Tino Rangatiratanga
me te Kāwanatanga

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

Part 1

Volume 3

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The cover photograph shows Hōne Heke Ngāpua addressing the crowd at Waitangi. Photograph courtesy of Auckland Libraries Heritage Collections (AWNS-18990324-01-02).

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CHAPTER 9

TE KOOTI WHENUA MĀORI I TE RAKI, 1862–1900

THE NATIVE LAND COURT IN TE RAKI, 1862–1900

> [T]he Native Land Court was established. Then we perceived our misfortunes when it was decided that pakehas should be Judges of the Court. What did the pakehas know of Maori customs that they should be appointed Judges?
>
> —Te Hemara Tauhia, Ōrākei, 1879.[1]

> [T]he whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is obtained, the Court serves no good purpose, and the native would be better off without it, as in my opinion, fairer Native occupation would be had under the Maoris' own customs and usages without any intervention whatever from outside.
>
> —T W Lewis, former Native Department Under-Secretary, 1891.[2]

9.1 Hei Tīmatanga Kōrero / Introduction

In chapter 8, we examined the alienation of Te Raki Māori lands from 1840 to 1865, the period in which the Crown asserted a right of pre-emption under article 2 of the treaty to impose a monopoly on purchasing. Throughout that period, settlers and Crown officials expressed dissatisfaction with the pace of acquisition and debated how land in customary Māori ownership might be more easily obtained without provoking conflict. Growing Māori resistance to the sale of land in Te Raki and elsewhere in the country, unease over the Crown's dual role as both the judge of Māori rights in land and its sole purchaser following the outbreak of war in Taranaki in 1860, and a reduction in the area the Crown was able to obtain, led to the development of a titling regime that enabled settlers to directly purchase land from Māori. This regime was ushered in by the Native Lands Act 1862 and the Native Lands Act 1865.

Pivotal to the origins of the Native Land Court, the 1862 Act provided for individuals, tribes, or communities to bring land before newly constituted local land courts in order to convert their customary tenure to a Crown-derived freehold title.[3] Following an investigation of rights, a certificate of title, 'conclusive as to ownership', could be issued, and applications for partition could be made. While presided over by a Pākehā judge, these courts would consist of at least two local rangatira with equal status, making the title determination process effectively Māori directed.[4] As we discuss in detail in section

9.3.2, 'experimental' or 'prototype' courts briefly operated at Kaipara and Whāngārei under the 1862 Act – a point that distinguishes Northland from many other regions in the history of the Native Land Court (elsewhere the Court did not begin operating until later legislation was in place). From late 1864, Francis Dart Fenton, who became first chief judge of the Court, significantly altered the body's composition and operating procedure, and oversaw its reconstitution as a national court of record under the direction of Pākehā judges.[5] These changes were later included in the Native Lands Act 1865, which came into effect in October 1865.

The foundation of the Native Land Court enabled a transformation of land tenure in Te Raki. At 1865, Te Raki Māori retained some 64 per cent of the 2.123 million acres comprising the inquiry district.[6] As we have discussed in preceding chapters, the impact of old land claims processes and large-scale Crown purchasing had created what legal scholar and historian Professor Richard Boast has described as a 'complex tenurial checkerboard' in Te Raki.[7] In the 35 years following the introduction of the Native Land Court, however, a further aggregate area of 684,620 acres was titled, approximately half of the total area that had remained in collective Māori ownership in 1865.[8] The pace of titling was especially rapid during the period from 1870 to 1875, notably in the Whāngārei and Mahurangi taiwhenua (subregions). Titling would subsequently slow, before the rate declined in the last two decades of the nineteenth century. By this stage, much of the land in the district had already been brought before the Native Land Court while Te Raki Māori resistance to the Court was intensifying.

9.1.1 The purpose of this chapter

The claimants in our inquiry presented a range of specific grievances related to the imposition, legislation, operation, and effects of the Native Land Court in Te Raki. We set out their arguments at an overview level in section 9.2.3 and consider them in detail at relevant points throughout the chapter. More broadly, the claimants identified the Native Land Court as immensely significant to loss of land and resources. They generally perceived the Court's role as being to investigate and individualise title, and its operation in the district as central to the long-term alienation of land and associated social and economic marginalisation of Te Raki Māori. They noted that the effects of these processes, which began during the nineteenth century, are still being felt in the district today.[9]

This chapter examines the Crown's Native Land legislation and the operation of the Native Land Court in Te Raki from 1862 until 1900. This period is bookended by the Native Lands Act 1862 – the legislation that established the Native Land Court – and the Maori Land Administration Act 1900, which ushered in a new era of Native Land legislation. We first examine the court system originally instated by the Native Lands Act 1862, the reformulation of the Court from 1864 to 1865, and the scope and character of these changes. We also consider the evolution of the legal regime underpinning the Court, how its operation was structured in our inquiry district, and the nature of that operation.

While drawing at times on illustrative examples to support our analysis, this chapter does not consider the wide variety of individual cases heard by the Native Land Court in depth. Instead, we focus on the reasons Te Raki Māori communities engaged with the Court, the effects of their engagement, and the larger question of whether the Court – and the titles created under Crown legislation – served the needs and interests of Te Raki Māori seeking to exercise their tino rangatiratanga over their communities and their lands, as guaranteed by article 2 of te Tiriti.

9.1.2 The structure of this chapter

The next section of this chapter (section 9.2) canvasses the issues we will determine. We begin by introducing the positions of the claimants and Crown, and acknowledge concessions the Crown has made. We then introduce central themes and conclusions of the Tribunal's extensive prior consideration of the Native Land Court and the operation of Native Land legislation in other inquiry districts. We distil a series of issue questions to be addressed in the chapter from the key differences in the positions of

claimant and Crown parties, our examination of treaty jurisprudence, and the statement of issues for stage 2 of our inquiry.

The first analysis section (section 9.3) considers the introduction of the Court, including its political context, constituting legislation, and the degree to which Te Raki Māori were consulted on the model of title determination the Crown instituted. We then discuss the reformulation of the Court after 1864, codified in the Native Lands Act 1865 (section 9.4); the subsequent development of Native Land legislation and the appropriateness of titles awarded by the Court (section 9.5); the operation of the Court in the inquiry district (section 9.6); Te Raki Māori engagement with the Court (section 9.7); and remedies and redress available to Māori aggrieved by its decisions and general operations (section 9.8). Finally, we summarise our findings of treaty breach (section 9.9), and consider prejudice arising from these breaches (section 9.10).

9.2 Ngā Kaupapa / Issues

9.2.1 What previous Tribunal reports have said

(1) *Introduction*

Over many years and in many inquiries, the Tribunal has considered the legislation that created the Native Land Court and governed its development. Tribunal reports have discussed in detail enactments including the Native Lands Act 1862, the Native Lands Act 1865, the Native Lands Act 1866, the Native Lands Act 1867, the Native Land Act 1873, the Native Land Administration Act 1886, the Native Land Act 1888, various land laws of the early 1890s, and the Native Land Court Act 1894. The Tribunal has generally found many aspects of Native Land legislation to have breached treaty principles. In addition to criticising the precepts of the individualisation model introduced under Native Land legislation, reports have stressed in particular the deleterious impact of post-1864 changes to the Court brought about by the Native Lands Act 1865. The Tribunal has concluded that these and successive legislative developments deprived Māori of meaningful and effective participation in the process of tenure conversion, which had far-reaching implications for whānau, hapū, and iwi.

A shared set of themes and conclusions emerge from earlier district inquiries which offer us some initial guidance. In the following section, we summarise aspects of this jurisprudence that have the greatest bearing on our consideration of the Native Land Court in Te Paparahi o Te Raki.[10]

(2) *Key premises underlying nineteenth-century Native Land legislation*

Across multiple inquiries, the Tribunal has commented on the key premises and assumptions of nineteenth-century Native Land legislation. Previous reports have identified the Crown's overriding conviction that it could, notwithstanding the treaty guarantee of tino rangatiratanga, and without the consent of its treaty partner, make and impose laws for the determination and regulation of Māori land ownership and establish institutions for their implementation.[11] A second major Crown premise was that the customary ownership of land, involving complex and changing layers of rights, could not provide an adequate legal basis for economic growth and development, necessitating its extinguishment and replacement with a system of English-derived, private-property ownership based on precise boundaries, certainty of title, and clearly delineated rights. The Crown believed that imposing a court system enabling the individualisation and transfer of Māori rights in land independently of the collective would hasten the decline of traditional tribal and hapū-based authority and promote assimilation. As *The Hauraki Report* (2006) concluded, the Crown was motivated to introduce the Native Land laws in part by a 'civilising mission', believing that Māori would reap cultural as well as economic benefits from individual title.[12]

The third premise held that the transfer of land from Māori into settler ownership, essential if the colony was to prosper, could be realised most expeditiously not through pre-emptive purchasing but, following a process of title investigation and determination, through direct purchase; that is following direct negotiation between

owners and purchasers. Finally, a fourth premise held that the extinguishment of customary tenure could proceed most efficiently through an independent court that (from 1865) would operate in accordance not with tikanga, with its emphasis on discussion, negotiation, and compromise, but with English judicial norms and with minimal formal Māori involvement in decision-making processes. The Tribunal has now developed a standard interpretation with respect to Native Land legislation and the institutions it created: that they were founded on and shaped by premises broadly inconsistent with Māori treaty rights and the Crown's obligations.[13]

(3) *Purpose of the Native Land Court*

In their conclusions on the purpose of Native Land legislation and the Native Land Court, previous Tribunal reports have advanced several major themes. The first centres on the purpose of the Native Land Court. Tribunal reports have broadly concluded that, given the perceived failure of Crown pre-emptive purchasing to yield 'sufficient' quality land for the continued expansion of British settlement, the Crown's primary purpose in conceiving and introducing the Native Land Court was to determine the ownership of customary land in order to expedite the transfer of land out of Māori ownership. As the Tribunal's *Te Urewera* report (2017), observed, echoing *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (2004), the introduction of the Native Land Court was 'primarily for the benefit of settlers, and its machinery was deliberately designed to bring about the transfer of the bulk of Maori land into settler ownership'.[14]

The Tribunal has concluded that a related underlying purpose of the Crown's tenure reform initiatives was to extend its own authority and reach. In this interpretation, the Crown's avowed aim of promoting the advancement of Māori through land reform was, at best, a secondary consideration to strengthening the dominance of the Crown and its British-derived legal system. In short, previous inquiries have found that the Crown, through the Native Land Court, usurped the right of Māori communities themselves to establish ownership of land and to control and manage their lands as they deemed fit. In doing so, the Tribunal has found that the Crown encroached on Māori autonomy in a manner not contemplated by, and in breach of, the treaty guarantee of tino rangatiratanga.[15]

(4) *Understanding of Māori society and culture*

The Tribunal has now commented widely on the degree of cultural understanding the Crown and judges and administrators of the Native Land Court possessed. The Tribunal has regularly found that, despite the requirement to determine ownership 'according to native custom', the post-1865 Native Land Court devised and applied a set of criteria that accorded primacy to descent, conquest, and occupation. At the same time, it often elected to minimise or ignore the dynamic complex of overlapping and intersecting rights and obligations that characterised customary tenure. In brief, previous inquiries have held that the Native Land Court was not equipped, in terms of its knowledge and understanding of history, whakapapa, tikanga, and relationships among hapū, and on account of the disposition of at least some of its presiding officers, to recognise and deal equitably with the complexities and subtleties of customary ownership.[16]

(5) *Consultation and consent*

In assessing the Native Land Court and its controlling legislation, previous Tribunal reports have considered the issues of consultation and consent. They have generally concluded that, given the assurance of tino rangatiratanga rights in article 2 of the treaty, any changes in the ownership, control, and management of Māori lands, fisheries, and forests required consultation with Māori and the receipt of their express consent prior to the formulation and implementation of any such transformation. The Tribunal has regularly found that no such consultation took place in respect of the introduction of Native Land legislation, in particular the Native Lands Act 1865, nor was Māori consent secured. As we discuss later, before the passage of the Native Lands Act 1862, some general dialogue occurred between the Crown and Te Raki Māori communities over the introduction of a rūnanga-style court to hear and determine claims of ownership and to resolve disputes over land.[17] Tribunal inquiries have been

very critical of the Crown's lack of consultation regarding the reformulation of the Court. As *The Wairarapa ki Tararua Report* (2010) observed:

> the proposition that those in government should engage with Māori on law changes that would profoundly affect them and their chief asset (land) is a reasonable one, even in the nineteenth century.

Tribunal inquiries have concluded, however, that reasonable Māori expectations as treaty partners overwhelmingly did not influence the Crown.[18]

(6) *Engagement with the Court*

Previous Tribunal inquiries have consistently found that, while bringing lands before the Court was in theory non-compulsory, Māori were in practice forced to engage in the Court's processes should they wish to receive legally recognised titles to their lands. Potential non-participants, the Tribunal has also found, were drawn involuntarily into the Court system, as remaining uninvolved meant they risked being dispossessed of their interests through the Court's determination of the claims of others.[19] The potential price of non-participation in the Court system, the Tribunal has determined, was in nearly all cases simply too high for it to have been a viable option. As the *Te Urewera* report concluded, the Crown effectively 'set up a system in the form of the Native Land Court that compelled Maori to participate against their wishes, and took their land from them if they did not'.[20] The imposition and operation of a land title system with no choices – or no choice but one, 'rejected in principle but inescapable in practice – was in breach of the Treaty'.[21]

(7) *Changes to customary tenure*

Previous inquiries have concluded that many Māori communities recognised that if they were to participate in the commercial economy, some changes to customary tenure would be necessary. However, such changes did not need to embrace all land in customary ownership. In effect, the Tribunal has determined that Māori wished to retain and exercise the treaty promise of options. The *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (1988) memorably described the power of choice inherent in the treaty as the right of Māori to walk 'in two worlds', or in only one if they chose.[22] As *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* (2023) put it, when entering into the treaty relationship with the Crown, Māori could reasonably expect 'the right to continue to govern themselves along customary lines, or to engage with the developing settler and modern society, or a combination of both'.[23] Further, the Tribunal has generally concluded that, while some Māori were interested in securing titles backed by the Crown, the Crown failed to give effect to their preference for a secure and stable form of collective title until practically the end of the nineteenth century. The Tribunal has found that management by Māori of their lands through collective or corporate bodies was clearly feasible, but while the Crown considered these possibilities, it did not provide for the establishment of Māori incorporations until 1894.[24]

(8) *Titles*

The Tribunal has closely considered the various forms of title Native Land legislation introduced, particularly those made available under the Native Lands Act 1865 and the Native Land Act 1873. Tribunal reports have widely judged the 'ten-owner rule', which came into effect under the Native Lands Act 1865, to have deprived all but the nominated owners of their rights and interests, and to have served the Crown's determination to individualise the ownership of customary lands, despite the preference of many Māori for collective ownership. Previous inquiries have concluded that the 'multiple title' introduced under the Native Land Act 1873 and extended by the Native Land Court Act 1880 and the Native Land Division Act 1882 gave the drive towards individualisation of Māori land interests strong and sustained impetus. In signing the treaty, the Tribunal has observed, Māori did not contemplate a system enabling the conversion of owners into holders of undivided interests able to alienate them without consulting the collective or securing its consent. Previous inquiries have thus concluded that the forms of title introduced in 1865 and 1873 were not intended to

meet Māori needs and wishes, but to support and further the Crown's agenda.[25] They have also highlighted that the Crown had other title options available to it, but failed to consider them or otherwise respond to Māori wishes for a legal collective title.[26]

(9) *Constitution and operation of the Native Land Court*

Other important findings centre on the constitution and operation of the Native Land Court. Previous inquiries have concluded that the local and flexible rūnanga-style courts established under the Native Lands Act 1862, together with their broadly tikanga-compliant mode of title investigation, were abandoned on the grounds that this system would have sustained and strengthened Māori communities and impeded the transfer of land into Crown and settler ownership. With respect to the operation of the post-1865 Native Land Court, previous inquiries have concluded that:

- the adversarial nature of proceedings discouraged negotiation and compromise between and among contending claimants, encouraged the presentation of false or misleading evidence, and often resulted in protracted and unnecessarily expensive proceedings;[27]
- the Crown's title system was complex, inefficient, and replete with contradictions, with an end result that Māori were neither safeguarded in the court process nor in the retention of their lands;[28]
- the manner in which the Court chose to notify and schedule hearings, its disposition to ignore provisions of Native Land legislation that it considered unworkable, notably preliminary investigations and prehearing survey plans, and its willingness to accept out-of-court arrangements as presented to it, disadvantaged many with otherwise legitimate claims and the right to be heard;[29] and,
- the costs of the Court's processes were not shared among benefiting parties, including the Crown and private purchasers.[30]

Previous Tribunals have concurred in finding that by establishing and operating the Native Land Court, the Crown had an overall responsibility to ensure that this institution, empowered to determine questions of custom and right, should be 'designed and implemented with Māori consent and cooperation'. They have generally found that the Crown failed to fulfil this obligation. As the Wairarapa ki Tararua Tribunal summarised, '[t]his did not occur in [other Tribunal] districts . . . It was no different in this district.'[31]

(10) *Appeal and redress*

On the matter of appeal and redress for Māori, the Tribunal has found that the Native Land Court was not the appropriate body to decide upon applications for rehearings or to investigate its own decisions. It has also found that rehearings in fact constituted (at least until 1889) fresh hearings with all the attendant costs, and that the Crown's failure to provide an independent legal appeal procedure until 1894 denied Māori the treaty right of equal treatment under the law and breached its obligation to protect their interests.[32]

(11) *Reform of the law*

A common Tribunal finding is that successive governments proved unwilling to re-examine and reconsider the systemic issues and difficulties to which Native Land law and its administration gave rise. The Crown instead preferred to deal with any such difficulties on a case-by-case, unsystematic, and extemporary basis, leaving unaltered the assumptions upon which such law was based and the principles it embodied.[33]

(12) *Costs and their allocation*

Tribunal inquiries have found that the process of title investigation prescribed by law frequently resulted in the imposition of heavy costs – both direct and indirect – on Māori, compelling many to incur debts that proved difficult to discharge. Moreover, the Crown failed to consider distributing those costs among the parties involved (Māori, the Crown, and private purchasers) according to the benefits each derived from the process of tenure conversion.[34]

(13) *Succession*

By adopting and applying succession rules of its own devising, the Court, in the view of the Tribunal, set in motion a process that had grave effects on all Māori communities. In conjunction with the transmutation of customary ownership of land into individual and tradeable rights, succession protocols of the Court resulted over generations in fractionation of ownership, title congestion, and fragmentation through continual processes of partition, as well as burdensome survey costs, and land management difficulties.[35]

(14) *Outcomes and prejudice*

The Tribunal has found consistently that Native Land legislation and the Native Land Court had transformative and often grave effects for whānau, hapū, and iwi. As *The Mohaka ki Ahuriri Report* (2004) concluded, 'native land legislation imposed a revolution in Maori land tenure that seriously undermined the social, political, and economic structures of customary Maori society'.[36] Previous inquiries have attested that the large-scale transfer of land out of Māori ownership and the imposition of the full costs of introduced processes on Māori were major contributors to the impoverishment of many Māori communities that became apparent by the close of the nineteenth century. A further general finding is that the operation of the Native Land Court systematically undermined the social integrity, social cohesion, governance, and economic functioning of Māori communities. Insofar as the imposition of the Native Land Court and its operating framework were concerned, the Tribunal's overarching conclusion has been that the Crown failed to uphold the terms and principles of the treaty, and failed to honour its promise of shared security and prosperity.

(15) *Conclusion*

In summary, we had before us an extensive and well-established body of Tribunal findings as we heard evidence on the introduction to Te Paparahi o Te Raki of the Native Land Court and its operation there. The Tribunal's findings related to Native Land legislation are of course too diverse to have detailed exhaustively within this introductory discussion of jurisprudence. We have therefore chosen to reserve some focused jurisprudential analysis for our later assessment of the establishment, restructure, and operation of the Native Land Court in Te Raki. For instance, in section 9.3, we closely consider Tribunal findings pertaining to the 1862 Act and the creation of the Court as a part of a discussion of its formation and operation in our district under the original statute. In sections 9.4 and 9.5, we discuss the development of consistent lines of finding by successive Tribunal reports on later Native Land legislation. Other legislation-related findings are integrated at relevant points throughout the remainder of the chapter.

While these previous findings may help frame our analysis, as alluded to in the introduction to this chapter, the Māori experience in Te Raki was distinctive in the national unfolding of the Native Land Court. Governor George Grey's rūnanga scheme operated more fully in the district than elsewhere (see chapter 7); and three of the five short-lived courts established under the Native Lands Act 1862 were located in Te Raki until their abolition in December 1864 (although only one operated, in Whāngārei). Three major titling regimes were implemented during the nineteenth century, introduced under the Native Lands Act 1862, the Native Lands Act 1865, and the Native Land Act 1873 respectively. In most other districts, the Native Land Court was the body reconstituted under the Native Lands Act 1865, and in a number of districts land only went through the Court under the Native Land Act 1873.[37] The singular experience of Te Raki, where lands were titled under the three different regimes, therefore needs to be taken into account when considering the application of some general conclusions the Tribunal has previously reached.

9.2.2 Crown concessions

The Crown conceded breaches of the treaty in three areas with respect to the Native Land Court system and the legislative regime that established it: the consequences for tribal structures; the operation of the ten-owner rule;

and the Crown's failure to provide for a collective title. We reproduce these concessions in full here:

> **Impact of Native Land laws on tribal structures**
> The Crown concedes that the operation and impact of the native land laws, in particular the award of land to individuals and enabling individuals to deal with land without reference to iwi or hapū, made those lands more susceptible to partition, fragmentation and alienation. This undermined traditional tribal structures which were based on collective tribal and hapū custodianship of the land. The Crown failed to protect those collective tribal structures which had a prejudicial effect on the iwi and hapū of Northland and was a breach of the treaty and its principles.
>
> **Ten-owner rule**
> The Crown concedes that the ten-owner rule had the potential to cause prejudice to Māori in circumstances where:
> - some right-holders were omitted from titles and dispossessed of their interests as a result;
> - the named owners acted individually in a manner contrary to the wishes or intentions of the wider community;
> - there was a subsequent succession of interests where there was no allowance for wider community interests.
>
> The Crown concedes that in these circumstances the ten-owner rule did not operate in a manner that reflected the Crown's obligation to actively protect the interests of Māori in land they may otherwise have wished to retain in communal ownership and this was a breach of the treaty and its principles.
>
> **Lack of collective title**
> The Crown concedes that its failure to provide a legal means for the collective administration of Māori land until 1894 was a breach of the treaty and its principles by failing to actively protect Māori interests in land they may otherwise have wished to retain in communal ownership.[38]

Crown counsel also accepted under questioning that the Native Land Court process could not be considered voluntary if a person was required to attend the Court to defend his or her rights.[39] The Crown submitted that, when taken together, these concessions addressed the claimants' overall allegations; namely, that Native Land laws 'undermined the communal nature and tribal structure of Northland Māori society, and thereby contributed to land loss'.[40]

9.2.3 The claimants' submissions

(1) *The purpose of the Native Land Court*

The claimants argued that a number of drivers prompted the Crown to establish the Native Land Court.[41] Counsel submitted that motivating factors included both 'immediate causal events on the ground' and 'long-held cultural ideologies brought to this country by the Pakeha settlers and then implemented by the colonial government'.[42] While noting that the premises underlying the establishment of the Court are difficult to describe in neat political or economic terms, claimant counsel distilled two main Crown objectives:

- to convert customary ownership into a form of title visible to the legal system that could then be easily alienated to the Crown and private purchasers to satisfy their desire for land; and
- to 'encourage and facilitate assimilation of the Maori people into the European population'.[43]

The claimants submitted that the 'extinguishment of tribal tenure and the undermining of customary Maori authority' was the Crown's dominant objective in establishing the Native Land Court.[44]

(2) *Consultation on the introduction and restructuring of the Court*

The claimants noted the Crown's 'clear umbrella duty under Te Tiriti to consult meaningfully and genuinely with Nga Hapu o Te Raki on the legislation establishing the Native Land Court'.[45] Claimants cited the conclusion of our stage 1 report that Te Raki Māori did not cede sovereignty to the Crown in 1840; this they characterised to mean that, when introducing changes that might abrogate or qualify Māori sovereignty, the Crown was obliged to consult Te Raki hapū. The claimants accepted that some 'discussion and communication' of land title determination and tenure reform occurred at Kohimarama in 1860

Crown and claimant counsel during week 21 of the stage 2 Te Paparahi o Te Raki hearings at the Turner Events Centre, Kerikeri, in October 2016.

and during Grey's 1861 efforts to promote his rūnanga system in Northland.[46] But they argued that this discussion was general in nature, was focused on the assumption that Māori would control any future adjudication process, and did not specifically reference provisions of the later legislation.[47] The claimants submitted that, while detailed communication about the 1862 Act itself did occur, this consisted of the Crown 'telling' Te Raki Māori about it after the fact, which did not satisfy any credible definition of consultation.[48] The claimants argued that no consultation at all took place on the introduction of the 1865 Act, which they described as reflecting a major departure from the Māori-controlled investigation process the 1862 Act had enabled.[49]

(3) *The structure and operation of the Court*

The claimants submitted that the Native Land Court, as it operated in Te Raki under the Native Lands Act 1865 and subsequent legislation, was not an appropriate investigator of land titles. They dealt at some length with what they

perceived as the flawed orientation and rigid procedures of the Court. The adversarial nature of the Court, claimants argued, led to the presentation of divisive, misleading, and even false evidence.[50] Further, they claimed that the Court's Pākehā judges lacked the familiarity with mātauranga Māori and tikanga necessary to effectively discharge their roles.[51]

In the claimants' view, the Native Land Court also essentially functioned as part of the Executive, with the Crown having an 'improper and pervasive influence . . . on a supposedly independent and neutral judicial body'.[52] For these and other reasons, claimants argued that the imposition on Ngā Hapū o Te Raki of a court characterised by 'severely deficient' processes and mechanisms was an 'intrusion into their sovereignty guaranteed to them under Te Tiriti, as well as a breach of Article three and the principle of active protection of Te Tiriti'.[53]

(4) *Māori engagement with the Court*

The claimants noted the significant extent to which Te Raki Māori participated in Native Land Court processes. They argued that Te Raki Māori sought title from the Court for a number of reasons, but primarily because:

- the Native Land Court was the only means by which they could gain recognised legal title to their land which then enabled them to participate in the developing colonial economy;
- they needed some form of protection for land that was under dispute or threat particularly relating to boundary issues; and
- pressure came from Crown purchasing officers, largely in the form of tāmana payments (advance payments made to individuals within ownership groups prior to title determination).[54]

In the claimants' submission, participation in its processes did not mean Te Raki Māori 'consented to or approved of the Native Land Court or the titling system that it implemented'.[55] As already noted, taking part was in fact their only option if they hoped to receive the secure title to their land necessary to participate in the colonial economy. Claimant counsel contended that Te Raki Māori were also often drawn into court proceedings to protect their interests from others.[56] Those who chose not to engage with the Court faced serious consequences. Because individuals could bring land before the Native Land Court by applying for a title determination, other interested parties would effectively be compelled to participate if they wanted to secure their interests. If they failed to do so, Māori risked the Court awarding the land exclusively to a very small group of applicants.[57]

Claimants also raised concerns about the costs of the Native Land Court, which they noted fell almost entirely upon Māori landowners rather than being distributed equitably among the beneficiaries of the determination process.[58] These costs ranged from formal procedural expenses such as legal representation, court fees, and survey costs, to the incidental expenses of attending distant sittings (for instance, medicine, food, and other general expenses), to income and other opportunities lost as a result of being absent in the Court.[59] While noting that these costs are 'not necessarily quantifiable in a monetary sense',[60] the claimants stressed that for the hapū and iwi of Te Raki, they were 'crippling in many circumstances'.[61]

(5) *Appropriateness of titles in respect of Māori interests*

The claimants argued that the Crown failed to provide titles recognising the rights of all owners and enabling collective ownership and management of land. The Crown, they submitted, instead experimented with forms of title intended to 'break down' communal ownership and expedite alienation.[62] The claimants observed that the application from 1865 of the ten-owner rule (which limited to 10 the number of owners able to be listed on the title of a block 5,000 acres or smaller) resulted in dispossession for many, and that amendments made to the legislation in 1867 did not materially change the situation.[63] For the claimants, the succession rules adopted unilaterally by the Native Land Court in 1867 established conditions for later title congestion and fractionisation of ownership shares, both of which had devastating effects.[64] The claimants argued overall that during the period from 1865 to 1900, Native Land legislation and the Native Land Court remained focused on the conversion of customary interests in land into individualised titles derived from the

Crown in order to facilitate and expedite the transfer of land out of Māori ownership. Further, they claimed that the Crown failed to consider title options that reflected Te Raki Māori tikanga and aspirations, nor did it provide a secure basis on which they could invest in and develop their lands.[65]

(6) *Protections and remedies*

On the safeguards available to them in the Native Land Court process, the claimants argued that legislative protections, such as restrictions on alienation, were 'insufficient, ill-thought out and for the most part ineffective'. The claimants again referred to the conclusion of stage 1 of our inquiry that Te Raki rangatira did not cede their authority to make and enforce law over their people and within their territories in 1840, and argued that inadequate protections to prevent or decelerate the loss of Māori land had crippling effects on rangatiratanga. The claimants noted that Court protections and restrictions would potentially have enabled communities to maintain some control over the alienation of their land.[66] However, as these protections were either removed or weakened by land legislation and inconsistently applied by Native Land Court judges, their efficacy was severely undermined and eroded. In particular, the claimants noted that:

- legislation that allowed and obliged the Court to inquire whether land should be protected from alienation as part of the title determination process was often ignored; and
- if alienation restrictions were placed on land, they could be easily circumvented by getting the owners to agree to alienation.[67]

The claimants submitted that legislation providing for the creation of reserves was unfit for purpose, seldom used, and in many cases where lands were reserved, the Crown was often able to circumvent the protection offered when targeting a reserve for purchase.[68]

The claimants also argued that the Crown failed to provide adequate recourse or remedies for Ngā Hapū o Te Raki aggrieved by decisions of the Native Land Court, that remedial mechanisms – such as rehearings – which did exist were ineffective and inappropriate, and that the Crown, although aware of decisions that resulted in injustice, failed to respond adequately.[69]

9.2.4 The Crown's submissions

(1) *The purpose of the Native Land Court*

Crown counsel submitted that the Native Land Court was established as an independent tribunal to investigate claims, ascertain the ownership of Māori customary land, and issue certificates of title. While acknowledging the Crown's concessions on aspects of Native Land legislation, counsel observed that, overall, 'the establishment of the Native Land Court was consistent with the treaty and its principles'.[70] In the Crown's submission, the introduction of the Native Land Court was the outcome of a period of social, cultural, and economic change in the mid-nineteenth century and must be understood in the 'context of the time'.[71] The Crown stressed the agency of Te Raki Māori in navigating transitions of the era and argued that the Native Land Court emerged to fulfil a 'demonstrable need by the early 1860s for a forum to determine competing claims to land'. The security and certainty necessary for Māori to operate in the new economy, the Crown submitted, 'could not have been provided by customary tenure.'[72]

The Crown argued that the Native Land Court's 'largely voluntary' investigation process was designed to facilitate Māori involvement in the colonial economy by ensuring they enjoyed the 'same rights as Europeans'.[73] The Crown acknowledged its policy in the nineteenth century to have favoured the alienation of Māori land, but argued that disposing of property was a right of ownership and consistent with its goal to bring 'unproductive' land into the national economy. In the Crown's assessment, land tenure conversion was implemented primarily to assist Māori and was consistent with the principles of the treaty. The transfer of land out of Māori ownership, the Crown argued, was a secondary purpose of tenure conversion and 'cause and effect' did not characterise the relationship between title adjudication and land alienation.[74] Finally, the Crown maintained that the Native Lands Act 1865 was originally 'framed to take communal interests into account' and that Native Land legislation was 'progressively reformed

to promote such recognition'. The Crown acknowledged, however, that tribal titles were not issued in Northland, but noted there is 'no evidence to explain why Te Raki Māori did not apply for them'.[75]

(2) *Consultation on the introduction and restructuring of the Court*

The Crown accepted that its degree of consultation with Te Raki Māori prior to introducing the Native Lands Act 1862 would not meet today's standards.[76] Counsel argued that some consultation did take place before the introduction of the Court into Northland, and this 'was consistent with the standards of the time'.[77] In support of this argument, counsel cited the 1860 Kohimarama Conference, the translation of the Native Lands Act 1862 into Māori and its distribution in Te Raki, and the efforts by Resident Magistrate John Rogan and Colonial Secretary William Fox in 1864 to explain the new law to Māori in Kaipara. Further, counsel noted Māori were advised that they would – and indeed they did – play a 'major role in title adjudications'.[78] At the same time, the Crown rejected the claimants' argument that the Native Lands Act 1865 constituted a major departure from its predecessor. The Crown argued that the 1865 Act was, in fact, 'substantially similar to the 1862 Act', and Te Raki Māori claims they were unfamiliar with the Native Lands Act 1865 did not necessarily mean unfamiliality with the earlier legislation.[79] The Crown noted that the 1862 and 1865 Acts were both translated into Māori in 1865, but offered no specific comment on the extent to which it consulted Māori on post-1865 legislative changes.[80]

(3) *The structure and operation of the Court*

Aside from the matters on which it conceded, the Crown did not respond directly to most detailed claimant grievances regarding the Court's operation. The Crown did, however, refute the claimants' argument that the Native Land Court was not independent of the Executive and that it operated in accordance with the Crown's biases and motivations. The Crown argued that the Court's judges and officials may have shared cultural orientations with the Crown, but it was nonetheless an independent tribunal. The evidence available, the Crown submitted, is insufficient to substantiate allegations of widespread Crown collusion with the Court.[81]

(4) *Māori engagement with the Court*

The Crown argued that Māori engaged with the Native Land Court for a number of reasons, including:

- to clarify boundaries between groups;
- to clarify and subdivide rights as among whānau;
- to attract European settlers and promote the establishment of towns; and
- to obtain a secure title from the Crown with which to transact land.[82]

The Crown noted further that some blocks came before the Court simply because the owners were anxious to establish the boundaries between their land and adjacent Crown land.[83] The Crown reiterated its concession that the individualisation of title undermined traditional forms of tribal authority. It noted, though, that Northland Māori were under no legal compulsion to bring their lands before the Court.[84] Nonetheless, in both its concessions and closing submission, the Crown acknowledged the 'reality' that:

> Māori had no alternative but to use the court if they wished to secure legal title to their land. A freehold title from the court was necessary if Māori wanted to sell or lease land, or use it as security to enable development of land. This often left Māori with few options other than selling some of their interests in order to secure and protect a big enough area on which to live, cultivate, farm and sustain their families. There is evidence that Māori entered into informal arrangements regarding customary land. Such transactions had no status in the law.[85]

(5) *Protections and remedies*

The Crown noted that the 1862, 1865, and 1867 Native Lands Acts did not contain automatic restrictions on alienation, but observed that some Māori resented encroachment on their ability to deal with lands as they

chose, including disposal of interests, and evaded forms of protection that did exist. The Crown argued that when it became apparent greater safeguards against dispossession were needed, it responded with 'stringent protective mechanisms'; in particular, the provision of the Native Land Act 1873 that memorials of ownership automatically restricted alienation by sale or leases longer than 21 years, unless a majority of owners wanted to sell.[86] The Crown accepted that this restriction 'was also commonly evaded by putting forward a few representatives' names for the memorial, to ensure a quick and uncomplicated sale'.[87]

The Crown argued that restrictions on alienation were intended to be a temporary measure, 'until such time as Māori had adapted to and were amalgamated into the new economy', and it was for that reason that the restriction regime was 'progressively loosened up to 1909, when all existing restrictions on the sale of land were removed'.[88] In its submissions, the Crown noted that from 1883, alienation restrictions could only be removed 60 days after notice had been given in the *Gazette* or *Kahiti* (Māori Gazette). The conditions for removal subsequently changed 'from a majority requirement, to the consent of all owners with public inquiry and then to one third of the owners where all owners had sufficient land for their support'.[89]

On the issue of the remedies and redress available to Te Raki Māori aggrieved by court decisions, the Crown pointed to the fact that all Native Land legislation from 1865 contained provisions for the rehearing of cases.[90] The Crown stated that the Native Lands Act 1865 provided that the Governor-in-Council could order a rehearing within six months of the original decision. Counsel noted that, while the Native Land Court no longer had jurisdiction after this period had passed, those seeking redress could do so through the civil courts or petition the Government for special legislation authorising a rehearing. After 1872, they could petition the Native Affairs Committee. In the Crown's submission, Te Raki Māori were aware of the available avenues of remedy. Crown counsel also submitted: '[t]here is no reason to suppose that rehearing applications were not generally considered on their merits and treated accordingly.'[91] The Crown did acknowledge that Native Land legislation did not provide guidelines clarifying what would be legitimate grounds for a rehearing.

9.2.5 Issues for determination

Based on the evidence presented to us by both claimants and the Crown, and our consideration of previous jurisprudence, we have identified the following issues for determination:

- Why was the Native Land Court established and was it designed to uphold Te Raki Māori tino rangatiratanga?
- Why and how was the Native Land Court restructured in 1864 and 1865?
- Did the Native Land Court award Te Raki Māori appropriate titles?
- How did the Court operate in Te Raki from 1865 to 1900?
- How did Te Raki Māori engage with the Native Land Court and what were the consequences of engagement?
- Were sufficient forms of redress and remedy available?

9.3 Why Was the Native Land Court Established and Was it Designed to Uphold Te Raki Māori Tino Rangatiratanga?

9.3.1 Introduction

As noted earlier, the Native Land Court in Te Raki was distinctive because, for a short period, the provisions of the Native Lands Act 1862 governed the operation of local courts. In April 1864, Governor Grey proclaimed the Native Land districts of Kaipara South and Kaipara North. The latter district extended to Whāngārei and included land blocks within the Te Raki inquiry district. The Native Lands Act 1862 was declared to be in operation in the proclaimed Native Land districts and a court was established to investigate Māori ownership of land blocks and issue certificates of title.[92] In August 1864, further Native Land districts were proclaimed for Hokianga, Kororāreka, and

Waimate. These five operational districts for the newly established courts would be abolished by the end of the year, and only 14 blocks (including 10 in Te Raki) would be investigated over this period.[93]

In this section, we examine the Crown's motives in deciding to waive its exclusive right of pre-emption and enable direct purchase of Māori land through the operation of the Native Lands Act 1862, and the extent to which the Crown secured Te Raki Māori agreement for introducing this legislation. To provide context for this decision, we return to the struggle for control over Māori affairs between the Governor and successive new settler ministries responsible to Parliament, which we discussed in chapter 7. By the late 1850s, settler politicians were prompted by increasing Māori resistance to Crown purchasing to push for direct purchase as a means of opening up more land for settlement. The rise of the Kīngitanga and the outbreak of war in Taranaki in 1860 further increased pressure on the Government to establish institutions that would provide for a form of Māori self-government and would relieve the Governor (in practical terms, his Chief Land Purchase Commissioner) of the responsibility of determining Māori titles. In the coming sections, we return to the subject of the Kohimarama Rūnanga, which was convened by Governor Thomas Gore Browne and Donald McLean as Native Secretary following the onset of the Taranaki conflict, where they proposed new policies for the administration of Māori lands to rangatira. We also discussed in chapter 7 the establishment of Governor Grey's rūnanga or the 'new institutions' as bodies for the adjudication of land disputes, before they were abandoned in favour of a Native Land Court. We outline the convoluted story of the development of the Native Lands Act 1862 and its multiple iterations, before assessing, in light of the information available, that court's brief operation in Te Raki until it was restructured in late 1864 and 1865. The claimants and Crown, as we have set out earlier (see sections 9.2.3 and 9.2.4), viewed these matters differently, disagreeing particularly on the Crown's principal reasons for instituting the Native Land Court system and the adequacy of its consultation on the introduction of the 1862 Act.

9.3.2 The Tribunal's analysis

(1) *The move to 'responsible government' and the question of Māori land tenure*

The passage of the first Native Lands Acts and establishment of the Native Land Court were preceded by years of debate over the Crown's Māori policy and its approach to native title and land purchase. Neither settlers nor Māori were satisfied with the Crown's handling of these matters. The newly formed settler Parliament, with its early ministries dominated by former New Zealand Company officials,[94] accepted the treaty and the guarantee of Māori ownership of all land in New Zealand with the utmost reluctance. They resented both the retention of control of Māori affairs by the Governor and Donald McLean's influence on policy as Native Secretary (from 1856 to 1861), and as Chief Land Purchase Commissioner (from 1854 to 1865). As discussed in chapter 7, they were highly critical of what they considered to be the slow pace of land acquisition under Crown pre-emption, as conducted by McLean's Native Land Purchase Department (established in 1854), which they condemned as an impediment to colonial expansion and prosperity. For their part, Māori were critical of the low prices offered by the Crown, were increasingly opposed to land sale, and desired greater political autonomy, as evidenced in the growth of the Kīngitanga. In Te Raki, the pace of Crown land acquisition slowed appreciably in the late 1850s, as discussed in chapter 8. At Waitara in Taranaki, the activities of land purchase officers would exacerbate tensions between those who wished to sell and those who did not, resulting in an attack on the authority of chief Wiremu Kīngi and his alleged ability to 'veto' land sales within his tribe, followed by the outbreak of war in 1860.

These circumstances intensified debate over the respective merits of Crown pre-emption and direct private purchase of Māori land. Some critics pointed to the dangers of the Crown, as sole purchaser, also deciding title in the absence of any independent inquiry. At the same time, there was a growing acceptance among settler politicians of the need for some form of title determination before purchasing could take place without causing conflict. The benefits of a secure individual title for Māori as an

essential precursor to their 'civilisation' were also widely assumed and this was an oft-repeated theme in political discourse of the 1850s and 1860s.

These matters – title determination and land purchase – were central points of contestation in the struggle between the Governor and the colonial Legislature for control of Māori affairs. The settler Parliament pressed for 'responsible government' at the first sitting of the General Assembly in 1854. As we discussed in chapter 7, the Acting Governor, Robert Wynyard, referred the matter to the Colonial Office, which did not oppose the idea – and nor did Gore Browne, the new Governor, though he did wish to retain control of Māori affairs. On his arrival in 1855, he had sought the opinion of Pākehā 'experts', including missionaries and a number of his own officials, as to whether the management of Māori affairs should be the responsibility of the Governor alone or handed over to a ministry chosen by elected representatives with the Governor retaining a right of veto. As historian Dr Donald Loveridge commented, it was perhaps predictable that all but two of the 38 respondents favoured the Governor keeping complete control over Māori policy rather than dividing responsibility for it.[95] Gore Browne decided to retain control of 'native policy', since the cost for any conflict resulting from policies relating to Māori would have to be borne by the British government, and he interposed himself between Māori and a settler Parliament in which they had no representation. In April 1856, he informed his Ministers that, while he would receive their advice on imperial matters, including 'all dealings with the native tribes, more especially in the negotiation of purchases of land', he was not obliged to accept it.[96]

(2) *The Board of Inquiry into Native Affairs, 1856*

Later that year, Gore Browne also set up a four-man board 'to inquire into the system of purchasing land from the Natives, and other matters referred to them'.[97] We discussed the Board of Native Affairs in chapter 8 (with reference to the question of what Māori understood by their land transactions) and return to it here, since it conducted the most thorough local investigation of the nature of customary title to date, although one undertaken with the aim of deciding how best to set about extinguishing it. Again, the opinions of witnesses (a total of 35, comprising officials, missionaries, early settlers, and nine Māori including Te Hira Taiwhanga) were sought. There was near unanimity of opinion that an 'individual right to any particular portion of land' did not exist 'independent and clear of a tribal right' in Māori customary law. There was less agreement on other matters, notably whether Māori were willing to sell their lands. Historians Dr Hazel Riseborough and John Hutton, who analysed the responses of the board witnesses, found that 16 thought they were and seven that they were not, while Māori opinion was split on the matter.[98]

The board reported what had been long known by those with experience in Māori matters: that each person had a right in common with the whole tribe over the disposal of land, and use rights in such areas as he (or she) or their parents had regularly cultivated or occupied, but the claim of an individual did not amount to a right of disposal to Europeans 'as a general rule' – a qualification made to account for the sales under pre-emption waivers in the vicinity of Auckland.[99] The board emphasised the complexity of customary ownership, overlapping and competing claims, and the effects of intermarriage on claims to land based on descent. A number of major factors complicating the task of defining title were identified: usufructary (temporary right of use) interests in the land, including those held by chiefs; inheritance through the female line and intermarriage between tribes that resulted in the ability to claim rights in the lands of different tribes; gifting of land; allocation of land in compensation for a wrongful deed; and the return of 'slaves' (war captives) to their former lands.[100] In the board's estimation, Māori lacked a secure and clearly defined title comparable to that held under the British system.[101]

Historian Dr Michael Belgrave has pointed out that such a complicated system of tenure presented 'real problems' for a Government anxious to extinguish Māori title for the purposes of colonisation: '[s]low and painstaking investigation did not transfer much land.'[102] The native protectorate had found this out; so had McLean and his purchase officers who had departed from recognised purchase

standards in order to satisfy an increasingly impatient and powerful settler population. For the Government, Belgrave argued, the problem was unchanged:

> How to recognise Maori customary ownership in order to purchase land, without getting drawn into a never ending process of buying off everyone who had a claim? What was to be done if some of those with rights refused to sell?[103]

The lack of a secure individual title was considered a serious obstacle to the progress of the colony and of Māori themselves for, in the board's view,

> As long as Maori . . . hold their lands as they do at present they have no incentive worthy of the name to improve their social condition or to add permanent improvements to their land; and as regards the adoption of our laws and customs it is not likely that they will readily break off their connexions with the native tribes, which now afford them the only security they have for their holdings until they are assured of a better. While they continue as communities to hold their land, they will always look to those communities for protection, rather than to the British laws and institutions, which, although brought so near, does not embrace them in regard to their lands.[104]

The provision of Crown grants was seen as serving several purposes. As Loveridge observed, Māori society would be de-tribalised and would be brought 'under the control of the same law and institutions as the settlers', while it would also encourage Māori to sell their unoccupied lands in the longer term.[105] The board of inquiry, which had noted the increasing reluctance of Māori to sell their lands, believed that if titles were individualised 'to such portions of land as may be actually required for occupation' and held under Crown grant, the remaining unimproved, unused lands could then be sold (see also chapter 8, section 8.3.2(6)).

(3) *Early attempts to convert customary tenure*

In the view of the board and settlers in general, the Government held 'insufficient land to meet the requirements of the Colonists'.[106] A means of extinguishing native title had to be devised that would be speedier than Crown purchase, so that more land could be opened up to meet settler demand. Though the board did not support waiving Crown pre-emption, colonial politicians increasingly favoured that option.[107] In August 1856, member of the Legislative Council, J A Gilfillan (Auckland), opened a debate in the General Assembly on 'native land purchases', inquiring whether it was 'the intention of the Government to introduce this session any measure to legalise the direct purchase of land from Natives?'[108] Gilfillan claimed that a 'deadlock' had been reached because:

> the Natives would not sell to the Government, the Government would not allow the Natives to sell to Europeans. This could only be remedied by allowing the Natives to sell their own land.[109]

The time had come for a new approach 'for the sake of the Natives' because the 'large quantity of land in their possession now unpeopled, and therefore untitled was of no real value to them' and would prevent their advance 'in the scale of civilization' by inducing them to 'lead a wandering unsettled life' resistant to Christian teachings. He adverted, too, to the long-standing criticism of pre-emption: that it denied Māori their rights as British subjects to sell their own lands, of which they had a 'surplus supply'.[110]

In his response, Attorney-General Frederick Whitaker agreed that it was 'very desirable that some change should be made in the mode of acquiring land from the Natives'.[111] He had drawn up a Bill enabling settlers to make a deposit on a desired piece of land to the Government, which would then complete the purchase and make the grant.[112] While the proposal to provide Crown grants to Māori 'was a measure he was inclined to look upon with favour' if it were first tried on a 'limited scale', there were major obstacles to overcome; direct purchase would not only interfere with the land fund but also the matter remained in the hands of the Governor.[113] However, a motion to modify the existing law to allow direct purchase 'through the agency and with the sanction of the Government'

received general approval.[114] Members such as Henry Sewell thought 'precautionary steps' such as registering the rights of different Māori so as to 'prevent confusion and disputes' were required, but there was wide consensus on the need for change.[115]

By the late 1850s, Crown officials and settler politicians, anxious to undermine the Kīngitanga and stave off what they perceived as incipient Māori nationalism, were increasingly willing to institute some form of Māori local self-government and some say in the disposal of their own lands. Fenton, working as resident magistrate in the Waikato in 1857, had proposed a system through which local rūnanga would regulate the affairs of Māori under the direction and control of Government. It was his view that Māori would 'cease to fear for their independence and . . . cease to regard the possession of the land as a matter of such deep interest' if their 'importance and position [were] properly recognized and protected'.[116] But the Governor withdrew Fenton from the district within a year, on the advice of McLean, who thought that he was exacerbating tensions and damaging the Government's efforts to constrain the influence of the Kīngitanga.[117] A later select committee which reviewed Fenton's operations criticised his withdrawal, lamenting that Māori had been 'once again left to their own devices'.[118]

Within a few months, the Stafford ministry (under Premier Edward Stafford) had introduced several measures concerning Māori land – notably the Native Territorial Rights Bill – as the struggle for control over native policy intensified. As discussed in chapter 7, this measure would have established a process by which the Governor-in-Council (the Governor acting in accordance with ministerial advice) might issue certificates of title to Māori land, either to communities or individuals. There was also limited provision for the issue of Crown grants, up to 50,000 acres per year. Under a waiver of the Crown's right of pre-emption, settlers would have been able to purchase or lease some Māori land directly for a substantial fee per acre. However, Gore Browne opposed the Bill, which he saw as a challenge to the Crown's authority, stating it would require Royal assent.[119] The imperial government was unwilling, at this stage, to surrender control over Māori policy to the colonial Legislature, and considered any move to waive the Crown's right of pre-emption to be 'in the highest degree unadvisable' and contrary to the spirit of section 73 of the New Zealand Constitution Act 1852. According to the Secretary of State for the Colonies, Lord Carnarvon, a system of direct purchase would fail to guarantee the fairness of negotiations that preceded any transfer of land, expose the Government to a suspicion of favouritism, encourage speculators, and 'induce an intermixture of European with Native lands, calculated to cause confusion and inconvenience'. Continued imperial military support was also contingent upon the maintenance of existing arrangements.[120]

Nonetheless, Gore Browne indicated to a deputation of settlers in June 1859 that it was

> desirable to provide means for enabling tribes, families, and particular individuals to define and individualize their property, and that it would be just and proper to confirm well-ascertained rights by a Crown title.

While the Governor did not accept that the Native Land Purchase Department had failed to procure sufficient good-quality land for colonists, he recognised that it was:

> very desirable for the interests of both races that the extinction of Native title over all land not required for the use or occupation of the Maories should be effected as rapidly as can be accomplished with justice.[121]

The other measures proposed by the Stafford ministry – the Native Districts Regulation Act 1858, accompanied by the Native Circuit Courts Act 1858 – fared better and were approved, coming briefly into operation. The Bay of Islands Settlement Act 1858 was also approved. Intended to provide for districts of mixed populations (as discussed in chapter 7), it proved a disappointment to Te Raki Māori. They had swallowed the bitter pill that was the hard line taken by Francis Dillon Bell's Land Claims Commission (Bell commission) on Crown ownership of 'surplus lands' from old land claims and pre-emption waiver purchases, in the expectation that the Bay of Islands Settlement Act

would assist in providing for shared authority and future prosperity; an expectation in which they would be further disappointed.[122]

Pressure for direct purchase mounted in the following year. Gore Browne's response to the delegation (noted above) was considered promising. Even though he clearly intended to retain control of the process, colonists agreed on the need for some system of ascertaining title as a preliminary step to purchase.[123] The question was how to do this 'effectually'. Several proposals were in circulation: Fenton's 'Scheme for Partition and Enfranchisement'; four Native Land Bills produced by the Government in 1859 for introduction during the 1860 session;[124] a plan by Sewell for the creation of native councils to ascertain titles with the aim of promoting 'systematic colonisation'; and a plan from Gore Browne which modified Sewell's scheme.[125] After considerable debate in the Colonial Office, the British government came up with its own Bill 'for the better Government of the Native Inhabitants of New Zealand, and for facilitating the Purchase of Native Lands', which was brought before the House of Lords in 1860. This also provided for a native council, which would be empowered to declare native districts in which native law would be maintained and rules devised for the investigation of Māori title and respecting the 'use, occupation and devolution of Native Lands'. Certificates of title could be issued, but these would not confer the power of alienation without the approval of the General Assembly.[126] The Bill was passed by the Lords but was abandoned after meeting strong opposition in the Commons following the outbreak of war in Waitara.[127]

War in Taranaki also undermined Gore Browne's position that only the Crown could safely conduct land purchases from Māori and that policy should remain under his control. Former supporters, Bishop George Augustus Selwyn and politician William Swainson, began to endorse direct purchase, and the war prompted a prolonged debate in the colonial Legislature in which McLean and Māori policy were the focus of attack.[128] A Native Council Bill was introduced (news having reached New Zealand that the British government was contemplating such a measure) that would enable the 'Executive Government', on the council's advice, to make laws to regulate the purchase of land. The council would be able to suggest

> such measures as may appear to them to be desirable for promoting the civilization of the Natives; for ascertaining and defining their tribal and individual territorial rights; for encouraging the partition of lands held by them in common; for rendering their surplus lands available for purposes of colonization; for establishing law and order among them; for preparing them for the exercise of political power; and generally for promoting the welfare and advancement of the Native People.[129]

On a broad level the intention was clear: decisions about Māori affairs would be in the hands of Ministers – and customary tenure would be transformed to promote the transfer of lands and Māori adoption of British laws and institutions. A key aim of the proposal was to encourage Māori to partition their lands into smaller holdings held by individuals to make the 'surplus' available for purchase. While Gore Browne remained convinced that the Crown was the 'rightful guardian of the Maori race', he accepted that the Constitution Act 1852 had not made 'sufficient provision' for it to properly fulfil that role. In his view, the Native Council Bill was the 'best compromise' that could now be made, and he recommended that it be given Royal assent. In the end, however, a council could not be formed, and nothing further was done.[130]

(4) *The Kohimarama Rūnanga and land titles*

Despite the growing challenge to his authority, including from the British government, in respect of Māori affairs, Gore Browne continued to search for a practical means of ascertaining customary interests in Māori lands and replacing them with Crown-derived titles.[131] In July 1860, he convened a major rūnanga at Kohimarama.[132] The main intention was to secure the allegiance of rangatira, particularly those from the putatively more 'friendly' regions north of Auckland, during the war in Taranaki. However, the rūnanga also provided a rare opportunity for Ngāpuhi

and other invited Māori leaders to engage with the Crown on the treaty relationship (which we analysed in detail in chapter 7). Here we discuss the proposals raised at the meeting for a means of determining land ownership.

During the course of the hui, the Governor presented several 'Messages' directed to the topic of Māori welfare and 'advancement'. 'Message No 2', delivered late in the proceedings, concerned land reform. Discussions touched explicitly upon the potential for Māori to be granted secure legal titles by the Crown. Reminding the assembled chiefs of the promise that had been made under article 2 of the treaty, the Governor asked them to consider 'the difficulties and complications attending the ownership of [Māori] land' in the hope that they could devise a plan to simplify tenure. Blaming tribal wars and disputes on the uncertainty of their tenure, the Governor warned that they would make 'no progress in civilization' until general principles as to boundaries and rights of property were laid down and the rights of the individual were as 'carefully guarded as those of a community'. He suggested that land disputes might be referred to a 'committee of disinterested and influential Chiefs selected at a Conference' similar to that being currently held, or by an arbitration panel with members chosen by both sides of the dispute and a chief from an independent tribe.[133] Only 11 of the 250 or so rangatira in attendance spoke on the matter (all in support), none of them from Te Raki.[134] Nor did the Crown's proposals for the administration and titling of Māori land feature in the resolutions adopted by the Māori representatives present.[135]

In brief, the Kohimarama Rūnanga was but one step towards a negotiated agreement between the Crown and Māori on issues of key importance to both treaty partners, including tenure conversion and the administration of Māori land. This discussion appeared to signal that some degree of communication about the Crown's preferences for a title determination system had taken place, but Gore Browne seems not to have commented specifically on the response to his tentative proposals. It may be, as Loveridge has argued, that the Governor likely came away from Kohimarama thinking that his audience had been receptive to the idea of tenure reform and the introduction of a means of settling land disputes.[136] It is clear, however, that the rūnanga as a whole had not consented to any change in their system of ownership or the introduction of any adjudicating body, let alone an English-style court. The Te Raki attendees expressed no opinion on these matters at all.

In early 1861, Gore Browne sent a memorandum to Premier Stafford asking whether it would be practical to set up a 'court'. He hoped to introduce a Bill to this effect in the next session. When it opened shortly after, the new Native Minister, Frederick Weld, moved that a select committee be established to report on the advisability of the proposal and the 'constitution and functions' of such a body.[137] Before much more could be done, the Stafford ministry fell, replaced by one led by William Fox, while Gore Browne had been replaced by Sir George Grey, who was already en route to New Zealand.

(5) *Grey's proposal for Māori adjudication of disputes*

Grey returned to New Zealand with discretion to make any change to the current native policy arrangements as he saw fit – and to a warm reception from colonists. He was expected to establish peace and improve the administration of Māori affairs; land was one of his first priorities. In June 1861, then Secretary of State for the Colonies, the Duke of Newcastle, signalled a change of heart on the part of the Colonial Office. He raised the prospect of declaring 'Native Districts' and 'withdrawing them, for purely native purposes, from the jurisdiction of the General Assembly, or Provincial Councils, or both', and of 'a distinct legislation and administration, in which the natives themselves should take a part'. Newcastle queried whether self-administered native districts 'would not better promote the present harmony and future union of the two races' than the 'fictitious uniformity of law that now prevails'. He also suggested that the system of Crown pre-emptive purchase, which he described as a 'most important portion of the subject closely connected with the origin of the present disturbance', might be modified or superseded. In addition, a tribunal might be created to which land

disputes could be referred. Newcastle indicated that should the Governor consider such a step desirable, the imperial government would be willing to:

> assent to any prudent plan for the individualization of Native Title, and for direct purchase under proper safeguards of native lands by individual settlers, which the New Zealand Parliament may wish to adopt.[138]

Grey responded by formulating proposals for State-mandated rūnanga, or 'new institutions', to be responsible for Māori self-government (we discuss Grey's rūnanga scheme in detail in chapter 7). To summarise, under this system some 20 rūnanga districts would be created (rather than following provincial borders). Their members would be appointed by the Crown and would operate under the direction of resident magistrates. They would have the power of adjusting disputed land boundaries of tribes, hapū, and individuals, and of 'deciding who may be the true owners of any Native lands'.[139] They would recommend the terms and conditions on which Crown grants would be issued and, jointly with the Governor, monitor and approve land transactions. There would be tight restrictions on land sales, however, including a requirement for the purchaser to live on the land for three years before receiving a Crown grant. It is worth noting the role of the Governor as a confirming authority in Grey's proposal; a similar provision would be included, albeit in a diluted form, in the 1862 Act.

The Fox ministry had misgivings about the cost of the machinery Grey proposed and disliked the restrictions on purchase but approved its general direction.[140] The Ministers thought that the only practical way of dealing with land was to 'leave the matter substantially in the hands of the Runangas'; once titles had been ascertained and recorded, 'the Natives should then be left to hold, sell, lease, or otherwise dispose of their lands in such manner as they might themselves choose'. The Government would, however, attempt to guide them in adopting regulations 'as may lead to the sale and occupation of those lands in the manner most beneficial to both races'.[141]

Grey favoured trialling his proposals in the 'loyal' north, where Ngāti Whātua, Te Uri o Hau, and Ngāpuhi had declined to support the Kīngitanga movement. Accordingly, in November 1861 the Governor met Māori in Hokianga and at Waimate, Bay of Islands, and elsewhere 'for the purpose of introducing the proposed Native Institutions amongst the tribes in those localities'.[142] During those meetings, Grey emphasised the role rūnanga would play in resolving disputes over land, including those that involved purchases by the Crown; leasing as a means of generating revenue; and the establishment of towns. In effect, Grey emphasised the contribution that rūnanga, in concert or partnership with the Crown, could make in securing peace, stability, and economic advancement.[143] Grey also carefully stressed that land title determination was an essential prerequisite to such development.[144] Some 1,500 Māori assembled at Rāwene in November 1861 to hear '[v]ery full explanations' which provoked a great deal of discussion led by Arama Karaka Pī (Māhurehure) and other principal rangatira. According to a report in the *New Zealander*, Māori were 'very greatly pleased' with Grey's proposals, which promised partnership, cooperation, and an appreciable degree of Māori control or autonomy.[145] In February 1862, the *New Zealander* declared that 'Not a single *hapu* declines to accept the proffered system'.[146]

In his report on the proceedings, dated 5 April 1862, the former Chief Protector of Aborigines, George Clarke, advised the Government that he had identified wide support for the new rūnanga system.[147] But the key tasks of land title investigation and resolution of disputes over land rights were quickly transferred – without consultation with Māori – to the newly created Native Land Court.

(6) *The development of the Native Lands Act 1862*

In January 1862, several months before the Bay of Islands rūnanga had met under Grey's scheme for the first time, the Fox ministry had already begun taking steps to introduce a different measure for the determination of Māori land title and direct purchase. Before the enactment of the Native Lands Act 1862, the proposal would undergo a convoluted legislative process where two different ministries

(led by William Fox and Alfred Domett) would each introduce Bills directed at the conversion of Māori tenure and enabling settlers to buy lands directly themselves. The two iterations of the Native Lands Bill 1862 reflected varying views on how Māori title should be decided and the role the Governor was to have in the process.

In opening the 1862 session of the New Zealand General Assembly, Grey focused on his rūnanga scheme, which he hoped would 'elevate' Māori and reconcile them to British rule. Bills would be introduced to remove 'impediments' to the individualisation of title, the issue of Crown grants, and Māori capacity to dispose of their lands.[148] The Native Lands Bill No 1 drafted by Sewell (acting as Attorney-General) modified Grey's proposal, and a new Bill and further changes would prove necessary to ease the passage of such a measure through the Legislature.[149] First, Sewell considered it best to overcome the stumbling block of section 73 of the Constitution Act 1852, which declared that it 'shall not be lawful for any person other than Her Majesty to purchase or in any way acquire or accept from the aboriginal Natives any extinguishment of their rights'. According to Loveridge, the need to keep within the spirit of section 73 probably explained the awkward phrasing of Sewell's Bill 'for regulating the disposal of Native lands'. He hit on the device of putting power to decide who the owners of Māori land were in the hands of the Governor (with the involvement of the owners), then confirming their ownership by an Order in Council; the owners might then seek regulations for the sale or lease (or making reserves) of their land from the Governor, who would confirm their request by a further Order in Council. Such recognition of Māori ownership and control over alienations by Orders in Council, Sewell evidently reasoned, extinguished native title before the land passed into the possession of private individuals.[150]

Bill No 1 thus enabled the Governor to ascertain 'in such manner as he shall think fit . . . who according to Native custom are the Proprietors of any Native Lands' (clause 4). The Governor was, however, to 'as far as possible in such manner as he shall think fit obtain the assent and co-operation of the Natives interested therein' (clause 6). Ownership would be confirmed by Order in Council. Where collective ownership was recognised, the Governor could 'in his judgment deem according to Native Custom' who should be entitled to act as their representatives. And once an Order in Council had been obtained, the 'Native proprietors' could submit requests to the Governor for the issue of regulations for the sale, or other disposal of the lands concerned (under clause 9). Sewell apparently thought the language of the Bill remained consistent with section 73 of the Constitution Act because, as Loveridge has interpreted his reasoning, 'the recognition of ownership and control over alienations by means of Orders in Council extinguished Maori title before the land passed into the possession of private individuals'.[151] Loveridge observed that others were far less certain the Crown was able to legislate over lands not yet acquired from Māori.[152] To finally resolve this issue, Sewell proposed in April 1862 that Grey

> obtain from [the imperial] Parliament an extension of power enabling the General Assembly to legislate with the assent of the Native Proprietors as regards lands not yet ceded to the Crown.

He also proposed that the Governor be authorised 'to assent to such Bills without reserving them for the Queen's assent'.[153]

Grey endorsed this request and sent the Bill and Sewell's memoranda off to London the same day, adding that he sought the power to make regulations 'for the sale letting occupation or other disposal of such lands' under any legislation approved by the Assembly as soon as an amending Act arrived in New Zealand. Loveridge noted that '[c]learly, the Governor (and probably his advisers) were eager to get the new system up and running'.[154] This feeling was shared in the Colonial Office, which responded by quickly moving to introduce amendments to 'The New Provinces Bill', which was already before committee, to empower the New Zealand General Assembly to alter or repeal section 73 of the Constitution Act, and providing that 'no Act passed by the said General Assembly, nor any

Part of such Act, shall be deemed to have been invalid by reason that the same is repugnant to any of the said Provisions'. The New Provinces Act 1862 (also referred to as the New Zealand Act) received Royal assent on 29 July 1862, but would not be gazetted in New Zealand until November.[155] Loveridge observed:

> a surprising feature of the passage of this legislation is the complete absence of any recorded debate on the constitutional change, or its implications for Maori interests or colonization.[156]

As the imperial government took steps to open the way for direct purchase of Māori land, Sewell's Native Lands Bill was introduced in the New Zealand General Assembly on 22 July 1862.[157] In introducing it, Fox made an opening statement on 'Native policy', which he maintained was essentially that adopted by the Governor and which the Ministers were now 'devoting themselves . . . to carrying into operation'.[158] The only practical way forward, he suggested, was for responsibility for Māori affairs to be shared between the Governor and his Ministers. He described the importance of engaging Māori 'in the work themselves', and explained that 'to this end' the Government 'look[ed] to the runanga, or Native council, as the point d'appui [support] to which to attach the machinery of self-government, and by which to connect them with our own institutions', while the 'institution of Government so established should be worked under European agency, but as far as possible by the Natives themselves'.[159] A vigorous debate about native policy and responsibility for it followed, and the Fox ministry resigned in the face of opposition before its land legislation could be passed.

Alfred Domett formed a new ministry in August 1862. Dr Loveridge noted that it contained many of the same people, minus Fox. The ministry's policy on Māori affairs was similar although it adopted a 'harder line on the question of responsibility'.[160] It also pared back the scheme for deciding title. Bell, who served as Native Minister, quickly introduced his own measure – the Native Lands Bill, No. 2 – 'to remove restrictions which now exist upon the sale and occupation of Native lands in New Zealand'. According to a later memorandum by Domett, the Bill differed materially from Grey's rūnanga system and the proposals advocated by the Fox ministry; these had had 'no chance of becoming law'. At the heart of this new piece of legislation was 'the unqualified recognition of the Native Title over all land not ceded to the Crown, and of the Natives' right to deal with their land as they pleased, after the owners, according to Native custom, have been ascertained by Courts to be established for the purpose'.[161] These were to replace rūnanga but were to be composed wholly or partly of persons of 'the Native race' and presided over by a European magistrate who would also have a vote, while the role of the Governor was reduced. Grey's scheme for gradual and conditional sales was also abandoned.[162]

Despite a continued preference for his rūnanga and the gradual opening of Māori land 'by European proprietors agreeable to the Natives of the district', Grey thought it better to have some law passed dealing with setting up a means of determination of ownership rather than none.[163] He approved the principle of the Bill, which he understood to mean:

> That Natives of New Zealand should be allowed to have as good a title to their lands as Europeans, and that they should, in the event of their disposing of or renting these lands, be allowed to obtain the value of such lands.[164]

In moving the second reading of the Bill, Bell described it as a major departure from Fox's Bill, in which the Governor had retained the power of determining native title. By contrast, he noted, 'we desire, subject to proper safeguards, that the Natives themselves should be empowered to ascertain and define their own titles.' The courts would,

> after a proper survey, a careful enquiry, and confirmation of their proceedings by the Governor . . . have the power of certifying who, according to Native custom, are the owners of any land.[165]

Bell argued that the right of the Government to take part in the process and 'rightly legislate, was settled when the Queen's sovereignty was established in these Islands'.[166]

Unsurprisingly, the new Bill provoked a heated debate both in and outside the House, which resulted in a number of concessions in the committee stage and as it went through the Legislative Council. Questions under discussion included whether the General Assembly had the power to create such a court, the wisdom of giving Māori customary rights any form of recognition in British law other than by Crown grant, the effect on the provincial land funds, and the possible impact on the relationship between Māori and Pākehā at a time of heightened tensions.[167]

Bell vigorously defended the measure as removing an entrenched Māori suspicion that the Government was intent upon taking their lands and sought to 'impoverish and degrade them'. In Bell's estimation, 'the one great mistake' of the Crown's approach to Māori land lay in it 'always trying to give them the least price they would accept for their land, in order that we might ourselves get the greatest profit we could by its sale'.[168] Once Māori were allowed full rights of ownership and 'benefit of their wealth', the 'root of agitation' – which had been the source of the outbreak of war in Waitara and the growth of the King movement – would be removed.[169] The result would be the 'advancement of their prosperity and wealth which [would] be the best and most lasting guarantee for the permanence of peace'.[170] He expanded on this theme in a subsequent November memorandum; the Act's political objective was the assimilation of Māori into colonial society and its economy by convincing them that the Crown did not desire to dispossess them of their land or to extinguish them as a people. Bell concluded:

> if we give . . . [Māori] a common bond of interest with ourselves, and assure to them and to their children a legal right to, and the full money value of their great territorial possessions, we may some day make them believe, in spite of themselves, that the progress of colonisation by our race means wealth and power for them as well as for us.[171]

Grey also endorsed the measure on these grounds. When proroguing Parliament in September, he had welcomed the new Act as assisting him 'in the work of restoring this country to tranquillity, and of bringing its native population to obey the law, and acknowledge the authority of Her Majesty's Government'. Further, in his view, it demonstrated the colonial Government's commitment to 'the welfare of the natives'.[172]

These objectives were reflected in the Act's preamble which, at some unknown stage,[173] was altered from a simple statement that it was 'desirable to remove restrictions which now exist upon the sale and occupation of Native Lands in New Zealand' to a much fuller explanation of its purpose invoking the guarantee of 'full exclusive and undisturbed possession of their lands and estates' under article 2 of the treaty and declaring the intention to relinquish Crown pre-emption. Additionally, 'the peaceful settlement of the Colony and the advancement and civilization of the Natives' would be promoted 'if their rights to land were ascertained defined and declared' and if such rights were 'assimilated as nearly as possible to the ownership of land according to British law'.[174]

There were further amendments to the original Bill. The most significant of these was a change in the wording of clause 2 which had initially stated: 'All Lands in New Zealand over which the Native Title shall not have been extinguished shall be deemed to be the absolute property of the persons entitled thereto by native custom.' Such an explicit acknowledgement of absolute Māori ownership made even members of the ministry uneasy, and the clause was altered to read:

> All Lands in New Zealand over which the Native Title shall not have been extinguished may . . . after the respective owners by Native Custom of the same shall have been ascertained as hereinafter provided be dealt with and disposed of under the provisions of this Act.[175]

A clause was introduced and subsequently amended as a result of Grey's initiative to provide for the provincial land funds by imposing a transfer duty of 10 per cent on

'An Imaginary Title'

It was considered essential by settler politicians that questions of Māori land title be settled before civil institutions could be successfully established. The introduction of the land court as a means of establishing who were the correct owners of the land was seen as inextricably linked to the success of colonisation. Attorney-General Sewell expressed great anxiety about whether a land court and direct purchase would be the best way forward, but he had no doubt as to the need for the 'imaginary rights' of Māori to be extinguished and for title to transfer into Pākehā hands. He told the Legislative Council:

> In fulfilling the work of colonization, we are fulfilling one of our appointed tasks. It is our duty to bring the waste places of the earth into cultivation, to improve and people them. It was the law laid upon our first parents to be fruitful and multiply, and replenish the earth and subdue it – to restore the wilderness to its original gardenlike condition. In doing this work we are fulfilling our mission. As a matter of abstract theory, I utterly deny that the land of these favoured Islands were meant by Providence to be retained in a state of waste – that a territory as large in extent and possessing as great natural advantages as the British Islands was to be rendered for ever inaccessible to civilization and forbidden to the use of man by an imaginary title vested in fifty or sixty thousand semi-barbarous inhabitants scattered thinly over the country in miserable villages in a few scarcely perceptible spots. I deny that, in the sense of any inherent right, this people can maintain their exclusive title to forests and plains which they never trod, and mountains, teeming probably with unlimited store of wealth, which it may be they never have seen. Those who, in opposition to such imaginary rights, maintain and assert the rights and duties of colonization have to my mind great truths on their side. In conformity with these truths the work of colonization proceeds.[1]

the first sale of land by Māori who held the certificate of title, and four per cent on each sale thereafter.[176]

In summary, then, the Native Lands Act 1862 in its final form was a compromise between the Governor and colonial politicians and within the Colonial Legislature itself. However, in the view of Bell and his fellow Ministers, it managed to

> give effect to the chief design they had in introducing it, namely, that the title, according to Native custom . . . be ascertained by regular tribunals, instead of being determined by the Executive Government, and that when that title has been so ascertained and registered, the Native owners may deal with their land as they shall think fit.[177]

In this way, the Act would reduce the powers of the executive Government to determine Māori land ownership and, in his words, 'reverse the policy which has guided the Government in its relations to the Natives on the land question for the last twenty years.'[178]

The Act established a court or courts to ascertain title to Māori customary lands. Although presided over by a Pākehā magistrate as president, in essence the Court would be run by local rangatira. Before coming to any decision, it would ensure the land was carefully surveyed and marked on the ground and in a plan. Once titles had been defined and ownership confirmed and registered, Māori would have all the rights of ownership that could be exercised under British property law and, more particularly, to sell their lands to whomsoever they pleased.[179] Although the Governor's role was much reduced. it was not fully dispensed with; if a claim was established to the satisfaction of the Court, it would be registered, and the record of proceedings submitted to the Governor for

'Calling a Spade' a 'Horticultural Utensil'

The different preoccupations of colonial politicians in passing the Native Lands Act 1862 were reflected in the various titles proposed for it:

- 'An Act to remove restrictions which now exist upon the Sale and Occupation of Native Lands in New Zealand';
- 'An Act to render the Title of Natives to their Lands as Valid and Effectual as the Title of Europeans under Grant from the Crown';
- 'An Act to provide for the Ascertainment of the Ownership of Native Lands, and for granting Certificates of Title thereto, and for other Purposes';
- 'An Act to alter the Provisions of the Treaty of Waitangi, and to legalize and facilitate direct Purchase from the Natives by Individuals';
- 'An Act to provide for the Ascertainment of the Ownership of Native Lands, and for granting Certificates of Title thereto, and for regulating the Disposal of Native Lands, and for the removal of the Restrictions on the Sale of Land by the Natives imposed by the Treaty of Waitangi'; and ultimately
- 'An Act to provide for the Ascertainment of the Ownership of Native Lands, and for granting Certificates of Title thereto, and for regulating the Disposal of Native Lands, and for other Purposes'.[1]

confirmation. At this point, the Governor could set aside reserves for the benefit of the tribe, particular rangatira, or whānau.

Once confirmed, certificates of title would be issued by the Court to 'Tribe Community or Individuals' (under section 12). Despite this recognition of the existence of an individual right independent of a more general tribal right – one which might be proven in court – this was not intended to be the primary means of individualising title. Rather, this would be achieved when tribes decided to partition their territory, requiring the owners to return to the Court for that purpose (section 20).[180] Certificates issued to individuals could be turned into Crown grants and sold or leased or both, so long as there were not more than 20 persons in the title (sections 15, 17, 18). However, as an alternative to individualisation and direct purchase, sections 21 to 25 provided that certificates issued to a 'Tribe or Community' could also be alienated or otherwise disposed of, with the consent and supervision of the Governor, through a complicated process of gazetted regulations which would be binding upon the Crown. For example, they could lay out townships, propose mining regulations, or raise mortgages.[181] In short, under these provisions, the Crown would assist hapū communities to plan for and regulate the alienation, occupation, and utilisation of their lands and resources.

Modern scholars have tended to overlook the importance of the Native Lands Act 1862 since it did not come into operation in many districts and was soon replaced by the Native Lands Act 1865, which had much wider application and established the procedures that would be followed for the rest of the nineteenth century. Dr Loveridge has commented, however, that the earlier measure promised 'a complete revolution in the native policy of the country', including the abandonment of the Crown's right of pre-emption, the commutation of native into English titles, and the system of 'direct purchase', or purchase by private interests that such individualisation would allow and support.[182] In Loveridge's assessment, the Native Lands Act 1862 was in these regards a very significant and 'plain and straightforward piece of legislation'.[183] Professor Boast has also described the legislation (along with its 1865 successor) as dramatically reversing previous Crown policy toward Māori land, and marking a 'turning point in New Zealand history'.[184] In Boast's assessment, the 1862 Act must be considered the true starting point of the Native Land Court system, introducing its basic 'conceptual structure': the waiver of Crown pre-emption, the

conversion of customary ownership interests to English-derived titles, and the establishment of a new judicial body for these purposes.[185]

While we agree with this assessment of the 1862 Act as laying the foundations of a tenure conversion process that would have enormous implications for Māori society, we also consider the changes instituted by its successor, the Native Lands Act 1865, to be crucial in influencing the success, or otherwise, of Māori engagement with the Crown's system of title determination (as we explain later in the chapter).

(7) *Consultation with Māori on the Native Lands Act 1862*

We received no evidence that the Crown, following the Kohimarama Rūnanga of 1860 and Grey's efforts in 1861 to promote the adoption of his rūnanga scheme, attempted to consult Ngāpuhi, or any other group of Māori, when preparing and enacting the Native Lands Act 1862. Instead, the Crown took steps to promote its new policy for the determination of Māori rights in land in Te Raki, but only after it had been codified in law. In this section, we discuss these efforts and the level of support amongst Te Raki Māori for the legislation. Historical commentary on the 1862 Act has tended to emphasise the delay between its passage and attempts to implement the legislation. As Loveridge noted (and as we discuss in the previous section), this delay was largely because the Crown was preoccupied throughout 1862 and 1863 with planning measures to enable the establishment of the Kaipara and Whāngārei pilot courts.[186] A major hui held at Waimā in Hokianga in September 1863 appeared to indicate acceptance of the idea of a Crown-sponsored means of determining tribal boundaries and resolving disputes as to ownership. The hui, convened by Arama Karaka Pī, took place in a large and substantial 'House of Assembly', which he had built specially for the proceedings at a cost of approximately £300.[187] According to local official and merchant James Reddy Clendon, who was present with George Clarke at the meeting as an observer, those assembled determined to define tribal boundaries and allocate land to hapū and whānau according to tikanga and the provisions of the Native Lands Act 1862, with the expectation of securing certificates of title. As commissioned researchers for this inquiry, David Armstrong and Evald Subasic, have argued the hui was 'evidence of Māori *adapting* to changing economic conditions on their own terms and within existing tribal structures' (emphasis in original).[188] In their assessment, it demonstrated a desire on the part of Māori to control the titling and alienation process, to acquire secure titles, and to invest in and develop their lands. It also made clear Māori expectations as to how the new system would work in practice.[189]

The Crown's first major steps to publicise the character of its new arrangements to Māori in Te Raki happened in March 1864 when Native Minister and Colonial Secretary William Fox, accompanied by John Rogan, who would be appointed a judge early the following year, toured Northland. The pair met with Māori at Te Awaroa, Tanoa, Oruawharo, Marekura (Te Tirarau's settlement on the Wairoa River), and Wharekohe. The purpose of the tour appears to have been to emphasise the need for law and order in the wake of the Waikato War; to set out the Act's provisions and to signal that there would be 'a new way of buying land'; and to publicise the arrival of Mr Rogan to adjudicate titles.[190] At meetings in 'all the principal native settlements', Fox primarily addressed the need for Māori and settlers alike to abide by the law. According to the *Daily Southern Cross*, the 'leading native chiefs' present 'unanimously expressed their willingness to submit themselves to the quiet operation of the law'. However at Tanoa and Marekura, Fox also addressed 'the sale of native lands' and foreshadowed the new system of direct purchase, explaining (according to the account published by the *Daily Southern Cross*):

> hitherto the natives could only sell their land to the Government, by whom it was resold to Europeans who desired to occupy it. In future that system would be altered. Any native in the districts named, who felt disposed to sell his land to any European, might do so on condition of first

> satisfying Mr Rogan that their title to the land was clear. In that way they would be enabled to sell land without Government intervention; and no disputes could arise hereafter.[191]

It is important to underscore that the tour was not intended as an exercise in consultation. Despite the Crown's assertions that a degree of consultation commensurate with the 'standards of the time' occurred regarding the 1862 Act,[192] Fox and Rogan's tour did not meet any reasonable definition of the term, as it occurred significantly after the fact; rather, it was an exercise to persuade and encourage Te Raki Māori to accept decisions that Parliament (which lacked any Māori representation) had already made. According to Armstrong and Subasic, Māori largely welcomed the new court as the system of direct purchase it established would allow them to control alienation and settlement and thus secure their economic and allied objectives.[193]

(8) *The abandonment of the rūnanga system*

While it had initially seemed that the title determination system established by the Native Lands Act 1862 would develop alongside the rūnanga, politicians such as Weld disliked separate rules and institutions for Māori. By the mid-1860s, the Crown's commitment to the latter scheme had clearly waned; the Native Land Court created by the Native Lands Act 1862 represented a step away from the rūnanga-based system first proposed by Grey and subsequently under Fox's ministry. In November 1864, Weld claimed that 'attempts to force political institutions upon the Natives' had failed.[194] Notwithstanding Grey's declaration that the rūnanga would be a permanent institution, 'a shelter and refuge for all times', the Weld Government withdrew support for these 'new institutions' in December 1865.[195] As we noted in chapter 7, in its submissions to our inquiry, the Crown denied that the rūnanga were deliberately 'abolished', arguing that they instead suffered from funding cuts applying to all areas of public expenditure, and exactly when and why rūnanga ceased to operate in Te Raki was unclear.[196]

As that chapter also discussed, most historians have described the demise of rūnanga as being more intentional. They included Dr Loveridge, who noted that they did not feature in the plans of the Government after 1865 and were thereafter purposefully all but 'eradicated'. Loveridge additionally observed that, while the Government was divesting itself of rūnanga and other commitments, the Native Land Court was one of the few areas in which Crown expenditure actually grew or stayed the same during this era. With Crown support, the Court became 'a major institution'.[197] It seems likely, then, that the Crown saw the individually oriented and judicially directed approach to title determination established by the Native Land Court as more conducive to its goals of expediting land sales and assimilation than the Māori autonomy inherent in the rūnanga model. The Crown's allocation of resources evidently reflected these priorities.

(9) *The operation of the Native Lands Act 1862 in Te Raki*

Royal assent for the Native Lands Act 1862 was proclaimed in July 1863.[198] Steps were promptly taken to implement the new arrangements on a 'trial' basis in Northland.[199] On 19 April 1864, Grey established two 'Native Land Districts', Kaipara North and Kaipara South, covering lands between the Waitematā and Tutukaka Harbours on the east coast, and Manukau Harbour and Maunganui Bluff on the west coast.[200] The following June, John Rogan (who had previously acted as a land purchase commissioner in the district) was appointed the president of both Kaipara courts; Wiremu Tipene and Matikikuha of Ngāti Whātua were appointed as judges in Kaipara South; and Te Keene and Tamati Rewiti of Ngāti Whātua in Kaipara North.[201]

The first sitting of the Kaipara South court was held outside the Te Raki inquiry district, at Te Awaroa (Helensville) on 7 June 1864. By this stage, an agreement was already in place to sell the lands Kaipara Māori had brought before the Court to a local settler, John McLeod, so a town could be developed at Helensville. The sitting took place at McLeod's house, reflecting mutual recognition of the potential transaction as central to the

proceedings.[202] This openness demonstrated the strategic and voluntary nature of this early stage of Māori engagement with the Court. Reports from around the time of the first sitting suggested Māori were satisfied with the new law, with its method of title investigations conducted by Māori for Māori, and were disposed to take advantage of it.[203]

At Te Awaroa, Rogan appears to have bypassed any preliminary investigation of tribal boundaries and instead proceeded directly to the first land to be adjudicated upon, the 396-acre Otamateanui block (outside the district). Various claimants presented their whakapapa during a day-long discussion about the block. Following consultation,

> it was communicated to the meeting that the persons appointed to ascertain the native title to lands in the district were satisfied that a title according to native custom was proved to the satisfaction of the court.[204]

The land was awarded to one individual as a trustee so as to make a legal transfer easier. A similar day-long process subsequently resulted in a title determination for the 67-acre Te Pua a Mauku block (also outside the district). According to the account of the case in the *Daily Southern Cross*:

> Native Judges . . . well know that all the responsibility will fall upon themselves should they award certificates to any but the rightful owners – hence the examinations are extremely minute, and well and ably conducted.[205]

Deeming the Kaipara 'experiment' a success, in August 1864 the Crown established three further Native Land districts and courts, for Hokianga, Kororāreka, and Waimate.[206] The following October, former Chief Protector of Aborigines George Clarke was appointed president of the three courts and he, in turn, named their Māori judges.[207] Governor Grey also issued regulations for the guidance of the Native Land Court in the Bay of Islands, outlining that it should be comprised of a president and not fewer than two judges, meaning that they could out-vote the president.[208] Furthermore, the Native Lands Act Amendment Act 1864 empowered the Governor to add an additional member or members to any court; whether they were to be Māori or Pākehā was not specified. Regardless, by December 1864 Weld, Fenton, and Mantell began to take steps to restructure the Native Land Court as a national institution and to reclassify the Māori judges as 'assessors' (we discuss the restructure of the Native Land Court further in the following section).[209] Ultimately, the Hokianga, Kororāreka, and Waimate courts appear not to have sat.

Despite these changes to the overall structure of the Court, Rogan continued to hold title investigations in Kaipara North during 1865 – before the 1862 Act itself was modified later that year. Of particular relevance to Te Raki was the court sitting in Whāngārei in March 1865, where title was determined in 15 blocks.[210] As Dr Loveridge noted, during these sittings the Native Land Court continued to operate as it had during the 1864 sittings, with two Māori assessors (as newly classified) 'still required to constitute a legitimate Court'.[211]

The first blocks that came before the Court were the Matakohe, and Motu o Tawa blocks – small islands in the Whāngārei Harbour – and the 11-acre Motu Kiwi block. The three blocks were claimed by Te Parawhau rangatira Te Tirarau on the basis of his tūpuna's possession of the land. After providing whakapapa evidence in support of his claim to the Matakohe block, he informed the Court that 'the whole of the Parawhau tribe own this land as descendants of these ancestors but they are willing that the Certificate of title be made in my name'.[212] The minutes record that Te Keene asked the members of Te Parawhau present whether they were 'all willing that the Crown grant should be made in Tirarau's name', and that the reply was 'we are'.[213] A survey of the block was then produced, and a proclamation was made of Te Tirarau's claim. As no objectors appeared, a certificate of title was issued to him.[214] Both the Motu o Tawa and Motu Kiwi blocks were

Māori men and women queuing in the street at Kaikohe awaiting a Native Land Court hearing in the early twentieth century.

claimed on the same basis, and Te Keene again received consent from the members of Te Parawhau present that the certificate of title should be issued to Te Tirarau.[215]

Each of the cases followed a similar pattern, in which the lead claimant would present a survey plan of the block and list of names before reciting whakapapa evidence in support of the claim. The boundaries of the block would then be recited, and the Court would establish that the claimant or claimants had the support of the wider tribal community by recording the response of those present during proceedings. In a number of cases, the Māori assessors sought the input of other rangatira on the validity of the claims. For instance, during the proceedings for the Tokaitarua block, Te Manihera stated that the whole of Te Parawhau had a 'tribal claim' in the block, while Te Tirarau informed the Court that the 'tribal right is forgone'. Te Keene then recorded Te Parawhau's consent to both the boundaries of the block and the names to be recorded on the certificate of title.[216] Te Tirarau and other members of Te Parawhau similarly supported the claim of Te Manihera to the Te Wharowharo block.[217] In the case of the Kopipi block, Mohi Te Peke of Te Waiariki and the other claimants received a number of questions from Te Keene regarding the basis of their claim, but once Ngāti Hau rangatira Haki Whangawhanga supported it, a certificate of title was issued to Te Peke.[218] Where a claim was disputed, such as occurred with respect to that of Wiremu Pohe to the Tauranga block, and agreement could not be reached in court, the investigation of the block was adjourned.[219]

Ten of the blocks investigated during this sitting (covering an area of 3,515 acres) were issued certificates of title in April 1865 and were included in a later register of blocks titled under the Native Lands Act 1862.[220] Dr Loveridge suggested that during 1864, the Court ascertained ownership of 'a great deal more' land blocks; however, their certificates of title were issued after October 1865 under the Native Lands Act 1865, and he found that no information on those blocks was available.[221] He observed that the large number of blocks investigated by the Court over this period reflected the high prices settlers were willing to pay for land in Whāngārei township. Rogan commented at the time that this would have incentivised Whāngārei Māori 'to submit nearly the whole of their lands to the operation of the Native Land Act'.[222] Indeed, settler Henry Walton purchased the Matakohe, Tokitaruna, and Ketenikau blocks shortly after title determination.[223] Some of the newly titled land remained in Māori ownership, at least initially, and a Crown grant was issued to the Māori owners of the 309-acre Ngarangipakura block. It is also notable that most of the Whāngārei blocks titled under the 1862 Act included small reserves that ranged between three and 20 acres, while a further 89 acres was reserved for roads in the Kopuawaiwaha, Matakohe, and Te Wharowharo blocks.[224] For the Māori owners, a township from which they might benefit economically, whilst

retaining significant land, was surely a welcome and exciting prospect.

The Whāngārei sittings were viewed as a success. The *New Zealand Herald* reported that where several disputes were anticipated, they had been 'amicably adjusted'.[225] Armstrong and Subasic noted that in Whāngārei, Rogan 'maintained the procedure he had devised at Awaroa in June 1864, and the process remained largely a Maori one'.[226] They described Te Raki Māori as having largely 'responded enthusiastically to Rogan's court', the evidence indicating 'an informal process largely driven by the iwi and hapu themselves in pursuit of their own rational economic objectives'.[227] In our view, the record from the minute book suggests that the Court offered Māori significant control over land title investigation, land alienation, and land settlement. As historian Dr Vincent O'Malley has observed, the Crown, on the other hand, regarded the Court as an effective means of ending the contraction in land sales that had prevailed since the late 1850s. In O'Malley's analysis, the Crown saw the Court as a means of expediting the assimilation of Māori into the colonial society and economy, and of avoiding disputes over land sales with ugly consequences such as the Waitara debacle that had led to war in Taranaki.[228] In the words of Fox, Rogan, under whom the Native Land Court operated in the north, was intended to be the 'plough' and the 'eyes and ears' of the Government.[229] The only practical alternative to war, declared the *Press*, was 'the slow, certain, irresistible, inexorable march of the civil power'.[230]

In sum, the provisions of the 1862 Act, and the experimental Kaipara and Whāngārei courts set up under that legislation, appear to have broadly met the expectations of Te Raki Māori for a title determination process they would lead, with the assistance of a suitably experienced Pākehā official. While a prototype for such a system existed in the Te Raki and Kaipara inquiry districts, the fact that it operated for only a short time and on a limited basis complicates analysis and judgement of its potential. What appears reasonably clear, however, is that the original iterations of this court system, should it have been allowed to develop further, may have gone some way towards meeting the Te Raki Māori need to determine ownership according to custom and tikanga, and enable the development and utilisation of land as they wished. But as discussed in section 9.4, before the Court had the chance to operate on a wide scale, it was restructured, reducing the role of Māori and introducing a form of title incompatible with customary tenure.

9.3.3 Conclusions and treaty findings

(1) *Why did the Crown decide to establish the Native Land Court?*

In submissions to our inquiry, Crown counsel asserted that the Native Land Court was introduced primarily for the benefit of Māori, rather than as a means of obtaining more Māori land for settler use.[231] This argument is contrary to the Tribunal's jurisprudence on the political and economic underpinnings of nineteenth-century Native Land legislation. As the Tribunal observed in *The Hauraki Report*, there were

> good reasons for the Crown to establish a tribunal, independent of the Executive, to determine intersecting and disputed claims to Maori customary land, and to administer legislative modifications to customary tenure to meet new needs.[232]

Nonetheless, Tribunal inquiries have generally concluded that the Crown's introduction of the Native Land Court was at heart an attempt to smooth the path of colonisation by speeding up the purchase of tribal lands. The Hauraki Tribunal found, accordingly, that the Native Lands Acts and the court system they established in general

> did not give Maori control – rangatiratanga – over their land. On the contrary, they represented for Maori the *loss* of control (as well as no development opportunities and the inexorable alienation of their lands). {Emphasis in original.}[233]

The Tribunal noted similarly in *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (2008) that the Crown's predominant intention in establishing the Native Land Court was to 'facilitate the alienation of Maori land to the Crown and private settlers'.[234] As we set out earlier, the claimants in our inquiry adopted a similar

position in respect of the Crown's motives for developing the Native Lands Act 1862 and implementing it in our district.[235]

While recognising that customary Māori tenure would need to be adapted in some respects to meet the demands of a 'modern economy', we do not accept as credible the Crown's argument that the Native Land Court was conceived and introduced to Te Raki through the Native Lands Act 1862 primarily as a strategy to assist Māori. While rhetoric accompanying the introduction of this legislation trumpeted the economic and cultural advantages the new system would have for them, it is clear that Māori treaty rights were, at best, a secondary motive in developing and instituting the 1862 Act. The Crown, we have seen, had more complex and distinctly less altruistic motives for embarking upon what would prove to be a protracted, difficult, and costly process to identify and individualise Māori land title. We can only concur with the jurisprudence that the Crown's major purpose in establishing the Native Land Court system was to expedite the alienation of this land, believing that allowing direct purchase by settlers would increase supply of Māori land and undermine nascent Māori collective efforts to stem sales.

With these conclusions in mind, we find in respect of the establishment of the Native Land Court that, by developing and implementing a system for title determination based on its own agenda to acquire more land, rather than the protection of Māori rights as guaranteed under article 2, the Crown breached te mātāpono o te tino rangatiratanga and te mātāpono o te matapopore moroki/the principle of active protection.

(2) *Were Te Raki Māori consulted about the Crown's decision to develop and implement legislation enabling tenurial reform?*

Te mātāpono o te houruatanga/the principle of partnership requires the Crown to consult and gain Māori consent on any changes affecting their rights under the treaty, in particular rights to their lands and other taonga guaranteed under article 2 (see section 2.3.4). Jurisprudence on the treaty principle of active protection, which emphasises the Crown's obligation to positively intervene to protect the interests of its treaty partner, also specifies the importance of ensuring 'full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected'.[236] As the Tribunal observed in *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of the Te Ture Whenua Māori Act 1993* (2016), '"full, free, and informed consent" of Māori is required when a legislative change substantially affects or even controls a matter squarely under their authority'.[237] In an area of key significance to Māori treaty interests such as their customary ownership of land, the Crown's responsibility to consult its partner was undeniably high.

Claimant and Crown parties in our inquiry agreed that some discussion on the possibility of developing a process for defining Māori customary rights in land occurred between the Crown and Te Raki Māori at the Kohimarama Rūnanga in 1860, and during Grey's trip to Northland in 1861, but they disagreed over the extent to which this was sufficient to satisfy the Crown's obligation to consult with and engage Māori in respect of the 1862 Act.[238] In our view, the discussions about title determination that took place in 1860 and 1861 were neither specific nor genuinely open or transparent enough to meet the Crown's duty to consult with and involve Te Raki Māori in decision-making on vital changes affecting their rights, as guaranteed by the treaty. No agreement was reached about these matters at Kohimarama, while what Grey discussed in Northland was substantially changed by the Colonial Legislature.

We received no evidence that the Crown communicated the provisions of the 1862 Act to Māori prior to its enactment, nor that it viewed Māori input as essential to the process of developing and refining the legislation. Although the arrangements of the 'experimental' courts later established under the 1862 Act in some ways reflected Māori needs and expectations, this does not excuse or negate the Crown's failure to meaningfully consult with Māori on a matter inherent to their treaty interests. Neither do we find persuasive the Crown's argument that it made concerted efforts to inform Te Raki Māori of the provisions of the 1862 Act in 1864. While it

was commendable of the Crown to actively disseminate this information, this occurred so clearly after the fact that it cannot be considered part of any credible consultation process.

Accordingly, we find in respect of consultation that the Crown's failure to seek Māori engagement on the provisions of the Native Lands Act 1862 was inconsistent with its duty to consult and gain the consent of Te Raki Māori on matters central to their guaranteed treaty rights, in breach of te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te tino rangatiratanga.

(3) *Did the courts established at Kaipara and Whāngārei under the 1862 Act provide for Te Raki Māori to exercise tino rangatiratanga over their lands?*

The Crown initially considered a system for determining title to collectively held Māori land, enabling its direct purchase by settlers, in the context of the rūnanga, or local tribal councils which Governor Grey promoted and implemented. As we have seen, from the early 1860s the idea of a court model to determine Māori interests in land gained precedence. These courts were initially envisioned to operate alongside the rūnanga. However, the settler Parliament quickly changed its mind on the merits of the respective systems, consciously letting the rūnanga model for self-government wither while diverting resources to the emerging Native Land Court. We believe that had the Crown allowed self-directed Māori title determination to take place within the context of a fully funded and supported rūnanga system, this would have given the greatest possible effect to Māori treaty rights, principally the tino rangatiratanga guaranteed by article 2. This did not happen, and the Crown instead jettisoned the rūnanga and embraced a judicial model that – particularly as reformulated after late 1864 – would become increasingly incompatible with tikanga and Māori control.

In assessing the treaty compliance of the 'experimental' or 'prototypical' courts operating briefly in Kaipara and Whāngārei under the 1862 Act, we must first acknowledge the limitations of the available evidence due to the brief tenure of these courts and the failure to keep full records of their hearings. However, from the primary sources and technical evidence in our record of inquiry, we consider that the system established under the 1862 legislation appears, in general, to have been consistent with Te Raki Māori expectations as to how their customary rights in land might be ascertained and reformed in a manner giving primacy to their agency and tino rangatiratanga. Under Rogan, the Court operated as intended, giving Māori substantial control over the process for determining ownership of their lands. Most importantly, its orientation broadly affirmed the right of Te Raki Māori to manage their lands as they saw fit. But it would be wrong to assume that the court model established under the 1862 Act was the inevitable or the natural outcome of Māori aspirations for a central role in determination of their land title. In fact, it appears that quite the opposite is true: other systems more conducive to tino rangatiratanga – principally the rūnanga model promoted by George Grey – were contemplated and then discarded.

As we have discussed in this section and in the preceding chapter, Te Raki Māori trust in the Crown had been seriously eroded by the latter's pre-emptive purchasing programme in Te Raki during the 1850s. This growing distrust was a key factor in the sharp contraction in land sales during the late 1850s, and the land-related tensions were further stoked by outbreak of military conflict following the Crown's bungled efforts to acquire land at Waitara in 1859 and 1860. Following the Kohimarama Rūnanga, where no resolutions were reached on the administration of Māori lands, the Crown instead forged ahead with establishing the system for land title determination established under the Native Lands Act 1862, despite little-to-no consultation with Te Raki or other Māori. It recognised in subsequent years both that Māori expected such consultation to take place and that the Crown was obliged to ensure this happened when their fundamental interests were at issue.[239] This failure to consult on the 1862 Act was unacceptable in treaty terms. Nonetheless, the courts that operated at Kaipara and Whāngārei, consisting

as they did of Māori judges able, in theory, to outvote the presiding officer, at least provided a workable compromise over the control of title determination and land alienation.

The courts created under the 1862 Act were a step away from the rūnanga-based system which Grey had discussed, but the impact of this change was ameliorated by the retention of a determining role for Māori within it. While we cannot find that the operations of the local land courts established at Kaipara and Whāngārei under the 1862 Act themselves breached treaty principles (other than in the aspects already noted), we do not wish to diminish the significance of the Crown's decision to begin a process of tenure conversion which, in its later iterations, would prove much more difficult for Māori to control.

9.4 Why and How Was the Native Land Court Restructured in 1864 and 1865?

9.4.1 Introduction

From December 1864, just a few months after the establishment of the 'experimental' courts at Kaipara and Whāngārei, a range of changes largely attributed to incoming Chief Judge Fenton were made to the Native Land Court. These were later included in the Native Lands Act 1865. The nature and extent of the shift they represented has generated considerable historical and legal debate. In our inquiry, the claimants have argued that the post-1864 restructuring of the Court was a significant departure from the Māori-directed title determination process established by the 1862 Act and which operated briefly at Kaipara and Whāngārei.[240] For its part, the Crown maintained that the Native Land Court, as reformed in 1864 and 1865, was not significantly different from the earlier body, and the new legislation merely extended its operation throughout the country, introducing other minor amendments.[241] In short, where the claimants emphasised differences between the courts of 1862 and 1865, the Crown stressed continuity of legislation and processes.

The parties also disagreed on the issue of consultation. While the claimants argued that none occurred, the Crown emphasised that it 'took steps to ascertain the views of Northland Māori both prior to the introduction of the Court and after it had started operating'. Crown counsel drew attention to the discussions that took place at Kohimarama in 1860, discussions with Grey in 1864, and the tour undertaken by Fox and Rogan in the Kaipara district that year. In the Crown's submission, 'Northland Māori had received assurances that a major role in title adjudication would remain with them', and the consultation had been 'significant'.[242] Counsel did not distinguish between the consultation that had been required for the two Acts, apparently considering this unnecessary because the Native Lands Act 1865 had introduced only minor changes.

In the following section, we consider why the Court, and the laws under which it operated, were changed; the impact on its structure; the degree of control that could be exercised by Māori, and the sorts of title available to them; as well as the extent of consultation that took place with Te Raki Māori about those changes, and whether they were approved by them.

9.4.2 The Tribunal's analysis

(1) *The restructure of the Court*

When a new Government led by Frederick Weld replaced the Whitaker–Fox ministry in November 1864, its central policy tenet was 'self-reliance'. Weld immediately moved in Parliament that the colonial Government must accept full responsibility for Māori affairs, rather than risking 'divided counsels and a vacillating policy'.[243] As we discussed in chapter 7, this meant that the colony would fund its own defence policies and the British government would withdraw its armed forces from the colony (see section 7.3.2). Weld believed that full settler control would put an end to the conflict in Waikato; the Government would continue to 'suppress outrages' but would trust 'to time and other means for the termination of our difficulties'.[244] The Native Land Court operations were a key aspect of those 'other means' of maintaining peace and security in the colony by providing a peaceful avenue for

Māori aspiration and for converting the communal title that Weld regarded as preventing their progress.[245] As Weld later noted, the Court would:

> indulge the natives in their passion for litigation, if we did not indulge them in war, [and] we hoped thereby not only to occupy their minds, but to give them real and substantial justice, by means of a Court in which they were to a great extent themselves the judges; and to give them the means of raising themselves above that communism which was weighing them down, to enable them to make themselves individual landowners, able to sell their lands in the open market at a fair price, or to let them, and thus to become rich, and interested in the maintenance of law and order.[246]

The Court would also satisfy settlers wishing to acquire land more easily. While the system enabling direct purchase of Māori land embodied in the Native Lands Act 1862 had won general settler support in the early 1860s, potential purchasers were critical of the 'cumbrous and imperfect' nature of its provisions.[247]

The other important context was the hardening attitude of the Colonial Legislature to 'any manifestation of Maori political autonomy'.[248] In the view of Armstrong and Subasic, O'Malley, and others, the expansion of conflict into the Waikato resulted in the further retreat of the Crown from the shared spheres of authority expressed within the treaty and its seeking to restrain Māori aspirations for self-determination. The rūnanga model was abandoned and the Native Land Court restructured to reduce Māori control of its processes.[249] Dr O'Malley commented that the Court created by the Native Lands Act 1865 was the result of 'increased settler hegemony and Pakeha demographic dominance in the wake of the Waikato war'.[250]

The Government subsequently decided to replace the system of courts operating within native districts with a single, national, permanent, and centralised court of record. As Dr Loveridge has noted, the Weld ministry moved quickly in making arrangements for this body, which would be headed by a chief judge and would operate throughout the colony. Weld recalled:

> The first day I was in office, I waited upon a gentleman [Fenton] in every way qualified for the task, and said, 'Native land courts are the last straw to save the drowning race, will you accept the office of chief judge of that Court?'[251]

Fenton was duly appointed chief judge in late-1864 and with Walter Mantell, who became the new Native Minister, set about the task of restructuring the Court.[252] Fenton later expressed the view that the 1862 Act had been too cautious and almost a dead letter, having '"died of Domett" who had the working of it'.[253]

The five existing native districts declared under the Native Lands Act 1862 were abolished by proclamation in December 1864, and the Act was extended to cover the colony as a whole.[254] 'A Warrant Making rules for Regulating the Sittings of Courts, under the "Native Lands Act 1862"' was also issued by the Governor on the same day.[255] This document set out a brief set of regulations for the Court, specifying:

> A Court established under the said Act shall consist of one Chief Judge, being a European Magistrate, and other such Judges, being European Magistrates, and such Native Assessors as may be from time to time appointed by the Governor.
>
> Any one of the Judges sitting, with two Native Assessors, shall have the powers of the Court.
>
> . . . [N]o Native Assessor shall act in a case in which he has any personal interest.[256]

Dr Loveridge and Professor Alan Ward have argued that the creation of a single national institution rather than several for individual districts was consistent with Weld's dislike of 'special machinery' for Māori and his policy of making them equal with Europeans in the eyes of the law. Whereas the 1862 Act had been passed in the context of Grey's rūnanga and native districts system, the 1865 Act set up a structure more akin to the Supreme Court, was extended as widely as possible and would be the cornerstone of native policy for the next 40 years.[257]

Fenton's appointment as chief judge (under the 1862 Act) was announced in early January 1865. John Rogan

and George Clarke senior were appointed as judges and the 11 Māori judges under the 1862 Act were now 'assessors'.[258] Over the next months, further judges were appointed (still under the 1862 Act); numerous surveyors licensed, and Fenton provided with a staff. It was at this point that the 1862 Act was translated into te reo.[259] In May 1865, the Native Land Purchase Department, which had been active in Te Raki from the 1850s, was abolished, deemed no longer necessary.[260] The *Daily Southern Cross* greeted this as a signal that 'the triumph' of direct purchase was complete, and that the Crown would no longer be perceived by Māori as 'a great land-jobbing company', its declared desire to protect them from 'the assumed rapacity of the settlers . . . [being] only a pretext to cover its own greed for land'.[261] The Native Land Court was no longer 'experimental' and, in the words of Loveridge, was to be:

> the principal vehicle by which Maori customary land was made available for colonization, through its conversion to freehold land which could be purchased or leased to European settlers.[262]

The changes announced in December 1864 were incorporated into the Native Lands Act 1865. That measure formed part of a debate over how best to govern the entire colony and, as Colonial Secretary J C Richmond expressed it, 'to quietly push forward the frontier of law and civilization'. The Native Lands Act 1862 had 'afforded them [the Government] means of testing where, when, and how far the jurisdiction of the ordinary Courts could be practically carried'. But the 1862 system,

> although . . . nominally for the purpose of investigating Native titles, could not be said to be so in the sense in which Europeans were accustomed to apply to their Courts generally, for there was no settled custom among the Maoris. In the main the title of a Native was the simple law of power. The Land Court, then, did not properly investigate titles: it ascertained and registered assents. A certificate by the Court amounted to this: that the persons named could hold the land claimed by common consent.[263]

It is striking, although not unusual, that an influential figure such as Richmond should exhibit such overt ignorance of tikanga and appear to view Māori land rights as arising solely from a primitive struggle for supremacy.

(2) *The scope and significance of the changes introduced under the Native Lands Act 1865*

Dr Loveridge has suggested that the extent of changes made to the Native Land Court in December 1864 and codified by the Native Lands Act 1865 have been exaggerated and were instead mostly consistent with the system introduced under the 1862 Act.[264] Crown counsel also maintained that the 1865 Act did not represent a major departure from the earlier legislation.[265] By contrast, Armstrong and Subasic insisted in their evidence to our inquiry that the reformulation constituted a radical departure from previous arrangements.[266] The claimants adopted Armstrong and Subasic's interpretation, which accords with both their own position and most of the prior historical analysis and treaty jurisprudence concerning the 1865 Act (as we discuss later).[267] Over many years, historians and Tribunal inquiries have roundly criticised the Native Lands Act 1865. While Dr Loveridge and Professor Boast have observed that the 1865 Act essentially codified changes already instituted from late 1864, most commentators regard the 1865 Act as instituting significant changes not only in the structure of the Court but also in the conversion of customary title to facilitate alienation – an approach followed in our analysis.[268] The principle of empowering a body to investigate the customary ownership of lands so that they could be purchased without causing conflict had been established under the 1862 Act and remained unchanged, but there were important innovations in 1865 that had profound implications for Māori.

The destructive nature of these changes and the system of title conversion they introduced have been emphasised by many scholars and the Tribunal in other inquiries. In his seminal work *A Show of Justice*, Professor Ward argued that under the Native Lands Act 1865, Māori communities were reduced to the role of litigants appearing before a 'body of self-proclaimed experts who had to try,

and frequently failed, to interpret Maori custom'.[269] In 1976, anthropologist Professor Hugh Kawharu described the post-1865 Native Land Court as 'a veritable engine of destruction for any tribe's tenure of land anywhere'.[270] The *Report of the Waitangi Tribunal on the Orakei Claim* (1987) observed:

> it is clear to us that the legislature [in passing the 1865 Act] was anxious that the right of Ngati Whatua and all other Maori to hold their lands on a tribal basis, guaranteed to them by the Crown in the Treaty, should if possible be extinguished.[271]

As *The Kaipara Report* (2006) concluded in its assessment of the Native Land Court's operation in Kaipara South:

> by imposing the legislative regime which governed Maori land tenure and the Native Land Court, the Crown failed in its fiduciary duty, set out by Lord Normanby in his instructions to Lieutenant-Governor Hobson and in the guarantees in the Treaty of Waitangi, to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities.[272]

In his study of the Native Land Court, *Te Kooti Tango Whenua* ('The Land-Stealing Court'), legal scholar Professor David Williams explicitly framed the differences between the 1862 and 1865 models in terms of their potential treaty compliance, observing:

> there was nothing historically inevitable about the Native Land Court operating in the way it did from 1865 onwards. A system of adjudication in which Maori judges had the actual power of decision, especially on questions as to who had customary entitlements over land, would have been much less open to attack for non-compliance with Treaty principles than the court system which was put in place by the Government during 1865.[273]

In *Te Tau Ihu o te Waka a Maui*, the Tribunal referred to the 1865 body as an 'adversarial, winner-takes-all court, dominated by European officials applying a simplified and simplistic understanding of Maori land tenure'.[274] In *He Whiritaunoka: The Whanganui Land Report* (2015), the Tribunal recorded that the changes set out in the Native Lands Act 1865 meant that the 'flexible and local court system with a high degree of Māori input' established under the 1862 Act and realised briefly in the form of the Kaipara court, was promptly replaced with a single, centralised, and adversarial Native Land Court.[275]

The Tribunal has also highlighted a disjunction between the identification of customary interests enabled by the 1862 legislation and the process of tenure conversion and individualisation intrinsic to the 1865 Act and the Court it established. As the Tribunal noted in *The Hauraki Report*, the preamble to the Native Lands Act 1865

> made clear the intention (once customary ownership had been determined) to encourage the extinction of such proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown.

This time, the Act was not simply about ascertaining customary rights and authorising direct dealing, it was also emphasising tenure conversion.[276]

We concur with the Tribunal's well-established understanding of the 1865 Native Land Act as a significant departure from the 1862 Act with considerable negative consequences for Māori landowners. The purpose of the Crown's amendment both of Native Land legislation and of the Court itself was clear. It expanded the Court's reach and abandoned the two-stage approach to individualisation of title. Sections 21 to 26 of the 1862 legislation, which had provided for tribal titles followed by certificates of title for subdivisions, were not carried forward into the new Act. As the Hauraki Tribunal has pointed out, this meant that the possibility of Māori undertaking careful planning – a tribal title, followed by partition to individuals – was no longer possible.[277] The 1865 Act also reduced the status and influence of Māori as decision makers. The ability under the 1865 Act (section 6) to appoint additional judges to the Court ensured the guaranteed majority that had made the title determination process Māori-controlled

What Changes Were Implemented under the Native Lands Act 1865?

Composition of the Court

Section 5 of the 1865 Act established a formal national court of record, consisting of one chief judge, various judges, and 'native assessors'. This was a departure from the initial composition of the court under the 1862 Act, which was primarily a Māori body, comprised of a panel of leading local rangatira supervised by a European magistrate.[1] These Māori judges were reclassified as 'assessors' in December 1864, and two of them were required to sit with a European judge to constitute a legitimate Court under the 1865 Act.[2] All three had to agree on an award, precluding any possibility that assessors could outvote the judge.[3] Section 6 of the 1865 Act followed the Native Lands Act Amendment Act 1864 in empowering the Governor to add an additional member or members to any Court; whether they were to be Māori or Pākehā was not specified.

The process of tenure conversion and alienation

Section 21 of the 1865 Act enabled '[a]ny Native' (defined in section 2 as 'an aboriginal Native of the Colony of New Zealand') to give notice of interest in a piece of land and name those interested. This empowered a single individual to bring land before the Court without the knowledge of hapū and others, thus precipitating a Court inquiry not just into the applicant's claim, but into the interests of all other claimants. This differed in intent from the 'Any Tribe Community or Individuals' specified as applicants in the Native Lands Act 1862.

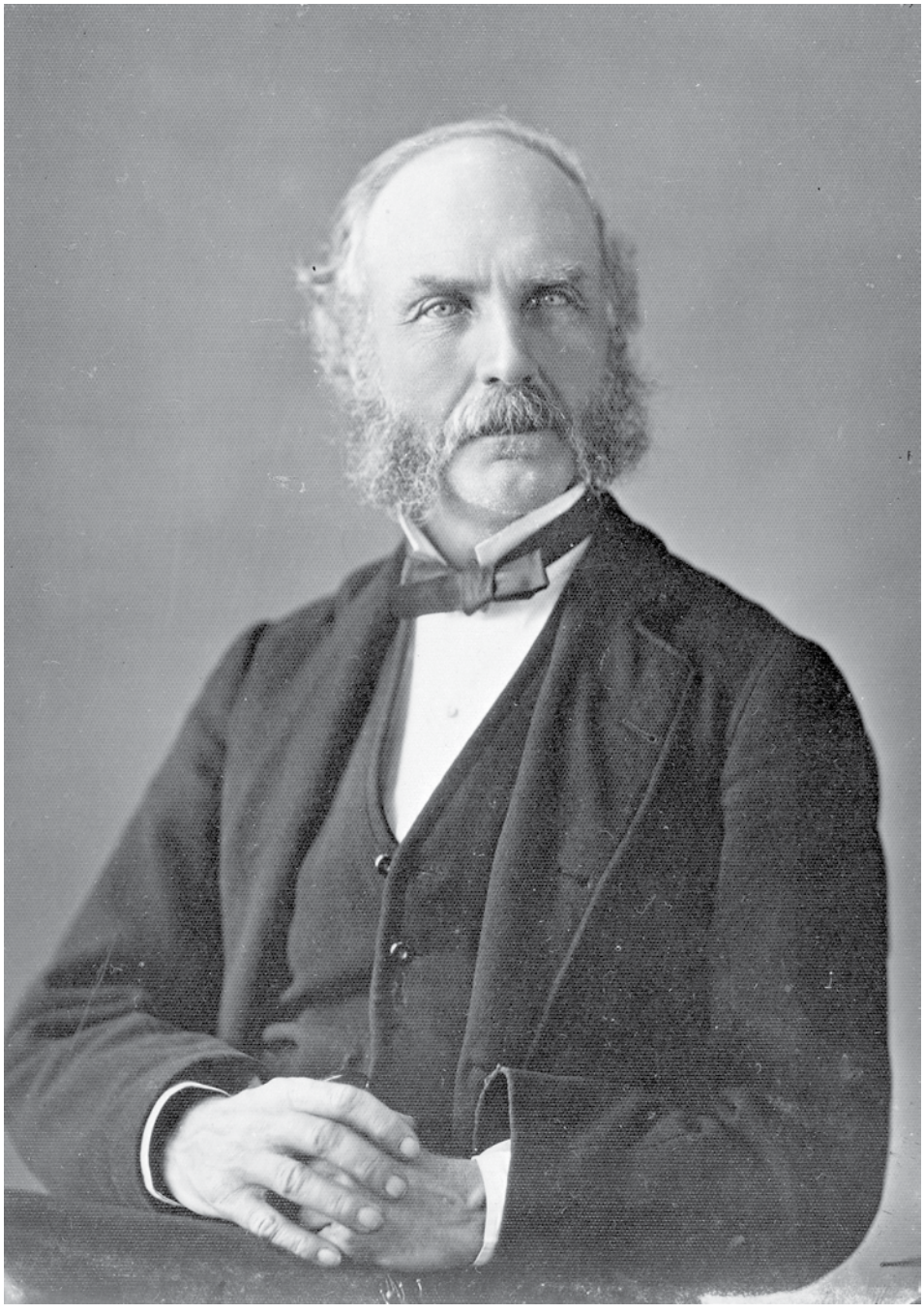
Section 23 of the 1865 Act specified that tenurial change would immediately follow an individual's application. Whereas the 1862 Act had implemented a process whereby tribal lands would be identified and then application could be made to subdivide these lands at a later date, the 1865 Act provided for a different approach: ownership would be determined first by the Court according to 'Maori proprietary customs', followed by a process of conversion in which a certificate of title would be issued to those with established interests.

The 'Ten-Owner rule' and tribal titles

Section 23 also introduced what became known as the ten-owner rule, which provided that 'no certificate shall be ordered to more than ten persons'; nor could certificates of title be issued 'in favor of a tribe by name' unless the block was over 5,000 acres in area. This was a departure from section 12 of the 1862 Act which provided that certificates of title could be issued to the 'Tribe Community or Individuals' whose title had been 'ascertained defined and registered'. The 1865 provision was intended to compel Māori to subdivide their lands immediately. We discuss the further implications of the ten-owner rule in practice in section 9.4.2.

Succession

Prior to the 1865 Act, succession was dealt with under the Intestate Natives Succession Act 1861. Section 30 of the 1865 Act gave the Court jurisdiction over succession matters when Māori landowners died intestate (without a will). It permitted the Court to inquire into and decide who, in accordance with native custom, ought to receive the hereditaments (that is, property that could be inherited), a responsibility that would expand following later legislative amendments. However, early on, Chief Judge Fenton established the principle in the 1867 *Papakura* case that all children were to inherit equally the shares of both their parents.[4]



Francis Dart Fenton, the first Chief Judge of the Native Land Court from 1864 to 1882. He was responsible for restructuring the Court in 1864 and 1865 following the establishment of early courts in Kaipara and Whāngārei that gave Māori substantial input into the title determination process. These courts were replaced with a single, national, permanent, and centralised Native Land Court, and the role of Māori on the bench was reduced; they were no longer judges alongside a Pākehā judge but became assessors. These changes were codified in the Native Lands Act 1865.

would be able to be diluted, as it invariably was in practice (see section 9.6). At the same time, the role of the Governor (and the protections he might exercise) was downgraded and replaced by the Governor-in-Council. The Governor would no longer have the power to make reserves, and while the Court could recommend that restrictions on alienation be placed on the title, it was not required to do so.

Of particular note, sections 23 and 24 of the Native Lands Act 1865 marked a radical departure from the provisions of its predecessor. There was no longer provision for collective or tribal titles, except for blocks of 5,000 or more acres. Instead, section 23 of the new Act ordered the Court to issue Certificates of Title, which included the 'names of the persons or of the tribe who according to native custom own or are interested in the land'. There were two provisos to this stipulation: 'no certificate shall be ordered to more than ten persons' and no block of less than 5,000 acres could be vested in a tribe. The Court was also directed to describe in the certificate the 'nature of such estate or interest' held by the individual owners or the tribe. Section 24 authorised the Court to issue more than one certificate for any particular claim, by dividing the land between owners or 'set[s] of owners' after ascertaining their respective interests, if that was what the owners wished. The parliamentary debates shed no light on the reason why the provisions for vesting title in a tribe or community (as well as individuals) were changed to these new requirements, since they were mostly carried out in committee. However, the impact on Māori land ownership and exercise of tino rangatiratanga was profound.

The changes introduced under the 1865 Act effectively removed or reduced the protections contained in the earlier statute. They transformed what had been a rūnanga-style tribunal, dominated by rangatira with the status of judges and familiar with tikanga, into an English-style court of record operating according to standardised procedures, many of which were fundamentally incompatible with Māori custom and tikanga. The rule of 'best evidence', which held that the Court could only consider evidence from initial claimants and objectors rather than making its own independent inquiries, has been criticised in earlier inquiries for the revival or continuation of tribal rivalries.[278] This stipulation had the wider implication that all owners would either need to attend or entrust the protection of their interests to others in the group. While the latter may have been possible in certain relationships and circumstances, the ability to bring applications to the Court without community consent and the ten-owner rule established under section 23 were nonetheless incompatible with tikanga and created a potential to disinherit great numbers of Māori, as we discuss further in section 9.5.2.[279]

In sum, it is evident that the Government of the day sought to accelerate the individualisation of ownership interests initiated by the provisions of the Native Lands Act 1862 and to bring all land in customary ownership within the scope of the tenure conversion process with the intention of undermining Māori collective ownership and accelerating the alienation of land. Nor do we accept the Crown's assertions that continuity defined the relationship between the Native Lands Act 1862 and the Native Lands Act 1865; we consider this inconsistent with both the majority of the evidence we heard and the Tribunal's careful jurisprudence on the topic.

(3) *Were Te Raki Māori consulted?*

As our earlier discussion has demonstrated, the Crown engaged in some limited consultation at Kohimarama with Te Raki Māori over the proposals for the methods of investigating titles subsequently contained in the Native Lands Act 1862. Previous Tribunal reports have stressed how crucial it was for the Crown to have had an earnest prior discussion with Māori about the changes to this system contained in the 1865 Act, and to have obtained their consent for these. As the Tribunal found in the *Wairarapa ki Tararua* report:

> The Native Lands Act 1865 signalled profound and far-reaching changes, and there is no question that a Kohimārama type of hui should have been convened to discuss the Act with Māori before it went to Parliament.[280]

No such meeting took place, and nor did we receive evidence that the Crown, when preparing the changes to the Court instituted in 1864 and contained in the Native Lands Act 1865, consulted with or secured the approval of Te Raki Māori in any way.

9.4.3 Conclusions and treaty findings

In their extensive consideration of district-based claims, previous Tribunal inquiries have found that the imposition of the remodelled court and tenure system contained in the Native Lands Act 1865, without Māori consent and contrary to their wishes, breached the treaty. The Central North Island Tribunal highlighted that the guarantee of tino rangatiratanga in article 2 meant Māori should have control of their affairs and the development of their own institutions, including systems to control title determination and prevent disputes:

> The alternative . . . was that judges would attempt to manage Maori custom from the outside, looking in. Such an alternative was inconsistent with the autonomy guaranteed to Maori by the Treaty. There was a fundamental disjunction when Maori law was placed under the control of a British court, with the decisions to be made not by the Maori people concerned but by a British judge. The Treaty could not be kept in those circumstances.[281]

The Central North Island Tribunal described as a 'universally adopted treaty standard' the interpretation that the decision to establish the post-1865 Native Land Court system, based on external adjudication of titles, was 'fraught with such consequences for Maori, and for the system of native title that protected their customary rights, [that it] could only have been taken without their consent'.[282]

Having reviewed the evidence relevant to our inquiry district, we agree with the conclusions of earlier Tribunal reports on the Crown's heightened duty to consult on the significant changes introduced to the Native Land Court system from late 1864. The deficiency of this process in Te Raki was manifest. In particular, we consider the Crown's claim entirely to lack foundation that 'Northland Māori' engaged with the 1862 court, 'over which they had already been consulted and with which they were familiar', and that they were therefore 'peculiarly placed to understand and engage with the Court system'.[283]

Although the Crown argued that the 1862 and 1865 acts were not fundamentally different, Tribunal inquiries have regularly emphasised the contrast between the 1862 and 1865 versions of the Court. As the Tūranga Tribunal observed,

> for a measure introduced without Maori consent and accompanied by considerable doubt as to its efficacy, even among its leading proponents, the 1862 version of the court worked surprisingly well in the Kaipara pilot. Perhaps it was because the court did not attempt to transform customary rights but merely declared them. Perhaps it was its facilitative approach. Perhaps it was just because it was tried in a 'safe' district. . . . after Kaipara, a quite different court emerged.[284]

Our analysis of the legislation and the evidence we received concerning the brief operation of the 1862 system at Kaipara and Whāngārei leads us to concur with the jurisprudence on the topic.

We note first that we welcome the Crown's concession of treaty breach concerning the ten-owner rule and its effects (see section 9.2.2). However, we find further in respect of the Native Lands Act 1865 that:

- By failing to make a good-faith effort to engage with and secure Māori consent in advance of the changes to the Native Land Court system, as set down in the Native Lands Act 1865, the Crown breached te mātāpono o te houruatanga/the principle of partnership, te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By legislating unilaterally in 1865 to codify changes to the composition and decision-making powers of the Native Land Court, the Crown effectively removed Māori control of the title investigation and

determination process, breaching te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga/the principle of partnership.

- By abolishing, without consultation, the flexible and tikanga-informed process the Court had originally employed to determine ownership in favour of a British system prioritising individual over collective rights, the Crown breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te tino rangatiratanga.

9.5 Did the Native Land Court Award Te Raki Māori Appropriate Titles?

9.5.1 Introduction

Claimants argued that the Crown's Native Land legislation did not provide a form of title recognising the rights of all owners and enabling collective ownership and management of Māori land.[285] For claimants, the ten-owner rule, the memorials of ownership established by the Native Land Act 1873, and the succession rules adopted by the Court in 1867 resulted in dispossession of interests, title congestion, and fragmentation of ownership. In general, the claimants submitted that the Crown failed to consider title options reflecting Te Raki Māori tikanga and aspirations and failed to provide a secure basis on which they might invest in and develop their lands.[286]

As introduced in section 9.2.2, the Crown offered several concessions related to Native Land legislation. At the same time, counsel argued that the Native Land Court 'did not set out to establish title on a one-man, one-estate basis', and that the law was 'originally framed to permit the Court to take communal interests into account, and was progressively reformed to better promote such recognition'. Further, counsel claimed that the Crown 'made these options available to Māori applicants and to the Court, but they were not taken up'.[287] The Crown also noted that the 1865 Act directed the Native Land Court to determine succession 'according to law as nearly as it can be reconciled with Native custom', and that the Native Land Act 1873 and the Native Land Court Act 1880 directed the Court to determine succession 'according to Native custom'. The Crown acknowledged, however, that the Court continued to apply modified English rules of succession, resulting in 'land fragmentation, with a range of prejudicial consequences for Northland Māori communities'.[288]

In this section, we examine the development of Native Land legislation following the Native Lands Act 1865 and consider whether the titles available to the Court for award fulfilled the Crown's treaty obligations to Te Raki Māori. We assess the Court's practice and operation in our inquiry district in section 9.6.

9.5.2 The Tribunal's analysis

(1) *The scale and pace of titling, 1865–1900*

Table 9.1 makes it clear that the bulk of the Court's titling activity occurred during the 15 years from 1865 to 1880, and principally under the Native Lands Act 1865 and the Native Land Act 1873. Historian Paul Thomas gave evidence that, between 1865 and 1874, customary ownership in some parts of Te Raki was practically extinguished, notably in Mahurangi and the Gulf Islands. In other taiwhenua, Māori secured titles over parts of their land while maintaining substantial areas under customary ownership. Notably in Whangaroa, Thomas calculated that just 23.2 per cent of the Māori land that would have its title determined in the Court had been titled by 1874. But by 1880, the Court had investigated and awarded titles in over 57 per cent of those lands in the Bay of Islands that would come before the Court, 63.2 per cent in Hokianga, 81.8 per cent in Mahurangi, 78.1 per cent in Whāngārei, and 59.4 per cent in Whangaroa.[289] In a short period of 15 years – and especially between 1875 and 1880 – the Native Land Court had profoundly altered the tenure of land in Te Raki. After this, the pace and scale of titling slowed sharply, partly in response to growing Te Raki Māori resistance to the Native Land Court (we discuss the Waitangi parliaments and Kotahitanga movements in detail in chapter 11) and partly as a result of the withdrawal of the Crown from the land purchasing that drove much of the Court's activity (land purchasing during this period is discussed in chapter 10).

Time period	Blocks titled	Proportion of known blocks	Acres titled	Proportion of known acres titled
1865–74	469	58.1	325,200	47.5
1875–80	202	25.0	255,860	37.4
1881–89	75	9.3	62,132	9.1
1890–99	61	7.6	41,427	6.0
Total	807	100.0	684,619	100.0

Table 9.1: Known blocks and acres titled by the Native Land Court in Te Raki, 1865–99.

(2) *Certificates of title and the ten-owner rule: the Native Lands Act 1865*

While the Native Lands Act 1862 represented a cautious step towards the individualisation of land ownership, the Native Lands Act 1865 marked the beginning of a more pronounced effort to promote it. As noted earlier, the core of the Native Lands Act 1865 lay in sections 21 and 23, which enabled individuals to apply for investigations of title without hapū consent and created the ten-owner rule respectively. Section 24 then authorised the Court to divide the land between claimants after ascertaining their respective interests. While the decision to restrict the number of owners in blocks smaller than 5,000 acres was not debated in the Legislature, Judge Henry Monro later observed that it had in mind 'the great practical inconvenience certain to result, in any subsequent transactions, from having any larger number to deal with where unanimity in action would have become essential'.[290]

In carrying out its task of ascertaining ownership, section 23 empowered the Court to issue certificates of titles for collectively owned blocks greater than 5,000 acres in area to 'named tribes'. But only one tribal title was issued in Te Raki,[291] and in practice the ten-owner rule was often applied to such blocks.

According to Armstrong and Subasic, the convention reflected the Court's assumption that its task was not to preserve but to extinguish collective ownership.[292] Riseborough and Hutton agreed that it:

> points strongly to the court's preference for procedures that would convert Maori land tenure into individual ownership, and not, for example, a legalised communalism of 'tribe by name'.[293]

Māori themselves may well have been unaware that a tribal title was available to them in the case of large blocks, given the Court's resistance to the option, but they also saw the practical convenience of restricting the number of owners to represent their interests and likely considered the role of nominated owner as an appropriate one for their rangatira. As table 9.2 demonstrates, the practice continued even after the law changed. The legislation offered the underlying ownership no protection, however; it failed to specify how owners were to be selected and the scope of their responsibilities.

The failure to give effect to the undisclosed trusteeship obligations of the named owners was a serious deficiency in the legislation that was soon identified but not remedied (very partially only) until passage of the Equitable Owners Act 1886. This Act enabled the Native Land Court to inquire into the nature of titles granted under the ten-owner rule and determine whether a trust existed or had been intended to exist – but only in the case of blocks still remaining in Māori ownership.[294] The Act appears to have been applied to only eight blocks within Te Raki: Te Koutu, Ohawini, Paparoa, Pukanui, Pukeatua, Tapapanui, Waikaramihia, and Waikariri.[295]

Time period	Average number of awardees	Number of blocks	Average size of blocks (acres)
1865–74	4.2	469	693.39
1875–80	7.9	202	1,266.63
1881–89	22.1	75	828.43
1890–99	55.2	61	679.14

Table 9.2: Average number of persons placed in titles of blocks in Te Raki, 1865–1900.

The long-standing lack of legal obligations on the part of nominated owners was compounded by the failure to provide an effective option for a collective title. As a result, the customary controls that the community could exercise were greatly reduced. As noted earlier, the Crown has conceded that these two features of its Native Land legislation (the ten-owner rule and failure after 1865 to provide for a collective title until some 30 years later), breached the treaty 'in certain circumstances'.[296]

In 1867, Chief Judge Fenton reported on the operations and impact of the Court; he expressed himself to be completely satisfied and commented on the 'wonderful ease' that had marked its operation. He suggested that every certificate represented a subdivision of the tribal estate, and that the process of individualisation was being managed at the hapū level. People were picked to go into the certificate by general arrangement of the tribe and, he implied, everyone was treated fairly: 'the consideration being that the names of those now inserted are to be omitted in certain other certificates'. Fenton noted at this point (two years into the Court's operation) that it was unclear whether or not the grantees were trustees or absolute owners as

> a great number of the certificates already issued are in favour of individuals, and whether these are trustees put in for the purpose of sale on behalf of the tribe, or whether they are to be regarded as intelligent members of the tribe determined to possess freeholds for themselves, it is impossible to say; and it would be difficult, if not impossible, to obtain this information from the Natives, unless they are thoroughly satisfied that our motives in seeking it are not such as to excite suspicion, and to satisfy them on this, as, indeed, on any other head, must be the work of time, and an unchanging policy.

He added that the ultimate result of the court process would be to turn Māori into either 'well-to-do farmers' or 'intemperate landlords'.[297]

Despite Fenton's satisfaction with the individualisation process that had been initiated, it had already become apparent that its effects could be undesirable. Fenton acknowledged that the provision had had a damaging effect in the Hawkes Bay, but in his opinion, it was

> not part of our duty to stop eminently good processes because certain bad and unpreventable results may collaterally flow from them, nor can it be averred that it is the duty of the Legislature to make people careful of their property by Act of Parliament, so long as their profligacy injures no one but themselves[298]

This remained Fenton's policy throughout his tenure as chief judge and rested on the conclusion that he ultimately reached and would consistently maintain: that the grantees were not trustees under the Act.[299] He later recorded that had the Court recognised or enforced a trustee relationship, it would have perpetuated the 'evil' of communal ownership.[300]

Judge Monro also acknowledged that limiting the ownership to 10 grantees had caused some difficulty but,

like Fenton, he considered the Act to have had its desired effect:

> Apart from the question of surveys, I cannot say that I have experienced any difficulty in the practical working of the Native Lands Act of 1865, except what may have arisen from clause twenty-three limiting the number of grantees to ten persons, but this difficulty has in each instance been easily overcome; and as one great object is to induce the Natives to individualize their titles as far as possible, I think it would be inadvisable to alter it.[301]

Judge Frederick Maning, for his part, indicated that he was prepared to issue certificates to the whole tribe in the case of large blocks. However, it appears that he did so only once, in 1867, when Te Māhurehure received a certificate of title for the 11,828-acre Whakatere–Manawakaiaia block.[302] The same year, he reported that Māori in the Bay of Islands and Hokianga regarded the Native Lands Act as satisfying a 'great want and vital necessity' by 'offering them a means of extricating themselves from the Maori tenure'. He believed that they were keen to individualise their titles and subdivided their blocks to achieve this object.[303]

Māori named in the titles of blocks were in the legal position of joint tenants with absolute rights of ownership. This meant that they could mortgage or sell their shares without reference to others named in the title. It also became clear that other hapū members were being dispossessed without any legal say in the control and management of what had been previously shared tribal land. As the retired chief justice, Sir William Martin, noted, the direction under section 23 of the Act for the Court to 'ascertain by such evidence as it shall think fit the right title estate or interest of the applicant and all other claimants to or in the land' could not be reconciled with the ten-owner rule:

> The grievance of which we now hear is this . . . that, although the land comprised in the Certificate may belong to more than ten persons, a Certificate is granted which names only ten of the owners, and gives no indication of the existence of other owners; that the ten persons named in the Certificate or the Grant have not, on the face of the Certificate or the Grant, been made to appear as only joint owners with others unnamed and trustees or agents for those others, but have appeared on the face of those instruments as the sole and absolute owners; that, as such, they have, either of their own motion, or being induced by other parties, conveyed the land to purchasers; and that in this way many persons have been deprived of their rights.[304]

Riseborough and Hutton described the resulting form of tenure as 'a pseudo-individualistic tenure of joint tenants, but one in which the tenants acted as individual owners, and not as trustees for the other rights holders under Maori land tenure'.[305] In the Tūranga report, the Tribunal observed that joint tenancies could have further consequences for Māori landowners:

> By this form of title, all interests were deemed to be equal. Individual interests could be alienated during the lifetime of individual grantees, but they could not be inherited by the successors of those grantees. Instead, on death, the individual undivided interests of the deceased joint tenant reverted to the pool of surviving joint tenants.[306]

The risk of dispossession may have been obviated to some extent in Te Raki by the smaller size of blocks being put through for title determination, in contrast to Hawkes Bay where some of the worst abuses were experienced in the early years of the Court's operation. Still, the extent of Court activity in Te Raki, where 58.1 per cent of all the blocks titled between 1865 and 1899 were put through while the ten-owner rule remained in force, suggests that the impact was considerable forcing the break-up of hapū ownership and their exclusion from key ancestral lands.

(3) *The 'ten-owner' rule modified: the amendments of 1867 and 1869*

A number of amendments to the Native Land Act followed during the mid-to-late 1860s. The Native Lands Act 1866 dealt largely with reserves, the imposition of restrictions on alienability, and surveys. Of concern to

us here is section 17 of the Native Lands Act 1867 which attempted to deal with the consequences of the ten-owner rule. Native Minister Richmond indicated:

> Great difficulty would be likely to arise in many parts of the country from tacit and unrecorded trusts being placed in the power of a few Natives holding grants or certificates for large tracts of land. The evil that existed in that respect should not be continued. It was very plain that hereafter persons holding those lands nominally in their own right, but really for large bodies of Natives, if they should find themselves pressed, as was not unlikely to be the case, for money, would desire to alienate from time to time, and the Government would have to sustain the irritation and discontent of those Natives for whom those persons held the property in an unacknowledged trust. He had desired that those who should have granted to them certificates for Crown Grants virtually in trust, should be called upon by the court to execute some declaration of trust, but the Attorney-General was of opinion that it would be attended with very great inconvenience.[307]

He did not elaborate on the nature of that 'inconvenience', but clearly lacking support for his efforts to have nominated owners defined as trustees, Richmond proposed that the names of all with interests should be recorded by the Court and that the land concerned should be held as inalienable (including by way of mortgage) except by lease for a period of up to 21 years.[308] Section 17 of the amending Native Lands Act 1867 thus offered several potential remedies:

- The Court was directed to ascertain 'by such evidence that it shall think fit, the right title estate or interest of the applicant and of all other claimants to or in the land'.
- The Court would then issue a certificate of title which would 'specify the names or the persons or of the tribe who according to Native custom own or are interested' in the land.

Section 17 then went on to state:

- The Court would ascertain 'by such evidence that it shall think fit the right title estate or interest not only of the applicant and of all other claimants to or in the land' but also 'of every other person who and every tribe which according to Native custom own or is interested in such land whether such person or tribe shall have put in or made a claim or not'.
- If the Court concluded that there were more than 10 owners in the block or that a tribe or hapū was interested in it and consented, a certificate could be ordered to issue to 'certain of the persons not exceeding ten' while 'the names of all the persons interested in such land', including those named on the certificate of title, and 'the particulars' of all their interests would be 'registered'; certificates of title in such instances would state that they had been issued under section 17.

The Act also attempted to put a brake on the pace of alienation, stating:

- '[N]o portion of the land' could be alienated by 'sale gift mortgage lease . . . exceeding twenty-one years' unless it was subdivided first.
- It was lawful for 'the persons found by the court to be interested or for the majority of them' to apply for such a subdivision.[309]

The provision should have offered Māori owners a modest measure of protection, but how it would work in practice was obscured by the poor drafting. The most serious deficiency was its failure to create an explicit trust with the result that the status of the 10 owners named on the certificate of title was far from clear. According to Judge Monro, the certificate of title 'determine[d] the proper parties to be dealt with'.[310] That they were to be regarded as trustees was implied by the registration of all owners (recorded on the back of the title), but this was not stipulated; in the opinion of the Hauraki Tribunal, it was 'a very great missed opportunity'.[311] Further, as the *Mohaka ki Ahuriri* report recorded, the mere listing of owners under section 17 did not create a tribal right to land.[312] Nor did the requirement for a majority consent for partition so that a portion could be sold equate to an alienation by collective consent.

The instruction to the Court to ascertain the rights of all possible claimants was apparently intended to solve the problem created under the 1865 Act whereby

only the interests of those who had lodged a claim were investigated. However, Professor Boast noted that it is not clear how the Court would identify and inquire into every interested person if it was to be limited to the evidence before it.[313] Ultimately, he concluded that section 17 'gave the Court an option' to conduct a wider inquiry if this was sought by the applicants. When the Court was asked to make an order under section 17, its practice was to record two lists, 'one of the ten representative owners, and the other of the remaining owners'. In these cases, the nature of title the two groups possessed was, however, 'far from clear'.[314]

In any event, the potential of section 17 was never realised, nor its possible flaws revealed in operation. It appears that the Crown failed to advise Māori of the amendment which was, in any case, tortuously constructed and difficult to understand. It was also disliked by Fenton who, according to Professor Ward, made no effort to explain it to Māori applicants.[315] Most judges followed Fenton's lead in the matter with the result that the provisions of the Native Lands Act 1867 were rarely applied; the only two exceptions that have been identified in our inquiry district are the Parahirahi and Kokohuia blocks.[316]

The causes of the chief judge's dislike are readily found. In his view, expressed in early 1868, the provision would frustrate the intention of the Native Lands Act 1865, and 'make perpetual the communal holdings of the Natives, by getting them in their existing state registered in a Court of Record and made sustainable in the Supreme Court'. He considered it:

> difficult to suppose that this would have [been] the effect intended; as it would be distinctly opposed to the declared intentions of the Legislature, and, in particular, to the essential object of these Acts.

Fenton went further, declaring that, since the law makers had not clearly expressed their intention, it was a matter of discretion on the Court's part to interpret the law in accordance with the interests of the applicants and 'general public policy'.[317]

Fenton refused to acknowledge that there had been a problem in the first place beyond that of individual profligate owners. Although Parliament had clearly intended section 17 to remedy some 'mischief', in the absence of a preamble, he expressed himself ignorant of what the mischief could have been. The policy of the Native Land Court would be to continue to compel tribes to subdivide 'until the names in the grant are brought within the legal number, and display the whole of the persons interested in the property'.[318] Fenton also argued that, in any case, no problem could be remedied by creating 'concealed equities'. He concluded:

> If this view is wrong, this Court may readily be compelled by *mandamus* to give the clause in question any other effect which the Supreme Court may think would more fitly interpret the intentions of the Legislature.[319]

No such order was made.

Nor did Parliament take any immediate remedial action. Although Richmond informed the House of the chief judge's refusal to execute the 'unworkable' provision, and highlighted the danger of issuing grants to individuals as trustees of the tribe without it being put into their power to 'arrest any dealings in regard to them', the Native Lands Act Amendment Act 1868 did not address these concerns.[320] The Government had instead distributed circulars to obtain declarations of trust on the part of owners who had been put into the title on behalf of the tribe – but we received no evidence of this having any success in Te Raki.

The Native Lands Act 1869, sponsored by Fenton as a Legislative Councillor, corrected one of the problems created by the earlier legislation.[321] Section 12 provided that in all instances where land had not already been sold, and in future cases, grantees under the 1865 and 1867 Acts were deemed to be tenants in common (meaning that individual interests were undivided, could be of variable value and proportion, and inherited by the heirs of each of the grantees) and *not* joint tenants (whereby all interests were deemed to be equal, could be alienated during the lifetime

of the individual grantees, and could not be inherited by their successors).[322] Section 15 provided that any alienation required the agreement of 'a majority in value of the grantees'. These provisions were intended to restore 'some degree of corporate status to individualised title', but it was still possible for a grantee to 'call for subdivision and the ascertainment of an individual interest which could then be sold'.[323] In Sir William Martin's subsequent assessment, these changes were insufficient to protect the rights of tenants in common, let alone the many unnamed customary owners who had not been entered on the title. It was still easy for purchasers to obtain individual, undefined shares in a piecemeal fashion, leading to the unwilling sale of the whole block. While there were also Māori who were 'dishonest and reckless enough to abuse, to the detriment of their fellows, the facilities which the present system furnishes', Martin argued that the law should protect others from their actions.[324]

(4) *Memorials of ownership: the Native Land Act 1873*

In response to growing criticism of the continued application of the ten-owner rule, the Government directed the preparation of two reports. The first was by Sir William Martin, whose opinions we have already quoted, and the second by Theodore Haultain, a retired soldier who had also been Minister for Colonial Defence and was a trust commissioner under the Native Lands Frauds Prevention Act 1870.[325] Their reports found serious fault with the operation of the land laws to date, and their proposals, together with the findings of the Hawke's Bay Native Lands Alienation Commission of 1872, exerted considerable influence on McLean, who was now Native Minister, as he prepared what would become the Native Land Act 1873.

Sir William Martin considered the complaints regarding the ten-owner rule to be 'just and well founded'.[326] In his view, while it was reasonable to limit the number of people with whom a lessor or purchaser had to deal, Parliament could not have intended to secure this benefit by 'ignoring or sacrificing the rights of any of the owners'. He proposed that all owners be included in grants, fuller powers be accorded owners after subdivision into ten-owner blocks, and the agreement of all owners be secured before a subdivision could take place.[327]

Haultain, whom McLean had tasked with investigating the workings of the Native Lands Acts and making an 'impartial report' to the Government, also concluded that the law and actions of the Court had resulted in problems for many Māori. After seeking the opinions of Native Land Court judges, assessors, important chiefs, and other authorities on the matter, he reported that Māori had complained that:

> the limitation of ten names to a Crown Grant, and the giving grantees equal interests, have put it in their power to dispose of the property, or parts of it, without reference to other persons who were also more or less interested, which power has, in many instances, been exercised to the great detriment of those parties.[328]

Haultain accepted that the complaint was legitimate and that the ten-owner rule had operated to the great detriment of those excluded from the titles. In his view, section 17 of the 1867 Act had failed to remedy this situation because most Māori were unaware of its existence – and even if they were, had been trapped in debt and were unable to afford the inalienability that would follow registration of all owners and the creation of a binding trust.[329] Like Fenton, Haultain thought that the best course was for the Court to issue titles only when blocks had been subdivided into small blocks in which there were, at most, 10 persons who would be unable to sell or mortgage their undivided shares; but he also recognised that such a system would entail massive survey expenses and debts for Māori.[330]

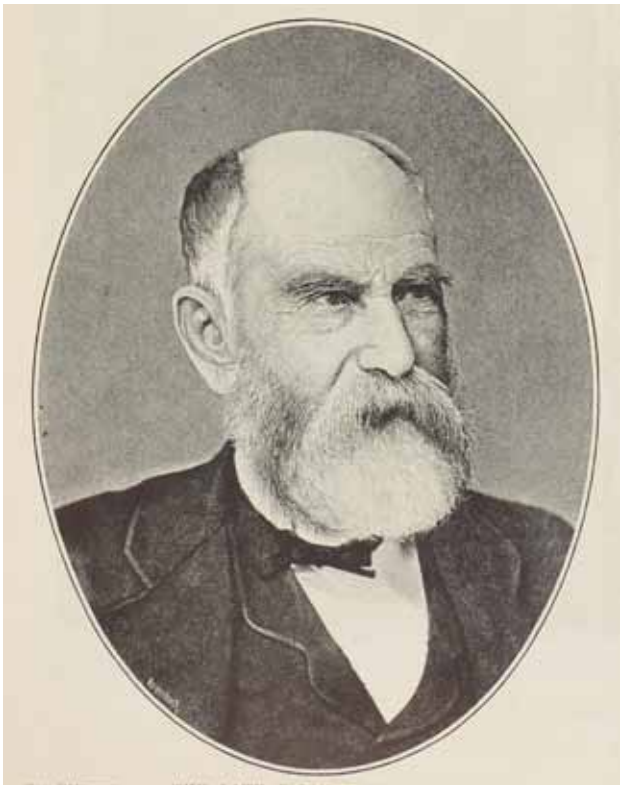
Chairman of the Hawke's Bay commission, Supreme Court Judge CW Richmond, observed that '[n]o one can doubt the expediency of legislation to promote the breaking up of tribal property', but he concluded nonetheless that the ten-owner rule and the issue of Crown grants to those whose names were entered on certificates of title constituted 'a very serious grievance'.[331]

The legislation that followed these trenchant criticisms, the Native Land Act 1873, was intended to resolve a number of the difficulties that had been identified. These included the costs of title adjudication and especially the cost of surveys; the matter of reserves and 'sufficiency' of land to be retained by Māori; and the general inaccessibility of the law to Māori. Most importantly, it ended the ten-owner rule for all new investigations of title, although it did not change the situation for grants already issued under the Native Lands Act 1865. Instead, under section 47 of the new Act, all owners would be recorded on memorials of ownership, not merely those claiming to be their representatives. Not all shares were to be considered as equal in value, and where a majority of owners requested it, the Court was empowered to determine the proportionate share of each owner.[332] Under section 48, the owners had no power to alienate except by way of lease for up to 21 years, but section 49 allowed a sale where all were agreed. Under sections 59 to 68 – with section 65 of particular relevance – land could be subdivided at the request of a majority of owners. Owners who wished to sell were required to sign a memorandum of transfer, while a Crown grant would be issued in favour of the purchaser on the Court's recommendation.[333]

Rather surprisingly, McLean did not mention the extremely significant change in how Māori land was to be titled during his summary of the Bill's main provisions when he introduced it to the House. However, later in the debate he acknowledged:

> Hitherto it often happened that eighty out of a hundred might not participate in the benefits of the grant, and that ten persons, who looked upon themselves as the legal holders of the estate, might sell it without accounting to the remainder of the owners. It was one of the great defects of the former Acts, and which this Bill would remedy, that the intended trusts were never properly secured or looked after.[334]

The Bill's reception was mixed. Karaitiana Takamoana, member for Eastern Maori, covering the region where some of the worst abuses had been identified, objected to it on the grounds that it would do nothing to remedy the injustices that had already occurred.[335] On the other hand, the Opposition's John Sheehan supported the intention to ensure that all owners were acknowledged and had to consent to any sale, but predicted that its provisions were insufficiently precise to prevent the old problem of piecemeal alienation of individual shares, resulting in the unwilling alienation of the whole block.[336]



Colonel Theodore Haultain, a retired soldier and Minister for Colonial Defence from 1865 to 1869. Prior to his appointment, he served in the Waikato War and he was given command of the second regiment of the Waikato Militia. In 1865, Haultain was promoted to full Colonel, and he was appointed Minister for Colonial Defence in the Stafford Government later that year. In 1873, he prepared a report for the Government on the workings of the Native Land Court, finding serious fault with the ten-owner rule and concluding that the Court had caused problems for many Māori, in part because of the costs associated with the Court process.

The most interesting debate for the purposes of this chapter took place in the Legislative Council where the failings of the proposed measure were identified. Notably, Henry Sewell, a former Attorney-General, who had been involved in the drafting of the Native Lands Act 1862 (see section 9.3.2(6)), suggested (perhaps surprisingly, given statements he had made in previous years) that it was premature to bring about the complete individualisation of Māori title, which he anticipated would be the effect of the new Bill. He argued that Māori 'communism' should be left intact for the meantime, and that Māori should be permitted to continue to deal with land transactions as a tribal body with collective structures and rights:

> What was now said was, that the Natives should be governed by majorities, and that their interest in their land should no longer be tribal or collective, but that each individual should have a distinct aliquot part [an individualised share, determined by dividing the value of collective assets by the number of interested persons]. That was a fundamental vice in this Bill.[337]

Dr Morgan Grace rejected these criticisms, throwing the blame for the failure of the 1865 Act and the frustration of Parliament's benevolent intent on Māori themselves – as did the Colonial Secretary of the day, Dr Daniel Pollen.[338] According to Grace, it had been Parliament's intention in the earlier Acts to recognise tribal entities by appointing 10 persons as trustees:

> But what did they find? They found that when it ceased to be to the interest of the trustees to respect those rights, they used them against the commune they were supposed to protect.[339]

Pollen, in his summary of the Government's position, also indicated that the Native Lands Act 1869 had failed in its intended effect:

> There was nothing more common, he was sorry to say, than for one Native, out of a great many named in a grant, to sell his individual interest, without reference to the other grantees. He need not tell honorable members that the moment one interest in an estate of that kind was parted with, the claims of all the rest were vitiated, for no one would care to buy with an imperfect title; and in that way very great injustice had been inflicted upon the Natives. It was only necessary for a person to secure a conveyance of the interest of a single Native whose name was in the grant, to make sure of getting the rest at his own price.[340]

Pollen failed to explain, however, how this new measure and the naming of all owners on the memorial would prevent the same thing happening. As Professor Boast has noted, the Native Land Act 1873 created a new category of land, held under 'memorial'.[341] We note that both Mr Wī Tako Ngatata and Colonel William Kenny argued that Māori had not been sufficiently consulted about the Bill. Kenny pointed out that it had not been printed in te reo as it 'ought to have been for the Native race' nor had it been circulated properly. Given the importance of the measure, which would directly affect Māori interests, Ngatata and Kenny considered that further consultation should take place before the Bill became law.[342]

(5) *The 'lesser of two evils'?*

It has been well demonstrated in Tribunal jurisprudence that the titles provided under the Native Lands Act 1865, its amendments, and under the Native Land Act 1873 did not meet the Māori need and increasing demand for a collective legal title; they did not provide the basis upon which Māori owners or any lending agency could contemplate the investment of capital and labour in development; and they imperilled the social integrity and cohesion of Māori communities.

While the ten-owner rule recognised the power and authority of rangatira (but without creating a trustee role in law), the memorial of ownership system had a contrary effect.[343] Rangatira were now but one of many owners who could exercise no collective control. Under the Native Land Act 1873, the land retained by owners remained in a modified form of customary ownership. All owners were supposed to be named, each of whom was awarded not a specific allotment of land but undivided tradeable shares

where, as the Tūranga inquiry pointed out, 'none had existed in Maori custom'. The same report noted there was nothing in the Act that required 'that purchasers deal with the community of owners *as a community* in securing agreements for sale' (emphasis in original).[344]

Section 87 of the Act stated that conveyances of native land before it was vested in freehold tenure by order of the Court would be 'absolutely void'. The protection offered here was negligible, however. The Tūranga Tribunal cited the Supreme Court decision in *Poaka v Ward* (1889), which argued:

> The Native Land Court system provided a number of safeguards for Maori, which ensured that all Maori listed on a memorial of ownership had a say in what happened to any single interest.
>
> . . . . .
>
> The effect of section 87 was that only transfers agreed by owners signifying their consent *in court* could be recognised as valid. All other transactions, and particularly all earlier transactions, were void. [Emphasis added.][345]

But, the Tribunal concluded, the reality of land transactions, both with the Crown and with private purchasers 'was not as the Supreme Court described it. Section 87 made pre-court individual dealing unenforceable, but did not *ban* it' (emphasis in original). Private purchasers could still buy up individual interests and avoid community decision-making if they considered that owners would not renege once the sale proposal came before the Court for affirmation. The Crown was not bound by the terms of section 87 anyway.[346] In the Tūranga Tribunal's view, section 87 was never intended to stop individual dealing.[347] It was absolutely clear:

> The 1873 Act individualised the sale of Maori land. In fact, it individualised Maori title *only* for the purpose of alienation. For every other purpose it was merely customary land outside English law and commerce. [Emphasis in original.][348]

Similarly, the *Hauraki* report found that the Native Land Act 1873, like the Native Lands Act 1865, 'provided a form of title which fell between two stools, undermining the control of land at hapu level under customary tenure, while not providing truly individualised titles'. Lands held under memorials of ownership thus existed in 'a kind of legal limbo'.[349]

The claimants in our inquiry also emphasised the failure of the Crown to provide a title that was useful other than for its goal of facilitating the sale of land. They stressed that, as a result of the changes forced on them by laws about which they had not been consulted and which they soon began to actively resist, the Crown undermined their tikanga, their social cohesion, their capacity to retain and manage their whenua, and their tino rangatiratanga. They regard this as a deliberate effort to assimilate them rather than incidental to the Crown's land laws.

In Te Raki, as table 9.2 indicates, by continuing the practice of naming a few owners as hapū representatives, the claimants' tūpuna had attempted to avoid the delay, expense, and inconvenience created by the memorial of ownership system and the need for repeated partitions and surveys by those wishing to transact their lands. But this practice could also expose them to great risk because of the lack of legal protections and acknowledgement of responsibility on the part of the Crown. Te Kapotai claimants brought to our attention the Te Turuki block, the site of their hapū marae, as one example of the long-term effects of the ten-owner rule. The original award to 10 owners by Maning in 1868 had resulted in a 'long running and bitter dispute' which had led to repeated applications to the Court and appeals well into the twentieth century.[350] Over 70 years later, Judge Frank Acheson would remark on the 'ill-feeling' that existed between a 'small group' and the 'great majority of the people', and he would appeal to them to establish 'harmonious relations'.[351] But, in the view of Te Kapotai at the time, the responsibility for the friction (and the obligation to repair the damage) rested with the Court and the Crown:

> It was Judge Manning who issued the title for Te Turuki in 1868. It was Parliament which established the Native Land Court and gave Judge Manning the right to issue the Te Turuki title. It is Parliament which gives the present Court the

> power to deal with this land. The Court gave the title to Te Turuki and it can take it away.[352]

Wiremu Reihana, on the other hand, described the destructive impact of the system introduced by the 1873 legislation on Ngāti Tautahi not only in terms of land loss but also on social cohesion and the functioning of hapū. Whereas previously his tūpuna had complete tino rangatiratanga over their whenua and its resources, 'due to the workings of the Native Land Court, the land was broken up, partitioned and sold off'. The effects were long-term. He told us:

> Life would change forever. The ownership list for the land blocks allowed the Crown to target individual owners and buy their land interests off them. The Court also pitted relations against one another as they competed for the land. This would undermine the unity of the hapū and the rangatiratanga of the rangatira, to the point where we seldom now act as a hapū unit.[353]

While the Court had recognised the chiefly status of Ngāti Tautahi tupuna, Eruera Tāhere, individualisation of title had made it impossible for him to 'counsel the hapū to work together to keep the whenua'.[354]

Other witnesses made similar points with reference to the impact on their rangatira, hapū, and the relationship between them. Tāhere argued that the Crown knew that Māori held their lands communally and that the authority of rangatira was dependant on the mutual backing of the hapū. In his view, the Crown deliberately set about removing the capacity of rangatira to manage their people and their lands.[355] He brought to our attention instances where blocks such as Maungataniwha and Te Pupuke were brought through the Court for title determination and awarded without the knowledge of Te Uri o Te Aho. According to the recollection of his whānau, it was many years before the hapū realised that the land was gone.[356] Rihari Dargaville agreed that the land laws represented 'a deliberate act of undermining and the denigration of rangatiratanga over ancestral whenua tuku iho'.[357] Mr Dargaville provided various examples, including the Kaingapipiwai block which largely passed out of Māori ownership as individual owners sold their interests and the land was partitioned into smaller sections.[358]

We received no evidence in our inquiry that would cause us to reject claimant allegations regarding the destructive consequences of land legislation and the Court under both title systems or to reconsider the general Tribunal jurisprudence we have already outlined. The Crown has conceded as much. In particular:

> the award of land to individuals and enabling individuals to deal with land without reference to iwi or hapū, made those lands more susceptible to partition, fragmentation and alienation.

The Crown accepted that this 'undermined traditional tribal structures which were based on collective tribal and hapū custodianship of the land' but rejected allegations that this was a deliberate and calculated policy on its part. Crown counsel did acknowledge, however, the failure 'to provide a legal means for the collective administration of Māori land until 1894', and that this was a breach of the treaty. We also welcome the Crown's general concession that it 'failed to protect those collective tribal structures which had a prejudicial effect on the iwi and hapū of Northland and was a breach of the treaty and its principles'.[359] But we do not accept that the consequences of the system introduced were unintentional except in the most limited sense; defenders of the Native Land laws threw the blame on rangatira themselves, but legislators had deliberately undermined their connection with hapū and offered no legal underpinning to ensure that responsibilities could be met.

(6) *The power to determine relative interests and partition*

The Native Land Act 1873 laid the foundation for a system in which individual, undivided shares could be gradually acquired, later termed 'purchasing by attrition'. As noted above, officials and politicians often argued that the destructive effect of the ten-owner rule was unexpected, but baulked at creating a trustee relationship between the

named owners and their hapū, introducing the memorial of ownership system instead. The Crown may have intended to prevent the legal dispossession of owners and facilitate Te Raki Māori participation in the colonial economy, but it was entirely as individual suppliers of land for settlement and not as collective owners and producers. As no more than a record of owners, memorials of ownership certainly did not provide a form of title upon which investment and development might take place; customary 'owners' were merely the lessors and vendors identified as such to Crown and colonists wishing to acquire land.[360]

When appearing before the Native Land Laws Commission in 1891, the Act's draftsman, John Curnin, claimed to have coined the term 'memorial of ownership' (as distinct from a certificate of title under the 1865 Act) to describe an English-style title 'issued to the Natives themselves, certifying that the title to such Native land had been ascertained'. According to Curnin, the Act's primary objective was to avoid the difficulties associated with the ten-owner rule and to encourage Māori to partition their lands into hapū and family holdings. Curnin went on to concede that some purchasers had 'got underneath the Act' to acquire individual shares.[361]

Curnin's explanations are, in our view, unconvincing. Many more than 'some purchasers' had managed to circumvent the supposed protections of the legislation to effect purchases by attrition. As Pollen had noted when introducing the Bill into the Legislative Council, once that happened, the rest of the block was sure to go as well. That was the conclusion, too, of the Native Land Laws Commission. In its view, through the 'pseudo-individualisation' of title, Māori had been reduced to 'a flock of sheep without a shepherd, a watch-dog, or a leader . . . The strength that lies in union was taken from them.'[362] The many obstacles to whānau partitioning land, especially the costs of survey and the trouble it caused, were already well known. These hurdles, in combination with the capacity of purchasers to acquire individual shares as and when they liked, makes it difficult to see the Act other than as intended to 'force sales'.[363]

The Crown's policy of enabling the Court to determine relative interests so that blocks could be partitioned and portions sold was central to the individualisation of Māori title and the process of alienation it facilitated.[364] The Native Land Act 1873 provided that a majority of owners could apply to the Court to ascertain 'the amount of the proportionate undivided share that each such owner of land is entitled to according to Native usage and custom'.[365] Under section 65, a simple majority also sufficed to initiate a partitioning out of their interests. There was no requirement for the entire group of owners to meet together and consent to alienations. As noted earlier, this meant that signatures could be acquired in a piecemeal fashion and a partition forced through the Court.

Over the following decades, the Crown, through a number of legislative provisions, continued to expand the Court's powers to determine the relative interests of Māori landowners and the capacity of individuals (including non-Māori) to initiate partitions. The *Turanga Tangata Turanga Whenua* report takes over a page to set out the many changes in the law during the late nineteenth century, including three u-turns over a 10-year period, as to who could apply for a partition. Sometimes, the rules applying to the Crown and private purchasers were the same, sometimes different.[366] Overall, the trend represented a substantial erosion of protections, reducing the requirement for a majority to initiate partition to a single individual owner, or on the instigation of the Crown. Provisions of note included:

- Intestate Native Succession Act 1876 (section 3) directed the Court to define proportionate shares when determining successors.
- Native Land Act Amendment Act 1877 (section 6) empowered the Crown to apply to the Court to have the shares it had acquired in a block partitioned out.
- Native Land Act Amendment Act (No 2) 1878 allowed any owner or interested party (including the purchaser of an undivided interest) to ask the Court to determine the value of any interest they held in order to partition out a portion of the land of an equivalent value; in effect, this provision ended the protection of a majority veto on the question of subdivision.[367]
- Native Land Division Act 1882 allowed an individual

to partition out an interest from a memorial of ownership or certificate of title but not purchasers unless the interests had been acquired before that date; this represented a partial reversal of policy, but the removal of the majority veto over partition remained unchanged.

- Native Land Administration Act 1886 reversed the 1882 change so that purchasers could apply to partition out their interests; this reflected a wider change in policy prohibiting direct private purchase, but which would have otherwise left those who had not yet had the undivided shares they had acquired partitioned out in a 'sort of tenurial limbo.'[368]
- Native Land Court Act 1886 (section 42) provided that the Court might, on making an order on an investigation of title, or a partition, decide the relative shares or interests of owners in the land on the application of any individual interested in the land.
- Native Land Court Act 1886 Amendment Act 1888 (section 12) required the Court to subdivide a block if it found on title investigation that there were more than 20 owners and it was practical to do so; section 7 affirmed the capacity of the Crown to cut out the interests it had acquired; section 21 required the Court, on making an order as mentioned in section 42 of Native Land Court Act 1886, to determine the relative interests of owners in the land 'whether such procedure is applied for or not'; at the same time, private purchasing had been restored (see chapter 10).
- Native Land Court Acts Amendment Act 1889 (section 6) enabled a purchaser to ask the Court to partition out his or her interest once the deed had been certified by a trust commissioner.
- Validation Court was established under Native Land (Validation of Titles) Act in 1893 to enable partitions that did not comply with procedural requirements to be perfected; the Court operated largely in the East Coast and to a certain extent in the Manawatū district.
- Native Land Court Act 1894 (section 17) enabled any person 'interested in the land' to initiate partition proceedings but dropped the trust commissioner requirement (that office having been abolished).

This remained the law regarding partition until 1909. However, additional rules gazetted in 1895, under the Native Land Court Act 1894, stated that it was the duty of the Court 'on every investigation of title or partition, and on determining any succession to ascertain or define the relative interests in the land of owners or successors.'[369] In *He Maunga Rongo: Report on Central North Island Claims, Stage One* (2008), the Tribunal observed that even as the Crown enacted these many legislative provisions to empower the Court to define relative interests in land and enable partition, it was aware of both 'the disintegrating, unusable, and insecure nature of Māori land titles', as well as 'the problems associated with the acquisition of undivided interests by private buyers' – and we would add, by the Crown itself.[370]

In contrast, it was not until the Native Land Court Act 1894 was passed – after more than two decades of Māori protest on the matter, as discussed in chapter 11 – that they were provided with any legal support for the collective management of their lands through incorporation and the election of committees. Under section 122 of this Act, the Court was empowered, with the consent of the majority of owners of any block, if the Crown had not already acquired an interest, and the majority of owners of a number of adjoining blocks agreed, to order an incorporation if satisfied that this would be to their advantage. Under section 123, the owners could then nominate a committeee of three to seven persons (not necessarily themselves) to administer the land. The committee could by majority decision and with the approval of the commissioner of crown lands for the district effect an alienation (section 126), with the proceeds paid to the Public Trustee who would distribute the moneys after deducting expenses for himself and the committee and any fees payable to the Crown (sections 128 and 129). Enabling Māori to incorporate ostensibly provided them with greater agency to collectively manage their land, but as the Tribunal observed in *He Kura Whenua ka Rokohanga*, it also served the Crown's land purchasing objectives for two key reasons. First, incorporations were easier to deal with than having

to collect each individual owner's signature as was the case under the memorial system. Secondly, under the legislation, elected committees could alienate land without the consent of the majority of owners, while 'the Crown could also continue to buy individual interests in incorporation land from owners who, at law, did not need the consent of others, or the committee'.[371] By this stage, Te Raki Māori were demanding more systemic reform of the land laws and the abolition of the Native Land Court altogether, and the option of incorporation was not adopted.

(7) *Introduced law and rules of succession and the impact on titles*

The claimants raised as a major Court-related grievance the laws governing succession to the Court-awarded interests of Māori landowners. They argued that the Crown breached Tiriti principles by applying English succession laws to the land interests of Māori landowners when it enacted section 30 of the Native Lands Act 1865 and successive legislation. Section 30 directed the Court to ascertain 'who according to law, as nearly as it can be reconciled with Native custom' ought to succeed to the land interests of a deceased intestate owner. Section 30, counsel said, left the Native Land Court 'with the discretion to apply tikanga or a mix of tikanga and English succession principles'. Instead the Court established the principle in an 1867 case (the *Papakura* case) that when Māori landowners died intestate, their land interests would be divided equally among their surviving children. This became the 'basic rule' relating to succession of interests in Māori land applied by the Court thereafter, which, counsel described as prejudicial in that it resulted in excessive fractionation of interests or shares.[372] Combined with the effects of the Native Land Act 1873, the outcome was rarely the demarcation of useable whānau or individual holdings on the ground, hindering the effective management of land by Māori themselves and facilitating the piecemeal purchase of interests. The claimants submitted:

> the Native Land Court's development and application of the principles of succession did not reflect the customary transmission of rights under tikanga, and in developing and applying those principles, breached the Crown's Tiriti obligations in respect of Maori being able to retain their lands as long as they wished and also in respect of the guarantee of tino rangatiratanga.[373]

The claimants alleged that the Crown was further culpable in having failed, when the Native Land Court

> explicitly and consistently breached the initial legislative directive to reconcile its decisions with Native custom . . . to ensure that the Court was brought into line and did indeed observe custom.

Because Fenton's attitude suited the Crown's agenda of individualising title to Māori land and undermining Māori social structures, it did not intervene to protect the tikanga of Te Raki Māori regarding succession, and thus breached the terms and principles of te Tiriti.[374]

Counsel for Ngāti Tautahi ki Iringa argued in closing submissions that 'the Crown's imposition of succession principles on Māori was also a breach of Article III of te Tiriti'.[375] Counsel cited the 'disastrous outcomes suffered by the Claimants, and many other if not all Te Raki Māori, as a result of the English law of succession on intestacy', and argued that, 'where Māori were disadvantaged, the principle of equity required that there be active intervention to restore balance'.[376] This theme of a fundamental disconnect between Ngāpuhi tikanga and the Court's principles and processes was echoed in evidence prepared for the Te Aho Claims Alliance by Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey. They noted that decisions on matters including succession were based on precedent decisions made by judges who brought with them 'attitudes and presumption from Britain and its legal system', which frequently distorted adjudication of the interests of tūpuna in the district.[377]

The matter of succession was raised by the Crown in 1860 during the proceedings of the Kohimarama rūnanga, when McLean expressed a preference for the settlement of succession through wills.[378] No further consultation with Māori on the matter appears to have taken place.

Succession was not dealt with in the Native Lands Act 1862, but section 30 of the Native Lands Act 1865 provided that when an owner died intestate (without a will), the Native Land Court was empowered to decide who, 'according to law as nearly as it can be reconciled with Native custom', were entitled to succeed to 'hereditaments', that is, according to Bennion and Boyd, both land owned by Māori under their customs and usages, and land clothed with English title (which today is defined as 'Maori freehold land').[379] Section 45 of the Act provided that 'any Native' who claimed a right 'by Native customs' to succeed to ownership of any native land, or part of it, might apply to the Court for determination of his or her claim. The Native Land Act 1873 had a similar section: 'any person' might apply to succeed to the interests of a deceased intestate owner holding land under a Court-derived title, when the Court would inquire into the application and in the wording of the statute decide who 'according to Native custom' ought to succeed (section 57). Subsequent legislation contained similar provisions.[380]

However, Chief Judge Fenton, in his very short 1867 judgment on *Papakura – Claim of Succession*, interpreted the 1865 Act to mean:

> English law shall regulate the succession of real estate among the Maoris, except in a case where a strict adherence to English rules of law would be very repugnant to native ideas and customs.

He was concerned that Crown grants should not be undermined at time of succession, and that land that had been 'clothed with a lawful title' should not revert to 'the tribal tenure'. He emphasised that it would be the duty of the Court, in administering the Act, 'to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent'. The ordinary law, primogeniture, should apply, but with a key exception: 'the descent of the whole estate upon the heir-at-law could [not] be reconciled with native ideas of justice or Maori custom'.[381] Bennion and Boyd pointed out that Fenton did not give any detailed reasons for deciding this way, apart from his comment that primogeniture would not reconcile with 'native ideas of justice or Maori custom'.[382] He explicitly decided not to incorporate Māori customs related to succession, nor apply the British practice of primogeniture (the right of succession belonging to the eldest male child; or to the eldest female if there was no male heir). Instead, all children would succeed equally and from both parents, and would do so irrespective of their residence or the size or the location of the block or blocks of land involved.[383]

Chief Judge Fenton's principle, the Tūranga Tribunal stated, was not consistent with tikanga: '[b]y tikanga any right to land required occupation in order to take effect. Descent was insufficient on its own.'[384] Tā Edward Taihakurei Durie made a related point in his paper, 'Custom Law', noting that Māori land tenure focused on land use (rather than land ownership).[385] Rights to use land for hunting, gathering, planting, building, and residing derived from 'membership within the community', which was gained 'primarily by birth', but 'also by adoption, incorporation [for instance, through marriage] and participation'.[386] In Te Raki, according to the evidence of Drs Henare, Petrie, and Puckey, it was the 'fundamental rule that land rights emanated from a specific ancestor' and were established by continuous occupation (ahi-kāroa). Take waenga, especially current or recent cultivations, formed the strongest basis of claim for land-use rights, while claims based on the unopposed taking of other resources were also important. Resource-gathering practices typically included bird or rat snaring, taking eels and establishing pā tuna or eel weirs, taking fish and seafood, flax, timber, or any other useful products of the land. Thus, the rat and kiwi-snaring paths, the eel streams, flax swamps, and groves of particular species of tree came under this category of mana or ownership. Consequently, claimants in land court hearings often referred to their forebears' use of resources in quite specific terms, since 'all recognised resources were deemed to have "owners" or kaitiaki who had the right to access and control their use'. They added that it was 'essential that the right to take resources be known and acknowledged'.[387] All this evidence speaks to use rights being passed to the next generation in accordance with tikanga.

In respect of the last wishes of rangatira holding mana over particular lands it was also important to indicate publicly who was to inherit the mana whenua after his or her death. Ōhākī, the final instructions given before death, 'can be defined in English as a legacy (koha or oha)', and '[l]ike other gifts or acts of tuku, it was necessary for the ohaki to be heard by all the hapu involved to be valid'.[388] Henare, Petrie, and Puckey pointed also to the lesser importance traditionally in Te Tai Tokerau of senior male lineage tracing, rather than female descent lines, citing the lines of Rāhiri, Kaharau, Hineāmaru, Waimirirangi, and a 'host of others within the [inquiry] rohe'.[389] It was not uncommon for men to reside with their wives' families, but the rights to the land remained with the wives.[390] Evidence given by women in the Native Land Court about boundaries, whakapapa, and the origin of place names showed that they had been taught these things, just as their male relatives had.[391]

Whānau and hapū sometimes sent their children to live with their relatives in other hapū to ensure they inherited use rights in that area. As the Tūranga Tribunal explained:

> When a marriage took place between members of different hapu, one person would move to live with the other person's kin. While the children of such a union would normally remain living with the kin-group where they were brought up, it was not uncommon for them to shift for a time to the rohe of the other parent, or a grandparent, renewing whakapapa connections and gaining access to a different resource complex.[392]

A significant aspect of the tikanga governing land tenure, therefore, was that it 'prevented the fractionating effect of devolution by descent alone'.[393]

Ironically, the English practice of primogeniture also served to prevent fragmentation of the landed estate of families. Professor Williams has observed that, in the *Papakura* judgment, Fenton did not discuss 'the anti-fragmentation principles of the English law of succession', nor did he make any 'allowance for mana, for the status of members of a hapu, or for ahi ka [unbroken occupation] . . . of land'.[394] In *He Maunga Rongo*, the Tribunal suggested that Fenton was 'anxious that land, once under Crown grant, should not be reclaimed by tribal law at the point of succession'.[395] In other words, the succession rules devised by Fenton were again directed towards the breaking up of collective ownership and tribal estates.

The rules of succession were therefore established by the Native Land Court which was empowered by legislation to decide on applications for succession. In 1871, Sir William Martin warned that their application would eventually generate a grievance. In his view, the Native Land Court should not interfere with Māori custom.[396] But Bennion and Boyd found:

> Even a cursory glance through land court minute books of last century suggests that its approach to succession orders generally followed Fenton's 1867 ruling. Interests in land were regularly split equally among all the children of the deceased.

Exceptions might be made to reduce the number of successors, either to facilitate alienations or to limit future fragmentation of the land.[397] But Armstrong and Subasic also gave evidence that in practice the Native Land Court continued to apply Fenton's *Papakura* rule.[398]

We have received no evidence to indicate that Te Raki Māori were at any stage consulted over nor their acceptance secured for the major change in succession law and the Court practices that followed the chief judge's ruling. In his evidence for Ngāti Tautahi ki Te Iringa, claimant Wiremu Reihana described the outcome of the Court's succession rules, which continued into the twentieth century:

> In the past, the mana of a rangatira over the land was usually passed down to the eldest son of that rangatira. The English succession laws destroyed this tradition and this resulted in the extreme fragmentation of our land interests. The English laws meant that land interests were succeeded to by every child of the deceased. My grandfather's interests should not have been succeeded to by individuals but kept together and held by one person who had the mana to receive the lands. However, this did not occur. By individualising title and by allowing for all the children of the deceased to

Wiremu Reihana presenting evidence for Ngāti Tautahi ki te Iringa claimants in hearing week 16, Turner Events Centre, Kerikeri, in 2015.

> succeed, we now have hundreds of owners in tiny blocks of land, making it difficult to manage the blocks properly.[399]

As noted earlier, the acknowledged results of the new succession rules and processes included fragmentation of the land, fractionation of ownership, and title congestion in the lands that Māori managed to retain. While the full extent and impact of these problems continued to expand and deepen into the second half of the twentieth century, they became evident to the second generation of owners to hold land under the inheritance system that had been grafted onto their own.[400]

An early example of the development of title congestion in Te Raki was the 4,767-acre Punakitere 2 block in Hokianga. Upon the award of a memorial of ownership in 1883, the block had 88 owners. On partition in 1897, Punakitere 2A of 500 acres had one owner, Punakitere 2B of 4,218 acres had 154 owners, and Punakitere 2C of 49 acres was awarded to the Crown. Punakitere 2B was further partitioned in 1901 into nine blocks: the Crown was awarded the 200-acre Punakitere 2B9, so that the remaining 4,018 acres were awarded in the form of eight blocks to a gross total of 260 owners; many owners almost certainly held shares in more than one block.[401] In brief, in 18 years, as the result of both Crown purchase and multiple successions, the average area held by each owner fell from 54.2 acres in 1883 to 15.45 acres (per gross owner) in 1901. Pakanae 2 showed a similar pattern: succession orders increased the number of owners from 66 in 1882 to at least 90 by 1889, and 250 by 1920 (we discuss this block further in chapter 10).[402]

Moreover, and following a similar pattern to that observed elsewhere, the number of succession hearings increased rapidly as the transformation of interests in land into individually owned and tradeable shares initiated by the Native Land Act 1873 took full effect.[403] In Te Raki as a whole, the number of succession and partition cases rose from 126 in the period from 1881 to 1889 to 266 in the succeeding decade, although declining from 43.2 per cent to 38.4 per cent of all cases.[404] The Native Land Laws Commission commented in its 1891 report on the sheer number of succession cases nationally:

> deaths are occurring at the rate of at least fifteen hundred a year. To these there will be certainly three thousand successors. Even now the undecided claims to succession are exceedingly numerous. Frequently the applicant dies before his claims to succession are heard.[405]

This rise in cases may have reflected the fact that succession embedded itself fairly quickly in Māori practice, as the Tribunal has previously observed.[406] The Court's wide application of the rule created an impression among Māori that it was important to succeed to have their land

rights recorded. Even if they no longer lived on the land, succession preserved their link to a block in the eyes of the Court (and the Crown), and their children could in turn succeed to their share.

For Te Raki overall, Thomas recorded that for 75 known blocks in the inquiry district titled during the period from 1880 to 1889, the average number of *original* owners was 22.1, but for 61 known blocks titled during the period from 1890 to 1899, the number of awardees rose sharply to 55.2.[407] A contraction in the area of land owned by Te Raki Māori and a growing population were combining with imposed succession rules to generate difficulties that would practically preclude any efforts to develop the lands involved. Assets, the Tūranga Tribunal observed, were being transformed progressively into liabilities.[408]

By the 1890s, the Crown was well aware of the difficulties that title congestion, fractionation of ownership, and unstable and disintegrating titles posed. However, before 1900 it did little more than offer some tentative remedial steps.[409] The Native Land Court Act 1894 made initial provision for the exchange of interests between two Māori owners. However, the Tribunal in *He Maunga Rongo* has pointed out that regulations under the Act seemed 'to limit exchanges to any two Māori owners owning land in severalty, or owning undivided interests in different blocks'.[410] As noted earlier, the 1894 Act also empowered the Court, with the consent of a majority of owners, to order the establishment of Māori incorporations.[411] However, there is no evidence that incorporation was a mechanism utilised by Te Raki Māori before 1900, and this innovation appears to have been largely ineffective in mitigating the effects of title congestion.[412]

Finally, we note that we do not make findings on the long term implications of legislation and legal decisions on succession in this volume of the report. We instead address this matter in our forthcoming volume concerning claim issues related to the twentieth century.

(8) *Indefeasible titles?*

The Tribunal has previously drawn attention to the fact that Māori were disadvantaged in the colonial economy not only by the inadequate titles they received under the Native Lands Acts, but also under the new conveyancing system the New Zealand State adopted in 1870. With the enactment of the Land Transfer Act 1870 and the introduction of the Torrens system, land ownership in New Zealand became based upon certificates of title and the registration of titles in a public records system. As Boast has explained, a certificate of title 'is meant to, and to a significant extent actually does, give to the landowner a virtually unchallengeable ("indefeasible") title.'[413]

The Torrens system, devised by Robert Richard Torrens, underpins real property law in New Zealand and Australian States, and a number of other jurisdictions. It is premised on the belief that the defects of the British system, centred around the common law rule 'that no person could confer on a mortgagee or purchaser a better title than they possessed', could be remedied.[414] The Torrens system seeks to provide

> security of title by means of state guarantee, simplicity by use of standardised forms in language readily understood by the layman, accuracy by the use of precise survey data, the reduction of costs by simplification of conveyancing procedures, expedition by streamlining and constantly revising recording procedures, and suitability to circumstances by relating our land registration system directly to our social and economic structures.[415]

Māori landowners were not well placed to secure land transfer titles. Relatively few held their land under Crown grant. From the outset, there were limits placed on the number of owners who could receive a Crown grant for any one block under the Crown's Native Land legislation. Under section 15 of the 1862 Act, where a certificate of title had been issued in favour of no more than 20 owners, the Governor could endorse the certificate of title with the Public Seal of the Colony, with the same effect as a Crown grant.[416] With the introduction of the ten-owner rule under the Native Lands Act 1865, the number of owners who could receive a grant was halved. Under sections 29 and 46 of the 1865 Act, certificates of title would be

forwarded to the Governor who could issue a Crown grant for the land. In our inquiry, Crown counsel described this process for acquiring a Crown grant 'as an optional step, since in most respects a certificate of title provided all the security and certainty Māori owners needed'. On the other hand, Crown grants imposed additional obligations such as rates and land tax, and land held under them could be seized for the repayment of debts.[417]

Section 80 of the Native Land Act 1873 maintained the requirement that the modified customary title could be converted into freehold title only if the owners numbered 10 or fewer, despite the introduction of memorials of ownership.[418] This provision required that no more than 10 Māori owners of land under a memorial of ownership apply to the Court for 'declaration that they may in future hold the same in freehold tenure'. If the Court was satisfied that the owners understood the effect of converting their title, and that the owners' relative interests had been recorded, it could transmit the memorial to the Governor with a recommendation that a Crown grant be issued.[419]

Māori land held under Crown grant was brought under the Torrens system by the Land Transfer Act 1870 Amendment Act 1874. However, Māori owners were still required to apply to the Land Court under section 80 of the 1873 Act. Māori land subject to a Land Court title order under the 1873 Native Land Act became subject to the provisions of the Land Transfer Act from that date, and the district land registrar (appointed under that Act) was required to register dealings with such land on the provisional register book of the district until a Crown grant for the land was registered.[420] Under the Native Land Court Act 1886, duplicate orders of the Court were to be forwarded by the chief judge to the Minister of Lands, at which point the owners were entitled to 'have issued to them a warrant under "The Land Transfer Act, 1885," for the issue of a certificate of title for the land' (sections 20–22). Section 73 of the Native Land Court Act 1894 (a section which was over a page long) rendered practically all titles determined by the Native Land Court up to 1894 automatically subject to the Land Transfer Act.[421] When the Court ascertained the title of 'Native land' from that time, the registrar of the Court was to forward the order to the district land registrar, who 'shall as soon as may be thereafter' issue a certificate of title to those named in the order and enter the order on the provisional register. At that point the provisions of the Land Transfer Act 1885 applied to the land, though the registration remained provisional until a certificate of title was issued.[422] But while the Native Land Court Act 1894 provided that every order affecting land could be registered, it did not require it (section 30).

Despite these legislative attempts to implement a State guarantee for Māori land, the 1980 Royal Commission on the Māori Land Courts found that a separate system developed alongside the Torrens system, 'for recording the details, including ownership, of Maori land within the records of the Maori Land Court'. The commission noted that there was 'no statutory justification for this procedure'. It had always been intended that, as soon as land in customary ownership had been investigated, 'this land should be made subject to the Land Transfer Act and a certificate of title issued under the Act pursuant to a Crown grant'.[423] However, it observed that many orders were not forwarded for registration because of unpaid fees, or the absence of an acceptable survey.[424] Another issue the commission identified was 'the failure of the parties involved to have the orders lodged in the Land Registry Office'.[425] Boast has stated that the relationship between the Land Transfer Acts and the Native Lands Acts was 'far from clear'. He cited the conclusion of Young, Belgrave, and Bennion that district land registrars 'often refused to accept transfer documents for registration on titles or because the title prohibited or prevented registration'. The registrar-general could also be required to defend transactions because statutory requirements were contradicted or not met.[426] The problem, Boast added, remains a serious one 'to this day'.[427]

A further problem was a disconnect between the statutory language of the Land Transfer Act 1885 and subsequent Native Land legislation that sought to bring Māori land under the Torrens system.[428] Section 67 of the Land Transfer Act 1885 stipulated that certificates of title under

the Act would be 'valid and effectual against the title of any other person' where no other person was in adverse or actual occupation of the land.[429] But this provision only extended to land brought under the Act by an 'applicant proprietor'. In its discussion of the Waiohau fraud in the *Te Urewera* report, the Tribunal observed that this provision did not include titles 'brought under the Land Transfer Act by an order of the Native Land Court', as the Supreme Court determined in its 1905 decision in *Beale v Tihema Te Hau*.[430] The Tribunal concluded that it was difficult to accept that the Crown deliberately denied Māori land the protections of section 67, and the continued requirement that Māori apply for a freehold title despite the provisions of the 1886 and 1894 Native Land Court Acts 'may have been an oversight, reflecting carelessness with Maori interests'.[431] The same year, a Privy Council judgment spelt out the impact of the doctrine of indefeasibility on title deriving from freehold orders of the Native Land Court. As the Tūranga Tribunal pointed out, the Privy Council reversed the decision of the New Zealand Court of Appeal on three Tūranga cases: 'in a single consolidated judgment', it found that, unless there had been fraud, no irregularity in the land court's processes could disturb the registered proprietor's title.[432]

The result of this divergence of the two systems for recording titles, the 1980 royal commission concluded, was:

> the benefits of the land transfer system [were] replaced by a cumbersome, inefficient system of records of Maori land and its ownership which put the Maori people in their land dealings at a considerable disadvantage compared with Europeans.[433]

Registration of titles in the Native Land Court did not offer certainty of title, and without such certainty, the lands involved were not acceptable as security.[434] As the Tribunal observed in *He Maunga Rongo*, 'multiple title was hard enough for lenders to cope with. Unregistered multiple titles were worse.'[435] In short, security of title was a fundamental requirement for participation in the commercial economy, but neither the titles made available to Māori nor the system of registration offered that certainty. The commission found that this problem had persisted into the twentieth century. As late as 1979, the number of unregistered partition orders in the Tokerau Maori Land District stood at 3,630 (21 per cent of the national total) and the number of unsurveyed partition orders at 2,411 (25 per cent).[436] For the Tokerau district, the proportion of all Māori land titles that remained unsurveyed stood at almost 52 per cent.[437]

Paul Thomas's evidence illustrated that, during the first decade of the Court's operation, many Te Raki Māori did seek Crown grants in exchange for their certificates of title. Between 1865 and 1875, 403 Crown grants were issued in our district for mostly small blocks or sections, and only four Crown grants were issued for blocks of over 20,000 acres.[438] From 1875 when Māori land came under the Torrens system there was a sharp decline in the grants issued to Te Raki Māori, with only three issued that year and Thomas's evidence did not include any record of further grants issued.[439] It is not clear why this was the case. Te Raki Māori owners like those in some other districts, may have been suspicious of registration under the Land Transfer Act (Te Ture Tuku Whenua), whether because they feared, or could not afford the registration fees, or because they feared that it would facilitate the alienation of the dwindling area remaining in their ownership. One major outcome of Māori hesitancy, however, was that they were in effect excluded from the Liberal Government's Advances to Settlers scheme. Māori freehold land did not qualify for assistance under the Government Advances to Settlers Act 1894. Māori had to get a Land Transfer Act certificate of title first – a somewhat daunting prospect, Boast suggested. Some may have achieved it, 'but in the nature of things this could not have helped very many families'.[440]

The economic and social consequences of the fact that such high numbers of Te Raki Māori land titles remained unregistered in the land transfer system would become increasingly manifest after the turn of the century. Yet it was not until the passage of the Te Ture Whenua Maori

Land Act 1993 (section 123) that all orders made in the Māori Land Court affecting title to land had to be registered under the Land Transfer Act 1952. We will consider this issue further in the next volume of our report.

9.5.3 Conclusion and treaty findings

As we discussed earlier, there is some evidence to indicate that Te Raki Māori were open to changes to customary tenure, attracted by the security of possession that they were told Crown-confirmed titles would confer and the opportunity to develop whānau properties while undertaking limited alienations to buy goods, stock, ploughs, and other farm implements – and attract settlement as well. But as the hui convened by Arama Karaka Pī at Waimā in September 1863 in response to Grey's rūnanga scheme made clear, their preference was for a collective title offering equivalent security to that of an individual certificate of title or grant, and their expectation was for a title determination system and process under their own control. Those aspirations were rejected and actively undermined by a colonial Legislature newly empowered to enforce its assimilationist goals and programme of accelerated land purchase.

Neither the titles offered under the ten-owner rule introduced in 1865, nor their replacement with the 'memorials of ownership' introduced in 1873 (renamed 'certificates of title' in 1880), offered the combination of security and flexibility Te Raki Māori were seeking. These titles had no basis in Te Raki Māori tikanga, nor did they approach the certainty of freehold titles. The one had the effect of legally dispossessing the hapū; the other crystallised title into a precise list of owners who held individual shares in the land, creating a new certainty not for hapū but for potential purchasers as to with whom to deal. We agree with the conclusion of the Tribunal in other inquiries that the intention was to compel Māori to sell lands that the Crown and colonists assumed could only be developed if in their own possession.

Under the system created by the Native Land Act 1873, groups or individuals could alienate their interests by partitioning out and creating a new title if the majority of owners in the original block consented to the partition.[441] This established a process that fell well short of collective consent because majority agreement could be achieved in a piecemeal fashion without prior discussion by the whole community of owners. Again, the undermining of collective control cannot be seen as other than deliberate. Over the next two decades, several legislative provisions were passed, the trend of which was to reduce the number of owners who had to consent to a partition and sale, favouring Crown and private purchasers while substantially weakening protections for Māori. It was not until 1894 that an apparent (but largely unattractive and unutilised) opportunity for incorporation was belatedly offered.

Dissatisfaction on the part of Te Raki Māori was made clear in the deliberations of several pāremata and in their representations to politicians and to the Native Land Laws Commission of 1891 which concluded that, after all the difficulties and costs involved in proving ownership, Māori were 'met by the absolute uncertainty of the title thus laboriously secured'. The commission went on to find that it was 'doubtful whether a single title resting upon the Native Land Act of 1873 and its many amendments can be upheld'.[442]

By simultaneously empowering Māori as individuals but disempowering communities, the memorials of ownership proved to be especially destructive of collective ownership and management. Te Raki Māori, as both individuals and collectives, lost the right and opportunity to choose how their lands might be best managed to serve the twin purposes of community stability and economic advancement. We agree with the assessment of the Tūranga Tribunal that a system that 'constrained choice and removed community decision making in this way was unquestionably designed to force sales'.[443] It was also a system imposed upon Māori largely without consultation and against their will.

Accordingly, we find that:

- The Crown introduced laws offering a title that failed to give legal expression to collective tenure and to accord with Te Raki Māori preferences. Such failures breached 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 and the guarantee of te tino rangatiratanga.

- The titles awarded to Te Raki Māori under nineteenth-century Native Land legislation and through the Native Land Court failed to provide the same certainty, stability, and protection as titles awarded in respect of general land and duly registered under the Land Transfer Act. The failure of the Crown to provide an equivalently robust titling regime for Māori as that applying to the settler population (and which failed to equip whānau and hapū to participate in the colonial economy to the same degree) breached te mātāpono o te mana taurite / the principle of equity.

9.6 How Did the Court Operate in Te Raki, 1865–1900?

9.6.1 Introduction

As we noted in section 9.2.3(3), the claimants made a number of specific allegations in respect of the Native Land Court's operation in our inquiry district and its appropriateness for determining title to Māori land. They argued that the Court's investigations were perfunctory and its records indecipherable or not maintained (despite the Government having an obligation to do so). They also criticised what they saw as the 'adversarial' approach of the Court and its negative effect on their tūpuna, whom they described as being pitted against each other in its proceedings.[444] The claimants argued that judges of the Native Land Court lacked an understanding of tikanga and te reo commensurate to the sensitive and significant tasks before them. Perhaps their most encompassing allegation was that the Court was not a fair and impartial judicial body but instead effectively served as part of the executive arm of Government, sharing its biases and objectives.[445] Claimant counsel advanced a conclusion similar to that reached by the historians who contributed expert evidence to the Whanganui Land inquiry: both sides of the debate agreed that the Court had been established to 'further particular Crown policy objectives' and that the judges of the Court 'shared those objectives and were frequently anxious to promote them.'[446]

The claimants argued that the Court's deficient orientation, processes, and mechanisms breached the treaty principle of active protection and the guarantee of equality contained in article 3.[447] As we also noted earlier, the Crown did not respond specifically to the majority of these allegations, except to refute the argument that the Native Land Court was not an independent tribunal. It also submitted that allegations of collusion between judges and the Crown were 'exceptional and based largely on supposition'. Furthermore, Crown counsel suggested: 'The fact that the judges agreed with the Crown's assumptions about the rightness of tenure reform, and the assimilation of Māori, is not enough to identify them with the Crown.'[448]

In this section we are concerned primarily with the constitution of the Native Land Court and the manner in which it conducted title investigations. We focus, in particular, on the roles and qualifications of judges and assessors, the notification and scheduling of sittings and hearings, and Court record-keeping. In general, we consider whether the practical operation of the Court complied with the Crown's treaty obligations.

9.6.2 The Tribunal's analysis

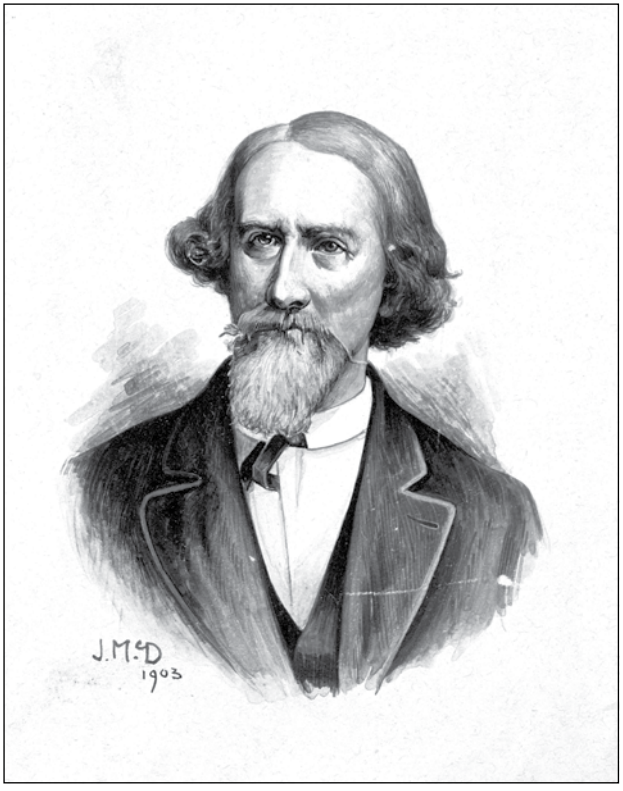
(1) *The operation of the Court in Te Raki: judges and assessors*

In the following section, we briefly consider what is known about the identities, experience, and attitudes of the judges who presided over court hearings in Te Raki during the critical period of the 1870s. We also explore the position of assessors in the court structure and the role they played in the title determination process.

(a) The Native Land Court judges

Historian Professor Keith Sorrenson has observed that the judges should be considered products of their time who shared a set of assumptions and orientations:

> We should not assume that the judges came to their task with open and empty minds, ready to view the Māori



Frederick Maning, Native Land Court Judge in the north between 1865 and 1876. Maning arrived in Hokianga in 1833 and settled in Kohukohu and, later, Ōnoke, where he married Moengaroa of Te Hikutū and had four children. He saw himself as an authority on Māori custom and resisted any interference in the Court's operation as a judge. He viewed the Court's work in distinctly assimilationist terms and was prepared to disregard the statutory provisions he disagreed with, such as the requirement to conduct preliminary investigations into Māori land ownership. Over time, Maning grew increasingly contemptuous of Māori customs and resentful of any who questioned his decisions.

> customary scene objectively and on Māori terms. . . . Above all, the judges were men with a mission, not merely to interpret and record Māori custom but to free it from the constraints of time and set it on the path of evolution.[449]

There was no body of precedent to which the early Native Land Court judges could refer or on which they could rely. The Court was directed to be guided in its judgments by Māori custom, but Pākehā judges were ill equipped to be deciding matters of tikanga. Although some of the first judges were chosen for their local knowledge and considered themselves to be experts on Māori matters, men like Judge Maning brought their English cultural imperatives to the business at hand.

Chief Judge Fenton directed his judges to follow 'the original principles of equity' until they had established a common law.[450] Soon, a set of rules had been developed for determining which groups had rights in a particular area of land and its resources. These principles of tenure were later identified by Judge Norman Smith in his seminal work on Māori Land Court practice as the take of discovery, ancestry, conquest, and gift.[451] Most weight was given to evidence of physical occupation. Dr Belgrave has pointed out that, although 'loosely based on the evidence of custom' given in Court, the identification of take and precedents was 'driven as much by policy considerations'.[452] Alternative interpretations of custom based in other foundational concepts such as whanaungatanga were ignored as the Native Land Court set about simplifying the complexities of customary tenure.

Appointees to the Native Land Court lacked not only expertise in tikanga but also legal training.[453] In his major study of the Native Land Court, Professor Boast noted that of the 17 judges active in Te Raki during the latter part of the nineteenth century, only five had studied law. In his view, '[t]he lack of legal expertise on the bench was . . . undoubtedly a problem'.[454] The multiple changes to Native Land legislation during the period heightened the importance of a thorough and up-to-date knowledge of the law.[455] While some judges were undoubtedly men of integrity and considerable capacity, others allowed their personal views, inclinations, and prejudices to colour their approach to their duties.

Frederick Maning served as a judge of the Native Land Court in the north between 1865 and 1876. Maning, who had married and had four children with Moengaroa of Te Hikutū, saw himself as knowledgeable on matters of custom but also as a major agent of social change, and the Court as initiating

> a revolution . . . which must of necessity displace barbarism and bring civilization in its stead, for the difference between a people holding their country as commonage and holding it as individualized real property is, in effect, the difference between civilization and barbarism.[456]

Maning's biographer John Nicholson quoted from an 1880 letter written by Maning to Samuel Locke (variously a land purchase agent, resident magistrate at Taupō, and politician) in which he averred that 'any machine of any shape that will get the land out of the hands of the Natives in the first instance is just what we required'.[457] Although he indicated that he would be prepared to issue a tribal title, with one exception, he never did so.[458] According to Boast, he was highly critical of section 17 of the Native Lands Act 1867, but later he was noteworthy for sometimes insisting on listing all owners in the memorial of ownership contrary to the stated preference of the applicants before him and the wishes of Crown purchase officers (see section 9.6.2). He was quite prepared to ignore provisions of Native Land legislation with which he disagreed; this was apparent in his refusal to conduct the 'preliminary inquiries' required by the Native Land Act 1873.[459]

Nicholson described a man to whom the transformation of the Native Land Court from a consultative mechanism into an authoritative instrument appealed, as it reflected his existing biases and autocratic streak.[460] Maning asserted that there was '[n]o other authority but myself' and resisted any interference in the operation of his Court or his opinions, with little respect for the contribution of assessors, or indeed, the opinions of Crown purchase officers (as we will discuss further).[461] Armstrong and Subasic argued that Maning's views coloured his approach as a Native Land Court judge, evident in his rigorous opposition to any expression of rangatiratanga, his dismissal of Māori assessors as irrelevant, his contempt for the Māori custom that was supposed to guide his decisions, and his desire to reduce Māori land ownership to the bare minimum necessary for subsistence. In their view, he was strongly prejudiced – more so than most of his fellow judges – against Māori chiefly authority and any expression of Māori collective will, and bitterly critical of any attempt by Māori or the Government to limit, restrict, or impugn the integrity and independence of his Court.[462] Boast shared that critical view, referring to Maning as 'an embittered bigot, prejudiced against Maori to an astonishing degree'.[463]

For their part, Te Raki Māori were acutely aware of Maning's views. It was for those reasons that rangatira involved in the dispute over the ownership of Puhipuhi (discussed later) did not want Maning to preside over the title hearings.[464] Although Maning's portrait still hangs in the wharenui of one Hokianga marae, it seems that his attitudes towards the local people hardened after the death of his wife and her brother, Hauraki, and soured with age.[465]

Judge Henry Monro, formerly a clerk in the Native Land Court, similarly believed that the extinguishment of customary ownership was necessary if Māori were to be 'civilized'. Monro had made his views clear to Fenton in 1871. He recognised that the Native Lands Act 1865, insofar as it sought to promote the individualisation of Māori land ownership, was contrary to the treaty and its recognition of the collective right that underlay the exercise of rangatiratanga, but claimed that such right 'was one too much at variance with the habits of a civilized community to be adopted by the colonists'. The Crown should consequently act as:

> an instrument for the gradual exchange of the vague and imperfect occupancy tenure of the Maori tribes into the more definite and fuller proprietary tenure of individual citizens, whether Maori or European, which alone could be recognized by the law of a settled Civil Government.[466]

Monro was certain that the purpose of the Native Lands Act 1865 was to promote the individualisation of land ownership and observed that, on this basis, 'it was decided that not more than ten names should be inserted in any Crown grant made in pursuance of an award by the Land Court'. He added that when making this provision, Parliament recognised the inconvenience certain to

Judges Henry Monro (left) and John Rogan of the Native Land Court. Judge Monro was the son of a missionary. He worked as an interpreter for the Native Department and a clerk of the Native Land Court before operating as a judge in the north from 1865. Judge Rogan also had no prior legal training, having worked as a surveyor in north Taranaki in the 1840s and 1850s and in Kaipara as a Crown purchase commissioner in the 1850s, where he would also become a resident magistrate in 1864. Rogan presided over early hearings of the Kaipara and Whāngārei courts under the Native Lands Act 1862 and he was one of the first judges appointed under the Native Lands Act 1865.

result from having to deal with a large number of owners and was eager to spare the Court and purchasers such trouble.[467]

Scholarly assessments of Monro vary considerably. In a report prepared for the Muriwhenua Land inquiry of 1997, historian (now professor of law) Claudia Geiringer found that he made no attempt to establish the rights of all owners, or to include all owners in memorials of ownership. Further, we received no evidence to indicate that he instigated any preliminary inquiries as required by the Native Land Act 1873. Monro (like Maning) appears to have instead relied entirely on the evidence presented in Court. He did not question the validity of that evidence and may have deliberately ignored the rights of some claimants. In contrast to Maning, in almost all cases, he accepted the wishes of applicants and purchase officers to limit the numbers named in blocks to 10 or fewer owners.[468] Armstrong and Subasic described him

as 'little more than a Crown agent'; they observed that he was 'guided by Crown land purchase agents in matters of title adjudication', and argued that he 'colluded' with them in awarding title to those whom they identified.[469] Armstrong and Subasic cited Paraone Ngaweke's comments to Fenton, made during Monro's 1876 Hokianga sittings, that the judge was a 'wicked European . . . and a fool in judicial matters'.[470]

Boast, on the other hand, noted that in 1867 Monro offered some scathing criticism of the Government's conduct with respect to the Poverty Bay (Tūranga) confiscations, awarded costs against the Crown, and 'was rebuked for his impertinence in presuming to criticise government policy'. Native Minister Richmond accused him of obstructing the 'pacifying of the country'. In Boast's assessment, Monro 'saw himself as a judge preserving a proper stance of judicial independence'.[471]

Like Maning, Judge John Rogan had no legal training at all. During the 1840s, he worked as a surveyor in Taranaki, where he met and became a close friend of Donald McLean's. In 1854, he was employed by McLean as a land purchase commissioner and in 1857 was assigned to Kaipara, where he oversaw several purchases. Rogan became the resident magistrate for Kaipara in 1864 and served as the president of the Kaipara courts under the Native Lands Act 1862.[472] While relatively little is known about his performance as a judge, especially in Te Raki itself, he was reportedly respected by Kaipara Māori and appears to have understood the need to maintain good relations with rangatira.[473] In particular, Rogan was careful not to offend the prominent rangatira Te Tirarau, in light of his influence in the north.[474] Rogan's good reputation among Māori evidently extended beyond Kaipara, as rangatira involved in the Ōtāua case specifically asked for him to join Maning to resolve the conflict there. In contrast to Maning, Rogan was known for his flexibility and apparent willingness to accommodate Māori views.[475]

As lawyer and historian Dr Bryan Gilling has observed, the Native Land Court was

> brought into being by legislation; it has been directed and channelled at every turn by legislation; its powers and methods of operation have been circumscribed and shaped by legislation and executive superintendence.

It was for this reason, he argued, that the Court was subject to 'a unique degree of ministerial control'.[476] Certainly, the judges (and assessors) were appointed by the Governor by warrant (section 6 of the Native Lands Act 1865) and by the Governor-in-Council under section 8 of the Native Land Act 1873. We agree, too, that the procedures of the Native Land Court were heavily prescribed by legislation – although not necessarily effectively so.

It is, however, difficult to establish direct 'ministerial control' of judges in the decisions they made. There could be close communication between the executive and the judiciary and between the Native Department and court officials. As we discuss (at section 9.8.2(1)(c)) in the case of Hauturu, Chief Judge Macdonald contacted Native Minister Bryce to ask whether the Government still wished to acquire the island and recommended if so that restrictions on alienation be placed on the title;[477] and Judge J S Clendon assisted in the Crown purchase of Omaunu 2 (see chapter 10, section 10.4).[478] However, we have received no evidence of direct interference in the judgments of the Court. No restrictions were entered in the title at Hauturu at the request of the owners.

On the other hand, we do think the Crown had an obligation to ensure that the law was administered by competent judicial officers who had the requisite knowledge of tikanga and the skills to navigate the increasingly complex set of rules established by land legislation. While it may have been impractical to require nineteenth-century judges to have expertise in tikanga and Māori custom, in our view, this shortfall required the empowerment of Māori to determine title to their own lands, as had been contemplated at the time, and as both Māori and even some Pākehā commentators and politicians would continue to advocate throughout the later part of the nineteenth century. At the least, the Māori assessors should have had a deciding role in guiding the Court's decisions as to customary rights, as they had under the 1862 legislation. We discuss whether this happened and the role of assessors in general in the following section.

Hone Peeti of Ngāi Te Whiu, who was appointed Native Land Court Assessor in 1875. In 1891, he gave evidence to the Native Land Laws Commission about the great costs that Māori attending Court had to bear and the Court's failure to recognise tikanga in its work.

(b) The role of assessors

Assessors who sat on cases in our district included Hōne Mohi Tāwhai, Neri Taruhia, Tamaho Te Huhu, Winiata Tomairangi, Wiremu Tipene, Maihi Parāone Kawiti, Hoterene Tawatawa, Te Hemara Tauhia, Te Keene, Hone Peeti, Arama Karaka Pī, Te Hira Awa, Riwhi Hongi, Tamati Huingariri, Himi Marupo, Wiremu Kaire, Hikuwai Tangi, Te Maka Hori Ngere, and Wepiha Pī.[479] In their submissions, claimants noted that '[t]he main avenue provided for the participation of Te Raki Maori experts [in Native Land Court proceedings] was the role of the Native Assessor', but that their involvement was 'limited under the 1865 Act and only diminished over the period under consideration [1865 to 1900]'.[480] Assessors therefore made only a minimal contribution to the shaping of the Court's decisions, its understanding of tikanga, and the development of precedent. The Crown, on the other hand, claimed that the Native Lands Act 1865 and the Native Land Act 1873 were 'quite clear about the pivotal role the assessor was expected to play in the work of the Court'. With respect to the argument advanced by claimants that, under the Native Lands Act 1865, assessors at best could veto the decision of a judge, the Crown insisted that 'The power to veto decisions is anything but subordinate', but rather represented 'equality and a requirement for consensus'. Crown counsel did acknowledge that under the Native Land Court Act 1894, the role of assessors was reduced, but suggested that by this time most of Northland's customary land had already passed through the Court.[481]

The legislative provisions relating to assessors underwent several important changes during the 1860s and 1870s. As discussed earlier, the Native Lands Act 1862, with respect to the composition of the courts that would be created under it, did no more than specify that each 'shall be under the Presidency of a European magistrate'. Loveridge quoted Native Minister Bell to the effect that each court though 'presided over by a European magistrate, will be mainly composed of Native Chiefs'.[482] That composition was confirmed by the proclamations of 21 April 1864 that established the Kaipara North and Kaipara South courts, while the four Māori appointed (two to each court) were not assessors but judges of 'equivalent status with the Resident Magistrate, save that he was the presiding officer'.[483]

The 29 December 1864 regulations, which were gazetted for the practice and procedure of the restructured Native Land Court, provided for one chief (European) judge, other (European) judges, and such native assessors 'as

may be from time to time appointed by the Governor'.[484] No assessor was permitted to sit on a case in which he had a personal interest. These provisions were carried forward into the Native Lands Act 1865: section 6 provided for the selection and appointment by the Crown of judges and Māori assessors, while section 12 empowered both to act judicially and provided that, with respect to every decision and judgment, each judge and at least two assessors had to 'concur'. This seemed to imply that assessors could not outvote a judge, nor could a judge outvote assessors. The balance changed again two years later. Section 16 of the Native Lands Act 1867 empowered a judge to sit with one assessor. The previous requirement for two had been found, according to Native Minister Richmond, 'inconvenient, and attended with considerable expense. It was desirable', he added, 'to retrench to the utmost extent, as the courts did not sustain themselves'.[485] That decision suggested, in our view, that the Crown did not greatly value the contribution assessors might make.

Evidence as to the degree of influence assessors were able to exercise in title investigations is generally sketchy. However, previous Tribunal reports have been critical of the subordinate position created for Māori in that role. As the Tribunal found in the Tūranga inquiry, whereas under the Native Lands Act 1862 assessors were regarded officially and acted as judges, their status was downgraded under the Native Lands Act 1865 by which they held their positions at the pleasure of the Governor.[486] While judges also held office subject to maintaining 'good behaviour', and if need be, their number could be reduced by the Governor-in-Council, the position of assessors was more tenuous. The Hauraki Tribunal considered the assessors to have been only intermittent participants in title hearings and an inadequate substitute for Māori control over the investigation process.[487] In *He Whiritaunoka* and in *Turanga Tangata Turanga Whenua* the Tribunal also questioned the rule prohibiting assessors from participation in hearings affecting lands in their own districts. This meant that local hapū were unable to have any direct input into the decision-making process, diluting the potential contribution of assessors as to matters of tikanga.[488]

The Central North Island Tribunal reached slightly different conclusions. It was noted in *He Maunga Rongo* that assessors were at times significant participants in the process. The Tribunal also observed that assessors, despite being drawn from outside the district, had knowledge of tikanga that other members of the Court lacked, enabling them to ask pertinent questions about such matters during title investigations.[489] Nonetheless, the Tribunal was generally sceptical about the limited and politically contingent space overall for assessors, and critical as to the inadequacy of the court system when compared to true Māori aspirations of controlling title determination themselves. Despite their active participation in title investigations, such 'limited Maori involvement in a Pakeha-created process was no substitute for real Maori control over the process'.[490] The Central North Island Tribunal concluded:

> Assessors played a role in a court system designed by the Crown, and their role in that system was defined by the Crown and, particularly after 1865, was subservient to that of the Pakeha judge.

It was hardly an equivalent to determination of customary ownership by rūnanga and komiti.[491]

As Boast has noted, considerable variation existed in the effectiveness and reputation of assessors, with some being considered conscientious and hardworking by contemporary Māori, and others less well thought of. Many assessors themselves, such as Ngāti Whanaunga leader and conductor of Native Land Court cases at Cambridge, Hamiora Mangakahia, also displayed a keen awareness of the shortcomings of the system they were working under and were vocal in expressing their concerns.[492]

The status and role of assessors was discussed by several of the rangatira from Te Raki and elsewhere who responded to Haultain's inquiry of 1871. Pāora Tūhaere proposed doing away with assessors altogether: 'They are of no use', he suggested, 'and have little or nothing to say to the cases that are being tried; they sit like dummies, and only think of the pay they are going to get.' He claimed that assessors 'always support the side in which they have friends or other interest'.[493] Others argued that

some judges, among them Monro, overruled assessors.[494] Wiremu Pōmare also suggested that most assessors 'sit there and say nothing, because they know nothing; they are like the pictures in a shop window, only put there to be looked at', acknowledging at the same time, that '[g]ood assessors can be of great assistance to the Judges in different cases where Maori custom is in question'.[495] For his part, Eru Nehua objected to 'the invariable selection of chiefs as assessors. They [assessors] should be men of good judgment. . . . Let the Maori elect the assessors, and the Europeans give them the power.'[496] Hemi Tautari, on the other hand, claimed that Māori 'approve generally of assessors sitting with and assisting the Judges'.[497]

While the views of Te Raki rangatira are not entirely clear, it does appear that they objected not to the presence of assessors, but to their selection and their clearly circumscribed role. According to Haultain, many Māori felt that they were of little use, being 'too much in awe of the Judge', and did 'not exercise any influence on the judgment'. However, most of those who responded to his inquiries agreed that assessors should be retained, citing a desire 'for more general employment in the administration of those laws that apply to themselves'.[498] It would seem that the confidence of Te Raki Māori in the Court system was, on the eve of the Crown's drive to acquire land in Northland, less than robust and that, in their view, the position of assessors in the Court's processes required strengthening.

Maning's attitude indicates that assessors had little-to-no influence in his Court. Responding to Sir William Martin's draft Native Land Court Act in 1871, he argued that there were many cases in which an assessor was not required and an unnecessary expense. In his view, their employment should be left to the discretion of the judge but an abrupt change in the system 'would not, perhaps, be advisable'.[499] Maning described assessors as 'gormandising hogs' and, as Armstrong and Subasic argued, considered Māori customary law as 'little more than a set of despotic, "crude and barbaric" customs based on mere force' which he required no assistance in interpreting.[500] Maning claimed that he never consulted with them on 'any advice on matters of business', stating, 'I know better than that'.[501]

The first Vogel ministry (1873 to 1875), in which McLean served as Native and Defence Minister, decided to dilute the role of assessors further. Section 15 of the Native Land Act 1873 specified that an assessor 'may assist in the proceedings [of the Court] but not otherwise' and that his 'concurrence shall not be necessary to the validity of any judgment or order'. The use of the word 'may' clearly implied that assessors sat at the discretion of the presiding judge, who did not need their agreement. Following sharp criticism from Māori, the Native Affairs Select Committee recommended that the position of assessors be reinstated.[502] This was done under section 5 of the Native Land Act Amendment Act 1874 which again specified that an assessor was to 'assist in the proceedings' and that 'there shall be no decision or judgment on any question judicially heard . . . unless the Judge presiding and at least one Assessor concur therein'. In its submissions to us, the Crown claimed that section 5 conferred on assessors the power of veto.[503] Boast agreed that section 5 restored the former equality between judge and assessor, and that judges and assessors had 'joint authority'.[504] In Parliament, it was claimed that the amendment would give 'a great deal more confidence to the Natives in the decisions of the Court'.[505] That it might empower assessors to veto decisions of the Court was not raised.

That position was clarified in 1878 in accordance with the recommendation of the earlier 1874 Native Affairs Select Committee that 'provision be made when differences of opinion occur'.[506] Section 2 of the Native Land Act Amendment Act (No 2) 1878 thus provided:

> When any Native Assessor appointed under the provisions of the Native Land Act 1873 shall differ in opinion from the Judge presiding, a memorandum of such Assessor's dissent, and the reasons therefore, shall be entered on the records of such Court.[507]

That provision appears not to have attracted any comment during the Act's passage through Parliament, we suspect because it was assumed that such opinions would be filed and forgotten.

Over the following years, the provisions regarding

assessors see-sawed but ultimately came to rest on a clearly subordinate position. Section 11 of the Native Land Court Act 1880 provided that one or more assessors 'shall sit at every Court and assist in the proceedings, and the concurrence of at least one Assessor shall be necessary to the validity of any judicial act or proceeding of the Court'. Section 9 of the Native Land Court Act 1886 provided under 'Part III: Jurisdiction' that a Court comprised one or more judges and one or more assessors 'as the Chief Judge may direct'. This meant that the Court could comprise two judges and one assessor. However, the Act also stated that 'the assent of one Assessor shall be necessary to the validity of a decision of the Court'. The same section provided that 'In all other respects the jurisdiction, powers, and authorities vested in the Court may be exercised by a Judge.' Finally, section 5 of the Native Land Court Act 1894 provided that the Native Land Court consisted of judges 'together with such Assessors, as the Governor may from time to time determine', and section 18 provided that 'a judge sitting alone may exercise all the powers of the Court'. Although an assessor would 'assist' in certain specified circumstances, his concurrence in the judgment was not required.

The Native Land Court minute books in Te Raki often fail to specify whether questioning was conducted by a judge or an assessor. As a result, as was the case in the central North Island, little is known about the precise role they played, what weight was accorded to their opinions, and how any differences of opinion between a judge and an assessor were resolved.

Only one instance of an assessor exercising a veto was brought to our attention. Title to Hauturu (Little Barrier) had been determined by Judge Rogan in 1880, but the matter proceeded to a rehearing in 1881 when section 11 of the Native Land Court Act 1880 applied, requiring agreement between judge and assessor. In this instance, Fenton and Wiremu Nero Te Awaitaia arrived at opposed positions over the award of title. The latter emphasised ancestry and whakapapa, stating:

> This is my word to the tribes present. This Court, the Native Land Court, gives the law according to the ways of the Europeans. Now, I hold according to ancient custom, according to genealogy. All the evidence on both sides has been written down. I consider that I know the truth, and that the Kawerau are the rightful owners. That is all I have to say.[508]

By way of response, Fenton insisted that occupation took precedence: 'All know, and Hemara [the claimant concerned] knows quite well, that titles founded on ancestry are rejected in presence of actual facts', he announced. In light of this difference of opinion, the case had to be reheard, as we discuss in section 9.8.2.[509]

Professor Boast, having analysed extensive evidence related to the operation of the Native Land Court, generally concluded:

> the assessors were not a token presence; in fact they can be seen sometimes to have played an active role in . . . cases, questioning witnesses, issuing separate judgments occasionally, and even making site visits . . . [but that] [f]or the most part we do not really know what role the assessors played.[510]

The law fluctuated on the matter; when section 5 of the Native Land Act Amendment Act 1874 and section 11 of the Native Land Court Act 1880 were in force, the agreement of assessors was certainly necessary for a valid Court judgment. However, even then failure to agree could be circumvented – namely, by the parties concerned accepting the judge's ruling despite the assessor's objections, or by arriving at some out-of-court agreement that the Court could approve.[511] Te Raki Māori efforts, from the late 1870s onwards, to persuade the Crown to strengthen the role of assessors or to empower rūnanga and komiti to conduct their own title investigations suggests that they thought their interests were not being protected. Nor can we ignore the prejudice freely expressed by judges such as Maning. We conclude that, in practice, it is most likely that assessors played a subordinate role to judges and, that when differences of opinion emerged, judges had open to them options to circumvent the requirement for the assessors' agreement. For much of the period under consideration, the Native Land laws confirmed that inferiority of position.

(2) *The operation of the Court: title investigations*

In this section, we are concerned primarily with the conduct of title investigations under the Native Lands Act 1865 and the Native Land Act 1873. We focus first on the matter of notification and scheduling of sittings and hearings. We then consider the impact of rules respecting who could bring applications for title determination; whether the Court complied with all the obligations imposed upon it by Native Land legislation, and whether Te Raki Māori were disadvantaged if and where it failed to do so. Of particular importance is the issue of the Court's responsibilities and actions when it came to endorsing out-of-court arrangements and the degree to which it was influenced by Crown purchase agents in this matter. In this assessment, we are again faced with the difficulty that the Court maintained inadequate records. Nevertheless, the evidence available allows us to draw some conclusions.

(a) Notification and scheduling of hearings

Timely and accurate notification of hearings was a critical matter since failure to attend the Native Land Court sessions could mean forfeiture of interests in blocks up for title determination. Claimants argued that the rules and procedures relating both to the notification of claims and hearings and to the conduct of court hearings were not fair and reasonable. Further, they argued that the Crown, although aware of the difficulties, failed to resolve them. They noted that section 21 of the Native Lands Act 1865 conferred on the Court considerable discretion over how notices of applications were publicised, but that in practice it relied almost solely on the *Gazette*. The often-sparse information offered, inaccuracies, misleading block names, misspelt names of applicants, and limited distribution of the *Gazette* among widely dispersed Te Raki Māori communities raised questions over whether such reliance was justified and whether all owners were informed in an adequate and timely manner.[512]

For its part, the Crown claimed that '[i]t became the practice to publish . . . notifications [of hearings] in the gazettes and to send copies to interested parties as well', and further, that Haultain's 1871 inquiries did not disclose any 'great concerns' over the notification process. Counsel concluded that 'there is no evidence of systemic failure on the part of the Native Land Court to notify claims being heard by the Court in the inquiry district.'[513] In support of its contention, the Crown cited historian Tony Walzl's study of 112 court cases between 1865 and 1915 in the Whāngārei area. Walzl, the Crown noted, did not – during cross-examination – identify a single instance of a person or group claiming that they had been excluded from a list of owners because they were unaware of the relevant hearing; nor was he aware of any rehearing being granted for the same reason.[514]

We note, first of all, that Mr Walzl's report, using the very limited record of relevant Native Land Court proceedings that exists, centred on the award of titles, and Crown and private purchases.[515] During cross-examination, he made it clear that he did not examine the matter of notification.[516] More generally, detailed information relating to notifications is not available, but the inquiry conducted by Haultain did attract some comment from Te Raki rangatira on the matter. Eru Nehua, for example, suggested that '*Gazette*s and Maori newspapers should be circulated more generally amongst the Natives. None ever come to my hapu, or to Ngunguru or to several other places along the coast.'[517] Haultain himself suggested that applications for hearings 'might be transmitted through the Magistrates of districts, and the *Gazette*s containing the notices should be largely and promptly circulated.'[518] That suggested a concern over their existing distribution.

Sir William Martin suggested in his draft Native Land Court Act of 1871 (clause 22) that a judge, on receipt of an application for an investigation of title be required to:

> send notice thereof in writing to each of the hapu named in the application, or otherwise believed by him to be interested, and shall also give notice of such application in such other manner as shall give publicity thereto.[519]

Maning, commenting on the draft, rejected the need for an enhanced notification procedure; in his view, the 'present law and practice' were 'quite satisfactory and sufficient'.[520] In the event, section 35 of the Native Land Act 1873 placed the responsibility on the applicants to ensure

that others knew that title to land in which they might also claim interests was being determined. The section required applicants for hearings to distribute a copy of such application 'to each of the tribes hapus or persons named in the application, or believed by the applicants to be interested in any portion of the land comprised in the application', and to satisfy the Court that they had done so. Section 36 provided for the insertion in the *Kahiti* or the *Gazette*, notices of claims and all sittings of the Court for investigation of titles.

In practice, applicants proved unable or unwilling to meet the requirements of section 35. Chief Judge Fenton, together with Judges Maning, Monro, Rogan, and Smith, asserted, however, that no real difficulty existed:

> Under the repealed Acts, notices of all claims containing the names of the claimants, the name of the piece of land claimed, and its localities and boundaries, and the time and place of hearing, besides being published in the *Gazette*s, were circulated by the Chief Judge, by a not expensive process, in such a manner that no Native in the district where the land was situated, was at all likely to be uninformed of any claim made, or of the time and place at which it would be heard. These notices by the Chief Judge will still have to be circulated under this Act, and past experience has shown that they would be sufficient without requiring the Native claimants to circulate notices, to do which sufficiently many would be unable and all unwilling. . . . It should be added that the Judges are not aware of any objection to the system of advertisement heretofore in practice.[521]

Section 5 of the Native Land Act Amendment Act 1878 (No 2) abolished section 35, leaving notification to the Court, which continued to rely on the *Kahiti* and the *Gazette* while also distributing notices to resident magistrates, assessors, claimants, and counterclaimants.

The difficulties described by Haultain appear to have persisted despite the sanguine opinion of Fenton and his judges. In 1876, Rewi Manuariki requested that notices be published well in advance of hearings so that his people would know when and where to attend and so make preparations.[522] A report in the *Auckland Star* in 1894 recorded that Māori were dissatisfied with 'the hurried way in which the Court has been notified, numerous important applications having been omitted altogether [from the *Kahiti*]'.[523] While the evidence is sparse, there is sufficient information to suggest that notifications of applications for title investigations were not always accurate, timely, and well circulated. The *Kahiti* appears not to have been distributed among all Māori communities, a failure of considerable consequence during the 1870s, when titling was proceeding rapidly. Further, we could locate no evidence that the Crown explored alternative means of distribution. Indeed, in 1878 Fenton acknowledged that notice 'in remote areas of the country' was 'imperfect' and likely to remain so indefinitely.[524] Clearly, there was potential for serious prejudice; as noted earlier, for example, it is the oral tradition of Te Uri o Te Aho that Maungataniwha and Te Pupuke were brought through the Court for title determination without their knowledge.[525] We agree with the conclusion reached in *Te Urewera*; namely, that while no evidence of systemic failure was identified, where failure did occur, the effects could be 'catastrophic'.[526]

Claimants also raised concerns over the scheduling and location of Native Land Court hearings.[527] Armstrong and Subasic listed the Native Land Court sittings conducted in Northland during the nineteenth century, together with their start dates. Hearings in Te Raki were frequent during the early 1870s, with one being held every two weeks between 1870 and 1872, but declining to one every six weeks between 1873 and 1876 as the number of applications for title investigations contracted. That schedule, observed Armstrong and Subasic,

> might not seem excessive, and would not have been had Maori living at Hokianga, for example, been required only to attend courts held in that locality (at least 4 during this period). But that was not the case. Because of whakapapa connections and the complex of customary rights existing across the district many Maori were required to attend a majority, if not all of these hearings . . .[528]

Although in the early 1870s sittings were generally held during the summer months, pressure arising from the Crown's purchasing programme meant hearings were also scheduled for less convenient months of the year, including those of planting and harvesting and mid-winter. On occasion, the sitting schedule was even more intensive. For example, in July 1873 Maning held six sequential hearings – in different places – to deal with a backlog of cases that had accumulated while he was out of the district.[529]

In most sessions, all the blocks listed for investigation were scheduled for the first sitting day, which might require claimants to wait several days, or even weeks, before their lands were considered.[530] The hearings Monro conducted in the Hokianga during mid-1875 drew in Māori from a wide area, compelling travel over ill-formed 'roads' and imposing great strain on both accommodation and food supplies. According to Civil Commissioner Henry Tacy Kemp, some of those who endured the mid-winter sittings in the Hokianga pressed the Government to ensure that future sittings took place at 'more seasonable' times of the year, but without result.[531] The passage of a large number of blocks through the Court in mid-1875, which were immediately acquired by the Crown, seems to indicate that scheduling was driven by the Crown's needs rather than those of Te Raki Māori. In *He Whiritaunoka*, the Tribunal suggested that the difficulties involved in scheduling were structural, and that if Māori had a greater involvement in the title adjudication process, or if they had been running their own process, ways of working around the imperatives of people's lives and communities would have been found.[532] We agree with that assessment.

(b) Initiating title investigations

How lands in customary ownership were brought before the Court for investigation is a key issue for claimants.[533] Under the Native Lands Act 1862, any 'Tribe Community or Individuals of the Native Race' could lodge an application for a title investigation; under the Native Lands Act 1865 and the Native Land Act 1873, '[a]ny Native' could apply; under section 16 of the Native Land Court Act 1880, applications had to be signed by '[a]ny three or more Natives', a requirement deleted by section 17 of the Native Land Laws Amendment Act 1883; while section 17 of the Native Land Court Act 1886 merely provided that 'Natives' could apply.

The Crown submitted that none of those provisions prevented applications being made by, or on behalf of, an iwi, hapū, or whānau. It initially conceded that enabling individuals to deal with land without reference to iwi or hapū 'undermined traditional tribal structures which were based on collective tribal and hapū custodianship of the land'.[534] In closing submissions, however, counsel argued that most titles were determined on the basis of prior arrangements agreed to by claimants.[535] In essence, the Crown's later submission was that where individuals applied to the Court, they did so with the knowledge and consent of their co-owners: there was, it concluded, 'little direct evidence of individuals in Northland spearheading applications contrary to the wishes of the wider hapū.'[536]

We note first that none of the relevant Acts included a provision under which any application for collectively owned land required the express sanction of all owners, an omission that opened an opportunity for the unscrupulous and opportunistic among both owners and purchasers to circumvent collective opposition to court processes. In effect, the lack of such a provision disempowered communities and whānau. Secondly, under the Native Lands Act 1865 (section 83) and the Native Lands Act 1867 (section 38), the Crown itself could, where the lands concerned were subject to purchase agreements, apply to the Court to have ownership determined. That power was carried over into the 1873 legislation. In other words, where its interests were concerned, the Crown could direct the Court to investigate ownership and do so without the knowledge or consent of the owners concerned. While section 13 of the Native Land Purchase and Acquisition Act 1893 empowered the Governor-in-Council to 'direct [the] Native Land Court to ascertain title to Native land proposed to be acquired', the Crown never found it necessary to invoke this statute (see chapter 10).

The ability of individuals to bring lands before the Court without the knowledge or sanction of all the owners

The Legal Status of 'Voluntary Arrangements'

Section 46 of the Native Land Act 1873: voluntary arrangement to be recognised
In carrying into effect the preceding sections, or any of the sections hereinafter contained regarding partitions, the Court may adopt and enter of record in its proceedings any arrangements voluntarily come to amongst themselves by the claimants and counterclaimants, and may make such arrangement an element in its determination in any case concurrently or subsequently pending between the same parties. In every such record there shall be entered the names of the persons with whose consent, and the names of the persons by whom any claim shall have been settled by any such arrangement.

Section 47 of the Native Land Act 1873: memorial of ownership, schedule, form 1
After the inquiry shall have been completed, the Court shall cause to be inscribed on a separate folium on the Court Rolls a Memorial of ownership in the Form No 1 of the Schedule hereto, giving the name and description of the land adjudicated upon, and declaring the names of all the persons who have been found to be the owners thereof, or who are thenceforward to be regarded as the owners thereof under any voluntary arrangement as above mentioned, and of their respective hapu, and in each case (when so required by the majority in number of the owners), the amount of the proportionate share of each owner. Every such Memorial shall have drawn thereon or annexed thereto a plan of the land comprised therein, founded on the map approved as hereinafter mentioned, and shall be signed by the Judge and sealed with the seal of the Court.

featured prominently in the many criticisms of Native Land legislation at the time. In his review of the Native Land Court, Sir William Martin observed:

> Formerly the majority could protect itself, and no action was taken until a considerable amount of agreement had taken place. Now the owners feel that they have no rest. Any single Native may give notice in writing that he claims to be interested in a piece of Native land, and thereupon the Court shall ascertain the interest of the applicant and of all other claimants in the land, and order a Certificate to be issued . . . Capitalists who desire investments can have no difficulty in finding the single man needed, and the majority are forced to submit to the burthen or risk the loss of their property.[537]

In his 1871 report to McLean, Haultain similarly observed that the power of an individual to demand a title investigation had given rise to a number of abuses. These included unfounded claims, and claims made 'without the assent, or even the knowledge, of other persons or of hapus most concerned'.[538] During the parliamentary debates on the proposed 1873 legislation, Sewell also highlighted what he termed the 'vicious principle' of 'giving power to a single Native to drag the tribal right into Court'. By the operation of clause 47 and the system of memorials of ownership, he added, 'the tribal right was *ipso facto* disintegrated; the tribe ceased to be a tribe, and became individualized'.[539]

These criticisms support the claimant contention that the Crown actively sought to undermine chiefly authority, collective decision-making, and tikanga by empowering individuals to act independently of iwi and hapū and, in particular, by allowing individuals to initiate title investigations without effective safeguards for the community. The capacity of individuals to bring collectively owned lands for title investigation made it almost impossible to keep them out of the court process, undermining any attempt to retain land in customary title.

(c) Out-of-court arrangements

Native Land Court judges in Te Raki, with the exception of Maning, were fully prepared, indeed actively disposed, to accept out-of-court arrangements regarding ownership. For their part, claimants acknowledged that, 'in some cases', out-of-court arrangements provided for a 'degree of Maori communal and chiefly agency', but argued that these supposed agreements 'should not have relieved the Court of its legislated duty to investigate the full extent of ownership'.[540]

The Crown placed more significance on this 'convention', submitting that by leaving it to Māori to prepare lists of owners, the Court permitted them 'an important degree of self-management and control of this aspect' of its operation.[541] In effect, Te Raki Māori were 'making the decisions about how customarily shared, overlapping, and usufructuary rights to particular areas of land would be managed'.[542] In the Crown's submission, out-of-court arrangements thus constituted 'an acceptance of the authority of chiefs and deference to communal decision-making'. On the other hand, the Court 'did not blindly accept uncontested claims'.[543] It was 'normal for the Court to assure itself that any arrangements described to the Court were supported by the community'.[544] Crown counsel acknowledged that the Court had a statutory duty to investigate the full extent of ownership, but maintained that 'deference to community desires and a preference for consensus were appropriate in the circumstances'.[545] As a result, the Court 'generally only intervened when there were objections or contested claims'.[546] Whether the Court had the discretion to eschew that statutory duty, how it determined that out-of-court arrangements represented community desires, and whether it was entitled to rely on the evidence presented by those claiming to be 'representatives' were all matters on which the Crown did not elaborate or offer specific evidence.

The Native Lands Act 1865 made no direct reference to out-of-court arrangements, but the ten-owner rule meant that agreements often had to be reached over both ownership and the names of those to be recorded on the certificate of title. There was thus a tension embedded in section 23: on the one hand, the Court was required to ascertain 'the right title estate or interest' of *all* claimants to a particular block but, on the other, could not award a certificate of title to more than 10 owners in blocks of 5,000 acres or less. Owners were therefore practically obliged to reach agreement over those to whom particular blocks would be awarded, while the Court was obliged to limit the number to not more than 10. In such cases, the important question is whether the Court did, in fact, assure itself that the arrangements presented to it enjoyed the support and approval of all those interested in the land concerned. There is little evidence that it did so, in the absence of counterclaimants or pre-title investigation (as would be required by the 1873 legislation).

For example, in the case of the 1866 Waiwera–Puhoi block hearings, Thomas concluded:

> The Court accepted without exception the pre-hearing arrangements made by Te Hemara and his small party of applicants. The hearings themselves were brief and did not resemble a thorough investigation into the history and customary rights of the area.[547]

No counterclaimants appeared and little cross-examination took place. It took the Court just two days to determine the titles of 11 of the 13 blocks involved. In Thomas's assessment, the Waiwera–Puhoi hearings marked the start of what would become an increasingly common pattern in Te Raki: the willingness of the Court to issue titles based on limited investigations, particularly when a sale was contemplated.[548] In the Whāngārei district, Tony Walzl also found that the Court commonly approved arrangements as presented and did so after brief hearings and without any effort to ascertain whether all owners had agreed.[549]

As discussed earlier, the Native Land Act 1873 attempted to solve the problem of undisclosed trusts by instituting the memorial of ownership system. Section 47 of the Act provided for the names of all owners to be recorded; however, the practice of nominating only a handful of owners continued. Section 46 also allowed the

Court to adopt 'voluntary arrangements' between claimants and counterclaimants, which often had the effect of limiting the number of names recorded on the memorial of ownership.

The effect of section 46 and requirements of section 47 were disputed between Judge Maning and Crown Purchase Officer Preece during a Court sitting in the Ahipara Court in November 1875. During the Court's investigation of Orohana (6,562 acres) at Mangonui (outside the district) four claimants admitted that there was a large number of other owners of the block but requested that their names alone be entered on the memorial of ownership.[550] Armstrong and Subasic gave evidence that Preece also urged Maning to award the title to 'a few willing vendors who had received tamana payments'.[551] However, Maning insisted that he was obliged under section 47 to record the names of all owners on the memorial of ownership. In turn, Preece insisted that Maning was in error, at the same time arguing that the award of title to those who had accepted tāmana would 'facilitate the purchase of the land by the Government'.[552] Maning, supported by District Officer Webster, argued that the purpose of the 1873 Act was:

> to put it out of the power of Native Chiefs or others to alienate the lands of the commoners of their tribes, or defraud them of the proceeds of the sales; things which have been reported to have been done very frequently of late.[553]

To Preece's argument that section 46 of the Act allowed the Court to approve 'voluntary arrangements', Maning maintained that it referred only to arrangements among contending parties of claimants – that is, it did not apply where a single claimant group reached such an arrangement among themselves.[554]

While Preece was anxious to acquire land as expeditiously as possible, Maning sought to protect the authority of his Court against Preece and other Crown officials who challenged his control.[555] Preece demanded that the matter be referred to the Attorney-General, while Maning sought a more authoritative decision from the Supreme Court. Both men wrote to McLean on 13 November 1875,

Judge Maning's early courthouse at Onoke, Hokianga, in 1955.

defending their position. Preece assured him that the owners had all agreed to the purchase and the division of payments. He set out his view that,

> in cases of sale when the owners have assembled and the money is to be paid there and then, it is far better that the owners should name representative men from the various hapus to be named in the Memorial rather than encumber the same with the names of all the owners some of whom have only an infinitesimal interest.[556]

Maning threatened to resign in response and told McLean, in unequivocal terms, that if the arrangement involving allegedly self-appointed 'representatives' was sanctioned, sale would be concluded by a few owners, leaving the others unable to compel a fair distribution of the purchase money.[557] After receiving these reports, the Native Department resisted Maning's call for an inquiry, or an investigation by the Supreme Court fearing, as David Armstrong put it, 'that this might lower Maning and/or Preece, two important public officials, in the estimation of Maori'.[558] In the end, the matter was referred to the Solicitor-General, who supported Maning's interpretation of the law. Henry Halse, the Native Secretary, wrote to Preece on 30 November 1875 informing him of the Solicitor-General's view that:

> The 46th section empowers the Court to adopt voluntary arrangements come to between the claimants and the counterclaimants and the 47th section requires that the names of all the owners, or who under such arrangement as before mentioned *are to be regarded as the owners* shall be inserted on the Memorial of Ownership. [Emphasis added.][559]

He further explained that the issue 'was not a case of claim and counterclaim but a mere question of the concurrence of the Native Owners as to the division of certain purchase money to be hereafter paid by the Government'. In this case, the parties were all claimants, and Maning was correct 'in declining to accept the names of selected representatives to appear in the Memorial of Ownership as the owners of the land'.[560] Chief Judge Fenton informed Maning the following year that he considered this question of law settled, and that a further inquiry would not be held for a 'reason of state'.[561]

This dispute reflected the poor wording of sections 46 and 47 of the 1873 Act which indicated a failure on the part of the Crown to draft legislation, crucial to the recognition of rights of all owners, with sufficient precision and care. However, it also undoubtedly derived from the tension created by Maning's autocratic temperament when faced with Preece's wish to expedite his purchase arrangements through his Court. As such, the opinion of the Solicitor-General seems to have had little wider application. The practice of accepting out-of-court arrangements continued, at least until the Atkinson Government strengthened the rules in 1890 to require such arrangements to be put into writing and signed by all concerned, and the Court to check the authenticity of the signatures and the bona fides of the arrangement itself.[562] We received no evidence on the practical workings of this innovation. The Tūranga Tribunal has also pointed out that the danger of persons being left off lists meant that there had to be a guaranteed right of appeal, but this was not available until 1894.[563]

Mr Thomas commented on this matter at some length, observing:

> A perusal of various sources including Paula Berghan's many but brief block histories suggests that often during this period only a small handful of individuals would appear before the Court and apply for title over the land. There were often no other claimants present. The Court frequently heard their evidence without much cross-examination or inquiry. It would seem that there was often no explicit discussion of the critical question of whether the applicants represented wider groups and individuals or claimed sole rights over the land. The Court's main concern was whether anyone in the courtroom explicitly and openly opposed the main applicant's evidence and claims. If the answer was no, as it frequently was, the Court immediately ordered a certificate of title to be issued to the main applicants and, if they so requested, to a handful of other individuals whom they recommended.[564]

As a result, there is little evidence that out-of-court arrangements were based on a consensus reached by all interested owners and that Te Raki Māori exercised a significant measure of influence over the Court. This was the point made by Maning when he warned McLean, in November 1875, that Court sanction of arrangements in which only a handful of owners were named in order to facilitate the transfer of blocks exposed those left off the memorial of ownership to also being left out of the distribution of the purchase money. In his view, many northern Māori did not want titles awarded to 'representatives'

but were too intimidated to oppose them. Importantly, he advised McLean that the majority of owners relied on the Court and the law to recognise their interests.[565] The implication was that, in Maning's view at least, by accepting uncritically prehearing or out-of-court arrangements, the Court failed to meet those expectations and to protect the interests of all Māori, but rather advanced the interests of the few.

(d) Preliminary investigations

In addition to the doubtful protection to be found for claimants in section 47, the 1873 Act contained a number of provisions that could have assisted in ensuring that those with verifiable claims were not being left out of Court arrangements; however, there were serious defects in how those protections worked in practice.

In an attempt to meet the criticisms of the effect of the land laws levelled by Ngāpuhi, other Māori, and many Pākehā commentators, McLean included several provisions requiring preliminary or prehearing investigations into Māori land ownership. Sections 21 and 22 provided for the appointment of district officers who were supposed to furnish the Court with an independent view on matters of customary right.[566] To that end, they were to prepare (with the assistance of the assessors and 'the most reliable chiefs') a reference book showing the tracts of land owned by different hapū of the district at 1840. Other duties included assisting in identification of any land brought before the Court for title determination that had already been alienated (sections 23 to 26) and land that ought to be reserved (sections 36 and 37). District officers were directed to inform the judge of

> any objection they may be cognizant of to the hearing of any such claim, or any difficulty or counter claim they may be aware of as existing against any portion of the land . . . and in any such case, the Judge shall suspend all further proceedings in the Court relative to the hearing of the claim until such objections are disposed of or removed.

Section 38 also directed judges to conduct preliminary inquiries 'with a view of ascertaining whether the application to bring the land under the Act is in accordance with the wishes of the ostensible owners thereof'. If satisfied that an application had been made in good faith, the judge would then approve the undertaking of a survey. These investigations and the preparation of such reports, it seems reasonable to conclude, would have included the question of whether out-of-court arrangements represented a consensus reached among all those with interests in the lands in question, and whether groups or individuals with legitimate rights were being excluded.

No district officers were appointed in Te Raki, however, until 1874, and by this time 325,200 acres or 47.5 per cent of the known area in customary ownership in 1865 had already gone through the Native Land Court and the blocks awarded to an average of four owners.[567] There is no evidence that any 'reference books' were prepared, and little evidence that preliminary investigations were conducted in a thorough and systematic way.[568] In January 1875, Native Minister McLean rebuked Webster, Hokianga's district officer (appointed in December 1874), for having failed to prepare reports on the Otangaroa and Te Patoa blocks.[569] He conceded that this had not been possible given the recent nature of his appointment but instructed:

> In future, however, in all instances where Natives are about to bring their lands under investigation before the Native Land Court, or intend to dispose of them to the Government, you will be required to make a full preliminary inquiry, so as to be able to state whether the survey can be proceeded with without affecting the peace of the district. The Native Lands Act 1873, so clearly lays down the duties of District Officers, that I am only to direct your notice to its provisions, and to request you give them your particular attention.[570]

Armstrong concluded, however, that Webster made only the 'most cursory inquiries into the Waimate Taiamai lands'.[571] Given the size of the area to be covered, and the pace and scale with which blocks were being brought through the Court, it is difficult to see how the inquiries of Webster and his fellow officers could have been effective. It seems that they were more concerned with safeguarding

the interests of the Crown than of Māori. Under-Secretary for Native Affairs T W Lewis later acknowledged that 'the Act of 1873 was not carried out in all its provisions', in particular those relating to district officers and preliminary inquiries. While such officers did attend hearings, they did so only 'to watch the proceedings on behalf of the Government in connection with the Government titles'.[572] That conclusion is largely supported by the evidence in Waimate–Taiāmai where Webster's assessment during the passage of blocks through the Court was, in all instances, a simple one of 'no objection'.[573]

Maning was strongly opposed to conducting preliminary inquiries; he questioned the value of district officers and generally refused to undertake them himself as required by section 38 of the Native Land Act 1873. Maning argued that the size of the districts and the dispersed Māori population rendered the requirement unworkable.[574] Beyond the practical difficulties, he was also opposed to the concept in principle, predicting in 1871, when the idea was mooted by Sir William Martin, that it would 'render the office of Judge contemptible'. In his view, such 'impertinent' and 'extra-judicial' inquiries would only result in 'one-sided and for the most part false evidence' likely to warp judgement when the case actually came into Court. Maning claimed that he never permitted 'any Native to say one word to me on the merits of any claim until it comes before me in Court, and the result has been excellent'.[575]

He continued to question the value of preliminary investigations and survey when section 38 passed into the law, arguing that this would cause rather than prevent conflict.[576] Informed by Fenton that he had no discretion in the matter, Maning continued to criticise the notion, although it seems he did occasionally and reluctantly undertake the duty. But in light of the opposition expressed by Maning and other Native Land Court judges, the Native Office decided that the matter of preliminary inquiries and surveys was best left to the district officers.[577] Section 6 of the Native Land Act Amendment Act (No 2) 1878 relieved the judges of any obligation in this regard, unless there was an 'urgent or particular' reason for a preliminary inquiry.

We conclude that the Crown's claim that Te Raki Māori helped to shape the decisions reached by the Native Land Court is based on insubstantial foundations. Only if the Government had implemented in full the provisions of the Native Land Act 1873 relating to district officers, insisted that judges carry out the provisions of the Act, if judges had scrutinised out-of-court arrangements, and if they had carried out the prescribed preliminary investigations would another conclusion have been possible. It is clear to us that this did not happen with any consistency, and that was largely because the Crown failed to provide any oversight of the judiciary's compliance with the statutory scheme under which the Native Land Court was operating. Any investigations conducted by the Court remained limited.

(e) Court and Crown officers

Purchase agents, Crown and private, were familiar with the broad requirements of the Native Land laws and ingratiated themselves, if they could, with officials of the Native Land Court. They were ever ready to exploit any rivalries among Māori over land claims, skilled in identifying those disposed to accept advance payments, and prepared to trade on any lack of understanding among Māori of the law and legal processes. Armstrong and Subasic have noted that Crown purchasing agents attended title investigations, at times gave evidence, and sought to persuade the Court to award titles to those who had accepted advance payments. We give examples later in this chapter.

The success of purchase agents in influencing court decisions appears to have been mixed; we cannot know for certain the extent of their sway because we cannot go behind Court rulings in that way. Maning's dislike of interference in his Court made him an unlikely puppet of the Native Land Purchase Department, although he shared its goals. He was strongly critical of the payment of tāmana before title had been investigated and could resist the efforts of its recipients, encouraged by Crown purchase agents, to nominate 10 or fewer owners to expedite sales, sometimes insisting on inserting the names of all owners into memorials of ownership.[578] In the case of

Tukuwhenua, for example, in January 1875 Maning named 10 owners on the memorial of ownership and entered the names of an additional 42 owners on the reverse, contrary to the wishes of the Crown's purchase agents.[579] It may be partly for this reason that Brissenden expressed a preference for Rogan, requesting the Native Minister send him to assist Judge Maning with the substantial backlog of cases, since he was

> the only gentleman who can act in Judge Maning's place, who will give the utmost satisfaction to the natives, being the man of their unanimous choice, and who many of them assert, knows in some instances more of their rights than they do themselves. I therefore beg the Native Minister will select Judge Rogan to act for the Government in the north, feeling sure he will be able to pass the whole of the land through in six months. In making this request I represent the wishes of the Maori people from Helensville to the North Cape.[580]

However, after consulting with Fenton, McLean instead sent Monro to Hokianga, where he conducted a series of cases involving Brissenden's identification of owners whom he had paid tāmana.[581] Monro apparently had none of Maning's qualms and was disposed to award titles to those individuals who had already accepted payments on the land under investigation. Armstrong found that Monro awarded all but one (Te Arawhatatotara 2) of the 18 blocks he adjudicated in Hokianga, from March 1875, to 'representatives' charged with effecting sale to the Crown. According to Armstrong, Monro's decisions were inconsistent with the requirements of the Native Land Act 1873, and were made despite the Court being advised of the claims of other (named) owners. Armstrong argued that these decisions reflected the Court's wish to facilitate and expedite alienation, protests by some owners notwithstanding – a general assessment with which we agree.[582]

Brissenden acknowledged the helpful attitude of Monro advising McLean:

> I cannot refrain from expressing to you the obligation I feel myself under to Mr Munro [*sic*], as presiding Judge of the Native Land Courts held by him at Ohaeamue [*sic*], Mangonui, and Herd's Point. In every instance he has shown the greatest consideration for me, while on behalf of the Government he has carefully and patiently investigated the numerous difficult and tedious cases brought before him. None failed to pass unless those for which the surveys and maps were not completed.[583]

For his part, Maning was highly critical of Monro's decisions. Writing towards the end of 1875 to William Webster, who earlier in the year had been appointed district officer for the northern district, Maning claimed that Monro had been 'led by the nose' and had

> willingly and deliberately ignored the rights of nine-tenths of the owners of almost every case he had to do with and left men at the mercy of a few Rangatira sharks and the consequence is that as the right owners have not signed the transfers or been named in the grants the Government have not got a single valid title in the North, it is fortunate the natives do not know it, but if they do there will be a second Hawke's Bay affair, with the difference that the natives will be right. I warned Munro [*sic*] . . . of the consequences of what he was doing but he kept on.[584]

Distributed widely and carelessly, tāmana increased conflict and threatened the smooth functioning of the Court.[585] The practice can be seen as challenging its independence and threatening to usurp its role.[586] Undoubtedly, these factors lay behind much of Maning's antagonism towards government officers in pursuit of a goal he otherwise supported. His criticisms notwithstanding, he was prepared to do purchase agents 'small favours', as he informed McLean, and nor did he refuse them 'any trifling assistance'.[587] The prevalence of blocks issued to a handful of owners in the 1870s indicates that Maning acceded to the practice of limiting the numbers in spite of his railings against it and occasional insistence on a fuller complement of owners being recorded on the memorial of ownership.

The evidence is insufficient, however, to support the charge that judges colluded with purchase agents; that is, cooperated in some secret or unlawful way in order to

deceive or gain an advantage. But it is hardly necessary to go so far to question the independence of the Native Land Court and its judges in a general sense. The prime purpose of the Court, after all, was to facilitate the purchase of Māori land – a goal which the judges fully endorsed – and as Sorrenson has observed, the 'notion of an independent court is more lore than law'.[588] By failing to act consistently on the knowledge that named owners represented the interests of wider groups, the Court opened itself to a charge of furthering Crown goals at the expense of Māori rights. The Court continued to fail to scrutinise out-of-court arrangements, and establish and record the names of all owners on the memorial of ownership (under section 47), while the underlying problem remained that the naming of all owners did not in any case express collective ownership. As Armstrong and Subasic have observed:

> It did not reflect the concept of tribal ownership or control, or provide for collective decision-making. Rather, it was the means whereby individualisation could be brought to a new plane of perfection, and chiefly and tribal authority might be further eroded.[589]

In short, it completely disregarded tikanga.

(f) Registering owners: the overall picture

The evidence presented to us indicates that post-1873 title hearings were frequently (although not invariably) brief and often superficial, that the Court continued to approve prehearing arrangements, and that it continued to award titles to a few individuals.[590] Over the period from 1875 to 1880, embracing years of intense titling activity in Te Raki, 202 blocks were titled. According to Thomas's analysis, 152 were awarded to 10 or fewer owners and only 15 to more than 20 owners.[591] The average number of awardees was just under eight per block – even then a figure inflated by the award of several blocks to large numbers of owners.[592] The 1,465-acre Omapere block in Te Waimate–Taiāmai is something of an exception as it was awarded to 235 owners in January 1879.[593]

Over half of blocks titled during this period contained fewer than 500 acres, and 59 were 100 acres or less. However, the number of smaller blocks titled does not entirely explain why the number of owners included in the Court's orders was generally so low during this period. Blocks under 500 acres only accounted for 17,335 acres of the 255,860 acres titled. Paul Thomas gave evidence that a considerable portion of this land was concentrated in a few large titles; 11 blocks greater than 5,000 acres came before the Court and accounted for over 101,856 acres of the area titled.[594] But there was no clear pattern of titles to larger blocks recognising a wider community of owners; for instance, the 9,281-acre Te Kauaeoruruwahine block in Hokianga was awarded to eight owners, and the 5,700-acre Manganuiowae block to only four owners, both during June 1875.[595] Despite the apparent requirement under the Native Land Act 1873 that all owners be registered, the number of blocks awarded to single individuals and the low average number of named owners clearly indicates that this did not happen, and that the interests of most Te Raki Māori were never legally recognised, defined, and recorded.

Between 31 May and 24 June 1875, at Herd's Point, Monro, with impressive efficiency, investigated applications for a series of blocks, including 19 with an aggregate area of 65,514 acres.[596] The Court reached its decisions on all 19 during a maximum of 18 sitting days (excluding weekends). All but two of the blocks were awarded to fewer than 10 owners. The exceptions were Pakanae 3 and Pukehuia which were awarded to 10 and 18 owners respectively. Omahuta (7,770 acres) was awarded to four individuals, although the Court was aware that four related hapū held interests in the block; Otangaroa was divided into four portions, and Otangaroa 4 (3,296 acres) was granted to a single individual despite the Court being advised that a number of hapū held rights to it; and Punakitere (7,557 acres) was awarded to a single individual, despite the Court again being advised that others claimed rights to the land. While Maning observed that the 5,700-acre Manganuiowae block belonged 'to every native north of Auckland almost', Monro awarded it to three Te Rarawa hapū, Tahawai, Kaitutai, and Ngatipato. They nominated four persons as owners, an arrangement to which the Court, without further investigation, agreed.[597]

In his analysis of Crown purchasing in Waimate–Taiāmai ki Kaikohe, David Armstrong recorded that during the period from 1866 to 1875, Maning dealt with six blocks and Monro with 18. Of those 24 blocks, 21 were awarded to fewer than 10 owners. Only in the case of Te Arawhatatotara 2 (Monro) and Tukuwhenua (Maning) were the blocks apparently awarded to the full community of owners (40 and 52 respectively).[598] In brief, the Court was fully aware that there were many more people with interests in the various blocks but, with minimal or no investigation, awarded all but two of them to small numbers of individuals or hapū 'representatives', who held no legal responsibility with regard to the underlying ownership.

We turn now to a handful of the many examples illustrating the difficulties associated with the court process that have been alleged by Te Raki claimants as designed to facilitate Crown purchases: among them, the use of advance payments, lack of investigation by district officers and the Court, brevity of hearings, and confirmation of prehearing arrangements without adequate scrutiny, resulting in awards to small numbers of owners.

For example, Coralie Clarkson in her detailed case study of the 13,642-acre Pakanae block was unable to locate any evidence that preliminary investigations were conducted by the district officer (Webster) before it was brought through the Court in 1875. The title hearing lasted less than a day and Pakanae 1 (9,064 acres) and Pakanae 3 (3,150 acres) were awarded to just a few owners each, despite evidence indicating that many others held interests in the land.[599]

Five blocks in the Mangakāhia taiwhenua (Pekepekarau, Waerekahakaha, Opouteke, Kairara, and Oue), with an aggregate area of 80,000 acres, were awarded to a single owner (Kamariera Te Wharepapa) and sold to the Crown within months. Dr Rigby described these transactions as the Crown's largest group of purchases from a single vendor in Te Raki and a major factor in the success of its purchasing programme.[600] The hearings were brief. No counterclaimants appeared and there was little focus on customary rights. For example, the minutes to the Waerekahakaha title determination merely noted that all parties in the courtroom agreed that Te Wharepapa would be the only name on the memorial of ownership for the block.[601]

Included in the Court's title determinations at this time (in February 1876) was the 3,968-acre Oue block. This, too, passed through the Court without contest or any degree of scrutiny of the arrangements that had been made between J W Preece and Te Wharepapa, who was said to be acting on behalf of several others to whom advance payments had been made. Preece explained to the Court that the block had been subject to a pre-treaty claim by the Reverend Charles Baker but that the Crown now sought to acquire it and had recently made payments to extinguish ongoing Māori interests to the area. One hundred acres were to be reserved; the rest was to go to the Crown. Producing invoices, Preece told the Court that the agreement required the award of the block to Te Wharepapa as the sole owner so that he could make the transfer. Te Wharepapa then confirmed Preece's account. No other witnesses were called. The block was awarded as Preece requested, and the purchase was finalised the following day.[602] As Thomas noted, Te Wharepapa does not appear to have claimed that he held sole rights over Oue, and 'it had long been clear to Crown officials that many different groups claimed rights in the area' (for instance, see our discussion of the 1862 Mangakāhia conflict in chapter 8). However, the Court failed to 'inquire into the long and complex history of this land' and simply complied with the request of 'the soon-to-be buyer and seller' to award title in such a way so as to ease its transfer into the hands of the Crown.[603]

We discuss the Crown's purchase of Te Kauaeranga and Ngaturipukunui in chapter 10 but briefly note here the award of these two blocks to a single owner, Te Tirarau Kūkupa, in July 1877. On his death, they passed to Taurau Kūkupa and Tito Tirarau.[604] However, when Native Land Purchase Officer Patrick Sheridan entered negotiations to purchase the blocks in November 1892, questions arose about the limited ownership. Hira Te Taka and 65 others who identified as Te Urirorοi petitioned Parliament that Te Tirarau's people had agreed to his name being entered on the title in order to obtain advances on the kauri

timber. Taurau Kūkupa was considered to be acting as the trustee for the Parawhau hapū, and Tito Tirarau for the Uriroroi hapū: 'Each one of those trustees had been appointed by their respective tribes.'[605]

The petitioners asked Parliament to return the block to the Native Land Court so they could prove their customary ownership.[606] While the purchase was not overturned, the Te Ngaere and Other Blocks Native Claims Adjustment Act 1894 was passed, directing the Native Land Court to establish whether persons other than the registered owners had any equitable claims in the blocks and were entitled to share in the purchase money, a portion of which the Crown had retained. During the Bill's second reading, Robert Stout (member of the House of Representatives for the City of Wellington) acknowledged:

> there were many cases . . . in which Maoris who were equitably entitled to lands, or to moneys coming from lands, had been entirely deprived of their rights through the way in which the Native Land Court had admitted that only certain members were owners of a block.[607]

The inquiry found that 32 persons were entitled to payment for their shares.[608]

(g) The Puhipuhi title investigation: a case study

In their submissions, claimants identified the Puhipuhi title investigation as an example of how Native Land Court processes could result in long and complex hearings. During these hearings, they said, disagreements among Māori over ownership were exacerbated by unclear, confusing, and sometimes contradictory rulings. They identified Judge Maning as especially problematic in this regard.[609] Ngāti Hau claimants, in particular, argued that the Court 'ultimately failed to provide . . . an effective mechanism by which to settle their dispute', and they highlighted 'the inadequacies of the available process to assimilate the nuances and complexities of Māori land tenure.'[610] The Crown, on the other hand, submitted that the majority of Northland's cases passed through the Court by agreement among the parties involved, and described contentious cases like Puhipuhi as 'the exception.'[611]

Puhipuhi is a case worthy of close attention because it raises a series of significant and recurring issues concerning the Court's operation in the inquiry district. These include Maning's decisions; the appropriateness of the Native Land Court and its processes for determining customary ownership; and the Crown's response to the claimants' desire for a rehearing. There is also the question of the Crown's efforts to acquire this particular area and its resources. This question is touched on only lightly here but fully explored in chapter 10.

The 25,000-acre Puhipuhi block lies inland and north of Whāngārei and south-east of Kawakawa.[612] At the time of the first Native Land Court hearing concerning the block in 1873, the principal claimants were Maihi Parāone Kawiti of Ngāti Hine, Eru Nehua of Ngāti Hau, and Hoterene Tawatawa of Ngātiwai. It was Eru Nehua who initiated the investigation of title as part of a plan for the development and management of Ngāti Hau's lands. A boundary survey, undertaken in July 1871, prompted what turned into a protracted and bitter struggle for the ownership of an area containing kauri gum, standing kauri, and fertile land. In a letter to Fenton, Hoterene Tawatawa claimed that Nehua and others were 'stealing' land that belonged to his hapū, while Te Tane Takahi of Ngāti Te Rā made a similar complaint to Native Minister Donald McLean.[613]

The initial application for an investigation of title for all of the Puhipuhi lands was lodged by Eru Nehua, Riri Taikawa, and Whatarau Ruku, of Ngāti Hau. Objections by counterclaimants from Ngāti Hine, Ngātiwai, and Ngāti Te Rā followed. In advance of the hearing in 1873, a dispute erupted over the right to extract gum, a clear indication of the rivalries involved and the difficulties they might pose for any determination of ownership. The case was to be heard by Judge Maning, prompting concerns from Takahi, Tawatawa, and Hori Wehiwehi among others over his impartiality.[614] Maning vehemently denied their allegations. The Native Office was disinclined to take this sort of complaint seriously and so he duly presided over the case, heard at Kawakawa in August 1873.

The Court minutes do not appear to have survived, while no other reports of the proceedings could be located. The only record comprises Maning's own

accounts and evidence adduced during subsequent hearings of 1875, 1882, and 1883. According to Maning, Maihi Parāone Kawiti, and Eru Nehua each claimed ownership of the entire block. He recorded that the claimants generally behaved in an 'unseemly' manner, 'swearing exactly what they considered would suit their parties but without the slightest apparent regard for the truth', and observed that Nehua, in particular, seemed bent on provoking armed conflict.[615] Mark Derby gave evidence that after the Court finished hearing evidence over the course of one day, Maning called a meeting at his residence.[616] Derby considered that Maning's decision to gather the principal claimants following the hearing in this way was 'curious in light of his previously stated opposition to rangatira contributing to court-ordered decisions'.[617] A possible explanation, Derby suggested, was that Maning recognised 'that he needed to enlist the support of key rangatira in order for any judgment on the division of the land to be accepted by them'. In this situation, the Court was often unable to resolve disputes, and as Derby observed, 'had to fall back on seeking chiefly agreement before it could "impose" its authority'.[618]

Nehua and Maihi Parāone said that Maning concluded the meeting by informing them that he would provide his judgment after he returned home to Hokianga.[619] According to both rangatira, the judge had delivered a written recommendation in which he proposed an award of 14,000 acres to Ngāti Hau, 6,000 acres to Ngāti Hine, and 5,000 acres for Ngātiwai, Ngāti Manu, and Ngāti Te Rā.[620] However, in his later communications with Fenton in 1877, Maning provided a rather different account of what he had proposed. He maintained that:

> The Court at length after much pains and consideration made an order [in writing] that the block should be divided by regular survey into three portions of nearly equal area (defined by the Court on the survey plan) but considerably different in value – the portion awarded to Eru Nehua is the most valuable, being the southern end of the block which he resides on, and has considerably improved, and has the best land. The northwestern division was awarded to M P Kawiti, and the northeastern, to the Ngatiwai tribe, and the expense of the subdivision was ordered to be divided between the three parties.[621]

Regardless of the particulars of his recommendation, Maning did not complete the process of making a formal title determination. Derby pointed out that the identification of three parties and the proposed division of land might have served as a starting point for later hearings, but did not have the force of law.[622] As a result, the case was adjourned to allow time for a survey of the different portions to be made.[623]

This outcome from the 1873 hearing satisfied none of the parties involved. A month after the initial hearing, Maning met with Nehua and wrote to Maihi Parāone seeking agreement from the rangatira on the division of the land. During these exchanges, according to Derby's evidence, Maning likely tabled another option for the division of land, by which the rangatira would each be given shares in various subdivisions.[624] In his letter to Maihi Parāone, Maning also appears to have suggested that he might pursue an agreement for an equal division of the land between the three parties.[625] There is no evidence that Maning offered these proposals to Hoterene Tawatawa, who wrote to the Native Minister in November 1873 seeking the Government's intervention in the Court's process.[626]

The result of these events, Derby considered, was that the parties 'were left with sharply divergent understandings of the immediate outcome of the 1873 hearing'.[627] Nehua believed he had been allocated the largest share, while Maihi Parāone understood that he had been given the right to renegotiate an equal share in the block. Derby gave evidence that tensions between the two rangatira continued over the subsequent two years before the block was back before the Court in February 1875. During this time, Nehua refused to permit a survey of the internal boundaries of the block, and as a result 'the matter could not progress to the issue of certificates of title'.[628] Maning later recorded that during the 1875 sitting he had dismissed the case and that 'furious and dangerous dissension' again ensued.[629] Derby commented that by the end of 1875, Nehua and Maihi Parāone's 'mutual distrust and

rancour made further direct negotiations between them apparently fruitless'.[630]

Over the ensuing years, Ngāti Hau and Ngātiwai made four applications for a further court hearing and determination of title to Puhipuhi, all of which were declined, primarily on the basis that the claimants were unable to reach agreement among themselves as to an allocation of land.[631] Derby detailed the ongoing correspondence Maihi Parāone and Nehua maintained with Government officials over 1877 and 1878. Both rangatira 'claimed to be abiding by Maning's 1873 Native Land Court proposal and each accused the other of defying that proposal'. For Ngātiwai, Tawatawa supported Kawiti's understanding of the 1873 proposal, and alleged in 1878 that Nehua unjustly claimed a majority share of the block.[632] In the meantime, correspondence between Maning and Crown officials indicated 'that they believed that the Native Land Court could not be effective until the chiefs themselves reached some accommodation'.[633]

After a failed attempt at mediation by Resident Magistrate E M Williams in March 1878, Wiremu Kātene (former member of the House of Representatives for Northern Maori) wrote to the Civil Commissioner, George Clarke junior, suggesting that the 'main cause' of the dispute was the Court's failure to excise the southern portion of the block occupied by Nehua and his whānau, with the result that Ngāti Hau were threatening to sell all their interests in the whole of Puhipuhi.[634] Maihi Parāone had also made a threat to 'subdivide the land myself and sell my portion to the Pakeha'.[635] Derby argued that for several years the Crown had prevented such sales by declining a further title investigation, and after Civil Commissioner Kemp informed the Native Minister in October 1878 of the value of the timber on the block, the Government began taking active steps to purchase Puhipuhi.[636] As we discuss further in chapter 10, the Crown proclaimed the block as being under negotiation for purchase in November 1878, and made tāmana payments to Eru Nehua, Hoterene Tawatawa, and Maihi Parāone over the following months (see section 10.4.2(3)(b)).[637]

In June 1879, after the Crown considered it had acquired Ngāti Hau, Ngātiwai, and Ngāti Hine's interests in the block, Native Minister John Sheehan advised Fenton that there was 'now no reason why the title (withheld in consequence of the dispute between Marsh Brown and Eru Nehua) should not issue'.[638] However, Derby observed that, '[h]aving secured the right to buy Puhipuhi, the Crown showed no further urgency to complete the purchase', and little action was taken for two years.[639] In the interim, both Nehua and Maihi Parāone filed an application for an investigation of the Puhipuhi title in February 1880, and Maihi Parāone, Nehua, and Tawatawa again submitted a joint application in March.[640] Derby considered that these joint applications indicated that:

> by 1880 all three groups of claimants were eager to resolve the matter of title to Puhipuhi, which had been uncertain and a source of tensions for almost a decade. This would allow them to see the Crown purchase of Puhipuhi completed, with the hope of European settlement to be established in the vicinity, bringing greater economic opportunities and infrastructure such as roads and railway. It would also allow them to collect the balance of their payments for the land, to pay off debts or to develop their remaining land.[641]

A hearing was held before Judge John Symonds in April 1882. The Crown decided not to apply to have its interests cut out in return for its advances, preferring to wait until the whole block could be acquired.[642] Nonetheless, a close eye was kept on proceedings via Native Land Court clerk and interpreter J H Greenway. Shortly before the Court delivered its judgment, Greenway sent a telegram to the Native Land Purchase Department predicting that some 'outside claimants' would prove their case 'as against those the Govt have already negotiated with and partly paid'. In that event, Greenway would 'endeavour to have Govt claims secured. Eastern and north-eastern portion of block most valuable on account of Kauri.' Noting that lawyers for private purchasers were offering more than the Government,[643] Under-Secretary Gill instructed Greenway not to apply for the Government's interest to be defined until the time for rehearing had lapsed, but to forward the Court's judgment to him as soon as it was delivered.[644]

The 1882 judgment differed markedly from that proposed by Maning. Describing the evidence as 'most conflicting and unsatisfactory', Symonds recorded that he and assessor Perini Mataiwhaea had 'had some difficulty arriving at a decision'.[645] Ngāti Hine's claim, based on conquest, was not accepted because their witnesses had disagreed as to its extent, and they were not included in the award. The lion's share (16,000 acres) went to Ngātiwai, Ngāti Manu, and Ngāti Taka and the remaining 9,000 acres to Ngāti Hau.[646] Greenway then read out to the assembled claimants the amount of the Government's previous advances.[647]

Objections followed from all claimant groups concerned. On 29 April 1882, Iwi Taumauru and others of Te Atihau, wrote to Native Minister Bryce asking for a rehearing of the case. They described themselves as 'disinterested onlookers' whose claims had not been upheld in the 1873 decision. However, they were concerned that the Court's award of the northern portion of the block to Ngāti Manu, Ngāti Te Rā, and Ngātiwai would result in their own wāhi tapu, pā, and cultivations and fences being incorrectly awarded to those groups.[648] Derby observed that, while they appear to have abandoned their claims to the block in the Court, 'they evidently wished to see wāhi tapu and other sites of significance to them protected'.[649]

That same day, Nehua and other members of Ngāti Hau, who had refused to submit a list of owners, also sent a petition to Native Minister Bryce. They too asked for a rehearing and objected to the Court's decision as including their pā, wāhi tapu, and cultivations in the area awarded to Ngātiwai.[650] Derby observed that the dates of Nehua and Taumauru's petitions both 'complied with section 47 of the 1880 [Native Land Court] Act which specified that rehearings had to be applied for within three months of the original hearing'.[651] Maihi Parāone rejected the judgment as well, raising the issue that he had already been paid advances but had not been awarded ownership of any part of the block. He wrote to Bryce twice in May 1882 requesting a rehearing.[652] Ngātiwai also petitioned the Government, but their objection concerned the per-acre price of six shillings that had formed the basis of their advances (we discuss this and further petitions concerning the Crown's tāmana payments in chapter 10).[653]

A rehearing of the case was eventually granted one month after a confrontation between Ngāti Hau and Ngātiwai at Ruapekapeka in June 1882.[654] Derby noted in his evidence:

> About 100 Ngāti Hau based at Pehiaweri, near Whangarei, travelled to Ruapekapeka on the northwestern boundary of Puhipuhi, and confronted a larger party of Ngāti Wai and their whanaunga. This expedition then became an occasion for utu, as the Ngāti Hau proceeded to destroy waerenga (clearings for cultivation) and to burn fences.[655]

Both sides were armed, but the confrontation was resolved without bloodshed following the intervention of resident magistrate James Clendon. Derby noted that the reasons for granting a rehearing are unclear, but that the threat of further trouble over the block and the glaring inconsistencies in the Court's decision were likely factors. The Crown's desire to purchase much of the block with a clear title was another consideration.[656] As Bryce had indicated earlier, the Crown decided the best course would be to allow a rehearing, after which the purchase of the entire block might be aggressively pursued. An offer by Maihi Parāone to refund the advances he had received was refused for that reason.[657]

The rehearing took place in 1883 and the Court awarded 2,000 acres to Ngātiwai and co-claimants, 3,000 acres to Ngāti Hine, and 20,000 acres to Ngāti Hau. Rehearing Judges O'Brien and Mair and native assessor Hipirini Te Whetu noted 'the very unsatisfactory quality' of some of the evidence presented, adding: 'It has unfortunately become so common an occurrence to interweave false statements with the truth that the court is often at a loss what to accept and what to reject.'[658] The judgment concluded that there were 'material contradictions in the evidence of certain witnesses' over the different hearings. Testing the claims against those made previously was

'the safest rule to follow' and on that basis, the Court continued,

> We think that Eru Nehua has been consistent throughout in his claim and in his prosecution of it. But we do not find that the other parties have. On the contrary, we find at the former hearing one party abandoning his claim, and another party supporting a claim in the N' Tera, N' Manu and N' Wai [*sic*] which he now disputes, and further waiving any claim to the Northern part of this block.[659]

Te Atihau had failed to establish any claim, and in the Court's opinion, it was 'a pity that they should have incurred the expense of prosecuting . . . what they had deliberately abandoned and withdrawn on the former hearing'. The evidence of 'some occupation' by Ngāti Hine and Eru Nehua's admission in favour of Maihi Parāone Kawiti was thought to 'justify . . . admitting them [Ngāti Hine] to an interest' in the block. Ngāti Tera, Ngāti Manu, and Ngātiwai were also awarded an interest 'on the evidence of occupation of a portion – a small portion of the block', even though that evidence had not been as 'satisfactory' as the Court might have wished.[660] A total of 20,000 acres, later designated as Puhipuhi 1, went to Eru Nehua and his co-claimants of the Ngāti Hau, descendants of Kahukuri; 3,000 acres (Puhipuhi 2) were awarded to Maihi Parāone Kawiti and Ngāti Hine; while the northern portion, Puhipuhi 3 of 2,000 acres, went to the descendants of Para, Taurere Kautu, and Te Pari.[661] According to the *New Zealand Herald*, 'The universal opinion is that the judgment is just, and strictly in accordance with the evidence, and has consequently given great satisfaction.'[662] The rehearing brought an end to investigations into the ownership of Puhipuhi, clearing the way for the Crown to pursue its purchase programme.

The case of Puhipuhi is illustrative of a wider pattern in the Native Land Court's title investigation and rehearing process. There were serious difficulties in converting complex rights based on different take into a simplified, individualised title, especially when evidence was constructed to serve the claims of the contending parties. The Native Land Court may not have caused conflict between the different hapū, but it is an oft-repeated allegation that the adversarial nature of the institution that had been created exacerbated divisions. Had the Court not existed, hapū and rangatira may well have reached their own accommodations as to who held rights and where. Even at the time, it was recognised that mediation involving the chiefs themselves was likely to deliver a better outcome than the Court could at Puhipuhi, and after the 1883 judgment had disallowed Kawiti's claim, it was Eru Nehua who had acknowledged his interests. In the meantime, there had been more than 10 years of contention and expense.

The various parties involved in the Puhipuhi case had been obliged to expend precious time and resources to prove their interests and defend them from others. Attending repeated and protracted hearings had the potential not only to put strain on hapū and iwi relationships, but depleted their already limited financial resources, undermining the sort of development plans being attempted by Nehua. This was a costly, disruptive, divisive, and effectively compulsory process. The 1883 ruling was apparently accepted by all claimant groups, but whether as a reasonable compromise or out of exhaustion is moot.

The contrast between Maning's original and revised divisions of Puhipuhi, the Native Land Court's 1882 decision, and the award finally made in 1883 raises some serious questions about the ability of the Court to sift and assess evidence with a view to reaching a just and consistent result.[663] Armstrong and Subasic concluded that the 'inconsistency in how the various Land Courts assessed the matter of ownership' suggested that 'the matter resembled a lottery'.[664] While we are not in a position to relitigate the findings of the nineteenth-century Native Land Court, this is a conclusion with which we have some sympathy. Certainly, the inconsistencies of judgments imposed by a Court dominated by judges ill-equipped in matters of tikanga and case law brought the institution into discredit amongst those obliged to abide by its decisions.

The intervention by the Crown's purchase agents and their payments of tāmana to some disputants also clearly aggravated the situation, while the blurring of lines of responsibility between the Court and the Crown's purchase agency in the person of Greenway is both notable and questionable and will be discussed further in chapter 10.

9.6.3 Conclusions and treaty findings

In our view, it is unnecessary to establish collusion between Native Land Court judges and Crown purchase officers to raise questions about the independence of the Native Land Court. It was an institution that was created by a settler parliament to facilitate the transfer of land out of Māori hands into their own. This has been the conclusion of the Tribunal in other inquiries and is one that we share. The men who were appointed as judges actively promoted that goal. Their work and the laws they applied were unquestionably assimilationist. Politicians and judges both saw the individualisation of title as assisting Māori in their progress to civilisation but settler ownership of lands they regarded as otherwise unused was to their mind, essential to the development of the colony and indeed, a project ordained by God. The Native Land Court judges brought that cultural and economic imperative and their own flawed understandings of tikanga to their consideration of customary ownership, and little or no legal experience to interpreting legislation that had been carelessly drafted, often to the prejudice of those who had to abide by their decisions. As the Puhipuhi case also demonstrated, other officials connected to the Court could be in close communication with the Native Department keeping an eye on its interests.

There was no legal requirement for applicants to demonstrate that they had the support of their own hapū – or the knowledge of others – in bringing lands through the Court for title determination. In the absence of counterclaimants, investigations were cursory and out-of-court arrangements by which a few owners only were named in the title were generally accepted without serious interrogation. Even Maning, who made much of his refusal to be led by purchase officers into putting their preferred candidates into the title, often acceded to the practice of naming just a few in the memorial of ownership for the sake of convenience but at risk to those whose interests were not recorded. Few protections were contained in the legislation and often these were poorly observed, while there were acknowledged but unaddressed issues with notifications and scheduling of hearings which increased the dangers of being left out while placing the onus on Māori to avoid that outcome.

We are also of the view that, if Māori had been empowered to reach decisions about their own lands themselves, many of these problems might have been avoided. That had certainly been contemplated at the time and was to be a consistent demand of Te Raki Māori in the years following the creation of the Native Land Court. We shall see that even when attempts were made to utilise their own komiti to resolve ownership disputes, ultimately the parties concerned were required to go through the Native Land Court for legal confirmation of title. And with that requirement came the opportunity for challenge and the consequences of more disturbance of inter-hapū relationships, absence from kāinga, and costs.

The appointment of assessors to the Court was hardly the equivalent of the legal empowerment of Māori institutions and was a largely disappointing expression of the Crown's duty to respect and give effect to tino rangatiratanga within a body of such key concern to their interests. This is not to say that assessors could not play an important role in the course of hearings and determination of cases, but it is hard to escape the conclusion that they were in a subordinate position, put there by legislation which wavered on the matter of their status but trended towards giving Pākehā judges the clear (and even sole) authority, and by the attitudes freely expressed by those same judges about their Māori colleagues. We do not accept that out-of-court arrangements were a true expression of Māori agency, especially given the involvement of Crown purchase officers. Nor was the Court's endorsement of

them, without an effective requirement for scrutiny within the Native Land legislation, an adequate discharge of the Crown's duty to respect and support the exercise of tino rangatiratanga.

Finally, we note that without the requisite expertise and in the overriding imperative to simplify and fix rights that were inherently flexible, complex and fluid, the Native Land Court built up a body of precedent that distorted tikanga and was inconsistently applied.

We also concur in broad terms with the claimants' assessment that the Native Land Court which operated in the inquiry district was beset with procedural flaws and was widely damaging to Māori communities. While the focus of our inquiry must be on the actions of the Crown and not the Court itself, we see those flaws as stemming from the structure that was created, the nature of the appointments made, the failures of legislation in its conception and drafting, and of the Government to ensure that provisions that might have offered a degree of protection were being implemented.

Accordingly, we find that:

- The failure of the Crown to create a body in which Māori (in Te Raki and elsewhere) had the determining role when deciding questions pertaining to their own lands was a breach of te mātāpono o te houruatanga/the principle of partnership; and in respect of the Court it created, its failure to ensure that assessors had equal status and authority to judges throughout the period under consideration was a breach of te mātāpono o te mana taurite/the principle of equity.
- The failure to ensure adequate notification of hearings and that the costs involved in the conversion of customary title were shared appropriately and fairly among the parties who benefited, Crown as well as Māori, breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te mana taurite/the principle of equity.
- The Crown failed to monitor court processes to assure itself that the institution it had created was functioning in an appropriate manner and to ensure that statutes were appropriately rigorous, fully implemented, and effective. Those failures breached te mātāpono o te matapopore moroki/the principle of active protection.

9.7 How and Why Did Te Raki Māori Engage with the Native Land Court and What Were the Consequences of Engagement?

9.7.1 Introduction

The engagement of Te Raki Māori with the Native Land Court, the benefits they expected, and the costs resulting from their participation featured prominently in the claims and submissions we received. Claimants argued that engagement with the Court was unavoidable if Te Raki Māori were to secure legally recognised and usable titles, protect their lands from rival hapū, and settle boundary disputes. It was submitted that Te Raki Māori expected such titles would facilitate their participation in the commercial economy and protect community ownership against excessive land loss.[665] They hoped secure titles would permit them to generate capital to invest in the development of their lands, other commercial enterprises, and community well-being.[666] Finally, titling of Māori lands would encourage Pākehā to settle among them, bringing the capital, services, technology, and employment opportunities that they sought, while allowing them to control the pace and scale of such settlement. Without any recognised alternative, their tūpuna were obliged to engage with the Native Land Court to realise these aspirations, although this did not imply approval either of the process, the forms of title issued, or the Crown's control of this sphere of governance. Te Raki Māori who chose not to engage with the Court, claimants argued, risked losing all right to lands, thereby rendering engagement practically obligatory.[667]

On the matter of costs, the claimants submitted that the expenses associated with participation in the Court were neither fair nor reasonable. They argued that Court-related costs restricted the ability of Te Raki Māori to

secure legal recognition of their interests in land. They also submitted that the Crown, although aware of the burden being imposed, did little to mitigate the consequences, and that judges largely failed to exercise any discretion to reduce costs. The claimants acknowledged the difficulties involved in any effort to quantify such costs, but argued that the travel and accommodation expenses involved in attending the Court, and especially survey costs, imposed a heavy financial burden on many of their tūpuna. Even if the Government could be prevailed upon to assist with accommodation, travel, and living expenses, the costs were still levied on the lands involved.[668]

The Crown advanced a similar set of explanations for Te Raki Māori engagement with the Native Land Court. In its view, they included a desire on the part of iwi and hapū to define boundaries, to partition land among whānau for the purpose of establishing farms and other land-based enterprises, to obtain a title from the Crown 'with which to transact', to secure the protection that a secure title offered when leasing land, and to attract European settlers and promote the growth of towns. While acknowledging that Māori had no alternative if they wished to secure legal titles, the Crown submitted that they were under no obligation to apply to the Native Land Court for an investigation into ownership.[669] The Crown noted that Te Raki Māori were fully able to keep significant tracts of land from passing through the Court, pointing to the largely successful Mōtatau rohe pōtae.[670]

With respect to costs, the Crown argued that court fees may have been one of the lesser expenses associated with the process, especially in the case of undisputed claims; that whether fees were burdensome depended upon the number of owners involved in any particular block; and that, from 1873, lawyers were debarred from the Court or could appear only with the consent of the presiding judge. On the other hand, counsel acknowledged that survey costs could be high – indeed high enough to compel some owners to alienate land to meet them – but suggested that the absence of land sales immediately following titling indicated that survey costs did not always prompt alienation. As for indirect costs associated with court hearings – that is, for travel, accommodation, sustenance, and medical attendance – the Crown noted that they varied widely from group to group and from individual to individual, and that they were impossible to calculate in any general way.[671]

In this section, we discuss why Te Raki Māori engaged with the Native Land Court, before examining the range of costs such engagement entailed.

9.7.2 The Tribunal's analysis

(1) *Te Raki Māori reasons for engaging with the Native Land Court*

Te Raki Māori chose to engage with the Native Land Court for a range of reasons, not least a desire to secure Crown-guaranteed titles. They thought that achieving a recognised form of English-style tenure would enhance their mana and support their commercial and development aspirations. In his correspondence with Fenton, Maning emphasised what he saw as the intention of Māori to subdivide their lands into whānau farms, while noting that where a claim was made for a large block, it was

> almost invariably with the purpose of securing a Grant for the external boundaries in the first instance and subdividing it afterwards as soon as the owners can conveniently raise funds to pay the expenses of the subdivision.[672]

Māori initial enthusiasm for what the Native Land Court was thought to offer is demonstrated by the large number of blocks brought through for title determination in the first years of its operation. Between 1865 and 1874, 469 blocks embracing 39.1 per cent of the known area in customary ownership within the inquiry district in 1865 passed through the Native Land Court. Maning's views are supported by data for the period from November 1865 to July 1867, when title was sought for many small blocks. Of the 30 certificates of title issued in the Hokianga district, 14 were for areas of under 100 acres, and 11 for blocks between 100 and 1,000 acres. In the case of Whāngārei

district, certificates were issued for 41 blocks, 20 of which were smaller than 100 acres, and 18 between 100 and 1,000 acres in size. In Mahurangi, title was sought for 12 blocks, 10 of them under 100 acres, and two between 100 and 1,000 acres.[673]

In his report on the Waimate–Taiāmai area, Armstrong argued that evidence for the period after 1865 confirmed that northern Māori sought whānau farms and were securing titles and selling some land to raise investment capital as part of a long-term strategy.[674] During the 1870s, Waimate hapū attempted to attract Pākehā settlement and the employment opportunities, trade, and services that would follow. Legally recognised titles to their lands were critical to that goal, and engagement with the Native Land Court the only means to secure them.[675] In their district-wide study, Armstrong and Subasic reached similar conclusions. They emphasised the initial eagerness of Te Raki Māori to use the Court as

> a means of achieving long-held economic and other ambitions. They sought title determination so that whānau could obtain farms, and in order to alienate such of their lands as deemed necessary to encourage the highly sought after Pākehā settlement and the establishment of urban centres.[676]

Further, there is evidence from Walzl's research into Whāngārei that some local Māori sought titles so that they could levy rents upon settlers who had chosen simply to occupy lands, or in default of payment, evict them – a clear indication that Te Raki Māori understood the potential value of a legal title.[677]

Above all, engagement with the Court seemed to offer Māori the chance to establish a mutually advantageous relationship with both settlers and the Crown. They envisaged that this would deliver stability, security, and prosperity, and allow them to maintain a central place in the emergent economy. The realisation of those aspirations depended on the ability to utilise their land and its resources. In turn, capitalising land interests required the clear definition of ownership and boundaries and the award of legally recognised titles. Sale of some of their land would be required, and this was largely accepted in the expectation of a range of benefits. As Judge Rogan advised J C Richmond (then Minister of Customs), hapū 'endeavoured by the only means in their power that is by the sale of their land, to induce the settlement of Europeans amongst them'.[678]

Their intention, as it had been in the preceding decades, was to share rights to land and the potential wealth that it offered, although on terms more fully integrated into the legal system that now dominated. It was necessary, in any case, for Te Raki Māori to conserve their own interests by controlling the pace and scale of Pākehā settlement. That possibility had been promised under Grey's rūnanga scheme and continued to exist under the Native Lands Act 1862, but became increasingly tenuous under the 1865 and subsequent legislation.

After the passage of the Native Land Act 1873, what appears to have been largely voluntary engagement with the Court became increasingly involuntary. Factors involved in this transition included section 34, which permitted individuals to bring title applications without community sanction; the undermining of traditional controls under the memorial of ownership system, which enabled purchase by attrition; and the use of tāmana as a strategy in purchase negotiations, requiring all of those who wished to defend their rights to attend Court to have them recognised and ultimately partitioned out. Engagement was inescapable if claims were to be heard and upheld.

Dissatisfaction soon developed among Te Raki Māori over unavoidable engagement with the Court and over its conduct and costs.[679] We examine the steps to resist the operation of the Native Land Court and assert control over their lands in the final decades of the nineteenth century in chapter 11, and we do not discuss them here. We note, however, the establishment in 1874 of the Te Rohe Pōtae o Ngāti Hine as a boundary marking autonomous Māori land around Mōtatau, within which engagement with the Native Land Court was prohibited.[680] The success of the rohe pōtae of Ngāti Hine and declining Crown interest in

further purchase in the district saw a decline in applications for title determination from 1880 onwards; only 75 blocks with an aggregate area of 62,132 acres were titled during the period from 1881 to 1889, and 61 with a total area of 41,427 acres during the following decade.[681]

(2) *The costs of engagement with the Native Land Court*

Participation in the court process imposed a range of burdens on Te Raki Māori of which survey costs would prove the most onerous. The absence of comprehensive and reliable data for our inquiry district renders quantification difficult, while some costs do not lend themselves to quantification at all. Establishing whether the costs of engagement with the Native Land Court led some Te Raki Māori to sell land is also difficult, although we do offer some comments on that matter in the section dealing specifically with survey charges.

By 1870, Te Raki Māori were expressing dissatisfaction over the costs being imposed upon them. In his submission to Haultain in 1871, Eru Nehua claimed:

> many persons are deterred from bringing forward undoubted claims from their inability to pay fees. They are frightened at the various payments they have to make. The payment fixed for a Crown grant should be sufficient.[682]

Wiremu Pōmare also commented at length on the matter of costs. He advised Haultain:

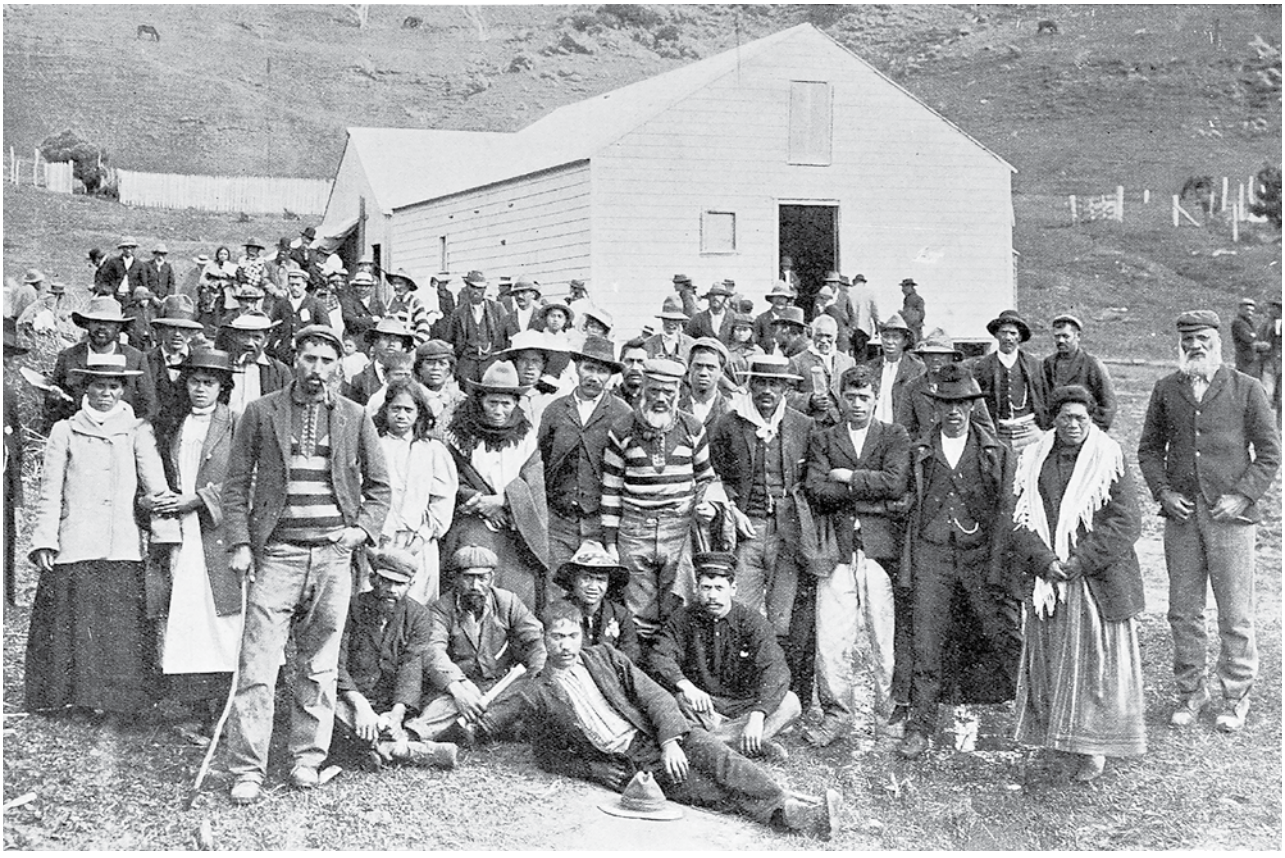
> The Maoris don't at all approve of paying the fees of Court; these have only recently been insisted on; we were not aware it was laid down in the Act. I was one of the first Natives who passed land through the Court at Mahurangi; a block of 1,220 acres was investigated by Mr Rogan, but I did not pay any fees, and this seems to be a new custom. These changes are not clear to us. The Maoris would like all the laws connected with Natives and their lands translated and circulated, as newspapers are amongst the Europeans . . . We know nothing of the laws, they are never sent to us; they are stowed away in the pigeon-holes of the Government, and we never see them.[683]

Pōmare's comments indicate that under the Native Lands Act 1862, Te Raki Māori did not incur expenses beyond those for survey; certainly, the Act did not contain a schedule of court costs, and the inclusion of one in the Native Lands Act 1865 clearly came as a surprise.

In his 1871 memorandum on the operation of the Native Land Court, Sir William Martin noted that 'the costliness of the Court . . . is bitterly complained of' and could be met 'by a scale of fees, accompanied by a proper taxation [itemisation] of costs'. Martin proposed a new scale that would limit the fees and duties payable 'to an amount necessary for the working expenses of the Court', and added,

> it seems worthy of consideration of the Legislature whether it is a wise economy to throw the whole of the expenses of the Court on funds so obtained, seeing that the action of the Court on principles herein set forth is a power capable of greatly benefiting both Colonists and Natives, and, indirectly, of diminishing the cost of Native and Defence Departments.[684]

The possibility of sharing court costs between Māori and the Crown did not attract serious consideration, however. Haultain's view was that Māori 'of course, wish[ed] to avoid paying the fees of the Court', but he thought that they did not amount to much unless the case was 'a very protracted one'. On the other hand, he acknowledged 'the expenses outside the fees of the Court are often very heavy'.[685] Haultain went on to note that from 1865 to 1870, the Court had cost £29,225, while receipts had amounted to £17,625. From the resulting deficit of £11,600, £3,517 in outstanding fees had to be deducted. Haultain estimated the net cost over five years at £8,000, a sum for which over 2,000,000 acres of land had been titled and opened for settlement. Further, he clearly expected that the Native Land Court would shortly generate revenue in excess of its costs, while adding that he had not included the cost of the Survey Department, put at £10,497 over five years, since the provinces had acquired, 'by means of this department, maps of much greater value at the expense of the Natives'.[686] Included with Haultain's report was a



Claimants outside the Ahipara Native Land Court, in the Muriwhenua district adjacent to the Te Raki inquiry district, 1904.

summary of court fees paid for the period from 1865 to 1870: of the £6,086 charged across the country, £3,517 (as noted earlier) remained as unpaid, strongly suggesting that Māori were experiencing difficulties in meeting the demands of the court process. For Auckland Province, the corresponding figures were £4,073 and £2,149, so that 52.8 per cent remained unpaid.[687]

Although the costs may have been comparatively modest for uncontested hearings, for contested claims they could mount quickly, imposing a serious burden on those for whom their land constituted their only capital. A range of costs had to be met just to have a claim heard, including fees for witnesses and kaiwhakahaere (advisors) where they were involved, and fees for interpreters and legal counsel. A rehearing application cost £5. There were fees for certificates of title and memorials of ownership, for Court orders and inspections of papers, plans and inspection of plans, and after 1889, for the filing of documents.[688]

Wiremu Kātene (formerly member of the House of Representatives for Northern Maori) complained to the Native Land Laws Commission at the meeting held at Waimate North in 1891 that until recently it had cost £1 per day to appear in Court even though the case might go on for two months and, he continued,

> It might be a case in which I appear merely as an objector, and not as an applicant . . . The claimant in such a case has also to pay £5 a week, I have seen these things at the Court at Hokianga, both claimants and counter-claimants being called upon to pay the fees I mentioned.[689]

Hone Peeti also described the intersecting costs and pressures Māori experienced when attending Court sittings:

> We find that the fees to be paid are very oppressive indeed, and the people are also subjected to great trouble in having to attend the Court, travelling night and day from distant places, and they are at the same time reduced to great inconvenience through having to obtain food – perhaps fruit – sufficient to last them for the month or so that will elapse before they can return to their places of abode.[690]

These were not one-off expenses; Te Raki Māori were charged not just for the initial title investigation but for all orders of Court business: partitions, subdivisions, successions, and rehearings. During the 1870s, the number and duration of Court sittings increased sharply as the Crown vigorously pursued purchase of Māori land. Armstrong and Subasic noted that sittings were held in locations stretching from Auckland to Ahipara and Whangaroa; and that at least some of them were scheduled in response to requests from the Crown's purchase agents. Some sittings drew in Māori from throughout the region, notably in Auckland, Haruru, and Kawakawa in 1871. Between 1870 and 1872, at least 19 sittings took place at Ahipara, Auckland, Awaroa, Hokianga, Kawakawa, Mangonui, Russell, and Whāngārei. As Crown purchasing accelerated, the number of sittings rose. Between 1873 and the end of 1876, at least 32 sittings took place, at Awaroa, Hokianga, Kaihu, Mangonui, Ōhaeawai, Russell, Kawakawa, Whangape, Whangaroa, and Whāngārei.[691]

Estimating the indirect costs (those not intrinsically connected to the Native Land Court by regulation) incurred by Te Raki Māori in the course of presenting claims or defending their rights is fraught with difficulty, but comment at the time indicates that travel, accommodation, and sustenance costs were often substantial. Applicants (and counterclaimants) were forced to follow the Court to distant locations, with damaging economic and cultural consequences.[692] Sittings during the winter months proved especially trying for Māori, who were often confined to makeshift and poorly serviced shelters and with inadequate food. Because they could not be sure when their interests would come before the Court, continued attendance throughout the sitting was vital if claims were to be advanced and recognised. Sittings could be cancelled and rescheduled, often at short notice, while hearings of claims also could be cancelled, postponed, or adjourned within a session, for example, should maps and plans not have arrived. In one reported instance in January 1879, almost 800 Māori camped around Herd's Point (Rāwene) as they attended a sitting of the Hokianga Court, but many applicants found that their cases were adjourned owing to the unavailability of plans.[693] This was a common occurrence, given the pressure of work on the first inspector of surveys and his department. As the *New Zealand Herald*, reporting on complaints made at a meeting held in the Bay of Islands in April 1885, summarised:

> they have not been well treated by the Governments of New Zealand, and there will be many grievances to air. The working of the Native Land Court is strongly denounced. The Natives complain that the Courts are fixed to be held at certain times and at certain places, but adjournment after adjournment takes place before any hearing takes place, and then, when a decision is arrived at and the ownerships are fixed, rehearings are granted, until the natives are fairly starved out, and unable to attend the Courts in support of their claims.[694]

Contested hearings were often protracted, resulting in substantial food and accommodation costs while normal economic activities, including planting, harvesting, and food gathering were disrupted. The implications of Court-related absences were serious for those reliant upon small surpluses to sustain them through the lean months of the year. For example, Rewi Manuariki advised Fenton in 1876 that he and his people had had to travel to Whāngārei twice in connection with their Te Akokotiri claims, and

that they were in want of food and had no friends in Whāngārei who could assist.[695] The frequency with which Te Raki Māori sought Government assistance to attend hearings attests to the financial burden court hearings imposed on both attendees and those Māori communities acting as hosts. Where supplies were made available, the costs were usually levied on the land.[696]

Lengthy hearings in cramped, insanitary, and often cold conditions also exposed Māori to communicable diseases. Armstrong and Subasic observed that a succession of cases at Hokianga in mid-1875 'caused much suffering and expense'. Resident Magistrate Spencer von Sturmer advised McLean in May that there would be:

> a scarcity of provisions at Hokianga before the end of the season, owing to the quantity [*sic*] from other districts attending the Land Court and the number of native 'huis' held since the crops have been harvested.[697]

In 1882, von Sturmer again commented on the impact of hearings, advising Webster that the Court was sitting at Herd's Point, where Māori 'wandered about' in conditions that were 'miserable and dirty', while 'the storekeepers generally grumble for the Court is not a success for them as the Maoris have not a shilling to spend'.[698] Notoriously, the sessions exposed those in attendance to the predatory conduct of publicans, accommodation house proprietors, and storekeepers who waited for blocks to be awarded and sold, and there invariably would be significant sums of money no sooner received than spent.

There were costs associated with lost or curtailed economic opportunities as well, most obviously in the form of foregone income from wage labour and returns from gum digging and farming. Armstrong and Subasic suggested that by the 1880s, 'interaction with the Native Land Court had set back rather than aided the economic position of Te Raki Maori', with purchase prices paid for land having been 'quickly exhausted' due to the high incidental costs associated with the Court.[699]

The difficulties were well known but there is little evidence to indicate the Court (or the Crown) made any considered or systematic attempt to meet Māori wishes or suggestions over the timing and location of sittings; rather, hearings continued to be scheduled primarily to suit the Court's own convenience and to ensure that Crown purchases were finalised as rapidly as possible. As the Central North Island Tribunal concluded, the problems associated with venues and the costs of hearings reflected the overall lack of Māori involvement in the design and conduct of forums charged with determining titles to land. Had there been such involvement, the Tribunal suggested, 'it is hard to imagine that they [Māori] would have placed the pressure on people and their economic and social well-being to the extent that the court did.'[700]

However, from 1880 onwards, the Court's rules did provide some potential relief from the financial burden of attendance; fees might be charged at the 'judge's discretion', and more explicitly under the Rules of the Native Land Court 1886, might be 'remitted or abated'. The 1886 rules also stated that they could accrue or be charged against the land concerned.[701] Whether judges ever waived fees for Te Raki claimants is unclear. Evidence from other inquiries suggests that they generally did not, and fees had to be paid up front.[702]

Native Minister Bryce had been sufficiently concerned over the expense of Native Land Court hearings that in 1883 he invited the Chief Judge James Edwin Macdonald to suggest ways 'of lessening the cost of determining titles which is at present, if rumour is to be believed, unreasonably large'. However, Bryce thought the problem lay not in the scale of fees, which he considered 'sufficiently low', but in the prolonged sittings and the cost of the lawyers and agents employed by the parties involved.[703] Macdonald noted that, in contested hearings, claimants and counterclaimants were often acting as proxies for purchasers, both private and Crown. In his view, the 'obvious remedy' was for the Crown to resume its pre-emptive right of purchase.[704] However, a much more limited action was taken. Under section 4 of the Native Land Laws Amendment Act 1883, lawyers, agents, and representatives were excluded from hearings, except where their presence was required by reason of 'age, sickness, or infirmity, or . . . unavoidable absence' of any party. The prohibition was short lived, however; they were allowed back into the Court, provided

the judge consented, under section 65 of the Native Land Court Act 1886.

(3) *Surveys and survey costs*

Claimants raised a number of issues relating to surveys. These included the poor standard of many early surveys, notably those conducted in the Bay of Islands and Hokianga; the inability of surveyed boundaries to take into account customary patterns of land ownership and rights; and an alleged lack of expertise on the part of many surveyors. The claimants argued that the Crown was aware of these problems from an early date but proved slow to effect improvements. Above all, the claimants raised the matter of survey charges, including the cost of remedying errors.[705]

The Crown acknowledged that any sale of land by Te Raki Māori in order to meet 'excessive' survey charges indicated a failure on its part to implement a fair titling regime and to protect the interests of Māori. The Crown noted previous Tribunal inquiries had found that survey costs of between 10 and 20 per cent of the purchase price of the land were 'the norm,' and asserted that possible breaches, defined as instances in which land was alienated in order to meet 'excessive costs', would need to be identified on a case-by-case basis.[706] The implication of the Crown's argument appears to be that the 'norm' could be considered acceptable, but that costs greater than 20 per cent of the price paid were 'excessive'.

In this section, we examine the decision to impose survey costs on Māori, whether such costs should have been shared with or assumed in their entirety by the Crown, whether Te Raki Māori raised concerns over them, and the manner in which the Crown chose to respond; that is, whether it elected to control costs or focus on their recovery from Māori landowners. A second major set of questions deals with the accuracy of surveys, whether the Crown was aware of the difficulties associated with the survey of Te Raki lands, and the actions, if any, it took to mitigate any such problems.

We note, first, that systematic evidence relating to survey costs is not available for the Te Raki district.[707] The extent to which such costs led to the sale of land, the award of land to surveyors as payment, or the award of land to the Crown in lieu of survey charges are also matters that remain to be established fully. We observe, too, that it is difficult to generalise about the level of survey costs because they varied considerably on a per-acre basis and as a proportion of the price for which the land was sold. In the case of large blocks, for example, costs could be reasonable if the lands concerned were clear of dense bush, were relatively accessible, and especially if they were contiguous with already surveyed lands, while the costs associated with the survey of small blocks tended to be higher.

(a) Early legislative requirements

The clear assumption was that Māori would be the major, if not sole, beneficiaries of Court-derived title, and under the Native Lands Act 1862 and 1865, they were required to meet survey charges in their entirety. This contrasts with the rules established for Pākehā purchasers of Māori land. For example, under the Land Claims Settlement Act 1856, those granted land for claims arising from pre-treaty transactions and those who purchased under FitzRoy's pre-emptive waiver scheme were required to commission surveys but were granted an allowance of one acre for every 10 shillings expended. It also contrasts with the reality on the ground; the major beneficiaries of Native Land Court activity were the Crown and settlers.

The Native Lands Act 1862 specified that the issue of a certificate of title first required a survey of the land concerned, although not before the Court had determined and registered ownership. For those who wished to secure certificates of title or Crown grants, survey charges were therefore unavoidable. The Native Lands Act 1865 specified that surveys had to precede title investigations, while the requirement that Māori pay fully was carried forward into the new legislation, again without consultation and in the absence of consent. The Native Lands Act 1865 further provided that the Crown could, upon request, advance the cost of surveys, that surveys would be conducted by Crown-licensed private surveyors, that liens

A surveying party at Pahi in the Kaipara Harbour, circa 1880–89. Survey plans were a requirement in Native Land Court title investigations, and surveyors played an important part in the Court process as the boundaries of blocks and subsequent partitions were defined. However, survey errors were common during the nineteenth century and were often made worse by the unclear nature of earlier surveys of grants issued for old land claims and pre-1865 Crown purchases, a particular problem in the Te Raki district. The survey costs, and the costs of resurveying to correct errors, were imposed on Māori owners and their land.

could be taken out over the lands involved, and that the Court could order the retention of a Crown grant by the surveyor concerned until his charges had been met.

Major changes with respect to the recovery of survey costs from Māori vendors were introduced in the Native Lands Act 1867 in a series of provisions a number of which were likely to have been incomprehensible to them. Section 6 established the office of inspector of surveys 'in order to secure the accuracy and consistency in surveys and plans' made under the Act, requiring him to certify survey plans prior to court hearings. Section 31 revoked the right of surveyors to hold a Crown grant until their costs had been met, providing instead that it would be held by the Secretary for Crown Lands. Section 33 allowed Māori to charge their lands to meet moneys advanced by private persons to fund survey costs. Section 34 provided that no certificate of title or Crown grant would be issued without the consent of the person to whom the moneys were owed or until the charges had been met, although section 35 empowered the Court to order delivery of a Crown grant after the execution of a mortgage to the lender. Sales of mortgaged land could not be enforced, but owners who wished to alienate their lands had first to deal with the holder of a lien or a mortgage. The emphasis was

quite clearly on the recovery of survey costs from Māori and not on their regulation or control. The Native Lands Act 1869 introduced a further change. Under section 11, no certificate of title would issue until a plan had been deposited in the Court.

The legal rights of Māori were also affected by other aspects of survey work. Notably, the decision to base surveys on an external frame of reference that a system of major triangulation would provide (discussed at section 9.7.2(3)(c)) resulted in the Trigonometrical Stations and Survey Marks Act 1868; this authorised the entry of government surveyors on any land and provided penalties for any obstruction and interference with stations and marks.

(b) Impact of survey errors

Survey errors could prove costly, not only because they would require resurveys but also in terms of land 'lost'. Thus the effects were not solely monetary in nature: they went to the heart of ancestral connections and identity. Claimant Sheena Ross said this about her tūpuna's understanding of surveying:

> Our tūpuna did not use imperial measures such as acres to place a border around our lands. This is a foreign concept that we still struggle with today. In our korero, our lands are marked out by the landmarks that we see, rather than as a line on a piece of paper. It was only when colonisation came that these concepts were introduced. Our tūpuna would not have known what these concepts of measurement were when the surveyors came onto our lands to make their mark. And the effects of this are still filtering through today when we have many examples of lands that have been surveyed by government contractors and marked out on the plans, yet these areas marked out do not match the korero that was passed down to us. We suffer by having our lands chopped up and cut off so that the borders are much different than how they would have been in our tūpuna's day.[708]

The Native Lands Act 1865 (sections 25 and 26) had made no reference to the matter of survey accuracy; that was a matter left to those individuals contracted to undertake the work. In August 1866, Acting Chief Surveyor Sinclair advised Fenton of the importance of developing and publishing a set of rules for licensed surveyors operating under the Native Lands Act since the information that surveyors were supplying was 'generally of the most meagre kind and it is frequently with the greatest difficulty that the position of the blocks to be adjudicated have been identified'.[709]

Maning also complained that surveys were 'in many cases incorrect, and the difficulties, disputes, and suspicions arising from this cause alone have been most serious and obstructive to progress'.[710] In turn, Fenton raised the matter with Native Minister Richmond, complaining of 'the unsatisfactory state of the Government Survey' and the 'very defective surveys' conducted by one surveyor, describing the latter as 'very unconscientious' and indeed his plans 'in many cases . . . [are] scarcely more than sketches'.[711] Fenton's concern centred not on whether Māori were being unfairly affected or that survey charges were absorbing a large proportion of the returns from sales, especially during a period of depressed land prices, but on the likelihood that they would deter Māori from

'A Hopeless Confusion of Titles'

Triangulation surveys lagged in Auckland Province. They had been introduced in Canterbury, Otago, and Wellington in 1849, 1856, and 1866 respectively, but were not used in Auckland until 1871.[1]

An 'approximate' return published in 1873 indicated that in Auckland Province, with an area of 17,000,000 acres, no major triangulation had been finalised and none was in progress, while minor triangulation had been completed for just 50,000 acres. For Wellington Province, by way of contrast, major triangulation had been completed over almost 2.5 million of its 7,000,000 acres with a further 1.43 million acres in progress, while minor triangulation had been completed in respect of 2,000,000 acres with a further 426,240 acres in progress.[2]

taking their lands through the Court and from subdividing land once titled.[712]

In mid-1867, Inspector of Surveys Theophilus Heale, in response to a request from Colonial Secretary Stafford, toured Northland and prepared a report on the state of its surveys. He was one of several officials to comment on the poor and confused state of surveys in the north – a legacy of the old land claims and early Crown purchases greatly complicating the task for Māori as they attempted to engage with the Native Land Court and the rules and costs that had been imposed. Among Heale's conclusions was an assertion that the Native Lands Act 1865 had exposed and highlighted 'the grossest of the defects in the old system'.[713] He pointed out that, through various Acts, Parliament had accorded 'every Native the right to claim a grant from the Crown, which must for its own safety and credit ascertain the position and boundary of the land granted'. He argued that surveying, particularly the introduction of a system of major and minor triangulation in the North Island, was work 'of a truly National character'. It provided an external frame of reference to which survey points could be fixed; this allowed not only for more accurate measurements but also for block surveys to be correctly located relative to each other. Heale noted that this would

> ultimately effect [*sic*] the value of every estate in the country, and lay the foundation for great future facilities in defining properties, planning public works, forming districts for political and municipal purposes, and for carrying out the far-seeing operations with a view to the future.

He went on to add:

> The Native land owner is already placed at a very great disadvantage in getting his land surveyed: rarely possessing ready money, he is obliged to find someone to survey his land on credit, and so often pays double what it costs a European.[714]

Heale continued to press his concerns. In March 1871, he advised Fenton that Māori 'dreaded' every act of survey as portending loss of lands and that surveyors were 'hunted off the land whenever seen'. In place of a system of general survey, 'wholly detached surveys' were conducted; a system that was 'open to every kind of objection', was 'enormously expensive', produced inaccurate results, and yielded surveys that could not be entered on a record map.[715]

As the Crown prepared to embark upon an extensive purchasing programme of Māori land as an integral part of the economic development plan for the colony, it was anxious that this objective should not be impeded. With this in mind, Native Minister McLean directed Haultain to investigate the conduct of surveys and associated costs as part of his general inquiry into the working of Native Land laws. After consulting Māori and Crown officials, Haultain concluded the prevailing system of employing private surveyors in Auckland Province had been the source of considerable difficulty for Māori. Reporting to McLean in July 1871, he noted that 'The uncertainty of speedy payment causes the surveyors to demand excessive prices for their work', while Māori had been put to the expense of having their lands resurveyed before the Court would entertain an application for title investigation. In some instances, opposing claimants each employed their own surveyors for the same or part of the same block of land because they would not trust their opponent's agent to lay down the boundaries they specified.[716]

Bay of Islands Resident Magistrate Robert Barstow, whom Haultain had consulted, noted that in some instances licensed interpreters had pressed Māori to allow surveys in return for kickbacks from surveyors. Land purchase agents generated further problems by advising Māori that surveyors' fees need not be paid until the land had been sold. Often blocks were not passed through the Court or were not sold, but the surveyors pressed for payment, leading some owners to give promissory notes. When such notes were not honoured, action in the Supreme Court, with all the attendant expenses, not uncommonly followed. Barstow recounted how the adventurer and settler, Charles De Thierry, tricked an ageing Tāmati Waka Nene into authorising a survey of Te Puna (at Kerikeri) that left him facing a bill of over £300. Barstow also claimed that rangatira Mangonui had been 'compelled to sacrifice' a 7,000-acre block at 'Pungahairi'

(Pungaere, also near Kerikeri) for £300, partly on account of survey charges amounting to £150.[717] Haultain suggested that such evils could be avoided if the Government were to assume the entire responsibility for surveys while Māori would continue to meet the costs.[718]

Heale also condemned the practice of pressuring Māori into signing promissory notes to compel payment through the Supreme Court as 'a reproach and a disgrace to the community'. The lands involved were frequently 'sold under execution at insignificant fractions of their value' and often secured by the surveyors involved.[719] Among those who found themselves summonsed were Honi Pama and Te Mariri, who had commissioned the survey of land on Rakitu and on Great Barrier Island for an agreed price of fivepence per acre, but had been charged 1s 6d per acre instead.[720]

Heale continued to make his views known directly to McLean, offering scathing criticism of surveying practices in the 'Northern districts' and predicting that unless surveys were conducted upon the basis of 'a sound practical system of triangulation', the outcome would be a 'hopeless confusion of titles'. He again noted that leaving the employment of surveyors to applicants to the Court had worked 'disastrously,' and this practice had arisen out of the earlier experience of northern Māori and their resulting 'extreme jealousy of Government surveyors'.[721] A year later, Heale reported that the position had not materially altered, again referring to the work that needed to be undertaken before the surveys of the northern districts could be put upon a 'satisfactory basis'.[722]

In his 1872 report, the secretary for crown lands, W S Moorhouse, also commented at length on the 'unreliable' state of surveys in the colony as a whole. He focused in particular on the Crown's liability for compensation for having failed in its obligation to produce accurate surveys as part of its contract with grantees. He referred to the 'present disorder', and set forth a number of far-reaching proposals for reform, commencing with the appointment of a Surveyor-General and the establishment of a central 'Survey Office'. But he also dwelt at some length on the survey of lands owned by Māori, how they had been inequitably affected, and how the work of the Native Land Court was being put at risk as a result. He noted:

> the usefulness of . . . [the Native Land Court] as at present administered is very much impaired by the fact that access to the Court, and the survey, and the ultimate Crown grant, all require the expenditure of money generally beyond the means of the Native, who, in order to bring his land into English tenure, has first to engage himself in the expense of a survey, then to incur considerable Court fees, for all of which, in addition to other unavoidable expenses not regulated by any Statute, his grant, when at last executed is impounded. To make these payments, the Native proprietor is generally compelled to borrow money upon conditions frequently equivalent to a material surrender of his proprietary independence; and therefore his first transaction connected with English tenure is remembered as having been the certain precursor of the complete and rapid extinction of his property. Thus the Native, to a great extent, is becoming chary of approaching an institution which has many times been the means of impoverishing his own race, and which, under existing conditions, has indirectly encouraged operations by the European, of a character alike demoralizing to himself and the Native.[723]

A table included in the report offered an 'Approximate Return of Native Crown Grants executed but not yet delivered to Grantees on 6th May 1872'. For Auckland Province, the number of grants stood at 336 of which 112 were listed as 'detained in Government Crown Lands Office for Surveyors' liens'.[724] In our view, the number of unreleased Crown grants illustrates the pressure that Māori owners were facing to meet the costs of putting their lands into a title system demanded by the Crown for the purpose of furthering colonisation.

Moorhouse's proposed solution was for the Crown to undertake all surveys of land for Māori, free of charge, together with the remission of all Native Land Court and Crown grant fees. Such an approach, he suggested, would better serve government goals, expediting the transfer of land out of Māori ownership by enabling them to acquire 'marketable' or vendible English titles. 'The surveys of

Native lands generally', he observed, 'have hitherto been remarkably loose, and the mere commencement of inevitable embarrassment, expense, and litigation.'[725] While his proposals would require the Crown to assume considerable costs, Moorhouse insisted that the expenditure 'would be more than balanced by the incalculable quantity of indirect profit, which must naturally follow the incorporation of the Native estate into the English system.'[726]

In a further report prepared for the Colonial Secretary in 1875, H S Palmer of the United Kingdom's Ordnance Survey was also especially critical of the state of surveys in Auckland Province: 'The history of the Auckland surveys is one of lamentable confusion and neglect, and want of system and accuracy.'[727] His assessment of the surveys conducted for Māori as they sought to secure titles for their lands was as scathing as those offered by Heale and Moorhouse. In his view, the practice of engaging private surveyors had rendered the establishment of a 'general system' impossible, and

> the work fell into the hands of an incompetent set, many of them utterly ignorant of the commonest rudiments of sound scientific surveying. It was accordingly done, though at frightful cost to the Natives, in a vague and slovenly style.

It had been only within the past year, he reported, that Heale had gained control of the method of survey and survey staff.[728]

Palmer offered one other important comment, noting that those surveyors who had been hired by Māori did 'just so much as was absolutely required by the rules of the Court'. Moreover, the requirement under section 67 of the Native Lands Act 1865 that surveyors be licensed by the Government had proved to be a check that was 'a very slight one practically'.[729]

(c) Introduction of new statutory rules

McLean clearly took account of the many criticisms of Haultain, Heale, and the Native Land Court judges as well as Māori themselves, although the major concern was to ensure that the work of the Native Land Court and the colonial project was not impeded, rather than the inequitable burden that was being placed on Māori. Nonetheless, certain protections were to be provided. The law relating to the conduct and requirements of surveys of lands owned by Māori was recast in the Native Land Act 1873. Section 33 deemed preliminary surveys to be 'imperative in every case' and was intended to ensure that those interested in a particular block should know of an impending investigation of title. However, as noted earlier, the judges disliked the provision, and Maning, in particular, argued that surveys prior to title determination were more likely to cause trouble than not. He maintained that, as the matter stood, Māori did not resist surveys if their land was encroached upon, confident that the Court would 'do them justice'. He predicted that such faith would be undermined if judges ordered surveys after a cursory and possibly incorrect investigation; applicants would think they had the backing of the Court, while counterclaimants, assuming the same, would resist the survey 'at any risk'.[730] That requirement, in the face of this opposition and having been found unworkable, was abolished in 1880.

Other protections were incidental upon regulations intended to ensure that surveys were properly conducted, but as the Hauraki Tribunal has commented, Māori benefited from an 'improvement in professional standards' as set out in the 1873 Act.[731]

These included:

- section 70, which required that all surveys were to be conducted 'in strict conformity' with the regulations prepared by the Surveyor-General;
- section 71, which required that all survey maps were to be certified by the Surveyor-General;
- section 72, which required native claimants or owners and the inspector of surveys to enter into signed agreements for surveys, set out in both Māori and English, such agreements to specify 'the fixed rate to be paid for the costs of such survey with plans thereof in duplicate, and the mode of payment'; and
- section 74, which forbade surveyors licensed under previous Acts from conducting surveys unless

> authorised by the inspector of surveys and provided that no person could seek to recover survey charges in any court unless the survey in question was authorised by the inspector.

Other sections were, however, more concerned with the recovery of costs. Section 69 empowered the Government, at the request of claimants or owners, to undertake and meet the costs of surveys; but the Act also permitted surveys to be paid for in land at the discretion of the Court (under section 73). The Native Land Act Amendment Act 1878 (No 2) confirmed the power of the Court to award surveyors payment of their costs in land or money.

By 1875, Heale was able to take charge of surveying of Māori land in Auckland and brought some order to the state of post-1867 survey of land in Te Raki.[732] Palmer noted that Heale had for a long time 'struggled in vain' against 'the evils of the Native-surveyor system', but it was 'only within the last few months that the entire control of the method of survey and employment of staff has come into his own hands'. Aside from being able to ensure the work was done to a professional standard, the experienced Heale was assisted by the belated advent of triangulation surveys in Auckland Province.[733] As we noted above, they had been introduced in Canterbury, Otago, and Wellington in 1849, 1856, and 1866 respectively but were not used in Auckland until 1871.[734]

The reforms contained in the Native Land Act 1873 arose in significant measure out of the confused state of surveys in Te Raki; but, while they offered Māori some protection against inaccurate surveys and high costs, such was the pace and scale of Crown purchasing in the region during the mid-1870s that the Survey Department was unable to meet the demand for plans. Heale advised McLean that the surveys conducted in North Auckland were almost all of blocks acquired by the Crown which were

> in almost every case interstitial pieces between former purchases from the Natives, some of them made many years ago; and the survey of them has consequently involved the

'It Would Have Been Impossible to Have Compiled a Plan from the Deeds' – the Huatau Survey[1]

In 1895, the Crown ran a survey line through the settlement of Ngāti Toro at Huatau. This case highlighted the long-term impact of the faulty surveys of numerous old land claims and early Crown purchases on Māori in Te Raki as they attempted to have their remaining interests defined by the Native Land Court. It also cast doubt on the claims of survey officials in the 1870s that any irregularities had been resolved.

The initial problem had arisen from James Odeland's old land claim (OLC 356–358) at the mouth of the Waihou River that was not surveyed at the time. The first land commission deemed the transaction (based on three different deeds) to be valid and awarded Odeland a total of 1,100 acres. However, the commission amended the boundaries in its report to exclude the area behind Tipata Creek, in accordance with Māori understandings of what had been transacted. As it turned out, Odeland would drown before his grants were issued, and the award was never surveyed.[2]

The second (Bell) commission then pursued the claim in 1858. The sole surviving signatory, Ngairo Whare Toetoe, joined with two other senior rangatira – Hohepa Ōtene and Wi Hopihona Tāhua – in agreeing with the boundaries that Bell read out, but when surveyor White attempted to cut the line at Huatau, Ngaro objected, calling him an 'unjust man' for having 'taken the land of the Mangamuku people'.[3] No further action was taken until the matter was referred to Judge Maning in 1874. Maning dismissed any remaining Māori claim to the land on the grounds that 'some of the natives acknowledge the rights of Odeland to a certain amount of land' and on evidence of 'peaceable possession [by Pākehā] for several years'. Again, nobody pursued the claim on behalf of Odeland's estate, and it lapsed, reverting not to Māori,

but to the Crown on the basis that native title had been validly extinguished. It still had not been surveyed at this point (circa 1880).

A Crown Lands Ranger raised the matter in 1891, believing the Crown was 'owed' some 600 acres; but when a survey was undertaken in 1895, Māori who had been living for generations on the land immediately protested, both as the survey line was cut, and when Seddon visited the district.[4]

On resurvey by the Crown in 1902, it was found that the area contained only 360 acres (26 acres of which was an urupā) and less than half of which had been transacted with Odeland.[5] Special legislation was passed in 1903 to empower the Native Land Court to hear the claim since Huatau was designated Crown land and outside its jurisdiction. At the hearing, William Webster, who said that he had known the area for 'over 50 years', told the court that the survey was incorrect, because:

> Instead of going on the lines mentioned in the grant, the surveyor ran his lines so as to include the acreage [granted]. The acreage was not really in the blocks sold and the Crown thus took nearly double the land actually sold by the natives. The survey included a large portion of the native settlement (Huatau) which had been occupied by the natives for very many years.[6]

An official from the Crown Lands Department admitted that the 1895 survey had mistakenly endeavoured to follow the deed descriptions 'strictly' and take in the full 1,100 acres, 'whereas there [was] not the area there.'[7] Huatau (184 acres) was then declared native land, the title of which was investigated. Stirling and Towers pointed out: 'The considerable expense of two surveys, an inordinate amount of staff time, and the generation of a considerable degree of ill will resulted in the Crown securing just 150 acres of poor quality land.'[8]

> recovery of old boundaries, originally very imperfectly surveyed, without any reference to triangulated or otherwise fixed points, and of which all marks on the ground had in many cases long since disappeared.

He went on to note that what he termed 'all the larger older surveys in the North have been closed', and that '[i]n doing so many errors of position have been rectified.'[735] This was not always the case, though, as the problems at Huatau would demonstrate. McLean, himself, noted in 1876 that want of 'proper surveys' had delayed the passage of Crown purchase blocks through the Native Land Court and thus the completion of transactions.[736]

Delays in surveys requested by Te Raki Māori of the lands that they proposed to retain were even more pronounced. In 1880, Auckland's chief surveyor, S P Smith, recorded:

> Pending more satisfactory arrangements as to recouping the sums advanced on surveys of . . . [Native Land Court blocks], I have not considered it advisable to undertake surveys for the Natives except in particular cases.

Surveys to meet the requirements of the Native Land Court had been conducted by authorised surveyors and the costs borne privately. Smith concluded:

> The cost per acre of these surveys I have no means of arriving at; but feel sure that it is very great, and a heavy burden to the owners. There are many reasons which make it certain that, if the Government had the power of taking *all* these surveys into their own hands, they could be done at once more accurately, and at half the cost involved in private surveys. [Emphasis in original.][737]

Nor had abuse of the system stopped. In 1875, evidence had emerged of substantial kickbacks being paid by surveyors to land purchase agents, including those contracted by the Government. Before the Auckland Provincial Council's Committee on Native Land Purchases, Crown

agent Edward Brissenden, for example, was accused of requiring a 25 per cent commission on work he directed to surveyors. Brissenden denied the allegation, but Heale subsequently acknowledged that it had substance.[738]

Further changes to the law relating to surveys followed. These largely continued the trend of facilitating the payment of survey costs, more especially in land, and ensuring that surveys were conducted to a proper standard. Thus section 39 of the Native Land Court Act 1880 stipulated that surveys for its purposes could only be carried out by government surveyors. (That provision was not included in the Native Land Court Act 1886; instead, survey plans had to be certified.) Notably, the capacity of the Court to compel the payment of costs was enhanced by the 1880 legislation. Under section 40, it could order the auction of a defined portion of the land to meet unpaid survey costs. The Court was also empowered to execute all instruments necessary to convey land in satisfaction of survey debts (under section 40). The 1882 Native Land Division Act stated that any person impeding survey was deemed to be guilty of contempt of the Court.

The Native Land Court Act 1886, which repealed the 1873 Act and its amendments, introduced charging orders in favour of surveyors to secure their costs (section 81). Such an order was to have the effect of a mortgage. An amendment of the Act two years later also provided that moneys owed under such a mortgage were repayable 12 months after an order had been made and that interest was payable at the rate of 5 per cent per annum.[739] The Native Land Court could authorise a survey and where that order had been approved by the Surveyor-General, the surveyor was authorised to enter the land, and any obstruction was deemed an offence.

The criminalisation of obstruction of a survey was confirmed under the Native Land Court Act 1894. Sections 61 and 62 allowed, respectively, the Court and the Surveyor-General to authorise the survey of and entry upon native land. Section 65 empowered the Court to vest a defined area of land in any individual to whom survey charges were due, or to charge land by way of mortgage 'on such terms as may seem just' and to order the sale of such land upon six months' expiration. Section 66 provided that the Court could levy interest on a mortgage as 'shall seem fair and reasonable, but not to exceed five per cent per annum'. Such interest was to be payable for not more than five years, although whether that implied, should charges remain unpaid, the land could be sold or vested is not clear. In the course of the debate on the Native Land Court Bill 1894, Hōne Heke Ngāpua objected to what he described as 'a cruel interest of 5 per cent on the principal'.[740] Finally, section 10 of the Native Land Laws Amendment Act 1896 empowered the Native Land Court to vest a defined area in trust for sale to meet survey (and other costs), the chief surveyor in each case to be one of the trustees.

Such changes strengthened the power of the Crown to order surveys, levy Māori landowners, and recover the costs in cash or in land. None of the later changes appears to have taken into account the representations to the 1891 Native Land Commission made by Māori in Te Raki and elsewhere that they continued to be troubled by defective and costly surveys. Witnesses described 'overlapping' surveys as a major cause of discontent among Ngāpuhi, and claimed a great deal of money had been spent on the preparation of plans only for the Court to reject them when brought forward, necessitating new surveys.[741] They were particularly critical of the Crown's taking of land as payment for survey charges.[742] At Waimate North, Wiremu Kātene asserted that 'if these lands of ours were sold they would scarcely produce sufficient money to pay for the heavy outlay entailed in connection with investigating the title.' Surveys, Kātene added, were 'a great source of difficulty with us', and he argued that native committees were better able to define tribal and hapū boundaries.[743] It was for this and other problems associated with the Native Land Court that leading Ngāpuhi rangatira stated a growing preference for the resolution of land disputes by native committees, rendering surveys, and especially subdivisional surveys, unnecessary, and enabling them to manage their own lands (see chapter 11).

(d) Evidence of survey costs in Te Raki, 1860s–90s

While comprehensive and systematic data relating to the survey costs that Te Raki Māori were required to bear are not available, the evidence indicates that from an early

stage they encountered serious difficulties in funding surveys, with some assisted by government advances (per section 77 of the Native Lands Act 1865) and others by cash advances from purchasers.[744]

The Crown was fully aware of the burden survey requirements were placing on Māori at an early stage. In 1866 and again in 1867, Judge William White (Mangonui) advised Fenton that many Māori were unable to meet survey and court costs, and he recommended heavy reductions lest they decline to bring their lands before the Court.[745] In 1867, Fenton drew Native Minister Richmond's attention to the burden imposed by survey costs, noting that survey and other expenses in respect of Waitaroto had amounted to 10 pence per acre, while the block had been offered for sale at one shilling per acre.[746] In 1871, Fenton again reported to McLean that survey costs were absorbing almost 'the entire proceeds of the land when sold'.[747] The Haultain commission and survey officers also made trenchant criticisms of the problems faced by Māori in this respect. These difficulties were caused, at least in part, by the costs of bringing that land into English tenure if they had to undertake multiple surveys to meet the requirements of the ten-owner rule, or to partition out interests as a result of sales.

We point to a number of examples. Armstrong provided details concerning the costs imposed on the owners of Otonga (28,036 acres) and Opuawhango (33,193 acres). He noted that in 1868, a surveyor named Newbury applied to register a survey lien over several blocks, including Otonga and Opuawhango, the lands having been acquired by the Auckland provincial government. The cost was £520, while additional partition surveys incurred a further £332, for a total of £852.[748] Armstrong also recorded that survey costs on 20 Te Waimate–Taiāmai blocks totalled £1,400; between 1871 and 1879, the Crown acquired 56,698 acres for £4,421, so that these charges absorbed 31.7 per cent of the purchase price. Among the blocks were:

- *The Waiohanga 2 block (481 acres):* The survey costs amounted to £62 12s, practically the whole of the purchase price of £65 paid by the Crown.
- *The Whaitapu block (2,716 acres):* Sold to the Crown for £212 12s 6d, the block carried survey charges of just over £166 or almost 78 per cent of the purchase price.
- *The Whakarongorua 1 block (810 acres):* The survey costs amounted to almost £51 while the Crown paid just under £61 for the block.
- *The Okaka block (915 acres):* The survey costs amounted to £63 4s, absorbing some 72 per cent of the purchase price of £87 3s 9d paid by the Crown.
- *The Te Horo block (132 acres):* The survey costs of £32 exceeded the £20 that the Crown paid.[749]

Other Te Raki examples include the 12,433-acre Pakanae block. In 1875, the Crown purchased Pakanae 1 and 3, a total of 11,430 acres. Survey charges amounted to £260 15s 9d, a sum deducted from the £799 paid for the two blocks; that is, almost 33 per cent of the purchase price.[750] Such charges bear little relation to the Crown's 'norm' of survey costs being a small percentage of the overall returns from sales.

The inspector of surveys prepared a return for 1874 and 1875 that included a list of blocks 'North of Auckland', their acreage, and the costs of survey. Most (but not all) were located within the Te Raki inquiry district. The blocks were grouped into four main categories:

- those conducted under 'Contract mileage rates', a total of 292,912 acres with an average survey cost of twopence per acre;
- those conducted under 'Contract average rates', a total of 61,429 acres with an average cost of 3.5 pence per acre;
- those conducted under 'Surveyors on daily salary', a total of 64,916 acres at an average cost of 4.6 pence per acre; and
- '[c]ost of surveys under Native Lands Act 1865', a total of 29,645 acres (in 15 blocks) at an average cost of 8.8 pence per acre.[751]

If it is assumed that the categories were constructed upon the same basis, then the range of costs, from twopence to 8.8 pence per acre seems extraordinary. One explanation may lie in the size of the blocks, those surveyed under the Native Lands Act 1865 being mostly small, while it is also possible that the cost of surveys under the Act included the expenses incurred by the

surveyors attending the Court. As we have explained, such costs, which could be considerable when cases were contested, adjourned, or moved, also had to be borne by Māori.

In an effort to clear survey (and other costs), owners offered blocks to the Crown or otherwise set them apart for sale. In 1887, for example, the owners of the Maunu block asked Native Minister Ballance 'how are we to act in selling our land so that we may discharge our debt to the surveyor to whom we are in debt that is to say under the Act of 1886 which came into force in 1887'?[752] The land set aside was 168 acres of Maunu 1E: although the details are obscure, it appears that a private sale took place and that the proceeds were employed to discharge the survey debt.[753]

Historian Paula Berghan detailed several other examples of sales associated with survey debts in our inquiry district. In 1889, for example, the owners of the 1,012-acre Papakauri block offered it to the Crown in order to discharge a survey lien of £45 5s 4d. The Crown acquired 890 acres at two shillings per acre, the lien thus absorbing almost half of the sale price.[754] The 3,226-acre Kaurinui 3 carried a survey lien in favour of the Government of £87 3s 9d. In 1899, the owners offered the block to the Crown, insisting that they had no other way of meeting the survey (and rate) costs. The Crown acquired the block at 2s 6d per acre but remitted the lien, effectively raising the price to just over three shillings per acre of which survey costs absorbed almost 22 per cent. In 1903, Kaurinui 3A of 2,193 acres was partitioned out and awarded to the Crown.[755] By 1895, the owners of the 1,106-acre Mareikura F, in an effort to discharge a survey lien (including interest over two-and-a-half years) of £72 7s 2d, sold the block to the Crown, the lien being deducted from the purchase price.[756] A final example which Berghan gave was Motukaraka West. In 1897, the Native Land Court vested the 775-acre block in two trustees for sale, one being the chief surveyor. In 1915, the block was declared to be Crown land.[757] Transactions of that kind support the Crown's own concession that any sale of land to meet excessive survey charges constituted a failure on its part to implement a fair titling regime and to protect the interests of Māori.

9.7.3 Conclusions and treaty analysis

Our analysis leads us to a number of conclusions. The first is that prior to 1872, Te Raki Māori largely chose to engage with the Native Land Court to secure titles and advance mutually advantageous relationships and partnerships with the Crown and settlers. They also sought to secure the legal basis on which they could invest in and derive revenue from their lands, preserving their place, authority, and role in what they understood would be a new social, economic, and political order. Our second conclusion is that largely voluntary engagement with the Court increasingly gave way during the 1870s to one that was involuntary and defensive. The evidence is clear that the pace of titling during the 1870s reflected the arrival of the Crown's purchase agents and their liberal use of tāmana to draw owners into the court process. As the Government's financial difficulties increased towards the end of the 1870s and purchasing contracted, and as the opposition of Te Raki Māori to engagement with the Court intensified, the pace of titling slowed. Thirdly, we conclude that engagement, whether voluntary or involuntary, imposed heavy costs on Te Raki Māori. Despite calls for far-reaching reforms, especially with respect to multiple fees and expenses associated with Native Land Court hearings, the funding of surveys, and the allocation of survey costs, little was done to ease the financial burden on Māori. Instead, the focus was on ensuring the recovery of the costs incurred by Māori generally in the form of land.

In 1891, Native Department Under-Secretary T W Lewis famously advised the Native Land Laws Commission that 'the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement'. He went on to add:

> Unless this object is attained the Court serves no good purpose, and the Natives would be better off without it, as, in my opinion, fairer Native occupation would be had under

> the Maoris' own customs and usages without any intervention whatever from the outside. Therefore, in speaking of the Native Land Court, this . . . I consider, must be applied – viz, that there should be a final and definite ascertainment of the Native title in such a way as to enable either the Government or private individuals to purchase Native land.[758]

In other words, the main beneficiaries of the conversion of customary tenure and title determination were the colonists. Yet the burden fell largely on Māori who were compelled to contribute to that process in the form of heavy court costs and survey charges. The result for Māori, as Moorhouse expressed it, was that the 'first transaction connected with English tenure [was] remembered as the certain precursor of the complete and rapid extinction of his property'.[759] Nor did the inequities end there; every partition, succession, and rehearing came with a further burden of costs (direct and indirect).

In his 1871 inquiry into the workings of the Native Lands Acts, Haultain endorsed the views of some of his Māori respondents, among them Te Raki leaders Hōne Mohi Tāwhai, Eru Nehua, and Wiremu Pōmare, proposing that the Government accept full responsibility for the conduct and cost of surveying on the grounds that the colony as a whole benefited.[760] Further, in his 'Memorandum on the operation of the Native Lands Court', Sir William Martin proposed that all surveys should incur 'a fixed rate per acre', and that all surveys should be conducted by officers of the Court.[761] The Native Land Act 1873 did empower the Government to undertake surveys at the request of owners and to pay the costs, at least initially, and this certainly happened on occasion. For example, the Crown met the costs of surveying Puhipuhi 1 block and Eru Nehua's reserve as part of the purchase agreement. However, the focus of that Act and subsequent legislation was on ensuring that the costs of survey were recovered from the owners, through the excision of a portion of land and by compulsory sale if need be.

Te Raki Māori were faced with an extra burden in having their titles defined as a result of the deplorable state of surveys in the district because of multiple, overlapping, and poorly surveyed old land claims and early Crown purchases. The Crown's failure to introduce into Te Raki a survey system to provide 'a robust framework of regulations and a triangulation control network to ensure accuracy'[762] constituted a failure to protect the interests of Māori with respect not only to ownership but also to the development and management of their lands. The consequence of complex, faulty, and expensive corrective surveys had to be borne by Māori as they sought to have title defined to their remaining lands through the Native Land Court system.

The Tribunal has previously found that in Northland the provisions of the Native Land Act 1873, intended to prevent the survey-related defects and abuses apparent in the district, under the pressure of the Crown's purchase agents were frequently infringed upon in an attempt to accelerate surveys, title investigations, and alienation. *The Te Roroa Report 1992* concluded:

> the Crown and its agents clearly failed to control the survey and furnish approved survey plans that defined boundaries for purposes of title and sale in accordance with the vendors' wishes and intentions. Its dealings with Te Roroa in respect of the survey were unfair and dishonourable and breached articles 2 and 3 of the Treaty.[763]

The evidence from Te Raki supports those conclusions, but we add that the Crown's first concern was its own survey needs, not those of Te Raki Māori, leaving many to turn to private, incompetent surveyors who indulged in unfair practices for personal profit. The reports prepared by the Surveyor-General indicate that during the 1870s and 1880s at least, the Crown focused its survey efforts on its own purchases, clearly prioritising them over those required by Māori attempting to utilise the Native Land Court system for their own benefit. In 1908, the Native Land Commission could still refer to 'huge arrears of survey work to be undertaken' in Northland.[764]

One of the major consequences of survey deficiencies

would become apparent when the Government Advances to Settlers Act 1894, a major factor in the post-1890 expansion of the primary sector, excluded native freehold land from the classes of land that qualified as security for loans. If the purpose of the Native Land Court was, as the Crown claimed in its submissions, to convert customary Māori land in collective ownership into titles derived from the Crown and 'facilitate Māori involvement in the new colonial economy', then it failed, proving unable to deliver titles considered sufficient as security for State development loans.[765]

Accordingly, we find that:

- By rejecting all requests by Te Raki Māori for the right, opportunity, and authority to conduct title investigations through their own institutions, by empowering individual Māori to act independently of co-owners, and by employing questionable purchasing tactics, the Crown rendered engagement with the Native Land Court and its processes practically obligatory, thereby breaching te mātāpono o te tino rangatiratanga.
- The process of tenure conversion meant many Te Raki Māori incurred substantial debt, notably in the form of survey costs. Although the extinguishment of customary ownership principally served the interests of the Crown, Māori were forced to meet the costs, often through the loss of land. By failing to ensure that the costs of extinguishing customary Māori title in the Native Land Court were allocated according to the distribution of benefits arising from the process, the Crown breached te mātāpono o te mana taurite/the principle of equity, in breach of te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te matapopore moroki/the principle of active protection.

9.8 Were Sufficient Forms of Remedy and Redress Available?

9.8.1 Introduction

Beginning with the Native Lands Act 1865, Native Land legislation contained provisions for rehearings. Prior to 1880, applications were dealt with by the Governor-in-Council, and after 1880 by the chief judge of the Native Land Court. Besides rehearings, the only other recourse open to those dissatisfied with decisions of the Native Land Court was petitioning Parliament. Responding to growing criticism of the rehearing process and the Native Affairs Committee's insistence that it did not, and could not, act as a de facto court of appeal, the Government established the Native Appellate Court in 1894. The key issue before us is whether the provisions for rehearing, petitions to Parliament, and appeals to the Native Appellate Court were of themselves fair and robust, and whether those avenues collectively provided an adequate means through which Te Raki Māori might seek remedy and redress.

The claimants argued that the Crown failed to provide adequate recourse or remedies for those of Ngā Hapū o Te Raki aggrieved by decisions of the Native Land Court. They submitted that established remedial mechanisms were inadequate and that the Crown was aware of court decisions that resulted in injustice; however, it failed to respond appropriately. The claimants acknowledged that, prior to 1894, aggrieved parties could apply for a rehearing. They argued, however, that this remedy was essentially illusory, because rehearings lacked consistent or transparent criteria, and the chief judge of the Native Land Court was reluctant to interfere with the decisions of his judges. Additionally, applications could be, and often were, refused without explanation, while successful applications resulted in new hearings and a second round of costs. As a consequence, claimants argued, few rehearings were pursued and fewer granted. An alternative to rehearings were petitions, but claimants suggested that the Native Affairs Committee tended to favour the Crown's view of disputes.[766] Furthermore, the claimants argued that the Native Appellate Court, established in 1894, 'was not a *physically* separate Court' (emphasis in original) but comprised judges already sitting in the Native Land Court itself.[767] They submitted that the Native Appellate Court was ineffective for reasons relating to the rules pertaining to the lodging of notices of appeal and the requirement to pay a deposit as security for the costs involved.[768]

The Crown noted that provision for rehearings was included in all Native Land legislation from 1865 onwards. Crown counsel argued that Te Raki Māori were aware of that provision, that there was no reason to suppose that applications for rehearings were not dealt with on their merits, and that the apparently low number of applications lodged by Te Raki Māori reflected the fact that many title investigations were based upon prior or out-of-court agreements. Further, counsel argued that the Native Affairs Committee acted as 'a de facto court of appeal', could take evidence, and 'invariably' sought background information from the Native Department. The Crown submitted that there was no evidence to support any claim of systemic failure with respect to both rehearing provisions and the operation of the Native Affairs Committee as a de facto court of appeal. Finally, the Crown dismissed the position adopted by claimants with respect to the status of the Native Appellate Court.[769]

9.8.2 The Tribunal's analysis

The right of appeal from judicial decisions is a crucial one, but the Crown was slow to institute a formal process. Prior to the establishment of the Native Appellate Court in 1894, Te Raki Māori aggrieved by the Native Land Court's decisions had two lesser avenues through which to seek redress: rehearings and petitions. In the following sections, we examine these in turn and offer some conclusions.

(1) *Rehearings*

Provisions relating to rehearings (but not to appeals) were included in the Native Lands Act 1865. Section 81 empowered the Governor-in-Council to order a rehearing, provided the order was made within six months of the Native Land Court's original decision. Rehearings would be held before one or more judges of the Court and two or more assessors. All previous proceedings dealing with the matter in question would be annulled and the case would be heard afresh (although as the Puhipuhi rehearing demonstrates, this rule was not necessarily followed by judges, who sometimes compared the evidence they heard with what had been said on previous occasions). So although section 81 was headed 'Appeals', it in fact provided for a rehearing by the same Court, accruing all the costs that attended the original hearing. The Act did not specify the grounds on which an application for a rehearing could be made, any procedure by which applications should be made, nor the remedies available. The rules issued under the Act were also silent on these matters.[770] These provisions were carried forward into the Native Land Act 1873.

As noted above, there was a six-month period within which to apply for a rehearing under the 1865 Act. Section 20 of the Native Lands Act 1869 reduced this to three months. Section 58 of the Native Land Act 1873 restored the period to six months, and then section 10 of the Native Land Act Amendment Act (No 2) 1878 again reduced it to a three-month period.

Under the Native Lands Act 1865, a decision to order a rehearing rested with the Governor-in-Council. In practice, the Government referred applications to the chief judge of the Native Land Court for his recommendation. Not until 1880 did section 47 of the Native Land Court Act 1880 transfer full responsibility to the chief judge. The legislation did not specify the matters the chief judge was required to consider when reaching a decision, nor the process that should be followed.[771] While anyone could seek a rehearing under the Native Lands Act 1865, section 47 of the 1880 Act limited that right to 'any Native who feels aggrieved by the decision of the Court' and to the Governor. The Act provided that rehearings would be held before two judges (one of whom could be the chief judge) and one or two assessors 'as the Chief Judge shall think fit'. The Court could 'affirm the original decision, or reverse, vary, or alter the same, or give such other judgment and make such orders as it may think the justice of the case requires'. Rehearings continued to mean that previous decisions were cancelled and that the entire case, with all the attendant costs, would be reheard. Māori were not involved in the decision-making process on applications for rehearing (until 1888), while their participation even as assessors in rehearing proceedings was entirely at the discretion of the chief judge.

The difficulty of securing a rehearing and the associated costs encouraged a growing number of Te Raki Māori

to petition Parliament for redress, among them Hōne Te Awa and 15 others of the Bay of Islands (1876), Wiremu Puata and five others of the Bay of Islands (1876), Hirini Taiwhanga and 70 others (1876), and Reihana Paraone and 10 others (1880).[772] Of these, none were successful.[773] In 1876, the growing number of petitions induced the Native Affairs Committee to recommend the establishment of a Court of Appeal to deal with complaints from those aggrieved by decisions of the Native Land Court. In 1884, the same committee drew the Government's attention to the fact that it was devoting a large proportion of its time to 'receiving statements in regard to claims for rehearings which have been refused by the Chief Judge of the Native Land Court'. Changing membership, interrupted sittings, and the expense involved in summonsing and maintaining witnesses meant that the committee was unable to arrive at properly considered and just decisions. It went on to note that 'the Natives complain that it frequently happens that the Chief Judge is himself the person from whose decision they appeal' and it remarked on the irregularity of this situation: that the Native Land Court was 'in the exceptional position that there is no appeal from its decision, and no remedy for its wrongful awards, except through special legislation'.[774]

The Government was slow to respond. The rehearing provisions of the Native Land Court Act 1880 remained in force until the passage of the Native Land Court Act 1886 Amendment Act 1888, although section 2 of the Native Land Acts Amendment Act 1881 had allowed the chief judge to order rehearings for part of a case or block. Under section 76 of the Native Land Court Act 1886, the chief judge continued to hear applications for rehearings unless he was a party to the decision appealed against, in which case the matter would be referred to two judges named by him. Section 77 provided for rehearings to be conducted before two judges – of whom the chief judge could be one, unless he were a party to the original decision – and one or two assessors as he saw fit. Two years later, the law was changed again: section 24 of the Native Land Court Act 1886 Amendment Act 1888 repealed section 76 (and section 77) and provided that the chief judge, 'assisted by an Assessor', was required to decide upon applications for rehearings in open court and that rehearings would be determined by a court of no fewer than two judges, one of whom could be the chief judge and the other an assessor, 'none of whom shall have adjudicated on the case at any former time'.[775]

It is not entirely clear what matters the chief judge took into account when preparing recommendations for the Government to consider, or in reaching his own decisions. According to historian Dr Grant Phillipson, the provisions relating to rehearings were intended to act as 'a safety valve for when court decisions posed a risk of armed conflict'. Other factors included 'the threat of trouble over a block, evidence that a decision was "manifestly wrong", technical or procedural mistakes, and glaring inconsistencies in the Court's decisions'.[776]

Whether the Crown's desire to acquire land that was the subject of an application for rehearing influenced such decisions is not entirely clear, although the Government's land purchase agents did offer advice over whether rehearings should be granted.[777] So long as the Government itself rather than the chief judge made decisions over whether an application would be allowed to proceed, the provision of this advice raised a serious question over potential conflicts of interest. Crown purchase agents had direct access to the Native Minister and clearly sought to exercise such influence as they could on rehearing decisions, as demonstrated in the case of Tangihua (noted in the following section); Paul Thomas noted in that context, 'it was up to the Native Minister to recommend to the Governor-in-Council whether the rehearings [sought] should be granted.'[778]

Few details relating to the number of rehearings are available. A search of Berghan's block narratives for Te Raki yields just a handful of examples, but that may reflect the fact that few Native Land Court records identified 'rehearings' by this title.[779] Overall, at least 29 rehearings were ordered in Te Raki during this period, most of them after 1880.[780] From the following examples, nevertheless, it is possible to draw some conclusions about the difficulties Te Raki Māori confronted when endeavouring to secure rehearings and about the manner in which the Crown chose to deal with applications.

(a) Tangihua

Tangihua is located on the border of the Whāngārei sub-district and Kaipara.[781] In 1873, the Crown initiated negotiations for the purchase of the block and in February 1875, the objections of counterclaimants notwithstanding, the 15,531-acre block was awarded to Te Tirarau Kūkupa and Maraea Te Waiata. Within a few days, Arama Karaka Haututu and seven others wrote to the chief judge seeking a rehearing. Civil Commissioner Kemp, who had negotiated the purchase and was anxious to complete the transaction, defended the Native Land Court's decision and advised Native Minister McLean against a rehearing on the grounds that, if it was questioned, the confidence of Māori in the Court's proceedings would be greatly weakened. McLean accepted that advice and advised the Governor accordingly. The Crown completed the purchase on 23 June 1875. In this instance, it seems likely that the decision to decline the application for a rehearing was influenced by the Crown's determination to protect its interest in the block.

(b) Te Tapuwae

Te Tapuwae, a Hokianga block in which both Ngāti Here and Ngāti Tūpoto claimed rights, was brought to our attention as an example that illustrated 'many of the negative elements usually present in northern land purchases', including:

> the lack of any 'preliminary inquiry', the intervention of interested third parties which exacerbated conflict, the Crown's manipulation of survey liens and hapu divisions to achieve its own objects, expensive lawyers, accusations of judicial partiality, incompetence, deception, and ultimately, land loss.[782]

In 1874, John Lundon and Frederick Whitaker had arranged with Nui Hare and Ngāti Here for the supply of timber for railway sleepers from the block, prompting objections from Hōne Mohi Tāwhai that the block belonged to Ngāti Tūpoto. Lundon and Whitaker advised Nui Hare to put the land through the Native Land Court so as to settle the question of ownership. In accordance with this advice, Nui Hare accompanied Lundon to Auckland, where he arranged with the surveyor, Tole, to have the land surveyed at the rate of fourpence per acre, to be paid within six months of its passing through the Court.[783] This agreement was put in writing. However, after survey, Tole sold the plans to the Government for £142 9s 4d without Nui Hare's knowledge. According to Lundon, a 'great injustice [had] been done to these people', who remained unaware that the surveyor 'had given the plans over to the Government', which now held a lien on the block. Lundon noted that '[t]hey were very much annoyed about it on account of their written agreement with Mr Tole.'[784]

The Crown now became more directly involved. Preece was anxious to secure road access to adjoining government-owned land. He had tried to buy the block previously but without success and, with Lundon's assistance, now won Ngāti Here's consent to put a road through it. Ngāti Tūpoto objected, saying that to consent to the road would be tantamount to admitting Ngāti Here's claim. However, Mohi Tāwhai was willing to sell the land, an offer which Preece at first refused and then accepted, fearing that road access would otherwise continue to be denied. He paid an advance of £100 on the block, upon which Ngāti Tūpoto made an application to the Court for a title determination. From their point of view, this had been arranged openly and fairly; from Ngāti Here's perspective, the payment was surreptitious and wrong.[785] They were particularly aggrieved when the survey plan they had commissioned was submitted to the Court with Ngāti Tūpoto's application.[786] Ngāti Here representatives then appeared in Court to object both to the application and the use of their plan. Monro, the presiding judge, replied that the land had been properly gazetted and that he would hear the case whether they were present or not.[787]

A protracted hearing followed in 1879. Nui Hare and his party were unprepared and convinced that Monro was biased against them 'on account of [the Government] giving them [Ngāti Tūpoto] money'.[788] Charles Nelson, who had taken over from Preece, kept an eye on the Crown's interests during proceedings. Amid a 'great deal of excitement', Monro divided the block equally between Ngāti Here and Ngāti Tūpoto, each party being awarded a block

of 3,147 acres, while a reserve of 2,000 acres was set aside for their joint ownership. Ngāti Here immediately sought a rehearing, asking Nelson not to make any further payment on the land until the matter was settled, a request that he ignored. Another £500 went to Tāwhai's party, while Ngāti Here refused to accept the offer made to them. Both sides were armed and conflict looked likely. Native Minister Sheehan apparently asked Lundon to use his influence to calm matters down – and to ensure that road access was not threatened. According to Nui Hare's subsequent petition, Sheehan had instructed Lundon to tell him that there would be a rehearing. On this basis, and with the assistance of Webster, von Sturmer, and other local colonists, the peace was kept. Lundon also advised Hare to engage a lawyer (which he did at what was said to be great cost) and make a direct approach to Chief Judge Fenton in order to confirm that a rehearing would take place.[789]

According to Hare and his lawyer (surveyor Tole's brother), Fenton had agreed to a rehearing. But it was standard practice for Fenton to refer such matters to the judge concerned, and Monro insisted that 'equal justice had been done to all parties and that a rehearing was unnecessary'. Armstrong and Subasic noted that Fenton, who 'was always most reluctant to go against the advice of his judges', recommended to Sheehan that none be granted, a recommendation that Sheehan accepted.[790] Fenton denied a claim made by Ngāti Here that he had promised to approve the case being heard again, stating that he had no recollection of the matter.

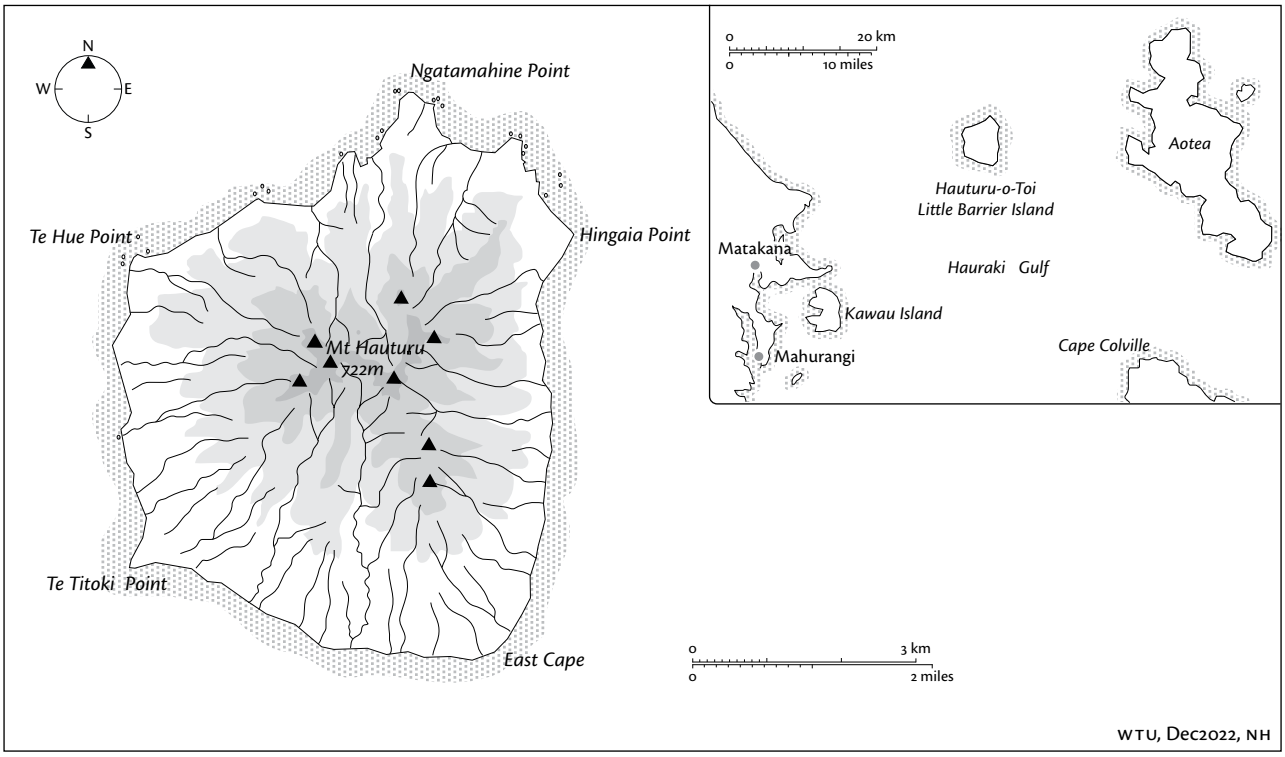
Sheehan also requested a report from Nelson, who blamed 'keen and zealous advisers' for the trouble, but acknowledged that the block had been in dispute for a number of years. He remained optimistic that the remaining land could be purchased and suggested it be included in a list of lands 'under negotiation', but cautioned that he might 'not for some time, be able to show that moneys have been paid on account of such negotiations'.[791]

When the case was called again, Ngāti Here found to their dismay that it was not for a rehearing but to supply a list of names for insertion in the Crown grant for their portion of the land. They refused, stating that they would wait upon the rehearing they had been promised. Monro threatened that he would go ahead and issue a Crown grant for that portion on which the Government had advanced money.[792] At this point, there was a £64 debt owed by Ngāti Here as their part of the survey costs. According to Lundon, upon hearing this 'the Natives hung down their heads and looked very black, and went across the river very dark, what the natives themselves call "pouri".'[793]

On Lundon's advice, Ngāti Here – joined by a party of Ngāti Tūpoto who had not accepted payments – petitioned Parliament. There can be no doubt that the Native Affairs Committee took the allegations seriously. It called a number of witnesses, including Lundon, Tole (Nui Hare's lawyer), Gill of the Native Land Purchase Department, and Chief Judge Fenton himself. The chief judge acknowledged that if the facts as set out in the petition were accurate, a 'miscarriage of justice' had occurred. As to his own actions, he did not remember having promised a rehearing, being (he said) over-worked and tired at the time;[794] yet according to Tole, the promise had been given 'in a most unmistakable way'.[795] R J Gill outlined the course of the Crown's purchase.

The Native Affairs Committee reported that 'the land . . . seems to have been fairly dealt with by the Court' but recommended that the Government inquire into the alleged grievances, including Fenton's original promise to grant a rehearing and Monro's subsequent actions. Native Minister Bryce rejected that recommendation. In his view, the case was an appeal against a decision of the Native Land Court, and if the Government were to review such a decision by 'extra judicial inquiry', this would be tantamount to creating a new tribunal.[796]

A rehearing did, however, eventually take place in 1882, for reasons that are not explained. Since the statutory period had lapsed, special legislation was required in the form of the Special Powers and Contracts Act 1881. The Native Land Court reaffirmed its original decision. In August 1882, Tapuwae was partitioned into Tapuwae 1 (3,147 acres, awarded to Ngāti Here), Tapuwae 2 (3,147



Map 9.1: Hauturu-o-Toi (Little Barrier Island).

acres, awarded to the Crown), Tapuwae 3 (1,040 acres, awarded to Ngāti Tūpoto and Ngāti Here), and Tapuwae 4 (1,040 acres, awarded to Ngāti Tūpoto and Ngāti Here).

While the circumstances under which a decision was made to allow, or disallow, a rehearing remain unclear, the available evidence again indicates that decisions over rehearings were often entangled with Crown purchase plans that had exacerbated tribal rivalries. Further, the expense of prosecuting their claims had left Ngāti Here in debt. There was the survey lien to pay off, plus the expenses of legal service and court fees. Hare wrote to the Government offering 520 acres (the Ngāti Here share of Tapuwai 4) for 10 shillings per acre. The Crown did not immediately accept the offer, but undertook further purchasing in Tapuwae in the following decade.[797]

(c) Hauturu

Title determination in the case of Hauturu (Little Barrier Island), one of the few areas Mahurangi Māori still retained by the 1870s, has been investigated by historian Ralph Johnson. The first of many hearings commenced in 1878 but was adjourned on the grounds that a suitable survey plan had not been submitted. A second hearing was held in July 1880, when the Court, in the absence of evidence from Ngātiwai, awarded ownership to Te Hemara Tauhia of Ngāti Rongo, Te Kawerau, and Te Uri o Hau 'and all those who joined with him'. The Ngātiwai claimants were granted a rehearing on the basis that they had not participated in the proceedings because they were unaware a survey plan had been completed. This was held in May 1881, but Chief Judge Fenton and native assessor

Te Wiremu Te Awaitaia could not agree on a decision. As a result of this deadlock, the case had to be heard again. In June 1881, Judges Monro and O'Brien awarded the land to five members of Ngātiwai. The Crown then decided that it required the island for defence purposes. In response to a request from the Crown, the Court (under section 36 of the Native Land Court Act 1880) declared the land to be inalienable except to the Crown.[798]

When Te Hemara Tauhia and 32 others petitioned Parliament, the Native Affairs Committee merely noted: '[t]he Government is now trying to settle the matter, and the Committee recommend that no effort should be spared to bring to a satisfactory conclusion a very serious dispute.'[799] In June 1881, two applications for a rehearing were lodged; in response, in July 1881, the Government gazetted a notification declaring its prior rights as provided under section 3 of the Government Native Land Purchases Act 1877.

In 1882, the Native Affairs Committee considered another petition against the decision, this time lodged by Henare Te Moananui and Paratene Te Manu of Ngātiwai, and concluded:

> It is evident that a mere legal decision is not likely to settle this case satisfactorily, and the committee would therefore recommend Government to continue its efforts to arrive at a peaceful solution either through purchase or some other way.[800]

Under section 2 of the Special Powers and Contracts Act 1883, the Native Land Court was required to investigate afresh the ownership of Hauturu. A hearing was held before Chief Judge JE Macdonald in February 1884.[801] The Crown was not represented, but Macdonald chose to contact Native Minister Bryce as to whether the Crown still wished to acquire the island and pressed him to reimpose restrictions on alienation (we discuss the Crown's purchase of Hauturu in chapter 10). Such action, Johnson observed, 'makes it difficult to credit the court hearing with any sense of judicial impartiality'. Johnson described Macdonald's interactions with Bryce as constituting 'extraordinary conduct on the part of the Chief Judge [that] appears to have compromised the integrity of [the] Native Land Court system'.[802] The Court awarded the land to the descendants of Maki and Mataahu, – viz to Te Kawerau, including Rahui, the daughter of Te Kiri' but did not impose any restrictions on alienation, at their request.[803]

The Court's decision elicited an application, lodged in September 1884, from Ngātiwai for a further rehearing. On the recommendation of the Native Select Committee, a clause was inserted into the Special Powers and Contracts Act 1884, and Hauturu was declared to be customary land again, thus falling within the jurisdiction of the Native Land Court. Both groups of claimants lodged applications, and a final hearing was conducted by Judge Edward Puckey in October 1886, in which the Court found for Ngātiwai. In December 1886, Ngāti Whātua applied for a rehearing, but their request was denied, thus bringing to an end a struggle that had significant impacts on the hapū involved. Johnson concluded that the Government intervened directly in the Native Land Court's handling of Hauturu at least partly to try to ensure that the island did not pass into private ownership.[804] While we reserve comment on the ultimate outcome of the case, we can only agree with Johnson's assessment that the Court's rehearing process was in this instance plagued by a weak-to-non-existent understanding of judicial independence and appeared subordinate – at least for a period – to the aims of the Crown.

(d) Te Pupuke

Historian Alexandra Horsley has examined the title history of the Te Pupuke block in Whangaroa.[805] The first hearing for this block was held in 1880 on the application of Hāre Hongi Hika and Paora Ururoa but it was adjourned because the surveyor had not been paid for work on the Waihapa block and refused to hand over the plans. When the case came on again in 1882, Hika and Ururoa advised the Court that they intended placing the block before the Komiti o te Tiriti o Waitangi (discussed in chapter 11). According to the later evidence of counter-claimant Taniora Arapata of Ngāti Pou, it was he who had called the komiti together.[806] Whatever the truth of the

matter, the increasing dissatisfaction with the Native Land Court and desire for a Māori-controlled alternative would complicate the determination of title in Te Pupuke in the years that followed.

The Komiti o te Tiriti o Waitangi, comprised of 10 rangatira chaired by Wiremu Kātene, heard the case in 1884 over the course of two days. It divided the land between Taniora Arapata and Hika and Ururoa. According to Arapata, Hāre Hongi Hika's party rejected the decision and boundaries set down by the komiti.[807] The matter seems to have been referred back to the Native Land Court by Arapata, the following year, in order to gain legal title for his portion. Hāre Hongi Hika's people did not attend. According to Arapata, their party of 30 had left the hearing and they gave no evidence. Natanahira Te Pona appeared as a counterclaimant but not as a representative for Hāre Hongi Hika and his evidence was not recorded.[808] Taniora Arapata claimed the western portion of Te Pupuke through ancestry (namely through Te Pikinga) but admitted the right of Hongi Hika's party to the eastern side, informing the Court of the komiti's decision. The Court accordingly awarded 'Te Pupuke West' to Arapata and his party of 65 claimants.[809]

Around the time of Hāre Hongi Hika's death in 1885, Mita Hape and Paora Ururoa petitioned Parliament for a rehearing stating that the block had been awarded to the wrong people. The Native Affairs Committee merely noted 'that this is a re-hearing case, and entirely in the hands of the Native Land Court'.[810] The chief judge agreed to a rehearing after Mita Hape had paid a deposit of £24 to cover the costs, possibly in anticipation of political objections. As Judge George Barton who presided over the rehearing in 1891 noted, the statutory grounds for that demand were questionable. While section 74 of the Native Land Court Act 1886 empowered the Court to demand a deposit to cover the costs of a hearing, that provision was not repeated in the sections of the Act dealing with rehearings.[811]

In 1891, Mita Hape and Te Ururoa wrote to the Native Land Court stating that they intended to withdraw their case. Horsley noted that Mita Hape had signed the 1888 petition addressed to the Queen which protested about the impact of the Native Land laws on Māori: that 'there were a great many troubles and pains oppressing' Maori caused by the 'bad laws' which were being enacted by Parliament.[812] The attempt to withdraw the case in 1891 was prompted in part by the recent discussions held with the Native Land Laws Commission. Hape and Ururoa told Judge Barton:

> This is to inform you that the Land Court at Whangaroa has been made of none effect concerning Te Pupuke and other lands of ours at Whangaroa on account of the burdensomeness of the (Native) land laws. The words of the Commissioner have reached us (requesting) that any observed evil (working) of the NL Court should be made public. Enough, the right methods have been shown by the Native people to the Commissioners. The Commissioners have said that a Native Committee will be set up to adjudicate on Native lands in the immediate future, therefore we have agreed to this at the present. time. Therefore for the present our lands are being withheld. Enough, do you all remain away and not waste time.[813]

Resistance on the part of Hape and Ururoa to the further involvement of the Court notwithstanding, a rehearing was held in June 1891 before Judges Barton and Spencer von Sturmer and native assessor Tuta Tamati. A further effort by Mita Hape to stop the case was also unsuccessful. He asked the Court whether it had received his letters and stated that 'the natives had decided after several meetings not to bring this case before the Court.'[814] However Taniora Arapata wanted the case to proceed. After a lengthy discussion the Court adjourned to allow Mita Hape to consult with his people and he returned the following day and told the Court that they had agreed to go ahead with the rehearing.[815]

The case was reheard over five days. Ururoa and Hape argued that Arapata and his people of Ngāti Pou had 'no mana' over the land, living there only by permission of Hongi Hika. Arapata changed his evidence from that given earlier with reference to Te Pupuke and (with his uncle Heremaia Te Ara) at Kaingapipiwai. He acknowledged to the Court:

> I wanted to deceive the other party. It was wrong on my part to set up Te Pikinga as my ancestor, but I was afraid the other side deceived so I did not set up the present ancestors. I certainly did wrong in not doing so.[816]

He now claimed through Te Puta and testified to his cultivations and burial grounds. Ururoa and Mita Hape argued that Hongi Hika had conquered the block and occupied it thereafter. The dispute, Ururoa said, had begun when Arapata had returned from Hokianga. The Court also heard evidence that Hongi Hika had gifted a portion of Te Pupuke to Whiro, the father of Ngawhare.[817]

The Court awarded the bulk of the block to the party of Hāre and Ururoa and the rest to Ngawhare. Much of the decision was devoted to the contradictions in Arapata's evidence which the Court believed to be 'untrue'. It emphasised the return of Hongi Hika to Pupuke in 1820 when Ngāti Hau had 'conquered' and driven Ngāti Pou from the area. They had fled to Hokianga living under the protection of Tāmati Waka Nene until long after the death of Hongi Hika. It was the view of the Court that when Arapata's people had returned they had done so under the protection of Whiro. As a result, Te Pupuke 1 of 522 acres was awarded to Whiro's daughter, Ngawhare, and Te Pupuke of 1,841 acres to Mita Hape, Paora Ururoa, 39 other owners and 33 minors. Taniora Arapata was awarded no share.[818] On this outcome being protested, the Court stated that if Arapata had 'a good claim [but] he kept it back and did not show it, he deserves to lose it'.[819] The assessor denied Arapata's accusation of bias, stating that his people were the enemies of Hongi Hika, not his friends.[820] The Court kept Hape's deposit of £24 on the ground that the 'trouble' over the title of Te Pupuke had 'been caused by the misconduct of Mita Hape and his advisors' and regretted that it was 'unable to punish him more severely.'[821]

(e) Tribunal summary

These Te Raki examples, and the Crown's reluctance to grant rehearings in blocks where it had a purchase interest, illustrate the inadequacy of the procedure that was in place from 1865 to 1894. On occasion rehearings were granted – as Tapuwae demonstrates – even when applicants changed their mind as dissatisfaction with and opposition to the Native Land Court intensified. However, the relevant statutory provisions did not form a properly constituted process by which those aggrieved by the decisions of the Native Land Court could appeal to a higher, separate, and independent tribunal. The Native Land Court was not, as earlier Tribunal inquiries have clearly established, the appropriate body to 'correct' injustices arising out of its own prior decisions.[822] The procedure by which applications were assessed was neither open nor contestable. In spite of conflicts of interest, the Crown could and did intercede, and the Native Land Court was not averse to engaging in delaying – and sometimes punitive – tactics.

The demand for rehearings pointed to the underlying difficulty that the Native Land Court frequently encountered when attempting to determine ownership according to tikanga, especially when judges lacked the necessary expertise. To simplify its task, the Court employed a narrow set of fixed criteria by which to assess claims to ownership; its adversarial and winner-take-all character encouraged the presentation of partial, skewed, and weighted evidence; it often failed to identify all rightful owners and to adjust lists of owners; and it was ill-equipped to deal with the complexities of customary tenure, in particular with overlapping rights. But the Crown proved reluctant to analyse the root causes of grievances; namely, the lack of meaningful Māori input into decisions and the assimilation of their laws into a transplanted system that was supposed to assess rights according to their tikanga, but did not.

Continuing dissatisfaction led finally to the establishment in 1894 of a 'Native Appellate Court'. Section 82 of the Native Land Court Act 1894 provided for a broad right of appeal, leave to file was not required, and the grounds of any appeal were not defined. Section 90 provided that the Court could 'affirm the decision appealed from' or direct the Native Land Court 'to give such other decision as to the Appellate Court may seem just'. On the other hand, the Court was to comprise no fewer than two judges of the Native Land Court, while no provision was made

for assessors. Moreover, section 93 provided that the decisions of the Court 'shall, as to every question of law and fact, be final and conclusive'. In other words, there was no appeal from a decision of the Native Appellate Court to the Supreme Court or the Court of Appeal, although the Native Appellate Court could state a case for the opinion of the Supreme Court on any question of law arising out of the proceedings.[823] Despite these defects, this was a much needed reform but one that came too late for many; by 1894, most land had already gone through the Native Land Court without a formal right to appeal the Court's decisions.

(2) *Petitions and the Native Affairs Committee*

In its submissions, the Crown argued that if an application for a rehearing was not lodged within the period allowed, petitions could be considered by the Native Affairs Committee 'acting as a *de facto* appeal court' with the capacity to gather evidence. This course of action was readily available to Māori and involved no cost unless they were called to appear in person. In the Crown's view, there was no systemic failure in how these procedures operated.[824]

The committee was not generally disposed to review decisions of either the Court or its chief judge, despite its concerns about the number of applications for rehearing that were being made and the lack of a formal avenue of appeal. In 1876, for example, Wiremu Puatata and five others from the Bay of Islands complained that they had been 'done out of their land' through the actions of the Court and sought compensation or the restoration of 1,000 acres. In 1877, the Native Affairs Committee reported:

> it appears from the evidence taken that applications for the rehearing of this block were refused by the Governor in Council in consequence of a recommendation to that effect made by the Chief Judge of the Native Land Court. The law gives the Governor in Council a discretionary power, and there is no evidence before the Committee to show that that discretion was not properly exercised.[825]

Whether or not the committee had sought evidence is unknown. Exactly the same decision was reached, again in 1877, with respect to the petition lodged by Hone Te Awa and 15 others of the Bay of Islands.[826]

In 1876, the Native Affairs Committee considered a petition lodged by Hirini Taiwhanga and 70 others seeking compensation or a rehearing; it decided 'that the time at their disposal has not been sufficient to enable them to make such inquiries as to justify them in reporting an opinion'.[827] The petition was reconsidered in 1877, and on that occasion the Native Affairs Committee decided that the matter involved a dispute among family members, but then noted, 'In the absence of any evidence, the Committee has no specific report to make.'[828] Again, it is not clear that the committee sought evidence. Finally, the committee often referred petitioners back to the original source of the grievance. The Native Land Court unsurprisingly proved reluctant to overturn its own decisions.[829]

The Native Affairs Committee's own reports demonstrate that it did not see itself as a court of appeal. In 1876, it recorded that it was

> not desirable that they should act in the capacity of a Court of Appeal from the Native Land Court, inasmuch as it is manifestly impossible that they can take sufficient evidence or devote sufficient time to a single case to enable them to come to a satisfactory conclusion.[830]

In 1883, the committee again noted:

> Disappointed claimants seem to think they can bring parliamentary influence to bear upon the Chief Judge by petitioning the House, and getting their case stated to this Committee; and the sooner this erroneous impression is removed the better for all parties concerned.[831]

In 1885, a large meeting in the Bay of Islands involving a number of upper North Island iwi complained of 'the somewhat cavalier manner in which their petitions have been treated by Parliament'. Petition after petition had been submitted without an outcome.[832] Speaking generally of the failure to have concerns about the Native Land Court addressed, Hōne Heke Ngāpua could only lament the dismissal of the many petitions submitted by

his constituents, who had a 'very strong objection to the Court' for its 'distortion of Native Customs' and for its 'enormous expense.'[833]

As noted earlier, the Native Affairs Committee did express concern about the number of petitions it was expected to consider, proposing that the Government 'create a properly-constituted tribunal to act as an Appeal Court from the decision of the Native Land Court'. The committee also recommended that the Government introduce 'some general legislation . . . dealing with appeals from decisions in respect of re-hearings'.[834] In other words, by its own statement, the committee recognised that it was not equipped to review Native Land Court decisions. The committee often decided that it was unable to deal with a particular matter on the grounds that it raised issues of policy. It could not overturn decisions of the Native Land Court; it did not have the time or capacity to investigate such matters. Nor could it compel the Government to act but could only recommend that it do so.[835] In sum, the most that it could do was to refer petitions on to other agencies for further investigation and possible resolution, criticise the Government when the latter failed to act on such recommendations as it did make, and occasionally recommend the passage of special legislation to give effect to its recommendations. It did not and could not fulfil the Crown's treaty obligations under article 3.

9.8.3 Conclusions and treaty findings

While limited, the evidence available to us on redress and remedies nonetheless indicates that the Crown did not provide a readily accessible, robust, transparent, and fair means by which those dissatisfied with decisions of the Native Land Court could seek relief. Neither the grounds on which applications for rehearings could be lodged, nor the basis on which they might be accepted or rejected, were specified. The lack of clarity may well have served to deter those dissatisfied from lodging applications, while the fact that full rehearings were mandatory until 1889 meant that costs were high.[836]

We conclude further that the Native Affairs Committee could not, as it observed itself on a number of occasions, act as a de facto court of appeal. The committee often declined to investigate petitions regarding Native Land laws on the ground that the matters raised involved issues of policy (as we discuss further in chapter 11). Where it sought evidence, the committee usually consulted the Native Department, and it frequently referred the matters raised back to the very court whose decision gave rise to the original complaint. Tapuwae serves as a case in point. The Native Affairs Committee considered the matter at some length but was inclined to the views of the Native Land Court itself (as were the Native Ministers with whom the ultimate decision rested). The Native Land Court decision may well have been fair within the constraints of attempting to recognise a complex customary matrix of rights. We are not in a position to say – but the process certainly was not. Ngāti Here and some of Ngāti Tūpoto were forced into a court investigation that they did not want at that point and a protracted and expensive process thereafter.

Moreover, the committee possessed only the power of recommendation. It was entirely at the Government's discretion whether any action followed. We conclude that Native Land Court decisions could not easily be challenged through an independent and robust legal appeal procedure at least until 1894. In our view, this failure contributed to the steady loss of confidence on the part of Te Raki Māori in the Native Land Court apparent from the mid-1870s.

We find in respect of the Crown's provision of remedy and redress:

- The legislative provisions relating to Native Land Court re-hearings did not, at least until 1894, furnish a sufficiently robust appeal mechanism or process, while the Native Affairs Committee possessed only a power of recommendation, and was not intended to act (and did not act) as a de facto court of appeal. The failure of the Crown to provide a robust appeal mechanism was in breach of article 3 of the treaty and te mātāpono o te mana taurite/the principle of equity.
- The Crown, in being responsible for and failing to

remedy these systemic deficiencies over a period of nearly 30 years, breached te mātāpono o te matapopore moroki/the principle of active protection and te mātāpono o te whakatika/the principle of redress.

9.9 Whakarāpopototanga o ngā Whakataunga/Summary of Findings

In light of the full discussion of treaty findings and analysis undertaken earlier, we briefly recap established breaches of the treaty and its principles.

In respect of the establishment of the Native Land Court, we find that:

- By developing and implementing a system for title determination based on its own agenda to acquire more land, rather than the protection of Māori rights as guaranteed under article 2, the Crown breached te mātāpono o te tino rangatiratanga and te mātāpono o te matapopore moroki/the principle of active protection.
- The Crown's failure to seek Māori engagement on the provisions of the Native Lands Act 1862 was inconsistent with its duty to consult and gain the consent of Te Raki Māori on matters central to their guaranteed treaty rights, in breach of te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te tino rangatiratanga.

In respect of the restructure of the Native Land Court and the Native Lands Act 1865, we find that:

- By failing to make a good-faith effort to engage with and secure Māori consent in advance of the changes to the Native Land Court system, as set down in the Native Lands Act 1865, the Crown breached te mātāpono o te houruatanga/the principle of partnership, te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By legislating unilaterally in 1865 to codify changes to the composition and decision-making powers of the Native Land Court, the Crown effectively removed Māori control of the title investigation and determination process, breaching te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga/the principle of partnership.
- By abolishing, without consultation, the flexible and tikanga-informed process the Court had originally employed to determine ownership in favour of a British system prioritising individual over collective rights, the Crown breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te tino rangatiratanga.

In respect of the appropriateness of titles awarded by the Native Land Court, we find that:

- The Crown introduced laws offering a title that failed to give legal expression to collective tenure and to accord with Te Raki Māori preferences. Such failures breached 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 and the guarantee of te tino rangatiratanga.
- The titles awarded to Te Raki Māori under nineteenth-century Native Land legislation and through the Native Land Court failed to provide the same certainty, stability, and protection as titles awarded in respect of general land and duly registered under the Land Transfer Act. The failure of the Crown to provide an equivalently robust titling regime for Māori as that applying to the settler population (and which failed to equip whānau and hapū to participate in the colonial economy to the same degree) breached te mātāpono o te mana taurite/the principle of equity.

In respect of the operation of the Native Land Court in Te Raki, we find that:

- The failure of the Crown to create a body in which Māori (in Te Raki and elsewhere) had the determining role when deciding questions pertaining to their own lands was a breach of te mātāpono o te houruatanga/the principle of partnership; and in respect of the Court it created, its failure to ensure that assessors had equal status and authority to judges throughout

the period under consideration was a breach of te mātāpono o te mana taurite/the principle of equity.

- The failure to ensure adequate notification of hearings and that the costs involved in the conversion of customary title were shared appropriately and fairly among the parties who benefited, Crown as well as Māori, breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te mana taurite/the principle of equity.
- The Crown failed to monitor court processes to assure itself that the institution it had created was functioning in an appropriate manner and to ensure that statutes were appropriately rigorous, fully implemented, and effective. Those failures breached te mātāpono o te matapopore moroki/the principle of active protection.

In respect of Te Raki Māori engagement with the Native Land Court, we find that:

- By rejecting all requests by Te Raki Māori for the right, opportunity, and authority to conduct title investigations through their own institutions, by empowering individual Māori to act independently of co-owners, and by employing questionable purchasing tactics, the Crown rendered engagement with the Native Land Court and its processes practically obligatory, thereby breaching te mātāpono o te tino rangatiratanga.
- The process of tenure conversion meant many Te Raki Māori incurred substantial debt, notably in the form of survey costs. Although the extinguishment of customary ownership principally served the interests of the Crown, Māori were forced to meet the costs, often through the loss of land. By failing to ensure that the costs of extinguishing customary Māori title in the Native Land Court were allocated according to the distribution of benefits arising from the process, the Crown breached te mātāpono o te mana taurite/the principle of equity, in breach of te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te matapopore moroki/the principle of active protection.

In respect of the forms of remedy and redress available to Te Raki Māori, we find that:

- The legislative provisions relating to Native Land Court re-hearings did not, at least until 1894, furnish a sufficiently robust appeal mechanism or process, while the Native Affairs Committee possessed only a power of recommendation, and was not intended to act (and did not act) as a de facto court of appeal. The failure of the Crown to provide a robust appeal mechanism was in breach of article 3 of the treaty and te mātāpono o te mana taurite/the principle of equity.
- The Crown, in being responsible for and failing to remedy these systemic deficiencies over a period of nearly 30 years, breached te mātāpono o te matapopore moroki/the principle of active protection and te mātāpono o te whakatika/the principle of redress.

9.10 Ngā Whakahāweatanga/Prejudice

As we have foreshadowed throughout this chapter, the Crown's failure to include Te Raki Māori in decision-making about its native land policies resulted in a court process that individualised Māori land rights in a manner that caused enormous prejudice to them, both at the time and for generations to come.

9.10.1 Māori subordination by a key colonial institution

While the Native Lands Act 1862 provided for substantial Māori control over the Crown-initiated process for the conversion of customary tenure, it was short lived. Less than a year after the Kaipara court's first sitting, it was restructured. Under the changes introduced by Chief Judge Fenton and the Weld ministry in 1864 and 1865, the power of Te Raki Māori communities to decide the ownership of their own lands was wrested out of their hands. A rūnanga-based model characterised by facilitation and consensus was replaced (without consultation) by an alien court structure and an adversarial process in which tikanga had limited space. In our view, this was prejudicial to Te Raki Māori in and of itself, resulting in

the subordination of Māori in and by a Crown-created institution dealing with matters of especial concern to them, their own knowledge of which far exceeded that of the men put in charge. The place of assessors, and the role of applicants and their ability to reach out-of-court compromises which were then approved by the Native Land Court, falls well short of the partnership role that had been guaranteed to Māori by the treaty. Instead of protecting tikanga and Māori autonomy, the Native Land laws and court operations resulted in the assimilation of Māori customary law into the imported system based in English law.

From this point on, the Crown's Native Land legislation and its interpretation and application by the Native Land Court generated further devastating consequences, including social, cultural, and economic prejudice for Te Raki Māori whānau, hapū, and iwi.

Tikanga was misrepresented. Pākehā judges brought their own perceptions, preoccupations, and prejudices to their interpretation of Māori tenure, resulting in its distortion and over-simplification in order to assist land transfer. The Court developed its own precedents and rules for excluding one group of claimants in favour of others although many decisions were inconsistent and confusing; they were, and remain, a source of distress for many claimants.

Much of the thinking behind the Court's determination of relative rights of claimants in land was based in European patriarchal assumptions and understandings of 'natural law' and 'primitive' societies in which 'might was right'. The Native Land Court's codification of custom gave greatest weight to occupation but determined this by 'physical evidence' rather than whakapapa, which was seen as secondary 'in all cases to the more visible and important facts of occupation and possession', or as 'necessarily unsatisfactory' and unreliable.[837]

Victory in warfare was given more weight than peacemaking. Conquest was elevated over intermarriage (which in such circumstances tied the later arrivals to the more ancient line). Similarly, the conditional nature of take tuku was misunderstood. The laying down of fixed boundaries cut across the fundamental value of whanaungatanga which emphasised inclusiveness, extending to resources and their use. The need to tailor evidence to persuade the Court of the validity of claims distorted the written record of rights and entrenched many of those misconceptions.

Most importantly, the refusal to give legal recognition to the collective nature of rights in land and resources meant that Native Land Court decisions could not give effect to tikanga and customary rights, the impact of which is discussed separately in the next section.

9.10.2 Uncontrolled pace of conversion of customary tenure

In Maning's view the difference between collective and individualised ownership was the difference between 'barbarism' and 'civilization'.[838] The effects of this deeply ingrained cultural assumption widely shared among his Pākehā contemporaries on Māori society and their capacity to engage with the Court and its new laws were immense. The accountability that had always regulated the actions of rangatira and hapū was greatly weakened, and customary title was extinguished at a rapid rate, as traditional controls were undermined by the ability of individuals to bring applications for title determination without the knowledge or consent of hapū. As collective controls unravelled and pressures deepened, partly as a result of the costs of that process and the tactics of purchasers (discussed in chapter 10), so did the pressure to bring more land through the Court with a view to gaining title so that it could be sold in order to pay debts, including those required to put lands into a tenure acceptable to Crown and colonists.

The Court awarded individualised titles to 325,200 acres in 469 individual blocks between 1865 and 1874.[839] Paul Thomas found that in this period 'the Court had a clear and considerable impact on those parts of Te Raki where the threat of landlessness and pressure from Crown purchasers was most acute'. Mahurangi, close to Auckland, was the taiwhenua most affected, having already been the site of significant Crown purchasing prior to 1865; there, 141,228 acres of the remaining customary Māori land had

Crown-derived title by 1874. Similarly, in Whāngārei, where significant Crown purchasing activity had occurred during the 1850s, customary title was extinguished over 141,228 acres of the remaining Māori land.[840] In Hokianga, the Bay of Islands, and Whangaroa, the Court had less of an initial impact, and the majority of the lands Māori had retained still remained under collective ownership in 1874.

After 1875, however, the Court's operation became closely intertwined with the Crown's renewed land purchasing policy.[841] Over the next five years, large swathes of land held collectively by hapū in Hokianga, Bay of Islands, and Whangaroa were brought through the Court. Thomas gave evidence that by 1880, 114,235 acres of Hokianga land had its title determined in the Native Land Court; in Whangaroa, the figure was 40,445 acres; and in the Bay of Islands, 94,456 acres.[842] In Mahurangi, customary title had been effectively extinguished except for Hauturu which, Thomas observed, had already come before the Court for titling but would take several years for ownership issues to be resolved.[843] According to Thomas, 'the Native Land Court was inextricably connected, in the view of Te Raki Māori, with massive land loss.'[844] We agree with that assessment, as we detail in chapter 10.

The Court's activity slowed throughout the region during the 1880s, as Māori resistance to its operation grew. The end of the frenetic Crown purchasing of the late 1870s also contributed to this slowdown, as did the diminishing land base left to be put through the Court system in some parts of the district.[845] But even with widespread resistance, the Court's operation continued. When the protracted title determination for Hauturu concluded in 1886, the last substantial area still held under customary title in the Mahurangi and Gulf Islands subregion had been brought within the new system. By 1889, the Court had determined title in 643,193 acres of Māori land across the district, and by the end of 1899 Thomas's evidence was that 80 per cent of the lands that would come before the Court for title determination had done so.[846] Yet, Thomas observed that 'Te Raki Maori resistance to the Court had, against considerable odds, achieved some significant victories'. He observed that, by 1900, Te Raki was 'one of the few parts of New Zealand that retained significant amounts of customary, or papatupu, land' (we will discuss the administration of the remaining customary lands after 1900 in a subsequent volume of this report).[847]

The extensive nature of the tenure conversion indicates the extent of the impact and prejudice suffered as a result of the operation of Native Land laws; the 'award of paper interests in blocks of land to individuals, enabling them to deal with land without reference to iwi or hapū', made those lands more susceptible to partition, fragmentation, and alienation, as the Crown has acknowledged. It must also be emphasised that it meant that Te Raki Māori were not in a position to take full advantage of collective title options when they were finally offered.

The extent to which the individualised titles severed Te Raki Māori from their collective rights in land is illustrated by the dominance of court awards of ownership to very small groups of individuals between 1865 and 1874 – an average of just over four owners per block.[848] Even though the ten-owner rule was abolished under the Native Land Act 1873, the practice continued, often where prior arrangements had been made with Crown purchasers to facilitate the process but where there still was no legal responsibility to ensure proceeds were fairly distributed. In approximately 78 per cent of the blocks to which the Court determined title during this period, Thomas noted that fewer than 10 owners were registered. Many blocks were awarded to a single individual and were immediately purchased by the Crown.[849]

Conversely, it is telling that, in the few cases in which a larger number of owners were awarded title, as in the Omapere block, located in Bay of Islands, where 200 owners were recorded, the Crown's ability to complete purchases was often delayed despite the fact that amendments to the legislation enhanced its capacity to partition out its share.[850] But without a legal collective ownership structure available to owners, their shares were generally of negligible economic value.

9.10.3 Extensive land transfer

The focus of legislators throughout the nineteenth century was on facilitating land transfer from Māori to colonists, not land retention and its utilisation for the benefit of

the hapū long associated with it. The titles created under the Crown's Native Land legislation were incompatible with Te Raki Māori preferences and the collective custodianship of the land. The purported intention of early legislators to enable Māori to create family farms was quickly demonstrated to be illusory in the absence of the necessary protections to ensure that titles were distributed accordingly, and that the wider group of owners was not left out over and over again.

The memorial of ownership system introduced in 1873 further undermined any possibility of whānau possession of a delineated lot on which they might establish a farm or other business. Instead, individuals received an undefined and undivided interest in land with which they could do virtually nothing other than sell or lease. Although all owners were meant to agree to an alienation, it was easy enough for purchasers to break through the circle of community ownership which had no legal status or support, get behind the title, and force a partition and sale at their own price.

9.10.4 Traditional tribal structures undermined

We received extensive claimant evidence concerning the Court's impact on the community structures and welfare of Te Raki hapū and iwi. The accountability between rangatira and hapū that bound them together and to the land was weakened by the process of individualisation and the failure to give legal expression to underlying trusts. Consensus reached in the open on the whenua was no longer required before individuals could take actions that affected everybody without their prior knowledge or agreement.

Principal figures in nineteenth-century Native Land legislation and administration were keenly aware of the devastation the laws and policies they had conceived and implemented had visited upon hapū and iwi. The destructive impact was acknowledged and condemned by the Native Land Laws Commission in 1891, for example.[851] The commissioners found that 'the tendency of the Act to individualise Native tenure was too strong to admit of any prudential check.'[852] Māori were 'helpless' under this law, as the commission explained:

Claimant Rueben Porter presenting evidence during hearing week 15 at Te Tāpui Marae, Matauri Bay, in September 2015. He spoke on the effect of Native Land legislation in the Te Raki district for Te Whānaupani, Ngā Tahawai, and Kaitangata claimants.

> [T]hey became suddenly possessed of a title to land which was a marketable commodity. The right to occupy and cultivate possessed by their fathers became in their hands an estate which could be sold. The strength which lies in union was taken from them. The authority of their natural rulers was destroyed. They were surrounded by temptations. Eager for money wherewith to buy clothes, food, and rum, they welcomed the paid agents, who plied them always with cash and often with spirits. Such alienations were generally against the public interest, so far as regards settlement of the people upon the lands.[853]

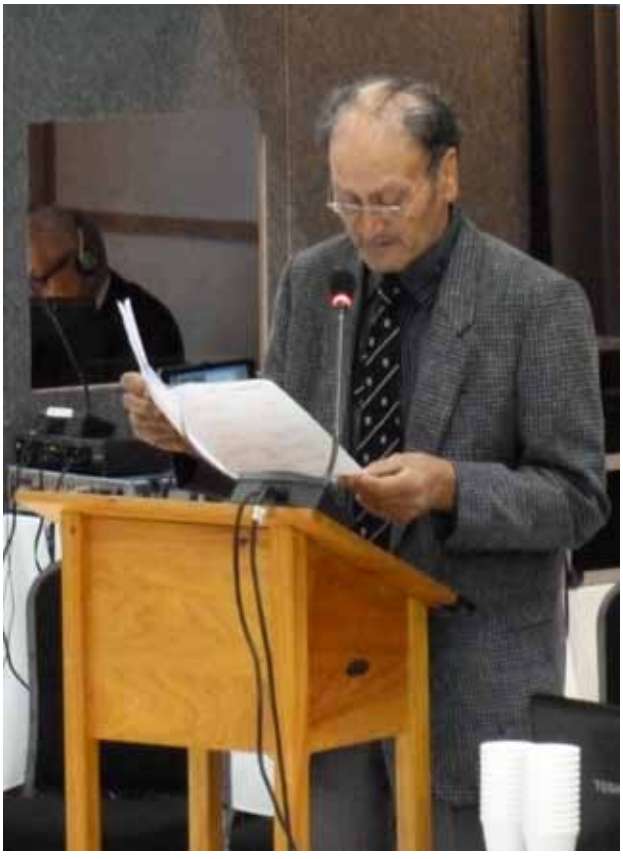
Elsewhere, the commission acknowledged the role heavy costs associated with putting lands through the Court played in this process.[854]

The legacy is still keenly felt. Rueben Porter (Te Whānaupani, Ngā Tahawai, and Kaitangata) stated that Native Land legislation specifically targeted 'the communal unity of our people, which was bound by whakapapa'.[855] He explained that individualisation of title wrested control of decision-making over land from rangatira, undermining their mana.[856] Tahua Murray (Ngāti Ruamahue) pointed out that the operation of the Court system relied upon the dismantling of collective decision-making and organisation that had been the bedrock of Te Raki hapū and their relationships with land for generations.[857]

The disruption to the unity of hapū and their ability to exercise rangatiratanga and adhere to tikanga was almost immediate. The adversarial court processes, combined with the additional pressure applied by Crown purchase agents, created distrust and contention among Māori communities. Mr Porter described the way his tūpuna were forced, through court processes, into situations where they had to compete for land within whānau. Land interests were contested in almost every single title investigation in which Mr Porter's tūpuna were involved, including the investigations into Matangirau in Whangaroa, where Hemi Tupe competed with his own nephew, Paapu Tupe.[858] Wiremu Reihana (Ngāti Tautahi) also noted that processes 'pitted relations against one another as they competed for the land'.[859] Pairama Tahere (Te Uri o Te Aho) argued that the ability of any individual to bring a case before the Court had 'destabilised the fabric of Māori social structure' in other ways as:

> Junior Rangatira . . . entered the process as a means of increasing their status, hapū who had been displaced from ancestral lands or hapū that had only minor interests in land entered the process . . . to confirm their ancestral land interests and those with minor interests in land or aroha interests sought to have those interests formalised.[860]

Denise Egen (Te Māhurehure) told us that the Native Land Court system deprived her people of the guidance traditionally exercised by their rangatira, which 'left them drifting at sea'. Once findings were made, they were difficult to undo given the obstacles to and expense of obtaining a reconsideration by the Court. She discussed how the Court had caused ongoing damage to the relationships between hapū members which persists to the present day. This breakdown in hapū relations resulted in 'the loss of a shared history, the loss of tikanga, a loss of rituals and the loss of whanaungatanga', in addition to the loss of land.[861]



Pairama Tahere presenting evidence for Te Uri o Te Aho claimants during hearing week 3 at Turner Events Centre, Kerikeri, in July 2013.

9.10.5 Loss of identity

An important consequence of the Court's operation under the Crown's Native Land legislation was that it separated hapū not just from their land but from their own identity,

grounded in their relationship with the natural world. Whenua was surveyed into a series of discrete and unrelated economic commodities, fragmenting the spiritual aspect of customary relationships with the whenua and hapū identity, so closely bound to that of their tūpuna, all the names they had given to its many landmarks and waterways and all the places remembered for their history there over generations. Laws designed to simplify the complex and overlapping networks of different interests into a defined and fixed ownership inevitably resulted in the exclusion of the 'losers' who had been unable to satisfy the Court's criteria. Claimants told us how their tūpuna became invisible as a result of Native Land Court processes. Vivian Dick (Ngāti Korokoro and Te Poukā) described the struggle of their hapū to re-establish mana whenua in Kokohuia after an adverse court decision:

> Ten owners were listed on the certificate of title, with the full 15 listed on the pages appended to the certificate. Our tupuna for some unknown reason were left off this certificate of title . . . Because our tupuna were left off this first certificate of title our whanau were practically made invisible by the Court and our tupuna's interests have not been properly recorded, acknowledged or accounted for. This has had ongoing affects for our whanau who have been trying to re-establish our mana whenua in Kokohuia.[862]

The prejudice associated with this practice endures today. Other claimants spoke in a similar vein. Willow-Jean Prime's explanation encapsulates the devastating effects that individualised title had, and continues to have, on Te Raki hapū:

> the Native Land Court totally changed the system of land holding and administration of both land and authority for our hapu . . . Changes from collective hapu ownership, to the individualisation of title, to failing to recognise those with interests thereby creating landlessness for whanau, to individuals now being able to make decisions that should have been collective decisions. Today we are so conditioned by colonisation that we think we have an individual right to land; however, the only reason we have that individual right is because of the Native Land Court process which created individual titles for our hapu land. The Native Land Court itself is a breach of Te Tiriti, and if the collective ownership of land was not eroded by the Native Land Court, individuals would not have the rights that they hold on to today.[863]

9.10.6 Socio-economic impact

Te Raki Māori suffered material hardship resulting from engagement with the Court. Direct fees, survey costs, payments to lawyers, and the incidental but unavoidable costs such as food and accommodation and other expenses associated with travelling to and residing near hearing centres for extended periods of time all placed financial strain on hapū. Rangatira were often accompanied by whānau and the wider community even if not everybody attended the hearing itself. At the same time, hapū already living near hearing locations bore the burden of hosting often-large groups of visitors for the duration of the session. Even when a session was not widely attended the survey and court costs had to be borne by the hapū through their leaders.

The costs of survey fell heavily and inequitably on Māori. Research into the Waimate–Taiāmai blocks indicated that survey costs often absorbed over 30 per cent of the proceeds from sale. Similar examples such as Pakanae were identified elsewhere in the inquiry district. In some instances, such as Whaitapu and Okaka, the proportion exceeded 70 per cent, and at Te Horo the survey costs swallowed more than the whole of the proceeds, leaving the owners in debt. The Crown was aware from an early stage that the costs of surveys could consume the main proceeds of sales for whānau, but it failed to introduce legislative changes to improve the growing inequities between Māori and settler communities.

Kuia Titewhai Harawira described the way costs associated with the Native Land Court forced her tūpuna into a cycle of debt:

> This resulted in significant and high costs to Ngati Hau. Not only were Court costs imposed on us but surveys were also conducted at our cost. On top of this we also had to bear the costs involved in travelling to the hearings, including

witnesses and overheads. This was incredibly difficult for us, as our people often did not have the financial means to meet these costs. It was worse when my Tupuna left lands to individual whanau. This of course, created a cycle of debt. Surveying our land came at a particularly high cost. It had to be done and we were often instructed to survey the land multiple times.[864]

Since the Court would only consider evidence viva voce, hapū and iwi were forced to attend entire sessions as they waited for their cases to be heard. Mr Tahere explained how Te Uri o Te Aho had been affected:

> In order to prevent the risk of land being alienated because the Hapuu were not there when the claim was heard, rangatira along with his support were forced out of necessity to attend hearings. The need for the Hapuu to attend Court hearings placed significant financial pressure on the Hapuu. Costs were incurred in attending hearings. The schedule for hearing the different claims lacked certainty. The Hapuu had to wait at Court for their case to be heard. The time spent waiting for their hearing placed significant financial burden and debt on the Hapuu. The Hapuu had to pay for accommodation and food while they waited. The tasks of rangatira and their supporters having to repeatedly attend hearings resulted in many Hapuu including Te Uri o Te Aho becoming impoverished and destitute.[865]

With no alternative, tūpuna used 'whatever resources [they] could in order to attend even if this meant getting into debt'. According to Mr Porter, Māori had 'to rely on their gum reserves to cover costs while they were attending the Court sittings'.[866]

Additionally, there were 'secondary effects' of the hapū being away from the kāinga:

> As a result of less numbers of the Hapuu being at home on the kainga crops did not get planted or tended, harvested was sometimes done later, harvesting and storage of food for winter was neglected or there was insufficient planting and as a result less produce harvested and the Hapuu never had enough food to sustain their dietary needs.[867]

Herbert Rihari presenting evidence for Ngāti Torehina ki Matakā claimants during hearing week 14 at the Kerikeri RSA in June 2015.

Not only were the normal cycles of planting and harvesting disrupted while attending the Court but also the health of attendees was endangered by the frequently crowded and unsanitary 'tent villages' that sprung up around the sittings. Herbert Rihari (Ngāti Torehina ki Mataka) discussed the negative health impacts on his tūpuna from attending Native Land Court hearings. Uncertainty about court hearing dates meant that whānau often had to stay away from home for weeks at a time.

This 'made them susceptible to illnesses either by being in close contact with others or through the conditions they were having to cope with, fending for themselves away from their kainga'. His tūpuna had no choice but to risk their health as otherwise their land interests may have been lost.[868] Likewise, Mr Tahere told us that those who attended hearings 'suffered from stress and their health and mental wellbeing was compromised. The effect of ill health of individual members had a negative effect on the Hapuu as a whole.'[869]

These conclusions about the adverse socio-economic consequences of the Court system were supported by Armstrong and Subasic's commissioned research. For example, they pointed to the increasing reliance of Whangaroa Māori on income from the gumfields and timber lands during this period, the money earned in this way supplemented by occasional wage labour building roads.[870] They further noted that the occurrence of famine in the Hokianga in 1883 at Waimā forced Māori 'to the Taheke gum-field *en masse* to earn the funds necessary to purchase food'.[871] These trends of increased reliance on declining extractive industries and wage labour also appeared in Whāngārei and Mahurangi, where the resident magistrate observed in 1885 that Māori communities struggled to cultivate sufficient foods for their needs.[872] Across the district, Armstrong and Subasic found that Māori were more in debt, more affected by disease, and increasingly absent from the social and cultural life of northern settlements. These trends worsened during the 1890s as kauri gum remained the only source of income for many Te Raki Māori, and the industry continued to decline.[873]

Armstrong and Subasic placed the marginalisation of Te Raki Māori during the late nineteenth century within the context of the wider economic downturns of this period and the gradual exhaustion of extractive resources, such as timber and gum, as well as the cumulative effects of the transfer of their lands into the hands of the Crown and colonists.[874] The Native Land Court was an additional burden on an already distressed people that their Pākehā neighbours did not face.[875] Armstrong and Subasic concluded:

> the Native Land Court and the deeply flawed tenurial system it introduced, isolation and lack of communications, ongoing land sales, conflict and debt, and a lack of planned or systematic Pakeha settlement on anything like Maori terms, consigned many to the economic margins.[876]

This cumulative disadvantage was a sad contrast to the reasonable expectations of Te Raki Māori that the treaty relationship they had entered into in 1840 would put them in a position to benefit from settlement in their rohe and the development of the colonial economy.

9.10.7 Overall conclusion

In our view, the prejudice resulting from the land laws compounded the damage already inflicted upon the tino rangatiratanga and well-being of Te Raki hapū by the Crown's imposition of its legal system, institutions, and its conduct of land purchase in the first 25 years of the colony. The Crown's Native Land legislation, which provided for the Court's operation, was designed to facilitate the purchase of land and succeeded in that objective. As Hōne Heke Ngāpua, a leading critic of the land laws and the Court, noted, as a result the remaining lands held by Te Raki were not sufficient for their support. He told Parliament in 1899:

> I can speak so far as the Native lands in the north of Auckland are concerned. The number of natives there has been increasing for a number of years. All the native lands north of Auckland are not really sufficient if divided equally amongst members of the different hapus for their maintenance and support . . . further acquisition of Native lands should be stopped altogether.[877]

The following chapter will consider in greater depth the complex socio-economic circumstances Māori faced during this period and into the twentieth century. It is sufficient for our current purposes to note that by the close of the century, landlessness had become a reality for many Te Raki Māori and with it came a greatly reduced capacity to engage in economic development. Māori were left instead with subsistence agriculture and marginalised wage

labour as their chief future prospects. Claimant Rueben Porter put it plainly:

> Our people were only ever going to be able to prosper in this new economy if we retained our lands. The retention of our lands would have allowed us to use the land for farming, to obtain funds from banks for economic development and for leasing. All of this would have allowed us to be a part of the new economy that was created by the Government.[878]

In sum, far from the opportunities and benefits they had been promised, Te Raki Māori suffered greatly as a consequence of their engagement with the Native Land Court. By imposing a new form of land ownership and failing to consult, involve, and respond constructively to Māori concerns, the Crown eroded the trust and confidence Te Raki Māori had originally placed in the treaty's promises of partnership, mutual benefit, equitable well-being, and development, as well as in the Court itself. The failure of the Crown to recognise or respect the exercise of their tino rangatiratanga over their lands and resources had long-lasting effects that extended throughout the twentieth century and continue today.

Notes

1. 'Paora Tuhaere's Parliament at Orakei', AJHR, G-8, 1879, p 27 (cited in David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), p 945).
2. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', minutes of evidence, 12 May 1891, AJHR, 1891, G-1, p 145.
3. Richard Boast, *The Native Land Court, 1862–1887: A Historical Study, Cases and Commentary* (Wellington: Brooker's Ltd, 2013), pp 50, 59.
4. Dillon Bell, Minute, 5 November 1862, IUP/BPP, vol 13, p 215 (cited in Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand,' report commissioned by the Crown Law Office, 2000 (doc E26), p 190, app 14).
5. Boast, *The Native Land Court*, p 45.
6. The Crown estimated that approximately 34.7 per cent of Māori land in the district had been alienated by 1865. This figure appears to account for a combined total loss of approximately 736,282 acres of land by 1865 – or the sum of the Crown's figures for land loss as a result of old land claims, pre-emption waivers and pre-1865 Crown purchases. If our figure for lands considered purchased as a result of old land claims and pre-emption waivers from chapter 6 (see table 6.1, section 6.1.4) are adopted, and using the same method, then the result is slightly higher: approximately 758,708 acres alienated by 1865, or 35.6 per cent of the district: Crown closing submissions (#3.3.407), p 3; Crown closing submissions (#3.3.412), p 6; Crown closing submissions (#3.3.404), p 5.
7. Boast, *The Native Land Court*, p 50.
8. Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900,' report commissioned by the Waitangi Tribunal, 2016 (doc A68), pp 17, 20.
9. Claimant closing submissions (#3.3.225), pp 259–270.
10. Where not specifically attributed, the synthesis of jurisprudence presented in this section has been drawn from our consideration of a range of Tribunal reports, including: Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 2; Waitangi Tribunal, *The Hauraki Report*, Wai 686, 3 vols (Wellington: Legislation Direct, 2006), vol 2; 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 2, p 777; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, Wai 1200, 4 vols (Wellington: Legislation Direct, 2008); Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vols 1–2.
11. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 777; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 529–530.
12. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, pp 663–671, 710, 778; Waitangi Tribunal, *Te Urewera*, Wai 894, 8 vols (Lower Hutt: Legislation Direct, 2017), vol 3, p 1009.
13. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, pp xxiii–xxiv.
14. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1009.
15. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 535; Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 663; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, pp 777–778; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1238–1239.
16. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*, Wai 64 (Wellington: Legislation Direct, 2001), pp 134–135, 146; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, pp 774–775; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 537.
17. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 710; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 536.
18. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 532.
19. Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, Wai 903, 3 vols (Lower Hutt: Legislation Direct, 2015), vol 1,

pp 471–472; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, pp 1084–1088; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1239.
20. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, p 577.
21. Ibid.
22. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22, 2nd ed (Wellington: Government Printing Office, 1989), p 195.
23. Waitangi Tribunal, *Te Manu Whatu Ahuru*, Wai 898, vol 1, p 216.
24. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 378–379, vol 2, p 671; Waitangi Tribunal, *Te Manu Whatu Ahuru*, Wai 898, vol 2, pp 1238–1239, 1302–1304.
25. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 447–448; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 441–446; Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 785; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, pp 535–536; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 785; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, Wai 1130, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 271.
26. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 777; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 537; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1239–1240, 1301–1302.
27. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 448; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 785.
28. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 469.
29. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1301–1302.
30. Ibid, pp 1277, 1301–1302.
31. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 531.
32. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 450–452, 468; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 786; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 473; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1346–1347.
33. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, pp 782–783.
34. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, Wai 201, vol 2, p 448; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 518–519; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, pp 519–520, 537; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 472–473; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, pp 1270–1272; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1322–1325.
35. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 499–500; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 785; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 470; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1302.
36. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, Wai 201, vol 2, p 447.
37. For instance, see Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 398; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1230–1231.
38. Crown closing submissions (#3.3.406), pp 5–6.
39. Crown counsel, transcript 4.1.32, Waitaha Events Centre, p 271.
40. Crown closing submissions (#3.3.406), p 6.
41. Claimant closing submissions (#3.3.225), p 23.
42. Ibid.
43. Ibid.
44. Ibid.
45. Ibid, p 35.
46. Ibid, p 38.
47. Ibid, pp 38–39.
48. Ibid, p 44.
49. Ibid, pp 38–39.
50. Ibid, p 88.
51. Ibid, p 97.
52. Ibid, p 96.
53. Ibid, p 110.
54. Ibid, pp 76–77, 86.
55. Ibid, p 76.
56. Ibid, p 77.
57. Ibid.
58. Ibid, p 184.
59. Ibid, p 175.
60. Ibid.
61. Ibid, pp 181, 175–183.
62. Ibid, p 112.
63. Ibid, pp 115, 118.
64. Ibid, pp 146–147, 151.
65. Ibid, pp 112–128, 146–152.
66. Ibid, p 187.
67. Ibid.
68. Ibid, pp 187–188.
69. Ibid, p 222.
70. Crown closing submissions (#3.3.406), p 5.
71. Ibid, p 3.
72. Ibid.
73. Ibid, pp 9–10.
74. Ibid, p 4.
75. Ibid, pp 9–10.
76. Ibid, p 10.
77. Ibid, p 11.
78. Ibid.
79. Ibid, pp 12–15.
80. Ibid, p 60.
81. Ibid, p 8.

82. Crown closing submissions (#3.3.406), p 24.
83. Ibid.
84. Ibid, pp 24–25.
85. Ibid, p 25; Crown statement of position and concessions (#1.3.2), p 115.
86. Crown closing submissions (#3.3.406), pp 50–51.
87. Ibid, p 51.
88. Ibid, p 52.
89. The Crown cited section 6 of the Native Land Court Act 1886 Amendment Act 1888, which provided for the removal of protections with majority consent; section 3 of the Native Land Laws Amendment Act 1890, which removed the proviso in the 1888 Act requiring that 'those appearing as owners and all others having a beneficial interest concur in the proposed removal'; the Native Land Purchase Act 1892, which empowered the Governor to declare any restrictions on alienation void for the purposes of Crown purchase; and section 52 of the Native Land Court Act 1894, which provided that restrictions could be removed 'with the assent of the owner, or of one-third in number at least of the owners . . . and on proof that every such owner has sufficient land left for his support': Crown closing submissions (#3.3.406), pp 51–52.
90. Ibid, p 59.
91. Ibid, p 60.
92. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 299.
93. The blocks that are listed on a register of land blocks titled under the 1862 Act and sit within Te Raki include Kopuawaiwaha, Te Wharowharo, Tokitaruna, Turakiawatea, Te Roro, Ketenikau (which appears twice), Ngarangipakura, Waikaraka, and Kopipi: 'Register to Native Titles to Land as defined by Courts under "Native Lands Act 1862"', Land Information New Zealand (Dr Donald Loveridge, supporting papers (doc E26(a)), pp [85]–[95]).
94. Edward Stafford, William Fox, Francis Dillon Bell, C W Richmond, and J C Richmond all had strong connections to the New Zealand Company. See Hazel Riseborough and John Hutton, *The Crown's Engagement with Customary Tenure in the Nineteenth Century*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 33–34.
95. Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand,' report commissioned by the Crown Law Office, 2000 (doc E26), p 40.
96. Browne, minute, 15 April 1856 (cited in Loveridge, 'The Origins' (doc E26), p 39).
97. Browne, 23 July 1856 (cited in Loveridge, 'The Origins' (doc E26), p 46).
98. Riseborough and Hutton, *The Crown's Engagement with Customary Tenure in the Nineteenth Century*, p 37.
99. Ibid, p 36.
100. Michael Belgrave, 'Maori Customary Law: from Extinguishment to Enduring Recognition', report commissioned by the Law Commission, 1996, pp 30–31.
101. Loveridge, 'The Origins' (doc E26), p 47. For the board's report, see 'Report of a Board Appointed by His Excellency the Governor to Enquire into and Report upon the State of Native Affairs', 9 July 1856, AJHR, 1856, B-3 (cited in Loveridge, 'The Origins' (doc E26), app 3, pp 256–269).
102. Belgrave, 'Maori Customary Law', p 31.
103. Ibid.
104. Board of inquiry into native affairs, 9 July 1856 (cited in Loveridge, 'The Origins' (doc E26), p 48).
105. Loveridge, 'The Origins' (doc E26), pp 48–49.
106. Board of inquiry into native affairs, 9 July 1856 (cited in Loveridge, 'The Origins' (doc E26), p 49).
107. For discussion of the board of inquiry's recommendations and reaction to them, see Loveridge, 'The Origins' (doc E26), pp 46–55.
108. J A Gilfillan, 7 August 1856 (cited in Loveridge, 'The Origins' (doc E26), p 56).
109. J A Gilfillan, 7 August 1856, *New Zealand Parliamentary Debates*, vol 386, p 335; see also Loveridge, 'The Origins' (doc E26), p 57.
110. J A Gilfillan, 7 August 1856 (cited in Loveridge, 'The Origins' (doc E26), pp 56–57).
111. F A Whitaker, 7 August 1856 (cited in Loveridge, 'The Origins' (doc E26), p 57).
112. Loveridge, 'The Origins' (doc E26), p 57.
113. F A Whitaker, 7 August 1856, NZPD, vol 386, p 336; Loveridge, 'The Origins' (doc E26), pp 57–58.
114. Loveridge, 'The Origins' (doc E26), p 58.
115. Ibid.
116. Fenton, 31 August 1860, AJHR, 1860, E-1C, p 10.
117. Loveridge, 'The Origins' (doc E26), pp 70–71.
118. Ibid, p 71; see also 'Report of the Waikato Committee', 3 November 1860, AJHR, 1860, F-3, pp 1–165.
119. Boast, *The Native Land Court*, p 50; Loveridge, 'The Origins' (doc E26), pp 81–85, 87.
120. Lord Carnarvon to Governor Browne, 18 May 1859, AJHR, 1860, A-4, pp 26–27.
121. Gore Browne, 9 June 1859 (cited in Loveridge, 'The Origins' (doc E26), p 91).
122. Grant Phillipson, 'Bay of Islands Maori and the Crown: 1793–1853', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A1), pp 173, 178, 363, 375.
123. Loveridge, 'The Origins' (doc E26), pp 92–93.
124. For discussion of these Bills, see Loveridge, 'The Origins' (doc E26), pp 100–103, 107–108.
125. For discussion of these proposals, see Loveridge, 'The Origins' (doc E26), pp 104–113.
126. Ibid, pp 114–115.
127. Ibid, pp 116–117.
128. Ibid, pp 118–121.
129. Joint Select Committee, 18 October 1860, JHR, 1860, pp 182–183 (cited in Loveridge, 'The Origins' (doc E26), p 123).
130. Gore Browne, 26 November 1860, AJHR, 1860, E-3, pp 6–7; Loveridge, 'The Origins' (doc E26), p 124.

131. Loveridge, 'The Origins' (doc E26), p 125.
132. As noted in chapter 7, we use this term to refer to the meeting more commonly known as the 'Kohimarama conference'.
133. Gore Browne, 18 July 1860, AJHR, 1860, E-9, p 10; Loveridge, 'The Origins' (doc E26), pp 126–127.
134. *Maori Messenger/Te Karere Maori*, 31 July 1860, pp 33–40 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 1, pp 42–46).
135. *Maori Messenger/Te Karere Maori*, 15 August 1860, pp 6–8 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 1, pp 101–102).
136. Loveridge, 'The Origins' (doc E26), p 132.
137. F A Weld, 13 June 1861 (cited in Loveridge, 'The Origins' (doc E26), pp 138–139).
138. Newcastle to Grey, 5 June 1861, AJHR, 1862, E-1, section III, p 4.
139. Grey, minute, October 1861 (cited in Loveridge, 'The Origins' (doc E26), p 144).
140. Loveridge, 'The Origins' (doc E26), pp 145–147.
141. William Fox, minute, 31 October 1861 (cited in Loveridge, 'The Origins' (doc E26), pp 146–147).
142. AJHR, 1862, E-9, p 3.
143. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 177.
144. Ibid, pp 10–12.
145. 'Governor Grey's Visit to the North', *New Zealander*, 16 November 1861, p 3.
146. 'The Native Question', *New Zealander*, 8 February 1862, p 3.
147. 'The First Maori Parliament or District Runanga', *Maori Messenger/Te Karere Maori*, 23 May 1862, p 13. This report was widely republished throughout the colony.
148. Loveridge, 'The Origins' (doc E26), pp 158–159.
149. This is referred to in the *New Zealand Parliamentary Debates* as 'Native Lands Bill No 1', as Bell introduced a second Bill, 'Native Lands Bill No 2': Loveridge, 'The Origins' (doc E26), p 159, fn 338.
150. Loveridge, 'The Origins' (doc E26), pp 148–149, 151.
151. Ibid, pp 150–151.
152. Ibid, p 151.
153. Sewell, memorandum, 9 April 1862 (cited in Loveridge, 'The Origins' (doc E26), p 151).
154. Loveridge, 'The Origins' (doc E26), p 152.
155. Ibid, p 156.
156. Ibid.
157. Ibid, p 159.
158. Fox, 22 July 1862, NZPD, vol D, p 421.
159. Ibid, p 422.
160. Loveridge, 'The Origins' (doc E26), p 161.
161. Domett to Grey, 24 August 1862, AJHR, 1863, A-1, p 7.
162. Loveridge, 'The Origins' (doc E26), pp 162–164.
163. Grey, quoted in Bell minute, 5 November 1862 (cited in Loveridge, 'The Origins' (doc E26), p 182).
164. Grey to Domett, 25 August 1862 (cited in Loveridge, 'The Origins' (doc E26), p 163).
165. 'Native Lands Bill', 25 August 1862, NZPD, vol D, p 610.
166. Ibid, pp 610–611.
167. Loveridge, 'The Origins' (doc E26), pp 170, 173.
168. Dillon Bell, 25 August 1862, NZPD, vol D, p 611.
169. Bell, 25 August 1862, NZPD, vol D, p 611.
170. Bell, 27 August 1862, NZPD, vol D, p 653.
171. Bell to Grey, 6 November 1862, AJHR, 1863, A-1, pp 10–11.
172. Prorogation, 15 September 1862, NZPD, vol D, p 727.
173. Loveridge, 'The Origins' (doc E26), p 174.
174. Ibid.
175. Ibid, pp 176–177.
176. Initially it was proposed in Council that clause 17, which enabled Māori owners named in a certificate of title to alienate their land, be modified to prohibit any alienation lasting more than seven years – whether by sale or lease – until and unless a fee of 2s 6d per acre had been paid. Governor Grey, who had the right under the Constitution Act to suggest amendments, argued that the fee would often exceed the value of the land being alienated. His proposal of a transfer duty of 10 per cent on the first sale by Māori and 4 per cent on each sale thereafter was accepted by the Council: see Loveridge, 'The Origins' (doc E26), pp 185–188.
177. Bell, minute, 5 November 1862 (Loveridge, 'The Origins' (doc E26), app 9, p 329).
178. Bell, 25 August 1862, NZPD, vol D, p 608.
179. Ibid, pp 610–611.
180. Loveridge, 'The Origins' (doc E26), pp 191, 322.
181. Ibid, p 192.
182. That assessment was offered in [editorial], *Lyttelton Times*, 11 October 1862, p 4 (Loveridge, 'The Origins' (doc E26), p 13). For that gestation, see Loveridge, 'The Origins' (doc E26). For the board's report, see 'Report of a Board Appointed by his Excellency the Governor to Enquire Into and Report upon the State of Native Affairs', 9 July 1856, AJHR, 1856, B-3 (Loveridge, 'The Origins' (doc E26), app 3, pp 256–269).
183. Loveridge, 'The Origins' (doc E26), p 165.
184. Boast, *The Native Land Court*, pp 45, 52.
185. Ibid, p 50.
186. Loveridge, 'The Origins' (doc E26), p 206.
187. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 290–291.
188. Ibid, p 294.
189. Ibid, pp 290–292.
190. 'The Hon Colonial Secretary in the North', no I-II, encl in Grey to Newcastle, 3 May 1864, IUP/BPP, vol 13, pp 583–589.
191. 'The Kaipara District', *Daily Southern Cross*, 31 March 1864, p 9; see also 'Tour of the Colonial Secretary and his Favorable Reception', *New Zealand Herald*, 6 April 1864, p 6.
192. Crown closing submissions (#3.3.406), pp 10–11.
193. Armstrong and Subasic, 'Northern Land and Politics (doc A12), pp 287–290.
194. Frederick Weld, 28 November 1864, NZPD, vol E, p 16.

195. For Grey's assurance, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 175, 264.
196. Dr Donald Loveridge, 'The Development and Introduction of Institutions of Governance for Maori, 1852–1865', report commissioned by the Crown Law Office, 2007 (doc E38), p 282.
197. Ibid, p 277.
198. Loveridge, 'The Origins' (doc E26), p 206.
199. Ibid.
200. The two districts were separated by a line that began on the southern boundary of the Waikeriawera block (in the Kaipara inquiry district) and crossed to the southern head of the Kaipara Harbour. As a result, both districts contained land in Te Raki: Kaipara North including parts of the Whāngārei and Mangakāhia taiwhenua, and Kaipara South containing the Mahurangi taiwhenua: proclamation, 23 April 1864, *New Zealand Gazette*, 1864, no 14, p 168; Loveridge, 'The Origins' (doc E26), p 212.
201. Proclamations, 25 June 1864, *New Zealand Gazette*, 1864, no 23, p 273; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 299.
202. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 299; Loveridge, 'The Origins' (doc E26), p 213.
203. See, for example, 'Kaipara', *Daily Southern Cross*, 14 June 1864, p 3.
204. Rogan to commissioner of crown lands, 7 December 1864 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 300–301).
205. 'Kaipara', *Daily Southern Cross*, 14 June 1864, p 3 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 301).
206. Proclamations, 18 August 1864, *New Zealand Gazette*, 1864, no 33, pp 345–346; Loveridge, 'The Origins' (doc E26), p 219.
207. Proclamations, 25 October 1864, *New Zealand Gazette*, 1864, no 42, pp 402–403; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 302; Loveridge, 'The Origins' (doc E26), p 219.
208. 'Order in Council', 28 October 1864, *New Zealand Gazette*, 1864, no 42, pp 403–404; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 303–304.
209. 'A Proclamation Bringing "The Native Lands Act 1862" into Force within the Whole of the Colony', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 465; 'A Warrant Making Rules for Regulating the Sittings of Courts under the "Native Lands Act 1862"', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 467; Loveridge, 'The Origins' (doc E26), pp 222–223.
210. The lands investigated included the Matakohe, Motu o Tawa, Motu Kiwi, Tokaitarua, Okara, Te Wharowharo, Te Roro, Kopipi, Turaki Awatea, Ngarangipakura, Ketenikau, Kopua Waiwaha, Waikaraka, Te Rewarewa, and Whiti Nga Marama blocks: Boast, *The Native Land Court*, p 244. It appears that the Kaipara North court also awarded the Opurepure block to Paikea and Manukau in 1864. This block was located in the Kaipara district, and Loveridge gave evidence that the Court's findings were criticised by Alfred Domett, the commissioner of crown lands, on the grounds that the record of proceedings did not 'bear any evidence of the fact of the title being satisfactorily investigated and ascertained': Loveridge, 'The Origins' (doc E26), pp 217–218; see also 'Register to Native Titles to Land as Defined by Courts under the "Native Lands Act 1862"' (Loveridge, supporting papers (doc E26(a)), p [87]).
211. Loveridge, 'The Origins' (doc E26), p 223.
212. *Matakohe* (1865) 1 Whāngārei MB 1; Paula Berghan, 'Northland Block Research Narratives', 13 vols, report commissioned by the Crown Forestry Rental Trust (doc A39(l)), vol 13, pp 343–344.
213. *Matakohe* (1865) 1 Whāngārei MB 1; Boast, *The Native Land Court*, p 244.
214. *Matakohe* (1865) 1 Whāngārei MB 1, 3.
215. *Motu o Tawa* (1865) 1 Whāngārei MB 3; *Motu Kiwi* (1865) 1 Whāngārei MB 3–4.
216. *Tokitaruna* (1865) 1 Whāngārei MB 4–7.
217. *Te Wharowharo* (1865) 1 Whāngārei MB 11, 13.
218. *Kopipi* (1865) 1 Whāngārei MB 20, 22–23; Kerehama Mahanga (doc AA75), p 4; Hana Maxwell (doc I5(a)), p 2.
219. *Tauranga* (1865) 1 Whāngārei MB 30–31.
220. The blocks within the Te Raki district were Matakohe, Kopuawaiwaha, Te Wharowharo, Tokitaruna, Turakiawatea, Te Roro, Ketenikau, Ngarangipakura, Waikaraka, and Kopipi: 'Register to Native Titles to Land as defined by Courts under the "Native Lands Act 1862"' (Loveridge, supporting papers (doc E26(a)), pp [85]–[95]).
221. Loveridge, 'The Origins' (doc E26), p 217. We note that three of the Whāngārei blocks, investigated under the 1862 Act – Motu o Tawa, Motu Kiwi, and Te Rewarewa – apparently were not issued certificates of title until after 1 November 1865, under the later Native Lands Act 1865: 'Return of the Certificates Issued by the Native Land Court from 1st November , 1865, to 30th June, 1867; Showing the Number of Owners and the Acreage', 22 July 1867, AJHR, 1867, A-10c, pp 4–5.
222. Loveridge, 'The Origins' (doc E26), p 217.
223. The 88-acre Te Roro block was also purchased by settler Isaac Lawrie in 1865: 'Register to Native Titles to Land as defined by Courts under the "Native Lands Act 1862"' (Loveridge, supporting papers (doc E26(a)), pp [85]–[95]).
224. 'Register to Native Titles to Land as defined by Courts under the "Native Lands Act 1862"' (Loveridge, supporting papers (doc E26(a)), pp [85]–[95]).
225. 'Wangarei', *New Zealand Herald*, 28 September 1864 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 302).
226. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 302.
227. Ibid, p 304.
228. Vincent O'Malley, 'Runanga and Komiti: Maori Institutions of Self-government in the Nineteenth Century' (doctoral thesis, Victoria University of Wellington, 2004) (doc E31), pp 60, 64; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 282.
229. Fox, 14 March 1864, IUP/BPP, vol 13, p 582 (cited in Loveridge, 'The Origins' (doc E26), p 209).
230. 'Native Policy', *Press*, 21 February 1863, p 1.
231. Crown closing submissions (#3.3.406), pp 9–10.
232. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 777.

233. Ibid, p 788.
234. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 777.
235. Claimant closing submissions (#3.3.225), p 23.
236. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 4.
237. Waitangi Tribunal, *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993*, Wai 2478 (Lower Hutt: Legislation Direct, 2016), p 157.
238. Claimant closing submissions (#3.3.225), pp 38–39; Crown closing submissions (#3.3.406), p 11.
239. Walter Mantell, 19 October 1872, NZPD, vol 13, p 801; William Kenny, 25 September 1873, NZPD, vol 15, pp 1375–1376.
240. Claimant closing submissions (#3.3.225), pp 56–59.
241. Claimant closing submissions (#3.3.406), p 12.
242. Ibid, pp 12–15.
243. Loveridge, 'The Origins' (doc E26), p 220.
244. F A Weld, *Notes on New Zealand Affairs*, 1869 (cited in Loveridge, 'The Origins' (doc E26), p 220).
245. Loveridge, 'The Origins' (doc E26), p 220.
246. Weld, *Notes on New Zealand Affairs*, 1869 (cited in Loveridge, 'The Origins' (doc E26), p 221).
247. *Daily Southern Cross*, 24 June 1865, p 4.
248. Armstrong and Subasic, 'Summary of "Northern Land and Politics, 1860–1910"' (doc A12(c)), p 5.
249. See David Armstrong, transcript 4.1.8, Turner Centre, Kerikeri, p 789; Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), p 177.
250. O'Malley (doc E31), p 4.
251. Weld, *Notes on New Zealand Affairs*, 1869 (cited in Loveridge, 'The Origins' (doc E26), p 221).
252. Loveridge, 'The Origins' (doc E26), p 221; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 305.
253. Fenton (cited in Loveridge, 'The Origins' (doc E26), p 221, fn 520).
254. 'A Proclamation', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 465.
255. 'A Warrant', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 467.
256. Ibid; Loveridge, 'The Origins' (doc E26), p 222.
257. Loveridge, 'The Origins' (doc E26), pp 222–223; A D Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 183.
258. Loveridge, 'The Origins' (doc E26), p 222.
259. Ibid.
260. 'The Native Land Purchase Department,' *Press*, 15 June 1865, p 2.
261. Editorial, *Daily Southern Cross*, 24 June 1865, p 4.
262. Loveridge, 'The Origins' (doc E26), p 223.
263. J C Richmond, 24 August 1865, NZPD, vol E, p 348.
264. See, for example, 'Evidence of Donald Loveridge concerning the Origins of the Native Land Acts and Native Land Court in New Zealand', report commissioned by the Crown Law Office, 2000 (doc E26(c)), p 29.
265. Crown closing submissions (#3.3.406), pp 12–15.
266. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 322.
267. Claimant closing submissions (#3.3.225), p 23.
268. Boast, *The Native Land Court*, p 50.
269. Ward, *A Show of Justice*, p 186; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 310–311.
270. I H Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 15 (cited in Waitangi Tribunal, *The Kaipara Report*, Wai 674 (Wellington: Legislation Direct, 2006), p 61).
271. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 213.
272. Waitangi Tribunal, *The Kaipara Report*, Wai 674, p 228.
273. David V Williams, '*Te Kooti Tango Whenua*': *The Native Land Court, 1864–1909* (Wellington: Huia, 1999), p 138.
274. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 2, p 775.
275. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 384.
276. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 684.
277. Ibid.
278. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 413–414; Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 696.
279. See Waitangi Tribunal, *The Kaipara Report*, Wai 674, p 227.
280. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 531.
281. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 417.
282. Ibid.
283. Crown closing submissions (#3.3.406), p 12.
284. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 413.
285. Claimant closing submissions (#3.3.225), pp 117–123.
286. Ibid, pp 112–127, 146–152.
287. Crown closing submissions (#3.3.406), p 16.
288. Ibid, pp 43–44.
289. We note that Thomas used a different figure for the total known acreage of the district (1,700,951 acres). As a result, while the percentages cited here provide a good indication of the rate at which title was converted, they do not precisely reflect the total amount of land in Māori ownership after 1865. Rather they reflect the total land that would be titled in the Native Land Court. Thomas furthermore noted that some 147,864 acres would be titled by the Court after 1900. We will return to the administration of Māori land in the twentieth century in a subsequent volume of this report: Thomas, 'The Native Land Court' (doc A68), pp 20–71.
290. Monro to Fenton 12 May 1871, AJHR, 1871, A-2A, p 15.
291. 'Native Land Titles Determined by Native Land Court', 18 June 1885, AJHR, 1885, G-6A, p 2.

292. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 312; Thomas, 'The Native Land Court' (doc A68), p 22.
293. Riseborough and Hutton, *The Crown's Engagement with Customary Tenure in the Nineteenth Century*, p 189.
294. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 522.
295. Thomas, 'The Native Land Court' (doc A68), app F, pp 334–373.
296. Crown closing submissions (#3.3.406), p 12.
297. Fenton to Richmond, 11 July 1867, AJHR, 1867, A-10, p 4.
298. Ibid.
299. Grant Phillipson, 'The Ten Owner Rule: A Selection of Official Documents with Commentary', report commissioned by the Waitangi Tribunal, 1995 (Wai 64 ROI, doc K13), pp [19]–[20].
300. 'Native Land Court', *Hawkes Bay Herald*, 4 November 1880 (cited in AJHR, 1886, G-9, p 14).
301. Monro to Fenton, 27 June 1867, AJHR, 1867, A-10, p 10.
302. Berghan, 'Northland Block Research Narratives' (doc A39(h)), vol 9, p 287; Maning to Fenton, 24 June 1867, AJHR, A-10, p 8; 'Native Land Titles Determined by Native Land Court', 18 June 1885, AJHR, 1885, G-6A, p 2.
303. Maning to Fenton, 24 June 1867, AJHR, 1867, A-10, pp 7–9.
304. Sir William Martin, 18 January 1871, AJHR, 1871, A-2, p 3.
305. Riseborough and Hutton, *The Crown's Engagement with Customary Tenure in the Nineteenth Century*, p 192.
306. The Tribunal observed that 'it was in 1869, and remains today, a presumption of the English common law that, unless otherwise expressly provided for or unless clear circumstances dictated otherwise, all Crown grants to multiple owners would take the form of joint tenancies'. See Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 379.
307. 'Native Lands Bill', 27 September 1867, NZPD, vol 1, pt 2, p 1136.
308. Ibid.
309. Native Lands Amendment Act 1867, s 17.
310. Monro to chief judge, 12 May 1871, AJHR, 1871, A-2A, p 16.
311. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, pp 698–699; see also Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 523.
312. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, Wai 201, vol 2, pp 447–448; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 312–314.
313. Boast, *The Native Land Court*, p 73.
314. Ibid, p 74.
315. Ward, *A Show of Justice*, pp 216–217.
316. For Parahirahi, see Rosemary Daamen, 'Report on the Alienation of the Parahirahi Block,' report commissioned by the Waitangi Tribunal, 1992 (doc E1), p 9, and, for Kokohuia, see Coralie Clarkson, 'Pakanae and Kokohuia Lands, 1870–1990', report commissioned by the Waitangi Tribunal, 2016 (doc A58), p 32.
317. Fenton, 7 April 1868, AJHR, 1871, A-2A, pp 40–41.
318. Ibid, p 41.
319. Ibid. A writ of *mandamus* is a court order restraining a public officer or institution from enforcing an order or doing an act which violates a person's fundamental rights.
320. 'Native Lands Act Amendment Bill', 8 October 1868, NZPD, vol 4, pp 229–231.
321. In 1870, the Government passed the Disqualification Act, one result of which was to invalidate Fenton's appointment to the Legislative Council (he was still chief judge of the Native Land Court); his rival Donald McLean, then Native Minister, is reputed to have been behind the Act: William Renwick, 'Francis Dart Fenton, in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1f5/fenton-francis-dart, accessed 1 November 2022.
322. See Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 379.
323. Phillipson, 'The Ten Owner Rule (Wai 64 ROI, doc K13), pp [54]–[56].
324. Sir William Martin, 18 January 1871, AJHR, 1871, A-2, pp 3–4; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [59]–[60].
325. See George P Barton, 'William Martin', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1m21/martin-william, accessed 5 December 2022; see also Gerald Hensley, 'Theodore Minet Haultain', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1h12/haultain-theodore-minet, accessed 5 December 2022.
326. Sir William Martin, 18 January 1871, AJHR, 1871, A-2, p 4; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [57], [60].
327. 'Draft Proposed Bill by Sir WM Martin', AJHR, 1871, A-2, pp 11–12, 15–16; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [66], [69]–[70], [73]–[74].
328. Haultain to McLean, 11 July 1871, AJHR, 1871, A-2A, p 4; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), p [86].
329. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, pp 3–5; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [85]–[87].
330. Haultain to McLean 18 July 1871, AJHR, 1871, A-2A, pp 3–5; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [85]–[87].
331. Richmond, 31 July 1873, AJHR, 1873, G-7, pp 6–7; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [147]–[148]; see also Keith Sinclair, 'Christopher William Richmond', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1r9/richmond-christopher-william, accessed 6 December 2022.
332. Native Land Act 1873, ss 34, 37, 38, 45, 47.
333. Ibid, ss 59, 61.
334. 'Native Land Bill', 25 August 1873, NZPD, vol 14, p 621 (cited in Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), p [197]).
335. Ibid, p 611 (p [197]).
336. Ibid, p 618 (pp [197], [206]).
337. 'Native Land Bill', 25 September 1873, NZPD, vol 15, pp 1368–1370; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), pp [197], [212]–[213].
338. For Pollen's views see 'Native Land Bill', 25 September 1873, NZPD, vol 15, pp 1366–1367; Phillipson, 'The Ten Owner Rule' (Wai 64 ROI, doc K13), p [211].

339. 'Native Land Bill', 25 September 1873, NZPD, vol 15, p 1371; Phillipson, 'The Ten Owner Rule' (Wai 64 R01, doc K13), p [213].
340. 'Native Land Bill', 25 September 1873, NZPD, vol 15, p 1379; Phillipson, 'The Ten Owner Rule' (Wai 64 R01, doc K13), p [217].
341. Boast, *The Native Land Court*, pp 98–99.
342. 'Native Land Bill', 25 September 1873, NZPD, vol 15, pp 1372, 1375–1376; Phillipson, 'The Ten Owner Rule' (Wai 64 R01, doc K13), pp [209], [214], [215]–[216].
343. Boast, *The Native Land Court*, p 80.
344. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 443.
345. Ibid, p 402.
346. Ibid, p 441.
347. It cited section 59, which gave the Court the role of safeguarding Māori against unfair or unjust transactions; but the section proceeded on the basis that an agreement or agreements had already been reached between the owner and the purchaser, and indeed that the purchase money had already been paid: Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, Wai 814, p 442.
348. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 443.
349. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, pp 731–732.
350. Te Kapotai Hapu Korero, 'Mana i te Whenua' (doc F26(b)), p 39; closing submissions for Wai 1464 and Wai 1546 (#3.3.382), pp 81–82.
351. Te Kapotai Hapu Korero, 'Mana i te Whenua' (doc F26(b)), p 40; closing submissions for Wai 1464 and Wai 1546 (#3.3.382), pp 81–82; Te Kapotai Hapū, supporting papers (doc F25(c)), p 1285.
352. Te Kapotai Hapu Korero, 'Mana i te Whenua' (doc F26(b)), p 40; closing submissions for Wai 1464 and Wai 1546 (#3.3.382), pp 81–82; Te Kapotai Hapū, supporting papers (doc F25(c)), pp 1334–1355.
353. Wiremu Reihana (doc T10(b)), p 52.
354. Ibid.
355. Pairama Tahere (doc G17), pp 40, 64–66.
356. Ibid, pp 68–69.
357. Rihari Dargaville (doc G18), p 7; see also evidence of Hazel Sade (doc I19), p [8]; Jasmine Williams (doc K5), p 31; Darryl Hape (doc N10), p 8; Trevor Tupe (doc S24), pp 2, 5; Nau and Hohepa Epiha (doc S25), pp 8, 21; Murray Painting (doc V12(a)), p 9.
358. Rihari Dargaville (doc G18), pp 21–28.
359. Crown closing submissions (#3.3.406), pp 5–6.
360. Boast, *The Native Land Court*, p 99.
361. John Curnin, 14 May 1891, AJHR, 1891, G-1, pp 170–171; Phillipson, 'The Ten Owner Rule' (Wai 64 R01, doc K13), pp [321], [353]–[354].
362. W L Rees, James Carroll, 23 May 1891, AJHR, 1891, G-1, p x; Phillipson, 'The Ten Owner Rule' (Wai 64 R01, doc K13), pp [312]–[313], [318].
363. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 528.
364. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 725.
365. Native Land Act 1873, s 45.
366. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 458–459; Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 729, fn 64.
367. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 458.
368. Ibid.
369. 'Rules and Regulations of the Native Land Court', 7 March 1895, *New Zealand Gazette*, 1895, no 18, p 442.
370. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 726.
371. Waitangi Tribunal, *He Kura Whenua ka Rokohanga*, Wai 2478, p 22.
372. Claimant closing submissions (#3.3.225), pp 146–152.
373. Ibid, p 149.
374. Ibid, p 147.
375. Closing submissions for Wai 1957 (#3.3.335), p 38.
376. Ibid, p 39.
377. 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 416–419, 420, 424–425.
378. Native Secretary, 2 August 1960, AJHR, 1860, E-9, p 20.
379. Tom Bennion and Judy Boyd, *Succession to Maori Land, 1900–52*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 4. The authors stated that the use of the term 'hereditaments' shows that the Court struggled to find a term for what was a new form of property for Māori.
380. An exception was the Native Succession Act 1881, which provided that succession to land still held by Māori custom was to be decided according to custom, but succession to 'hereditaments' or land held under a title derived from the Crown was to be guided by the law of New Zealand. This provision was shortlived, evidently because of Māori opposition, and an amending Act in 1882 revised the reference to succession of land held by a Crown-derived title; it would henceforth be decided 'according to the law of New Zealand as nearly as can be reconciled with Native custom': Bennion and Boyd, *Succession to Maori Land*, p 7.
381. Native Land Court, *Important Judgments Delivered in the Compensation Court and Native Land Court, 1866–1879* (Auckland: Native Land Court, 1879), pp 19–20.
382. Bennion and Boyd, *Succession to Maori Land*, p 6.
383. See Native Land Court, *Important Judgements*, p 20.
384. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 500.
385. Eddie Taihakurei Durie, 'Custom Law', Treaty Research Series (Wellington: Treaty of Waitangi Research Unit, 2013), p 66.
386. Ibid, pp 62, 66–67, 68.
387. 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 331, 336–338.
388. Ibid, pp 346–347.

389. Henare, Petrie, and Puckey, '"He Whenua Rangatira"', p 347.
390. Ibid, pp 347–350. The authors cited evidence given in the Native Land Court and to papatupu block committees.
391. Ibid, p 349.
392. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, pp 18–19.
393. Ibid, vol 2, p 500.
394. Williams, '*Te Kooti Tango Whenua*', p 180.
395. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 724.
396. Martin, 18 January 1871, AJHR, 1871, A-2, pp 4–5.
397. Bennion and Boyd, *Succession to Maori Land*, p 8.
398. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 813.
399. Wiremu Reihana (doc T10(b)), p 53.
400. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 728.
401. Berghan, 'Northland Block Research Narratives' (doc A039(f)), vol 7, pp 364–365.
402. Clarkson, 'Pakanae and Kokohuia Lands, 1870–1990' (doc A58), pp 9–10, 81–82; Thomas, 'The Native Land Court' (doc A68), pp 158–159.
403. See, for example, Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 451.
404. Thomas, 'The Native Land Court' (doc A68), p 190.
405. W L Rees and James Carroll, 23 May 1891, AJHR, 1891, G-1, p xvii (cited in Bennion and Boyd, *Succession to Maori Land*, p 9).
406. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 500.
407. Thomas, 'The Native Land Court' (doc A68), pp 17, 24.
408. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 494.
409. Ibid, pp 499–503; Native Land Court Act 1894, s 122.
410. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 727.
411. Native Land Court Act 1894, s 122.
412. Thomas, 'The Native Land Court', p 194, fn 450.
413. Boast, *The Native Land Court*, p 203.
414. Katherine Buchanan, George Hinde, and Donald McMorland, *Hinde McMorland & Sim Land Law in New Zealand*, 2nd ed, 3 vols (Wellington: Lexis Nexis, 2003), vol 1, p 227.
415. Department of Statistics, *The New Zealand Official Yearbook, 1978* (Wellington: Department of Statistics, 1978), p 282.
416. Section 18 of the 1862 Act provided that an owner listed on the certificate of title, or someone who had purchased an interest in the land, could apply to the Governor for a Crown grant.
417. Crown closing submissions (#3.3.406), pp 52–53.
418. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 440.
419. Native Land Act 1873, s 80.
420. Land Transfer Act 1870 Amendment Act 1874, ss 9–10.
421. 'The Royal Commission on the Maori Land Courts', AJHR, 1980, H-3, p 39.
422. Section 73 further stated that, until a certificate of title was issued, the existing Native Land Court certificate, memorial of ownership or other instrument of title, or duplicate copies, should be embodied in the provisional register; the chief judge was to forward such documents periodically to the district land registrars for this purpose.
423. 'The Royal Commission on the Maori Land Courts', AJHR, 1980, H-3, p 39.
424. Ibid, p 40.
425. Ibid, p 39.
426. Grant Young, Michael Belgrave, and Tom Bennion, *Native and Maori Land Legislation in the Superior Courts, 1840–1980* (Auckland: School of Cultural Studies, Massey University, 2005), p 36; Boast, *The Native Land Court*, p 203.
427. Boast, *The Native Land Court*, p 203.
428. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1396.
429. Land Transfer Act 1885, s 67.
430. See the Te Urewera Tribunal's discussion of *Beale v Tihema te Hau and Attorney General* (1905) in Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, pp 1394–1396.
431. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1396.
432. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 466.
433. 'The Royal Commission on the Maori Land Courts', AJHR, 1980, H-3, p 38.
434. Ibid, p 40.
435. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 770.
436. 'The Royal Commission on the Maori Land Courts', AJHR, 1980, H-3, p 45.
437. Ibid, p 42.
438. Thomas, 'The Native Land Court' (doc A68), pp 25, 35, 39.
439. Ibid, p 289.
440. Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island, 1865–1921* (Wellington: Victoria University Press, 2008), pp 260–261.
441. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 401.
442. W L Rees, James Carroll, 23 May 1891, AJHR, 1891, G-1, p xii.
443. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 528.
444. Claimant closing submissions (#3.3.225), p 88.
445. Ibid.
446. 'Agreed Historian Position Statement on Native Land Court Issues – March, April, and May 2009' (Wai 903 R01, #6.2.5), p 74.
447. Claimant closing submissions (#3.3.225), p 88.
448. Crown closing submissions (#3.3.406), p 8.
449. Maurice Peter Keith Sorrenson, 'The Lore of the Judges: Native Land Court Judges' Interpretations of Māori Custom Law', *Journal of the Polynesian Society*, vol 124, no 3 (2015), p 224. For an exploration of some of Fenton's ideas, see Maurice Peter Keith Sorrenson, 'Folkland to Bookland: F D Fenton and the Enclosure of the Māori "Commons"', NZJH, vol 45, no 2 (October 2011), pp 149–169.
450. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', minutes of evidence, AJHR, 1891,

G-1, p 55 (cited in Riseborough and Hutton, *The Crown's Engagement with Customary Tenure in the Nineteeth Century*, p 59).
451. Norman Smith, *Native Custom and Law Affecting Native Land* (Wellington: Maori Purposes Fund Board, 1942).
452. Belgrave, 'Maori Customary Law', p 35.
453. Fenton evidence, 19 March 1891, 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, p 55.
454. Boast, *The Native Land Court*, pp 118–119.
455. Bryan Gilling, 'The Nineteenth-century Native Land Court Judges: An Introductory Report', report commissioned by the Waitangi Tribunal, 1994 (Wai 814 R01, doc A78), p 24.
456. Maning to Fenton, 24 June 1867, AJHR, 1867, A-10, pp 7–8.
457. Maning to Locke, 11 July 1880 (cited in John Nicholson, *White Chief: The Story of a Pakeha–Maori* (Auckland: Penguin Books, 2006), p 186).
458. Maning to Fenton, 24 June 1867, AJHR, A-10, p 8.
459. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 683–684.
460. Nicholson, *White Chief*, p 187.
461. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 322.
462. Ibid, pp 722–725.
463. Boast, *The Native Land Court*, p 138.
464. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 722–725. They noted that many Māori were in considerable debt to Maning. If and whether such indebtedness influenced any of his decisions as judge is not clear, although the potential for conflicts of interest certainly existed.
465. David Colquhoun, 'Frederick Edward Maning', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1m9/maning-frederick-edward, accessed 6 December 2022.
466. Monro to Fenton, 12 May 1871, AJHR, 1871, A-2A, p 14. Part of the letter was reprinted in AJHR, 1890, G-1, p 21.
467. Monro to Fenton, 12 May 1871, AJHR, 1871, A-2A, p 15.
468. Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claim, 1865–1950', report commissioned by the Waitangi Tribunal, 1992 (Wai 45 R01, doc F10), pp 87–89.
469. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 48, 61, 704.
470. Paraone to Fenton, 7 July 1876 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 706).
471. Boast, *The Native Land Court*, pp 194–195; Richmond to Monro, 21 August 1867 (cited in Boast, *The Native Land Court*, p 194).
472. Boast, *The Native Land Court*, pp 127–128; Gilling, 'The Nineteenth-century Native Land Court Judges' (Wai 814 R01, doc A78), p 8.
473. Boast, *The Native Land Court*, pp 128, 133.
474. T B Byrne, *The Unknown Kaipara: Five Aspects of its History 1250–1875* (Auckland: T B Byrne, c 2002), p 363.
475. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 362.
476. Gilling, 'The Nineteenth-century Native Land Court Judges' (Wai 814 R01, doc A78), pp 2, 5.
477. Ralph Johnson, 'Report on the Crown Acquisition of Hauturu (Little Barrier Island)', report commissioned by the Waitangi Tribunal, 1999 (doc E8), pp 14–15.
478. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1150, 1154.
479. Ibid, pp 392, 418, 423, 560, 726, 942, 914, 1178, 1540–1545; Thomas, 'The Native Land Court' (doc A68), p 29.
480. Claimant closing submissions (#3.3.225), p 127.
481. Crown closing submissions (#3.3.406), pp 41–43.
482. Bell minute, 'Native Lands Bill', 5 November 1862, IUP/BPP, vol 13, p 215 (cited in Loveridge, 'The Origins' (doc E26), p 190).
483. Loveridge, 'The Origins' (doc E26), pp 212, 212 fn 492.
484. 'A Proclamation Bringing "The Native Lands Act 1862 into Force within the Whole of the Colony', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 465; 'A Warrant making Rules for Regulating the Sittings of Courts under the "Native Lands Act 1862"', 29 December 1864, *New Zealand Gazette*, 1864, no 51, p 467.
485. 'Native Lands Bill', NZPD, 1867, vol 1.2, p 1135.
486. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 413.
487. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 777.
488. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 385–386; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 449.
489. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, pp 495–500.
490. Ibid, p 497.
491. Ibid, pp 497–498.
492. Boast, *The Native Land Court*, pp 138–139.
493. Te Wheoro and Pāora Tūhaere, 18 February 1871, AJHR, 1871, A-2A, p 26.
494. Henry Tomoana, evidence, 31 May 1871, AJHR, 1871, A-2A, p 37.
495. Wiremu Pōmare, statement, no date, AJHR, 1871, A-2A, p 35.
496. Eru Nehua, evidence, no date, AJHR, 1871, A-2A, p 34.
497. Hemi Tautari, statement, no date, AJHR, 1871, A-2A, p 30.
498. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 7.
499. Maning, notes on draft, 2 September 1871, AJHR, 1871, A-2A, p 23.
500. Maning to Webster, no date (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 56).
501. Maning to Webster, no date (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 370–372, 801–802).
502. See 'Report on Petition of Mohi Mangakahia and 19 Others', AJHR, 1874, I-3, p 1.
503. Crown closing submissions (#3.3.406), pp 41, 43.
504. Boast, *The Native Land Court*, p 136.
505. 'Native Land Bill', 27 August 1874, NZPD, vol 16, p 986.

506. 'Report on Petition of Mohi Mangakahia and 19 Others', AJHR, 1874, I-3, p 1.
507. Ibid.
508. Te Awataia, 13 May 1881, Hauturu rehearing, Kaipara MB 3, p 435 (cited in Peter McBurney, 'Responses to Statement of Issues Relating to the Mahurangi Sub-region' (doc A36(c)), p 4).
509. Fenton, 13 May 1881, Hauturu rehearing, Kaipara MB 3, p 435 (cited in McBurney, 'Responses to Statement of Issues Relating to the Mahurangi Sub-region' (doc A36(c)), p 4).
510. Boast, *The Native Land Court*, pp 135–140.
511. See Preece to Under-Secretary, Native Office, 12 February 1876, AJHR, C-6, p 12.
512. Claimant closing submissions (#3.3.225), pp 153–157.
513. Crown closing submissions (#3.3.406), pp 31–34.
514. Ibid, p 34.
515. Tony Walzl, 'Overview of Land Alienation around Whangarei City', report commissioned by the Crown Forestry Rental Trust, 2015 (doc U1).
516. Tony Walzl, transcript 4.1.22, Terenga Parāoa Marae, Whāngārei, pp 508–509.
517. Crown closing submissions (#3.3.406), pp 31–32. For Eru Nehua's comments, see AJHR, 1871, A-2A, p 35.
518. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 8.
519. Martin, proposed draft Bill, AJHR, 1871, A-2, p 11; see Gerald Hensley, 'Theodore Minet Haultain', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1h12/haultain-theodore-minet, accessed 5 December 2022; George P Barton, 'William Martin', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1m21/martin-william, accessed 5 December 2022.
520. Maning, notes on draft, 2 September 1871, AJHR, 1871, A-2A, p 23.
521. AJLC, 1874, no 1, p 6.
522. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 822.
523. 'Native Land Court', *Auckland Star*, 7 May 1894, p 3.
524. Fenton to Native Minister, 16 May 1878 (cited in Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 446).
525. Pairama Tahere (doc G17), pp 68–69.
526. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1054.
527. Claimant closing submissions (#3.3.225), p 158.
528. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 818–819.
529. Ibid, p 819.
530. David Armstrong and Evald Subasic, response to statement of issues (doc A12(b)), p 29.
531. H T Kemp to Fenton, 30 July 1875 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 821).
532. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 446.
533. Claimant closing submissions (#3.3.225), pp 89–90.
534. Crown statement of position and concessions (#1.3.2), pp 108–109.
535. Crown closing submissions (#3.3.406), p 69.
536. Ibid, pp 28–29.
537. Martin, 'Memorandum on the Operation of the Native Lands Court', 18 January 1871, AJHR, 1871, A-2, p 4. Martin proposed a remedy in sections 21 and 22 of his draft Native Land Court Act: Martin, proposed draft Bill, AJHR, 1871, A-2, p 11.
538. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 8.
539. 'Native Land Bill', 25 September 1873, NZPD, vol 15, pp 1369–1370.
540. Claimant closing submissions (#3.3.225), p 117.
541. Crown closing submissions (#3.3.406), p 35.
542. Ibid, pp 37–38.
543. Ibid, p 40.
544. Ibid, p 36.
545. Ibid, p 39.
546. Ibid, pp 37, 69.
547. Thomas, 'The Native Land Court' (doc A68), pp 28–29. Thomas relied on Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts', report commissioned by the Mahurangi and Gulf Island Collective Committee and Crown Forestry Rental Trust, 2010 (doc A36), pp 418–439.
548. Thomas, 'The Native Land Court' (doc A68), p 29.
549. Walzl, 'Overview of Land Alienation' (doc U1), pp 44–51, 68–76.
550. David Armstrong, 'The Native Land Court and Crown Purchasing in Te Waimate–Kaikohe in the Nineteenth Century', report commissioned by the claimants, 2016 (doc AA52), p 14.
551. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 708.
552. Maning to Fenton, 9 November 1875 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 709).
553. Ibid.
554. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 709.
555. Ibid, p 712.
556. Preece to McLean, 13 November 1875 (cited in Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 15).
557. Maning to McLean, 13 November 1875 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 712–713).
558. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 15.
559. H Halse to Preece, 30 November 1875 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 9, p 2:1599).
560. Ibid.
561. F D Fenton to Maning, 11 March 1876 (cited in Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 15).
562. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, pp 1370–1371.
563. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 450–452.
564. Thomas, 'The Native Land Court' (doc A68), p 27.
565. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 712–714.

566. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 398–399.
567. Thomas, 'The Native Land Court' (doc A68), pp 17, 24. Gilbert Mair was appointed for Bay of Islands, H T Kemp for Kaipara, and William Webster for Hokianga: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 682.
568. Thomas, 'The Native Land Court' (doc A68), pp 87–88.
569. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 17.
570. McLean to Webster, 20 January 1875, in H H Turton, comp, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (Wellington: Government Printer, 1883), section C, p 47.
571. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 17.
572. T W Lewis, evidence to Owhaoko and Kaimanawa Native Lands Committee, 20 July 1886, AJHR, 1886, I-8, p 66.
573. See Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), pp 17, 40, 42–43, 45, 47–48, 50, 54, 65–66, 68.
574. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 686–687.
575. Chief clerk, Native Land Court, to McLean, 18 September 1871 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 683).
576. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 685.
577. Ibid, pp 688–689.
578. Ibid, p 705.
579. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 11.
580. E Brissenden to Native Minister, 2 January 1875 (cited in Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 10).
581. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 706.
582. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), pp 10–11.
583. Brissenden to McLean, 3 July 1875 (cited in Geiringer, 'Historical Background' (Wai 45 ROI, doc F10), pp 52–53); see also Preece to McLean, 3 July 1875, AJHR, 1875, C-4, p 2.
584. Maning to Webster, no date (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 704).
585. See Maning to Webster, 14 June 1874 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 690).
586. Thomas, 'The Native Land Court' (doc A68), pp 82–83.
587. Maning to McLean, 11 September 1874 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 705).
588. Sorrenson, 'The Lore of the Judges', p 231.
589. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 49.
590. Thomas, 'The Native Land Court' (doc A68), pp 87–88.
591. Ibid, pp 88–89.
592. Ibid.
593. Ibid; Berghan, 'Northland Block Research Narratives' (doc A39(e)), p 76.
594. Thomas, 'The Native Land Court' (doc A68), p 74.
595. Data relating to Native Land Court title investigations and Crown purchasing from 1865 onward (#1.3.2(c)); Thomas, 'The Native Land Court' (doc A68), app C.
596. Thomas, 'The Native Land Court' (doc A68), pp 107–110.
597. Paula Berghan, 'Northland Block Research Narratives', 13 vols, report commissioned by the Crown Forestry Rental Trust, 2006, vol 5 (doc A39(d)), pp 110–111; vol 6 (doc A39(e)), pp 62–63, 195–196; vol 7 (doc A39(f)), p 362. For Maning's comment, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 692.
598. See Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), pp 10–11, 55–56.
599. Thomas, 'The Native Land Court' (doc A68), pp 94, 96; as previously indicated, the Pakanae investigations are also discussed in detail by Coralie Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), chs 2–3.
600. Dr Barry Rigby, 'Validation Review of the Crown's Tabulated Data on Land Titling and Alienation for the Te Paparahi o Te Raki Inquiry Region: Crown Purchases, 1866–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A56), p 4; Thomas, 'The Native Land Court' (doc A68), p 99.
601. Thomas, 'The Native Land Court' (doc A68), p 101.
602. Berghan, 'Northland Block Research Narratives' (doc A39(e)), pp 269–270; Thomas, 'The Native Land Court' (doc A68), p 102.
603. Thomas, 'The Native Land Court' (doc A68), p 102.
604. Berghan, 'Northland Block Research Narratives', vol 4 (doc A39(c)), pp 334–335.
605. Ibid, p 339.
606. Ibid.
607. 'Ngaere and Other Blocks Native Claims Adjustment Bill,' 5 September 1894, NZPD, vol 85, pp 461–462.
608. Thomas, 'The Native Land Court' (doc A68), pp 213–218.
609. Claimant closing submissions (#3.3.225), p 90.
610. Closing submissions for Wai 246 (#3.3.249), p 80.
611. Crown closing submissions (#3.3.406), p 37.
612. Berghan, 'Northland Block Research Narratives' (doc A39(f)), p 265; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 721–735.
613. Tawatawa to Fenton, 5 June 1871 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 9, p 2:1447); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 721.
614. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 722–725.
615. Maning to Fenton, 26 June 1877 (Berghan, supporting papers (doc A43), vol 2, p 961).
616. Eru Nehua, Maihi Paraone Kawiti, Horotene Tawatawa, the native assessors Hirini Taiwhanga and Wi Taua were present: Mark Derby, '"Fallen Plumage": A History of Puhipuhi, 1865–2015', report commissioned by the Waitangi Tribunal, 2016 (doc A61), p 72.

617. Derby, '"Fallen Plumage"' (doc A61), p 74.
618. Ibid.
619. Ibid, p 75.
620. Derby noted that no version or copy of the letters sent to Nehua or Maihi Paraone appear in the archival records, and they were unable to be located. A letter may also have been sent to Tawatawa but this was not subsequently mentioned in his later evidence: ibid.
621. Maning to Fenton, 26 June 1877 (cited in Derby, '"Fallen Plumage"' (doc A61), p 75); Derby noted that Maning reiterated this claim again in a 1879 letter to Fenton: Maning to Fenton, 8 July 1879 (cited in Derby, '"Fallen Plumage"' (doc A61), p 76).
622. Derby, '"Fallen Plumage"' (doc A61), p 76.
623. Maning to Fenton, 8 July 1879 (cited in Derby, '"Fallen Plumage"' (doc A61), p 76).
624. Derby, '"Fallen Plumage"' (doc A61), pp 77–84. Derby explained that 'Maning's grounds for allocating these shared interests in each division appear to reflect the complex nature of the various customary interests in Puhipuhi, and to have aimed at overcoming opposition from contesting claimants. Maning seems to have attempted a solution that roughly resembled an equal three-way division, while ensuring that Nehua (whose efforts at farming the Taharoa lands Maning evidently respected) gained substantially more in "value" than the other principal claimants': ibid, p 78.
625. Ibid, p 80.
626. Tawatawa asked McLean 'to put a stop to further encroachment upon my land – Te Puhipuhi. And also other pieces of land belonging to me which Eru Nehua is endeavouring to obtain possession of': Tawatawa to Native Minister, 12 November 1873 (cited in Derby, '"Fallen Plumage"' (doc A61), p 82).
627. Derby, '"Fallen Plumage"' (doc A61), p 83.
628. Ibid, p 84.
629. Maning to Fenton, 8 July 1879 (cited in Derby, '"Fallen Plumage"' (doc A61), p 93).
630. Derby, '"Fallen Plumage"' (doc A61), p 87.
631. Ibid, pp 105, 106.
632. Ibid, p 98.
633. Ibid, p 104.
634. Ibid, pp 98, 101–102, 104.
635. M P Kawiti to H T Clarke, 18 November 1877 (cited in Derby, '"Fallen Plumage"' (doc A61), p 96).
636. Derby, '"Fallen Plumage"' (doc A61), pp 105, 114–116, 117.
637. Ibid, pp 121–122, 128–131; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 728–729.
638. Sheehan to Fenton, 21 June 1879 (cited in Derby, '"Fallen Plumage"' (doc A61), p 128).
639. Derby, '"Fallen Plumage"' (doc A61), pp 128–129.
640. Ibid, pp 136–137.
641. Ibid, p 137.
642. Ibid, p 151.
643. Greenway to R Gill, 21 April 1882 and 29 April 1882 (Derby, '"Fallen Plumage"' (doc A61), p 151).
644. Derby, '"Fallen Plumage"' (doc A61), pp 141–152.
645. Symonds, judgment, 26 April 1882 (cited in Derby, '"Fallen Plumage"' (doc A61), pp 152–153).
646. Derby, '"Fallen Plumage"' (doc A61), pp 152–153.
647. Ibid, p 153.
648. I Taumauru and others to J Bryce, 29 April 1882 (cited in Derby, '"Fallen Plumage"' (doc A61), p 155).
649. Derby, '"Fallen Plumage"' (doc A61), p 155.
650. Ibid, p 156.
651. Ibid.
652. Ibid, pp 156–157.
653. Ibid, p 157.
654. Ibid, p 159.
655. Ibid.
656. Ibid, p 160.
657. Ibid, pp 160–161.
658. Judgment, 26 May 1883 (cited in Derby, '"Fallen Plumage"' (doc A61), p 167).
659. Ibid.
660. Ibid (p 168).
661. Derby, '"Fallen Plumage"' (doc A61), p 168.
662. 'Kawakawa Native Lands Court', *New Zealand Herald*, 2 June 1883, p 5 (cited in Derby, '"Fallen Plumage"' (doc A61), p 168).
663. Derby, '"Fallen Plumage"' (doc A61), pp 167, 173.
664. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 735.
665. Claimant closing submissions (#3.3.225), pp 65–66.
666. Ibid, p 67.
667. Ibid, pp 65–77.
668. Ibid, p 174.
669. Crown closing submissions (#3.3.406), pp 24–25.
670. Ibid, pp 3, 26–27.
671. Ibid, pp 48–50.
672. Maning to Fenton, 19 February 1872 (Armstrong, 'The Native Land Court and Crown Purchasing' (doc A A52), pp 18–19).
673. 'Return of the Certificates Issued by the Native Land Court from 1st November , 1865, to 30th June, 1867; Showing the Number of Owners and the Acreage', 22 July 1867, AJHR, 1867, A-10(c), pp 3–5.
674. Armstrong, 'The Native Land Court and Crown Purchasing' (doc A A52), pp 18–20.
675. Ibid, pp 19–20.
676. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 22.
677. Walzl, 'Overview of Land Alienation' (doc U1), p 75.
678. Rogan to Richmond, 20 June 1868 (quoted in Paul Thomas, 'The Crown and Maori in the Northern Wairoa, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 1999 (doc E40), p 207).
679. Thomas, 'The Native Land Court' (doc A68), chs 3–4.
680. See Peter Clayworth, 'A History of the Motatau Blocks, c 1880–c 1980', report commissioned by the Waitangi Tribunal, 2016 (doc A65).
681. Thomas, 'The Native Land Court' (doc A68), p 17.

682. Eru Nehua, 'Appendix to Return Relative to the Working of the Native Land Acts', 20 April 1871, AJHR, 1871, A-2A, p 34.
683. Wiremu Pōmare, 'Appendix to Return Relative to the Working of the Native Land Acts', 20 April 1871, AJHR, 1871, A-2A, p 35.
684. 'Papers on Native Land Court and Natives Reserves Acts', no date, AJHR, 1871, A-2, pp 4, 16.
685. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 7.
686. Ibid, p 9.
687. 'Appendix to Report Relative to the Working of the Native Land Acts', AJHR, 1871, A-2A, p 51.
688. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1265.
689. Wi Kātene, 'Minutes of Meetings with Natives and Others and Correspondence', 2 April 1891, AJHR, 1891, G-1, p 21.
690. Hone Peeti, 'Minutes of Evidence', 2 April 1891, AJHR, 1891, G-1, p 61.
691. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 818–819, 824.
692. Ibid, p 822.
693. 'Hokianga', *New Zealand Herald*, 27 January 1879 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 822). The small size of courtrooms at the time meant that few people could find shelter inside them on winter hearing days.
694. 'Native Meeting at the Bay of Islands,' *New Zealand Herald*, 21 April 1885, p 6.
695. Cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 822.
696. Ibid, pp 818–824.
697. Von Sturmer to McLean, 18 May 1875, AJHR, 1875, G-1, p 4.
698. Cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 823.
699. Thomas, 'The Native Land Court' (doc A68), p 159.
700. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 518.
701. *New Zealand Gazette*, 1880, no 114, p 1706; *New Zealand Gazette*, 1885, no 35, p 719.
702. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1263.
703. Lewis to Macdonald, 26 May 1883, AJHR, 1883, G-5, p 1.
704. Macdonald to Bryce, 22 June 1883, AJHR, 1883, G-5, p 2.
705. Claimant closing submissions (#3.3.225), pp 164–173.
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710. Maning to Fenton, 24 June 1867, AJHR, 1867, A-10, p 7.
711. Fenton to J C Richmond, 11 July 1867, AJHR, 1867, A-10, p 5.
712. See, for example, Fenton to J C Richmond, 11 July 1867, AJHR, 1867, A-10, pp 3, 4; Maning to Fenton, 28 June 1867, AJHR, 1867, A-10, p 9; Rogan to Fenton, 26 June 1871, AJHR, 1871, A-2A, pp 13–14.
713. Heale to Richmond, 2 August 1867, AJHR, 1867, A-10B, p [3].
714. Ibid, pp 4, 5.
715. Heale to Fenton, 7 March 1871, AJHR, 1871, A-2A, p 19.
716. Haultain to McLean 18 July 1871, AJHR, 1871, A-2A, pp 5–6.
717. 'Notes of conversation with Mr Barstow', 4 February 1871, AJHR, 1871, A-2A, p 47.
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719. Heale to Fenton, 7 March 1871, AJHR, 1871, A-2A, p 20; see also 'Notes of Conversation with Mr Barstow', AJHR, 1871, A-2A, p 47; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 779.
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721. Heale to McLean, 5 July 1871, AJHR, 1872, G-21, pp 4–5.
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733. Ibid, p 6. By June 1880, in the Auckland Provincial District, of a total of 22 surveyors employed by the Survey Department, just three were 'contract or other surveyors': see AJHR, 1880, H-27, p 7.
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743. Ibid, pp 19, 21.
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747. Fenton to McLean, 'Return Relative to the Working of the Native Land Acts', 28 August 1871, AJHR, 1871, A-2A, p 11.
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751. Heale to the Native Minister, 'Report by Inspector of Surveys', 28 May 1875, AJHR, 1875, H-6, pp 4–6.
752. Kamariera Te Wharepapa to Ballance, 8 June 1887 (quoted in Walzl, 'Overview of Land Alienation' (doc U1), p 93).
753. Walzl, 'Overview of Land Alienation' (doc U1), p 93.
754. Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, pp 108–115.
755. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, pp 355–362.
756. Berghan, 'Northland Block Research Narratives' (doc A39(d)), vol 5, pp 155–163.
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759. Moorhouse to Gisborne, 'Report of the Secretary for Crown Lands', 9 July 1872, AJHR, 1872, C-2, pp 4–5.
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763. Waitangi Tribunal, *The Te Roroa Report*, Wai 38 (Wellington: Brooker and Friend, 1992), p 70.
764. Stout and Ngata, 'Native Lands and Native-Land Tenure', 10 June 1908, AJHR, 1908, G-1J, p 8.
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766. Claimant closing submissions (#3.3.225), pp 213–216.
767. Ibid, p 216.
768. Ibid, p 217.
769. Crown closing submissions (#3.3.406), pp 59–63.
770. 'Rules under "The Native Lands Act, 1865"', 5 April 1867, *New Zealand Gazette*, vol 20, pp 135–140.
771. Dr Grant Phillipson, '"An Appeal from Fenton to Fenton": The Right of Appeal and the Origins of the Native Appellate Court', NZJH, vol 45, no 2 (October 2011), p 175.
772. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 864–866.
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775. Native Land Court Act 1886 Amendment Act 1888, s 24.
776. Phillipson, '"An Appeal from Fenton to Fenton"', pp 172–173.
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779. Ibid, p 256.
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781. The following account is taken from Berghan, 'Northland Block Research Narratives' (doc A39(g)), pp 188–205.
782. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 749. The following account draws on Berghan, 'Northland Block Research Narratives' (doc A39(g)), pp 217–236; and Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 749–757.
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784. Ibid, p 750.
785. Ibid.
786. Ibid, pp 750–751.
787. Ibid, p 751.
788. Petition of Nui Hare and others, 8 July 1880 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 751).
789. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 751–752.
790. Ibid, p 752.
791. Nelson to Secretary Native Land Purchase Department, 6 August 1879 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 753).
792. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 753.
793. Petition of Nui Hare and others, 8 July 1880 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 753).
794. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 754.
795. Petition of Nui Hare and others, 8 July 1880 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 755).
796. Bryce, memorandum, 27 September 1880 (Berghan, 'Northland Block Research Narratives' (doc A39(g)), p 224.
797. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 756–757.
798. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 4–9. The history of the various Court awards in the various Hauturu cases is not straightforward. In the 1880 case, the Court made its award to Te Hemara citing his evidence of the conquest of Hauturu by 'a branch of Maki's people'. Te Hemara then put forward a list of 18 names for the memorial of ownership, in which each owner had specified their hapū (there were a range, including Ngāti Rongo, Ngāti Manuhiri, Kawerau, and others). However, all except two (one of Ngāpuhi and one of Ngati Māru) gave their iwi as Ngāti Whātua. (The Court had also accepted the claim of Wiremu Turipona of Ngāti Maru.) Beazley stated that the customary right was claimed from Maki and Mataahu (that is, Te Kawerau), as did McBurney, and he said that those who gave a Ngāti Whātua affiliation 'claimed through their Te Kawerau ancestors'. He suggested that those among the claimants with strong affiliation to Ngāti Whātua hoped to distance themselves from the descendants of Mataahu and his son Rehua among the the Ngātiwai of Hauturu witnesses: *Hauturu* (1880) 3 Kaipara MB

388, pp 388, 394; Michael Beazley (doc K8), pp 27–28; doc K2, p 158); McBurney (doc A36), pp 503–504; Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 4–9.

799. Native Affairs Committee, 19 July 1881, AJHR, 1881, I-2, p 5.

800. Native Affairs Committee, 28 June 1882, AJHR, 1882, I-2, pp 6–7.

801. It is clear from the Court minutes that Chief Judge Macdonald presided over the case from 31 January to 15 February 1884 and that Judge Edward Williams sat with him. Judge Williams, identified in the minutes as the puisne judge, delivered the judgment of the Court (described as 'unanimous') on 7 February, and it was also he who presided in the Court briefly when the Chief Judge failed to return from his visit to Bryce on 14 February when he was expected: Taitokerau Maori Land Court minute books, 1865–1910, Kaipara minute book 4, pp 160–161, 210, 217.

802. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 14–15.

803. McBurney discussed the traditional histories of Te Kawerau kin groups and of the developing relationship between sections of Ngāti Whatua who lived around the northern margins of Kaipara Harbour and Maki's Te Kawerau people, as well as traditional evidence before the Native Land Court in the Hauturu case. Beazley considered the relationships among the various kinship groups arising from Maki and Mataahu and their take to Hauturu, and Johnson outlined the complex history of claims to the island made to the Native Land Court and the various Court decisions: doc E8, pp 1–22, 29–30. Beazley noted that Te Kawerau and Ngāti Whatua worked together in presenting the Hauturu case on behalf of Te Kawerau to the Court (doc K2, pp 22, 183–185), and he and McBurney each discussed the significance of the lists of names put in and the tribal identities of those named, as recorded in the minutes: Michael Beazley, 'Te Uri o Maki' (doc K2), pp 22, 164–165, 183–185, 189, 203–213; Michael Beazley (doc K8), pp 27–31; Johnson, 'Report on the Crown Acquisition of Hauturu (doc E8), p 15; McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts' (doc A36), pp 64–108, 109–152, 499–586, 538–542, 550–555.

804. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 12, 16, 18–19, 22.

805. The following account is taken from Alexandra Horsley, 'A History of the Otongoroa, Te Pupuke, and Waihapa Blocks (Whangaroa), 1874–1990', report commissioned by the Waitangi Tribunal, 2016 (doc A57), pp 70–80.

806. Ibid, p 73.

807. Ibid.

808. Ibid, p 74.

809. Ibid, pp 74–75.

810. Native Affairs Committee, 12 August 1886, AJHR, 1886, I-2, p 42.

811. Horsley, 'A History' (doc A57), p 85.

812. Ibid, p 77.

813. Hape and Ururoa, 12 June 1891 (cited in Horsley, 'A History' (doc A57), pp 78–79).

814. Mita Hape, 17 June 1891 (cited in Horsley, 'A History' (doc A57), p 79).

815. Mita Hape, 18 June 1891 (cited in Horsley, 'A History' (doc A57), p 79).

816. Taniora Arapata, 19 June 1891 (cited in Horsley, 'A History' (doc A57), p 81).

817. Horsley, 'A History' (doc A57), pp 81–82.

818. Ibid, pp 83–84.

819. Ibid, p 84.

820. Ibid.

821. *Te Pupuke* (1891) 10 Northern MB, p 341 (cited in Horsley, 'A History' (doc A57), p 85).

822. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 449–452, 468; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1100; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 473; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1353.

823. Native Land Court Act 1894, s 92.

824. Crown closing submissions (#3.3.406), pp 61–62.

825. John Bryce, 19 September 1877, AJHR, 1877, I-3, p 22.

826. Ibid, p 21.

827. John Bryce, 25 October 1876, AJHR, 1876, I-4, p 26.

828. John Bryce, 25 September 1877, AJHR, 1877, I-3, p 24.

829. Ward, *A Show of Justice*, p 271; Williams, *'Te Kooti Tango Whenua'*, pp 4–5.

830. John Bryce, 23 August 1876, AJHR, 1876, I-4, p 9.

831. Robert Trimble, 3 August 1883, AJHR, 1883, I-2, p 12.

832. 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 21 April 1885, p 6.

833. 'Maori Lands Administration Bill', 19 October 1899, NZPD, vol 110, p 745.

834. Native Affairs Committee, 21 June 1888 and 26 June 1888, AJHR, 1888, I-3, pp 12, 14.

835. Guy Finny, 'New Zealand's Forgotten Appellate Court? The Native Affairs Committee, Petitions, and Maori Land, 1871 to 1900' (honours thesis, Victoria University of Wellington, 2013), pp 5, 15.

836. Native Land Court Acts Amendment Act 1889, s 13; Native Land Court Act 1894, s 39.

837. *Important Judgements Delivered in the Compensation Court and the Native Land Court, 1866–1879*, 1879, p 60; Judge Seth Smith (cited in Norman Smith, *Native Customs and Law Affecting Native Land* (Wellington: Maori Purposes Fund Board, 1942), p 52).

838. Maning to Fenton, 24 June 1867, AJHR, 1867, A-10, pp 7–8.

839. Thomas, 'The Native Land Court' (doc A68), p 17.

840. Thomas's evidence suggested that these figures reflect 79 per cent of the total land that would be titled in the Native Land Court in Mahurangi and 40 per cent in Whāngārei: ibid, p 20.

841. Ibid, p 69.

842. These figures reflect 63 per cent of the total land that would be titled in the Native Land Court in Hokianga; 59 per cent in Whangaroa; and 57 per cent in the Bay of Islands: ibid, p 71.

843. Ibid, p 226.

844. Ibid, p 3.

845. Ibid, pp 120–121.

846. Thomas's evidence was that 668,468 acres of land in Te Raki had been titled in the Native Land Court by the end of 1889, and there remained 147,864 acres that would be titled after 1900: ibid, p 129.
847. Thomas, 'The Native Land Court' (doc A68), p 234; Paul Hamer and Paul Meredith, '"The Power to Settle the Title?" The Operation of Papatupu Block Committees in Te Paparahi District, 1900–1909' (doc A62), p 51.
848. Thomas, 'The Native Land Court' (doc A68), p 226.
849. Ibid, p 88.
850. Ibid.
851. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1189.
852. W L Rees, James Carroll, AJHR, 1891, G-1, pp ix–x.
853. Ibid, p x.
854. Ibid, pp xi, xxv.
855. Rueben Porter (doc S6), p 55.
856. Ibid, p 59.
857. Tahua Murray, transcript 4.1.20, Te Tapui Marae, Matauri Bay, pp 219–220.
858. Rueben Porter (doc S6), p 52.
859. Wiremu Reihana (doc T10), p 52.
860. Pairama Tahere (doc N20), pp 40–41, 46.
861. Denise Egen (doc Q9), p 25.
862. Vivian Dick (doc X12(b)), p 5.
863. Willow-Jean Prime (doc AA86), p 17.
864. Titewhai Harawira (doc I30(a)), p 8.
865. Pairama Tahere (doc G17), p 65.
866. Rueben Porter (doc S6), p 41.
867. Pairama Tahere (doc G17), p 65.
868. Herbert Rihari (doc R14), pp 66–67.
869. Pairama Tahere (doc G17), p 65.
870. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1123–1124.
871. Ibid, p 1127.
872. J S Clendon to Native Secretary, 28 May 1883 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 11, p 3:388); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1129.
873. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1245.
874. Ibid, pp 1125, 1134.
875. Ibid, p 1125.
876. Ibid, p 1134.
877. Hōne Heke Ngāpua, 1 September 1899, NZPD, vol 108, p 658 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1156).
878. Rueben Porter (doc S6), p 42.

Page 1038: 'An Imaginary Title'

1. Sewell, 9 September 1862, NZPD, vol D, pp 684–685; Dr Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand,' report commissioned by the Crown Law Office, 2000 (doc E26), pp 184–185.

Page 1039: 'Calling a Spade' a 'Horticultural Utensil'

1. Dr Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand,' report commissioned by the Crown Law Office, 2000 (doc E26), pp 222–224. The title of this sidebar was taken from 'The Native Lands Bill', *Wellington Independent*, 6 September 1862 (cited in Loveridge, 'The Origins' (doc E26), pp 178–179).

Page 1051: What Changes Were Implemented under the Native Lands Act 1865?

1. Dr Donald Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand,' report commissioned by the Crown Law Office, 2000 (doc E26), p 190; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 412.
2. Loveridge, 'The Origins' (doc E26), p 223; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 412.
3. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 414.
4. Tom Bennion and Judy Boyd, *Succession to Maori Land, 1900–52*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 5; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 499.

Page 1056: Table 9.1

The figures in table 9.1 are sourced from Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68).

Page 1057: Table 9.2

The figures in table 9.2 are sourced from Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68).

Page 1112: 'A Hopeless Confusion of Titles'

1. 'Conference of Chief Surveyors (Report of the Conference Held at Wellington, April 12, 1873)', AJHR, 1873, H-1, p 14.
2. Ibid, pp 4, 13.

Page 1116: 'It Would Have Been Impossible to Have Compiled a Plan from the Deeds' – the Huatau Survey1

1. *Huatau* (1902) 33 Northern MB, p 351.
2. 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), p 1360.
3. Ibid, p 1357.
4. *Huatau* (1902) 33 Northern MB, p 351.
5. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 1360.
6. *Huatau* (1902) 33 Northern MB, p 349.
7. Ibid, pp 351–353.
8. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 1360.

CHAPTER 10

NGĀ HOKONGA O NGĀ WHENUA MĀORI, 1865–1900

CROWN AND PRIVATE PURCHASING OF MĀORI LAND, 1865–1900

> kua rongo nga iwi Maori katoa o enei motu e rua i te mamae me te taumaha i raro i te mana o nga hanganga ture a te Paremata o te Kawanatanga o Niu Tireni i nga tau maha kua mahue ake nei, na reira i kimi ai nga iwi Maori o enei motu i nga huarahi e mau ai kia ratou nga toenga whenua kia ratou inaianei.
>
> all the Maori people of these two islands have heard about the pain and the weightiness [caused by] the New Zealand Parliament legislation of many years that have passed. Therefore, the Maori people of these islands should search for pathways that would enable them to hold on their remaining land now.
>
> —Heta te Haara (Ngāpuhi), speech at the 1892 Kotahitanga Parliament[1]

10.1 Hei Tīmatanga Kōrero / Introduction

In the previous chapter, we saw how the operation of the Native Land Court after 1865 transformed Māori land tenure. Customary ownership by hapū was replaced, first, by Court-derived certificates of title and later, by memorials of ownership listing owners certified by the Court. These changes enabled the Crown to deal with owners whose interests in land it sought to acquire on an individual basis rather than from groups or the community. In this chapter, we resume the analysis of Crown purchasing of Māori land we began in chapter 8, starting here at 1865 and continuing through until 1900. This latter date marks the introduction of legislation to establish Maori Land Councils and the beginning of a new approach to the determination of title process (we discuss the origins of the Maori Lands Administration Act 1900 in chapter 11, see section 11.5.3, and will consider its operation in a subsequent volume of this report). It also coincides with a hiatus in new purchasing which the Crown imposed on itself in 1899.

From 1865 to 1900, the Crown purchased some 231 Māori land blocks within the inquiry district.[2] Their combined area comes to an estimated 588,707.5 acres.[3] Private purchasing occurred on a much smaller scale during this time, with available evidence suggesting that at least 174,000 acres were alienated in this way (from 1865 to 1905).[4] Over this period, the amount of land the Crown purchased was slightly greater than the combined acreage of

the Crown's pre-1865 purchases (some 482,000 acres, see chapter 8). However, the combined effect of the Crown's investigation of pre-treaty land transactions, pre-emption waiver grants, the Crown's scrip and surplus land policies, and pre-1865 Crown purchasing meant that over one-third of their land had already transferred out of Te Raki Māori ownership by 1865.[5] Thus, the overall effect of the Crown's nineteenth century land and alienation policies was that only one-third of the district, or less than 604,000 acres, remained in Māori ownership by 1900.[6]

The pace of Crown purchasing throughout the latter decades of the nineteenth century was very uneven, for reasons we describe more fully later. Initial inactivity was followed by a purchasing spree in the mid-1870s; the Crown completed acquisition of approximately 294,735 acres in 1875 and 1876; over half the total acreage it purchased between 1865 and 1900.[7] Dr Barry Rigby observed that many Crown purchases during these two years were undertaken in Hokianga and Mangakāhia, which 'contrasts with the pre-1865 pattern where Crown purchases were concentrated in Whangaroa, Bay of Islands Whangarei and Mahurangi'.[8] While we received no systematic evidence on the leasing of land as an alternative to permanent alienation, it too appears to have been more common during the 1870s. Then came a lull before a second upsurge in the mid-to-late 1890s, which ended when the Crown temporarily halted new purchases across the entire country in 1899. Many of the blocks that had been leased for 21-year terms for the harvesting of timber in the 1870s were purchased by the Crown during this period. Between the suspension of Crown pre-emption in 1865 and its reimposition – first from 1886 to 1888, and then from 1894 – private purchasers were entitled to compete for Māori land with the Crown. At all times however, the Crown could employ advance payments or issue proclamations declaring blocks under 'negotiation', wherever and whenever it wanted to exclude rival bids.

We received a large number of claims concerning land purchasing in Te Raki throughout this period.[9] These claims focused largely on the Crown's alleged exploitation of tenure change and manipulation of the legislative framework to favour itself in land dealings; the practices of the Crown's purchasing agents on the ground; and the immediate and enduring consequences of land loss for Te Raki hapū and iwi. Other particular grievances included the failure of the promised benefits of land alienation to materialise, inadequate valuations and prices, and a lack of protection for Māori interests – demonstrated particularly in the Crown's failure to provide adequate reserves. As a result, claimants argued, Māori were left with an utterly inadequate land base and prevented from participating in the development of the colony on equal and equitable terms.[10]

10.1.1 Purpose of this chapter

Previous chapters have considered the treaty compliance of the Crown's policies for purchasing Māori land in the inquiry district from 1840 until 1865 (chapter 8), as well as the political origins, legislative purpose and structure, and workings of the Native Land Court (which began operating in Te Raki in 1864; see chapter 9). Here, we turn our attention to claim issues relating to the purchasing of Māori land from the time it came under the new Native Land Court system until the turn of the century.

Claimants alleged that the Crown's land purchasing regime during these 35 years breached the treaty. Broadly, they argued that the Crown diminished the ability of Te Raki hapū and iwi to exercise tino rangatiratanga by facilitating land alienation in the district to such an extent that it caused them irreversible prejudice.[11] The chapter considers whether these allegations can be upheld. In doing so, we assess the treaty compliance of the Crown's efforts to acquire Te Raki Māori land itself, and also to facilitate purchasing and leasing by private interests (bearing in mind that the evidence shows this happened on a considerably smaller scale).

10.1.2 How this chapter is structured

We begin by summarising the findings of previous Tribunal reports about the Crown's treaty obligations when it purchased, or facilitated the purchase of, Māori land. We also set out the concessions the Crown has made about its land purchasing policies in this period, and the positions of the parties on the topic.

On the basis of this contextual material, we identify the three salient issue questions to be determined in the chapter. In short, they concern the political and economic objectives driving the Crown's purchasing in Te Raki between 1865 and 1900, the fairness of its purchasing practices, and the extent to which the Crown acted to protect the interests of Te Raki hapū while pursuing its purchasing programme. On each issue, we begin by briefly setting out the key arguments advanced by the parties. We then analyse those arguments in light of the evidence to reach a series of conclusions and findings. All our findings are brought together in summary in section 10.6, followed by our overall assessment of any prejudice that Te Raki hapū sustained through treaty breaches arising from the Crown's purchasing policies and practices over this period.

10.2 Ngā Kaupapa / Issues

10.2.1 What previous Tribunal reports have said about the Crown's treaty obligations

Chapter 8 of this report, which discussed Crown purchasing from 1840 to 1865, detailed the Crown's general treaty obligations in respect of the alienation of Māori land, as expressed in previous Tribunal reports (see section 8.2.1). Broadly, te Tiriti explicitly guaranteed Māori tino rangatiratanga over their lands and resources, and obliged the Crown to uphold this guarantee. Previous Tribunal reports have found that these obligations continued to apply in the later period too, when the Native Land Court regime was in force. Drawing on those reports, the Crown's treaty obligations when purchasing (and facilitating the purchase of) Māori land between 1865 and 1900 can be summarised as:

- all groups of customary owners and their respective interests must be identified;
- all disputes over ownership must be resolved before the start of Crown negotiations for purchase;
- the hapū must be involved in negotiations, not just individuals;
- the area of land being negotiated must be clearly defined;
- the nature of the transaction, whether permanent or not, must be well understood by all the customary owners;
- the price must be fair;
- all customary owners must give their free and informed consent to the purchase, or have the ability to remove their interests;
- the purchase must leave sufficient community land for the current and future use of the hapū and for their well-being and their economic development; and
- the nature and substance of the purchase must have been put to those consenting to it honestly, and without fraud or unfair inducement.[12]

In chapter 9, we also outlined what previous Tribunal inquiries have said about the relationship between imposed title changes and the alienation of Māori land in the Native Land Court era. Briefly, the individualisation of title – first provided for through the Native Lands Act 1862 – had serious consequences for Māori groups wishing to retain their land. For the Crown, though, individualised title was essential to achieving its land acquisition objectives, and it provided the basis for the land purchasing system that operated from 1862 onwards. But, as the Tribunal found in *He Maunga Rongo: Report on Central North Island Claims* (2008), that system was not consistent with the treaty. It followed, the Tribunal said, 'that every purchase conducted under [that system] was necessarily in breach of the Treaty'.[13]

In *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (2004), the Tribunal also found that the creation of a 'virtual' individual title, which enabled purchases from individuals who were equipped with a new right to sell their paper interests, was inconsistent with the duty of active protection of Māori tino rangatiratanga over their land. The Native Land Court regime, the Tribunal concluded, destroyed 'community decision making in respect of alienation and land development'.[14] In *He Whiritaunoka: The Whanganui Land Report* (2015), the Tribunal similarly concluded that Crown purchasing methods undermined communal or collective decision-making and advantaged those who

wished to sell. It said the Crown's desire to avoid negotiating with hapū or whānau remained constant, even as the methods employed and the legislation that underpinned them changed over the period from 1870 to 1900.[15] In *He Maunga Rongo*, the Tribunal found that the Crown

> turned their tino rangatiratanga into a virtual, saleable, individual interest. This was a very serious breach of the terms of the Treaty and of the principles of partnership, autonomy, and active protection.[16]

Previous Tribunal inquiries have also discussed specific aspects of Crown purchasing practices in this era, especially its agents' use of tāmana – advance payments made to individuals within ownership groups before the Court had determined title. In the Wairarapa ki Tararua inquiry (2010), the Tribunal found that the use of tāmana raised issues as to 'the fairness and propriety of binding owners to a future sale by offering them money when they were so impecunious'; it also called into question whether owners could, in the absence of details about the final purchase, give 'their full and free consent to a subsequent sale'.[17] In *He Maunga Rongo*, the Tribunal found that, by making a tiny payment,

> the Crown could tie up all the land and resources over a large area, without time limitations . . . [which] placed the Crown in a position of considerable advantage in using its monopoly powers to not only drive prices down, but to coerce Maori to sell the freehold, faced as they were with few other alternatives to earning an income from their properties.[18]

10.2.2 Crown concessions

During our inquiry, the Crown conceded that aspects of its purchasing policies were inconsistent with the treaty. It also acknowledged the relevance here of its concessions about the operation and impact of the Native Land laws – especially 'the award of land to individuals and enabling individuals to deal with land without reference to iwi or hapū' – and about the lack of collective title (we address this concession in detail in chapter 9.2.2).[19] In addition, as it had in other inquiries, the Crown accepted that 'excessive and unnecessary use of its power to legislate a [land purchasing] monopoly for the Crown' could, in specific cases, represent a treaty breach; however, it considered no such cases had been identified in Te Raki (see section 10.2.4).[20]

The Crown submitted that the combined effect of these concessions sufficiently addressed claimant arguments about its purchasing activities.[21] Specifically, the Crown conceded that, in this period,

> it did not have a system in place to ensure that it did not purchase land that was needed to ensure the iwi and hapū of Northland could continue to maintain themselves. That was a failure to actively protect Māori and a breach of the Treaty.[22]

Crown counsel stated that the date when Te Raki hapū were left with insufficient land would have 'varied between regions and within hapū'. It acknowledged records indicating that 80 to 90 per cent of land within the Whāngārei and Whangaroa districts was no longer in Māori ownership by 1908. For the people of Mahurangi and the Gulf Islands, insufficient land was a reality even earlier – although, in closing submissions the Crown resiled from its earlier statement that iwi in these areas were 'virtually landless' by 1865, noting that the figures supporting that statement had been revised over the course of the hearings.[23] Acknowledging that these groups are *now* virtually landless, however, Crown counsel conceded that the Crown's 'failure to ensure they retained sufficient land for their present and future needs was a breach of the treaty and its principles'.[24]

The Crown also made specific concessions about deficiencies in its acquisition of Hauturu (Little Barrier Island) over the course of the 1880s and 1890s – including pursuing negotiations with individual shareholders rather than all landowners, using monopoly powers and special legislation to achieve its purchasing aims, and forcibly evicting Ngāti Manuhiri living on the island. We return to these concessions later in this chapter when we examine the fairness of the Crown's purchasing practices.

10.2.3 The claimants' submissions

In their generic submissions, claimant counsel argued that Te Raki hapū understandings and expectations of land purchasing were not materially different in 1865 from what they had been in 1840. As in the earlier period, land was not considered to be a tradeable commodity. Selling it did not extinguish the mana, tino rangatiratanga, or ancestral connections of hapū and iwi to the lands in question. Rather, counsel contended, Te Raki Māori saw land transactions as a means to attract European settlement and enjoy the economic benefits that would follow.[25]

Their vision was consistent with the treaty, claimant counsel asserted. Under article 2, hapū and iwi should have been allowed to alienate land through existing tribal structures and thereby exert and maintain control over the scale, pace, and nature of settlement.[26] However, claimants submitted that the Crown denied hapū and iwi this right, giving control of the sales process to the Native Land Court, whose abhorrence of 'tribalism' served to expedite Crown purchasing operations.[27]

Central to the claimants' arguments was their assertion – supported by Tribunal findings in other inquiries – that the Crown's purchasing activities in this period were conducted under a system (the Crown's Native Land legislation and regime for land administration) that was inconsistent with the treaty. As such, they said the key issue for the Tribunal to determine was whether the resulting transactions entered into by the Crown between 1865 and 1900 were treaty-compliant. Claimants spoke of the Crown's failure to actively protect Te Raki hapū and their lands, resources, and tino rangatiratanga over those lands.[28] They gave further detail of the Crown's alleged breaches in their generic submissions:

- The Crown has failed to prevent, rectify, or remedy the rapid alienation of Te Raki Māori lands so that the remaining land in Te Raki Māori ownership is insufficient for their present and future needs;
- The Crown failed to ensure that sufficient lands and resources were set aside as inalienable reserves for the present and future needs of Te Raki Māori;
- The Crown undertook a determined and comprehensive land purchase programme designed to obtain for the Crown as much Māori land as possible from within Te Paparahi o Te Raki Inquiry District; . . .
- The Crown employed sharp and unfair purchase policies and practices in dealings with Te Raki Māori which assisted the Crown to acquire land at bargain-basement prices;
- The Crown failed to ensure that Te Raki Māori were protected against individual members further fragmenting the land by sale and partition; . . .
- [T]he Claimants suffered significant prejudice as a result of Crown actions and omissions which constituted breaches of Te Tiriti during the period 1865–1900.[29]

Claimant counsel submitted that both the legislation the Crown enacted in this period and its purchasing policies were driven by political and economic imperatives. The Crown sought to acquire Te Raki Māori land at a discount, promising collateral benefits in the form of towns, public works, settlers, and services. But the Crown did not deliver on these promises;[30] it continued to pressure Māori into selling their land, and adopted or facilitated the use of aggressive tactics. These included the payment of tāmana, low pricing, a failure to identify all owners of Māori land earmarked for purchases, and an unwillingness to consult with those who did not wish to sell.[31]

Once the Crown's exclusive right of pre-emption was reintroduced under the Native Land Court Act 1894, Māori land could no longer be purchased privately. Claimants alleged that the Crown then took advantage of its purchasing monopoly – which it had secured for itself through 'a variety of legal devices' – by failing to pay a fair price for the lands.[32] Subsequent on-sales of land created a windfall for the Crown and therefore constituted losses for Te Raki hapū. Claimant counsel emphasised the prejudicial effect on Te Raki Māori of their inability to profit commensurately with the market potential of their land in this period.[33]

Throughout these years, the claimants alleged, the Crown was aware that its land legislation and purchasing programme would result in the widespread alienation

of Te Raki Māori land and resources.[34] Nonetheless, it pressed on with purchasing and facilitated the purchase of large tracts of land, even when the impact of doing so on hapū and iwi was evident. Claimants identified several points at which the Crown was alerted to the growing landlessness of Te Raki Māori and its effects, including by way of warnings from its own officials (such as the report to Parliament by the Minister of Native Affairs, Donald McLean, in 1876) and complaints from Māori. The Crown knew, claimants said, of the severe prejudice hapū would suffer if it did not stop purchasing land in the north.[35] Yet, the Crown's purchasing policy remained largely unchanged: still it failed to set aside the reserves for Māori as required by law; still it failed to monitor the sufficiency of land and resources retained both by specific groups and across the district as a whole.[36]

It was not only the Crown's own purchasing practices that were the subject of claimant allegations. Claimants submitted that the Native Lands Act 1865, which allowed for the purchase of Māori land by private purchasers, also encouraged unscrupulous storekeepers and traders to supply goods to Māori at high prices – inducing them to sell land as they sought to repay the moneys owed. It was argued that, although 'these transactions may not have been directly at the hand of the Crown', the Native Land legislation certainly helped to facilitate them.[37] And, as it was the Crown that had enacted this legislation (and more) to facilitate European settlement, claimants said the Crown was responsible for any adverse consequences.[38]

Ultimately, claimants argued, the Crown's purchasing programme throughout this era failed to meet the expectations of Te Raki hapū. The promised benefits of closer Pākehā settlement did not eventuate, and hapū instead lost large tracts of land to Crown and private purchasing.[39] Their sense of loss would have been compounded by the Crown's subsequent failure to utilise all the land that had been alienated. Claimants pointed out that when, in the 1890s, Premier Richard Seddon told Te Raki Māori the Crown wanted even more of their purportedly 'barren' land for European settlement, a local leader reminded him of the large amount of Crown land in the district that was still unoccupied – surely this could be brought into service if the Crown really wanted to utilise idle land?[40] Overall, the claimants concluded, the Crown failed to actively protect Māori property interests to the fullest extent reasonably practicable, failed to protect the land base of Te Raki hapū, and in fact actively reduced their papatupu (customary) landholdings – all with little regard for the sufficiency of land for present and future Māori needs.[41]

10.2.4 The Crown's submissions

We have already noted the Crown's concession that aspects of its purchasing policies in this period were inconsistent with the treaty. The Crown also acknowledged that, as a privileged land purchaser throughout these years, it was obliged 'to apply high standards of good faith and fair dealing'; 'to take such steps as were reasonable in the circumstances to protect the land and resources of Northland Māori for as long as they wished to retain them'; and to ensure that Māori 'retained sufficient land to meet their existing and future needs'.[42]

The Crown accepted that 'excessive and unnecessary use of its power to legislate a monopoly for the Crown in terms of land purchasing' might, in specific instances, amount to a treaty breach. Indeed, in previous inquiries it had acknowledged that 'roll[ing] over proclamations giving it monopoly purchasing powers' was one unnecessary use of its legislative powers.[43] However, Crown counsel argued that pre-emptive purchasing did not, in itself, amount to a treaty breach: to determine if a breach occurred, it was 'necessary to identify actual prejudice as a result of particular proclamations'.[44] The Crown noted that its purchasing in Northland during the 1890s, the period in which Crown pre-emption was reintroduced under section 117 of the Native Land Court Act 1894, 'did not compare to purchases that took place in the 1870s.' However, Crown purchasing also increased between 1895 and 1898.[45]

Moreover, in the case of Te Raki, the Crown argued that Māori still retained the right to alienate land, describing this as a 'fundamental right of ownership' guaranteed under article 3 of the treaty.[46] In the 1860s and early 1870s, counsel submitted, Northland Māori had control of land

Crown counsel Andrew Irwin with claimant Rudy Taylor during hearing week 18 in April 2016 at Mātaitaua Marae, Utakura. Irwin represented the Crown throughout the hearings of the Te Paparahi o Te Raki claims.

purchasing processes in the district.[47] This changed in the 1870s. From this point on and until the end of the century, the Crown's land purchase policy was driven by the national exigencies of the time, counsel argued. It was seeking to stimulate an ailing economy, capitalise on an expanding dairy market, and integrate Pākehā and Māori societies.[48] The Crown's purchase policy reflected these imperatives and was not expressly designed to facilitate the alienation of Māori land, Crown counsel contended.[49]

Responding to claimant allegations that the Crown failed to ensure Te Raki Māori had sufficient lands for their needs or to create reserves as the Native Land Act 1873 required during this period, Crown counsel pointed to its 'overarching concession that it did not have a system in place to ensure that it did not purchase land that was needed by Northland Māori'.[50] Put simply, the Crown acknowledged it had no system to monitor the sufficiency of Te Raki Māori landholdings and cease purchasing if particular groups or individuals were at risk of landlessness.[51]

As to tāmana, the Crown asserted that the practice of paying tāmana did not, in and of itself, breach the treaty. Counsel argued that the Native Minister instructed land purchase officers that the strategy was 'to be used with caution and with respect for the wishes of Māori communities'. Moreover, the Crown completely banned the practice of tāmana for papatupu land in the 1880s.[52]

With regard to land pricing, the Crown contended that in determining a 'fair' price, it is not always helpful to compare regions, similar blocks, or Crown and private purchases. Such comparisons, the Crown argued, do not take into account issues such as the size, quality, and location of the land in question, nor the infrastructure required to either extract resources from it or establish settlement.[53]

In respect of private purchasing, counsel commented that an absence of reliable data meant that its extent cannot be gauged, and little is known about individual transactions beyond the bare details. In general, though, counsel said private purchasers 'were concerned mainly

with the personal economic return the land would produce', and so were interested only in land of high quality or which carried marketable resources, including kauri and minerals.[54] Moreover, as historians David Armstrong and Evald Subasic had concluded, Te Raki hapū retained control over land alienation to private buyers throughout the 1860s and early 1870s.[55] After 1870, the Crown submitted, private land transactions were subject to scrutiny by trust commissioners (see section 10.5), which would have rejected any unfair transactions. The Crown also noted that the Native Land Court was empowered to examine the fairness of certain sales.[56]

Lastly, the Crown asserted that its land purchasing policies and actions in the inquiry district should be judged in relation to the standards of the time and in terms of what was reasonably possible for the Crown to achieve.[57]

10.2.5 Issues for determination

Having reviewed the findings of previous Tribunal reports (including our own stage 1 report), the Crown's concessions, differences between the parties' arguments, the stage 2 statement of issues, and the evidence presented to us, the issues for determination in this chapter are as follows:

- What were the political and economic objectives of the Crown's purchasing policy, and how were they implemented in Te Raki between 1865 and 1900?
- Were on-the-ground purchasing practices consistent with the Crown's treaty obligations?
- Did the Crown take adequate steps to protect the interests of Te Raki hapū?

10.3 What Were the Political and Economic Objectives of the Crown's Purchasing Policy and How Were they Implemented in Te Raki between 1865 and 1900?

10.3.1 Introduction

The passing of the Native Lands Acts 1862 and 1865 and the establishment of the Native Land Court as a national institution were transformative events for Te Raki Māori (we discuss the operation of the Native Land Court under these Acts in chapter 9). The creation of the new regime was propelled by the Crown's desire to acquire the substantial quantity of land it said it needed for expanding European settlement.[58] This objective remained constant throughout the period and prompted the Crown to introduce other legislation, such as the Public Works and Immigration Acts of the 1870s, intended to encourage settlers and free up land for them. It underpinned the resumption of Crown purchasing after 1870, which was essential to the Government's plan to revive an ailing colonial economy and improve internal security.[59] But Government officials were eager for Māori to recognise its purchasing programme had other objectives too: it would enhance their lives and prospects, delivering benefits that would be 'felt and enjoyed by both races alike'.[60]

However, according to the claimants, the benefits promised by the Crown – jobs, economic prosperity, better infrastructure, and more – failed to materialise. Instead, they were left increasingly landless by a 'determined and comprehensive' Crown campaign to purchase as much Te Raki Māori land as possible at nominal prices, which used monopoly powers, self-serving Native Land legislation, and aggressive tactics to achieve that goal.[61]

Crown counsel denied that its policies regarding Māori land were intended to bring about 'wholesale alienation', arguing instead that the Crown's purchasing was shaped by contemporary national needs.[62] Crown counsel contended that Northland was not an immediate focus for land purchasing or land development in this period, as its '[p]oor unfavourable climatic conditions, and rugged terrain' rendered it less attractive to settlers than other parts of the colony.[63] No money was set aside for land development in the region until 1873, so it was not until the mid-1870s that Crown purchasing recommenced in Northland in earnest.[64] That programme was also short-lived; by the end of the 1870s, the bulk of Crown purchasing in the district had been completed.

As noted earlier, while the Crown has previously accepted it 'did not comply with its duty to purchase reasonably when it continually rolled over proclamations giving it monopoly purchasing powers', it considered that this did not necessarily apply in Te Raki, and questioned

in general the extent to which such powers were utilised in the district.[65] The Crown considered that no particular Te Raki purchases met its threshold for a treaty breach in this regard; namely, a situation in which actual prejudice arose because of a specific proclamation.[66] Moreover, in respect of the Immigration and Public Works Amendment Act 1871, counsel noted that the power to proclaim pre-emption over specific blocks was not used in the district.[67] When it came to the Government Native Land Purchases Act 1877, counsel asserted that the most relevant evidential reports had only documented its use in relation to Hauturu and Puhipuhi.[68]

10.3.2 Tribunal analysis

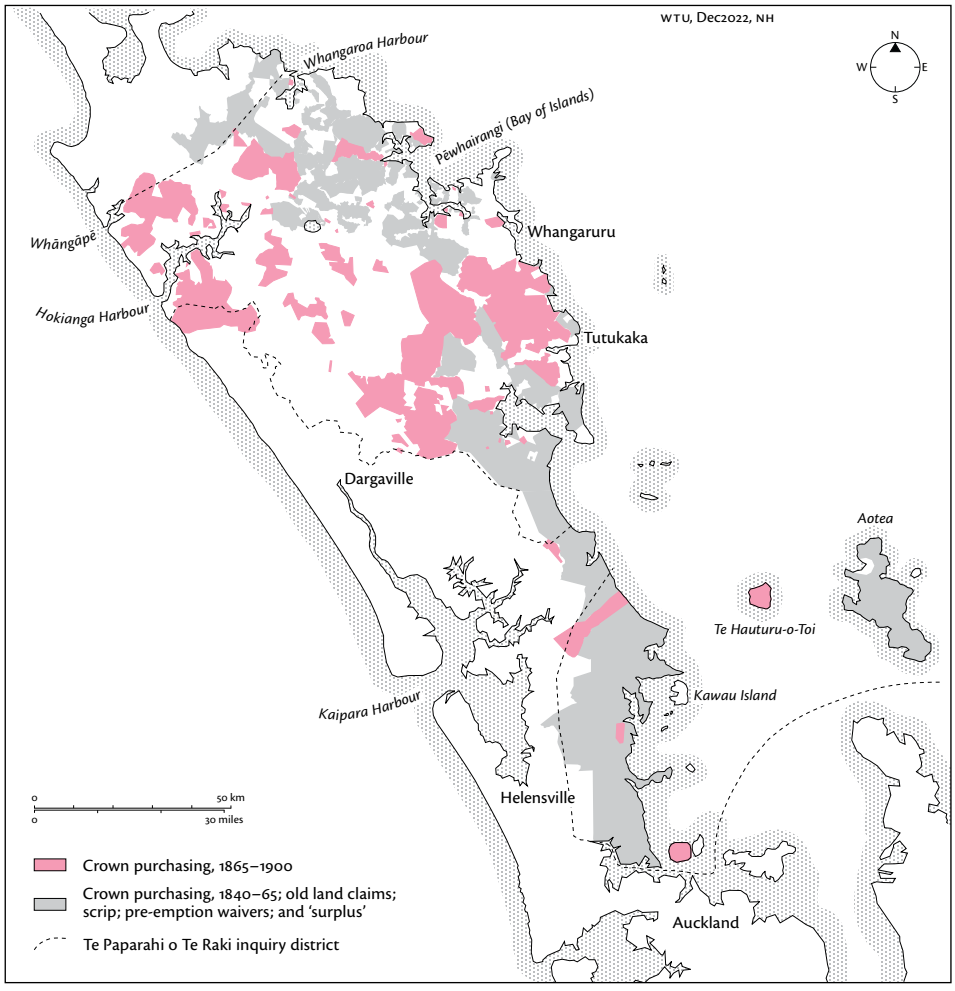
We begin by considering the objectives underlying the Crown's land purchasing policy and programme in Te Raki (section 10.3.2(1)). This discussion encompasses the entire period, from 1865 to 1900. We then examine the implementation of the programme – in other words, what those objectives translated to in practice – over three distinct phases. In turn, we focus on the 1870s, when large-scale Crown purchasing began in earnest in the district; the 1880s, when the Crown pulled back from the extensive purchasing of the previous decade; and the 1890s, when large-scale purchasing flourished again under the Liberal Government.

(1) *The Crown's evolving objectives 1865–1900*

From the very start, the Crown's objectives in purchasing Māori land were both assimilationist and economic. While Crown pre-emption was in place, its purchasing was the primary means by which land was made available for settling new immigrants. It was anticipated that the profits arising out of the on-sale of purchased land to settlers would generate revenue to fund the development and governance of the colony (we discuss the land fund model in chapter 8, section 8.3.2). Large land blocks were preferred by the Crown, as this minimised transactional and development costs (especially surveying costs, see section 8.4.2). Where purchasing took place in advance of the settlement frontier, it could reduce the potential for Māori–settler conflict – although conversely, officials such as McLean (chief native land purchase commissioner before his parliamentary career) recognised that pushing purchases too far could also create tensions and damage the possibility of Māori engaging with the new settler economy.[69]

As we have discussed in previous chapters, the settler Parliament had become highly critical of McLean and the Native Land Purchase Department, and the slow pace of land purchasing under Crown pre-emption. The respective merits of Crown pre-emption and direct private purchase of Māori land were the subject of intense debate during the early 1860s, as the Governor and the colonial Legislature struggled for control and responsibility for the Māori affairs (see chapter 7, section 7.3.2).[70] In May 1865, however, the Native Land Purchase Department was abolished in one of a series of policy shifts that included Fenton's restructure of the Native Land Court as a national and Pākehā-led institution for the determination of Māori titles (see chapter 9, section 9.4).[71] At that time, the Crown did not need to pursue fresh land purchases; the recent confiscation of millions of acres of Māori land following its campaigns in the Waikato, Bay of Plenty, and Taranaki had provided it with more than could be settled in the short term.[72] In fact, as late as 1870 the Crown was still spending more than £2,000 per year on surveying the confiscated lands.[73] And now, settlers could buy land directly from Māori once it had been put through the Native Land Court, rather than waiting for the Crown to purchase it, extinguishing native title, and on-sell it.[74] However, as we will discuss further, the Auckland Provincial Government pursued a limited purchasing programme in Te Raki in the absence of a central Native Land Purchase Department.[75]

It was not until the start of the 1870s that the Crown had reason to resume purchasing Māori land in earnest. The catalyst was the Vogel scheme – the Fox ministry's response to the economic woes then facing the country, not least the financial burden created by the costs of the military campaigns in the second half of the 1860s.[76] The scheme, driven by Julius Vogel, Colonial Treasurer to Premier William Fox and Premier himself between 1873 and 1875, involved large-scale foreign borrowing to



Map 10.1: Overall Crown purchasing in Te Raki, 1865–1909.

finance immigration and extensive public works, and the provision of direct assistance to selected industries (notably goldmining). Altogether, £4,000,000 was to be raised under the Immigration and Public Works Loan Act 1870: of this, £2,000,000 was allocated for railways, £1,000,000 for immigration, £400,000 for roads, £300,000 for water supply works on the goldfields, £200,000 for the purchase of land from North Island Māori, and £60,000 for telegraphs.[77] Three years later, the Immigration and Public Works Loan Act 1873 empowered the Government to raise another £2,000,000 for the construction of roads and land purchasing, with £500,000 allocated to the latter; accompanying legislation set aside half of the £500,000 for Auckland Province.[78] Altogether, some £11,000,000 was borrowed in support of the Vogel scheme between 1870 and 1878.[79] Initially, the provincial governments were to carry out land purchasing, and the cost was to be charged against the provinces until the land passed to the colonial

Julius Vogel, Colonial Treasurer in the Fox ministry from 1869 and the New Zealand Premier from 1873 to 1875. He implemented the 'Vogel scheme', an ambitious public works and immigration policy funded by substantial borrowing. As part of his vision of economic development, the Crown returned to large-scale purchasing and sought to cheaply acquire great tracts of Māori land using borrowed capital.

Government, or was on-sold to raise funds for immigration and public works purposes.[80] In 1873, responsibility for Crown land purchasing transferred to Native Affairs and a new Native Land Purchase Department whose spending and personnel were considerably extended under McLean's direction as Native Minister.[81]

The success of the Vogel scheme relied on the Crown's ability to acquire, once again, Māori land cheaply and on a large scale. As McLean put it, only the Crown could provide the 'regular and progressive settlement' that was required for colonial development.[82] The revenue obtained from on-selling the land to the new immigrants was needed to help defray the scheme's costs.[83] To maximise its return, the Crown would have to purchase the land serviced by the infrastructure proposed under the scheme ahead of its construction; otherwise, it would not benefit from the rise in land values that would occur once the infrastructure was completed.[84] Vogel also pointed to the enhanced security arising from extending communications and settlement into Māori-dominated districts, and providing Māori with employment on public works contracts.[85] For Māori communities, the potential for deriving income from the construction of public works would only have added to the promise of economic integration which they hoped would come from having settlers in their midst.[86]

The Crown's plan to re-enter the land market was not without its critics when it was presented to Parliament in 1870. Member of the House of Representatives Edward William Stafford (who had already twice served as Premier, and would do so again briefly between September and October 1872), objected to 'the Government taking the position', as he perceived it, of 'land jobbers and land buyers among the Natives, instead of exhibiting itself to them as the impartial judge and beneficent ruler'.[87] Other political opponents questioned the need for Crown purchasing at all, while some predicted private competitors would compel the Crown to pay prices that would imperil its hopes of making a profit from on-sale.[88] Walter Mantell, who had conducted purchasing for the Crown in the South Island between 1848 and 1853 and was now a member of the Legislative Council, attacked both the new policy and McLean's past record when in charge of the Native Land Purchase Department.[89] However, McLean insisted that Crown purchasing was needed to prevent land being taken over by private speculators, and he reassured Parliament in 1870 that the Crown did not intend to hide its operations and would not complete purchases until 'after inquiry as to title in the Native

Land Court'.[90] Similarly, Minister of Justice Henry Sewell argued that '[t]he evils of the old land purchase system have been met by the . . . [establishment of] the Native Lands Court.'[91]

By October 1875, McLean's purchasing programme had achieved its objective of enabling a sizeable public estate to be accumulated. As of June 1876, completed and incomplete purchases since 1870 in the North Island as a whole amounted to 1.77 million acres and 2.70 million acres respectively. The remaining 1.81 million acres of the public estate (then 6.28 million acres in size) consisted of leases, both completed and incomplete. McLean reported that a large proportion of all purchases completed nationwide since 1872 were north of Auckland, with 443,856 acres purchased after 1872 and another 165,661 acres purchased after 1875. With so much land already acquired, or soon to be, McLean was able to announce that the Crown intended completing all purchases already in train before embarking on fresh ones; no large new land acquisitions would be required for at least a year.[92] The following year, McLean added a further justification for pausing Northland purchasing in particular. In one of his final statements as Native Minister, he observed that it was questionable whether the 'wants' of its Māori population could be met if their landholdings continued to diminish.[93]

McLean's decision in 1875 to wind down purchasing marked the start of a much more restrained Crown approach to acquiring Māori land, which would remain in place until the start of the 1890s. Indeed, in September 1876, the new ministry, with Harry Atkinson as Premier, proposed abolishing the Land Purchase Department, which it considered as 'being no longer a necessary part of the Government service'.[94] When the Atkinson ministry fell in October 1877, it was replaced by a new administration led by the two-term former Governor, Sir George Grey.[95] The incoming Government soon signalled its own plans for the Crown to largely withdraw from purchasing Māori land.[96] To support the process of wrapping up existing purchases and to protect the Crown's unrealised investment, the Grey ministry passed two significant statutes in 1877: the Native Land Act Amendment Act 1877 empowered the Crown to bring blocks before the Native Land Court for determination of ownership and the excision of such interests as it had purchased; and the Government Native Land Purchase Act 1877 gave the Crown the power to exclude private competition in respect of blocks which had been proclaimed as 'under negotiation'.[97]

The budget for Crown purchasing was then slashed when John Bryce became Native Minister in John Hall's ministry in 1879. In part, this was in keeping with the paring back of Crown expenditure in response to the economic downturn which started that year and continued through the 1880s. But the budget cut also reflected Bryce's disdain for what Crown purchasing had achieved relative to its settlement objectives.[98] In his statement to Parliament in 1879, Bryce made a pointed comparison between the acreage the Crown had acquired in various provincial districts since 1870 and the acreage disposed of by waste land boards to settlers: for Auckland province, the figure was 1,153,648 acres acquired, versus only 691 acres sold.[99] Accordingly, during the early 1880s, there was little money available for new purchasing, and funds that were expended had to be targeted rather than used indiscriminately.[100]

There was a brief return to the Vogelism of the early 1870s when the Stout–Vogel ministry (led by Robert Stout, with Vogel as Colonial Treasurer) took over the reins of government in 1884, and Native Minister John Ballance pursued the purchase of Māori land blocks along the proposed route of the North Island main trunk railway.[101] Ballance's Native Land Administration Act 1886 also restored Crown pre-emption, but only for two years; private purchasing was soon made legal again with the passing of the Native Land Act 1888.[102] By then, the Stout–Vogel ministry had been replaced by the government of Harry Atkinson who, having been returned to office as Premier for a fourth time, reverted to the policies of fiscal restraint practised at the start of the decade.[103]

Crown policy on Māori land purchasing was turned on its head, however, when the Liberals came to power at the

start of the 1890s. The Liberal Governments, led first by John Ballance and later by Richard Seddon, believed that promoting the cause of small farmers was key to achieving economic prosperity. On that basis, they reasoned, they should acquire the lands tied up in unsubdivided blocks of Māori land as well as in large pastoral settler estates, both of which were considered as either underutilised or unproductive. Thus, the Government set out its plan to resume large-scale purchasing of Māori land in June 1891.[104]

To fund it, the Ballance Government passed the Native Land Purchases Act 1892. This Act authorised the borrowing of £50,000 per annum for up to five years, and also extended the Crown's ability to utilise proclamations declaring blocks to be under negotiation, which excluded private competition.[105] Section 14 of the Act addressed the Crown's concern that restrictions against alienation applied by the Native Land Court might interfere with its land settlement plans;[106] it enabled the Governor to remove or declare void restrictions on the alienation of 'any Native land . . . provided that any such removal or avoidance shall only operate in favour of the Crown.'[107] Almost alone, the Māori members of Parliament raised objections to this legislation. Notably, Eparaima Kapa (Te Whananaki hapū of Te Aupōuri and member of the House of Representatives for Northern Maori) advocated for a return to 'the plan followed in former days', when purchase negotiations were conducted in open meetings where all the terms of sale were defined and agreed. He stated: 'Let us have things done in an open manner, and in the light of the shining sun', a plea that was commonly expressed by Māori at that time.[108]

The following year, the Liberals' thinking on Māori land was further elucidated in the preamble to the Native Land Purchase and Acquisition Act 1893:

> Whereas at least seven million acres of land, principally situated in the North Island of the colony, owned by Natives, are lying waste and unproductive, and, in the interest of the Natives and of Her Majesty's other subjects in the colony, and more especially for the extension of settlement, it is necessary that such land should be made available for disposal under the land laws of the colony: And whereas the existing law for extinguishing by purchase the Native title . . . fails to afford adequate means for supplying the rapidly increasing demand for land for settlement purposes, and great injury is thereby occasioned, and the progress of colonisation is retarded, and is therefore necessary to provide further and other means by which lands owned by Natives may be acquired for the purpose of disposal.

This Act allowed for areas of 'Native territory' to be proclaimed and made subject to a Native Land Purchase Board; landowners could then be required to vote on whether to lease or sell their land to the Crown, or vest it in the board.[109] The legislation also allowed the Governor-in-Council to direct the Native Land Court to hold a title hearing for the land subject to the proclamation.[110] The Act thus provided no security for iwi and hapū who had kept their lands from going before the Native Land Court – which was happening at an increasing pace in Te Raki.[111]

As it turned out, the Crown never found it necessary to invoke the Native Land Purchase and Acquisition Act 1893. Instead, from 1894 until 1899 the Seddon Government was able to rely upon the Lands Improvement and Native Lands Acquisition Act 1894 and the Native Land Court Act 1894 to meet its purchasing objectives. Like the Native Land Purchases Act 1892 which it replaced, the Lands Improvement and Native Lands Acquisition Act was essentially about financing the Crown's land settlement programme.[112] Aiming to encourage 'the settlement of the [Pākehā] people upon the lands of the colony', the Act consisted of two parts: part I related to Crown lands and dealt with the construction of roads and bridges and the preparation of land for settlement, with section 8 empowering the Government to borrow £250,000 for a 'Lands Improvement Account', while part II – which applied to native lands – authorised the Government to borrow £250,000 for the 'Native Lands Purchase Account', which was purely for purchasing Māori land.

Under this Act, many State-assisted farm settlements were established or improved, while the Liberal

Government expanded its purchasing of Māori-owned land. As the Tribunal observed in *He Maunga Rongo*:

> the Liberal Government of the 1890s recognised the potential for new farming developments to support its economic, social and political objectives of closer rural settlement and individual family farms.[113]

Its efforts were boosted by legislation such as the Advances to Settlers Act 1894, under which enticing low-interest loans were made available to prospective Pākehā settlers – but not to Māori, due to the multiple ownership of Māori land. Clearly, the prosperous economic future envisaged by the Liberal Government was first and foremost a Pākehā one. Settling Māori either upon their own lands or upon Crown lands did not number among the Crown's objectives.[114]

At the same time, the Crown's right of pre-emption had been restored by section 117 of the Native Land Court Act 1894,[115] a step fully consistent with the Liberal Government's willingness to employ the power of the State to achieve its goals. Professor Tom Brooking has argued:

> Seddon hoped that pre-emption would appeal to Liberal MHRs from rural North Island seats, whose tenure would only become secure if the Government ended the stalemate in Māori land sales.[116]

Seddon also viewed restoring the Crown's right of pre-emption as just towards Māori. He stated in Parliament that the Act would simplify the proceedings of the Native Land Court and lower expenses for Māori, protecting them from 'the land-grabber' and 'land-shark'.[117] However, the Act also loosened alienation restrictions. Under section 52, it empowered the Court to remove restrictions provided one-third of the owners assented and all owners had 'sufficient' land for their support (we discuss the Crown's standard of 'sufficiency' further in section 10.5.2).[118]

The feeling among Māori was that Crown pre-emption would prevent them from securing the full value of lands they might sell in the future.[119] Indeed, the Crown acknowledged in this inquiry that 'there was a good deal of Māori opposition' to the return of pre-emption, which also curtailed the ability of Māori to lease their land; thus, those who could not afford to develop their land could only get a return on it by selling it to the Crown.[120] Following the introduction of the legislation, nearly 6,000 Māori (including those in Te Raki) signed petitions opposing it.[121] Speaking of the reimposition of pre-emption in Parliament, Hōne Heke Ngāpua (member of the House of Representatives for Northern Maori) described it as a 'cruel and cowardly proposition . . . cruel because it is unjust; cowardly, because it is the strong treading on the weak'.[122] Nevertheless, two years later Premier Seddon asserted that Māori had accepted its reintroduction.[123] Acknowledging that a great deal of land had, accordingly, been purchased from Māori, he claimed that the Government had

> acted for their benefit . . . we have greatly helped to save the land to the Natives. We have saved them from being tempted by what was their ruin in the past – the pakeha-Maori and the rum bottle. We have saved them from a class of persons who in the past obtained their land by means often absolutely discreditable.

The Crown, he insisted, was obliged to 'do what is just to our Native brethren' and buy such land as they determined to sell.[124]

Between May 1893 and December 1897, the implementation of the Liberals' land policies enabled the Crown to acquire 1,614,017 acres of Māori land across the whole of New Zealand.[125] In contrast, by March 1898 the Government had acquired only 154,623 acres of settler-owned land by breaking up the great estates under the Lands for Settlements Act 1894.[126] Acquisition continued to run a long way ahead of settlement, just as it had in the 1870s. By mid-1898, only 209,512 acres of the Māori land the Crown had acquired from 1893 to 1897 had been occupied by Pākehā settlers.[127] Moreover, the Crown was now ready to wind down purchasing operations, as Seddon's financial statement signalled to Parliament in 1899. Later that year, section 3 of the Native Land Laws Amendment

Act 1899 set out that '[o]n and after the commencement of this Act Native land or land owned or held by Natives shall not be alienated to the Crown by way of sale'.[128] Although constraining the Crown, the Act nevertheless provided for the Crown to complete purchases already agreed on, as well as to undertake future purchasing. It was not meant to bind any future policy; indeed, it expired at the end of the 1900 parliamentary year.[129]

The preceding discussion has surveyed the evolving objectives that drove the Crown's purchasing policies throughout the entire period between 1865 and 1900. We now step back to examine the implementation of those policies in Te Raki over three distinct phases: the 1870s, the 1880s, and the 1890s.

(2) *The path towards large-scale Crown purchasing in Te Raki: the 1870s*

As described earlier, the Crown set aside its purchasing ambitions from 1865 through until 1870. In the Te Raki district, its re-entry into purchasing Māori land was even later, not taking place until 1872. Te Raki may have been accorded a low priority because the Auckland Provincial Council wanted the Crown to give preference to buying auriferous (gold-bearing) lands.[130] Moreover, with its broken terrain, extensive tracts of poor gumland soils, and unfavourable climate, agricultural opportunities in Northland had been considered limited; extractive industries were the mainstay of the regional economy. And, as the Crown noted, by the early 1870s private purchasers had already accounted for some of the higher-quality land with their tendency 'to "pick the eyes" out of the larger blocks'.[131]

Prior to the dismantling of the Native Land Purchase Department in 1865, the Auckland provincial government had arranged very few purchases in Te Raki, relying instead on the landholdings already in the possession of the Crown.[132] However, as the Crown stepped back from its purchase operations in the mid-1860s, both the provincial governments and private purchasers became involved in buying Māori land. The central government allocated funding specifically for provincial government purchasing. In 1869, for example, the Auckland provincial government was granted £5,818 for land purchasing under the Auckland Appropriation Act 1869.[133] But judging by a return later presented to Parliament, it appears that the six Opuawhanga and neighbouring Otonga blocks – lying north of Whāngārei and all purchased between 1866 and 1872 – were the provincial government's only acquisitions within the inquiry district.[134] Together, the blocks had a combined area of 61,229 acres.[135] However, the destruction of the various deeds of purchase in a fire meant that it was not until after substitute deeds were prepared in 1878 that the Crown (as successor to the provincial government after its abolition in 1876) confirmed its ownership of these six blocks.[136]

The objects of the Crown's purchasing in the north, as McLean described them, were:

> that all the kauri forests of any value that could be secured should be secured, and also that agricultural land of good quality should be acquired even in preference to forest land. With regard to forests, I was anxious that the Government should get them, rather than that they should pass into the hands of speculators.[137]

The Crown's newfound determination to resume acquisition of Māori land in Northland from 1872 first manifested itself in the appointment of Thomas McDonnell junior as a land purchase agent in the region. The son of an early timber trader and former Hokianga-based old land claimant (see chapter 6), McDonnell was given the initial task of following up on an offer to sell the Waoku block to the Crown.[138] But, by mid-1873, McDonnell was actively trying to generate sales of land that had not been already offered. He told one group of Māori he encountered that, as they would never make use of all their good land, their best plan was to sell it.[139]

From March 1874, land purchase agent Edward Brissenden and his assistant, Charles Nelson, took over much of the purchasing work.[140] Brissenden was instructed to direct his attention to large blocks of forest land,[141] and naturally targeted the forested blocks of the Hokianga where the Māori community was already receptive to the idea of purchase and the 'collateral benefits' that

Table 10.1: Lands negotiated for by Brissenden, year ended 30 June 1875.

Category	Area (acres)	Cash paid (£)
Blocks for which negotiations completed	159,635	12,977
Blocks passed Native Land Court, awaiting funds to settle	106,990	1,973
Blocks surveyed, awaiting sitting of Native Land Court	150,267	2,851
Blocks under survey	33,600	533
Blocks awaiting survey, carefully estimated at	100,000	80
Blocks that he 'shall be unable to complete'	3,974	110
Total	554,826	18,524

might accrue to them.[142] Making prolific use of tāmana, Brissenden and Nelson generated a rush of sales. By August 1874, Brissenden was asserting that he would be able to secure between 500,000 and 700,000 acres in Northland for the Crown – provided it supplied him with enough money to make full payments for blocks as soon as sale terms had been agreed.[143] In just the brief interval between the start of 1875 and Brissenden's dismissal in October of that year (for his role in issuing fraudulent miners' rights in the Hauraki district),[144] the purchase of some 25 Hokianga blocks was completed. Their combined area was almost 97,000 acres.[145] Brissenden had also signed the deed for the purchase of the Pakiri block in 1874, but as some of the trustees he had paid could not legally sell their interests, this purchase was put on hold. It was retrospectively legalised in 1877, and the sole non-seller's interest partitioned out in 1880.[146]

Brissenden prepared a summary of his purchase activities in Northland for the year ended 30 June 1875, which is set out in table 10.1. By any measure, he had embarked upon a very large and well-funded land-purchasing campaign, and achieved impressive results within a remarkably short period.

Using similar tactics to those of Brissenden, land purchase agent Henry Tacy Kemp was able to acquire 58,810 acres in three large blocks (Wairua, Purua, and Tangihua) in the hinterland of Whāngārei during 1875.[147] Meanwhile, J W Preece, who was given the job of completing Brissenden's purchases, secured some 84,000 acres of Mangakāhia land in 1876. Half fell within the huge Opouteke block, where purchasing was made easier by the Native Land Court having awarded most of the land involved to a single owner, Kamariera Te Wharepapa.[148] These Mangakāhia acquisitions were in addition to 25,667 acres of adjacent land already gained when Brissenden completed the Waoku 1 and 2 purchases in 1875.[149] In comparison, between 1874 and 1876 Whangaroa and the Bay of Islands attracted the Crown's attention to a lesser degree. The aggregate areas purchased there were nonetheless still significant, amounting to around 5,700 acres in Whangaroa and 24,200 acres in the Bay of Islands.[150] The latter acreage added to the 19,500-acre Hukerenui (or Touwai) block which had been sold to the Crown in 1873.[151]

Meanwhile, the completion of Brissenden's purchases remained a sizeable and protracted task. As of June 1876, 16 of the 52 purchases, encompassing an estimated 115,900 acres, had not even been surveyed. In nine of these cases, the survey had been delayed by disputes among competing owners, suggesting that Brissenden's claim to have carefully established who the owners were in each case was likely untrue.[152]

Kauri workers taking a tea break, likely in the Auckland or Northland regions, late 1800s. The Northland kauri trade flourished in the mid-1870s, caused by increasing demand for timber in Auckland. Land purchase agents were instructed to acquire large blocks of forest land because the timber industry had become a significant economic activity and major export earner.

A full year later, Preece summarised the position of 55 blocks 'North of Auckland':

- Twenty-nine transactions had been completed; the 50,919 acres had been acquired for £5,302 10s (excluding survey and incidental costs) or just over two shillings per acre. Preece recorded that very large payments had been made by way of deposits but that many owners had not participated in them. The average area of the blocks was 1,756 acres.
- Another three transactions were nearing completion.
- Twenty-three transactions were 'incomplete.' Only five involved blocks whose ownership had been investigated by the Native Land Court.
- Of Brissenden's purchases, 30 had been completed and eight – on which no advance payments had been made – had been abandoned.[153]

The 6,050-acre Puketutu and 5,646-acre Manganuiowae blocks, for which purchase deeds were signed in 1877, were the last 5,000-acre-plus blocks the Crown acquired from Brissenden's operations, but the process of completing his transactions continued until at least 1882 when the 2,071-acre Oikura 1 block was finally secured.[154] Brissenden has been described as 'perhaps the most successful and unprincipled' of the crown land purchase agents working in the north throughout the 1870s, and at least some of the delays in completing his acquisitions likely arose because his 'haste also caused him to cut legal corners'.[155] We comment further on the actions of Brissenden and other crown purchase agents in section 10.4.2(1).

Crown purchasing during the late 1870s did not end with the finalisation of Brissenden's transactions, however. In late 1876, Māori living in Whāngārei made new offers to sell around 40,000 acres (Taheke, Waitomotomo, Te Ripo, Papakauri, and Omaikao) in the Mangakāhia–Hokianga backblocks.[156] Only a few months earlier, McLean had issued a parting warning that Māori landownership north of Auckland was reaching the threshold beyond which they might not have enough land to meet their future needs. Despite this, Charles Nelson was authorised to engage in a fresh series of purchases throughout 1878 to 1880.[157] At the same time, Nelson also made advance payments to rangatira claiming interests in the 25,000-acre Puhipuhi block, which contained some of the best remaining kauri forest in close proximity to Whāngārei (we discussed the title determination in this block in chapter 9).[158]

Thus, the total area of blocks for which purchase was completed from 1875 to 1881 – funded chiefly by Vogel's large-scale borrowing programme, discussed in section 10.3.2(1) – amounted to over 430,000 acres. This figure takes into account the former provincial government's

The Northland Timber Trade in the Late Nineteenth Century

A flourishing, settler-controlled kauri export trade developed in the district in the mid-1870s, driven by increasing demand for timber in Auckland (as forests nearer the city became depleted), improved milling technology, and the emergence of companies able to raise the requisite capital.[1] The industry was far from new. Māori in Northland had traded timber with Europeans since the mid-1820s and had initially retained control over the developing trade; according to historian David Alexander, they used their tribal authority to 'dominate' the timber industry while Europeans were their 'supplicants', seeking the chiefs' permission to acquire essentials.[2] By the 1870s, many Māori still ran small felling operations, supplying timber for European holders of railway contracts or squaring timber – work that enabled them to make 'large sums of money', the resident magistrate at Hokianga noted at the time.[3]

However, the timber industry had changed profoundly over five decades. Kauri timber production had become 'the most significant economic activity' in Northland and a major export earner.[4] But, notwithstanding the bush gangs still felling timber for railway sleepers, Māori were now largely sidelined from the industry.[5] It is apparent that the Government was becoming increasingly averse to Māori entrepreneurialism.[6] Two large, modern sawmills were established in Northland – one on Whangaroa Harbour in 1874, and another at Kohukohu, on the Hokianga Harbour, in 1879 – but the land on which these and other mills stood was European-owned, and the timber processed in them came mainly from Crown-owned land. Moreover, the vast majority of logging and milling employees were European – a direct effect of Julius Vogel's immigration scheme, which brought an influx of people who gravitated to jobs in the country's largest industry. Few Māori were employed.[7] With limited scope to engage in the industry they had once dominated, Māori were limited to participating in the few ways still left to them: by leasing their land for timber extraction, selling the standing timber on their land, and selling their timber land outright.[8]

But even the ability of Māori to benefit from the lease and sale of their forest land during the kauri boom was hampered. First, the Government stipulated that cutting rights could be leased only on Māori land held under Crown grant, a law to which many Māori objected.[9] Secondly, the market price of timber was driven down by the Crown's willingness to sell its forests cheaply, a consequence of its priority to clear the land to encourage settlement.[10] The Crown's low sale prices thus dictated the price Māori could obtain for their forestry assets.

The sale price of kauri dropped with the global economic downturn of the mid-1880s, leading to loss of work in the industry.[11] In 1889, the Melbourne-based Kauri Timber Company bought up the country's major sawmills, including Kohukohu, along with 1.5 million feet of standing timber on over 300,000 acres of freehold and leasehold timber land. The Kohukohu mill operated for a further 20 years.[12]

purchases of the Opuawhanga and Otonga blocks (representing 61,229 acres), which were confirmed in 1878, and the final acquisition of the Pakiri 2 and 3 blocks (both 9,766 acres in size), which were confirmed in 1881.[159] It should be noted that, to assist its purchasing operations in Te Raki throughout this period, the Crown made extensive use of proclamations under the terms of the Government Native Land Purchases Act 1877 to exclude private competition.[160] The following year, a return on lands proclaimed under the Act recorded that the Opuawhanga 1–4 blocks in Whāngārei (amounting to 20,507 acres), the 3,000-acre Motukaraka block, and the 8,374-acre Tapuwae block in Hokianga were under negotiation.[161] By October 1878, the Crown had issued proclamations notifying that 11 more

blocks in the district were under negotiation, including the 20,000-acre Pakiri block in Mahurangi.[162] A further proclamation concerning the 25,000-acre Puhipuhi block was issued in December 1878. We discuss the further examples of the Crown's use of proclamations in the Hauturu and Puhipuhi purchases in sections 10.4.2(3)(b) and 10.4.2(4)(c).

(3) *The Crown steps back from purchasing: the 1880s*

The influence of John Bryce, and particularly his slashing of Native Department spending in 1879, was evident in the inquiry district from 1882 until 1890. Within this period, the Crown completed the purchase of only 14 blocks, four of which comprised five or fewer acres (for schools or roading). The combined area of all 14 blocks came to 31,718 acres.[163] This is not the entire extent of purchasing during this period, however, as Hauturu (Little Barrier Island) had been 'under negotiation' since 1881, and the Crown had begun acquiring shares in the Parahirahi block (which contained the Ngāwhā Springs) in 1886.[164] Of the acquisitions that had been completed, the largest comprised three of the five Puhipuhi partitions (with a combined area of 19,490 acres), which followed the final title determination of the Native Land Court in 1883.[165] Other substantial acquisitions were Waitomotomo 1 and 2 (8,272 acres), where the Crown had its shares partitioned out from the interests of the non-sellers without having made any pre-title payments on the block.[166]

Meanwhile, the limited private purchasing that had occurred throughout the 1870s continued to a lesser extent into the 1880s and beyond. As has been noted already, private purchases accounted for the alienation of 39,884 acres between 1875 and 1884, and a further 4,967 acres between 1885 and 1894 – a far smaller acreage than the Crown had acquired.[167] Again, the largest private purchases were driven by the needs of the timber industry; inland from Whāngārei, for example, Lanigan, a sawmill proprietor at Ngunguru, purchased the 3,396-acre Kopuatoetoe block in 1897, one year after title was awarded to Ngāti Hau and Te Waiariki.[168] Similarly, the Auckland Timber Company acquired the 2,706-acre Kauriputete block in Whangaroa from its Te Uri o Te Aho owners during the early 1880s.[169]

(4) *The Liberal Government resumes large-scale land purchasing: the 1890s*

In the years 1891 to 1900, the Crown was able to purchase around 83,493 acres of Māori land within the inquiry district.[170] While this was much less than the acreage purchased during the 1870s, its significance cannot be ignored in light of McLean's 1876 warning about the dwindling sufficiency of Māori land even then. It is also apparent that owners' motivations for selling were often different from what they had been in the 1870s. In the wake of the economic downturns of the 1880s, numerous owners – such as those of Marumaru, Oue 2, and Tarakiekie – had sold land in an effort to alleviate their poverty. Other owners – such as those of Papakauri, Maraekura, and Kaurinui 3 – were driven by the need to pay off survey liens (an ongoing issue that predated the 1890s) or rates demands.[171] It should be noted that rates on Māori land had become a more pressing issue after the Rating Acts Amendment Act 1893 was passed, since these demands were no longer directed by local bodies to the Crown for payment.[172] Likewise, partitioning (and, hence, fresh survey costs) increased as more and more owners were awarded interests in the remaining Māori land blocks.[173]

The Liberals' purchasing programme got off to a slow start in Te Raki, with only eight purchases completed in the years 1891 to 1894. Moreover, as noted, the two largest acquisitions – Parahirahi D (4,292 acres) and Hauturu (Little Barrier Island (6,960 acres) – had begun in the previous decade. In terms of shaping what was to come, perhaps the most significant Crown acquisitions in the early 1890s were Kauaeranga (3,672 acres) and Ngaturipukunui (462 acres) to the west of Whāngārei. Originally awarded solely to the Te Parawhau rangatira Te Tirarau (representing all the interests in the blocks), their ownership had since passed on to his brother Taurau Kūkupa and Tito Tirarau. The former was now aging and indebted, and his land agent A R Cooke arranged for the sale of the blocks to the Crown – with the added bonus that Taurau Kūkupa would dispose of other interests to the Crown as well.[174]

The Crown's restoration of pre-emption under the Native Land Court Act 1894 signalled a new push towards land acquisition. It was only in 1895 that the bulk of

Crown purchases began in our inquiry district continuing through until 1899. From 1895 onwards, the Crown's dedicated purchaser on the ground in Te Raki was the agent C H Maxwell. He came prepared with schedules of fixed per-acre prices for the blocks that the Crown was interested in acquiring, enabling him to buy shares from individual owners without needing to consult further with other Crown officials (although, in the cases of Rotokakahi and Te Awaroa, the offers had to be increased from four to five shillings per acre).[175]

As we discussed in chapter 9, the Native Land Court began awarding blocks to larger numbers of owners during the 1890s.[176] Unlike the purchasing of the 1870s when Crown agents paid tāmana prior to court hearings, and as historian Paul Thomas put it, 'set the agenda', purchase blocks during this period were not subject to pre-title arrangements.[177] Furthermore, the Native Land Court Act 1886 had repealed the requirement under the Native Land Act 1873 that alienation restrictions be placed on each memorial of ownership (see section 10.5.2(3)). This shift enabled the Crown to once again purchase individual, undefined shares, and subsequently, it could further apply to partition out the interests it had purchased under the Native Land Court Act 1886 Amendment Act 1888 and the Native Land Court Act 1894.[178] Professor Ward commented that this raft of legislation 'streamlined the ways by which Maori land suitable for settler purposes could be identified and prepared for sale'.[179] Thomas gave evidence that 'the most important purchases during this period involved the Crown gradually acquiring the interests of hundreds of individual owners'.[180] Crown officers were assisted in their purchase efforts by the considerable survey and court costs Te Raki hapū incurred; many of them had already lost much of their land, and there were few ways to pay off these debts apart from selling even more of their interests.[181]

The Crown's purchasing in Te Raki during the 1890s was centered in poverty-stricken areas including Hokianga and Mangakāhia.[182] Although the Crown acquired interests in numerous Whāngārei, Mangakāhia, and Hokianga blocks during this period (including 11 Hokianga blocks in 1897 alone), most comprised less than 1,000 acres; the only purchases of more than 5,000 acres were the partitions Rotokakahi A2 (5,134 acres) and Te Awaroa 1A1 (7,843 acres).[183] But, once Taurau Kūkupa had been convinced to dispose of his interests in Mangakāhia and Whatitiri, these blocks significantly boosted the acreage that the Crown was able to obtain in the late 1890s. As a result of hundreds of separate payments made by Maxwell to Whatitiri partition owners, the Crown had been awarded 15,780 acres from that block by 1900, supplementing the 11,515 acres it was awarded out of the Mangakahia block in 1896.[184]

(5) *Te Raki whānau and hapū expectations of land transactions throughout this period*

As the Crown's purchasing objectives evolved over succeeding decades, so too did the expectations and aspirations of Te Raki whānau and hapū. But at the same time, many retained the fundamental understandings and expectations they had brought to their relationship with Pākehā in the earlier period. As the claimants told us, Te Raki Māori never resiled from their view that selling land did not 'amoun[t] to an "absolute alienation" in a Pakeha sense', that land sales 'never severed that intimate connection with Papatuanuku', and that the trade-off of making available their land to the Crown would be an opportunity to participate in a new economic system affording them many benefits – benefits that the Crown had promised would flow to them alongside Pākehā settlement.[185]

In 1865, the effects of the new Native Land laws, including landlessness, debt, and disintegrating collective decision-making were not yet apparent, and many Te Raki rangatira hoped that the promise of partnership with the Crown, and economic prosperity for settlers and Māori alike, might yet be realised under this new system. At a time when other parts of the North Island were beset by conflict, Te Raki Māori had responded to policies such as Grey's rūnanga (or 'new institutions') positively, seeing this as a chance to participate in their own governance and the wider economy on their own terms,[186] just as they had done in the 1830s. The enthusiasm with which they greeted Grey's rūnanga reflected their wish for townships, as well as their hope for economic development through

land settlement, the construction of public works, and the provision of educational and medical services while controlling the pace of alienation of their lands.[187] The *Daily Southern Cross* reported in 1866 that Māori in Whāngārei had

> commenced turning their attention to laying down grass paddocks in several places . . . [A]t Manua, they have given contracts to Europeans to clear, plough, and fence in with posts and rails, forty acres [for pastoral farming].[188]

Another example was the March 1870 opening of flax and flour mills (owned by rangatira Hōne Mohi Tāwhai and his son) in Waimā in the Hokianga. These mills demonstrated the renewed interest in the flax trade and were also used to grind wheat grown nearby, in the Waimā Valley.[189]

To Māori, the main perceived benefit of land transactions, other than the money payment, was that they would promote settlement of the land in question. They also expected the Crown to invest in infrastructure which would facilitate the development of that settlement and of lands that they had retained.[190] When Governor George Bowen and Native Minister McLean toured northern districts in 1870, Te Raki Māori made their expectations clear: they wanted more mills, Pākehā settlers, townships, markets, and roads.[191] Similar representations were made to Governor James Fergusson on his visit to Northland in June 1874.[192] But there were other factors that could also motivate Māori owners to sell land. If they found themselves in difficult financial circumstances, they might decide to sell in order to raise money. Given that they lacked access to the commercial credit that Pākehā enjoyed, such transactions were out of necessity rather than choice.

Te Raki Māori opinion was divided, however, as to how much land should be made available to settlers. A snapshot of Māori views on transactions early in this period comes from the 'Statements of Native Chiefs' collated for Thomas Haultain's report on the working of the Native Lands Acts, written in 1871 before Crown re-entry into the land market. In the opinion of Tāmati Waka Nene, Bay of Islands Māori had not parted with too much of their land, and while he thought that 'they may waste some of the money that they receive', they paid their debts, 'and purchase such things as they want with it'.[193] Based on his experience as an assessor in the Bay of Islands, Hemi Tautari was similarly largely untroubled by the prospect of future purchasing, observing that 'in very few instances' were Māori 'parting with their lands too rapidly or to too great an extent' and that they were getting 'a better price now than when the Government were the only purchasers'.[194] Eru Nehua, on the other hand, thought that more land needed to be reserved from sales, citing one instance where an owner from Te Kapotai hapū had become landless.[195] Meanwhile, Wiremu Pōmare was alarmed that Māori were not just 'selling their lands at too rapid a rate' and were 'anxious to sell more', but were also failing to accumulate the funds their sales had raised.[196]

In this period, perhaps the strongest initial Māori support for opening up land for settlement was to be found in Hokianga where, at the time, Māori outnumbered Pākehā by around 20 to one.[197] Here, initiatives such as the combined flax and flour mill that Hōne Mohi Tāwhai and his son established at Waimā in 1870 prompted hopes of an economic resurgence.[198] When Governor Bowen met with Hokianga rangatira in the same year, most speakers uttered expressions of cordiality and friendship; Hōne Mohi Tāwhai, for example, declared that 'I am the brother of the Pakeha.'[199] Rangatira Moetara expressed a desire to 'show my good-will to the Pakehas, and to encourage them in their flax mills and in getting kauri gum', while Ngakuku concluded his speech by stating that 'I am anxious that this district should be full of Europeans.'[200] Responding to these addresses, Governor Bowen welcomed the prospect of Māori and settlers working together to develop the land, albeit undertaking separate roles in which Māori supplied the resources and Pākehā the capital and expertise:

> I am truly glad that you are co-operating so zealously with the Europeans in developing the rich natural resources of this fair land – I mean, in particular, the flax, the timber, and the kauri gum. In this profitable industry each race is necessary to the other – the Maori to supply the raw material, and the

> English the mills and manufacture, and to send it away in ships.[201]

Towards the end of the hui, another speaker, Aporo, lent his voice to the call for land settlement at Hokianga, saying, 'Bring Europeans! There is plenty of land here for them.'[202]

Over the next few years, other Hokianga and Mangakāhia landowners likewise expressed interest in selling their lands for the purposes of inducing settlement. Superintendent, and member of the House of Representatives for Auckland West, Thomas Gillies, wrote that he had received several offers from Māori wanting 'to encourage European settlement in the district' when he visited Mangakāhia in his official capacity in February 1873.[203] Two months later, Hokianga's resident magistrate, Spencer von Sturmer, noted 'the great desire of the whole of the Native people for the settlement of Europeans amongst them'. Von Sturmer went on to observe that the Karuhiruhi block at Whirinaki, one of only two large Crown purchases in 1872, 'was sold by the Native owners under the idea that it would be speedily laid out in farms and settled upon'.[204] When Governor Fergusson toured Northland in 1874, the same desire for settlement and infrastructure was again expressed by rangatira he met at Hokianga, with Henry Tacy Kemp recording that they had 'urged the extension of Native schools, and the establishment of a special settlement for the purpose of increasing the trade and commerce of the district'.[205]

Crown agents were keen to appeal to Māori expectations that land sales would be followed by settlement; and what was once informal encouragement now increasingly resembled official strategy. When, in mid-1873, McDonnell needed to deter Mangakāhia owners from accepting higher offers from private bidders, he did so by stressing that the land sold to speculators would be 'locked up'. But if they sold their lands to the Crown instead, they 'would derive a great and permanent benefit from the settlers who would be sent to occupy them'.[206] Likewise, H T Kemp persuaded Te Tirarau and other rangatira in January 1874 that they should make land available for immigrants on both sides of a new road the Crown was building, thereby 'promoting generally the development of the resources of the country, the benefits of which were now felt and enjoyed by both races alike'.[207] In his speech at Hokianga in 1874, Governor Fergusson applied further pressure on Māori to sell their lands, pointing out:

> [They] had in their hands the means of obtaining the advantages of European settlement by selling sufficient lands to induce it, but if they did not do so they could not receive the contingent advantages.[208]

Evidently, these messages had some success. In his 1876 statement to Parliament on North Island land purchases, Donald McLean observed:

> Appeals have on more than one occasion been made by the Natives to have these lands peopled by an English population, and they have readily disposed of some of the best of their lands to induce European settlement.[209]

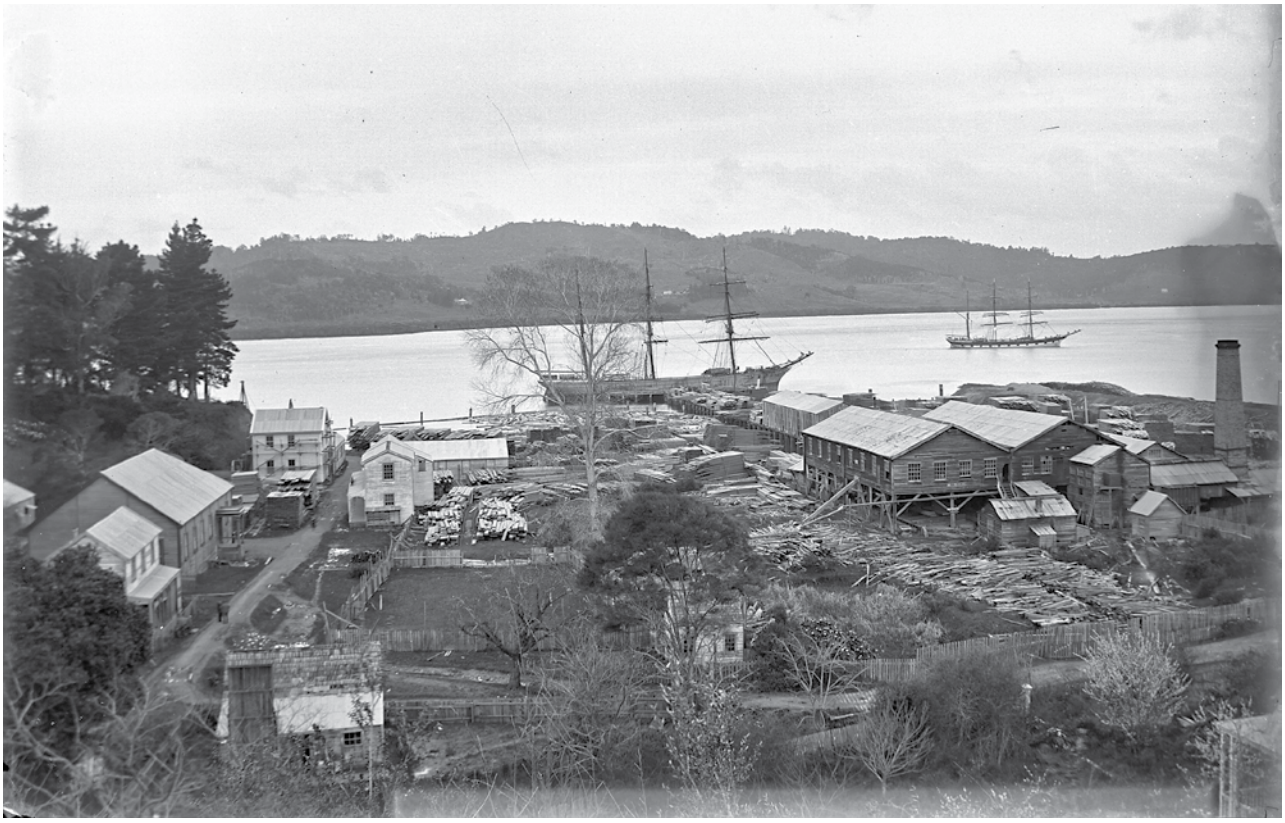
It is not surprising then, that the failure of the Crown to open up purchased lands to settlers led to frustration and disillusion among those who had once regarded land sales as a means to bring prosperity to both Māori and settler communities in the near future. In 1876, von Sturmer advised the Native Department that Māori living at Hokianga continued 'to express great anxiety for the introduction of European settlers amongst them'.[210] He made similar comments in 1879: Māori, he wrote, had insisted that 'when they sold large blocks of land to the Government it was held out, as an inducement to sell, that Europeans would settle amongst them: this, they say, has not taken place'. Thus, Māori were seeking the establishment of a special settlement so that 'the promise made by the agents of the Government who purchased the land [might be] fulfilled'.[211] There is evidence, however, that the Crown deliberately frustrated the possibility of Māori accessing any benefits from the rise in prices that settlement might bring. In January 1874, H T Kemp wrote to the Native Department in an effort to prevent the Crown from missing out on the full increase in land value that would follow road building and settlement. Kemp

urged the department to ensure that nothing more than bridle tracks would be constructed through Māori land that the Crown proposed purchasing.[212] Native Secretary Clarke annotated Kemp's letter with the words 'Kemp is right', indicating the Native Department approved this approach.[213] In May 1880, von Sturmer noted among Māori an increasing distrust of Europeans and a growing disposition to resist selling land, both to the Crown and to private individuals.[214] By this time, then, many Māori appear to have decided that the Crown's promises of material benefits were empty (see chapter 11, section 11.4).

By the early 1890s, when the Liberals sought to resume large-scale purchasing in the region, Te Raki Māori had developed an even more negative perception of Crown purchase activity. This can be seen in the growing influence of the Kotahitanga movement and its promotion of boycotts of the Native Land Court (including the surveying and selling of land).[215] Such tactics emulated Ngāti Hine's rohe pōtae, which had held strong under the leadership of Maihi Parāone Kawiti (see chapter 11, section 11.4.2(5)).[216] A sense of disillusion was also expressed during the hui at Waimā, which formed part of Premier Richard Seddon's nationwide tour in 1894. In relation to the Native Land Purchase and Acquisition Act 1893, Pene Taui complained that '[t]he Natives have no jurisdiction over the land now. The Government can buy where they see fit'. Meanwhile, the other main speaker, Wiremu Komene, queried why the Crown needed to purchase even more of the 7,000,000 acres remaining in Māori ownership throughout the country when 10,000,000 acres of Crown land remained unused.[217]

In reply to Komene, Seddon appeared insensitive to these concerns. He pointed to the rapidly increasing demand for land for settlement purposes, driven by high levels of immigration.[218] Some South Island settlers were now having to sell land back to the Crown so that it could be better utilised; he said it would therefore be unfair to leave Māori north of Auckland with 600,000 acres of land that had not been passed through the Native Land Court. The longer it remained in that state – uncultivated and unimproved due to ongoing uncertainty over its ownership – 'it means no one will go near it and the longer the titles are unascertained the greater the danger to the Natives', Seddon insisted. He reminded his audience that most of the land the Crown had purchased in the north to date 'is of very inferior quality. You have always taken care to sell us gum-land. We cannot put people on such land' – a comment that neatly sidestepped the fact that the price the Crown had paid for this 'very inferior' land did not include the value of the premium resource that stood on it.[219] Seddon also addressed Wiremu Komene's question about the rights of non-sellers to resist a proposed sale by simply asserting that 'majorities must rule'.[220]

In our view, Seddon's response was unlikely to have been well received by Hokianga Māori who could point to their significant contribution of land during the 1870s, when they transacted their timber lands with the Crown and private interests. They had seen the arrival of timber mills during this period, and Hokianga Māori were potentially able to derive income from squaring timber and bush work with the mill opening in Hokianga at Kohukohu in 1879. However, their expectations of ongoing participation in the booming timber trade were frustrated as immigration increased during the 1870s. Māori were pushed to the margins of the industry they had once controlled, unable to maintain their incomes as an increasingly European workforce came to dominate the mills and the bush gangs (see the sidebar on page 1178 on the Northland timber trade in the late nineteenth century).[221] David Alexander gave evidence that once the large mills were established, they relied heavily on timber from Crown-owned land, which it sold for low prices limiting the revenue Māori could generate from leasing their lands for this purpose. As a result, Māori were 'bypassed and, except where timber cutting rights on Maori owned land were required, largely irrelevant to the industry'.[222] The timber lands that had been purchased had either been cleared or were controlled by the Kauri Timber Company, which Alexander commented 'acquired many, indeed most, of the sawmills and their associated bush contracts in Northland'.[223] Overall, the Crown retained some 206,000 acres of unoccupied land in Hokianga at 1890 and had offered Hokianga Māori very few economic opportunities.[224] As historian Dr Nicholas Bayley observed, because of the



The Kauri Timber Company mill at Kohukohu on the shoreline of Hokianga Harbour, circa 1890–1909. The sawmill was established in 1879 and was purchased by the Melbourne-based Kauri Timber Company in 1889, along with most of New Zealand's other major sawmills and a large amount of timber land.

limited economic opportunities available over this period, 'gum digging became an essential component of Maori economic survival from 1870 onwards.'[225] In all, although Māori were increasingly critical of the effects of the Native Land Court and Crown purchase practices, their options, other than further sale, were increasingly limited.

10.3.3 Conclusions and treaty analysis

The Crown and Te Raki hapū had fundamentally different expectations and objectives for the alienation of land in the latter part of the nineteenth century. The Crown wanted to create a purchasing system that would expedite large-scale acquisition of Māori land for Pākehā settlement without (in the words of Native Minister McLean) causing 'any risk of disturbance or revival of feuds.'[226] It sought to construct a new society and economy, free of the constraints Māori 'communalism' was believed to impose. Conversely, hapū wanted to keep a substantial proportion of their lands while also entering into a partnership with the Crown to facilitate settlement and the development of those lands they retained.

The speed with which the Crown achieved its objective of acquiring large areas of land in Te Raki between 1872 and 1875 illustrates the small regard officials had for Te

Raki Māori expectations during this period. As we have discussed, the colonial Government had incurred significant debts in order to pursue a policy of settlement and development. To service these debts, the Crown expected to maximise its return on land purchased by ensuring it acquired land ahead of any developments that could raise prices.[227] The Crown relied on paying low prices and targeted lands bearing valuable resources, such as kauri, which could bolster its returns. To meet its objectives, the Crown appointed agents, such as Brissenden and Kemp, directing them to acquire large blocks of forest land.[228] In contrast to pre-1865 arrangements, Crown agents also faced competition from private purchasing during this period, until the Government Native Land Purchase Act 1877 empowered the Crown to exclude private competition.[229] Another strategy adopted by Crown purchasing agents was to make advance payments, or tāmana, ahead of Native Land Court title determinations (we discuss tāmana and the purchasing practices of Crown agents further in section 10.4).

Te Raki Māori also supported further settlement in the district and sought to restore their economic partnership with the Crown. During the 1870s, Crown agents used the promise of development and economic benefits to induce Māori to enter into transactions with them, despite the higher prices offered by private purchasers. Many whānau and hapū held fast to the hopes and expectations – especially of retaining an ongoing relationship with their land – that had initially encouraged them to seek a mutually beneficial relationship with the Crown and shared prosperity going forward. However, when these benefits failed to materialise – and in the face of uncontrolled and apparently unstoppable processes unleashed by the Crown's Native Land legislation – Te Raki Māori lost faith in the Crown's promises. In 1874, Maihi Parāone established a rohe pōtae over Ngāti Hine territories, prohibiting the operation of the Native Land Court there, as well as surveys and land sales.[230] That year, Hōne Mohi Tāwhai and others petitioned the House seeking the repeal of the Native Land Act 1873. Further petitions were made in 1876 by Hirini Taiwhanga, Maihi Parāone Kawiti, and others; and in 1877, again by Tāwhai.[231] The latter sought to repeal existing Native Land Acts, an end to Crown purchasing, replacement of the new Native Minister John Sheehan, and establishment of 'clear laws, which will result in the union of the two races'.[232] We discuss these initiatives in detail in chapter 11.

Towards the end of the 1870s, the Crown began to consider paring back its land purchasing programme in Te Raki, aware that landlessness was becoming a real prospect for some Te Raki Māori communities. As Minister McLean told Parliament in 1876, in light of 'the large extent' of Māori land the Crown had purchased there already and recent representations made to the district officer about the quantity of land remaining to Māori – and with 'regard being had to the wants of the Natives' – the question of whether the Crown should acquire more Māori land in the district needed consideration.[233] The move to scale back purchasing in the district gained more momentum when the Government introduced its policy of fiscal restraint and slashed Native Department spending in 1879 – a development that meant there were now few prospects that the Crown's earlier promises of economic benefits for Māori would be fulfilled. As we discuss in chapter 11, Te Raki Māori would increasingly turn to advocacy for self-government and recognition of their treaty rights during this period. When the Liberal Government once more resumed a large programme of land purchasing in the 1890s, its priority was again to open Māori land for settlement. It paid little heed to the proposals of the Kotahitanga parliaments until 1899 (see chapter 11, section 11.5) nor to the growing Māori landlessness that had been widely articulated, including in Parliament two decades earlier.[234]

In our view, the Crown's purchasing policy in the latter part of the nineteenth century primarily sought to secure land for Pākehā settlers to utilise and develop, despite the rhetoric of the two races joining together in this endeavour, and prosperity resulting for both through the process of title conversion and land sale. In response to economic pressures beginning in the 1870s, the Crown sought to strengthen its position as purchaser of Māori land (by granting itself monopoly powers). Correspondingly, the Crown took measures during this period to limit or

restrict the ability of Te Raki hapū to exercise their rights as the owners of land (and weakened protections Māori had been able to secure) as we discuss further later. In these ways, the Crown failed or declined to recognise that empowering itself as land purchaser disempowered Māori as owners and vendors. We also note that by strengthening its position as purchaser, the Crown enhanced its obligation to actively protect the interests of Māori. However, the Crown's real concern was promoting economic growth through a single-minded quest to make Māori land available for settler use and finance further development with the proceeds. Successive Governments pursued this goal with little concern for the rights and interests of their treaty partner and despite the determined efforts of Māori leaders, such as Hōne Heke Ngāpua (member of the House of Representatives for Northern Maori), who saw it as his 'duty, on every occasion possible to call the attention of honourable members to the different treatment accorded to the Natives from that which is given to Europeans'.[235] Instead, the Crown targeted Māori owners as a source of cheap land it could readily acquire to fund the colony.

Accordingly, we find that:

- By returning to land purchasing in the 1870s for the purpose of expediting Pākehā settlement, and doing so at the expense of Te Raki Māori rights to retain and develop large parts of their land within a mutually beneficial relationship, the Crown breached te mātāpono o te houruatanga/the principle of partnership, and te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development, as well as te mātāpono o te tino rangatiratanga.
- By assuming and imposing land purchase monopoly powers under the Government Native Land Purchase Act 1877 without the consent of Te Raki Māori and in the face of opposition, the Crown acted inconsistently with its duty to engage with Māori in good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.
- By unilaterally reimposing Crown pre-emption through the Native Land Court Act 1894 in the face of express Te Raki Māori opposition and without adequate engagement with Te Raki hapū, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- By reimposing Crown pre-emption, the Crown denied Te Raki Māori potential benefits associated with a market in land. Its reimposition restricted the ability of Māori to develop and transfer their land in a way that other landowners were not subject to. This breached te mātāpono o te mana taurite/the principle of equity. Moreover, re-asserting its right to pre-emption actually heightened the Crown's obligations to protect the rights and interests of Māori landowners. Its failure to do so was thus a breach of te mātāpono o te matapopore moroki/the principle of active protection and te mātāpono o te kāwanatanga.
- By failing, through its legislation and policy, to promote land settlement opportunities and collateral benefits for Te Raki Māori equivalent to those afforded to Pākehā settlers, as promised, the Crown breached te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of equity and the principle of mutual benefit and the right to development.

10.4 Were on-the-Ground Purchasing Practices Consistent with the Crown's Treaty Obligations?

10.4.1 Introduction

In this section, we examine *how* purchasing was conducted, whether the Crown was aware of any difficulties Māori experienced because of the methods its agents employed, its response to any such problems, and whether the interests of Māori were effectively protected throughout the purchasing process.

Claimant counsel alleged that the Crown placed 'insurmountable pressure on hapū and Te Raki Māori to alienate their lands'.[236] The claimants argued that the Crown's purchasing practices fuelled conflict over customary rights and payments, which became more frequent as the Native Land Court system replaced the rūnanga and

existing tribal structures. The use of tāmana, instances of individual owners acting without the authority of the collective, and boundary issues resulting from incorrect surveys (see chapter 9, section 9.7) all served to exacerbate disputes.[237] The claimants also submitted that the Crown's Native Land regime exposed Te Raki hapū to unscrupulous purchase practices and increased Māori indebtedness.[238] The Crown, they submitted, employed aggressive tactics in an effort to pressure them into selling, failed to identify all owners before commencing purchase negotiations, negotiated with those willing to sell but disregarded the wishes of those unwilling to do so, conducted surveys in the face of Te Raki hapū opposition, and sometimes encouraged conflict between Māori.[239] Claimants drew particular attention to the conduct of Brissenden, the Crown purchase agent who acquired 231,552 acres on its behalf during 1875 and 1876 alone.[240]

The widespread practice of agents promising 'collateral benefits' to Māori who agreed to sell their land was another questionable tactic highlighted by claimants and researchers. According to Armstrong and Subasic, these promises were 'remarkably similar to the inducements held out to Northern Māori by Kemp in the pre-1865 Crown pre-emption period'.[241] As Māori had legitimate expectations of receiving the benefits they were promised, claimants said the Crown had an obligation to create circumstances that would enable Māori to achieve economic success once the Crown acquired their lands. They said the Crown failed to meet this obligation and used these inducements only to acquire land as cheaply as possible.[242] Little was done to ensure that the benefits held out to Māori actually materialised. On the question of pricing, claimants submitted that the Crown paid their tūpuna unfair prices and continued to sell land it had acquired from Māori for prices far exceeding those paid to them.[243] The Crown, they said, knowingly offered Māori much less than the true value of their lands. The Crown's purchase of Puhipuhi was cited as an example.[244]

Despite section 75 of the Native Lands Act 1865 making the payment of tāmana void, the claimants said that the Crown continued to use this prejudicial tool, in the absence of Crown pre-emption, to tie up lands in the Native Land Court and remove them from the purview of private purchasers.[245] The claimants submitted that tāmana often resulted in payments to the 'wrong people, and gave no option for non-sellers' interests to be heard'.[246] This occurred because tāmana was paid before the Native Land Court had determined ownership.[247] Claimant counsel submitted that tāmana was 'a particularly sinister purchase practice' which private purchasers, provincial agents, and Crown agents alike, used to acquire more land from Māori.[248] Further, the claimants submitted that tāmana was often paid before the final price had been determined. They again pointed to the alienation of the Puhipuhi block, discussed also in chapter 9, as a case in point.[249] The Mane Hotere claimants submitted that, even though it was tāmana paid by a private purchase agent that initiated the unhappy chain of events that followed, the Crown 'was directly responsible for permitting such practices' – which were, moreover, commonplace among its own agents.[250]

In response to these claimant arguments, the Crown conceded that it failed to ensure Te Raki hapū and iwi retained land required for their maintenance.[251] But Crown counsel contested many of the more specific allegations concerning its purchasing programme, the policies that it implemented, and the practices it employed.

For example, the Crown argued that land purchase agents were repeatedly cautioned over the use of tāmana, although counsel acknowledged it was 'a standard feature' of Crown purchase practice in Northland.[252] Crown officials censured agents who misused such payments, engaged in unscrupulous dealings, or failed to comply with the requirements of the Native Land Act 1873. Brissenden (whose activities the claimants especially condemned) had been removed from his post after just two years, counsel noted. Moreover, in 1879 the Government ordered that the practice of tāmana cease. Finally, Crown counsel rejected any suggestion that advance payments encouraged the Native Land Court to award title to those who had received tāmana. In fact, counsel argued, purchasing agents consulted with rangatira with the aim of confirming the strength of the claims of those offering to sell.[253] In the view of Crown counsel, claimants had based

their conclusions about the use of tāmana on the high correlation between those who received advances and those to whom the land was awarded; but the Crown argued correlation was not causation.[254]

The Crown thus concluded that the use of tāmana payments in Northland 'did not demonstrate unfair dealing or a breach of the treaty'.[255] Counsel argued that the payments 'did not prevent a sale occurring on a collective basis', and that 'they were void and unenforceable at law, so the Crown had little recourse if an agreed sale was later repudiated'.[256] Rather, down payments were employed in an effort to 'facilitate the purchase of large continuous tracts of land for orderly settlement'.[257] The Crown did not explain how tāmana 'facilitated' purchase in this way; however, it did acknowledge that tāmana had 'the potential to disadvantage Northland Māori'.[258] Nonetheless, the Crown claimed that the Governments of the day took steps to ensure that the practice was not abused.[259] In other words, tāmana, suitably employed, had a valid and proper role to play in land purchasing, and indeed the Crown argued that 'in principle, there was nothing inconsistent with the treaty in offering advance payments to these rangatira'.[260]

Concerning the prices paid for hapū land, the Crown noted the difficulties involved in establishing what was 'fair'. It argued that comparisons between private purchase prices and those paid by the Crown failed to recognise the differences in land quality between the two types of purchase being undertaken. Private purchasers generally selected high-quality land, whereas the Crown purchased land of variable quality in large blocks. The Crown therefore maintained that 'each transaction requires a case-by-case assessment'.[261]

On the matter of land sufficiency, the Crown conceded 'that it did not have a system to ensure that Northland Māori retained sufficient land for their present and future needs'. The Crown also accepted that its failure to offer any definition of what constituted 'sufficient land' was a breach of the treaty.[262]

With respect to leasing, the Crown described Te Raki hapū as 'often willing' to lease land for gum and timber extraction purposes; this accounted in part for their strongly adverse response to the Crown's reassertion of pre-emption in 1894. Insofar as the leasing of papatupu land was concerned, the Crown noted it was the responsibility of Māori to protect their own interests.[263] On the other hand, legislative protections had been put in place with respect to the leasing of land that had passed through the Native Land Court. Section 74 of the Native Lands Act 1865 provided that any lease had to be interpreted to the lessor, and executed in the presence of and attested by a judge or justice of the peace. Under the Native Lands Frauds Prevention Act 1870, leases of lands that had passed through the Native Land Court had to be approved by a trust commissioner. In addition, section 59 of the Native Land Act 1873 required the Court to satisfy itself of the fairness and justice of the transaction, the rents payable, the assent of all owners, and the appointment of rent receivers. Such provisions, the Crown argued, were intended to prevent Māori from entering into unfair or unreasonable leases, although compliance with lease terms and conditions was not subsequently monitored.[264]

10.4.2 Tribunal analysis

(1) *The practices of the Crown's land purchase agents*

We have already encountered Thomas McDonnell, H T Kemp, Edward Brissenden, Charles Nelson, and J W Preece who, at various times throughout the 1870s, were all engaged by the Crown as land purchase agents in the Te Raki inquiry district. In 1875, Native Minister McLean reported that when the Government was preparing to initiate its new programme, it had 'found itself with scarcely any officers of experience to carry out the delicate work of land-purchase negotiations'. Discovering that most seasoned agents had been employed by private purchasers, the Crown found it 'expedient to make terms with the most active and successful of [them], and offer them inducements to enter the Government service'.[265]

In theory, the Crown's purchasing agents should have acted in concert with each other. Doing so might have assisted Māori in some way (by achieving greater clarity about boundaries, for example) but it might also have exclusively benefited the Crown (if the agents had jointly agreed on a low price, for example, placing Māori in a

very difficult negotiating position). In any event, the separate deployment of agents across the inquiry district, and the difficulties of communicating their dealings to one another and to the Native Department, worked against maintaining a common negotiating position. The Native Department was most alarmed by the potential for agents to end up bidding against each other, with one official noting in April 1874, that 'some instructions should be given to all of them or they [will] cut each other's throats'.[266] The relationship deteriorated between McDonnell and Brissenden, for example, after Brissenden was allowed to take over most of the purchasing (further incentivised by his moving from a salary to a per-acre commission), after which McDonnell's services as a land purchaser were dispensed with altogether.[267] Brissenden had first suggested to McLean in September 1874 that payment on commission would give him the 'confidence to proceed vigorously',[268] and the following month Brissenden was advised that he would be paid twopence for every acre to which the Government secured a clear and undisputed title.[269] McLean confirmed the arrangement in January 1875, although according to Armstrong and Subasic, he was reluctant to do so, apparently concerned that were Brissenden paid on commission, he would not give adequate attention to Māori interests nor to ensuring adequate reserves were set aside.[270]

McLean appears to have issued few instructions to agents, which is consistent with his earlier stance throughout his 1850s purchasing programme (we discuss McLean's operation of the Native Land Purchase Department during the 1850s in chapter 8).[271] Nevertheless, McLean conveyed some of his expectations in a letter he sent McDonnell in late 1871 (when the latter was acting as a purchasing agent in the Whanganui region), and then re-sent in October 1873. McLean emphasised that 'careful inquiry should be made among the Native owners' to ensure that acquisitions could be completed without causing disturbances or the revival of feuds. McLean also required agents to make a full report on the potential of the land to be purchased, to supply a rough sketch identifying the boundaries, and also to report on any reserves that were required.[272] McDonnell's initial correspondence suggests he was attempting to comply with some of these directions, more particularly those of direct benefit to the Government. For instance, in his April 1873 report on the Omahuta block, he described meeting Hōne Mohi Tāwhai and other owners at Herd's Point, Rāwene; he noted the large quantity of first-rate kauri timber and kauri gum at hand, and concluded his report by listing the block's boundaries. His summary was silent on other matters McLean had asked his agents to report on, such as any requirements for reserves.[273]

McLean's directions gave no advice on fixing prices. However, in his early correspondence with McLean, McDonnell noted what price Māori owners were seeking for particular areas of land and what he thought that the Crown should offer (which was invariably much less).[274] In short, McDonnell was seeking an endorsement of the price that should be offered, or alternatively a maximum offer beyond which the Native Department was not prepared to go. The department still had ultimate control over the amounts being spent by its agents as it only forwarded the final payments needed to complete transactions after all terms, including the area to be purchased, had been agreed with the sellers.[275]

Generally, during the 1870s Crown purchase agents made tāmana payments to presumed landowners as a way to lock in sales even before the Native Land Court had determined title to the land in question.[276] Brissenden told the Native Land Purchases Committee of the Auckland Provincial Council in May 1875: 'We are in the habit of paying deposits on all blocks under negotiation.'[277] The remainder of the purchase price would then be settled after the Native Land Court had determined the ownership and a survey to determine the area had been completed (we discuss specific purchases involving the use of tāmana in section 10.4.2(3)).

McLean expressed some caution about the payment of advances where ownership was contested. In November 1871, he issued a circular that emphasised the importance of agents being certain of the land ownership first so that transactions might be completed 'without incurring the chance of any future trouble or disagreement'.[278] He also wanted to avoid paying tāmana that might be lost if the

recipient's ownership of the land in question was not eventually established – a concern that would be shared by Native Ministers who succeeded him. But McLean's purchase agents largely ignored his instructions and were prepared to risk the loss of the tāmana, knowing that private purchasers also sought to persuade Māori to discharge any debts through the sale of land.[279] There is evidence that Crown purchasing agents were confident that Māori would not repudiate tāmana payments;[280] evidence of the importance of mana and the strengthening of relationship with the Crown in the act of selling. Agents might also attempt to transfer tāmana payments onto other lands as a security against the interests Māori held in various blocks.[281]

In May 1875, Brissenden testified to the Auckland Provincial Council's Native Land Purchase Committee that he undertook 'careful enquiry amongst the principal Chiefs' to ensure that advances were paid to those with rights to dispose of the blocks concerned.[282] As we noted earlier, this statement seems questionable; certainly, the pace at which Brissenden was working throws doubt on the claim. By the spring of 1874, he was initiating purchases at the rate of three blocks per week. Speaking later of this period, agent H T Kemp told a magistrate that he had become aware of 'the reckless manner in which Mr Brissenden, assisted by Mr Nelson, paid money by way of advance to Natives having small or no interest in lands'.[283] In the case of Omahuta (discussed more fully in section 10.4.2(3)(a)), Judge Frederick Maning had been so concerned by the inter-hapū divisions that Brissenden's tāmana payments were creating that he withheld authorisation for the block's survey, in August 1874. He did the same with another Hokianga block, Maunganuiowae.[284] Brissenden's own purchasing return for December 1874 revealed that the survey of the Bay of Islands block Tautoro was also on hold because of owners objecting to the sale.[285] Meanwhile, McDonnell was running into trouble with his use of tāmana as well. By December 1874, McLean had been informed that the rangatira Hongi Hika and Paora Ururoa would not allow the survey of the Otangaroa and Patoa blocks because tāmana had been given, without their knowledge or approval, to three individuals.[286] Reflecting on these situations, Judge Maning wrote to von Sturmer, Hokianga's resident magistrate, in 1874, observing that the Government's agents had 'laid the groundwork for much trouble in bargaining and paying earnest money to natives for lands to which they have only a partial right or in some instances no right at all'.[287]

The payment of tāmana was not the only way of pressuring owners to offer land for sale and undermining the collective capacity to retain lands or manage their disposal: another was organising surveys for land that had not yet passed through the Native Land Court, creating costs that could ultimately only be met by sale of the land concerned (or a portion of it, which then required further survey and entailed further expense). In the course of giving evidence to the Native Land Purchase Committee in Auckland, Brissenden observed:

> As a rule, when the Government purchase, [Māori] perform the surveys and pay for them. In some cases, the cost of surveys has been deducted from the purchase money to the Natives.[288]

A letter from McDonnell to Preece in April 1875, albeit in relation to blocks within the Muriwhenua inquiry district, suggests that owners also had to pay for the survey of any reserves made for them. Given the same officials were involved, it is highly likely that the same was happening in this inquiry district during the corresponding period, though we have no direct evidence.[289] If so, this is consistent with the Crown's policy from 1873 onwards, after it switched to buying parcels of individual shares in blocks, of getting non-sellers to pay for their share of the partition. A third inducement for prospective sellers, was the repeated promise that land settlement would follow purchase. As we have already noted, this was a commitment that the Crown failed to fulfil.

There is also evidence suggesting the agent Charles Nelson may have sometimes encouraged owners to believe they were not selling the timber on their blocks. Again, we can look to events in nearby districts for precedent. The *Te Roroa* report noted that, according to oral tradition, the trees on the Waipoua 1 block (which Brissenden

Thomas McDonnell junior, the son of an early timber trader and old land claimant in the Hokianga. Appointed Crown land purchase agent in 1872, McDonnell operated throughout the district, using tāmana (advances paid to individuals presumed to be landowners before the Native Land Court determined title over the land) to overcome private competition in land acquisition.

purchased with Nelson's assistance) had not been sold.[290] Similarly, we were told of testimony given in support of a petition to Parliament in 1924 by Wiremu Rikihana, then a member of the Legislative Council, who explained that Nelson had agreed to the owners retaining the timber before the Crown purchased the Te Kauaeoruruwahine block in the Hokianga in 1875. In this instance, Judge Frank Acheson had surmised that the timber might have been reserved only for customary purposes, such as building waka, on the basis that Nelson would not have been authorised to make such an agreement at the time.[291] In 1880 however, Nelson did agree that the Crown would buy the land and not the timber on the Pahinui block, before approaching Eru Nehua soon after the sale to get him to agree to waiving his timber rights.[292] While this evidence is not conclusive, it does demonstrate what the *Te Roroa* report observed in relation to Waipoua 1:[293] that the texts of Crown deeds, and possibly the explanations of agents themselves, were unclear and inconsistent on what was being included in purchases.

Another tactic was available to land purchase agents if they found none of these inducements proved sufficiently persuasive, and if the owners were not seeking to raise capital for investment (as in the Hukerenui sale) or to clear debt (as in the instance of Pakiri). The agents could, and sometimes did, create doubt in the owners' minds about other offers, so that accepting the Crown's seemed the safest option. There is evidence that Thomas McDonnell cynically used the impending abolition of the provinces to encourage owners to accept a lower price in one purchase.[294] Once the Crown introduced proclamations in 1877 to prohibit private competition for blocks, of course the undermining of other offers was no longer necessary.

While it is true that Brissenden was working largely without the benefit of detailed instructions, his record of purchasing in Northland as a whole also shows his willingness to circumvent the requirements set out for purchasing in the Native Land Act 1873, in the interests of speed. In June 1874, he had to resubmit deeds for two Kaipara blocks (Arakiore 2 and Owhetu – outside our inquiry district) after H T Clarke, Under-Secretary for the Native Department, reminded him that all instruments of disposition of Māori land were invalid unless explained to Māori and certified by an interpreter appointed under the Act. Furthermore, Brissenden was reminded, the signatures of owners on such instruments had to be attested by a resident magistrate or a judge of the Native Land Court 'and at least one other adult credible witness'.[295] Clarke's reproof came only a month after Brissenden had failed to ensure that the two signatories on the Pakiri deed

(a purchase which we review in section 10.5) were both entitled to act as sellers.

In Brissenden's view, the difficulty of meeting purchasing requirements could be solved by relaxing them; in an undated memorandum to McLean, he argued that investigations in respect of blocks under negotiation by the Crown 'should not be governed by the cast-iron rules which are applied, and properly applied, to private purchases'. In addition, he suggested that the 1873 Act be amended to allow surveying to take place at the same time as (rather than after) purchase negotiations; he considered this would allow the Crown to purchase much more land more expeditiously and for lower prices. Changing the Act, he suggested, would accelerate the process and would keep the Government in good standing with Māori who had accused purchasing agents of using tāmana to 'tie up their lands'.[296] While McLean did not implement the suggested changes, Brissenden's fast-and-loose approach to purchasing during this period may have influenced McDonnell, who had demonstrated caution in his earlier operations. In October 1874, McDonnell's report to Clarke described one purchase as 'another block, acreage not known, price to be fixed in future, but survey is to commence at once'.[297] Soon afterwards, he was (unwillingly) relieved of his land purchasing role after he tried to push through the Otangaroa and Patoa survey in the face of owner opposition.[298]

Evidently, the Crown's land purchase agents could also be party to the out-of-court arrangements for determining the titles of blocks that the Crown wished to purchase. We know this as a result of the clash between Judge Maning and Preece at the Orowhana block title hearing in October 1875 (we discussed Maning's dislike of tāmana and apparent preference for recording all owners in chapter 9). The claimants to the block had acknowledged that it had a substantial number of owners; however, Preece expected Maning to approve a short list of representative owners, based on the provision for adopting out-of-court arrangements in section 46 of the Native Land Act 1873. In turn, Preece expected these owners would unanimously support sale to the Crown, thus satisfying section 49 of the same Act.[299] Despite Preece's pleading that 'some of the other parties if named might decline to sell their shares, or require an exorbitant payment for them', Judge Maning refused to adopt the shortened owner list.[300] He adjourned the hearing and even threatened to resign, warning that '[i]nterference by [the] land purchase department before a claim is settled will surely lead to disaster'.[301] The Solicitor-General, whose opinion was sought, stated that the Judge had interpreted the Act correctly (see chapter 9, section 9.6.2).[302]

Otherwise, the Court's practice of endorsing arrangements to designate only a small number of owners when the Crown was purchasing had been widespread, and it continued after the Orowhana battle (which itself was resolved in the way Preece and the claimants had wished when heard by Judge Monro in 1877).[303] In the case of Te Kauaeoruruwahine, for example, the Court had split the block between three claimant groups. This allowed Brissenden to complete the purchase the following day when, in the interests of speed, 'he did not pay all the awardees, but just one representative of each group'.[304] In the case of Punakitere, the Court awarded the block solely to Hori Karaka Tawiti, even though he had originally argued that 12 people held rights to the land. But part way through the hearing, Tawiti told the Court that 'it had been arranged' for his to be the sole name on the memorial of ownership. Ten days after the title hearing, Brissenden completed the purchase of the block for the Crown.[305] The Native Land Court's accommodation of purchasers (and vendors) was not limited just to Crown purchasing though. As Wiremu Pōmare told Haultain's inquiry into the workings of the Native Land Court in 1871, 'Pakehas often advise the Natives to get as few names as possible to a grant for the convenience of selling'.[306] As late as 1882, the Kahakaharoa block was awarded to just two individuals and sold shortly afterwards to a timber-milling company, despite Haki Whangawhanga having asked for 'a great number of names' to go on the title at the start of the hearing.[307]

Brissenden's conduct as a land purchase agent (and to a lesser extent, that of Nelson and Preece) would be called into question over the course of multiple official inquiries into the agents' actions during 1875 and 1876. The

first was launched by the Auckland Provincial Council in May 1875.[308] The council – as the beneficiary of Crown purchasing in the inquiry district, since all land acquired would be transferred to it for disposal to settlers – was justifiably concerned about any potential misuse of funds.[309] The first witness to appear before the council's inquiry was Provincial Councillor John Lundon. He made several allegations against Brissenden: among them, that he was purchasing land for private interests while working for the Crown, receiving kickbacks from surveyors whose work he was commissioning, paying hush money in order to cover up his activities, and having owners plied with drink during court hearings so that the publican's charge was included in the purchasing expenses.[310] Theophilus Heale, the inspector of surveys, appeared next; he observed that several surveyors had told him of overtures to pay commission to land purchase agents (which was usual with private surveys), but stated that he had taken measures to prevent this occurring where Crown purchasing was concerned.[311] Brissenden himself then appeared, denying Lundon's allegations.[312] However, the next Crown witness, Major Green, Agent General for the Central Government in Auckland, explained that he was under instructions not to cooperate with the inquiry; this was at the behest of the Colonial Secretary, who considered such an investigation should properly be conducted by Parliament. The provincial council's inquiry promptly ended, without reaching any definitive findings.[313]

In response to allegations made during the inquiry, J W Preece defended Brissenden's purchasing record in his report to McLean at the start of July 1875. Preece observed that the Native Land Court had found only one fault in Brissenden's many purchases involving tāmana: namely, the payment made to Wī Tana Pāpāhia in the case of Omahuta. As for the contention that owners had been paid with credit to be used with storekeepers and publicans rather than being paid in cash, Preece said it was 'entirely without foundation'.[314] McLean in turn gave a statement to the House of Representatives in August, emphasising the difficulties faced by land purchase agents and praising their success in acquiring as much land as they had at lower rates than private buyers would pay.[315]

However, by late August it became clear that Brissenden's activities would be further investigated. Sir George Grey, an opponent of McLean's purchasing programme, had first successfully moved in Parliament that all correspondence about the employment of land purchase agents be published. Grey then sought the expansion of an inquiry into two block purchases south of Auckland (Tairua and Pakarirahi) so that all purchasing undertaken by McDonnell, Brissenden, and James Mackay could be examined.[316]

Much of the evidence before Parliament's Tairua investigation committee centred on Brissenden and was presented by Thomas McDonnell (who was thus effectively both a witness at, and subject of, this inquiry). McDonnell advanced several serious allegations. He alleged Brissenden had told him that he had authorisation to acquire Northland timber leases and land for himself and others, including McLean, Vogel, and the current Premier, Daniel Pollen. He also claimed that Brissenden had attempted to swindle a tāmana recipient out of a payment and had directed survey work to particular individuals in exchange for kickbacks of 50 per cent.[317] McDonnell's evidence may have been coloured by his resentment at Brissenden having displaced his own purchasing role, and some of his evidence was inconsistent.[318] However, J E Dalton (employed by Brissenden as an interpreter and part-time 'surveyor') testified that he, and allegedly other surveyors, arranged to pay Brissenden 'a percentage' of the moneys received from the Government for surveys in Northland – which substantiated McDonnell's claim of kickbacks.[319] Brissenden appeared before the inquiry in person and also submitted a detailed statement. In it, he refuted these allegations and addressed rumours that he had allowed land to be reserved for later private acquisition. He made a counter-allegation against McDonnell that he had squandered money by paying more than an agreed rate for some purchases.[320] On the matter of possible kickbacks, Brissenden argued that, because his assistant Charles Nelson doubled as a surveyor, he was technically entitled to a commission from anyone to whom he had subcontracted the survey work. When it came to the allegations that he had acted in league with

private purchasers, Brissenden suggested that these were based on his having refrained from interfering in private deals made before 1873, an approach which McLean had endorsed.[321] Brissenden's statement also referred to the use of 'treating' (that is, using food and drink in lieu of cash) in relation to the Pakanae block, but as Nelson had already told of engaging in the practice in a letter to the *New Zealand Herald*, Brissenden merely praised his contribution to acquiring the land.[322]

Ultimately, the Tairua investigation committee established on Grey's orders made no mention of Brissenden or McDonnell in its final report, and merely observed that it had been unable to resolve the large amount of evidence 'of a most conflicting character'.[323] In the meantime, however, Brissenden had been dismissed from Crown service; as noted, this was due to another inquiry finding that he had fraudulently issued mining rights in the Ohinemuri goldfield for personal gain.[324]

Brissenden's and Nelson's purchasing operations in Northland received further scrutiny in yet another inquiry the following year. Conducted by the Resident Magistrate J C Barstow, it concerned the alleged improper purchase of the Waipoua and Maunganui blocks. These two blocks are outside the Te Raki inquiry district. However, Barstow's investigations into the complaints brought on behalf of the blocks' two owners, Tiopira and Parore Te Āwha, by solicitor Joseph Tole – a friend of Nelson – concerned the purchase of the Opouteke block as well, so are relevant here.[325] In the case of Waipoua and Maunganui, Brissenden and Nelson had recognised Tiopira's interests in these blocks, but not those of Parore Te Āwha. While Tiopira ended up selling his interests for £2,000, Parore Te Āwha – having proved his claim in the Native Land Court – negotiated the larger sum of £2,500 and a 250-acre reserve with Preece.[326] Tole had argued that Tiopira had been duped out of an equivalent payment to Parore Te Āwha's, while Preece and Kemp blamed the situation on the flawed distribution of tāmana by Brissenden and Nelson.[327]

Similarly, in the case of Opouteke, the Crown had only dealt with Kamariera Te Wharepapa, and the Court had accorded him sole ownership of the block on the understanding that he would compensate Haurangi and Heta Te Haara for their interests (which proportionately were worth around £650). When this did not happen, Preece had persuaded Haurangi to accept £100 to extinguish his interests.[328] Tole argued that the Crown needed to get Kamariera Te Wharepapa to pay the money he owed, and if not he would seek to have the purchase rescinded.[329] Neither Tiopira's bid for restitution nor Haurangi and Heta Te Haara's claim for action against Kamariera Te Wharepapa was successful, with Barstow commenting sternly on the conduct of the Crown purchasers. Of Brissenden and Nelson, Barstow stated that 'I refrain from commenting upon conduct so dishonorable.'[330] Even so, within two years Nelson was (like Preece) working as a land purchase agent for the Crown. He had been employed in this role by the Native Minister John Sheehan, who had earlier worked closely with Nelson and Brissenden on the contentious Pakiri purchase.

In our view, the Crown failed to exercise effective control over agents acting on its behalf and had little interest in doing so. The Crown did not seek to comprehensively inform itself whether the conduct of agents compromised the rights and interests of Māori owners or indeed invalidated any of the purchases they had concluded. If McLean is taken at his word, then he did not see fit to dismiss Brissenden for his activities in Te Raki and elsewhere, despite the conduct that had been disclosed in the various inquiries. Dismissal may have raised very difficult questions; claimant counsel suggested, that possibly McLean was anxious to avoid any more searching investigation into the conduct of the Crown's Te Raki land purchasing that could leave him open to the charge of complicity in actions that he knew were questionable, at least.[331]

Brissenden's activities lay at the heart of many of the claims submitted to us concerning the Crown's purchase methods during the 1870s. Both the terms on which Brissenden was engaged, and the advice he and other land purchase agents offered McLean, placed on the Crown a particular responsibility; namely, to insist and ensure that negotiations were conducted openly and fairly, with the interests of all rightful owners recognised and respected. The Crown did not fulfil this responsibility. McLean's

failure to issue proper instructions to his agents, to monitor their activities, and maintain control over them – along with his willingness to adopt a commission model for Brissenden – effectively incentivised irresponsible and potentially corrupt practices. By the time the activities of Brissenden and certain other agents came under scrutiny, they had already managed to execute an enormous and irreversible transfer of land out of Te Raki Māori possession. As a result, the Crown directly benefited from practices that fell well short of its own stated standards.

(2) *Private purchasing and leasing*

The available data suggests that the scale of private purchasing in Te Raki during the period from 1865 to 1900 was much smaller than that undertaken by the Crown. Purchasers – some of them settlers with whom Māori landowners had existing relationships – typically offered and paid higher prices for land than the Crown.[332] Henry Walton, for example, was able to acquire several small blocks around Whāngārei due to his being a business partner and relative by marriage of the rangatira Te Tirarau Kūkupa.[333] If the right opportunity presented itself, Māori might choose to sell to private buyers for essentially the same reasons they chose to sell to the Crown. Landowners could also decide to sell an area of land that they considered too small for its loss to harm their interests.[334]

The records detailing the nature and extent of private purchasing are incomplete or imprecise;[335] as the Crown submitted, little is known about most private transactions 'beyond the bare details of block, owners, purchase price and the name of the purchaser'.[336] Historians Dr Barry Rigby, Dr Paul Hamer, and Rose Daamen cited an unpublished list of private purchases in Auckland Province between 1865 and 1869 which recorded the alienation of 184,558 acres over this period. Included in this figure were three large Mangakāhia blocks: Maungaru (21,319 acres), Nukutawhiti (12,168 acres), and Te Karaka (11,710 acres).[337] Another return was produced for Parliament in 1883 that only included private purchases under the Native Land Act 1873, but recorded that 7,153 acres had been privately purchased in the Bay of Islands, Hokianga and Mangonui districts, and a further 128,202 acres was privately purchased during this period in the Whāngārei and Kaipara districts.[338] Private purchasing records compiled by Crown counsel identified transactions involving more than 61 blocks, which resulted in 39,884 acres being alienated between 1875 and 1884. (Between 1885 and 1894, private transactions involving a further 22 blocks would lead to the alienation of another 4,967 acres.[339]) However, only a quarter of the blocks in question comprised more than 300 acres, meaning accumulated private sales over the period involved much less land than Crown purchasing.

The distribution of sales also reflected the location of the Pākehā population, with most private purchase activity focused on blocks near Whāngārei; there were hardly any such purchases in Hokianga. The timber industry's demand for future forest supplies continued to be responsible for the largest private transactions. The sawmiller George Holdship bought the 3,439-acre Otangaroa 2 block at Whangaroa in 1876,[340] and his fellow sawmiller Pierce Lanigan the 3,396-acre Kopuatoetoe block at Ngunguru north of Whāngārei.[341] The respective purchasers of Maungaru and Te Karaka, namely Charles Walton and Randall Johnson, had both been directly involved in the titling process. Walton had acted for the claimant, Paikea Te Hekeua, at the Maungaru title hearing, while Johnson had contributed £100 towards the cost of surveying the Te Karaka block.[342] The Maungaru block was later on-sold to W S Grahame, who wanted to mill the timber on it.[343]

Many sales to private purchasers were driven by the familiar spectre of indebtedness.[344] Store debt and debt from court proceedings over land would have loomed large during the 1880s and early 1890s in our inquiry district too. As we have discussed, at that time the general economic downturn had forced many Māori to turn to gum-digging, while opportunities for employment in road construction and other public works had dwindled,[345] and no short-term income was being generated by land sales to the Crown. The example of the Otaniwha block – 1,206 acres in the Whāngārei district – is illustrative. The block was initially brought before the Court for title determination by Eru Pakere, who sought to pay off a debt incurred by one of his people involved in a case before the Supreme Court. The Native Land Court process itself proved costly,

due to survey costs and court fees (see chapter 9, section 9.7); these were paid for by a 'European friend', who may well have been a prospective purchaser. Title was awarded to Pakere alone in 1885, and he sold the block in 1887.[346] Similar cases occurred elsewhere in the district, such as the Bay of Islands in 1885. The first concerned the 127-acre Honohere block, which Maihi Parāone Kawiti intended selling to repay debt and raise development money. The Court awarded the block to Kawiti and three others, who then sold it the following year to a Kawakawa store owner.[347] As already illustrated by the Otaniwha example and the Te Karaka purchase by Randall Johnson in 1868, paying advances for surveys – which had become legal in 1867 – was another means by which private parties could gain interests in blocks.[348] It would have been an attractive enticement for Māori landowners, who had been generally required to meet survey charges in their entirety during this period (see chapter 9, section 9.7.2).

Leasing provided an alternative for Māori landowners to generate income from their land. As early as 1866, the Ketenikau block owners entered into a 99-year coalmining lease, and title to the Orokaraka block was also obtained so that it could be leased to facilitate the shipping trade.[349] As noted, we did not receive any systematic evidence on the extent of private leasing during this period. However, it appears that demand for timber saw a significant number of blocks being leased for 21-year terms during the 1870s. The first was the Stannus Jones lease over the Pakiri block (which the Crown bought out in 1874) and a lease taken out over the Rotokakahi and Te Awaroa 1 and 2 blocks in Hokianga in 1873.[350] These were followed by Te Tirarau granting leases to Charles Walton of two western Whāngārei blocks (Marumaru and Raihara) in 1875,[351] while George Holdship sought a lease over the whole of Otangaroa before switching to purchasing the partition Otangaroa 2 after the lease proposal failed.[352]

A number of Mangakāhia and western Whāngārei blocks – Kauaeranga, Mangaroa, Ngaturipukunui, Opouteke 2, Oue 2, Pipiwai, Pukehuia, Ruataewao, and Tarakiekie – were then leased in the late 1870s.[353] As we discussed in chapter 9, the Kauaeranga and Ngaturipukunui blocks were awarded to Te Tirarau Kūkupa alone in July 1877, who signed 21-year timber leases over the blocks a few days later.[354] Paul Thomas noted that Te Tirarau 'received the proceeds for the timber lease, some of which, it would seem, he distributed to others who held (non-legally recognised) rights to the land'.[355] The next year, J Symonds, resident magistrate for the Kaipara district, reported that the system of leasing was providing Māori sufficient income, 'so much so that they are not so industrious as in former times'.[356] However, Armstrong and Subasic observed that leasing was not favoured by the Crown as a means of opening up land, and it was not widespread outside certain timber lands.[357]

Fewer lease agreements seem to have been entered into during the 1880s and 1890s. Notable was the Ngunguru Coal Company's lease on the Kiripaka block (the company had initially sought to secure it for coalmining purposes along with 'almost all the lands on both sides of the Ngunguru River'; by 1896, though, it appears that next to no coal had been discovered).[358] When the 21-year timber leases expired, a number of blocks where the valuable timber had been cut out were purchased by the Crown in the 1890s (we discuss the Kauaeranga and Ngaturipukunui purchase in section 10.5).[359]

(3) *Tāmana*

Tāmana was the practice by which purchasers (both the Crown and private individuals) paid advances to individuals presumed to be owners, even before the Native Land Court had determined title over the land in question.[360] As the Tribunal said in the Central North Island district inquiry, purchasers thereby '[took] the risk that those they were paying would later be confirmed as the "correct" owners'[361] – a risk considered worthwhile in order to secure and expedite a purchase. Elsewhere, the Tribunal has characterised the practice, at least as undertaken by the Crown, as 'making initial payments to favoured rangatira away from the eyes of other leaders and resident hapū'.[362] In Northland, the practice of advance payment was also referred to as 'sprinkling mana'.[363] This is a telling description.

The payment of advances was not new to Northland; McLean himself had used this means when purchasing Pakiri South in the 1850s (see chapter 8, section 8.5.2).[364] The practice had since been sanctioned by Native Land legislation, when undertaken by Crown agents. Section 75 of the Native Lands Act 1865 made pre-title contracts for land owned by Māori but for which the Court had not issued a certificate of title 'absolutely void'; that is, not valid or legally binding. However, section 83 allowed for pre-title determination agreements between Māori owners and Crown purchasing agents. Where an agreement was made, the Governor was empowered to refer the matter to the Court for title determination, and the apportionment of interests between the parties to the transaction.[365] A series of ambiguous and confusing provisions followed. In discussing sales under memorials of ownership (whether to Crown or private purchaser), section 59 of the Native Land Act 1873 referred to 'advances of money made to the Native owners by way of earnest money to bind the agreement for such sale', which could be deducted from the purchase amount. On the other hand, section 87 of the same Act stated that conveyances of native land before it was vested in freehold tenure by order of the Court would be 'absolutely void' although, as we pointed out in chapter 9, the provision failed to ban the practice absolutely. Section 107 also provided that the Governor, or Māori landowners, could seek an order from the Court in cases where 'money has been paid on account of such land, but no perfected agreements have been made nor possession acquired by her Majesty'. In determining the title to such land the Court had four options. It could:

- order the completion of the agreement;
- partition out the interests of the Crown;
- order the repayment of advances received by Māori; or
- declare that the land be vested in the Crown.[366]

Private purchasers would eventually be explicitly prohibited from using tāmana by section 7 of the Native Land Laws Amendment Act 1883, which prohibited parties from entering into purchase negotiations until 40 days had lapsed from the date on which a title had been ascertained[367] – a provision from which the Crown was exempt.[368] It was not until Crown pre-emption was restored in 1894 that its purchase agents abandoned the use of advance payments, despite the Native Minister's earlier directives to stop the practice.[369]

The Crown paid tāmana on most lands in the inquiry district it sought to acquire during the 1870s. Despite McLean's repeated cautions to his agents about the risk that payments could stoke rivalry between competing parties, or where there was a risk that payments might be expended in vain, his instructions were largely ignored without sanction.[370] Brissenden's December 1874 return listed 66 blocks for which he and McDonnell had initiated purchase. Most were in Te Raki, and money had been advanced on all but one. The total sum involved amounted to almost £6,953 – a sizeable unsecured liability for the Crown. The block area had been estimated in just seven cases, and the price per acre varied widely: across 55 blocks, it ranged from fourpence to 3s 6d. The largest advance was for Pekapekarau, at £375,[371] while at the other end of the scale, tāmana of just £5 had been paid for the Poniwhenua block, which was subsequently acquired by private purchasers.[372]

Many of the payments were modest – effectively small tokens scattered around as many potential owners as possible. In part, this was an attempt to minimise loss should recipients not be declared owners by the Native Land Court. Brissenden relied on tāmana to exclude private purchasers, who he complained had 'money in hand' and thus 'a great advantage' over him while he was still waiting for funds to be advanced. Private purchasers were also likely to make offers that he could not match.[373] Consequently, the trick was to get in first. As described in the case of the Otangaroa and Patoa blocks, the Crown's land purchase agents also saw the payment of tāmana as grounds for going ahead with commissioning surveys.[374] Once completed, surveys gave the Crown an even more secure stake in the land in question.

The practice of making pre-title hearing advances attracted considerable contemporary criticism. It was one of three complaints Hōne Mohi Tāwhai and others made

about the Native Land Act 1873 in a petition to Parliament in 1874. The Native Affairs select committee agreed with the petition on this point, resolving:

> That it is not expedient that money should be paid by the Government by way of advance to Natives on account of their lands until they are satisfied as to who are the real owners thereof.[375]

In the Legislative Council, in September 1876, Mōkena Kōhere began a debate about whether the Government's practice of sending purchase officers to make a 'payment of monies' for lands that had not gone through the Native Land Court 'was contrary to law, and . . . likely to result in serious difficulties, and perhaps bloodshed'. Kōhere sought to have advance payments declared unlawful, while G S Whitmore (Hawke's Bay) described them as a bribe employed to prejudice the interests of owners.[376]

In 1876, Premier Daniel Pollen acknowledged that in acquiring the right to deal with land in advance of title determination, the Crown had acquired 'exceptional powers'. He added, however, that 'the completion of such transactions was contingent upon the action of the Native Land Court'.[377] This did not assuage concerns about the desirability of any pre-title payments or indeed the broader dealings of the Native Land Purchase Department, and doubts were raised over whether agents ever explained to Māori the purpose of such payments or the consequences that attached to accepting them.[378] In 1879, Native Minister Bryce issued instructions to the land purchase officer J C Young (who was operating in Tauranga) to make no further payments 'to natives on lands that have not been before the Native Land Court for investigation of title'.[379] The following year, during parliamentary debates about the Native Land Sales Bill in 1880, Bryce also offered some pointed criticisms of both private and government purchasing agents' tactics, notably pre-title advances, which he described as 'scattering money among . . . [Māori] like dirt'. His many concerns included the fact that tāmana had been paid for land of unknown quality and uncertain area, and that the payments constituted an unsecured liability for the Crown.[380] That the practice might also have disadvantaged Māori was not a matter on which he commented, although he did note that the agents' conduct 'has done more to demoralize and degrade the Maori race than all our efforts at colonization can ever redeem'.[381]

Notwithstanding Bryce's remarks, while the Crown was aware that paying tāmana undermined Māori capacity to retain land, criticism of the practice focused primarily on the possibility of payments being lost.[382] So long as this did not eventuate to any great extent, warnings about paying tāmana could be ignored in Te Raki as elsewhere – including by private purchasers. While the reassertion of the Crown's pre-emptive right of purchase brought the practice of tāmana to an end in 1894, the new policy has been described as a 'double-edged sword,' since it meant that Māori had no available money to meet their heavy court costs.[383]

The following examples illustrate how the practice of tāmana played out in various parts of the inquiry district throughout the 1870s, and its destabilising effects for hapū and iwi.

(a) Use of tāmana at Omahuta

The dispute over the Omahuta block (in Whangaroa) involved numerous hapū – Ngāti Kahu, Ngāti Miru, Ngāti Hau, Ngāti Korokoro, Ngāi Tūpoto, and Te Uri o Te Aho of Māhurehure – and numerous individuals, some with multiple affiliations to these and other hapū.[384] Colonel McDonnell inspected the block in March 1873 in the company of Hōne Mohi Tāwhai and other owners. He observed that it included 'many millions of feet' of quality kauri timber. Tāwhai and the other owners had requested 12s an acre, but McDonnell considered they would accept a price closer to 3s an acre, or slightly lower.[385]

In July 1874, Brissenden made the first of three advance payments for the block on behalf of the Crown. Brissenden's initial payment of £100 to Hōne Mohi Tāwhai and two others was followed by another £100 to Wiremu Tana Pāpāhia, also in July, and £30 to Rihara Raumati and two others in September 1874.[386] Brissenden also reported that the purchase rate was set at just 1s 6d per acre, much lower than the original per-acre rate sought

by Tāwhai or suggested by McDonnell.[387] As noted earlier, Judge Maning was sufficiently concerned by Brissenden's payments to contact Resident Magistrate von Sturmer. Maning informed him that, as the hapū disputing the block were trying to resolve their differences, Brissenden making payments to only some representatives of hapū without reference to others was inflaming matters. Judge Maning recommended to von Sturmer that no purchase should take place until the dispute about the block's ownership had been resolved. According to Maning, the payment of tāmana to only some of the owners of this land would make resolving questions of title more difficult in the future, and also alarm those who had missed out.[388] Te Uri o Te Aho hapū oral traditions, which Pairama Tahere related during hearings, tell us that the tāmana for Omahuta was accepted by 'junior rangatira'; nonetheless, their hapū 'felt obligated to follow through with the agreement to sell'.[389]

When Omahuta came before the Native Land Court in June 1875, Judge Monro found in favour of Hōne Mohi Tāwhai's claim for Te Uri o Te Aho, Ngāti Korokoro, and Ngāti Hau, rejecting the opposing cases put by Wiremu Tana Pāpāhia for Ngāti Kahu, Wiremu Hau for Ngāti Miru, and Pairama Te Tihi for Ngāti Tūpoto.[390] The successful parties then submitted ownership lists for three partitions to the Court. Hōne Mohi Tāwhai was one of five owners for Omahuta 2, while there were four owners for Omahuta 1, and three for Omahuta 3.[391] Within a week, the Court had approved the Crown's purchase of both Omahuta 1 (1,722 acres) for £129 3s and Omahuta 2 (6,048 acres) for £453 12s, leaving only Omahuta 3 (678 acres) in Māori ownership.[392] To complete the Omahuta purchase, the Crown paid £99 to the owners of Omahuta 1, and £353 12s to Hōne Mohi Tāwhai – apparently accounting for £130 of the advances it paid in 1874.[393]

As for the advance of £100 to Wī Tana Pāpāhia, this appears not to have been deducted from total purchase price of £582 12s.[394] According to Crown purchase officer Preece, this was the only occasion when a recipient of tāmana from Brissenden was not subsequently confirmed as an owner by a title investigation. Nevertheless, Preece defended the advance, arguing that Wiremu Tana Pāpāhia would not have let the Omahuta survey go ahead otherwise, and he asserted that Pāpāhia had received a portion of the purchase money from the successful claimants.[395] This claim cannot be confirmed however. As researcher David Armstrong commented, 'just why the other claimants had opposed Papahia's claim, if Preece's comments are accurate, remains a mystery'.[396]

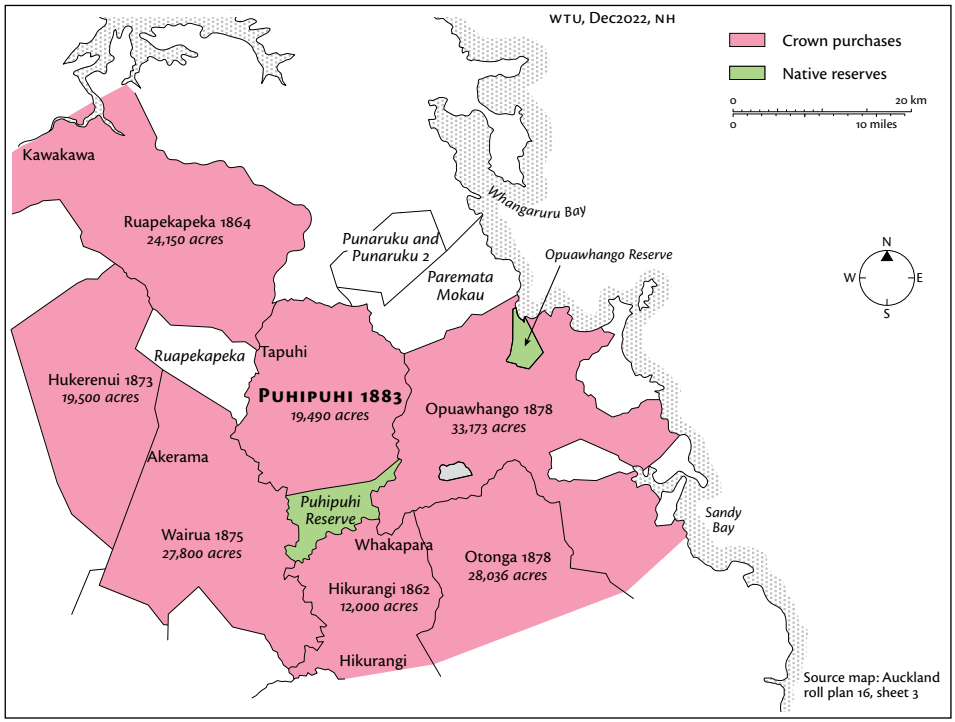
(b) Use of tāmana at Puhipuhi

Another example of the Crown using advance payments to facilitate sales concerns the acquisition of the 25,000-acre Puhipuhi block, the subject of several claims in this inquiry. Ngāti Hau claimants alleged that the Crown succeeded in getting owners to sell the land for less than it was worth by employing tāmana payments and proclaiming that Puhipuhi was under negotiation.[397] Ngātiwai and Ngāti Hine claimants also argue that the advances paid affected the outcome of the title hearing.[398]

The prolonged court process to settle the title is discussed in the Native Land Court chapter (see section 9.6); here, we focus on how the Crown used advance payments on a block whose ownership was known to be contested in order to further its purchasing objectives.

The timber industry was booming in Auckland Province in the late 1870s, which made Puhipuhi's kauri forest a significant asset. According to the agent Charles Nelson, around 1876 the Auckland timber merchant George Holdship – who would go on to purchase approximately half the Otangaroa block the following year – considered Puhipuhi worth £30,000, or more than £1 per acre, for the timber alone.[399]

At the time, the ownership of the Puhipuhi block was still unclear. Title hearings had been held in 1873 and 1875, with Eru Nehua of Ngāti Hau, Hoterene Tawatawa of Ngātiwai, and Maihi Parāone Kawiti of Ngāti Hine as the main claimants; however, these proceedings were adjourned without a determination having been issued (see chapter 9, section 9.6). Over this period, Judge Maning proposed a number of options for the division of the land and the claimants' interests, but the outcome remained unclear. Furthermore, as we discussed in chapter 9, Maning's private discussions with Nehua and



Map 10.2: Crown purchasing in Puhipuhi.

Maihi Parāone created confusion about what had been proposed, and tensions between the parties increased over the subsequent years.[400] It was not until 1878, when the Crown became interested in acquiring the valuable timber on the block, that officials took any action to resolve the dispute.[401]

Native Land Purchase Under-Secretary RJ Gill saw purchasing the interests of Eru Nehua and Maihi Parāone Kawiti as a way of acquiring a forest for the Crown, while also bringing a seemingly intractable inter-hapū dispute to a conclusion.[402] Puhipuhi was proclaimed as a block under negotiation for purchase in November 1878, locking out any private buyers.[403] Over the next 12 months, officials would make six advance payments, with a total of £620 going to Eru Nehua and others, £400 to Hoterene Tawatawa, and £1,000 to Maihi Parāone Kawiti. Additionally, the Crown reimbursed Eru Nehua for the £312 cost of surveying the block.[404] Deals were also struck privately, whereby the Crown agreed to pay Kawiti a total of £2,500 for his interests. The Crown accepted Nehua's request to set aside land that Ngāti Hau were currently farming as well. The reserve area was surveyed in 1880, remarkably, before a formal title was made granting ownership to Nehua and Ngāti Hau. Researcher Mark Derby suggested that the Crown considered that Ngāti Hau were likely to be awarded some interest in the block, and that they would only agree to the Crown purchasing that interest 'if their retention of the reserved area was guaranteed in advance'.[405] However, these deals further stoked tensions between the parties.[406]

A few days before the title investigation hearing began in April 1882, Gill informed Native Minister Bryce that the Crown had already advanced a total of £2,332 and the claimants expected the payment of the balance, £3,668 (for a total of £6,000), at the Court. Bryce responded that the land should be purchased if it could be acquired

at that price. But during the first day of the hearing, Gill withdrew the application to determine the Government's interest, on the basis that the original application was made before the survey of Nehua's reserve was approved by the Surveyor-General in March 1882, and as a result, it was not excluded.[407] Correspondence between Crown officials and Bryce illustrates their initial concern about the size of the tāmana payments, and how the Court's decision would align with these arrangements. They initially developed a 'fallback option' in case the Court awarded some Puhipuhi land to claimants other than those who had already received tāmana. In that case, officials indicated they would seek another court hearing where (they hoped) the Court would award the Crown 'land equivalent in value to what it had already paid in advances'.[408] But as the 1882 hearing got underway, Crown officials and the Native Minister increasingly favoured another outcome: that the Court would determine the rightful owners of Puhipuhi in its entirety, not just the owners of those areas to whom the Crown had already paid advances. In which case, the Crown hoped, any further Puhipuhi owners could be persuaded to sell.[409] As we noted in chapter 9, the Court awarded 16,000 acres to Ngāti Manu, Ngāti Te Rā, and Ngātiwai, and 9,000 acres to Eru Nehua and Ngāti Hau.[410]

Then, after the Court delivered its judgment, the Crown sought to have Hoterene Tawatawa – who had earlier accepted advance payments on behalf of Ngātiwai – added to the Ngātiwai owner list. According to Derby, Crown officials maintained that the other Puhipuhi owners had left off Tawatawa's name in the hope of nullifying any obligation to abide by the purchase price of six shillings per acre the Crown had offered when paying Tawatawa his first advance.[411] In order to forestall that possibility, Derby noted that 'the Crown agreed to the registrar of the court adding Tawatawa's name to the certificate of title'.[412] The Crown can be seen intervening to ensure that the final title determination was consistent with the advance payments it had paid out, rather than the owners' wishes.

The judgment was protested by all parties. In chapter 9, we discussed the petitions for a rehearing made by Iwi Taumauru of Te Atihau, Nehua and Maihi Parāone (see section 9.6). Maihi Parāone made two appeals to Native Minister Bryce for a rehearing in May 1882, pointing out that he had received advanced payments for the block:

> If you do not agree to a rehearing, what is to be done about the five hundred pounds that I have received – you have proclaimed that 25,000 acres because of advances made upon it which we have received . . . grant a new hearing of that land, lest you should altogether lose the money you have advanced on this land.[413]

In June 1882, Hone Tiaki and 34 members of Ngātiwai petitioned the Government, claiming that they had received a share of the advances and objecting to the per-acre price of six shillings that had been the basis for those payments that they claimed they had not received a share of. The petitioners noted that '[k]auri timber in the vicinity of the said block is selling for fifteen shillings a tree and a great many trees grow upon an acre.'[414] They complained, that the Crown had secured the land for less than half that amount, and the proclamation over the land was preventing them from accepting a higher price from private purchasers for their interests.[415] Bryce's response was to blame private interests whose 'unlawful' interference was, he thought, 'doubtless at the bottom' of the petition. It was, he noted, the intention of the Government to 'purchase the block or as much of it as they can'.[416] Subsequently, Nehua, Tawatawa, and Kawiti wrote jointly to the Native Minister in 1882 to ask if they could repay their advances and be free of their sale obligation. But Bryce rejected this request, and Derby considered this was 'an indication that the Crown believed it had secured a good deal with its initial advances and was determined to hold the vendors to the original terms of that deal'.[417]

After the vigorous Māori opposition to the Court's 1882 decision, and an armed confrontation between members of Ngāti Hau and Ngātiwai in June 1882 (see chapter 9), a rehearing was granted, and the final adjudication of the Puhipuhi title took place in 1883.[418] The Crown was now even more determined to protect its investment, with Under-Secretary Gill instructing the Native Land Court clerk John Greenway to see that,

Logging of the kauri forest at Puhipuhi, early 1900s.

> should the Court award the land to the hapus to which Eru Nehua, Hoterene Tawatawa and Marsh Brown Kawiti belong, that the names of those who participated in the [advance] payments are registered as owners of the land.[419]

It is unclear how effective this instruction was, as Judges Loughlin O'Brien and William Gilbert Mair opted to weigh up the parties' cases according to how consistent they had been across the various hearings. Ultimately, they awarded the bulk of the block, some 20,000 acres, to Eru Nehua and Ngāti Hau (see chapter 9 for details of the block's subdivision, and also how the remaining land in the block was awarded among Ngāti Hine, Ngāti Manu, Ngāti Te Ra, and Ngātiwai claimants).[420]

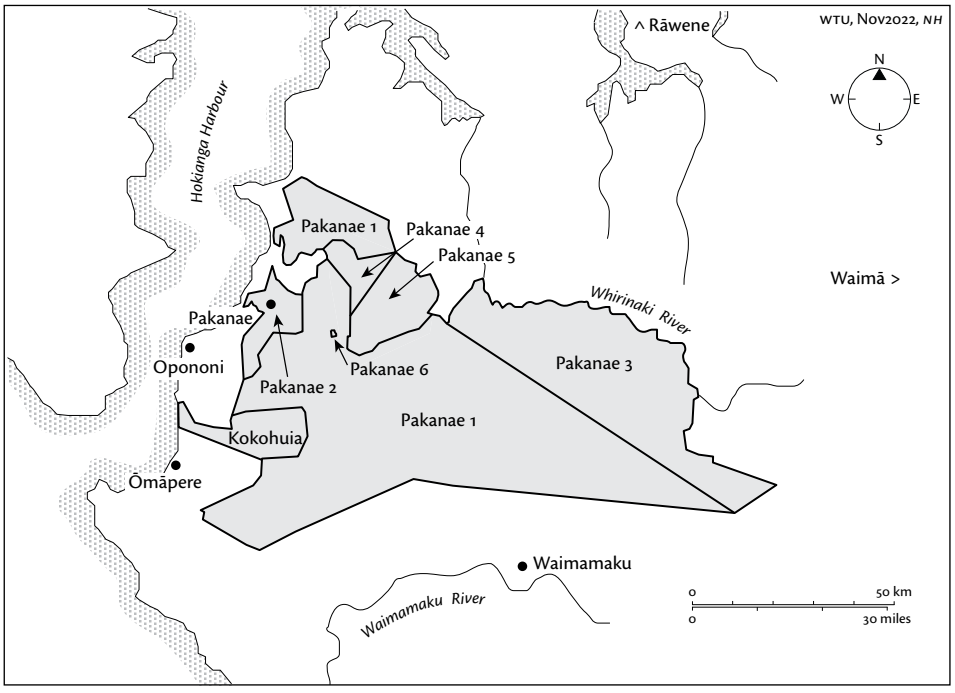
Once the title to the various Puhipuhi subdivisions had been decided, the Crown then set about completing its purchase. During the hearing, Greenway had warned Gill that Ngāti Hau and Ngāti Hine would not complete the sale 'except at a large advance on price already fixed'.[421] Gill therefore proposed to Native Minister Bryce that the Crown raise its initial offer of six to 15 shillings per acre for the timber areas (which Gill thought covered 6,000 acres), and 7s 6d per acre for the remaining land.[422] A valuation made by Assistant Surveyor-General S Percy Smith gives us a fairer indication of its market value at the time; he thought that it contained 4,000 acres of prime kauri forest, worth £6 per acre; 5,000 acres of first-class land, worth 15 shillings per acre; with the remainder, in his opinion, worth 9s 6d per acre. Percy Smith also noted that he had valued the kauri 'at very much less than private individuals do'.[423] Eru Nehua and Maihi Parāone Kawiti made counter-offers of £20,000 for 14,190 acres (Puhipuhi 1, less reserves) and £4,500 for 3,000 acres (all of Puhipuhi 2), which still would have resulted in the Crown outlaying less than the value suggested by Percy Smith. However, Gill and Bryce continued to insist that Eru Nehua and Maihi Parāone Kawiti accept a purchase price closer to what the advances had been paid out on.[424]

Ultimately, this approach, together with its purchasing monopoly while the proclamation remained in place, enabled the Crown to purchase 14,490 acres of Puhipuhi 1 for £8,574, the 3,000 acres of Puhipuhi 2 for £1,800, and the 2,000 acres of Puhipuhi 3 for £1,000. These sums included the advances already paid. The per-acre price for the three blocks – approximately 12 shillings in the case of Puhipuhi 1 and 2, and 10 shillings for Puhipuhi 3 – can be instructively compared with the market prices indicated earlier by Percy Smith.[425] Altogether, the Crown had acquired almost four-fifths of the Puhipuhi lands, while only paying the owners about one-third of what it knew its value to be.

(c) Use of tāmana at Pakanae

Te Wahapū o Hokianga nui a Kupe claimants submitted that Pakanae 1 (9,064 acres) and Pakanae 3 (3,150 acres) were both sold to the Crown within a week of the Native Land Court granting titles to them in June 1875.[426] Together, these two partitions encompassed more than 89 per cent of the Pakanae block. Their rapid sale contrasted with the other four Pakanae blocks, the largest of which was Pakanae 5 (740 acres). None of the land these four blocks encompassed was sold before 1900, although two of the owners of Pakanae 5 invited the Crown to offer 15 shillings per acre for it in 1897.[427]

Brissenden, assisted by Nelson, organised the payment of tāmana for undefined shares in Pakanae. As he was shifting from a salary to a per-acre commission, Brissenden was keen to acquire as much land as he could in the shortest possible time.[428] As noted earlier, one of Nelson's tactics was to discredit private bids; he did this in Pakanae by inflating owner expectations. Brissenden claimed that Nelson told them that he would pay them 10 shillings per acre (although the owners later told Brissenden's interpreter that Nelson offered them 30 shillings per acre). Regardless, Nelson's offer resulted in negotiations with other prospective purchasers being 'broken off' (Brissenden's description). The land was surveyed, and ultimately the Pakanae owners accepted Brissenden's offer, even though it was far less than Nelson had indicated, amounting to only around 1s 3d per acre overall.[429] Further, researcher Coralie Clarkson refers to evidence indicating that Nelson and Brissenden may have employed 'treating' to secure what became Pakanae 1 and 3.[430] She explained:



Map 10.3: The Pakanae block.

The practice of 'treating' refers to land purchase agents colluding with or acting as shopkeepers to provide Maori with goods, and in turn getting them into debt that they then had to sell land to clear.[431]

A list compiled by Clarkson shows that of the four tāmana payments made during September and October 1874, two (totalling £80) were to Hapukuku Moetara of Ngāti Korokoro and others, while the other payments (of £50 each) went to Pairama Te Tao and others, and Hōne Mohi Tāwhai and others.[432] At the Pakanae 1 title hearing in June 1875, Hapukuku Moetara asserted that Ngāti Korokoro had agreed his name alone should be entered onto the memorial of ownership. The minutes record that 'Hone Mohi Tawhai said Hapakuku Moetara is the person who has the mana over this land', and a number of witnesses then 'rose in succession to corroborate H Moetara's statement'.[433] This helped expedite the block's sale to the Crown, as section 49 of the Native Land Act 1873 allowed alienations where all owners were in agreement.[434] In contrast, Pakanae 2 (425 acres) – which contained Ngāti Korokoro's ancestral kāinga – was later awarded to 66 owners, while Pakanae 4 (258 acres) and 5 (740 acres) were awarded to 10 and eight owners respectively. Pakanae 6 was also awarded to one owner, but it was a five-acre burial reserve.[435] When it came to the sale of Pakanae 1, which occurred only eight days after the title award, three of the tāmana payments (totalling £130) were counted as a deposit, leaving the Crown to pay the £429 balance for the block.[436]

Shortly afterwards, Pakanae 3 – which Hapukuku Moetara acknowledged was not Ngāti Korokoro land and had been claimed by Te Waharoa for Te Hikutū – was awarded to 10 owners.[437] With all owners assembled in Court, the Crown could obtain their signatures for the purchase deed and have the sale confirmed by the Court on the same day. The block payment for Pakanae 3 consisted of £50 tāmana, plus the balance of £149 6s 3d.[438]

(d) Use of tāmana by private purchasers

Although we received little evidence about the manner in which private purchasing was conducted in the inquiry district, it is clear – as the following example illustrates – that private purchasers also paid tāmana (until the enactment of section 7 of the Native Land Laws Amendment Act 1883 prevented the practice). Like the Crown, they paid advances before title determination in an effort to exclude rivals and bind all owners to an agreed price. And the use of tāmana payments by private purchasers could likewise have destabilising and divisive effects for Te Raki hapū and iwi.

For example, the Ngā Hapū o Hokianga, Te Uri o Hau, Mane Hotere hapū, and Ngāti Kahao Taou Maui hapū claimants alleged that tāmana paid by a private agent led to a deadly clash in September 1879 (which later became the subject of a report to Parliament, 'Native disturbance at Otaua, Hokianga').[439] The dispute pitted the Ōtāua-based Ngāi Tū hapū, led by their rangatira Hoterene Wī Pou, against the Ngāi Tāwake hapū of Matarāua and Kaikohe. At issue was the Mangamaru block, situated between Ōtāua and Matarāua, which both hapū considered belonged to them.[440] According to Armstrong and Subasic, the private purchase agent John Lundon (also member of the House of Representatives for the Mangonui and Bay of Islands electorate from 1879 to 1881) had given money to Hoterene Wī Pou. But Ngāi Tāwake had no plans to bring the block before the Native Land Court and therefore opposed its survey. When Ngāi Tāwake told the local magistrate, Edward Williams, of their opposition, he warned the surveyors that the land was under dispute. Then, when a party of Ngāi Tū started clearing lines for a survey, they were fired on by Ngāi Tāwake, leaving two dead; in the ensuing return fire, two Ngāi Tāwake were also killed. Senior Ngāpuhi rangatira Hōne Mohi Tāwhai, Mangonui Kerei, and Maihi Parāone Kawiti intervened and calmed tensions, with both parties accepting that these rangatira should take charge of the disputed block.[441]

The rangatira were, however, unable to broker a long-term agreement between Ngāi Tū and Ngāi Tāwake. In 1887, Hoterene Wī Pou and others from Ngāi Tū applied to the Native Land Court for title investigation, and Ngāi Tāwake had no option other than to counter-claim. As it turned out, Judge Edward Puckey found in favour of the Ngāi Tū applicants, awarding both Mangamaru (1,327 acres) and the neighbouring block of Ninihi (303 acres) to Hoterene Wī Pou and Eruera Whakamautara (Ngāti Tautahi).[442]

(e) Summary: the use of tāmana in Te Raki

Despite McLean's cautions about the use of tāmana, Crown purchase commissioners made widespread use of this tactic during the 1870s.[443] From 1865, the Crown's Native Land legislation made provision for the Crown to use advance payments and pre-title determination purchase agreements to overcome private competition, which appears to have been a greater concern than ensuring their payments were made to the correct owners. McLean's early instructions on the use of advance payments and pre-title determination purchase agreements were totally ignored, which suggests that his agents understood that they were in little danger of rebuke. The evidence shows that when the Crown's agents employed tāmana, they did so with several objectives in mind. These included:

- drawing land held in customary ownership into the title adjudication and partitioning processes;
- committing owners to sale;
- excluding private purchasers (and thus exercising a large measure of control over price);
- circumventing any opposition to alienation collectively voiced by claimants, or any demands over price and reserves they may have presented;
- binding owners to the low prices paid in advance of title-determination, which they were able to set without informing the owners of the value of their land and resources such as timber; and,
- establishing a basis on which they might hope to influence, guide, or induce the Native Land Court to reach decisions over titles that favoured the Crown's purchasing ambitions.

Tāmana generated uncertainty, disunion, and tensions because numbers of Māori found themselves drawn, willing or unwillingly, into title adjudication and partition proceedings that were both costly and divisive. Even

Brissenden admitted to McLean that Māori regarded small advance payments as 'a trick to tie up their lands'.[444] Section 59 of the Native Land Act 1873 did direct the Court to inquire into all transactions for sale and purchase and to satisfy itself that all owners agreed to alienation, but offered little if any protection when all of the rightful owners had not been identified – much less their names entered upon the memorials of ownership.

The introduction of the Government Native Land Purchases Act 1877 gave the Crown an even freer hand which it deployed in Te Raki. Once the Crown had made any payment for land or had begun negotiations to do so, it could – without consulting landowners – simply issue a proclamation asserting its prior rights over the land in question. Any ongoing negotiations that owners might be having with private purchasers were effectively shut down.[445] According to the purchasing agent James Preece, if those who received tāmana were not ultimately found to be owners, then the successful claimants would share the balance of the payments with them nonetheless; however, he stated that the vast majority of those who were paid tāmana were awarded title.[446]

Whether or not this is true, it does not adequately answer the question of whether the Crown's payment of tāmana may have predetermined the outcome of the Court's title investigations – something the Crown disputed in its closing submissions. Arguing that 'correlation is not causation', the Crown submitted that the question 'turns on the facts of particular block investigations and title awards' and thus can only be answered on a case-by-case basis.[447] Without such granular evidence, we recognise a direct causal connection between the receipt of advance payments and the Court award of title may be impossible to prove; the influence of such a consideration was unlikely to be acknowledged in any court judgment. But at the very least, it is clear the Crown's practice of paying tāmana had the deleterious effect of drawing individuals with uncertain claims to particular parcels of land into the Crown's purchase net, put pressure on others with rights in the land concerned to accede to Crown purchase, or forced them into court to defend their interests and undermined collective decision-making and control over land and resources. It was a practice which was designed to advantage the Crown.

(4) *Purchasing individual interests*

With Te Raki hapū becoming increasingly resistant to selling, the Crown changed tack during the late 1880s and 1890s. Increasingly, it targeted blocks that had not been subject to pre-hearing advance payments but were vulnerable for other reasons. Compared with the 1870s, the sheer number of owners to whom the Native Land Court now generally awarded Te Raki block titles was notable – 55 on average by the 1890s, compared with an average of eight owners in the late-1870s (see chapter 9, section 9.5.2(1)).[448] This proliferation of individual owners possessing shares that were undivided and undefined on the ground has been called 'a new form of Court-inspired individualisation'.[449] Generally, the many owners 'did not control their own distinct, viable piece of land' but were effectively 'tenants in common', who 'often saw little way of deriving benefit from their land except through selling their interests'. The Crown's purchase agents were only too willing to oblige, and throughout the 1890s they set about steadily acquiring the undivided interests of of Te Raki landowners identified by the Court.[450]

The Crown's largest acquisition in the district that decade illustrates the process, and its consequences for Māori. It involved the 21,362-acre Whatitiri block, where the Crown acquired at least 15,670 acres by means of 29 separate purchase deeds between 1895 and 1899. The Court then carried out 'multiple' partitions of seller and non-seller interests. Thomas describes individual Māori owners struggling to protect their interests at partition hearings in the face of the Crown's 'overwhelming power'.[451] At the end of the partitioning process, while Māori retained around a quarter of the Whatitiri lands, 'their holdings were scattered into numerous small, isolated parcels hemmed in by Crown-owned land'.[452]

Typically, some time would elapse between the Crown purchasing individual interests and applying to the Native Land Court for a partition order. During this interval,

more pressure could be placed on the remaining owners to sell. The delay also restricted owners' ability to use the land as they chose. For example, after the Court awarded title over two Mangakahia blocks (2A and 2B) to 150 and 58 owners respectively in 1895, the Crown moved swiftly to acquire individual interests before partition – at a time when many Te Raki landowners were experiencing dire poverty. The recovery from the economic depression of the 1880s had largely bypassed Northland, and more especially Te Raki Māori.[453] During the winter of 1896, the Te Oruoru school teacher observed with alarm that 'the unfortunate people are actually starving for want of food!'[454]

Against this background, many Mangakāhia landowners sold their interests to the Crown in order to buy food or pay off debt. By July 1896, all but 33 of the 208 owners of the two blocks had done so. Those who refused to sell came under intense pressure when the Crown moved to prevent them from cutting down timber in the blocks in order to generate income, but they remained defiant. Finally, the Crown applied for the Court to partition out its share, and in 1896 it was awarded the bulk of Mangakahia 2 – 11,515 acres out of the original 13,987 acres. The 11 non-sellers of Mangakahia 2B were awarded 1,696 acres, while the interests of the 22 non-sellers in Mangakahia 2A were split into four separate areas totalling just 772 acres. Over the decades that followed, the remaining Māori-owned land in the Mangakahia block was progressively divided into ever-diminishing parcels.[455]

While some of the Crown's purchasing in the region was initiated by the owners themselves,[456] from 1894 onwards the land purchase agent C J Maxwell was actively promoting the Crown's offers. Indeed, he was so active that the rangatira Taniora Arapata sought to have an alienation restriction placed on Kaingapipiwai to stop him from harassing its owners. However, his request was ignored.[457] Maxwell's arrival more or less coincided with the restoration of pre-emption, which gave the Crown an effective monopoly on purchasing. Hōne Heke Ngāpua, then the member of the House of Representatives for Northern Maori, bitterly opposed the return of pre-emption, describing its effect on land prices as 'legalised robbery'.[458] The Crown's offers were now fixed, on the advice of the Survey Department,[459] in conjunction with Maxwell, and were not subject to negotiation (although there was some scope for increasing offers where collective refusal began frustrating the Crown's purchasing ambitions).[460]

The Crown's purchasing during the 1880s and 1890s – and, just as importantly, its participation in partition hearings – also shows an intent to acquire the mineral resources of the Te Raki inquiry district wherever possible. Representing the Crown at the 1894 Native Land Court hearing where its interests in the Parihirari blocks were to be defined, Gilbert Mair found that 'the non-sellers wanted the best of the block including all the Cinnabar [mercury] workings'. After some hectic out-of-court discussions, Mair was able to report that he had secured all local mercury deposits for the Crown: 'the 4290 acres awarded to the Crown, contain all the Quicksilver [mercury] deposits and are therefore, the most valuable portion of the estate', he advised.[461] Meanwhile, the promise of copper and silver deposits on Omaunu 2 and coal on Whakapae 2 prompted higher than usual offers from the Crown of 10 shillings per acre, which it subsequently raised to 15 shillings per acre in the case of Omaunu 2.[462] However, some owners still resisted the Crown's purchasing proposals, including Taniora Arapata – said to be 'the leading man of the Hapū interested' – who was holding out for the £1 per acre he said potential private purchasers had offered him.[463] But the Crown persisted, with the assistance of James Stephenson Clendon (a Native Land Court judge), who took over negotiations with landowners.[464] Ultimately, the Crown acquired 2,376 acres of Omaunu 2 (the one remaining owner retained 45 acres) and 517 acres of Whakapae 2 (the remaining five owners retained 78 acres).[465]

The Crown's strategy of purchasing individual interests from numerous listed owners gravely undermined tino rangatiratanga and the ability of hapū to retain lands in their ownership at the very time when they needed to muster all their resources to protect both. As the Tribunal has commented in the *Turanga Tangata Turanga Whenua*

report, the Crown's pursuit of individual interests allowed the sale of community assets 'without the community even knowing that they had been sold', without their consensus, and without the traditional bulwark of communal decision-making.[466] The 1891 Commission on Native Land Laws concluded that, under the Native Land Act 1873,

> The old public and tribal method of purchase was finally discarded for private and individual dealings. . . . All the power of the natural leaders of the Maori people was undermined. . . . The crowds of owners in a memorial of ownership were like a flock of sheep without a shepherd . . . suddenly possessed of a title to land which was a marketable commodity. . . . The strength which lies in union was taken from them. The authority of their natural rulers was destroyed.[467]

This had been apparent early on.

The Crown's purchasing of individual interests especially undermined plans that owners might have collectively prepared for investment, development, and management – such as those made by the owners of Omaunu 2 who refused the Crown's offer to purchase the land for 7s 6d per acre in 1896. They asked for a loan of £120 from the Crown 'for the purpose of improving that land' and to enable them to access the resources, with the land as a security.[468] However, this was rejected by Maxwell and Native Minister Sheridan on the basis that it would be better for the Crown to purchase shares in the land 'outright'.[469]

The Crown's policy also meant those owners who retained their interests were drawn more deeply into uncertainty and debt. The mounting costs were usually registered as interest-bearing liens over those very lands. The Crown's targeting of absentee owners or those with less affinity with blocks was also a cause of community discord. For example, Paihia Pukerewa and others wrote to the Native Minister complaining that shares in Motukaraka East had been sold by individuals who had been included in the owner list only out of aroha.[470] For those owners who did not want to sell, the process could still entail multiple court hearings and multiple surveys. The associated costs were then apportioned on the basis of the share of the block awarded to the remaining owners and the Crown respectively. We described earlier how this incremental, or serial, partitioning of blocks played out in the case of Whatitiri.

As blocks fragmented during the 1880s and 1890s – either through subdivision into smaller blocks with 'manageable' numbers of owners, or through the Court partitioning out Crown interests – the burden of fresh survey costs fell on ever-smaller areas of land. As described in chapter 9.7 where such costs could not be paid, they remained as liens on the land which increased with interest; eventually, the Crown often took them over. At least two blocks in the inquiry district, Omaunu 1E and Waiaruhe 2A, were subdivided specifically for the purpose of being awarded to the Crown in lieu of survey costs.[471] A number of other blocks, such as Mareikura F, Kaurinui 3 and Motukaraka West, were also offered for sale in order to pay off survey liens.[472]

The Crown has argued there was no necessary relationship between the Native Land Court system and land alienation – citing the examples of the Parahirahi and Kokohuia blocks. According to Crown counsel, the delay between the original award of title and the Crown's eventual purchase of these blocks shows that individualisation of title was not necessarily related to alienation.[473] However in our view, the Crown's delay in purchasing the Parahirahi block was more attributable to the alienation restrictions recorded in the memorial of ownership in 1873, which delayed subdivision until 1885.[474] Purchase negotiations for the block took place from 1885 to 1894, and by the time they concluded, the Crown had acquired most of its 5,097 acres.[475] The evidence supports the claimants' allegation that the delay between titling and acquisition was the product of the Crown's strategy of acquiring individual shares through a process of attrition. As to the Kokohuia block, the limited evidence we received suggests that the delays in alienation were caused by the requirements of the Native Lands Act 1867, under which the land was titled. Section 17 acted as a protection against alienation by requiring all owners to be recorded on the title and the land to be partitioned into blocks with fewer than 10 owners before it could be sold (see chapter 9, section 9.5).

As a result, the Kokohuia block was not brought before the Court for partitioning until 1904.[476]

(a) The purchasing of individual interests at Parahirahi

The Crown set about acquiring individual interests in the 5,097-acre Parahirahi block – which contained both valuable minerals and the Ngāwhā Springs – in the late 1880s. The Tribunal has previously commented on the Crown's acquisition of Parahirahi in its 1993 report into claims concerning the ownership and control of the Ngāwhā geothermal resource;[477] however, the treaty compliance of the purchase of the land itself rather than its geothermal resources was also the subject of multiple claims in this inquiry. For this reason, we discuss the block here. Claimants from Ngā Hapū o Hokianga, Te Uri o Hau, Mane Hotere hapū, and Ngāti Kaha o Taou Maui argued that when the Crown's interests were partitioned out in 1894, the remaining owners were left with the least productive parts of the block (the Crown acquired 4,293 acres as Parahirahi D that included – restrictions on alienation notwithstanding – most of the parcel containing the Ngāwhā Springs – as outlined in the *Ngawha Geothermal Resource Report*).[478] Similarly, the Pārahirahi C1 Trust and Ngā Hapū o Ngāwhā's claim also argued that the Crown exploited its capacity to purchase individual shares to acquire most of the Parahirahi block, which had significant quicksilver (mercury) deposits. It is alleged that the Crown then took interests throughout the three partitions, irrespective of their reserve status or the wishes of the owners. The claimants said that the Crown's award included four out of the five acres of the reserved land that had been set aside to protect the Ngāwhā Springs.[479]

The initial title investigation hearing for the Parahirahi block was held in July 1873. It followed a lease agreement reached the previous year between Wiremu Hongi Te Ripi (and nine others of Te Uri o Hau hapū) and John White, which allowed the mining of Parahirahi's quicksilver deposits.[480] Rose Daamen observed that no records survived from the hearing, but Judge Maning issued a certificate of title to 10 owners, and recorded a further 17 owners under section 17 of the Native Lands Act 1867.[481] At a rehearing in November 1874, the 5,097-acre block was awarded to a larger group of 37 owners; 36 were from Te Uri o Hau, while the other was from Ngāti Rangi hapū.[482] Parahirahi was partitioned in October 1885. In accordance with the owners' wishes, a five-acre triangle on the northern boundary containing the Ngāwhā Springs was set aside as Parahirahi C. The other 5,092 acres were split along a diagonal from north-west to south-east to become Parahirahi A and B. The Court also restricted the alienation of Parahirahi A (the western half) and C so that they could not be leased for more than 21 years or sold without the Governor's consent.[483]

Despite, these restrictions Crown officials paid £25 to Hirini Taiwhanga in April 1886, on account of his 'interest in Parahirahi blocks A, B and C'. This amounted to six shillings per acre (making his share worth £41 6s 6d) after an earlier offer from two owners to sell their shares at the rate of £1 per acre had been declined.[484] Under the Native Land Act 1873, the Crown ostensibly required the consent of all owners for the removal of the restrictions, or a majority who would partition out their interests (we discuss alienation restrictions in section 10.5.2(3)).[485] By August 1886, the Crown had extended its offer to include all owners, but at only three shillings per acre, a reduction which may have been prompted by an unfavourable assessment of the commercial value of the block's mineral deposits by the Director of the Geological Survey, Sir James Hector.[486] At this reduced rate, the Crown's total potential outlay would be £764 11s.[487] A *Gazette* notice was published in October 1886 declaring the block subject to Crown negotiation, thereby excluding any private buyers.[488] This action should not have legally overridden the Court-imposed restrictions on alienation.[489] However, over the next 12 months, the Crown was able to increase its holding in the block to almost 28 of the 37 shares. In 1889, it paid Taiwhanga the remaining amount it owed for his share, at the rate of six shillings per acre.[490]

After a final share-buying push, which boosted its interests to 32⅓ shares out of 37, the Crown sought to have its portion partitioned out of the block at a Native Land Court hearing held in 1894.[491] Here, the Crown produced a purchase deed that proved to have several defects which would have put the sellers at a disadvantage; quite apart

The Ngāwhā hot springs, circa 1900–19. The springs were located in the 5,955-acre Parahirahi block and, when the individual interests that the Crown had purchased in the block were partitioned out in 1894, the Māori owners were left with only 804 acres. The ownership and control of geothermal resources were the subject of claims in the 1993 Ngawha Geothermal Resource inquiry.

from being undated and unsigned by the Crown, it did not identify any of the partitions or areas that the Court had previously reserved from sale, most notably the springs. Furthermore, the deed listed all the owners as sellers, apparently in the expectation that the Crown would be able to acquire all the shares.[492] The potential for sellers to have a say in exactly where the Crown took its share of the block was further diminished by the Crown's failure to notify them of the hearing.[493] Ultimately, in return for conceding fragmented areas around the kāinga and mahinga kai on the periphery of Parahirahi, the Crown was also able to secure all the potentially valuable quicksilver (mercury) deposits.[494] In total, the Crown award amounted to 4,293 acres, while the various non-seller enclaves had a combined area of 804 acres.[495]

The discrepancies that arose from the 1894 determination of the Crown's interests in the Parahirahi block are worth noting. In summarising a case brought by

petitioners in 1945, Judge Ivor Prichard considered the non-sellers to have been 'exceedingly generously treated as regards value' since they were 'treated on an acre basis only, although the acre with almost all the springs on was awarded to them and the 4 acres contains only two springs'.[496] However, they were neither awarded the land they desired nor did they all receive payment – as the case of Marara Eparaima illustrates. While acknowledged as non-sellers in May 1894, neither she nor her husband were listed at the hearing of 19 October 1894. It was later identified that they had not received payment for the land the Crown had acquired, shares of which (at three shillings per acre) should have equated to £5 3s 4d. Marara later stated that they had not agreed to sell their interest in the block as it was a 'native reservation' belonging to their elders.[497] Thus the Crown had exempted itself from and actively undermined restrictions on alienation; it procured the most valuable portion of the block following subdivision, regardless of earlier efforts by the hapū to retain these areas and the right of non-sellers to an area of proportionate value.

(b) The purchasing of individual interests at Oue 2

The evidence of claimants representing the Mangakāhia Māori Komiti and Ngā Uri o Mangakāhia alleged that the Crown acquired land from their tūpuna by exploiting their economic distress. The claimants described the Crown's acquisition of Oue 2B in 1896 as the result of 'land being sold out of necessity' because their tūpuna – who, according to block records, did not wish to sell when the Crown initially sought to purchase – were in 'a desperate state'.[498]

The 1,186-acre Oue 2 block had gone before the Native Land Court for title determination in 1876, but the application had been withdrawn because of objections to the award being made solely to Komene Te Aranui. Three years later, the block was awarded to 16 owners, who entered into a 21-year timber lease with the Union Steam Company.[499] There is no record of these owners offering to sell interests in the block until January 1895, when Mitai Penetaui wrote to the Minister of Lands informing him of his willingness to sell the block 'for what will be a proper price'.[500] Soon after, the Crown had other offers to consider, this time from Komene Matiu Te Aranui and Hare Mokena Wharepapa of Mangakāhia. On 7 February 1895, they wrote to the Native Minister, setting out plainly both their desire to sell and their motives for doing so:

> we have land which we cannot under the present law sell to Europeans, we are therefore willing to sell it to the Government and have applied to the Government Land purchase officer to sell lands, but he is a long time before he comes to buy them. We have no money and our people have no stores & no food, the winter is coming on and Maungakahia [*sic*] is far from good roads. We do not wish our people to starve, we wish to sell [our] lands & buy food for them.[501]

These owners met with Crown land purchase officer Maxwell in Whāngārei in March to discuss matters further. Afterwards, he confirmed to Native Minister Sheridan that the land the letter-writers wished to sell was Tarakiekie and Oue 2. He advised he had promptly purchased Komene Matiu's share in the former but now found him resistant to selling his interest in Oue 2. Indeed, he told Sheridan:

> The natives who have been agitating through their agents for the sale of their lands did not evince much inclination to sell when I was in Whangarei prepared to purchase interests.[502]

However, Maxwell considered Oue 2 suitable for settlement and had been recommending it for purchase for some time. There was also support from the Surveyor-General, who advised Sheridan on 7 March 1895 that purchasing Oue 2 'would consolidate the Crown's lands in the area.'[503]

The Native Land Purchase Department subsequently offered five shillings per acre for the block; this equated to £18 10s 7d for each owner's 74-acre share. After acquiring 11 out of 16 shares, the Crown had its 815-acre interest partitioned out from Oue 2 by the Court in October 1896, leaving five owners with the remaining 373 acres (the

Oue 2B block).[504] According to the claimants, only 239 acres of Oue 2 remain in Māori ownership today, making this a particularly telling example of the consequences of land being sold by individual owners out of economic desperation.[505]

(c) The purchasing of individual interests at Hauturu

The Crown's manner of purchasing Hauturu (Little Barrier Island) was the subject of a number of claims (some of which have been fully settled by the Ngāti Manuhiri Claims Settlement Act 2012 and the Te Kawerau ā Maki Claims Settlement Act 2015).[506] Generally, claimants argued that the Crown used its powers under Native Land legislation to reduce and, ultimately, remove the owners' ability to retain their interests on Hauturu. They highlighted the Crown's repeated imposition of restrictions on land being alienated to any party except itself, either by invoking clauses in legislation or by intervening in Native Land Court hearings.[507] In closing submissions for Ngāti Rehua/Ngātiwai ki Aotea, claimant counsel argued that these restrictions deprived owners of the opportunity to benefit from the island's kauri timber resource.[508] According to claimants Elvis Shayne Reti, Henry Murphy, and Merepeka Henley (Ngātiwai), the timber alone was worth more than what the Crown eventually paid for the island.[509] Claimants also noted that the Crown's Native Land laws divided ownership among individual shareholders, which benefited the Crown, as it was able to acquire the shares on the island piecemeal, rather than by negotiating with owners collectively.[510]

Several submissions also pointed to the Crown's subsequent compulsory acquisition by way of the Little Barrier Island Purchase Act 1894 of shares it had been unable to purchase, and the forced eviction of Tenetahi and Rāhui Te Kiri and their whānau in 1896.[511] Counsel for Mr Beazely alleged that the Crown forged the signatures of Tenetahi and Wī Taiawa on a 1893 deed in order to give the impression that they had agreed to the disposal of their shares.[512] Finally, Te Hokingamai e te iwi o te Motu o Mahurangi and Nga Wahapu o Mahurangi-Ngāti Whātua/Ngāpuhi claimants submitted that the Crown rationalised its compulsory acquisition of Hauturu by saying a wildlife reserve was needed for conserving native birds.[513]

The Crown made several concessions in our inquiry with respect to the purchase of Hauturu in its closing submissions on public works and other takings. Referring to section 8(9) of the Ngāti Manuhiri Claims Settlement Act, counsel acknowledged that the Crown:

> 6.1 used monopoly powers to exclude private purchases and prevent owners from generating revenue from the timber resources of the island;
> 6.2 negotiated with individual share-holders rather than with the owners as a whole;
> 6.3 promoted special legislation, the Little Barrier Island Purchase Act 1894, and used it to compulsorily acquire the shares of those individuals who refused to sell;
> 6.4 showed blatant disregard for those Ngāti Manuhiri resident on the island, including persons who had refused to accept compensation for their shares taken under the Act, by forcibly evicting them in 1896.[514]

We note here that the latter concession (6.4) was reserved for resident Ngāti Manuhiri for the purposes of the Act concerned. However, it is reasonable to infer that it would apply equally to the other owners living on the island who were subjected to the very same actions.

To fully understand the Crown's concessions, we need to consider the manner in which the Crown gained possession of Hauturu between 1881 and 1896. We do so next, before reviewing how the Crown's actions adversely impacted on the claimants in this inquiry whose claims have not already been settled with the Crown.

Although Wiremu Pōmare first raised the possibility of selling Hauturu to the Crown in 1844,[515] the Crown only started actively trying to acquire the island in 1881. Officials at the time considered Hauturu had strategic value for the naval defence of Auckland. Therefore, in May 1881, during the first Native Land Court rehearing into Hauturu's ownership (see chapter 9), the Commissioner of Lands for Auckland had asked the Court for an order making the island inalienable except to the Crown.[516]

However, as Chief Judge Francis Fenton and the Native Assessor reached conflicting conclusions as to the award of ownership, no such order was made at that time.[517] A month later, a new rehearing in June 1881 presided over by Judges Monro and O'Brien, and assessor Petera Pukuatua, determined that ownership should be awarded to the five Ngātiwai claimants, and the requisite order was made. Their decision overturned the earlier award of Hauturu to Te Kawerau a Maki claimants (made at the 1880 hearing at which Ngātiwai had been largely unrepresented).[518]

With the title question seemingly resolved, the Native Land Purchase Department determined in July 1881 that it would offer £2,500 for the whole of Hauturu. The department estimated the timber value at £1,500.[519] A *Gazette* notice was issued declaring Hauturu subject to the Government Native Land Purchase Act 1877, thereby excluding any other buyers.[520] The Ngātiwai owner, Paratene Te Manu, subsequently sought £700 per owner (or £3,500 in total) in late 1882. But Native Minister Bryce remained uneasy about the matter of title, and the Crown was already considering having Hauturu's ownership reinvestigated,[521] a course of action for which the Te Kawerau a Maki claimants had been vigorously agitating. They were implacably opposed to the Court's decision to favour Ngātiwai's recent occupation over their own ancestral rights through conquest and subsequent occupation, and had even threatened to reassert those rights through a waka taua.[522] In the view of Pāora Tūhaere, one of the leading claimants on the Te Kawerau a Maki side, the Crown needed either to purchase the island from a much larger group of owners, or to 'withhold the offer and let Little Barrier Island remain without Government interference.'[523]

With the passage of the Special Powers and Contracts Act 1883, the Crown annulled all the Native Land Court ownership determinations in respect of the island to date. Hauturu reverted to its former status as land 'held by the Native owners according to Native customs or usages', which enabled the Court to investigate its title again.[524] As we discussed in chapter 9, a new hearing was held in February 1884, presided over by Chief Judge John Edwin Macdonald, sitting with Judge Edward Williams. The Court awarded the title to the Te Kawerau a Maki claimants.[525] In view of the Crown's prior interest in purchasing Hauturu, Macdonald had warned the Native Minister during the hearing that there were other potential buyers, and he therefore advised the Crown to ask again for alienation to be restricted.[526] Ultimately, Hauturu's 18 new owners did not want restrictions entered on the title, and so Judge Williams simply cautioned them that they could not negotiate any sale until the 40-day window for rehearing applications had elapsed.[527]

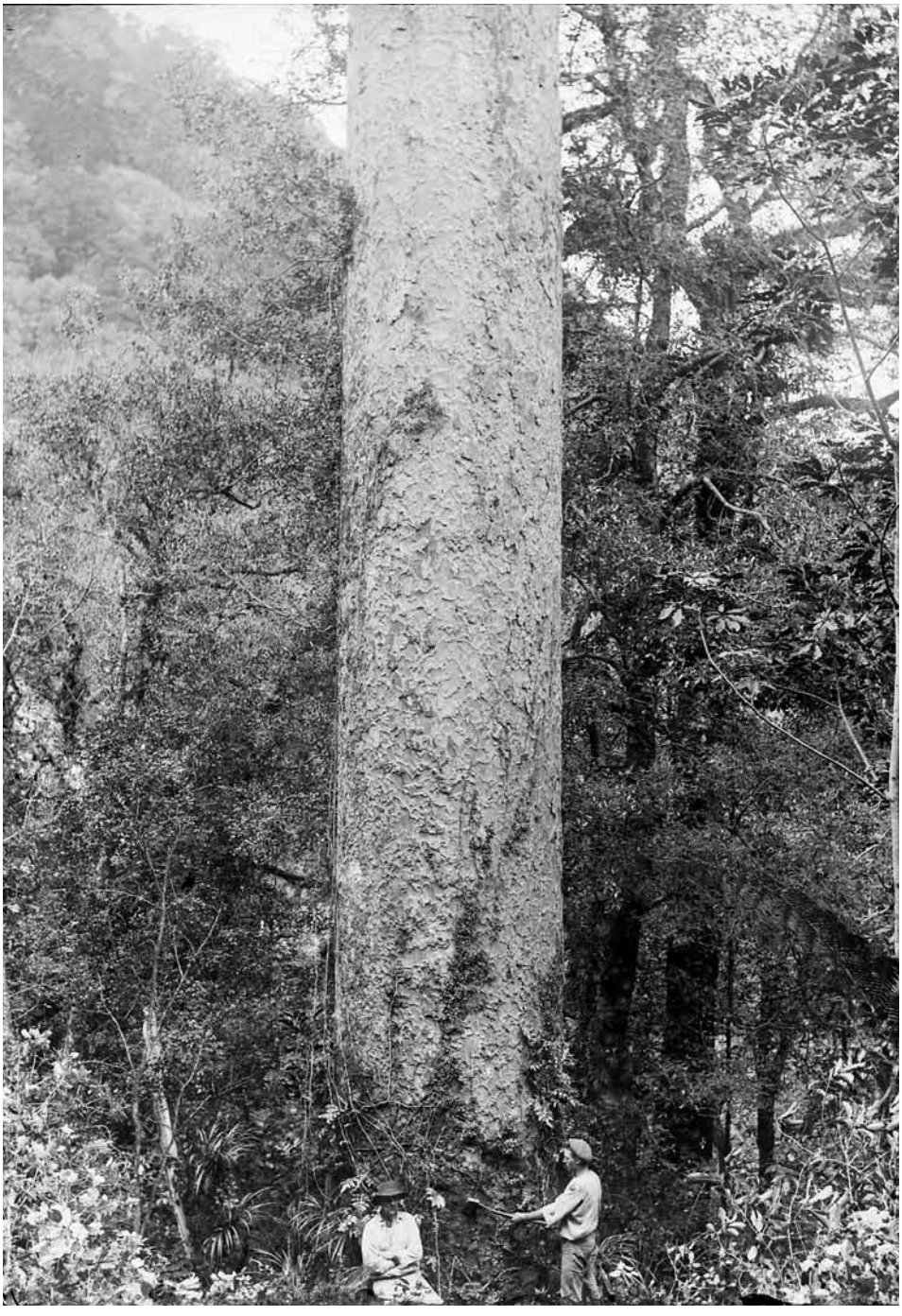
In September 1884, Te Hemara Tauhia informed the Native Land Purchase Department that the Te Kawerau a Maki owners would not accept less than £2,700 for Hauturu.[528] In the meantime, the Ngātiwai party of claimants were voicing staunch opposition to the award having been made to the Te Kawerau a Maki party. Chief Judge Macdonald refused a rehearing, but the Legislative Council's Waste Lands Committee was more sympathetic and made provision for another hearing through the Special Powers and Contracts Act 1884. In protest, Edmund Dufaur, the solicitor for Ngāti Whātua (with whom the Te Kawerau a Maki claimants had affiliations),[529] complained that the then-Government had only introduced this provision because the Te Kawerau a Maki owners said that the timber alone was worth thousands of pounds more than 'the Government offer for land and timber'.[530] Despite this protest, the rehearing was gazetted in December 1884, which again had the effect of making Hauturu inalienable.[531]

Historian Peter McBurney observed that at this point 'the Government was committed to having the Native Land Court rehear the case'. Nevertheless, purchase negotiations continued and McBurney cited an internal memorandum that indicated the Crown was prepared to purchase Hauturu for £2,700, 'the price agreed to by Te Hemara Tauhia and others'.[532] Officials also proceeded to make an advance payment for Hauturu to Te Hemara Tauhia of £40 in February 1886.[533] Eventually, the new hearing was held in October 1886, and thanks in part to former Chief Judge Fenton's advocacy for Ngātiwai

Tenetahi of Ngātiwai in 1893 on Hauturu (Little Barrier Island). The Crown forcibly evicted Tenetahi, Rāhui Te Kiri, and their whānau for refusing to leave their home on the island after the Seddon Government had passed the Little Barrier Island Purchase Act 1894. The Act compulsorily acquired individual interests in Hauturu that the Crown had been unable to purchase from owners.

(which had seen him seize upon any discrepancies in the testimony of Te Kawerau a Maki claimants),[534] it was the Ngātiwai party of 14 claimants that prevailed after 10 days.[535] As a result of the judgment, Pāora Tūhaere returned Te Hemara Tauhia's advance.[536]

Throughout the late 1880s, purchasing negotiations between the Crown and the Ngātiwai owner group remained at a stalemate, as neither budged from their respective positions (an offer of £2,700, versus an asking price of £4,000).[537] In 1890, the Crown raised its offer to £3,000. Under a deadline threat from the Native Minister, Alfred Jerome Cadman, three of the owners (Tenetahi, Kino Reweti, and Wī Taiawa) conditionally accepted the offer in September 1891. They insisted, however, that all the owners would have to agree to the sale before the payment was made, and all of it would go to Tenetahi for



A Kauri tree on Hauturu (Little Barrier Island). The island's timber resources and Premier John Ballance's desire to establish a native bird sanctuary were driving forces for the Crown's 1894 purchase of Hauturu.

distribution to the others. However, Cadman later withdrew the offer, deciding that there were higher spending priorities elsewhere.[538]

In the absence of the offer, nine of the 14 owners now threw their support behind plans to exploit the island's kauri timber. Tenetahi had bought a scow for this purpose before signing up to the September agreement.[539] He entered into a £1,000 contract with the Auckland timber merchant, Simon Welton Browne, in March 1892. Tenetahi later told Henry Wright, who had gone to Hauturu to report to the Government on the timber cutting, that the other owners had permitted him to sell the timber so that he could pay off debts he had incurred during the Native Land Court hearings.[540] In Wright's opinion, the kauri timber on the island was worth as much as £5,000. As the owners came to appreciate its value, their purchase expectations also increased. In December 1892, Paratene Te Manu – who, we noted earlier, had sought a purchasing price of £3,500 a decade before – now asked for £10,000 for the island.[541]

Meanwhile, Premier John Ballance remained determined to secure a sanctuary for native birds and instructed Cadman to reinstate the £3,000 offer.[542] In June 1892, the Crown issued notices threatening prosecutions for cutting timber, given that Hauturu was still subject to Crown purchasing negotiation (and the 1881 *Gazette* notice). This threat against Pākehā merchants proved effective.[543] Following negotiations between officials and the owners' agents in August 1892, individual owners began to give their agreement for the Crown to acquire their shares.[544] Nevertheless, as an owner, Tenetahi still had rights to cut timber, and so he took over operations himself in late 1892.[545] Over the course of the following year, the Crown continued to sign up owners. Then, in October 1893, officials opted to speed up the acquisition process by simply copying the signatures of Tenetahi, Kino Reweti, and Wī Taiawa from the abandoned 1891 agreement. The new deed was dated 24 October 1893, giving the impression that this was the date on which it had been finalised, when in fact Rāhui Te Kiri and her daughter Ngāpeka had still not signed – to say nothing of the deed's reliance on signatures that had been copied over from the earlier agreement that Tenetahi (at least) had subsequently repudiated.[546]

Rāhui Te Kiri of Ngātiwai and Ngāti Whātua with her daughter Ngāpeka Te Roa on Hauturu in 1893.

Tenetahi's final attempt at a compromise, set out in his petitions to Parliament during 1893, was to have his share of the island partitioned out. While the Native Affairs Committee favoured the purchase of his interests, it supported a partition if Tenetahi would not sell. Gerhard Mueller, the Crown Commissioner of Lands, was convinced, however, that the Crown needed exclusive possession to prevent further milling.[547] In order to compel the Crown to come to terms, Tenetahi then threatened to import bees, which would jeopardise the Crown's bird

sanctuary plans (since bees would likely interfere with the birds' feeding habits).[548] The Seddon Government's response was equally drastic: it passed the Little Barrier Island Purchase Act 1894, thereby taking over the unpurchased interests of Tenetahi, Kino Rewiti, Wī Taiawa, Rāhui Te Kiri, and Ngāpeka, while their respective entitlements to the £3,000 purchase price were lodged with the Public Trustee.[549] Hōne Heke Ngāpua, member of the House of Representatives for Northern Maori, objected strongly to the legislation during the parliamentary debates, noting that the Bill had been brought forward in the late stages of the parliamentary session, and Hauturu Māori had not been informed of the Crown's intentions.[550] As historian Ralph Johnson observed, this Act again falsely used the signatures on the 1891 agreement as evidence of all the owners' consent to the sale. In what historian Peter McBurney called a 'highly dubious piece of law-making', the Act also stated that even though Rāhui Te Kiri and Ngāpeka had not signed the agreement, 'according to Native custom and usages they are bound by [its] terms'.[551] Tenetahi and Rāhui Te Kiri would later confound the Crown's ambitions by refusing to leave their home on the island. They departed only when, with great show, a bailiff supported by a group of soldiers evicted them in January 1896.[552] It is not clear that Tenetahi and Rāhui Te Kiri ever collected the amounts held by the Public Trustee or if they were compensated for their other losses, about which Tenetahi was still petitioning Parliament in 1910.[553]

This narrative clearly demonstrates how much the Crown's use of legislation to exclude all other purchasers of land and timber – a tactic the Crown itself acknowledges it used – cost the owners of Hauturu. Wright's assessment of what the island timber was worth in 1892 (£5,000) was 60 per cent more than the Crown paid out for Hauturu the following year. If the land was worth £1,000 (out of £2,500) in 1881, then – given the increase in the value of the timber – a fair value in 1892 would have been at least £6,000. We note that the restriction on alienation had been in place from the time ownership was intially determined right through until the Crown's compulsory purchase, which in our view should have put a greater onus on the Crown to provide the owners with an independent valuation and a fair price at the time of purchase.

The Crown has conceded that, in acquiring Hauturu, it bought up individual shares – a commonly used strategy (provided for in the legislation) that reduced the effectiveness of non-sellers to resist purchasing efforts. However, the Crown's ultimate resort to compulsory purchase, also the subject of a Crown concession, meant that dealing with the owners as a group would not have changed the final outcome. What was more extraordinary was the falsification of signatures on the 1893 purchase deed in order to convince Parliament that the owners had universally accepted the Crown purchase offer of £3,000. The 1894 Act, based on this false premise, lent legal and seeming moral authority for the subsequent eviction of Tenetahi, Rāhui Te Kiri, and their whānau. (We will return to consider what Crown actions such as these reveal about its commitment to its treaty obligations – namely, to act with good faith and honour – in section 10.4.3.)

The owners of Hauturu were also prejudiced by the Crown's insistence on exclusive possession of the island. Had the Crown accepted Tenetahi's petition to Parliament in 1893 seeking the partitioning-out of his interests, then the 1896 eviction would have been unnecessary. It might also have bolstered the Crown's plans for a bird sanctuary. The Auckland Native Land Court Registrar, Herbert Frank Edger, had proposed Tenetahi as custodian of the Crown's new wildlife sanctuary; as the *Observer* newspaper remarked, birds would in fact have been much safer under Tenetahi's watch than they were under the Crown-appointed ranger, who was accused of illegally collecting specimens for the ornithologist Walter Buller.[554] The Crown also ignored its long-standing obligation to provide reserves for the retention of urupā, kāinga, and cultivations.

(5) *Valuations*

The Crown submitted in our inquiry that the value of land is fundamentally determined by market forces: 'it is worth whatever a would-be purchaser is willing to pay for

it and whatever its owners are willing to accept for it'.[555] As a result, its position was that there is no formula to determine whether a price was fair, and that 'each transaction requires a case-by-case assesment'.[556] That said, the Crown acknowledged that 'there was no clear policy for how the price for Northland Māori land was set, or how land valuations were made'. Instead, the limited evidence suggested that the Native Ministers set

> a maximum price per acre that would be offered for a particular block, with the understanding that the purchase agent would endeavour to obtain the land at the lowest price possible.[557]

For land covered by proclamations, Crown counsel told us that a 'market-derived value or price' could not be ascertained for land; instead, 'owners had to rely on the value set by the Crown'.[558]

The possibility of Māori land valuation was expressed in land legislation at an early stage but many years elapsed before there was any attempt to establish an effective system. Section 55 of the Native Lands Act 1865 provided for the imposition of duties on the first sale or other disposal, except by mortgage of 'any hereditaments or Native Land', with such duties payable to the Crown by the purchaser, lessee, or other person in whom the new estate was intended to be vested. A purchaser, for example, was required to pay a duty at the rate of 10 per cent of the purchase moneys. But where no consideration or nominal sum was expressed in the deed, the duty payable was calculated upon a valuation of inheritable aspects of Māori land and property, or parts thereof, by a valuer who could be appointed for the purpose by the Registrar of Deeds. It was not until 1905, however, that a formal valuation by a competent valuer became a legal prerequisite for Crown purchase of Māori land and the basis of the minimum price the Crown could offer.[559] Evidence suggests that during the nineteenth century, the Crown was prepared to formally value lands in Māori ownership only when it suited its purposes – such as when its own taxation or revenue interests were involved.

The Crown's tendency to forgo formal valuations of Te Raki hapū land was demonstrated when, in 1873, Maihi Parāone Kawiti asked the Government for £800 to erect a mill at Kawakawa. The rangatira offered as security about 7,000 acres known as Touwai, which straddled the Waiōmio River. However, Kemp, acting for the Crown, did not undertake a detailed valuation of the land intended for security when considering making a loan but rather 'approached the whole question as a land purchase'. Ascribing to the land a value of 1s 6d per acre – Kawiti thought it worth two shillings per acre – Kemp also suggested that the surveyor 'include sufficient lands within the block to generate the cash needed by Kawiti'. He wrote to the Under-Secretary of the Native Department that Kawiti was so eager to secure the funds, he was willing to convince others in the surrounding area to sell. Kemp perceived this as a huge benefit to Crown plans since extending the block would connect it with other large blocks that could also be purchased at the same rate.[560] Ultimately, the negotiation ended with a purchase of 19,500 acres. The Crown paid £1,512 10s for the land, of which it forwarded £800 to Maihi Parāone as a loan, with the remainder going to six others of Ngāti Hine. The net effect, Armstrong and Subasic comment, was that the Crown acquired almost 20,000 acres on favourable terms.[561]

A different approach was taken in the case of land owned by Pākehā. The abolition of the provincial governments in 1876 led to Parliament passing the Rating Act 1876, the preamble of which noted that it was 'expedient that a uniform system for the valuation of property upon which rates are assessed, and for the making and levying of rates, should prevail throughout New Zealand'. The Act established a colony-wide rating scheme based upon annually renewable valuation rolls, but it applied only to Pākehā-owned land: the definition of rateable property set out in section 37 excluded customary lands 'and lands in respect of which a certificate of title or memorial of ownership has been issued, if in the occupation of aboriginal natives only'. Yet, the scheme was clearly capable of being extended to all lands in Māori ownership. In brief, the political will was absent and the idea was resisted.

The potential for injustice to Māori was recognised at the time but the imperative of acquiring land cheaply

continued to prevail. In the course of an 1879 investigation into expenditure by the Native Land Purchase Branch of the Native Department, a Legislative Council committee concluded that '[t]he present system of acquiring Native Lands is attended with such serious disadvantages that it is expedient it should cease absolutely.'[562] It particularly noted the Crown's resistance to having prices for Māori freehold land being set by valuation. However, Under-Secretary of the Native Land Purchase Department, R J Gill, argued that the need to complete transactions quickly and at a low price precluded formal valuations.[563]

After the Crown and Native Lands Rating Act 1882 significantly expanded the extent of Māori land liable to rates demands, county councils had reason to include property tax assessments of Māori land blocks in their rates rolls. It is questionable how reliable these were, given that under the terms of the legislation, the Crown paid rates to county councils on the owners' behalf. This practice gave rise to contemporary suspicions that councils inflated the assessed values in order to boost their rates income.[564] These direct payments from the Crown to county councils were phased out after the Act was repealed in 1888,[565] thus removing the incentive for inflating the assessments. Evidence from several Hokianga blocks, which we draw on in the following section on prices, suggests that the property tax assessments, as published in a nationwide return of Native Land Court blocks still in Māori ownership in 1891, were on the generous side. They nevertheless serve as an indicator of relative value; for most of the blocks concerned, they were at or slightly above the amount for which the Crown estimated they could be on-sold following its intended purchase. However, as table 10.2 illustrates, Māori received much lower prices for all the purchase blocks for which we have evidence available on the valuations.

Subsequently, the Liberal Government made provision in the Native Land Purchase and Acquisition Act 1893 (in section 6(1)(c)) for Māori-owned land to be valued by 'three indifferent [that is, impartial] persons', including one appointed by the owners. However, valuation first required that the owners agreed to have their lands dealt with under the Act. In other words, valuation – and fair consideration, it appears – were contingent upon owners handing over their lands to the Native Land Purchase Board for sale or lease. Crown Ministers pointed to these provisions as a marked improvement for Māori. In 1895, when responding to Te Raki Māori concerns over the Act, Premier Seddon argued that, before it was passed,

> you never had an opportunity . . . of having . . . land valued before it was sold, and of having independent persons as representatives of the Native race to fix the fair value before it was offered for sale.

Seddon insisted that the Act would ensure that '[t]he Natives get the full market value for their land', and indeed described it as 'the most liberal Native land purchase law ever passed by Parliament'.[566] Additionally, Seddon claimed that '[t]here has always been in my mind a doubt as to whether the Natives got a fair value for their land'. He then acknowledged:

> the expenses of partition came upon the Natives who had not sold. Where the interest was small, the expenses of survey and putting it through the Court ate up the land, and the Natives got little or nothing.

Seddon argued that this new Act offered Māori the same advantages as those enjoyed by Pākehā wishing to sell land to the Government under the Land for Settlements Act 1894.[567] He was being less than frank, although we consider his admission significant. While both statutes made provision for independent valuations, under the Native Land Purchase and Acquisition Act, Māori were required to sell at the value fixed by the Native Land Purchase Board.

The Native Land Purchase and Acquisition Act 1893 was overtaken by the Crown's reassertion of pre-emption under the Native Land Court Act 1894; the idea of setting minimum payment rates by valuation, which the 1893 Act had provided for, was thus deferred.[568] Eventually, the Maori Land Settlement Act 1905 set the Government's own capital valuation, determined in accordance with the Government Valuation of Land Act 1896, as the minimum

price that it would pay for lands acquired from Māori. While we lack evidence specific to our inquiry district, we note that between 1900 and 1910, prices per acre paid for lands the Crown acquired from Māori across the whole colony rose by around 50 per cent, compared with what it had paid, on average, pre 1900.[569] This likely illustrated the extent to which the Crown, in the period leading up to 1900, had acquired land at substantially less cost than would have been the case if it had to pay even minimum payment rates set by valuation – quite apart from its market value.

In our view, systematic and contestable valuations would have constituted an important protective mechanism for Māori during a period in which the Crown was constantly seeking to strengthen its position as purchaser – by excluding private competitors, by weakening restrictions on alienation (discussed in section 10.5), and by undermining collective control over land. As noted earlier, Parliament reinstated the Crown's monopoly on land purchasing through the Native Land Court Act 1894, using that privileged position to support its policy objectives. Claims (such as that R J Gill made to the 1879 Native Department investigations) that formal valuations would have impeded the Crown's acquisition of land and allowed land to fall into the hands of private purchasers are without substance; we consider this argument to have served merely to obscure its determination to acquire land at the lowest possible price. We explore the relationship between valuations and prices in the following section.

(6) *Prices*

The prices paid for Te Raki land over the period 1865 to 1900 are a key issue of dispute between the Crown and claimants.[570] The claimants challenged the Crown's position that the prices paid were set by market forces,[571] arguing instead that the Crown exploited its purchasing privileges in order to deny owners a fair price. They said that it did so through strategies such as the payment of tāmana or the gradual, piecemeal acquisition of shares, as well as its ability to exclude private competition altogether by using proclamations and, later, Crown pre-emption. The claimants also alleged that the lack of readily comparable private purchases in Te Raki, and the absence of formal valuations prior to purchase by the Crown, further complicate the assessment of what a fair price would have been.

Comparing the prices paid by the Crown with those paid by private purchasers does provide some insight, albeit limited. As described earlier, from 1865 to 1900 private purchasers acquired far less land than the Crown in Te Raki, favouring (as the Crown argued at the time) small blocks of higher quality. Even so, the differences between the payments made to effect the two different types of purchase are striking. For example, Brissenden told the Auckland Provincial Council's Committee on Native Land Purchase in May 1875 that he had paid as little as fourpence per acre and not more than three shillings per acre for Māori land.[572] The cumulative record of 135 block purchases by the Crown in Northland between 1872 and 1883 shows an average price paid of 2s 6d per acre, although this drops to 2s 2d per acre if the purchase of Puhipuhi (for which around 12 shillings per acre was paid) is excluded.[573] In the Mangonui, Whangaroa, Bay of Islands, and Hokianga districts during essentially the same period (1874 to 1883), there were 25 private transactions involving a total of 7,154 acres, for which an average price of 7s 2d per acre was paid. In the Whāngārei and Kaipara districts, 65 private transactions were recorded: they involved a total of 128,202 acres and an average price of almost 3s 7d per acre. The lowest amount paid for any block in these private purchases was 1s 6¾d per acre.[574] Admittedly, private buyers could be pickier when they were securing small blocks, but even the purchases over 1,000 acres generally accord with the trend of private buyers paying more than the Crown. The per-acre rates paid by private purchasers in the 1870s for Kopuatoetoe (3,396 acres) and Otangaroa 2 (3,439 acres) blocks were five shillings and 4s 9d per acre respectively.[575]

It is a similar picture if we look at purchasing figures for Auckland Province as a whole. Trust Commissioner Haultain recorded that, during the year ended 30 June 1876, the Crown acquired from Māori 437,788 acres for £33,669, or almost 1s 4d per acre. In the same year, private individuals acquired 60,182 acres for £10,187 or almost 3s

4d per acre. Meanwhile, 13 town lots were sold for £915 or almost £7 8s per acre.[576] Purchasing in the following year was on a smaller scale, but the difference in the prices paid by the Crown and private individuals remained significant. Haultain recorded that, during the year to the end of June 1877, the Crown acquired 75,748 acres for an average of 2s 2d per acre. Over the same period, private individuals acquired 55,927 acres at an average of 6s 9d per acre.[577]

While this quantitative analysis has its limitations, contemporary observations by those involved in land purchasing provide further evidence that private purchasers were willing to pay higher prices than the Crown. It was widely acknowledged to be the case. Brissenden, for example, told the Native Land Purchase committee in May 1875 that 'I think the blocks which I have negotiated are worth double the amounts which I have given for them, in the hands of speculators.'[578] Similarly, Brissenden had relied on Charles Nelson to discredit private offers when the Crown had sought to purchase Pakanae, while Thomas McDonnell had acknowledged that private buyers might pay more than his offer for Omahuta. Speaking about Crown purchasing practices more generally and beyond Te Raki, Native Minister Sheehan told Parliament in 1877 that it could hardly be expected that Māori owners would sell to the Crown for 2s 6d when private purchasers would give them 10 shillings per acre.[579]

It is unsurprising that the Crown should have paid less than private buyers, given there was no firm basis for setting prices – except that, as Brissenden stated in May 1875, they were 'governed for the most part by the quality and the extent of the block and its probable usefulness'.[580] This meant that the price of each block was subject to negotiation in which the Crown's land purchase agents saw their duty as being to fix a price at the lowest level the owners would accept, rather than a price that was fair to both parties. McDonnell, in particular, took great pride in his ability to make savings for the Crown by beating down the purchase price; in the case of some Mangakāhia blocks, he had even persuaded owners to accept a 50 per cent reduction (from 2s 6d to 1s 3d per acre) on a price to which the Crown had already agreed.[581] Private offers had the potential to interfere with the Crown's purchasing plans, as they could suggest to owners that their land was worth more than the Crown wanted to offer. This had happened in 1873 when some Mangakāhia landowners received a letter from Mr White, a private purchase agent, advising them 'to sell their lands at no less than 2/6d and 3/– an acre but to reserve the best, and the kauri land, as he could get them 5/– an acre for it from his Pakehas'.[582] Where the Crown's land purchase agents were unable to employ tāmana payments in time to exclude alternative offers, their usual recourse was to emphasise to owners that the Crown was purchasing both their high- and lesser-value lands. The agents would also stress that the collateral advantages that would follow sale and settlement, and that only the Crown could provide these roads, bridges, and other infrastructure.[583]

It should also be noted that the Crown did not account for the potential value of timber in its purchasing.[584] This was acknowledged in the 1907 General Report issued by the Stout–Ngata commission (formally, the Royal Commission Appointed on Native Lands and Native-Land Tenure), which observed that 'in respect of lands carrying milling-timber, the Crown has made no allowance for its value'.[585] Similarly, there does not seem to have been any accounting in the purchase price for kauri gum the land might contain, even though the Crown's land purchase agents were aware that it might immediately be capitalised upon for this purpose. In the case of Omahuta, this meant that the Crown paid only 1s 6d per acre for a block that McDonnell had first observed contained 'large quantities' of both first-rate kauri timber and gum, later noting that if Canadian settlers were placed upon it, their collection of both resources from their land would immediately 'provide them with a handsome surplus.'[586]

In the view of Stout and Ngata, the reason the Crown had not paid specifically for timber was that timber-producing forest had no value when it came to the Waste Land Board disposing of it to settlers (given that the settlers would have to clear the forest before they could farm their land). Stout and Ngata concluded that Māori landowners should not be penalised by the failure of the Waste Lands Board to exploit the timber before on-selling it.[587] Judge Acheson's 1925 inquiry into whether the Crown

Gum digging in the northern gum fields.

had offered to leave the timber on Te Kauaeoruruwahine in Māori ownership reached a different conclusion, reasoning that the inaccessibility of the timber had given it no market value at the time of purchase. But Acheson accepted that the former owners had reason to feel aggrieved that all of the subsequent £50,000 rise in the timber's value had accrued to the Crown.[588] The same issue arises with the purchase of Puhipuhi 1, 2, and 3 in 1883: the Crown bought 19,490 acres for just £11,374, even though the surveyor S Percy Smith had reckoned that the standing kauri timber on the block was worth £30,000, based on existing royalty rates.[589] Three years later, the Crown forester T W Kirk estimated that all Puhipuhi's standing timber was worth £45,000, which he suggested could be accessed with easily constructed tramways or by driving it down creeks.[590] However, later efforts to extract the timber along creeks proved unsuccessful, and most of the forest was ultimately lost to fire.[591] Even so, by 1891 the Crown

had already capitalised on Puhipuhi's timber: it offered 5,000 acres of forest containing kauri and tōtara timber as part payment to the builder of the Whāngārei-Kamo railway extension.[592] In short, the Crown was aware that the timber of such blocks would rise in value once infrastructure was in place enabling its exploitation. But rather than letting that increase in value be shared with Māori, by paying a fairer price at the time, the Crown – through its purchasing – sought to secure as much as possible of the gain for itself.

Market timing worked in favour of McLean's purchasing programme by allowing the Government to exploit the downturn in land prices at the start of the 1870s – a downturn created by Crown policy because a significant acreage of Māori land that had passed through the Native Land Court now became available for purchase. In March 1871, Theophilus Heale noted that some 4,000,000 acres of Māori-owned land in Auckland Province had passed through the Native Land Court since 1865, while a further 2,000,000 acres had been acquired by confiscation. As a result, in a land market that he described as 'overstocked', Heale noted, prices had declined sharply so that:

> lands equal in quality to what in 1860 were readily sold at £1 per acre and which could only be obtained in small areas, are now hawked about in large blocks for sale at 2s per acre, and even less. . . . the costs, too, which would have been an insignificant proportion to the value at 20s or even 10s per acre, look enormous when the land is sold at 1s.[593]

In November 1872, Chief Judge Fenton confirmed Heale's report, advising former Premier William Fox that prices were low and

> there are great quantities that have passed the Court that the natives are wishing to sell. All you have to do is offer a price, in most cases less than in the old days of land purchase. 45,000 acres in the North was sold [privately] the other day . . . for 6d an acre.[594]

Mantell subsequently referred to the proposal to purchase land from Māori at a maximum of two shillings per acre and to sell at a minimum of 10 shillings per acre as 'a strange piece of liberality at the expense of others – not an unusual form of liberality, yet not a praiseworthy form of liberality'.[595]

The depressed land market perfectly suited the Government's capital-borrowing programme of the 1870s: it could acquire a great deal more land at low prices which, with the pending influx of immigrants and corresponding rising demand for land, would allow it to maximise its returns. It had no incentive to manage the market to assist Māori to realise fair prices so that they could develop their remaining land and resources. As noted above, the Crown already held more land than it could readily make available for settlement. It now set about drawing yet more Te Raki land into the title adjudication and purchase process, forcing down prices. Between 1 July 1874 and 30 June 1875 alone, the Crown acquired a further 28,527 acres in Mangonui, for an average of just over sevenpence per acre; 131,097 acres at Hokianga, for just over 1s 9d per acre; and 61,941 acres in Whāngārei, for an average of slightly more than 1s 11d per acre. These were, as Armstrong and Subasic put it, 'bargain-basement prices'.[596]

The Crown was clearly aware that it had disadvantaged Māori vendors by imposing measures intended to protect its own interests as purchaser. That was apparent in McLean's Native Land Sales and Leases Bill 1876. The objective of the Bill, its preamble recorded, was 'to enable the aboriginal natives of the colony to obtain a larger value for their interests in . . . [Native] lands, and to discourage speculation, and restrain dealings therein'.[597] Where owners wished to alienate, they would set prices and any reservations, terms, and conditions. The measure was to apply to customary lands and lands held under memorials of ownership, but not to lands for which people had received or were entitled to receive Crown grants. However, the Bill did not pass.

By 1880, many Te Raki Māori clearly felt that they had effectively subsidised the Fox–Vogel ministry's large-scale capital borrowing as a result of the Crown's policy of 'buying cheap and selling dear'.[598] Having once viewed the Government's economic development plan as an opportunity to secure long-promised collateral benefits

for themselves, Māori now more fully recognised that it had been based on the purchase and resale (at enhanced prices) of their lands. Hōne Mohi Tāwhai (member of the House of Representatives for Northern Maori) insisted in the House, that 'laws are made to obtain the Native lands in order to assist in defraying the interest on the loans'.[599] Adding to the injury, 'not one copper' of the £27,000,000 borrowed since 1861 had been spent on public works in Northland.[600] Again, in 1880, when engaged in a debate over Native Minister Bryce's proposed Native Land Sales Bill, Tāwhai said that Māori held a widely shared perception that they had subsidised the development of the colony and were continuing to do so.[601]

The same drive to buy up land as cheaply as possible is also evident in the second surge of Crown purchasing in Te Raki during the 1890s. Most of these purchases were made after the restoration of Crown pre-emption in 1894, and so there was no competition from private buyers. This situation allowed the Crown to unilaterally fix prices offered and adopt a 'take it or leave it' approach in its dealings with individual owners of shares.[602] As in the 1870s, there was no use of formal land valuations to determine what a fair price might be, let alone arbitration to determine it – something that had been provided to Crown land lessees since 1882.[603] Although the Native Land Purchase and Acquisition Act 1893 contained a provision for the independent valuation of Māori land, it was rarely (if ever) used.

Auctions were another method that could potentially have secured a fairer, market-driven price for Māori land. They were periodically mooted as a way for Māori to get a fairer price.[604] Sir George Grey had earlier attacked FitzRoy's pre-emption waiver scheme for (among other things) failing to gazette individual waivers, arguing that Māori would have received better prices if the land had been put up for auction. Both Edward Shortland and Sir William Martin also recommended sales by auction to improve the early Native Lands Acts in 1865 and between 1870 and 1871, respectivey. In Professor Alan Ward's opinion, if this safeguard had been adopted there would have been publicity about alienations and a 'better chance of securing the full market value'. Instead, 'the piecemeal acquisition of signatures from individuals, indebted and under pressure, could continue until a buyer had a majority necessary for a partition.'[605] Later, Robert Stout was another strong proponent, stating in 1893 that, through auctions, Māori 'could . . . get the best price, and were not bound to put their land under this stupid eternal lease.'[606] Stout's argument was based on the grounds of equity: '[t]hey [Māori] have equal rights with us, and I say it is utterly unfair that we should seize their land at a less price than they can get for it from other people.'[607] Sections 26 and 27 of the Native Land Purchase and Acquisition Act 1893 did provide for Māori land to be auctioned if two-thirds of the owners applied for the removal of a Crown proclamation on the land, and this was approved by Governor-in-Council. But as previously noted, this provision was never put into effect. The Native Land Court Act 1894 retained provisions for sale by auction, but only if the Māori owners, or a majority of them (or newly incorporated owners through their committee), applied to the land board for their land district, which would then auction the land. The proceeds of the sale would then be lodged with the Public Trustee for distribution to the owners in proportion to their relative shares or interests.[608]

Purchase agents kept the prices they paid as low as possible. However, C J Maxwell, in reports to his superiors, detailed his frustration that his share-buying progress was being hampered by the quantum of the offers he was able to make. In mid-1894, Maxwell received a memorandum from Mueller, Auckland's commissioner of crown lands and chief surveyor, setting out the prices that various Te Raki blocks might reach if put on the market, and the prices that the Crown could safely offer without risk of making a loss. Mueller's recommendations took into account possible survey costs (for which he set aside 2s 6d per acre) and 'thirds' (one-third of the sale price) for local roading.[609] In response, Maxwell wrote to Patrick Sheridan, the Chief Native Land Purchase Officer:

> the system of loading the land to be purchased with thirds is a great hindrance to acquiring land in the North as it prevents a fair price being given, that is, a price at which the natives would sell readily.[610]

Block	Area (acres)	Estimated on-sale (per acre)	Property tax valuation in 1891 (per acre)	Proposed offer in 1894	Actual payment
Opouteke 2	2,735	12s 6d to £1	£2	5s	4s
Punakitere 2	4,767	5s to 12s 6d	10s	2s 6d	4s
Omahuta	678	15s to £1	10s	7s	No data
Kahikatea	797	15s	No data	4s 6d	5s
Tautehere	693	At least 12s 6d	10s	3s 6d	Same
Tapuwae 3	1,040	At least 12s 6d	No data	3s 6d	No data
Motukaraka	c 2,450	At least 12s 6d	No data	3s 6d	8s
Tapuwae 1	3,147	12s 6d to £1 10s	No data	5s	No data
Otarihau	1,170	At least £1	No data	7s	5s
Papua	576	10s to £1	15s	5s	No data
Waiwhatawhata 2	2,114	10s to 15s	19s approx	4s 6d	No data
Mangawhero	1,402	15s	£1 3s approx	5s	3s
Mangapupu	890	15s	£1 2s approx	5s	No data
Horotiu	826	10s to 15s	18s approx	4s	Same
Pukehuia 2	1,412	12s 6d	15s	4s	3s
Manawakaiaia	11,828	10s 6d	£1 1s approx	3s 6d	No data
Whawharu 1	1,722	10s to £1	15s	5s	Same
Waima 2	7,456	15s to £1 5s	£1 1s approx	7s	No data

Table 10.2: Estimated on-sale prices, property-tax valuations, and proposed Crown offers for various Hokianga and Mangakāhia blocks, 1894.

Indeed, in one of the final private sales in Te Raki in 1894, Kaingapipiwai 1 had sold for 13s 10d per acre, while at the same time Maxwell had been offering its Māori owners three shillings per acre (itself an increase on the previous offer of 2s 6d per acre).[611]

It is worth noting the very different expectations applying at this time to Māori landowners, as opposed to owners of pastoral estates. The Crown expected Māori owners to meet the costs of the 'thirds' (as defined in section 126 of the Lands Act 1892) by having this amount deducted from the price they received. This did not apply to other owners; section 20 of the Lands for Settlement Act 1892 included an exemption from paying 'thirds' to local authorities under the Land Acts when lands were purchased or disposed of under the 1892 Act. This was an unreasonable discrimination, especially given that Te Raki Māori land was also being purchased with the objective, at least in principle, of promoting land settlement.

Table 10.2 is based on a list Maxwell prepared in 1894, detailing the expected on-sale prices of several Hokianga

and Mangakāhia blocks, along with his proposed per-acre offer. The table also shows the 1891 property-tax valuations of these blocks – which, while potentially inflated, were also meant to reflect market prices. It details the subsequent adjustments the Crown made in the per-acre rate that owners received for their shares as well; where the Crown had acquired no shares in a block by 1900, this is indicated by 'no data' instead of the actual price paid.

As the table demonstrates, the Crown stood to gain from buying shares at the proposed offer rates in every block – assuming the projected on-sale prices and anticipated costs (the deductions from the on-sale prices to be used for local roading and survey expenses) are reliable. Thus, officials had the leeway to raise their offer substantially whenever they saw an opportunity to purchase. This appears to have happened in the purchase of the Motukaraka East block (1,437 acre), where the proposed rate of 3s 6d per acre was increased to eight shillings after John Lundon offered to broker a deal that also included the 1,327 acre Mangamaru block (which the Crown purchased for five shillings per acre).[612] However, this case appears to have been something of an exception. As table 10.2 indicates, in the case of four blocks the eventual price received by owners for their shares was even more miserly than what Maxwell had proposed.

The Crown drove a similarly hard bargain across the inquiry district as a whole during the 1890s. Outside the 15 shillings per acre paid for several small Whatitiri partitions in the late 1890s, the most common Crown purchase price over the course of the decade was four shillings per acre. The only owners to receive 10 shillings or more per acre for their shares outside Whatitiri were the owners in the Omaunu 2, Porangi, and Whakapae 2 blocks.[613]

In short, the use of tāmana, down payments (payment of the purchase price in instalments, after title determination), and monopoly powers to keep out private competition worked together as complementary elements in the Crown's strategy to minimise prices for Māori land.[614] As Fox and Vogel had hoped and intended, New Zealand enjoyed a major boom during the 1870s on the back of imported capital and extensive public works construction, private investment in land settlement and housing, a rising influx of migrants, and rapidly rising land prices. But this economic transformation was grounded in the acquisition of extensive areas of Te Raki Māori land at minimal prices which had been created in large part by the Crown's policy. There is little evidence that Māori benefited as a result, fuelling their criticism of a colonial Government that actively hindered their participation in the economy other than as providers of cheap land, cheap itinerant labour, cheap forests, and other resources.

In the complete absence of any independent valuation, and the practical absence of a free market in land, how were prices for Māori-owned land set in Te Raki and elsewhere? As noted, the Crown suggested that 'there was no clear policy'.[615] What can be said, however, is that Crown purchasing did follow a consistent approach in which profitability was safeguarded, competition was excluded where possible, no minimum prices were set or valuations employed, and there was little room for landowners to negotiate (including over reserves). In our view, by taking what was essentially an uncompromising and self-serving approach to price-setting, the Crown did not meet its treaty duty of dealing with Māori fairly and in good faith. It was open to the Crown to secure independent valuations (as it did for other purposes) and employ them as a guide to setting minimum purchase prices. This would have constituted at least a basic protective mechanism, but the Crown failed to adopt it until after most Te Raki lands had transferred out of Māori hands. Instead, the Crown's pricing regime was based upon a steadfast refusal even to countenance the valuation of lands owned by Māori, except for the purpose of levying rates or taxes.

We consider the evidence that the Crown did not pay fair prices is compelling. It thus failed to give effect to its guarantees in articles 2 and 3 of the treaty, and failed to ensure that hapū were in a position to invest in the development of the lands that they retained. Indeed, as Crown historian Donald Loveridge has argued, the money the Crown spent on purchasing extra Māori land would have been better spent on assisting Māori to develop the land they had left.[616]

10.4.3 Conclusions and treaty findings

The Crown designed the legislative regime governing Māori land with the aim of imposing a system of individualised title, in large part to make land easier to purchase. Māori communities were disempowered by the Crown's failure to provide for a legal collective title, and the deliberate undermining of their capacity to hold on to and manage their lands as they wished (and as they had in the past). As the Tribunal commented in the Tūranga inquiry, it was a system whose designers 'refused to provide for Maori communities to manage their assets *as communities*' (emphasis in original).[617]

The Crown's purchasing policies and practices were designed to take advantage of the title system that it had created enabling the acquisition of large amounts of Māori land at low cost throughout the period reviewed in this chapter. It did so using tactics that were at best of questionable integrity and, at worst, destructive to Te Raki hapū. Certainly, they were not treaty-compliant.

In particular, the payment of tāmana was a widely deployed and effective tool by which Crown purchasing agents acquired interests in large, undefined blocks, even before title had been determined. The use of tāmana, and the legislation enabling it, hobbled Māori efforts to exercise tino rangatiratanga, undermining collective decision-making. It also constrained individuals from freely choosing whether and to whom to sell their interests. Further, the lack of transparency surrounding tāmana payments and their incremental nature made it impossible for landowners to know what parts of their land might later be carved out by the Court for the Crown, or the extent of the loss. Nor could they easily determine if the price per acre the Crown was offering was at all reasonable – and, as the evidence has shown, very often it was not.

The widespread use of tāmana payments in Te Raki continued for decades, despite it being frowned upon by those running the Native Land Purchase Department (although the evidence shows their objections were motivated more by the worrying prospect of tribal dispute and unsecured Crown investment than by the effect of tāmana payments on hapū rangatiratanga). Even when the Crown took steps to investigate particular transactions it knew had involved tāmana payments or other questionable tactics (such as those identified in multiple inquiries into Brissenden's purchases in the mid-1870s), there is no evidence suggesting matters materially improved for the landowners affected.

The legislative regime and the tactics of Crown purchase agents created anxiety, competition, and division as Te Raki Māori owners found themselves – often unwillingly – drawn into expensive title adjudication and partition proceedings, and compelled to sell. Tāmana and the collection of individual signatures undermined the community control that hapū had long exercised over their lands and resources.

Accordingly, we find that:

- By employing tāmana, or advance payments, the Crown deliberately undermined the capacity of Te Raki Māori to retain their lands and resources in breach of te mātāpono o te tino rangatiratanga.
- By conducting its purchasing in a manner calculated to undermine the capacity of hapū to reach and maintain decisions about land, the Crown also undermined established Te Raki Māori authority structures and social cohesion, breaching te mātāpono o te tino rangatiratanga.
- In addition, despite the objections of Te Raki Māori and the conclusions reached by several official investigations into this practice, the Crown failed to respond in a timely and effective manner with appropriate remedies. This failure was in breach of te mātāpono o te whakatika/the principle of redress.

The Crown engaged, on commission, agents whose tactics had already come under scrutiny and a good deal of criticism. They became part of a system calculated to encourage unrestrained and unethical purchasing. The Crown then failed to monitor their actvities, exercising little control over them until it was too late with extensive territory having transferred out of the hands of Māori who had been exposed to their tactics.

We thus find that, by failing to monitor and exercise effective control over the practices and activities of its

purchasing agents the capacity of Te Raki Māori to retain and develop their lands was undermined, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development, and te mātāpono o te matapore moroki/the principle of active protection.

The Crown acknowledged in closing submissions that there was 'no clear policy for how the price for Northland Māori land was set';[618] however, in practice, the Government followed some largely consistent approaches to setting land prices at Māori expense. As Mantell observed, the proposed purchase of land from Māori at a maximum per acre price well below that of the resale was 'a strange piece of liberality', not unusual 'yet not a praiseworthy form of liberality'.[619]

Although the Native Land Purchase and Acquisition Act 1893 contained provision for the independent valuation of Māori land, it was rarely used and, in any case, came too late to have much beneficial effect. In the absence of valuations before 1905, the Native Minister would instead approve prices in accordance with recommendations prepared by the Surveyor-General. In our view, a contestable system for valuing land would have given Te Raki hapū and iwi a key protective mechanism, particularly important at a time when the Crown was attempting to strengthen its purchasing powers by excluding private competition to Māori disadvantage.

Other practices the Crown regularly adopted included determining maximum prices before purchase negotiations, promising collateral benefits to induce Māori to accept lower prices and failing to take account of the value of timber and kauri gum in the price offered. The Crown also deployed tactics to restrict private competition, thereby keeping prices low. On the basis of the evidence, we conclude that the Crown did not pay fair prices for land in Te Raki which was an essential obligation long acknowledged by Crown officials. An effective valuation system would have been a significant protective mechanism for hapū and iwi, better enabling them to invest in developing their remaining lands; and another potential safeguard that came far too late was the option of sale by auction. Not only were the prices paid kept deliberately and artificially low but also much of the money Māori received went towards title conversion costs – along with needs for daily sustenance, as demonstrated by storekeeper debt – rather than to develop the lands they retained.

As such, we find that:

- By deliberately designing purchasing processes and using tactics intended to lower the prices of Te Raki Māori land for its own benefit, the Crown acted inconsistently with its duty of good-faith conduct, and in breach of te mātāpono o te houruatanga/the principle of partnership. In this respect, the Crown was also in breach of te mātāpono o te mana taurite/the principle of equity.
- By intentionally acquiring vast tracts of Te Raki Māori land at much lower prices than it was worth, the Crown was in breach of te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principles of equity and of mutual benefit and the right to development.

Lastly, following the implementation of the Native Land Act 1873 the Crown relied on the purchase of individual interests to continue acquiring vast tracts of hapū land. The Crown ignored its obligation to respect tikanga by dealing with whānau and hapū on a collective basis. Instead, the Crown acquired land by attrition – without the knowledge of all the rightful owners, without allowing them to reach decisions as a community on the matter, or in the face of their opposition.

In our inquiry, the Crown conceded that the individualisation of title made lands more susceptible to partition, fragmentation, and alienation, and that this process worked to undermine tribal structures.[620] But we further consider, as other Tribunal inquiries have done, that the Crown exploited the system of title individualisation created by Native Land legislation to benefit its own purchasing programmes, prioritising the interests of Pākehā colonists over those of Māori.

Accordingly, we find that the Crown purchased land by acquiring individual interests, bypassing and thereby

undermining community decision-making processes which had traditionally protected whānau and hapū lands. In doing so, the Crown acted inconsistently with its duty of good-faith conduct, in breach of te mātāpono o te houruatanga/the principle of partnership. It also breached te mātāpono o te tino rangatiratanga.

10.5 Did the Crown Take Adequate Steps to Protect the Interests of Te Raki Hapū when Purchasing Land?

10.5.1 Introduction

The question of 'sufficiency' of land and resources is prominent among purchasing-related matters raised by claimants. Jane Hotere and other Ngāpuhi claimants argued that it should have been Te Raki hapū, not the Crown, that had the right and opportunity to define the lands they wished to retain. Echoing Armstrong and Subasic – who said the protective mechanisms the Crown put in place to avert Māori landlessness, including the 1873 legislative requirement to set aside at least 50 acres per person, were either not applied or ineffective – these claimants contended:

> the extent of land necessary for present and future Māori needs should [have been] based on Māori expectations and Crown promises, not on a Eurocentric 'acre per head' calculation.[621]

More generally, counsel representing Ngāti Kawa and Ngāti Rāhiri claimants told us that the Crown failed to abide by the instructions of Lord Normanby, that Māori be left with sufficient lands to sustain themselves, thus depriving hapū of the opportunity to participate on an equal footing in the economy.[622] Claimants submitted that the Crown was aware that Māori land legislation, beginning with the Native Lands Act 1865, would lead to the widespread alienation of Te Raki hapū land and resources. Despite this knowledge, the Crown remained focused on facilitating the transfer of land out of Māori ownership, failing in its duty of active protection in so doing.[623]

Similarly, claimants argued that, while the Native Land Act 1873 empowered the Native Land Court to scrutinise any sale of land held under a memorial of ownership, in practice the Act was used to facilitate sale to and purchase by settlers. This was despite the fact that all owners were now supposed to be entered into the title, and a prospective purchaser needed to acquire the interests of them all.[624] Further, Ngāti Taimanawaiti claimants pointed out that the Native Land Frauds Prevention Act 1870 and its successor, the Native Land Frauds Prevention Act 1881, empowered trust commissioners to inquire into the validity of all alienations – including whether Māori retained sufficient land for their 'support'. However, the claimants alleged that there is no evidence of the commissioners ever rejecting 'inequitable transactions' and (in respect of their land at Okura No 2, Ohakiri, and Opuhiiti), there is no evidence that transactions were even investigated.[625]

Claimants argued that between 1865 and 1900, the Crown did not meet its duty to ensure Te Raki hapū retained sufficient land even though it had long been aware that it would need to limit and monitor its land purchasing activities. The extent of the lands it had acquired was such that McLean, in a report to Parliament in 1876, suggested that purchasing in the region should be brought to a halt – not only due to 'the wants of the Natives' but also because much of the land remaining in their ownership had passed through the Native Land Court and was now held in individual tradeable title.[626] The claimants considered this a concession by the Crown at the time that if the Government did not stop purchasing land in the north, Te Raki hapū would suffer severe prejudice. The Crown nonetheless continued its purchasing programme, breaching its treaty duty.[627]

The claimants submitted that, in addition to McLean's 1876 report, the Crown continued to be made aware of growing Te Raki landlessness throughout the 1880s by complaints from Māori themselves.[628] There was no real change in policy, however. Counsel argued that, in the 1890s, the Crown remained interested only in acquiring whatever papatupu land was left, rather than utilising the vast tracts of land they had already acquired.[629] The

Crown's failure to ensure hapū retained 'sufficient' land 'applied both in specific cases and regionally, as well as broadly to the inquiry district as a whole.'[630]

Virtually no reserves were set aside. This omission was despite the Native Land Act 1873 requiring district officers to select, in consultation with Māori, a minimum of 50 acres of inalienable reserve land for every man, woman, and child.[631] Claimants said that this failure to set aside reserves was another effect of tāmana. Much of the land had already been secured by Crown and private purchasers through payments to individual owners, so was not available to be reserved even if the district officers had attempted to fulfil their duties.[632] The claimants noted that the Crown created just 27 reserves from 1865 to 1900, amounting to only 5,578 acres. Counsel pointed out that this was significantly less than the reserves (some 14,000 acres) created in the pre-1865 period.[633]

Claimants argued that the reserve provisions in the Native Land Act 1873 were evidence of the Crown's recognition that it needed to ensure Māori retained sufficient land, including the kāinga, mahinga kai, and wāhi tapu essential for their well-being.[634] However, as counsel for the Te Ihutai hapū noted, the Crown failed to implement those legislative provisions.[635] In generic closing submissions, counsel also argued that Te Raki hapū were low on the Crown's priority list, and that the Crown failed to actively protect their interests by neglecting to ensure sufficient lands were retained.[636] Counsel for the Te Kapotai and Ngāti Pare hapū and the Waikare Inlet claims submitted that the Crown failed to specify how it had arrived at a minimum of 50 acres per person as a definition of sufficiency, and whether it had taken into account such matters as location and quality.[637]

The Crown conceded that no system was in place 'to ensure that it did not purchase land that was needed to ensure the iwi and hapu of Northland could continue to maintain themselves'.[638] Counsel acknowledged that under the Native Land Act 1873, the Crown was obliged to select and set apart reserves for Māori, to ensure that the lands were surveyed, and to have the title investigated by the Native Land Court, but that it failed 'to fully implement' those provisions.[639] The Crown also suggested, however, that whether or not the reserve provisions of the 1873 Native Land Act had been implemented,

> the core issue is that the Crown did not have a system to monitor the sufficiency of Northern Māori landholdings, and to discontinue purchasing when it threatened to leave particular Northland Māori landless.[640]

The Crown additionally pointed to its concession regarding iwi living in Mahurangi, the Gulf Islands, Whangaroa, and Whāngārei, which linked the landlessness of these groups to the Crown's failure to ensure they retained sufficient land; this was a breach of the treaty and its principles, the Crown conceded.[641]

The Crown argued that the primary purpose of the Native Lands Frauds Prevention Act 1870 was to prevent fraudulent transactions (by requiring scrutiny by the trust commissioners), and that it contained a provision relating to sufficiency. Crown counsel suggested that, before 1881, it was unclear if the Crown was actually bound by the trust commissioner regime; nonetheless, counsel said, the Crown did place land transactions before commissioners for investigation. Any uncertainty was resolved by section 8 of the Native Lands Frauds Prevention Act, which 'removed the Crown from the ambit of the Trust Commissioners' jurisdiction'.

Crown counsel said that an examination of the Auckland District Trust Commissioner's letter book indicated that he was 'quite conscientious' in discharging his duties, while respecting the right of Māori to deal with their lands as they saw fit.[642] Counsel also pointed out that section 59 of the Native Land Act 1873 allowed the Court to investigate the 'justice and fairness' of any transaction.[643] Finally, counsel noted that the Maori Real Estate Management Act 1888 offered protection, through the Native Land Court, to any minor or person suffering from a disability who held interests in land.[644]

The Crown also insisted that there was insufficient evidence to support any claim that Crown action, or inaction, was responsible for any unscrupulous tactics

private purchasers may have employed when trying to acquire land from Māori. Private transactions were subject, however, to the scrutiny of the trust commissioner for Auckland Province appointed under the Native Lands Frauds Prevention Act 1870, and by the Native Land Court under sections 59 and 60 of the Native Land Act 1873. The Crown offered no comment on how, or to what effect, either the trust commissioners or the Native Land Court employed their powers, other than asserting that the former would have rejected any 'manifestly unfair transaction.'[645]

10.5.2 The Tribunal's analysis

In this section, we review the effectiveness of the various protective measures the Crown put in place with the general aim of fulfilling Normanby's earlier instruction that it should not purchase from Māori 'any territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence.'[646] We start by considering how the Crown developed a 'sufficiency' standard for assessing how much land could be alienated from Māori without doing undue harm. We then examine whether the Crown adequately monitored the extent to which Māori were retaining land within the inquiry district. Finally, we consider whether three different measures intended to prevent harm arising from land sales – alienation restrictions, the creation of reserves, and vetting of purchase transactions – provided an effective level of protection for Te Raki landowners.

(1) *The Crown's standard of 'sufficiency'*

The question of how much land Māori needed to retain generated considerable debate among settlers and Crown officials during the latter part of the nineteenth century. Crucial to answering this question was deciding whether the Crown should continue with the approach it took before 1865, when reserves were confined largely to cultivations and kāinga, or whether it should seek to ensure Māori had enough land to participate in the modern settler economy. The latter concept was not one foreign to the Crown, since there was an implicit standard of sufficiency built into the minimum landholding sizes when Crown land was subdivided and offered for sale to settlers. However, applying that concept to Māori landowners was a different matter, and the question of equity was not considered.

When Colonel Haultain prepared a report on the workings of the Native Land Court for Donald McLean in July 1871, he included the views of Te Raki rangatira on the question of what was 'the least quantity of land' that should be reserved for Māori. Eru Nehua of Ngāti Hau had remarked that '[s]ufficient land has not been hitherto reserved for the use of the Natives.'[647] Wiremu Te Wheoro of Waikato and Pāora Tūhaere of Ngāti Whātua noted that the Native Land Court had not reserved sufficient land as inalienable – 'that in some cases the wishes of the owners have not been carried out in this respect' – and they proposed:

> from 50 to 500 acres should be reserved for each Maori man, woman, and child, according to the land they hold. They might be allowed to lease some of it, but not to sell it on any account.[648]

In contrast, Hemi Tautari considered that five acres of good-quality land might be sufficient, but more would be needed if the land was of lesser quality.[649] As an assessor in the Native Land Court, his view may have been influenced by those of Chief Judge Fenton and Judge Maning, who both believed that Māori required no more than five acres per head.[650]

In November 1871, McLean advised purchase agents that they were to provide 'a clear idea as to what reserves it will be necessary to make for the Natives – in the case of these, discriminating most carefully their acreage.'[651] He expressed his view on reserves clearly during parliamentary debates on the Native Land Act 1873, intimating in August 1873 that:

> the chief object of the Government should be to settle on the Natives themselves, *in the first instance*, a certain sufficient quantity of land which would be a permanent home for them,

> on which they would feel safe and secure against subsequent changes or removal; and, in fact, to be held as an ancestral patrimony, accessible for occupation to the different hapus of the tribe; to give them places which they could not dispose of, and upon which they would settle down and live peaceably side by side with the Europeans. The officers appointed would ascertain the requirements of the Natives, and set apart a sufficiency of land for their use. [Emphasis added.][652]

Further, McLean emphasised the importance of tribal reserves as a means of instilling confidence among Māori that their lands would not all be lost to them. Many Māori, he noted, regarded Crown titles as 'devices on the part of Europeans to get a hold of their lands'.[653] The future McLean painted was of Māori and Pākehā communities living settled and secure side by side. Section 24 of the Act was unambiguous; it provided that district officers were:

> to select, with the concurrence of the Natives interested, and to set apart, a sufficient quantity of land in as many blocks as he shall deem necessary for the benefit of the Natives of the district.

Sufficiency was considered to amount, on aggregate, to 'not less than fifty acres per head for every Native man woman and child resident in the district'.[654]

Though it was the district officer's responsibility, Māori were clearly intended to play a key role in the process of creating reserves – in fact, the Native Land Act 1873 required their agreement. McLean's remarks and the wording of the Act's preamble and section 24 implied that the reservation of land was a first requirement in any land purchase, and that the land reserved would be owned collectively. This much was indicated in *Te Waka Maori a Niu Tireni*, in which the Government stated:

> No man will be able to sell the land so set apart; and henceforward it will not be in the power of any chief to sell all the land of the tribe and leave the tribe without any land; but by the new law every man, woman, and child will be counted, and a large piece of land for the whole of them, in proportion to their numbers, will be kept for them; where they can live, and where they may die, for it will not be lawful for any one to sell that land, or take it away from them, or prevent them from living on that land and cultivating it.[655]

This parcelling out of reserves would protect Māori from the operation of the widely criticised ten-owner rule and ensure that all Māori retained a 'sufficiency' of land, defined by the Act as a *minimum* of 50 acres per capita.

In other inquiries, the Tribunal has found that the 50 acre per capita requirement in the legislation was insufficient to meet the Crown's treaty obligations. In *Turanga Tangata Turanga Whenua*, the Tribunal suggested that this minimum had been arbitrarily defined and 'took no account of the size of families, location, and quality of land needed for workable farms'.[656] In *He Maunga Rongo*, the Tribunal added: 'The "sufficiency" of land set at a level of 50 acres a head was clearly meant for bare subsistence needs only.'[657] The evidence we have on the viability of colonial farms supports this conclusion, suggesting that properties as small as 50 acres could not prosper across much of Northland. For example, in relation to Whangaroa County, in 1908, the Stout–Ngata commission contrasted the more than 80 acres per head then in Pākehā ownership with the 40 acres per head of land in Māori ownership, stating that the latter was 'really too small an area . . . to make a living off the land from ordinary farming'.[658]

Nevertheless, the 50 acres was defined as a minimum not a maximum. Thus, in principle, the reserves provisions of the Native Land Act 1873 offered, as Thomas observed, something considerably more valuable than 'a few areas excluded from land sales for the maintenance of the vendors'.[659] Moreover, as the notice in *Te Waka Maori a Niu Tireni* makes clear, those provisions were oriented towards the needs of Māori communities rather than the interests of individuals. After district officers set apart reserves, the Act provided for those areas to be surveyed before an investigation of the parent block by the Native Land Court to confirm the title to the land, with owners' names listed on a Memorial of ownership. After six months and barring any rehearing, a notice confirming the reserve would be published in the *New Zealand*

Gazette and the *Kahiti*, including a note that such reserves were inalienable by sale, lease, or mortgage, except with the consent of all owners and the Governor-in-Council.[660]

The Native Reserves Act 1873 was presumably meant to be utilised alongside the Native Land Act 1873, which was passed on the same day. The Reserves Act was designed to systematise the administration of Māori land that had up to that point been 'reserved' and held in trust through one of a number of possible mechanisms.[661] However, the Act was never actually implemented. The Commissioner for Native Reserves in the South Island said it suffered from 'a host of deficiencies', and major objections to it were aired in parliamentary debates – including 'that too much authority for administration had been shifted away from the Governor's direct control' and 'the existence of Maori administrators'.[662] The failure to put the Native Reserves Act into effect left the provisions of the Native Land Act 1873 to be implemented on their own.[663]

A new round of Crown purchasing in Te Raki followed. While section 24 of the Native Land Act 1873 offered hapū and iwi a degree of protection, as discussed in chapter 9, Fenton and other Native Land Court judges disliked the prospect of district officers interfering in their work and the provisions relating to reserves were never fully implemented. According to William Webster, Te Raki Māori were also averse to the creation of reserves over which they did not have ultimate control:

> The Natives have all objected to allow any of their lands to be reserved in the manner required by the [Native Land] Act, and, when strongly advised to secure an inalienable reserve for themselves and their families as provided by the Act, have uniformly said that the provisions of the Act are very good, but they prefer to have their land left in their own hands, to deal with as they like.[664]

With McLean's departure from the role of Native Minister in 1876, the concept of district officers reserving lands to ensure sufficiency had lost its champion. As the Tribunal noted in its report on Whanganui land claims, by this time the district officer scheme was becoming a dead letter.[665] With the Native Reserves Act 1882, however, the Crown briefly revived its wish to take a more active role in preserving sufficient landholdings. The Act empowered the commissioner of native reserves to make submissions during court hearings as to whether Māori owners needed to retain particular lands for their own use; but any such interest proved short-lived, as the commissioner Alexander Mackay was not replaced when he resigned in 1884.[666]

The Government again addressed the definition of reserves and sufficiency in section 15 of the Native Land Purchase and Acquisition Act 1893. It provided that the Crown was required, before completing any sale, to establish whether the vendors had other land 'sufficient for their maintenance'. If not, the Crown was required to reserve such areas of the block as it deemed to be sufficient, or set aside land out of any other Crown block. Section 15 defined sufficiency as not less than 25 acres of first-class land; 50 acres of second-class land, or 100 acres of third-class land per man, woman, and child.

The insertion of quantitative definitions into the 1873 and 1893 Acts presupposed that the Crown possessed the requisite information and the administrative systems to give them effect. If it possessed neither, then there would appear to have been a lack of serious intent, if not irresponsibility on the part of law makers. The Crown could have provided for Māori to exercise their tino rangatiratanga by enabling them to define the area that they required before any purchasing negotiations commenced. Instead, purchase tactics were employed that undermined the capacity of owners to reach a collective decision as to what lands they wished to retain. The Crown took upon itself the responsibility of defining what Māori required for their maintenance and then failed to ensure that the minimum standards it had set were met. The Crown has conceded in this inquiry that, in fact, it lacked the information to enable it to do so.[667] In our view, it also lacked the will.

As for the adequacy of the sufficiency definitions set out in the 1893 Act, a comparison with the Crown's village homestead special settlement scheme in Northland is instructive. Under that scheme, which sought to entice (Pākehā) settlers, they would be allocated a maximum of

50 acres.[668] By 1889 – only three years after the scheme was set up – one-third of the Whananaki allotments, and almost half of the Hukerenui and Punakitere allotments taken up by settlers had been abandoned, suggesting 50 acres (let alone 25) was indeed insufficient for viable farming in Te Raki.[669]

(2) *Was alienation monitored?*

A system for monitoring the alienation of land might have protected Te Raki hapū from being left with insufficient holdings for their current needs and future well-being. We have already noted the Crown's concession that it did not have a 'system' in place by which to balance its land purchases against the acknowledged need of hapū to retain 'sufficient' land. The necessity for such a system was clearly implied in Normanby's August 1839 instructions to Hobson, namely:

- that with respect to land, Māori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves';
- the Crown was not to 'purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence'; and,
- acquisitions by the Crown for future settlement were to be 'confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves', and in all future dealings with Māori, the Crown would provide for and protect Māori interests.[670]

Those instructions imposed a serious obligation on the Crown officials to develop standards that would translate those instructions into purchase practice and to acquire a clear understanding of where purchasing might be undertaken without threatening Māori well-being.

The Native Department may have had some intention to keep track of purchasing when it re-entered the market after a brief hiatus; this was suggested by the provision under section 24 of the 1873 Act for district officers to keep a record of the extent of land held by each hapū, and how much had been reserved, in local reference books. However, according to John Curnin, none were ever produced.[671] Any monitoring seems to have been abandoned by the time Brissenden's purchasing was at full tilt. This is most clearly demonstrated by Brissenden's return, submitted to the department in December 1874; of the 66 Northland blocks under negotiation, in which he gave acreage estimates for only seven. Brissenden observed that surveys were completed or nearly completed for 29 of the blocks. But that still gave him time to enter into yet more purchases, and it left the department with little to go on in terms of judging the location, size, or ownership of all the other blocks. Indeed, for most of the 66 entries in the return, Brissenden identified the sellers only as a single named individual 'and others'.[672]

Nevertheless, officials were aware of the rapid pace with which land was transferring out of Māori hands in the Te Raki district. This is apparent from McLean's reference to representations from his district officer when sounding his warning about acquiring further Māori land in Northland in 1876. McLean told Parliament:

> Viewing the large extent of country that has been from time to time acquired from the Natives in the North, and the representations that have been made by the District Officer, appointed under the Native Land Act of 1873, as to the quantity of land still in the possession of the Natives, it has become a question for consideration whether, after the present negotiations are completed, it would be right, regard being had to the wants of the Natives, for the Government to acquire any more land in that district.[673]

Judge Maning made similar observations to those of McLean in July 1876. He advised Chief Judge Fenton that northern Māori were inclined 'to divest themselves of every acre of land for which they can obtain money', and claimed that they had failed to work with district officers to define and establish reserves. Predicting that many Māori would become landless, Maning estimated that at a minimum of 50 acres per capita, 293,350 acres would have to be reserved for Ngāpuhi; the implication was that

purchasing would have to cease immediately if the law was to be followed.[674] In any case, as noted earlier, he considered five acres per person to be adequate. Four years later, when providing evidence at the Pakiri inquiry, Fenton (who also had advocated the five-acre figure) expressed regret on behalf of both himself and Judge Monro 'that the success of the Government . . . had been so great. We thought they had denuded the Natives of their lands to a much greater extent than they ought to have done.'[675] In essence, the responsibility was seen as entirely that of Māori for selling excessive amounts of land and failing to ensure that they retained sufficient landholdings to enable their future participation in the economy.

The warnings given by McLean and Maning (regardless of whom they held responsible) put the Crown on notice: it had to proceed with care if Māori in the district were to be able to sustain themselves let alone develop their lands (and resources) in the future. From about this time, the Crown was also able to keep a better record of the land still held in Māori ownership. The slowdown of Crown purchasing after 1876 was one factor behind the improvement in record-keeping. So, too, was the advent of local body rating, which required local authorities to know both the location and tenurial situation of Māori land, such as whether it was being leased, within their rating districts. By the end of the 1870s, the Crown was in a position to publish maps showing land tenure across the North Island.[676] These factors led to the inclusion of a higher level of detail in returns that were presented to Parliament in 1886 and 1891. The first identified the remaining area of papatupu land by county; named and provided the area of reserves made under various enactments; and listed all the blocks and the acreages held by Māori as inalienable.[677] The second, published on the eve of the Liberal Government's renewed purchasing efforts, offered a comprehensive summary of tribal lands (by block and acreage) that had not passed through the Native Land Court and were not leased. The returns also detailed Māori land that had passed through the Native Land Court and was leased to Pākehā, including details of area and property-tax valuations; and blocks (by area and property-tax valuations) that had passed through Native Land Court and been retained by Māori. The marked variation in the rates of property-tax valuations indicated a clear appreciation of the attributes of the blocks involved.[678]

Comments made by Native Minister Ballance in 1886 attest to ongoing awareness at the highest levels of Government about the predicament that Māori, particularly those in Te Raki, might face if alienation of their lands continued. Ballance warned that, as a class, landless Māori were 'becoming a danger to the state', and therefore suggested that areas of unoccupied Crown land could be set aside for them. If actioned, he thought this measure would principally benefit Ngāpuhi.[679] However, there was no practical action to ensure that the Crown did not purchase too much land from any given hapū in any given district; neither were there any moves to set aside reserves to prevent that from happening. In 1899, Hōne Heke Ngāpua (member of the House of Representatives for Northern Maori) informed the House of Representatives:

> [All] the Native lands north of Auckland are not really sufficient if divided equally amongst members of the different hapus for their maintenance and support . . . further acquisition of Native lands should be stopped altogether.[680]

(3) *Were restrictions on alienation effective?*

Imposing restrictions on alienation was a further mechanism available to the Crown to meet its obligations of active protection. Generally, such restrictions would take the form of a Native Land Court prohibition on any alienation of the land other than by a lease lasting no more than 21 years. The intended purpose was to give Māori 'time to make management decisions free from pressures for alienation, or to protect the land so that it could only be leased and not sold'.[681] Previous Tribunal inquiries have found, however, that alienation restrictions were ineffective when it came to helping Māori retain their lands over the long term. Given that they blocked developmental opportunities (such as raising funds through mortgages, or selling timber), such restrictions in the title may even have done more harm than good.[682]

Continual tinkering with the legislation concerning alienation restrictions reflected the Crown's inability to strike a balance between its obligation to respect tino rangatiratanga, its duty to protect Māori against injurious land loss, and its own objectives of making Māori land available for settlement and ensuring that the state managed this process and private purchasers ('speculators') were kept at bay.

Prior to 1873, the Native Land Court was supposed to hear evidence on the merits of alienation restrictions before making a recommendation to the Governor. However, Chief Judge Fenton was 'ideologically opposed' to imposing restrictions,[683] while in the early 1870s Judge Maning doubted restrictions on alienability for reserves were either necessary or desirable in areas further away from Auckland. At first, Maning claimed that Hokianga Māori possessed far more land than they could 'possibly improve themselves' and hence should be encouraged to sell some of it.[684] Indeed, in 1870 he appeared to think that Native Land Court judges were already ensuring that Māori retained sufficient land, arguing that the Court 'always places restrictions on the sale of a sufficient quantity of land to ensure to the natives an ample provision for their comfortable maintenance'.[685] However, as we noted earlier, by 1876 Maning would become concerned that the Crown had acquired more land than Te Raki Māori could safely alienate; but, as we read it, his comments about pending Māori landlessness were intended as a rebuke to Māori for their profligacy and lack of forethought rather than as a criticism of the rapacious practices of government purchase officers.

Te Raki Māori responses to alienation restrictions before 1873 were mixed. Given the number of alienation restrictions applied to Te Raki blocks in the late 1860s, there was clearly some acceptance of the principles underlying them. Hugh Carleton, member of the House of Representatives for the Bay of Islands, told Parliament in 1867 that 22,597 acres and 4,194 acres of Hokianga and Bay of Islands land respectively were subject to alienation restrictions.[686] Charles Heaphy's report as Commissioner of Native Reserves lists some 25 Hokianga blocks and 68 Bay of Islands blocks as subject to alienation restrictions in 1871, but only five blocks in Whāngārei and Mahurangi.[687] Among Te Raki Māori, it seems that the main objection to the restrictions was the manner of their implementation, which interfered with their ability to exercise rangatiratanga over their lands. As of May 1870, Judge Maning reported that northern Māori were

> deeply discontented that their land should be made inalienable by act of Parliament, and without their knowledge, and cases have occurred where the inalienability of some of those lands has been both . . . injury to the natives and a cause of discontent against the Government.[688]

The discretion of the Native Land Court to impose restrictions on alienation as it saw fit (but generally at the request of the owners) was subsequently removed by section 48 of the Native Land Act 1873, which required a standard inalienability clause to be annexed to all memorials of ownership the Court issued. However, other sections of the 1873 Act provided for exceptions to the annex requirement: if all owners agreed to sell the land (section 49); or, in the absence of unanimity, if a majority of owners partitioned the land for sale (section 65). As the Waitangi Tribunal observed in the *Turanga Tangata Turanga Whenua* report, the cumulative effect of these two sections was to negate section 48; their inclusion 'meant that the manner of alienation was restricted, but alienation itself was not'.[689] The significance for the Te Raki inquiry district was that during the mid-to-late 1870s, when the Crown's determination to purchase Māori land was at its height, alienation restrictions provided no barrier to the Crown's ambitions. According to Thomas, the years from 1875 to 1880 'more than any other period, laid the foundations for Maori landlessness and shortage of land throughout Te Raki'.[690] For the two years for which we have information, 1875 to 1877, the trust commissioner rejected only a handful of transactions because there were restrictions on the title preventing sale.

The legislation governing restrictions on alienation went through several changes during the late 1870s and 1880s. Section 3 of the Native Land Amendment Act 1878 (No 2) again empowered the Court to recommend

restrictions that could only be removed by the Governor. Section 36 of the Native Land Court Act 1880 then authorised the Court to impose its own restrictions (without the involvement of the Governor). Thereafter, the trend was towards making it easier for owners to have restrictions removed and, in the 1890s, to exempt the Crown from their operation altogether. That trend can first be seen in the Native Land Division Act 1882, which empowered the Native Land Court to remove restrictions when partitioning inalienable land. In a Waitangi Tribunal overview report on Crown policy relating to reserved lands under the Native Reserves Act, J E Murray described this as 'an indirect and relatively easy way of having restrictions removed without further scrutiny'.[691] The second measure was the Native Reserves Act 1882, specifically section 22 which empowered the Native Land Court to vary or annul any restrictions on alienation. The Court, however, had to first satisfy itself that a final reservation was 'amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or partly belongs'.

The Native Land Administration Act 1886, which banned private buyers from directly purchasing Māori land, effectively introduced another restriction on alienation. But the reaction against Ballance's reforms in 1888 led not only to the Native Land Administration Act 1886 being revoked, but also to further weakening of the pre-1886 alienation restrictions by the legislation that replaced it (the Native Land Court Act 1886 Amendment Act 1888). Section 6 of the 1888 amendment Act provided, again subject to sufficiency considerations, that restrictions 'which may hereafter be ordered may be annulled or varied by order of the Court on application by a majority in number of the owners of the land'. Meanwhile, another Act passed in 1888 – the Native Land Act 1888 (repealed by the Native Land Court Act 1894) – provided that existing restrictions could be removed or declared void by the Governor-in-Council on the application of a majority of the owners (section 5). Applicants were not required to set out any grounds or information about the sufficiency of the land they were to retain.

The 1,348-acre Oue block in Hokianga provides an example of the ineffectiveness of placing restrictions on alienation in the title. When title had been awarded in 1868, the block was made subject to alienation restrictions, which stood in the way when the Crown had first considered acquisition in 1872. However, the Crown started acquiring interests in the block in 1874, and it completed the purchase of all but 19 acres (split between three reserves) in 1876.[692] As for the purchase by George Holdship of the Otangaroa 2 block (also restricted), this was achieved in 1876 by half the owners having the block subdivided into two, at which point they unanimously agreed to the sale of their 3,439 acres. The sale was confirmed by the Native Land Court on 3 November 1876 and the trust commissioner's certificate was dated 18 January 1877.[693]

At the time when Crown pre-emption was briefly restored in 1886, a return presented to Parliament showed 137 inalienable blocks, totalling 73,160 acres, in the three counties of Bay of Islands, Hokianga, and Whāngārei (although as the return still included the 1,348-acre Oue block, its accuracy is open to question).[694] Only 6,591 of the 73,160 acres had been added since 1880 (that is, while the imposition of restrictions had been discretionary).[695] Considering that 38,163 acres of Te Raki land had passed through the Native Land Court between 1881 and 1885, the uptake of alienation restrictions appears to have been slow.[696] This may reflect the lack of confidence among Māori that alienation restrictions would protect their ownership, while they might interfere with their ability to manage their lands.[697]

One of the Whāngārei blocks listed in the 1886 return was Whauwhau Pounamu, a small block that is the subject of allegations in the Karaitiana whānau claim. Again, the history of its alienation illustrates just how easily alienation restrictions could be ignored or circumvented. Comprising just 49 acres, Whauwhau Pounamu was one of many small blocks for which title investigations occurred in the 1860s. At the May 1867 hearing, Hepi Monariki and Tipene Hari were both placed on the title, but not before Monariki had stated that 'the land belonged to the whole of us' and asked for restrictions to be 'placed on the sale of this land for the benefit of the children'.[698]

An official report on cases that passed through the Native Land Court to June 1867 indicates an alienation restriction (as set out in the Native Lands Act 1866) was placed on the title, although this was not recorded in the minute book.[699] Eighteen years later, by which time Tipene Hari had died, his son-in-law and Hepi Monariki reached agreement about partitioning the block. It seems the existence of any restriction was forgotten; no mention was made of it. In any case, the restriction came to an end with the block's partition. Sixteen of the 23 acres in Whauwhau Pounamu 1, and all of Whauwhau Pounamu 2, were sold to James Whitelaw in September 1886.[700]

Throughout the 1880s, Māori views on alienation restrictions remained mixed, reflecting the unenviable position in which they had been placed as a result of government land legislation and purchase policies. Māori calls for control over their own lands grew more emphatic. For example, in 1888 a hui at Pūtiki of rangatira from across the North Island called for the continued operation of native committees. The rangatira wanted them to have powers equivalent to those of the Native Land Court. They stipulated that – subject to conditions covering land sufficiency and a 200-acre reserve (for contested alienations) being met – Māori should 'have full authority to deal with their own lands, as to sale, lease or otherwise'.[701] However, there seems to have been an acceptance among Māori that some alienation restrictions were better than nothing. This was especially so once the Liberals began moving to resume Crown purchasing on a large scale. In 1892, Eparaima Te Mutu Kapa (member of the House of Representatives for Northern Maori) opposed the removal of restrictions on alienation, fearing that further land loss would follow.[702] It is also notable that when Wiremu Komene – whose keen questioning of Seddon during the Premier's North Island tour in 1894 was noted in section 10.3.2(5) – challenged several provisions of the Native Land Purchase and Acquisition Act 1893, the alienation restrictions section was not among them.[703] Meanwhile, Hōne Heke (member of the House of Representatives for Northern Maori) told Parliament in 1895 that the restrictions on leasing should be removed to help Māori facing rates demands.[704]

Although alienation restrictions were changed again in the 1890s, this was done to meet the Crown's needs rather than those of Māori landowners. The changes were consistent with the advice of Native Department Under-Secretary Lewis to the Rees–Carroll commission in 1891 that there was no such thing as absolute inalienability.[705] He also claimed that the Crown, when purchasing land that was subject to restrictions on alienation, was 'practically compelled to break the law'; otherwise, it could not purchase at all, 'which is extremely unsatisfactory where the land is required for settlement'.[706] Possibly in response to Lewis' advice, section 14 of the Native Land Purchases Act 1892 and section 12 of the Native Land Purchase and Acquisition Act 1893 provided for the removal of restrictions on land under negotiation for sale to the Crown. The Native Land (Validation of Titles) Act 1893 also allowed the Native Land Court to validate any irregularities that had occurred in the removal of restrictions. Finally, section 52 of the Native Land Court Act 1894 empowered the Court to remove or vary any restrictions on alienation with the assent of the owner or one-third of the owners, 'on proof that every such owner has sufficient land left for his support'.

Thus, during the second period of intensive purchase activity in Te Raki – namely 1895 to 1899 – the Crown's programme was unhindered by both private competition and whatever alienation restrictions had been previously placed on the title of blocks. Indeed, many of the blocks of 1,000 acres or more that had featured in the 1886 return of inalienable land scrutinised by Parliament – Otarihau, Te Awaroa 1, Rotokakahi, Te Tapuwae 3, and Te Ruatahi – were subject to Crown purchases during this period.[707] Other blocks that were alienated in spite of restrictions included Parahirahi (which was discussed in section 10.4.2(4)(a)) and Horahora North and South.

(4) *Horahora*

According to Te Waiariki, Ngāti Korora, and Ngāti Takapari claimants, the alienation of the Horahora block demonstrated the detrimental double impact caused by the imposition of Native Land Court processes and Crown purchase practice.[708] In 1877, at the request of Hohepa

Senior Waitangi Tribunal researcher Dr Barry Rigby presenting during hearing week four at the Turner Events Centre, Kerikeri, September 2013. Dr Rigby carried out extensive research on Crown purchasing and Māori land alienation in the Te Raki district.

Mahanga and Kereama Te Peke, the Native Land Court investigated the title to Horahora South and Horahora North. The Court awarded the 1,986-acre Horahora North block to nine owners, and the 1,336-acre Horahora South block to 28 owners. Using sections 48 and 49 of the Native Land Act 1873, the Court put restrictions on the title of both blocks, barring sale and lease for more than 21 years.[709]

Despite these alienation restrictions, in January 1895 the Crown land purchase agent Christopher Maxwell sought authorisation to take up an offer to sell interests in the Horahora South block.[710] We note that the Crown listed this block in the *New Zealand Gazette* on 18 July 1895 as under negotiation for Crown purchase 'in pursuance to the provisions of the "Native Land Purchases Act 1892"'.[711] Historian Dr Barry Rigby argued that Crown officials may have felt empowered by section 76 of the Native Land Court Act 1894, which pertained to 'Rights of the Crown' and stated: 'Nothing in this Act shall limit the power of the Crown to acquire land from Natives, and any deed shall be given effect to notwithstanding any law in force to the contrary.'[712]

Given the surplus of land available to the Crown and its pre-emption policy, Maxwell reckoned that the land in Horahora South – although worth 10 to 15 shillings per acre – could be bought for five shillings per acre. Following the same logic, the Surveyor-General recommended a purchasing price of three to four shillings per acre, and in February the Minister of Lands approved four shillings per acre across the entire block. In July 1895, the *New Zealand Gazette* added Horahora South to its list of blocks under negotiation for Crown purchase.[713] By purchasing individual owners' interests, the Crown ultimately managed to acquire 10 out of 28 shares. In October 1896, the Crown then partitioned its 477-acre entitlement out of the block as Horahora 2A, leaving the 18 non-sellers with the remaining 858 acres, which became Horahora 2B.[714]

No reserves were made for the sellers, and there is no

record in the Court minutes of any assessment of the sufficiency of the remaining lands for Māori in Horahora. According to Armstrong and Subasic, the purchase of Horahora 2A (like all of Maxwell's endeavours) exemplifies the overriding aim of Crown purchase policy in the north at this time: to acquire any remaining areas suited for settlement at the lowest price. Little or no attention was paid to Māori economic aspirations or the retention of land in Māori ownership.[715] Speaking of the land loss that his tūpuna had suffered, Pereri Mahanga (Te Waiariki, Ngāti Korora, and Ngāti Takapari) attested to their territorial integrity being 'shattered by the Crown'.[716] For the Crown, by contrast, the Horahora purchase illustrates the practice of circumventing title restrictions and acquiring blocks for much less than their true value.

(5) *Were ample hapū reserves created?*

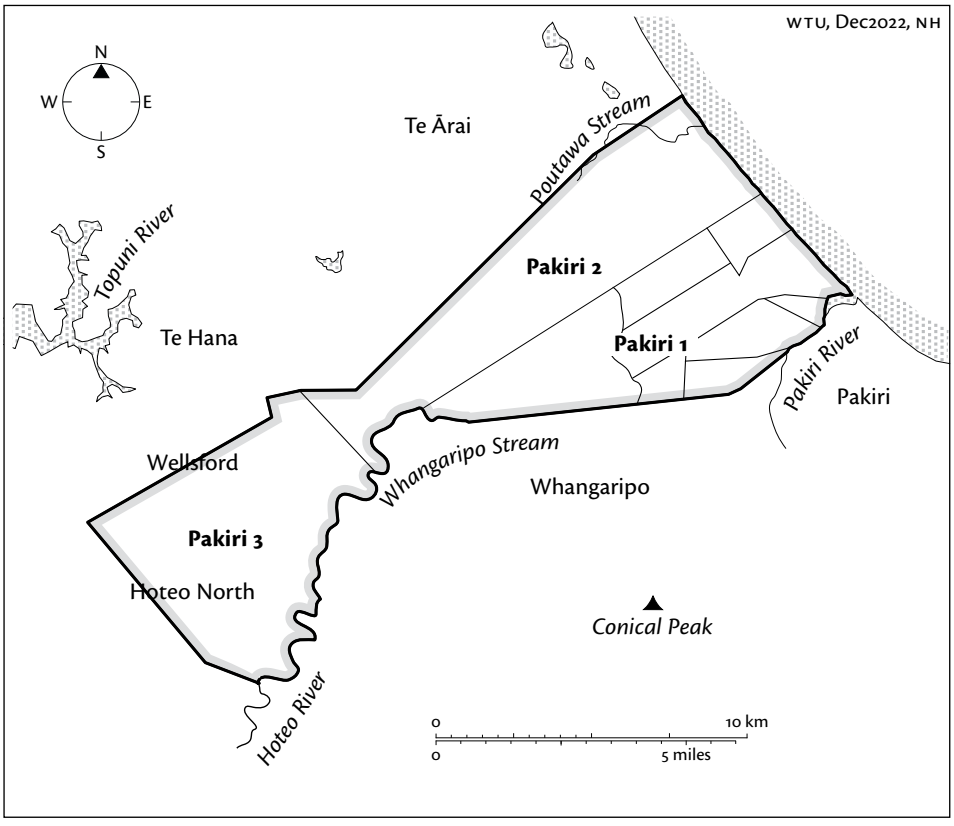
In the preceding discussion of protection mechanisms, we saw how section 24 of the Native Land Act 1873 would have allowed district officers to effectively ring-fence Māori land for future use, but this provision was rarely used. We also saw how applying alienation restrictions at the time of title hearings could also result in 'Native Reserves', but that such protections had limited meaning when the restrictions were so easily evaded. We now turn our attention to the reserves more closely associated with Crown purchasing between 1865 and 1900; that is, areas cut out or excluded from purchases. This was precisely how the small number of reserves generated from pre-1865 purchases and the settlement of old land claims had been created.

According to Dr Rigby, during the period from 1865 to 1900, the Crown created just 27 reserves in Te Raki with an aggregate area of 5,578 acres. This amounted to less than one per cent of the total of 588,707 acres that it acquired during that period. Moreover, those 27 reserves were all established during the 1870s.[717] The tiny number and limited area (an average of 207 acres) of reserves created out of Crown-purchased blocks in these years suggests an ad hoc and negligent approach by the Crown that was utterly inconsistent with ensuring that Māori retained the land required for immediate sustenance, the maintenance of cultural obligations, and future development. As a result of this negligence, promised reserves were not always granted or provided where they should have been (as demonstrated by the cases of Te Arawhatatotara and Tunapohepohe, described later). Additionally, reserves were not safe from future purchase. By 1880, the Crown had acquired the 882-acre Ngatahuna reserve, which was associated with the purchase of Otonga 1; the 417-acre Te Karu and the 159-acre Waimahutahuta reserves, both set aside out of the Whataipu block; and 241 out of the 250 acres in Maroparea reserve, created out of the Punakitere block.[718]

In the 1890s, just one reserve was established as part of the Crown's purchasing.[719] At the very time the Te Raki Māori land base was dwindling dangerously (and the powers of the Court and Crown over its alienation were strengthened), the provision of reserves remained utterly inadequate. In part, this was a matter of practicality; given the Crown was dealing with each owner of shares separately, it could not easily have reached agreement with every owner as to where a reserve might be located (unless it did so at the start of the process at a hui with all owners in attendance).[720] Patrick Sheridan, the chief native land purchase officer, said in 1895 that if part of a block was to be excluded from sale, then the remaining owners would have to absorb it into their interests when the block was eventually partitioned. He reminded Gill of this policy when writing to him about provisions for reserves in a Te Urewera transaction:

> if they [the Māori sellers] imagine we are going to pay them in full for the land and then give it back to them you had better let them understand that that is not the way we do things nowadays.[721]

In fact, as McLean's 'repurchase' policy had demonstrated, this had never been the way things were done; essentially, Māori were expected to pay for their own reserves. The Crown's approach was to transfer its protective responsibilities to the remaining owners – a practice that was especially unfair when the owners who had decided, or were in a position to retain their interests, were in the minority.



Map 10.4: The Pakiri block.

Several of the flaws in the Crown's approach to creating reserves were apparent in the 1875 Te Arawhatatotara purchase in Hokianga. The purchase took around five years to finalise, with a significant amount of confusion between Māori and the Crown over what had been agreed. David Armstrong observes that the Crown's purchase of Te Arawhatatotara commenced in August 1874, when Brissenden paid £30 tāmana in relation to the adjacent Punakitere and Te Arawhatatotara blocks to Pehikura of Ngāti Moerewa and three others. Charles Nelson, who was involved in the payment, later asserted that he had agreed to set aside two reserves within the two blocks totalling around 490 acres. He noted that Matenga Taiwhanga had forgone payment, with the expectation that he would instead retain ownership of the reserves.[722]

In April 1875, the 4,116-acre Te Arawhatatotara block came before the Native Land Court, where ownership was disputed by several parties, including Hare Rewiti Puataata of Ngāti Wake, Hone Moka of Ngāti Pākau, Hōne Mohi Tāwhai of Māhurehure and Ngāti Pākau, and Pehikuru of Ngāti Moerewa. Armstrong noted that several reserves were indicated on the plan before the Court, including a 250-acre reserve at Maroparea on the eastern boundary of the block. Hare Puataata claimed that the block was owned by Te Matenga Taiwhanga, Hirini Taiwhanga, and nine others. Pehikura's claims centred on the western side of the block and did not oppose that of Puataata. Tāwhai claimed a part of the block with Hone Moka, which included the reserves claimed by Pehikura.[723] To resolve these conflicting claims, the Court partitioned

Tribunal site visit to Matakā, the sacred maunga of Ngāti Torehina ki Matakā, overlooking Pēwhairangi (the Bay of Islands) during hearing week 14 in June 2015.

the block into two, creating a boundary to separate the lands belonging to the Tāwhai and Hone Moka party from those belonging to Pehikura and Puataata. The eastern section, Te Arawhatatotara 1, was awarded to Pehikura and Puataata, of whom Armstrong observed, 'it is clear that these two chiefs were representatives of a wider community of owners, and had effectively been nominated to conduct a pending sale of the land to the Crown.'[724] Te Arawhatatotara 1 was sold to the Crown for £353 the following day (which included the £30 tāmana Brissenden had paid the previous year).[725] Notably, the purchase deed did not mention any reserves.[726] Armstrong records that survey costs totalled £95, or a further 27 per cent of the purchase moneys.[727]

Te Arawhatatotara 2, comprising the western portion of the parent block, had its title hearing on 11 November 1876 to ascertain 'who of Ngatipakau are entitled to claim'.[728] Armstrong states that, after extensive evidence was provided to the Court, a memorial of ownership was issued to 40 owners, including Hone Moka, on 15 November 1876.[729] The Crown purchased Te Arawhatatotara 2 the next day for £368.[730]

The same day as the Crown's purchase of Te Arawhatatotara 2 was confirmed (16 November 1876), Te Matenga Taiwhanga and others wrote to the Native Minister stating that government officer Nelson had agreed reserves should be made in Te Arawhatatotara 1 (which the Crown had purchased the year before). He apparently received no response, as he again wrote in February 1877, asking that 400 to 500 acres be set aside as had been agreed and as they had been promised. It appears that around this time, Native Under-Secretary Clarke directed Preece to carry out any arrangements regarding reserves that had been made. When Preece wrote back on 28 March 1877, however, he said he was unaware of any reserves on Te Arawhatatotara 1, pointing instead to reserves on the Punakitere block, which the Crown had also purchased in 1876. By May 1877, Clarke had taken steps to have the reserve at Te Arawhatatotara set aside by the Auckland Waste Lands Board.[731]

District Officer Webster visited Kaikohe in September 1877 to meet with Hirini and Te Matenga Taiwhanga and arrange for a survey of the reserves. At this meeting, Webster argued that the owners had failed to mention reserves during the Native Land Court hearings in 1876. As a result, they had received payment for the whole block, and would therefore have to bear the survey expenses for the land to be now reserved.[732] These comments were not correct. Taiwhanga had not received any of the tāmana payment from Brissenden and would have reasonably expected the Crown to carry out its promise to set land aside. Furthermore, the Māori owners had in fact indicated their wish for a number of reserves to be established during the Native Land Court hearings. The Maroparea reserve, which was identified for the Court in 1876, was the same as the area Te Matenga had sought to be kept aside.[733] In purchasing the whole block, the Crown had both failed to recognise the reserves identified in court and to deliver on its earlier promises.

The Crown's belated provision proved short-lived. By 1878, Matenga had informed the Crown that he wished to sell the reserve land to the Government for £100, as it had taken too long for it to be set aside; in the interim, Matenga explained, he had grown old, his daughter had died, and he had gone to live in Maketu.[734] In 1880, following further letters from Matenga, Nelson finally confirmed to Land Purchase Under-Secretary Gill that a 250-acre reserve called Maroparea had been created from Te Arawhatatotara 1, and a 240-acre reserve named Pukututu from the adjacent Punakitere block. The following month, Gill instructed Nelson to purchase both reserves.[735] In October of 1880, 241 acres of the Maroparea reserve were purchased by the Crown, with nine acres held back as a Native reserve.[736]

Similarly, a key grievance in the Ngāti Torehina ki Matakā hapū claim is the Crown's lack of reserve provision – in this instance, its purchase of the entire Tunapohepohe block, without any land being reserved at all. In submissions, the claimants argued that the Crown must have employed underhand methods to obtain the owners' agreement to part with a block containing cultivations and the sacred maunga Matakā in return for £244 2s 6d (or 2s 3d per acre for the 2,170-acre block). In the Native Land Court title investigation held in April 1875,

Haroe Morunga put forward Ngāti Torehina ki Mataka's case, testifying that they did not reside on the block but had cultivations there. According to the claimants, the presence of such cultivations was 'viewed by the Native Land Court as [a] key poin[t] when establishing mana and resolving disputes'.[737] Haroe Morunga's evidence was then countered by Matenga Taiwhanga, who asserted an ancestral claim on behalf of Ngāti Kura.[738] No survey of the block had been carried out, so the Court made do with a certified tracing.[739] After the cross-examination of witnesses, Judge Monro awarded the block to the four Ngāti Torehina ki Mataka owners named by Haroe Morunga. No protections were requested, and none were put in place.[740]

Few details are on record of the subsequent Crown purchase of the Tunapohepohe block, although published correspondence reveals that Brissenden had made a £50 advance on the block by mid-1875. At the time, Brissenden reported that he had negotiated the rate of 1s 6d per acre for the whole block.[741] In September 1876, H T Kemp had completed purchasing it for the Crown, and the purchase was gazetted in April 1878.[742] Despite the presence of the maunga Matakā and Ngāti Torehina ki Mataka cultivations on the block, no reserves were created.

(6) *Was fraud prevented?*

For much of the period from 1865 to 1900, two agencies were responsible for vetting Māori land transactions for fraud: the Native Land Court, and the trust commissioners appointed under the Native Lands Frauds Prevention Acts. Here, our main focus is the latter, as fraud prevention was their primary function (unlike the Court, for whom it was just one of many tasks). Nevertheless, it is appropriate to briefly review the Court's responsibilities, since it was in effect the first line of defence.

In cases where Māori wished to sell land, section 59 of the Native Land Act 1873 required the Native Land Court to 'make inquiry into the particulars of the transaction'. Subsequently, 'on being satisfied of the justice and fairness thereof, [and] of the assent of all owners to such sale', the Court could endorse the memorial of ownership 'to the effect that the transaction appears to be bona fide, and that no difficulty exists in respect of the alienation of the land comprised in such Memorial'. The provision did not specify how to assess whether a transaction had been conducted in 'justice and fairness'or any remedies if it proved not to have been. Although the Act was not repealed until 1886, Paul Thomas could find only 'sporadic references' to the Court acting under section 59 in Te Raki, and nothing to suggest it carried out any thorough inquiries.[743] From 1886 onwards, the Court's duty to establish that a transaction was bona fide was reiterated several times: in section 24 of the Native Land Administration Act 1886, section 4 of the Native Land Court Act 1886 Amendment Act 1888, and section 4 of the Native Land Laws Amendment Act 1890. Again, no remedies were provided.

The Native Land Court Act 1894 contained an apparent revision of the Court's role in inquiring into and confirming alienation particulars when land was sold. Its inclusion probably reflected the abolition of the position of trust commissioner by the same Act. Section 53(1) specified that the Court had to be satisfied that a transaction was not:

- prohibited by law;
- contrary to equity and good conscience;
- a breach or in contravention of any trust to which the land was subject;
- in contravention of any restriction on alienation;
- made 'in consideration wholly or partly, directly or indirectly, of the supply, or promise of supply, of any intoxicating liquor, or weapons or munitions of war'; or
- subject to a notice under the Native Land Purchases Act 1892 or the Native Land and Purchase and Acquisition Act 1893.

Section 53(2) set out five further requirements, namely that:

- the title had been ascertained;
- the consideration had been paid or given;
- the vendor ('other than a half-caste') had 'sufficient land left for his support,' while any half-caste had 'sufficient means of support derivable from land or otherwise';
- the deed carried a plan of the land, a certified statement in the Māori language setting out the effect

of the deed, and confirmation that effect had been explained by a licensed interpreter to each vendor before signing; and

- the signature of each vendor had been attested by a named official.

No evidence was presented to us about how these 'Confirmation of Alienations' provisions in the Native Land Court Act 1894 were administered. How the Court interpreted and applied the requirements – particularly those relating to 'equity and good conscience' and 'sufficiency' – is not known. As a result, whether these provisions offered effective protection cannot be established, although their inclusion indicates that the Crown recognised its responsibility to ensure land purchases were fair and legitimate.

We now turn our attention to the trust commissioners, a role that was created by the Native Lands Frauds Prevention Act 1870. This Act emerged from an 1870 parliamentary select committee consideration of the Native Reserves Bill. Supporters of the proposed legislation had called for an independent check of the Native Land Court to guard against sales breaching intended trusts, fraudulent dealings, and improper payments for the purchase of lands from Māori.[744] Two concerns predominated: first, that settlers were endeavouring to acquire land through foreclosing on mortgage debts incurred by Māori; and secondly, that those named as grantees under the Native Lands Act 1865 were placed in the legal position of absolute owners, enabling settlers to acquire Māori land through 'inequitable bargains'. Minister of Justice Sewell, when moving the Bill's second reading, remarked:

> He could conceive no greater danger to the Colony than for large masses of Natives to be denuded of their lands and pauperized. The next step to pauperization would be brigandage, and that would be fatal to colonization.

The object of the Bill was, therefore,

> to prevent, as far as possible, the maladministration of lands vested in trustees for the Natives, in cases where trusts had been created in the names of individual proprietors, but really for the benefit of Native communities.[745]

Sewell went on to comment:

> We must not attempt to take the Native under our protection, controlling their free agency in dealings with their own lands. That would be equally resisted by Europeans and Natives. On the other hand, it was necessary to extend to the Natives the same protection which we provide for ourselves in our own tribunals. What was meant by this Bill was to declare that transactions which were plainly against law and equity should be invalidated; to provide means by which the circumstances attending those transactions should be investigated; and to provide an easy, cheap, and speedy process to which parties, whether Natives or Europeans, might resort to determining questions springing out of these transactions.[746]

The preamble to the Native Lands Frauds Prevention Act 1870 referred to 'frauds and abuses in connection with the alienation of land by Native proprietors' and noted that 'lands held by them on trusts have been improperly disposed of and dealt with'. However, the Act had a wider application. Section 4 – which applied to all land in Māori ownership, whether subject to an underlying form of trust or not – provided that no alienation would be certified as valid if 'contrary to equity and good conscience'; or if the alienation contravened any trusts affecting the land in question; or if the supply of alcohol, arms, or stores had formed part of the payment. Section 5 required the trust commissioner to investigate: the circumstances of every alienation; whether the parties to the transaction understood its nature; the nature of the consideration and whether it had been paid; and 'that sufficient land is left for the support of the Natives interested in such alienation'. While the Act appeared to provide Māori with a measure of protection, it did not define sufficiency (which was to remain undefined until the Native Land Act of 1873).

Previous Tribunal reports have criticised the Native Lands Frauds Prevention Act 1870 and its implementation. *The Hauraki Report*, for example, concluded that the

reports produced by trust commissioners were merely a 'formality . . . especially after the amendment Act of 1881 had introduced pro forma statutory declarations as the way of ascertaining relevant facts'.[747]

In *Turanga Tangata Turanga Whenua*, the Tribunal concluded that the Act, had it been rigorously applied, would have largely enabled the Crown to meet its obligation of active protection, but that the commissioners charged with its implementation were insufficiently resourced and lacked the necessary powers.[748]

In *He Whiritaunoka*, the Tribunal concluded:

> With just five part-time trust commissioners covering the whole of the country, they could not undertake detailed investigations, and some were notoriously lax in fulfilling their duties.[749]

In his instructions to trust commissioners in 1871, Sewell noted the Act was intended to ensure 'a system of fair dealing' in land transactions with Māori. But he also advised them that their 'inquiries need not, in ordinary cases, be too minute'.[750] In March 1871, Sewell again advised commissioners that, while the Government was

> most anxious that the equitable rights of all parties should be preserved by means of the provisions of this Act, care should be taken not to permit an over scrupulous anxiety to prevent inequitable bargains from interfering with the legitimate transfer of property.[751]

Of particular moment was Sewell's direction to the effect that if the title granted by the Court did not disclose a trust, then none was to be implied, meaning that where the ten-owner rule had been applied, all other rightful owners who had been left off the title were denied such protection as the commissioners might have offered.[752] His astonishing advice that trust commissioners should avoid inquiring too closely into the equity of the transactions they were supposed to be monitoring casts serious doubt on the integrity of the Crown's intentions and the likely effectiveness of this measure.

Only two of the reports prepared by Trust Commissioner T M Haultain of Auckland, covering just that province, were published. During the year ending 30 June 1876, Haultain's office received 210 deeds. Certificates were refused in five cases: three because the land was inalienable except by lease for 21 years, and two because the land was held by grantees in trust for a tribe. Haultain's report made no reference to the matter of 'sufficiency'.[753] In his second report, for the year ending 30 June 1877, Haultain recorded that he had received 225 deeds and again, only five had been refused certificates.[754] Haultain did not elaborate on how his office managed to deal with 435 deeds in two years while complying with the exacting requirements of section 5 of the Native Lands Frauds Prevention Act 1870. The reasons given for refusing these 10 certificates suggest that he focused on the legal status of the lands involved, particularly whether restrictions against sale were entered on the title. All other matters, including whether transactions had been conducted with 'sincerity, justice, and good faith' as Normanby had directed in 1839, or in 'equity and good conscience' as stated in Native Lands Fraud Prevention Act 1870,[755] were evidently beyond the capacity of trust commissioners to assess.[756]

In 1886, G E Barton, appointed by the Government to investigate some particular instances where restrictions on alienation had been removed, concluded 'that the system of inquiry before the frauds prevention commissioners [was] useless for the prevention of fraud'.[757] That same year, Native Minister Ballance claimed that it was

> notorious that the Frauds Commissioners in the past have performed their duties in the most perfunctory manner, and passed transactions when the consideration was a mere bagatelle – 'an iron pot' . . . In this way large tracts of land are passed into the hands of private owners.[758]

In his evidence before the 1891 Native Lands Laws Commission, the Native Department's Under-Secretary, T W Lewis, also suggested that, while the Native Lands Frauds Prevention Acts had been intended to protect

Māori, in fact they had 'inflicted serious loss upon them'. Purchasers, he suggested, adjusted the price they were prepared to pay to take into account the costs of commissioners' investigations. Given that 'lands are purchased from the Natives at very much below what would be the value of similar land in the hands of Europeans', the outcome was:

> the Frauds Prevention Acts have certainly the effect of reducing the price of the land of the Maoris and so depriving the Natives of at least 25 per cent of the monetary value of their land.[759]

Insofar as trust commissioner investigations were concerned, Lewis aptly noted that Māori secured 'a pennyworth of protection at a cost . . . of a pound'.[760]

An additional peril of informal trust relationships, and one which should have justified trust commissioner protection, was that the sense of obligation of named owners to those who had failed to find their way into the title could diminish with the passage of time and (more especially) generations. In the case of Kauaeranga and Ngaturipukunui, the two successors to the original owner, Te Tirarau, had been persuaded that selling the blocks to the Crown would alleviate their poverty. As we noted in chapter 9 (see section 9.6), the sale went ahead in late 1893 despite complaints. These included a petition to Parliament from Hira Te Taka and 65 others, stating that Te Tirarau had held the blocks in a trust relationship and had only become sole owner to facilitate a lease with a timber-milling company 16 years earlier.[761] Rather than trying to rescind the sale, Parliament instead made provision in sections 2 and 3 of the Ngaere and other Blocks Native Claims Adjustment Act 1894 for half of the purchase money to be paid to those whom the Native Land Court could identify as having interests in the blocks. This investigation was undertaken by Judge Edward Gudgeon, who determined that it should be divided among 32 people. A subsequent request from Hori Rewi for a reserve to be created for the non-owners was unsuccessful.[762]

Historian J E Murray concluded:

> It is difficult not to read a certain ambivalence, indeed, a half-heartedness, in the general instructions to trust commissioners. The Crown's intention was to protect but not to protect with much rigour.[763]

Moreover, the Crown's own purchases (such as Kauaeranga and Ngaturipukunui) were specifically exempted from the commissioners' scrutiny by section 13 of the Native Land Laws Amendment Act 1883 and section 8 of the Native Lands Frauds Prevention Act 1881 Amendment Act 1888. In *He Maunga Rongo*, the Tribunal concluded that it was 'not consistent with the Crown's honour that its purchase officials should be held to a lesser standard than private buyers', a conclusion repeated in *He Whiritaunoka*.[764] We share that view, especially in light of the widespread criticism of the system by the Crown's own officials. The following sections comprise two further case studies to help address the question of interventions to prevent fraud.

(a) Pakiri

The acquisition of the Pakiri block in Mahurangi was one Crown purchase in which a trust commissioner intervened to doubtful effect. In 1872, the storekeeper John McLeod had approached the Crown about purchasing in the Pakiri block. He hoped that the proceeds of a sale could be used to clear the debt of more than £290 that he was owed by Hori Te More, the father of one of Pakiri's three owners.[765] The following year, John Sheehan, acting as lawyer for both Te More and McLeod, arranged for the land purchase agent Thomas McDonnell to initiate the purchase. McDonnell did so by paying £10 to Arama Karaka on behalf of another Pakiri owner, Wi Te Apo, who was a minor. Sheehan was also a trustee for Wī Te Apo, compounding Sheehan's conflict of interest. A further £20 payment was made to Hori Te More in the expectation that he would succeed to the interest of his son, who had died in the interim.[766] Brissenden then took over in 1874, buying out a timber lease over the block for £450, and signing a deed for the purchase of two-thirds of the block with Hori Te More and Arama Karaka, whom he paid £800, half of what had been agreed. Under this

arrangement, the remaining share of the block was to be retained by the non-selling owner, Rāhui Te Kiri.[767]

Trust Commissioner Haultain held an inquiry into the transaction in May 1876, hearing evidence from Charles Nelson, Edward Brissenden, Arama Karaka, Hori Te More, and Te Hemara Tauhia. By this time, Native Minister McLean had already decided not to complete the purchase. The department's Under-Secretary H T Clarke had alerted him that it was illegal, given that the Maori Real Estate Management Act 1867 did not accord trustees the power to sell the interests of minors.[768] Unsurprisingly, Haultain withheld his certificate, finding that neither Hori Te More (who had not in fact been named as his son's successor) nor Arama Karaka had the right to sell interests in Pakiri.[769] But, in March 1877, Haultain produced a second report, this time for John Sheehan, now the Native Minister. Haultain suggested a twofold way to circumvent the obstacle to purchase of the Pakiri block: Parliament could pass legislation validating the sale of minors' shares by trustees and Rāhui Te Kiri could be persuaded to agree to the sale.[770] The Maori Real Estate Management Act Amendment Act 1877 fulfilled the first part of this suggestion, while the need for Rāhui Te Kiri's assent to the sale was removed by the 1880 partitioning of the block into three parts. After that, the Crown completed the purchase of Pakiri 2 and 3, paying the remaining £800 in 1881.[771]

(b) Opuawhanga

The transactions involving Opuawhanga (especially Opuawhanga 2) are a key grievance raised in Marie Tautari's claim on behalf of Te Whakapiko hapū.[772] The Native Land Court heard the title application for the block in May 1867, and divided it into four partitions: Opuawhanga 1 through 4, which were awarded to three, two, one, and three owners respectively.[773] The Whangaruru Rūnanga had previously recognised that Pita Tunua should represent his hapū's interests in Opuawhanga 2, and this was reflected in a case put to the Native Land Court. Parore, however, objected that his interests had been omitted and that he, too, had an ancestral claim to Opuawhanga. Pita Tunua accepted Parore's claim, and they were both named as owners in Opuawhanga 2.[774] Only Opuawhanga 4 had been surveyed, and therefore the Court made temporary orders for the other three blocks, which would stand until they were surveyed. The subsequent surveyed areas for Opuawhanga 1 to 4 were determined as 9,450 acres, 6,784 acres, 1,782 acres, and 15,157 acres respectively.[775]

According to Thomas, the inquiry into ownership of these blocks was 'quick and perfunctory', and he noted the difficulty in ascertaining the extent to which hapū and iwi agreed with or were even aware of the land transactions that followed.[776] Armstrong and Subasic stated that tāmana had been paid for the Opuawhanga blocks in 1866 by John White.[777] The surveyor Frederick Newberry testified during the Opuawhanga 2 hearing that Pita Tunua had not received any of that payment, and as a result had initially obstructed its survey.[778]

A final Opuawhanga payment of £1,533 was arranged in Auckland in May 1870.[779] The Auckland Provincial Government which had become responsible for purchasing land in Te Raki after the dismantling of the Native Land Purchase Department now considered the blocks 'to be fully and finally acquired'.[780] However, Auckland Province's Opuawhanga purchase file contains receipts for only Opuawhanga 1, 2, and 4. Similarly, Marie Tautari found payments only for Opuawhanga 1, 3, and 4 in the provincial government ledger books covering 1867 to 1875.[781] A few years later allegations were made that the signatures of some owners (including Ngahuia and Mokau) had been forged on the deeds, but who the alleged perpetrator was remains unclear.[782] The final payments and the associated forgery had all occurred prior to the passage of the Native Lands Frauds Prevention Act 1870, before which time, as Haultain observed in 1871, the only avenue for seeking redress would have been through the Supreme Court.[783]

After the original Opuawhanga purchase deeds were lost in a fire in 1872, Crown purchase agent Nelson was tasked, in 1878, with encouraging the original owners to sign replacements. It is at this point, it seems, that Pita Tunua and Parore were brought to accede to the Crown's

Claimant Marie Tautari presenting evidence on behalf of Te Whakapiko hapū of Whananaki at hearing week five, Forum North, Whāngārei, September 2013.

purchase. They did so at a Whāngārei hotel, with the former receiving a £6 payment to cover his costs.[784] However, some of the other owners (including Ngahuia and Mokau) refused to sign the new deeds. Their opposition included concerns about whether the right people had been paid for the blocks and the forgery of signatures on the original deeds.[785]

Petitions continued to be received in the following decades from owners who had not received payment.[786] In 1881, Pita Tunua and three others petitioned Parliament seeking the return of half of the Opuawhanga 3 block. They asserted that Nelson had misled Tunua in encouraging him to sign the deeds when he had not been paid for the block. However, Parliament considered that no payment was due, and that the signed deed was the end of the matter. This remained the Crown's position when another petition raised the question of non-payment in 1903.[787]

10.5.3 Conclusions and treaty analysis

(1) *'Sufficiency'*

Through the treaty partnership, the Crown accepted an obligation to ensure that Te Raki Māori retained land sufficient for their existing and future well-being. This obligation clearly required the Crown to go beyond simply providing for minimum subsistence when transacting land. To meet a treaty-consistent standard, the Crown needed to ensure that hapū retained enough land for their communities to continue to flourish as polities strong in their cultural and social identity for generations to come. And they must retain enough productive land for present and subsequent generations to be able to engage with and benefit from the colonial economy on their own terms (and as they had been led to expect).

Several nineteenth-century statutes used the term 'sufficiency' to characterise the amount of land Māori needed to retain, and both the Native Land Act 1873 and the Native Land Purchase and Acquisition Act 1893 included quantitative definitions of what 'sufficiency' was considered to comprise.[788] The term itself reveals a miserly approach quite out of keeping with the importance of land to the economic future of Māori. The Tribunal has repeatedly found that the statutory definitions (even though expressed as minimum requirements) were patently inadequate for anything other than bare subsistence – a finding borne out in Te Raki not only by the experiences of Māori but also by the dismal outcome of the Crown's attempts to encourage Pākehā settlement by allocating 50-acre holdings in the 1880s.

Ultimately though, the statutory definitions and standards meant little because the Crown demonstrated no sustained commitment to ensuring its own officers and agents gave effect to them. Nor did it show any serious intent to ensure that Māori were always part of decisions about the creation of reserves which, under section 24 of the Native Land Act 1873, were to be made 'with the concurrence of the Natives interested' for their support and

maintenance. The making of hapū reserves never became a standard part of land purchases, with its own established protocols.

Consequently, the Crown failed to monitor or regulate where land could be purchased in the inquiry district without endangering or damaging the interests of hapū. Through this omission, the Crown flouted the obligations imposed on it by Normanby's instructions, its responsibilities under the treaty, and its own legislation. It was guided instead by an overweening determination to prioritise colonisation over the protection of Māori interests, and it did not shrink, when required, from bending or ignoring its statutory obligations to achieve this.

Accordingly, we find that, in failing to develop and implement a system to ensure Te Raki whānau and hapū retained land of appropriate quality and quantity for the well-being of present and future generations and their economic development, the Crown fell short of the protective duties inherent in the treaty partnership, breaching te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te houruatanga/the principle of partnership.

(2) *Restrictions on land alienation*

It is clear that the Crown was aware – from an early stage – of the need to monitor and limit its land purchasing in Te Raki. Nonetheless, it re-entered the land market in the early 1870s at full throttle. Its purchase planning was detailed, but little thought was given as to how to prevent Māori from being rendered landless or how to monitor the impact of its policy. During this period, the Crown amassed information about the extent, location, and quality of lands remaining in Māori ownership in Te Raki, but this knowledge did not in any way curtail its land purchasing.

It is also clear from the evidence available to us that the Crown's failure to enforce provisions that could have restricted land alienation assisted Crown purchasing in Te Raki. The Native Land Act 1873 strengthened requirements relating to restrictions on land alienation, but these were not fully implemented. Further, amendments enacted from 1881 onwards that modified or lifted such restrictions made it progressively easier for the Crown to pursue its land purchasing objectives. Thus, the long-term economic, cultural, and commercial interests of Te Raki hapū were, as a matter of policy, sacrificed to the interests of Pākehā settlement and economic progress.

Accordingly, we find that the Crown failed to implement or enforce an effective policy for restricting the alienation of Māori land, and instead prioritised the needs of settlers, taking steps to reduce the effectiveness of existing restrictions, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te mana taurite/the principle of equity, te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development.

(3) *Reserves*

We cited earlier the statement of Native Minister Donald McLean, describing the Government's 'chief object' as:

> To settle upon the Natives themselves, in the first instance, a certain sufficient quantity of land which would be a permanent home for them, on which they would feel safe and secure against subsequent changes or removal; land in fact to be held as an ancestral patrimony accessible for occupation to the different hapus of the tribe: to give them places which they could not dispose of, and upon which they would settle down and live peacably side by side with Europeans.[789]

The Tribunal commented in the *He Maunga Rongo* report that 'had this stated intention been carried out, many of the claims before us may have been unnecessary'. In this speech, the Tribunal observed, McLean clearly recognised 'the Crown's obligation to ensure that ancestral lands were made inalienable, and that the hapu would maintain rights of occupation'.[790] The evidence in this inquiry on the creation of reserves reveals a profound chasm between the lofty vision for hapū articulated by McLean, and the Crown's near-total failure to make any lasting provision for hapū lands.

The scant number of reserves created (27 only) and their limited average size (207 acres) speak volumes. The

Crown's approach was inconsistent with ensuring Te Raki hapū communities retained sufficient land to either maintain a traditional lifestyle or engage in the colonial economy on an equitable footing, and thus failed to actively protect their tino rangatiratanga rights. Nor were these reserves safe from further Crown purchasing: it had acquired some, or all, of the land from four reserves by the end of the 1890s.

Accordingly, we find that the Crown:

- Failed to develop and institute a clear policy for creating reserves on a basis agreed with Te Raki hapū leaders, in breach of te mātāpono o te houruatanga/the principle of partnership. The policies the Crown did introduce failed to balance its purchase goals with the creation of hapū reserves and to legally protect and respect such reserves as were established, in breach of te mātāpono o te matapopore moroki/the principle of active protection.
- Failed to ensure that Te Raki whānau and hapū retained enough land and resources to meet their obligations under tikanga, to develop their lands, and to contribute to the colonial economy in successive generations, which breached te mātāpono o te tino rangatiratanga and te mātāpono o te matatika mana whakahaere/right of development.

(4) *Fraud prevention*

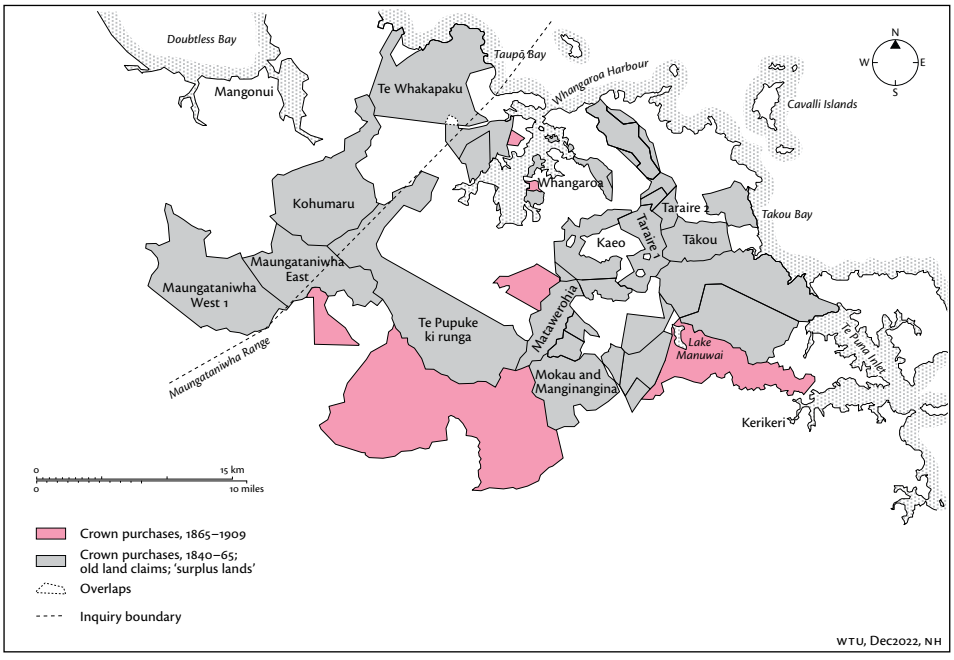
The Government failed to ensure that measures intended to protect Māori against fraudulent transactions were effective or applied with the necessary vigour and rigour. It weakened or simply exempted itself from the application of protective mechanisms that impeded its purchasing ambitions – as demonstrated by the legislative steps taken to remove obstacles hindering the Crown's (inconveniently illegal) purchase of the Pakiri block. The Crown also neutralised the potential effectiveness of available protective mechanisms when it progressively diluted the role of the trust commissioners, eventually doing away with them altogether. Its cavalier and expedient approach to fraud prevention reflected the Crown's general unwillingness throughout this period to engage with Māori over reforms to Native Land laws, including those ostensibly designed to benefit them.

We find that the Crown failed to ensure the implementation of effective protective legislation including legislation specifically addressing fraud prevention, and then circumscribed the exercise of those legislative protections that did exist or simply ignored them. This breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te matapopore moroki/the principle of active protection.

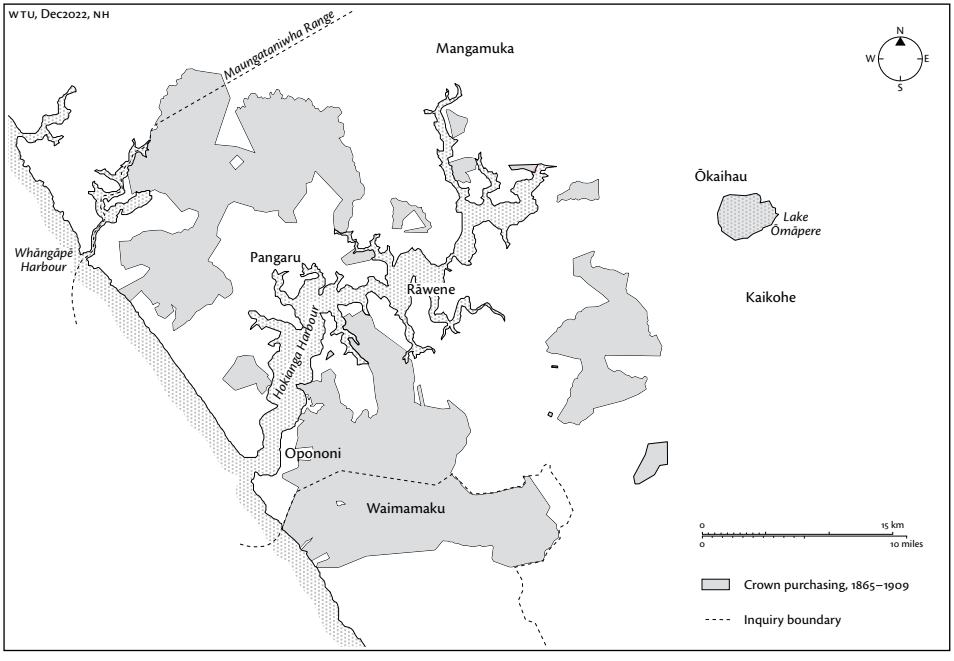
10.6 Whakarāpopototanga o ngā Whakataunga/Summary of Findings

In respect of the political and economic objectives of Crown purchasing policy, we find that:

- By returning to land purchasing in the 1870s for the purpose of expediting Pākehā settlement, and doing so at the expense of Te Raki Māori rights to retain and develop large parts of their land within a mutually beneficial relationship, the Crown breached te mātāpono o te houruatanga/the principle of partnership, and te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development, as well as te mātāpono o te tino rangatiratanga.
- By assuming and imposing land purchase monopoly powers under the Government Native Land Purchase Act 1877 without the consent of Te Raki Māori and in the face of opposition, the Crown acted inconsistently with its duty to engage with Māori in good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.
- By unilaterally reimposing Crown pre-emption through the Native Land Court Act 1894 in the face of express Te Raki Māori opposition and without adequate engagement with Te Raki hapū, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- By reimposing Crown pre-emption, the Crown denied Te Raki Māori potential benefits associated



Map 10.5: Crown purchasing in Whangaroa, 1865–1909.



Map 10.6: Crown purchasing in Hokianga, 1865–1909.

with a market in land. Its reimposition restricted the ability of Māori to develop and transfer their land in a way that other landowners were not subject to. This breached te mātāpono o te mana taurite/the principle of equity. Moreover, re-asserting its right to pre-emption actually heightened the Crown's obligations to protect the rights and interests of Māori landowners. Its failure to do so was thus a breach of te mātāpono o te matapopore moroki/the principle of active protection and te mātāpono o te kāwanatanga.

- By failing, through its legislation and policy, to promote land settlement opportunities and collateral benefits for Te Raki Māori equivalent to those afforded to Pākehā settlers, as promised, the Crown breached te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of equity and the principle of mutual benefit and the right to development.

In respect of the Crown's on the ground purchasing practices, we find that:

- By employing tāmana, or advance payments, the Crown deliberately undermined the capacity of Te Raki Māori to retain their lands and resources in breach of te mātāpono o te tino rangatiratanga.
- By conducting its purchasing in a manner calculated to undermine the capacity of hapū to reach and maintain decisions about land, the Crown also undermined established Te Raki Māori authority structures and social cohesion, breaching te mātāpono o te tino rangatiratanga.
- In addition, despite the objections of Te Raki Māori and the conclusions reached by several official investigations into this practice, the Crown failed to respond in a timely and effective manner with appropriate remedies. This failure was in breach of te mātāpono o te whakatika/the principle of redress.
- By failing to monitor and exercise effective control over the practices and activities of its purchasing agents the capacity of Te Raki Māori to retain and develop their lands was undermined, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development, and te mātāpono o te matapore moroki/the principle of active protection.
- By deliberately designing purchasing processes and using tactics intended to lower the prices of Te Raki Māori land for its own benefit, the Crown acted inconsistently with its duty of good-faith conduct, and in breach of te mātāpono o te houruatanga/the principle of partnership. In this respect, the Crown was also in breach of te mātāpono o te mana taurite/the principle of equity.
- By intentionally acquiring vast tracts of Te Raki Māori land at much lower prices than it was worth, the Crown was in breach of te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principles of equity and of mutual benefit and the right to development.
- The Crown purchased land by acquiring individual interests, bypassing and thereby undermining community decision-making processes which had traditionally protected whānau and hapū lands. In doing so, the Crown acted inconsistently with its duty of good-faith conduct, in breach of te mātāpono o te houruatanga/the principle of partnership. It also breached te mātāpono o te tino rangatiratanga.

In respect of the steps the Crown took to protect Te Raki Māori land, we find that:

- In failing to develop and implement a system to ensure Te Raki whānau and hapū retained land of appropriate quality and quantity for the well-being of present and future generations and their economic development, the Crown fell short of the protective duties inherent in the treaty partnership, breaching te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te houruatanga/the principle of partnership.
- The Crown failed to implement or enforce an effective policy for restricting the alienation of Māori land, and instead prioritised the needs of settlers, taking steps to reduce the effectiveness of existing restrictions, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te mana taurite/the

principle of equity, te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development.

- The Crown failed to develop and institute a clear policy for creating reserves on a basis agreed with Te Raki hapū leaders, in breach of te mātāpono o te houruatanga/the principle of partnership. The policies the Crown did introduce failed to balance its purchase goals with the creation of hapū reserves and to legally protect and respect such reserves as were established, in breach of te mātāpono o te matapopore moroki/the principle of active protection.
- The Crown failed to ensure that Te Raki whānau and hapū retained enough land and resources to meet their obligations under tikanga, to develop their lands, and to contribute to the colonial economy in successive generations, which breached te mātāpono o te tino rangatiratanga and te mātāpono o te matatika mana whakahaere/right of development.
- The Crown failed to ensure the implementation of effective protective legislation, including legislation specifically addressing fraud prevention, and then circumscribed the exercise of those legislative protections that did exist or simply ignored them. This breached te mātāpono o te houruatanga/the principle of partnership and te mātāpono o te matapopore moroki/the principle of active protection.

10.7 Ngā Whakahāweatanga / Prejudice

The claimants argued that the Crown's legislation, policies, actions, and omissions relating to the alienation of Māori land between 1865 and 1900 prejudicially affected Te Raki Māori. The Crown's actions and omissions include its policy of aggressive purchasing, its failure to set up legislative protections to ensure Te Raki Māori had sufficient land resources for present and future needs, and its failure to ensure they could participate as treaty partners in the new colonial economy. The scope of the resulting prejudice for Māori, discussed in the following sections, ranges across the economic, social, and political spheres, and its impact continues today.

10.7.1 Extensive loss of tribal estate

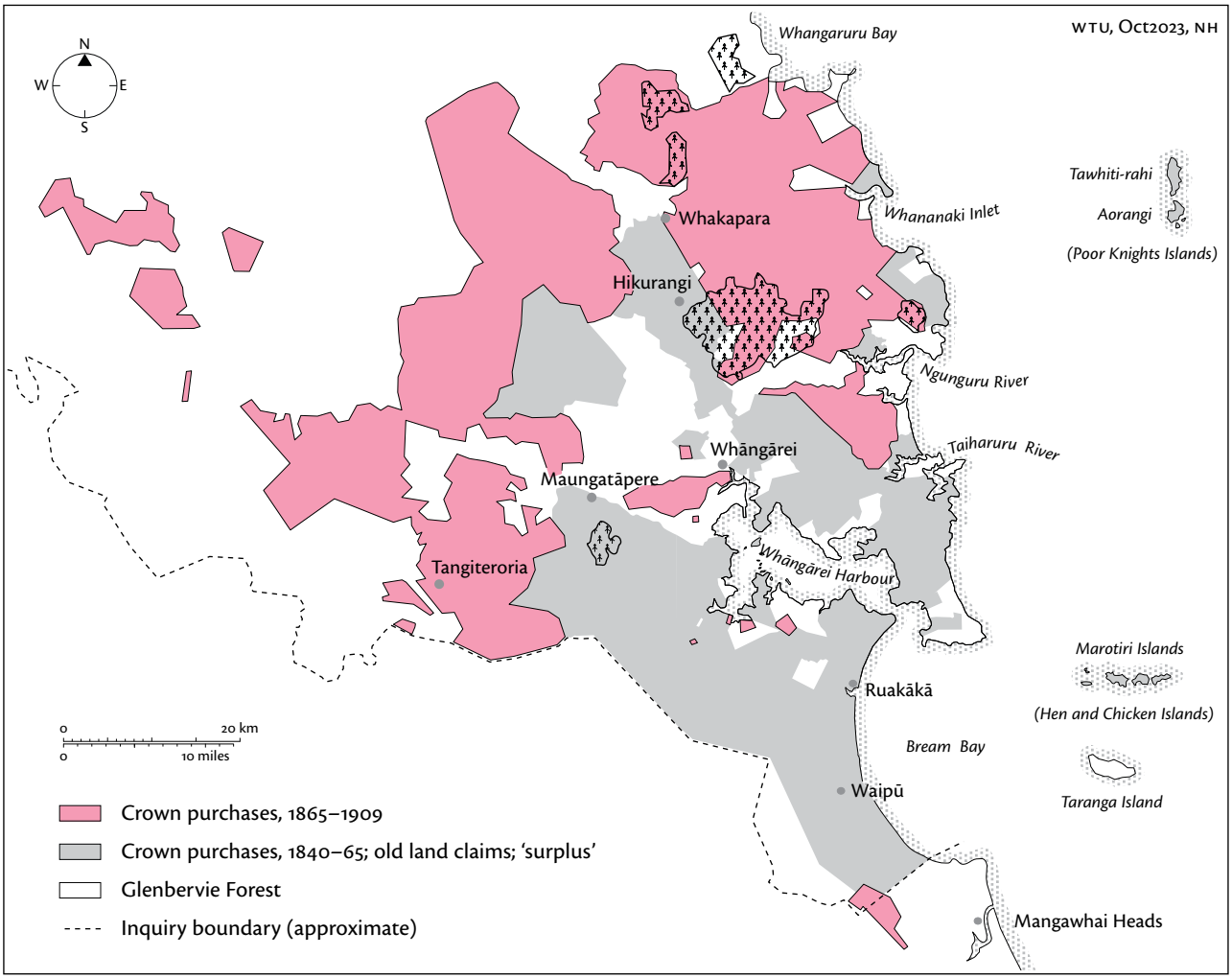
Over this period, the Crown purchased 231 blocks of Māori land in the inquiry district, comprising 588,708 acres.[791] While it had withdrawn from purchasing for a short time, the Crown resumed its efforts to acquire Te Raki land after 1872. Half of the total acreage was acquired during the mid-1870s, when purchasing was spear-headed by the land purchase agent Edward Brissenden. As outlined in this chapter, during the 1870s the Crown's preferred method of initiating purchase was the payment of tāmana, before shifting to the incremental purchase of blocks by acquiring individual interests in the late 1880s and the 1890s. By these means, the Crown succeeded in largely extinguishing customary ownership and then utilised the power imbalance inherent in the Native Land legislation to purchase the vast majority of the district from Māori. Just 27 reserves were created in the inquiry district over this period, amounting to a mere 5,578 acres – less than one per cent of Crown-purchased land.[792] And, even so, reserves were subject to further Crown purchase activity.

The aggressive Crown purchase policy, and the methods its agents employed, hampered the ability of hapū and iwi to exercise their tino rangatiratanga. Traditional relationships and structures were destabilised, depriving some whānau and hapū even of a tūrangawaewae and resulting in fundamental changes to the organisation of Te Raki Māori society.

10.7.2 Damage to chiefly authority and social cohesion

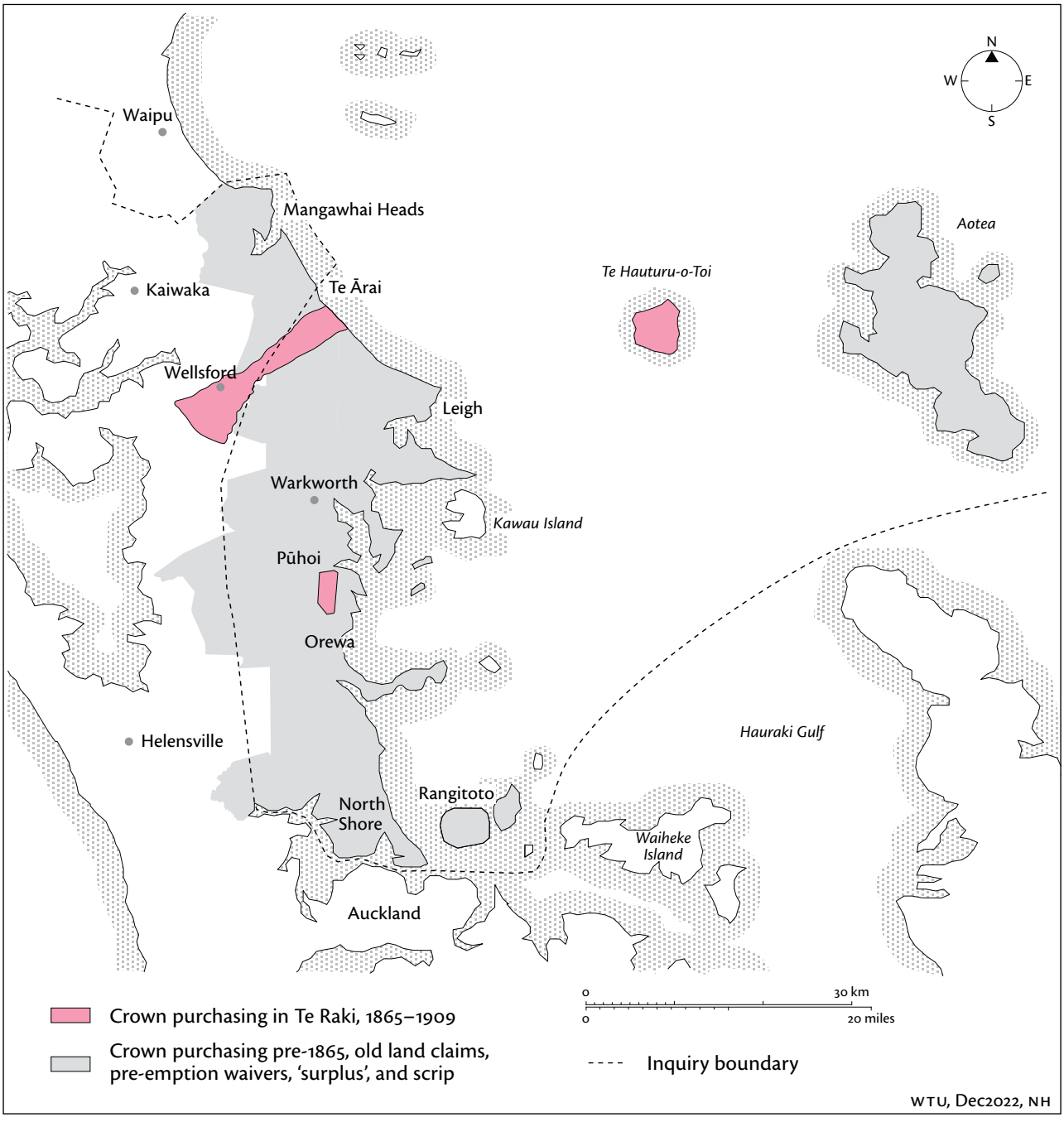
Between 1865 and 1900, the Crown (and to a lesser extent, the Auckland provincial government and private purchasers) were able to take advantage of the title and purchasing mechanisms that had been enshrined in Māori land legislation. Those mechanisms had been introduced with a view to limiting the control that hapū had over the management of their own lands. Te Raki Māori social structures were fractured and the role of successive rangatira undermined as a result.

Both the methods that the Crown relied on to initiate

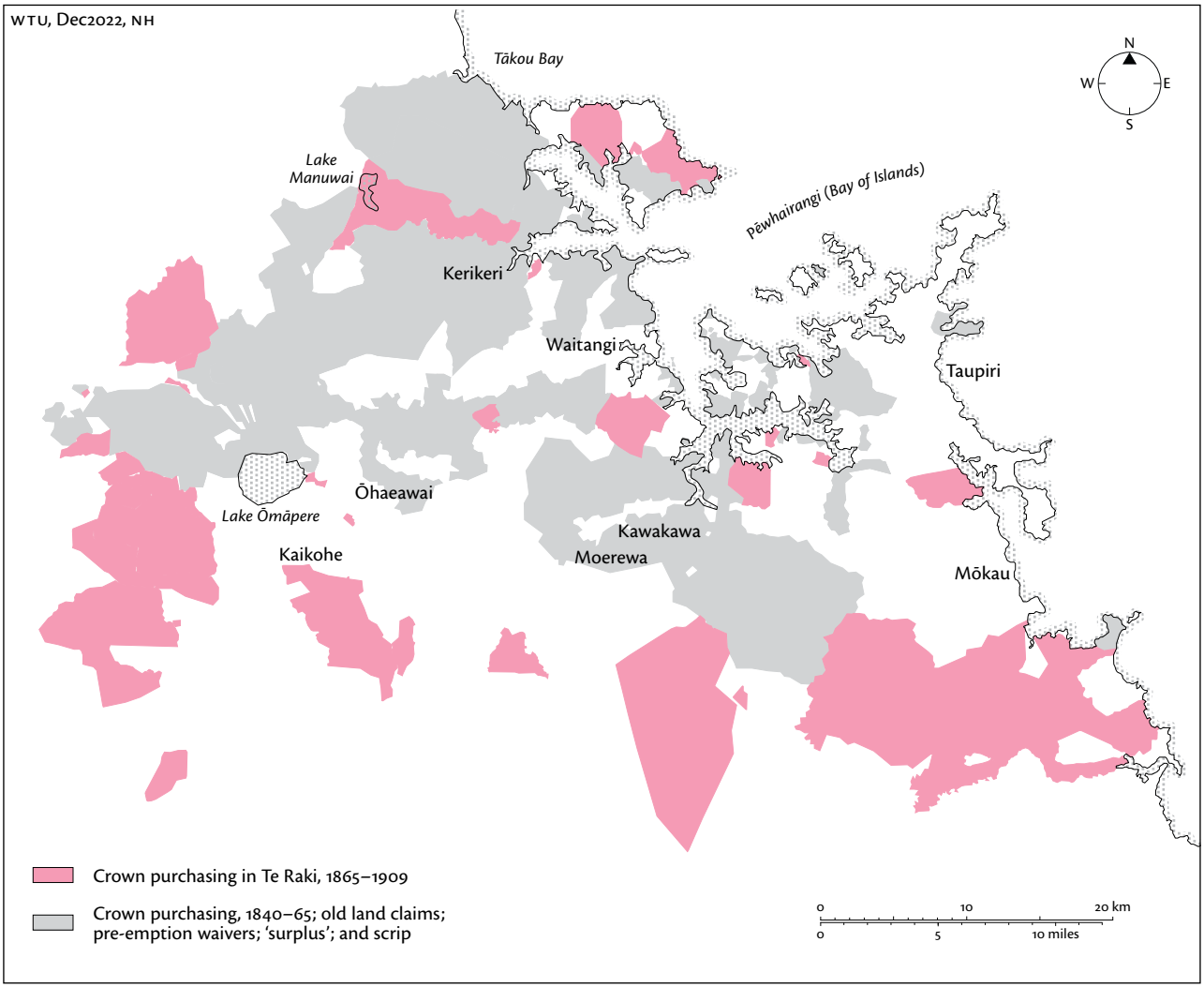


Map 10.7: Crown purchasing in Whāngārei, 1865–1909.

purchasing – the payment of advances or tāmana, and later, the buying of shares – involved Crown agents dealing with individual owners without necessarily, any prior community discussion. By avoiding negotiations with hapū, the Crown undermined collective decision-making over land alienation and development, the setting aside of reserves, and resource use. McDonnell's purchase of the Otangaroa and Patoa blocks exemplified the Crown's approach: he commenced negotiations with the individuals whom he could most easily persuade to 'sell', rather than with hapū led by rangatira Hāre Hongi Hika and Paora Ururoa.[793] In other instances, rangatira were persuaded to accept tāmana payments without the prior knowledge and consent of their communities. The motives of rangatira in accepting such offers varied; some did so as a means to alleviate debt, and some in the hopes of progressing their



Map 10.8: Crown purchasing in Mahurangi, 1865–1909.



Map 10.9: Crown purchasing in in the Bay of Islands, 1865–1909.

relationship with the Crown and thereby protecting their hapū. In either case, these Crown-initiated transactions had the effect of undermining relationships both within and between Māori communities. The involvement of Te Raki rangatira in such sales sometimes generated suspicion and tension within the hapū, and with other hapū who shared rights in the transacted land.

Both the payment of advances and the purchase of individual interests damaged the social cohesion of hapū whose lands were sought by the Crown or private buyers. Under tikanga, matters affecting the whole community would have been discussed and consensus reached, in the open, before any action was taken. But when advances were paid, all owners were drawn into the sale at whatever

Claimant Waitangi Annette Wood presenting evidence for Ngāti Rua ki Whangaroa in hearing week 15 at Te Tapui Marae, Matauri Bay, 2015.

price and terms had been agreed to by the first recipients. Hapū were divided into sellers and non-sellers, the latter suffering the further injustice of having to meet their proportion of title hearing and survey costs. As for share purchasing, once the Crown had acquired some interests in a given block, it was entitled to have these 'cut out' at will, while those who wished to retain ownership had to pay an equivalent proportion of the partition costs of the land they wanted to keep.

Inter-hapū relationships were also damaged. During the 1870s, it was routine for purchasing to begin before blocks had been surveyed or their ownership determined. Given that more than one hapū often had interests in blocks, fear of the Crown favouring owners from one over those of another could generate inter-hapū tensions, as was seen in the case of the Puhipuhi purchase. The same dangers also arose when private buyers imitated the Crown's purchasing approach. The most striking example was the armed conflict at Matarāua, in 1879, where the payment of large advances to Ngai Tū led directly to the death of four people (two from Ngai Tū and two from Ngāi Tāwake).[794]

We heard from claimants in our inquiry that the prejudice from land loss was both manifold and intergenerational. Marie Tautari (Te Whakapiko), for example, told us of the lasting impact on her hapū caused by the Opuawhanga land transactions (discussed in section 10.5.2(6)(b)):

> These losses combined with the failure of the Crown to make good on its promise to pay for Opuawhanga No 2 after the Crown Grant was registered, and the failure of the Crown to ensure that the Fishing Reserve would be protected all contributed to perplex and destabilise a strong community of people who had been well resourced, independent and committed to full expression of their centuries old identity, up to and following the time of the Treaty.[795]

Today, the divisive legacy has continued, with ongoing argument over the roles that particular individuals or groups may have played in selling land. For instance, Waitangi Annette Wood (Ngāti Rua ki Whangaroa) told us of Wiremu Naihi, the mātāmua of Te Pahi. As a rangatira, he was influential in the Ngāpuhi and Ngāti Kahu area and is frequently mentioned in the Native Land Court records as having brought land through it. However, the voices of rangatira like Wiremu Naihi were, and continue to be, misinterpreted. As Ms Wood explained:

> The history captured in the documentation associated with that time has marginalized our tupuna's role as a rangatira, and has been presented in such a way as to state that he supported the sale of the whenua to Pakeha. This has resulted in our own internal discussions, having to defend his role as

rangatira. Because our people believe our tupuna endorsed the sale of the land, it has caused division amongst us – intergenerational division in particular.[796]

10.7.3 Lost economic opportunities

A defining feature of Crown purchasing in the inquiry district throughout this period was the determination to buy up Māori land as cheaply as possible to make way for Pākehā settlement and to fund the colony's development and governance.

We note the difficulty of drawing neat connections between nineteenth-century land alienation and later socio-economic disadvantage experienced by Māori communities in Northland. Although the Crown did not comment on the nexus between nineteenth-century land policy and longer-term deprivation in the inquiry district, its submissions did emphasise at various points what it saw as the necessity to substantiate specific prejudicial outcomes of particular actions and policies alleged to have breached the treaty.[797] Providing this kind of cause-and-effect substantiation in individual cases is an impossible demand to meet. When a longer-term and wider lens is applied, however, it is clear that the dispossession of Māori of their land was systemic and had a range of damaging outcomes, some discernible in the immediate term, but many cumulative, compounding, and deeply entwined.

As we have seen, in the early and mid-1870s the Crown's land purchase agents paid tāmana as a way to exclude private purchasers (who were not legally allowed to make advance payments) and to lock in its own acquisitions at a low price.[798] To make these offers more appealing, the 'collateral benefits' of Crown settlement were also promoted. From the late 1870s, the exclusion of private competition began to be enshrined in law, first with the use of proclamations to declare blocks 'under negotiation' by the Crown, and then with the restoration of Crown pre-emption from 1886 to 1888, and from 1894 onwards.

Inevitably, the Crown's exploitation of its privileged legal position deprived Māori landowners of the opportunity to receive a market price for their land. Māori landowners were also denied the benefit of even a Government valuation of their land until 1905. Since there were few comparable land purchases by private parties during the 1870s, it is impossible to gauge precisely how much more income Te Raki Māori would have received had there been a free market in land. But assuming an average difference between market value and purchase price of 1s 6d per acre – which does not seem unreasonable, given Brissenden's boast that land was worth twice as much in the hands of speculators, and McDonnell's audacious reduction of a previously agreed price by 1s 3d per acre – then the combined loss across all of Te Raki might be estimated at more than £30,000. Looking at it another way, this would mean that if the landowners of Te Raki had received market prices, they might have retained an extra 150,000 acres or more, over the 1870s purchasing period, and still received as much payment.

We are on firmer ground when it comes to prices for many of the individual blocks purchased in the 1890s, as official estimates were made of their on-sale value. Generally, it was around three times the amount offered to Māori. The Crown could have doubled the offers it made for many of these blocks. That would have meant the owners receiving 10 shillings rather than five shillings per acre. If, across all the purchases during the 1890s, the per-acre price that Te Raki Māori were paid had been four to five shillings higher, altogether they would have received another £20,000 from selling their lands.

Meanwhile the Crown practice of acquiring land well in advance of settlement and holding on to it for many decades meant that a large amount of capital remained locked up, while Māori received few of the benefits they had been promised.

10.7.4 Loss of resources and economic capability

As tribal structures were progressively eroded during this period, the economic opportunities open to Te Raki Māori were simultaneously breaking down. The result was increasing Māori material poverty. The Crown's purchasing programme and the divisive and unfair purchasing tactics employed by its agents were central to this decline. The programme itself, and its implementation, deprived hapū of both customary resources and the opportunity to accumulate capital for the purposes of investment

and development. By 1900, hapū and whānau were left with insufficient land to engage in land-based economic opportunities. At the same time, a disproportionate amount of the 'profits' from sale were swallowed by the costs of putting lands into a tradeable state in the first place and, increasingly, by the basic requirements for daily sustenance rather than investment in the future.

Land alienation had resulted in a major regional economic shift toward a cash economy that had cumulative consequences for Te Raki hapū and iwi. The sale of the kauri-covered areas of Puhipuhi signified the beginning of this transition. As Mark Derby's evidence demonstrated, Puhipuhi Māori could no longer remain largely self-sufficient on their own land and took to gum-digging to make ends meet.[799] Typically, they then accrued debts as a result of overdrawn accounts for the provisions they then had to buy at inflated prices set by company stores. As historian Bruce Stirling commented, many Māori were

> being held in a state of peonage by storekeepers – the diggers were their 'working bullocks.' When a digger was fortunate enough to earn more from the sale of his gum than showed on his store account the storekeeper would insist on retaining this as a credit in the books, rather than paying over the cash. As the commissioners observed, it proved, 'almost impossible to obtain any cash whatever, without taking legal proceedings, that in remote country districts would entail great trouble and expense.'[800]

The ever-declining area of land remaining in Māori ownership also became steadily harder to utilise. In blocks where the purchasing process was underway, owners could not risk improving their land as, following partition, this investment might end up in the Crown award. Nor, as we saw in the case of Mangakāhia in the 1890s, could owners profit from their land in other ways, such as selling its timber, if they wanted to avoid a damaging injunction. The same restraints applied more generally to land under Crown pre-emption, since entering into new leases of land to private parties (such as local farmers) was prohibited. To make matters worse, with no settlement allowed in the vicinity of lands the Crown was considering purchasing, the Crown robbed Māori communities of economic opportunities and new markets.

The Crown also showed a distinct lack of interest in developing potentially valuable resources while they remained on Māori land, such as when it declined the Omaunu owners' request to invest in mining opportunities on the block. It was assumed that such assets needed to be in Pākehā hands to be developed. This was exemplified when coal-bearing land was identified on the Ruapekapeka block in the early 1860s, while it was still in Māori ownership. It was only once the Crown had acquired the land that its potential was realised; in short order, a coal mine was opened and infrastructure established. By 1880, the Kawakawa mine was producing the most coal of any in the country, and the town was flourishing. But Māori, including those who until recently had owned the land from which Kawakawa's new prosperity derived, were not: as Alexander comments, mining 'was strictly a European activity, and Kawakawa was strictly a European town.'[801] Here and elsewhere, Te Raki Māori could only stand by and watch while Pākehā profited from the exploitation of the region's natural resources. As was the case with coal mining, it was Pākehā who prospered from the trade in timber that stood on land its Māori owners may have chosen to lease or utilise for themselves. And also like coal mining, the effects of the timber trade and the gum-digging activities that followed degraded the quality of that land. Even those areas remaining in Māori ownership were often of poor quality and all but incapable of further economic development – an issue we will return to in the context of the twentieth century.

By the turn of the century, so much land had been lost that the Māori communities of Te Raki did not have enough to support their present needs, let alone future requirements. Describing their predicament to Parliament in 1899, Hōne Heke Ngāpua observed:

> I can speak so far as the Native lands in the north of Auckland are concerned. The number of natives there has been increasing for a number of years. All the native lands north of Auckland are not really sufficient if divided equally amongst members of the different hapus for their

maintenance and support . . . further acquisition of Native lands should be stopped altogether.[802]

While significant areas of papatupu land could be found in some parts of Te Raki (which would create its own challenges in terms of attracting investment in the future), the remaining land was mostly highly fragmented and often resource poor. For three decades, the Crown had aggressively purchased both land and the resources it contained. It thereby sought to capture for itself as much as possible of the future gains in value, while leaving large tracts of land unoccupied and unused or damaged in the process.

This pattern of voracious land purchase and exploitation was disastrous for Te Raki Māori in all taiwhenua, leaving them marginalised, and often unable to access traditional food sources or participate on equal terms in the wider economic, social, and political life of the nation.

Notes

1. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi, Apereira 14, 1892' (cited in Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), p 311).

2. The maps used to illustrate land purchasing in this chapter are based on a different time period (1865 to 1909) as they are drawn from information recorded by the 1909 Stout–Ngata commission. We are satisfied that this causes little distortion in the portrayal of Crown purchasing in this period.

3. Dr Barry Rigby, 'Validation Review of the Crown's Tabulated Data on Land Titling and Alienation for the Te Paparahi o Te Raki Inquiry Region: Crown Purchases, 1866–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A56), p 3; Crown closing submissions (#3.3.407), p 13; claimant closing submissions (#3.3.213), p 35.

4. This figure was reached as the sum of the private purchase data provided by the Crown for the period from 1865 and 1905 onward. The figure includes purchases where the date of purchase is unknown, but excludes all blocks that had their title determined by the Native Land Court after 1905. The figure also accounts for an error in the Tokawhero block, where the Crown data recorded the purchase of the whole block (2,777 acres), whereas the purchase only amounted to 694 acres: Crown data (#1.3.2(c)). In his evidence in this inquiry, Paul Thomas observed that the Crown's data on private purchasing may not be complete as it has relied on the block narratives produced by researcher Paula Berghan, and 'it is unclear how extensive and systematic Berghan's search for private purchase was'. As a result, our figure is most likely lower than the acreage actually purchased privately during this period: Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68), p 257; Paula Berghan, 'Northland Block Research Narratives', 13 vols, report commissioned by the Crown Forestry Rental Trust, 2006 (doc A39).

5. In chapter 6, we found that some 274,592 acres were considered purchased as a result of old land claims and pre-emption waivers. Because of the overlapping nature of some of the pre-1840 transactions and pre-1865 Crown purchase blocks, it is difficult to accurately assess the amount of Te Raki land that remained in Māori ownership in 1865. However, the Crown estimated that approximately 34.7 per cent of the district had been alienated by 1865. This figure appears to account for a combined total loss of 736,282 acres of land by 1865 – or the sum of the Crown's figures for land loss as a result of old land claims, pre-emption waivers and pre-1865 Crown purchases. If our figures from chapter 6 are adopted, and using the same method, then the result is slightly higher: approximately 758,708 acres alienated by 1865, or 35.6 per cent of the district: Crown closing submissions (#3.3.407), p 3; Crown closing submissions (#3.3.412), p 6; Crown closing submissions (#3.3.404), p 5.

6. At the end of the nineteenth century, we estimate that Te Raki Māori retained approximately 603,700 acres of land. This figure is reached by subtracting the lands alienated by Crown processes for investigating pre-treaty transactions (274,592 acres), Crown purchasing (482,115 acres, pre-1865; 588,707 acres, post-1875), and private purchasing (174,000 acres) from the total area of the district (estimated at 2,123,148 acres by the Crown). However, because of the limited evidence available on private purchasing during this period, the actual figure is most likely lower. We note that in 1908 the Stout–Ngata commission found that the total amount of land in Māori ownership in Te Raki was only 543,754 acres: Crown closing submissions (#3.3.407), p 3.

7. Rigby, 'Validation Review' (doc A56), p 4; Crown closing submissions (#3.3.407), p 3.

8. Rigby, 'Validation Review' (doc A56), p 6.

9. These included closing submissions for Wai 49 and Wai 682 (#3.3.382(b)); closing submissions for Wai 53 (#3.3.370(b)); closing submissions for Wai 68 (#3.3.347); closing submissions for Wai 120 (#3.3.320); closing submissions for 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 (#3.3.262); closing submissions for Wai 156 (#3.3.401(c)); closing submissions for Wai 179, Wai 620, Wai 1524, Wai 1537, Wai 1541, Wai 1673, Wai 1681, Wai 1917, and Wai 1918 (#3.3.393(b)); closing submissions for Wai 246 (#3.3.249); closing submissions for Wai 250 and Wai 2003 (#3.3.272); closing submissions for Wai 295 (#3.3.394); closing submissions for Wai 320 and Wai 736 (#3.3.350); closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399); closing submissions for Wai 354 and Wai 1535 (#3.3.392); closing submissions for Wai 421, Wai 593, Wai 869, Wai 1247, Wai 1383, and Wai 1890 (#3.3.329); closing submissions for Wai 492 (#3.3.311); closing submissions for Wai 549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297); closing submissions for Wai 779 (#3.3.268); closing submissions

for Wai 919 (#3.3.390); closing submissions for Wai 974 (#3.3.245); closing submissions for Wai 990, Wai 1467, and Wai 1930 (#3.3.274); closing submissions for Wai 1140 and Wai 1307 (#3.3.354); closing submissions for Wai 1147 (#3.3.263); closing submissions for Wai 1312 (#3.3.319); closing submissions for Wai 1314 (#3.3.396); closing submissions for Wai 1341 (#3.3.377); closing submissions for Wai 1354 (#3.3.292(a)); closing submissions for Wai 1384 (#3.3.286); closing submissions for Wai 1464 and Wai 1546 (#3.3.395); closing submissions for Wai 1497 (#3.3.271); closing submissions for Wai 1508 and Wai 1757 (#3.3.330); closing submissions for Wai 1509, Wai 1512, and Wai 1539 (#3.3.301); closing submissions for Wai 1514 (#3.3.357); closing submissions for Wai 1515 (#3.3.314); closing submissions for Wai 1516 and Wai 1517 (#3.3.246); closing submissions for Wai 1522 and Wai 1716 (#3.3.341(a)); closing submissions for Wai 1525 (#3.3.306); closing submissions for Wai 1531 (#3.3.260); closing submissions for Wai 1534 (#3.3.292); closing submissions for Wai 1536 (#3.3.368); closing submissions for Wai 1538 (#3.3.303); closing submissions for Wai 1544 and Wai 1677 (#3.3.261); closing submissions for Wai 1613, Wai 1838, Wai 1846, and Wai 2389 (#3.3.328); closing submissions for Wai 1661 (#3.3.369); closing submissions for Wai 1665 (#3.3.380(b)); closing submissions for Wai 1684 (#3.3.358); closing submissions for Wai 1712 (#3.3.283); closing submissions for Wai 1724 (#3.3.332); closing submissions for Wai 1725 (#3.3.238); closing submissions for Wai 1832 (#3.3.352); closing submissions for Wai 1843 (#3.3.386); closing submissions for Wai 1852 (#3.3.372); closing submissions for Wai 1857 (#3.3.291); closing submissions for Wai 1886 and Wai 2000 (#3.3.273); closing submissions for Wai 1940 (#3.3.259); closing submissions for Wai 1957 (#3.3.335); closing submissions for Wai 1959 (#3.3.304); closing submissions for Wai 1961 and Wai 1973 (#3.3.325); closing submissions for Wai 1968 (#3.3.337); closing submissions for Wai 2010 (#3.3.349); closing submissions for Wai 2058 (#3.3.267); closing submissions for Wai 2059 (#3.3.296); closing submissions for Wai 2060 (#3.3.247); closing submissions for Wai 2063 (#3.3.255); closing submissions for Wai 2071 (#3.3.375); closing submissions for Wai 2181 (#3.3.242); closing submissions for Wai 2206 (#3.3.400); closing submissions for Wai 2244 (#3.3.326); closing submissions for Wai 2355 (#3.3.275); closing submissions for Wai 2368 (#3.3.243); closing submissions for Wai 2371 (#3.3.327); closing submissions for Wai 2376 (#3.3.316(a)); closing submissions for Wai 2377 (#3.3.333(a)); closing submissions for Wai 2382 (#3.3.339(a)); closing submissions for Wai 2394 (#3.3.336); closing submissions for Wai 2425 (#3.3.367).

10. Claimant closing submissions (#3.3.213), pp 66–67.

11. Claimant closing submissions (#3.3.213), p 16; submissions in reply for Wai 1940 (#3.3.436), p 9; claimant submissions in reply (#3.3.429), p 10; claimant submissions in reply for Wai 1259, Wai 1538, Wai 1543 (#3.3.462), p 8.

12. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), pp 205–206; Waitangi Tribunal, *The Ngai Tahu Report 1991*, Wai 27, 3 vols (Wellington: GP Publications, 1991), vol 3, pp 825–826; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45 (Wellington: GP Publications, 1997), p 5; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 120; 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, p 286; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 104; Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, Wai 903, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 368; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 2, pp 1358–1360.

13. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, Wai 1200, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 625.

14. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 513–514.

15. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 496.

16. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 625.

17. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 465.

18. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 587.

19. Crown closing submissions (#3.3.406), pp 5–6.

20. Crown closing submissions (#3.3.407), p 34.

21. Ibid, p 6.

22. Ibid, pp 3–4.

23. Crown statement of position and concessions (#1.3.2), p 131; Crown closing submissions (#3.3.407), p 4; Crown closing submissions on issue 4 (#3.3.404), pp 10–11.

24. Crown closing submissions (#3.3.407), p 4.

25. Claimant closing submissions (#3.3.213), pp 62–64; claimant submissions in reply (#3.3.429), p 9.

26. Claimant submissions in reply (#3.3.499), pp 105–106.

27. Claimant closing submissions (#3.3.213), pp 21, 40.

28. Summary of claimant closing submissions (#3.3.213(a)), p 4.

29. Claimant closing submissions (#3.3.213), pp 10–11.

30. Claimant closing submissions (#3.3.213), p 39; claimant submissions in reply (#3.3.499), p 113.

31. Summary of claimant closing submissions (#3.3.213(a)), p 17.

32. Ngāti Hine, 'Te Whanga Tuarua – Whenua' (doc M25(d)), p 106; claimant closing submissions (#3.3.213), pp 56, 58–59.

33. Claimant closing submissions (#3.3.213), p 58.

34. Claimant closing submissions (#3.3.213), p 37; claimant submissions in reply for Wai 2063 (#3.3.544), pp 78–79.

35. Claimant closing submissions (#3.3.213), p 52; see Paul Thomas, 'The Native Land Court: 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68), p 121.

36. Claimant closing submissions (#3.3.213), p 43; claimant submissions in reply (#3.3.429), p 3.

37. Claimant closing submissions (#3.3.213), p 25.

38. Claimant submissions in reply (#3.3.429), p 10.

39. Summary of claimant closing submissions (#3.3.213(a)), p 27.

40. Claimant closing submissions (#3.3.213), p 54.

41. Summary of claimant closing submissions (#3.3.213(a)), p 29.
42. Crown closing submissions (#3.3.407), p 2.
43. Ibid, p 4.
44. Ibid, p 34.
45. Ibid, pp 34–35.
46. Ibid, pp 2, 9.
47. Ibid, p 8.
48. Ibid, pp 9, 12.
49. Ibid, pp 7–11.
50. Ibid, p 6.
51. Ibid, p 7.
52. Ibid.
53. Ibid, p 28.
54. Ibid, p 17.
55. Ibid, p 8.
56. Ibid, p 17.
57. Ibid, p 8.
58. Claimant submissions in reply (#3.3.429), p 14.
59. Crown closing submissions (#3.3.407), pp 8–9.
60. H T Kemp to Native Secretary, 5 January 1874 (cited in David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), pp 760–761).
61. Claimant closing submissions (#3.3.213), pp 10, 18, 58.
62. Crown closing submissions (#3.3.407), p 8.
63. Ibid, p 11.
64. Ibid, p 12.
65. Ibid, p 34.
66. Ibid.
67. Ibid, p 33.
68. Ibid, p 34.
69. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1029.
70. Dr Donald Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori, 1852–1865', report commissioned by the Crown Law Office, 2007 (doc E38), pp 228, 266–270.
71. Proclamation, 17 May 1865, *New Zealand Gazette*, 1865, no 19, p 168; Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori' (doc E38), pp 222–228.
72. Stafford to Whitaker, 18 January 1866, AJHR, 1866, A-2, pp 4–5; 'Return of Lands Confiscated by the General Government, Etc', AJHR, 1871, C-4.
73. 'Return of the Cost of the Administration of the Confiscated and Ceded Lands', no date, AJHR, 1870, C-7, pp 3–4.
74. Under section 18 of the Native Lands Act 1862, the Governor could issue a Crown grant to a private purchaser who had purchased the interests of an owner named on a certificate of title issued under that Act. This provision was carried over in section 47 of the Native Lands Act 1865: Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori' (doc E38), pp 137–138, 228–229.
75. Rose Daamen, Barry Rigby, and Paul Hamer, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996) (doc H2), p 225. Section 73 of the New Zealand Constitution Act 1852, which provided for the Crown's sole right of purchase, also made limited provision for the Crown to delegate its land purchasing powers to provincial governments.
76. J Vogel, 'Financial Statement', 29 July 1869, AJHR, 1869, B-2, pp 9, 13–15; J Vogel, 'Financial Statement', 28 June 1870, AJHR, 1870, B-2, pp 11–17; see also section 7.3.2(g)–(h) for a discussion of how responsibility for Māori affairs was transferred from the imperial government to its colonial counterpart between 1865 and 1870. In return, the colonial Government agreed to bear all costs of future internal defence, which the imperial government had previously met.
77. Immigration and Public Works Loan Act 1870, s 35; Waitangi Tribunal, *The Te Roroa Report 1992*, Wai 38 (Wellington: Brooker and Friend, 1992), p 55.
78. Immigration and Public Works Loan Act 1873, s 3, sch; Immigration and Public Works Loan Act 1873, ss 3–4; Waitangi Tribunal, *The Te Roroa Report*, Wai 38, p 55.
79. Waitangi Tribunal, *The Hauraki Report*, Wai 686, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 797.
80. Vogel, 'Financial Statement', 28 June 1870, AJHR, 1870, B-2, p 13; Immigration and Public Works Loan Act 1870, ss 35, 38.
81. Kathryn Rose, 'The Bait and Hook: Crown Purchasing in Taupo and the Central Bay of Plenty in the 1870s', report commissioned by the Crown Forestry Rental Trust, 1997 (Wai 1200 R01, doc A54), p 5.
82. 'Immigration and Public Works Bill', 16 August 1870, *New Zealand Parliamentary Debates*, vol 9, pp 21–23.
83. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 797.
84. Vogel, 'Financial Statement', 28 June 1870, AJHR, 1870, B-2, p 13.
85. Ibid, p 20.
86. See, for example, W B White's report on Mangonui: White to Native Minister, 21 June 1872, AJHR, 1872, F-3, pp 3–4.
87. 'Financial Statement', 12 July 1870, NZPD, vol 7, p 348.
88. See, for example, W Rolleston, 8 July 1870, NZPD, vol 7, pp 314–315; W Stafford, 12 July 1870, NZPD, vol 7, p 348.
89. 'Protests upon the Immigration and Public Works Bill', 6 September 1870, *Journals of the Legislative Council of New Zealand*, pp 146–147.
90. 'Immigration and Public Works Bill', 16 August 1870, NZPD, vol 9, pp 21–23.
91. 'Immigration and Public Works Bill', 26 August 1870, NZPD, vol 9, p 309.
92. 'Supply', 8 October 1875, NZPD, vol 19, p 342; see also 'Statement Relative to Land Purchases, North Island', 30 June 1875, AJHR, 1875, G-6, p 7.
93. McLean, 'Statement Relative to Land Purchases, North Island', no date, AJHR, 1876, G-10, p 1.
94. 'Ministerial Changes', 4 September 1876, NZPD, vol 22, p 2. As noted earlier, the Land Purchase Department was abolished in 1865, but it had since been re-established.

95. Grey had entered politics in 1875 after his second vice-regal appointment was terminated in 1868.
96. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 402.
97. Ibid, p 403.
98. 'Lands Purchased and Leased from Natives in North Island', 30 June 1886, AJHR, 1886, C-5, p 9; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 404.
99. Bryce, 'Native Statement', 17 October 1879, AJHR, 1879, G-1, p 9.
100. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 806; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 557; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 412.
101. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 416–417; Minister for Public Works, 'Public Works Statement', 25 June 1886, AJHR, 1886, D-1, pp 14–15, 23.
102. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 417–418.
103. Ibid, p 483.
104. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1144; 'Financial Statement', 16 June 1891, NZPD, vol 71, p 65.
105. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 422; Native Land Purchases Act 1892, ss 4, 16, 22.
106. T W Lewis, evidence to Commission on Native Land Laws, 12 May 1891, AJHR, 1891, G-1, p 146.
107. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 422; Native Land Purchases Act 1892, s 14.
108. 'Native Land Purchases Bill', 19 August 1892, NZPD, vol 77, p 229.
109. 'General Report on Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p 4; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 585.
110. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 585.
111. Thomas, 'The Native Land Court' (doc A68), p 189.
112. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1412.
113. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 3, p 945.
114. Ibid, pp 963–992. As discussed in chapter 9, Te Raki Māori were very hesitant to apply for Land Transfer Act certificates of title.
115. Ibid, p 588.
116. Tom Brooking, *Richard Seddon: King of God's Own, the Life and Times of New Zealand's Longest-serving Prime Minister* (Auckland: Penguin, 2004), p 204.
117. Seddon, 28 September 1894, NZPD, vol 86, p 374 (cited in Brooking, *Richard Seddon*, p 204).
118. Native Land Court Act 1894, s 52; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 635.
119. Parata, 19 August 1892, NZPD, vol 77, p 227.
120. Crown closing submissions (#3.3.407), p 34.
121. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1146.
122. 'Lands Improvement and Native Lands Bill', 21 September 1894, NZPD, vol 86, p 232.
123. Seddon, 14 July 1896, NZPD, vol 93, pp 168–169.
124. Seddon, 22 July 1896, NZPD, vol 93, p 385.
125. 'Native Lands Purchased by Government between 1 May 1893 and 31 December 1897', 28 October 1898, AJHR, 1898, G-3A.
126. 'Report on Land for Settlements Act, 1894', 8 June 1898, AJHR, 1898, C-5, p 1.
127. 'Native Lands Purchased by Government between 1 May 1893 and 31 December 1897', 28 October 1898, AJHR, 1898, G-3A.
128. Native Land Laws Amendment Act 1899, s 3.
129. Ibid, s 5.
130. Gisborne to Gillies, 3 December 1870, AJHR, 1871, D-3, p 5.
131. Crown closing submissions (#3.3.407), p 11.
132. Bruce Stirling, 'Eating Away at the Land, Eating Away at the People: Local Government, Rates, and Maori in Northland', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A15), p 67.
133. Province of Auckland Appropriation Act 1869, sch A.
134. Kaipatiki and Onekura were also recorded as provincial government purchases, but both are in the Kaipara: 'Lands Purchased and Leased from Natives in North Island', AJHR, 1885, C-7, p 4.
135. The six blocks in question were Opuawhanga 1, 2, 3, and 4, and Otonga 1 and 2: 'Lands Purchased and Leased from Natives in North Island', AJHR, 1885, C-7, p 4.
136. David Armstrong, 'Ngati Hau "Gap Filling" Research', report commissioned by the Crown Forestry Rental Trust, 2015 (doc P1), pp 17–19, 21–22.
137. McLean, evidence to Tairua Investigation Committee, 30 September 1875, AJHR, 1875, I-1, p 40.
138. Waitangi Tribunal, *The Te Roroa Report*, Wai 38, pp 55–56; McDonnell to general government agent, 10 July 1872, AJHR, 1873, G-8, pp 17–18.
139. McDonnell to Under-Secretary, Native Department, 7 August 1873, AJHR, 1875, G-7, pp 2–3.
140. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 654–655; Thomas, 'The Native Land Court' (doc A68), p 77.
141. Under-Secretary, Native Department, to Brissenden, 12 March 1874, AJHR, 1875, G-7, pp 7–8.
142. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 637–638.
143. Brissenden to McLean, 3 August 1874, AJHR, 1875, G-7, p 17.
144. Waitangi Tribunal, *The Te Roroa Report*, Wai 38, p 59.
145. Figure based on purchase deed dates in Crown purchases index in Rigby, 'Validation Review' (doc A56), app A.
146. Thomas, 'The Native Land Court' (doc A68), p 62; Maori Real Estate Management Act Amendment Act 1877, ss 2, 8, 9.
147. Thomas, 'The Native Land Court' (doc A68), pp 103–105.
148. Ibid, pp 100–102, 111. Figure based on purchase deed dates in Crown purchases index in Rigby, 'Validation Review' (doc A56), app A.
149. 'Return of Negotiations Completed to 30 June 1876', AJHR, 1876, G-10, p 7.
150. Rigby, 'Validation Review' (doc A56), app A.
151. Thomas, 'The Native Land Court' (doc A68), pp 63, 67.
152. Preece to Native Minister, 1 June 1876, AJHR, 1876, G-5, pp 1–2.

153. Preece to Under-Secretary, Native Department, 26 June 1877, AJHR, 1877, G-7, pp 1–2.
154. Smith to Brissenden, 12 June 1875, AJHR, 1875, G-7, p 35; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1878, G-4, pp 2–3; 'Lands Purchased and Leased from Natives in North Island', 20 August 1883, AJHR, 1883, C-3, p 3.
155. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 653–655.
156. Berghan, 'Northland Block Research Narratives' (doc A39(h)), vol 9, pp 211–212.
157. Compare 'Lands Purchased and Leased from Natives in North Island', AJHR, 1879, C-4, pp 4, 10–11; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1878, G-4, pp 2–3, 9.
158. Mark Derby, '"Fallen Plumage": A History of Puhipuhi, 1865–2015', report commissioned by the Waitangi Tribunal, 2016 (doc A61), pp 114–115, 121, 139.
159. Figures based on Dr Barry Rigby's validation review of Crown purchase data: Rigby, 'Validation Review' (doc A56), p 4, app A. This figure also accounts for the Takahue 1 and 2 and Unuhia blocks, which straddle the inquiry district boundary.
160. For a list of blocks subject to proclamations in 1878, see 'Lands Purchased and Leased from Natives in North Island', AJHR, 1879, C-4, pp 10–11.
161. 'Lands Proclaimed under "Government Native Land Purchases Act, 1877"', 31 July 1878, AJHR, 1878, II, C-4, p 1; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1879, C-4, p 9.
162. The other blocks proclaimed under negotiation in October 1878 included Patumutumu, Mokau 2, Te Whau, Te Mata, and Oikura in the Bay of Islands and Otaruru, Pahinu, Huehue 1, Tautehere, and Waitaha in the Hokianga. In addition to these blocks, the Pukekauri block in Mangakāhia was proclaimed under negotiation in July 1879: 'Lands Purchased and Leased from Natives in North Island', AJHR, 1879, C-4, pp 10–11.
163. Figure based on purchase deed dates in Crown purchases index and accounts for the 673-acre Waitomotomo 3 block which was also included in the 8,945 acres for Waitomotomo in Rigby, 'Validation Review' (doc A56), app A.
164. Ralph Johnson, 'Report on the Crown Acquisition of Hauturu (Little Barrier Island)', report commissioned by the Waitangi Tribunal, 1999 (doc E8), p 10; Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993*, Wai 304 (Wellington: Brooker and Friend Ltd, 1993), pp 40–42.
165. Derby, '"Fallen Plumage"' (doc A61), pp 174, 185.
166. Berghan, 'Northland Block Research Narratives' (doc A39(h)), vol 9, pp 213, 215, 222–223; 'Native Land Purchases in the North Island since 1 April 1884', AJHR, 1888, G-2, p 1. Note that Berghan gave the acreages as 8,332 acres and 40 acres as opposed to 8,232 acres and 40 acres.
167. Crown data (#1.3.2(c)); Thomas, 'The Native Land Court' (doc A68), p 132.
168. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 448.
169. Ibid, p 363.
170. Figure based on purchase deed dates provided by Dr Rigby. However, it should be noted that this figure includes the acreage for Ruapekapeka 7A, for which the purchase date should have read 1899, not 1889. It also includes the total acreage for the Te Awaroa 1A1 block, which is partly outside the inquiry district. We also note the Crown's submission that, according to Dr Rigby's evidence, 'the Crown purchased 81,473 acres in Northland in the 1890s': Crown closing submissions (#3.3.407), p 13; Rigby, 'Validation Review' (doc A56), app A; Berghan, 'Northland Block Research Narratives' (doc A39(g)), vol 8, p 106.
171. Thomas, 'The Native Land Court' (doc A68), pp 203–204; Māori rural lands had been made liable for rates under the Highway Boards Empowering Act 1871: Stirling, 'Eating Away at the Land' (doc A15), p 17.
172. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1199.
173. Thomas, 'The Native Land Court' (doc A68), pp 149–151.
174. Ibid, pp 214–217.
175. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1147–1150; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1895, G-2, p 4.
176. Thomas gave evidence that the Court awarded blocks to more than 55 owners on average: Thomas, 'The Native Land Court' (doc A68), p 193.
177. Ibid, p 194; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1157.
178. Thomas, 'The Native Land Court' (doc A68), p 199.
179. Professor Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whanui Series (Wellington: GP Publications, 1997), vol 2, p 247.
180. Thomas, 'The Native Land Court' (doc A68), pp 193–194.
181. Ibid, pp 201–203.
182. Ibid, p 201; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1147.
183. Rigby, 'Validation Review' (doc A56), app A.
184. Thomas, 'The Native Land Court' (doc A68), pp 207, 209–211.
185. Claimant closing submissions (#3.3.213), pp 62–65.
186. Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), pp 161–166.
187. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 66, 629.
188. 'Wangarei', *Daily Southern Cross*, 29 June 1866, p 4; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 624.
189. 'Hokianga', *New Zealand Herald*, 17 March 1870, p 4; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 626.
190. Vincent O'Malley, 'Summary of Northland Crown Purchases, 1840–1865' (doc A6(b)), pp 32–34.
191. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 568–569, 624–627.
192. Ibid, pp 892–896.

193. Tāmati Waka, statement, 26 April 1871, AJHR, 1871, A-2A, p 25.
194. Hemi Tautari, response to questions, no date, AJHR, 1871, A-2A, pp 29–30.
195. Eru Nehua, statement, no date, AJHR, 1871, A-2A, pp 34–35.
196. Wiremu Pōmare, statement, no date, AJHR, 1871, A-2A, p 35.
197. 'Notes of Proceeding during the Visit of His Excellency the Governor to the Ngapuhi Tribes', AJHR, 1870, A-7, p 9.
198. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 626.
199. 'Notes of Proceeding during the Visit of His Excellency the Governor to the Ngapuhi Tribes', AJHR, 1870, A-7, pp 9–10.
200. Ibid, pp 10–11.
201. Ibid, p 12.
202. Ibid.
203. Superintendent Gillies to general government agent, 11 February 1873, AJHR, 1873, G-8, p 19.
204. Von Sturmer to McLean, 28 April 1873, AJHR, 1873, G-1, pp 2–3.
205. H T Kemp to Under Secretary, Native Department, 2 June 1874, AJHR, 1874, G-2, p 4.
206. McDonnell to Dr Pollen, 2 June 1873 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 758).
207. Kemp to Native Secretary, 5 January 1874 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 760–761).
208. Governor Ferguson, 26 May 1874 (Armstrong and Subasic, supporting documents, 15 vols (doc A12(a)), vol 10, p 2:1718).
209. 'Statement relative to Land Purchases, North Island', no date, AJHR, 1876, G-10, p 1.
210. Von Sturmer to Under-Secretary, Native Department, 11 May 1876, AJHR, 1876, G-1, p 19.
211. Von Sturmer to Under-Secretary, Native Department, 26 May 1879, AJHR, 1879, G-1, p 2.
212. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 758.
213. H T Clarke, annotation dated 15 January 1874 (Berghan, supporting papers, 6 vols (doc A43), vol 1, p 65).
214. Von Sturmer to Under-Secretary, Native Department, 7 May 1880, AJHR, 1880, G-4, p 2.
215. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1284–1286, 1305.
216. Ibid, p 1285; Peter Clayworth, 'A History of the Motatau Blocks, c1880–c1980', report commissioned by the Waitangi Tribunal, 2016 (doc A65), p 53.
217. 'A Narrative of the Premier's Trip through the Native Districts of the North Island', AJHR, 1895, G-1, pp 26–28.
218. Ibid.
219. Ibid, p 28.
220. Ibid, p 29.
221. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), pp 143, 150, 179; Bayley, 'Aspects of Maori Economic Development and Capability' (doc E41), p 76.
222. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), p 144.
223. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), p 190.
224. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1030.
225. Bayley, 'Aspects of Maori Economic Development and Capability' (doc E41), p 77.
226. McLean to McDonnell, 30 November 1871, AJHR, 1873, G-8, p 17; see also section 10.4.2(1).
227. Vogel, 'Financial Statement', 28 June 1870, AJHR, 1870, B-2, p 13.
228. Under-Secretary, Native Department, to Brissenden, 12 March 1874, AJHR, 1875, G-7, pp 7–8; McLean, evidence to Tairua Investigation Committee, 30 September 1875, AJHR 1875, I-1, p 40.
229. For a list of blocks subject to proclamations in 1878, see 'Lands Purchased and Leased from the Natives in North Island', AJHR, 1879, C-4, pp 10–11.
230. Clayworth, 'A History of the Motatau Blocks' (doc A65), p 53; Ngāti Hine, 'Te Whanga Tuarua – Whenua' (doc M25(d)), pp 5–7; Erima Henare (doc D14(b)), pp 29–31.
231. Armstrong and Subasic, 'Northland Land and Politics' (doc A12), pp 695–696, 861, 865, 867.
232. Maihi P Kawiti and 269 others, petition, AJHR, 1876, I-4, p 27 (cited in Armstrong and Subasic, 'Northland Land and Politics' (doc A12), p 863).
233. 'Statement relative to Land Purchases, North Island', no date, AJHR, 1876, G-10, p 1.
234. For example, the Native Land Court Act 1894 made some provision for collective management of land by incorporated owners: Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 366. Armstrong and Subasic, 'Northland Land and Politics' (doc A12), pp 1304–1305.
235. 'Land for Settlements Bill', 3 October 1895, NZPD, vol 91, p 104.
236. Claimant closing submissions (#3.3.213(a)), p 5.
237. Ibid, p 12.
238. Ibid, pp 11–12.
239. Ibid, p 17; see also Waitangi Tribunal, *The Ngāti Kahu Remedies Report*, Wai 45 (Wellington: Legislation Direct, 2013) for a discussion about Otangaroa.
240. Claimant closing submissions (#3.3.213(a)), p 14; Rigby, 'Validation Review' (doc A56), p 4.
241. Claimant closing submissions (#3.3.213), p 39.
242. Ibid; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 954.
243. Claimant closing submissions (#3.3.213), p 51; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1029–1030.
244. Claimant closing submissions (#3.3.213), pp 37–38; Derby, '"Fallen Plumage"' (doc A61), pp 154–155.
245. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 412 (cited in claimant closing submissions (#3.3.213), p 26).
246. Claimant closing submissions (#3.3.213), p 26; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 412.
247. To support this, the claimants cite the Crown statement of position and concessions (#1.3.2), p 129.

248. Claimant closing submissions (#3.3.213), p 26.
249. Claimant closing submissions (#3.3.213(a)), p 16; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 662; Derby, '"Fallen Plumage"' (doc A61), p 144.
250. Closing submissions for Wai 974 (#3.3.245), p 14.
251. Crown closing submissions (#3.3.407), pp 3–4.
252. Ibid, p 25.
253. Ibid, pp 25–28.
254. Ibid, pp 27–28.
255. Ibid, p 7.
256. Ibid.
257. Ibid, p 26.
258. Ibid.
259. Ibid, pp 26–27.
260. Ibid, pp 7, 26, 28.
261. Ibid, pp 28–29.
262. Ibid, pp 4, 35, 42, 44.
263. Ibid, p 36.
264. Ibid, pp 36–38.
265. 'Statement relative to Land Purchases, North Island', 30 June 1875, AJHR, 1875, G-6, p 2.
266. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 652–653.
267. H T Clarke to McDonnell, 15 August 1874, AJHR, 1875, G-7, p 18; McDonnell to H T Clarke, 9 June 1875, AJHR, 1875, G-7, p 31.
268. Brissenden to McLean, 4 September 1874, AJHR, 1875, G-7, pp 13–14.
269. St John to Brissenden, 30 October 1874, AJHR, 1875, G-7, p 19.
270. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 45.
271. Brissenden to McLean, 18 March 1874, AJHR, 1875, G-7, p 8; Brissenden to Clarke, 8 April 1874, AJHR, 1875, G-7, p 9.
272. McLean to McDonnell, 30 November 1871, AJHR, 1873, G-8, p 17; McLean, instructions, November 1871, AJHR, 1875, G-7, p 7.
273. McDonnell to general government agent, 7 April 1873, AJHR, 1873, G-8, p 21.
274. McDonnell to general government agent, 24 December 1872, 11 February 1873, 26 February 1873, 7 March 1873, 7 April 1873, AJHR, 1873, G-8, pp 18–21.
275. See Brissenden's observation on the belated nature of payments: Brissenden to McLean, 3 August 1873, AJHR, 1875, G-7, pp 16–17.
276. This description echoes the Tribunal's analysis in the *Te Roroa* report, one of the first inquiries to address tāmana: Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 59.
277. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 699.
278. McLean, instructions, November 1871, AJHR, 1875, G-7, p 7.
279. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 816.
280. Ibid, p 703.
281. For example, in 1876 Kemp suggested that half of the Crown's 1876 tāmana payment of £200 to Maihi Parāone for his interests in the Aukumeroa block could be treated as a security against private purchasing in the Puhipuhi block. Derby commented that this was 'an example of the various and imaginative ways in which payments to those with interests in Māori land, or credit extended to them, could be regarded, by the prospective purchaser at least, as advance payments on those lands': Derby, '"Fallen Plumage"' (doc A61), p 116.
282. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 699.
283. H T Kemp, statement, no date, AJHR, 1876, C-6, p 19.
284. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 691–692.
285. Brissenden, return, 30 December 1874, AJHR, 1875, G-7, p 27.
286. McLean to Brissenden, 29 December 1874, AJHR, 1875, G-7, p 25.
287. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 691.
288. Armstrong and Subasic, supporting documents (doc A12(a)), vol 8, p 2:1063.
289. McDonnell to Preece, 9 April 1875, AJHR, 1875, G-7, pp 30–31.
290. Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 79.
291. Report and recommendation regarding petition of Tamaho Maika and others, AJHR, 1926, G-6A, pp 1–3.
292. Berghan, supporting papers (doc A43), vol 1, pp 380–383.
293. Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 79.
294. McDonnell to McLean, no date, AJHR, 1875, G-7, pp 30–31.
295. Clarke to Brissenden, 12 June 1874, AJHR, 1875, G-7, p 12.
296. Brissenden to McLean, 3 August 1874, AJHR, 1875, G-7, pp 16–17.
297. McDonnell to Clarke, 22 October 1874, AJHR, 1875, G-7, p 23.
298. Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 58.
299. Section 49 of the Native Land Act 1873 provided restrictions on alienation could be removed if all owners of a block agreed to a sale or partition of the land.
300. As we explain in chapter 9, Maning refused on the basis of his interpretation of sections 46 and 47 of the 1873 Act. Section 46 provided that the Court might adopt voluntary arrangements entered into between claimants and counterclaimants, and section 47 provided that the names of all those found to be owners (that is, by the Court) or those 'thenceforward to be regarded as the owners thereof under any voluntary arrangement' were to be recorded on a memorial of ownership. In the case of Orowhana, Maning stated that all those awarded title were claimants; there was no dispute between claimants and counterclaimants: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 714.
301. Maning to Fenton, 9 November 1875 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 708).
302. Thomas, 'The Native Land Court' (doc A68), pp 112–114.
303. Ibid, p 114.
304. Ibid, p 109; Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 333.
305. Thomas, 'The Native Land Court' (doc A68), pp 107–110.
306. Wiremu Pōmare, statement, no date, AJHR, 1871, A-2A, p 35.
307. Thomas, 'The Native Land Court' (doc A68), p 25.

308. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 697–700.
309. Ibid, p 697.
310. Ibid, pp 697–698; Armstrong and Subasic, supporting documents (doc A12(a)), vol 8, pp 2:1032–2:1042.
311. Armstrong and Subasic, supporting documents (doc A12(a)), vol 8, pp 2:1056, 2:1060.
312. Ibid, pp 2:1064, 2:1069–2:1070.
313. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 699–700. Major Green's instructions came from Colonial Secretary Pollen.
314. Preece to McLean, 3 July 1875, AJHR, 1875, C-4, p 2.
315. 'Land Purchases, North Island', 10 August 1875, NZPD, vol 17, pp 224, 229; McLean, 'Statement relative to Land Purchases, North Island', 30 June 1875, AJHR, 1875, G-6, pp 1–2, 8.
316. McDonnell to Pollen, 10 July 1872, AJHR, 1875, G-7, p 1; 'Report of the Tairua Investigation Committee', AJHR, 1875, I-1, p [2].
317. McDonnell, evidence to Tairua Investigation Committee, 13 August 1875, 26 August 1875, AJHR, 1875, I-1, pp 9–10, 15–16.
318. McDonnell, evidence to Tairua Investigation Committee, 26 August 1875, AJHR, 1875, I-1, p 13.
319. Dalton, evidence to Tairua Investigation Committee, 16 September 1875, AJHR, 1875, I-1, p 29.
320. Brissenden, evidence to Tairua Investigation Committee, 31 August 1875, AJHR, 1875, I-1, pp 18–19; Brissenden, sworn statement to Tairua Investigation Committee, 7 October 1875, AJHR, 1875, I-1, pp 51–52.
321. Brissenden, evidence to Tairua Investigation Committee, 31 August 1875, AJHR, 1875, I-1, p 19; Brissenden, sworn statement to Tairua Investigation Committee, 7 October 1875, AJHR, 1875, I-1, p 52.
322. 'Native Land Agents', *New Zealand Herald*, 23 July 1875, p 1 (cited in Coralie Clarkson, 'Pakanae and Kokohuia Lands: 1870–1990', report commissioned by the Waitangi Tribunal (doc A58), p 54).
323. 'Report of the Tairua Investigation Committee', 11 October 1875, AJHR, 1875, I-1, p iv.
324. 'Report of the Ohinemuri Miners' Rights Inquiries Committee', 4 October 1875, AJHR, 1875, I-3, p 2.
325. 'Alleged Improper Sale of Land North of Auckland, (Inquiry by Mr R C Barstow, RM, and Papers Relative to)', AJHR, 1876, C-6, pp 1, 15, 24.
326. Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 74–76.
327. 'Alleged Improper Sale of Land North of Auckland, (Inquiry by Mr R C Barstow, RM, and Papers Relative to)', AJHR, 1876, C-6, pp 3–4, 11, 15, 19.
328. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 740–741; Tole to superintendent, 13 March 1876, AJHR, 1876, C-6, pp 7–8.
329. Preece, memorandum, 20 April 1876, AJHR, 1876, C-6, pp 8–9.
330. R C Barstow, 'Report on Purchase of Maunganui and Waipoua Blocks', no date, AJHR, 1876, C-6, p 15; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 76–77, 80. We do not disagree with the findings of the *Te Roroa* report that '[i]n completing the purchases, Crown agents were unfair to Tiopira and breached the voluntary agreement between Tiopira and Parore which was explicit in the terms of sale', but note that evidence from the Te Raki inquiry district does not support the impression of Nelson as the altruistic whistleblower, which that report suggests.
331. See Tribunal questioning of claimant counsel Te Kani Williams, transcript 4.1.28, Te Whakamaharatanga Marae, Waimamaku, p [337].
332. Thomas, 'The Native Land Court' (doc A68), pp 84, 220–221; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 676, 731, 758, 1029.
333. Henry Walton, for example, was able to acquire several small blocks around Whāngārei due to his being a business partner and relative by marriage of the rangatira Te Tirarau Kūkupa: Thomas, 'The Native Land Court' (doc A68), p 41.
334. See, for example, the sale of the 50-acre Taurangakotuku block near Whāngārei: Tony Walzl, 'Overview of Land Alienation', report commissioned by the Crown Forestry Rental Trust, 2015 (doc U1), pp 91, 188.
335. Thomas, 'The Native Land Court' (doc A68), pp 257–288.
336. Crown closing submissions (#3.3.407), p 17.
337. All three are listed in the 'Return of Lands Granted in Auckland Province, Sold or Leased to Europeans, April 1865 – 15 June 1869', which was enclosed with a letter from the Registrar-General, Alfred Domett, to the Native Minister, Donald McLean, in June 1869: NS69/704 – Domett, General Registry of Land, to Native Minister, 29 June 1869, encl (iii), AECW 18683 MA-MT1/2/[157], Archives New Zealand, Wellington. This return is referred to in Daamen, Hamer, and Rigby, *Auckland* (doc H2), p 244. See also Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 8, pp 137–138, 286–287, 370.
338. A total of 25 purchase blocks made up this acreage in the Bay of Islands, Hokianga, and Mangonui; and 65 purchase blocks make up this acreage in Whāngārei and Kaipara. A portion of these blocks were in our inquiry district. We estimate that out of the total area purchased approximately 1,300 acres were in the Bay of Islands, 3,800 acres in Hokianga, 216 acres in Whangaroa, 10,000 acres in Whāngārei, and 1,260 acres in Mahurangi over this period: 'Return of Lands Passed through the Native Land Court since the Native Land Act 1873 Came into Operation', no date, AJHR, 1883, G-6, pp 2–4.
339. Crown data (#1.3.2(c)); Thomas, 'The Native Land Court' (doc A68), p 132.
340. Alexandra Horsley, 'A History of the Otangaroa, Te Pupuke, and Waihapa Blocks (Whangaroa), 1874–1990', report commissioned by the Waitangi Tribunal, 2016 (doc A57), p 90.
341. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 448.
342. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 812, pp 137–138, 286–287.
343. Paul Thomas, 'The Crown and Maori in the Northern Wairoa, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 1999 (doc E40), p 245; Thomas's report does not specify Maungaru as the land sold by Walton to Grahame, but Grahame is identified as its

owner by a *New Zealand Gazette* notice in 1876: 'Land Transfer Act Notices', *New Zealand Gazette*, 13 July 1876, no 41, p 508.
344. Thomas, 'The Native Land Court' (doc A68), pp 129–136.
345. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 926–927, 971, 1130, 1227.
346. Thomas, 'The Native Land Court' (doc A68), p 134.
347. Ibid; Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 3, p 158.
348. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 808.
349. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), p 119; Thomas, 'The Native Land Court' (doc A68), pp 41–42.
350. Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 11, pp 335–340; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 476–477.
351. Berghan did not specify Walton as the lessee of both, but Te Tirarau Kūkupa was the lessor of both, and the leases started on the same day: Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 263–264, 603.
352. Horsley, 'A History' (doc A57), pp 88–90.
353. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 140, 142, 234–235, 392, 449, 518, 576–577, 628, 676.
354. Thomas, 'The Native Land Court' (doc A68), pp 214–215; Te Tirarau had been awarded the title of the 380-acre Pukehuia block in March 1875 and had signed a 21-year lease agreement for the block with the Kauri Timber Company: Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, p 576.
355. Thomas, 'The Native Land Court' (doc A68), p 215.
356. Symonds to Under-Secretary, Native Department, 16 May 1878, AJHR, 1878, G-1, p 4.
357. Armstrong and Subasic, 'Northland Land and Politics' (doc A12), p 935.
358. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 163, 167.
359. Ibid, pp 142, 150, 450–451, 577.
360. As noted earlier, this definition of tāmana payments is based on the Tribunal's analysis in the *Te Roroa Report*: Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 59.
361. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 590.
362. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 1, p 186.
363. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 27, 354, 410.
364. O'Malley, 'Northland Crown Purchases' (doc A6), pp 215–216.
365. David V Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia, 1999), p 330.
366. Ibid, p 331.
367. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 612.
368. The exemption was contained in section 13 of the Act.
369. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1176–1177.
370. Ibid, p 679.
371. Brissenden, return, 30 December 1874, AJHR, 1875, G-7, p 26; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 469, 515.
372. Brissenden, return, 30 December 1874, AJHR, 1875, G-7, p 26; 'Detail of Expenditure to 30 June 1875, Negotiations in Progress', AJHR, 1875, G-6, p 17; Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 13, pp 232, 295–296.
373. Brissenden to Pollen, 14 April 1874, AJHR, 1875, G-7, p 10; Brissenden to McLean, 4 September 1874, AJHR, 1875, G-7, p 14.
374. McLean to district officer, Bay of Islands, 20 January 1875, AJHR, 1875, G-7, p 29.
375. 'Report on the Petition of Mohi Tawhai and Others', 20 August 1874, AJHR, 1874, I-3, p 2.
376. 'Native Land Purchases', 21 September 1876, NZPD, vol 22, pp 437, 439.
377. Ibid, p 438.
378. Ibid, p 439.
379. Transactions of Messrs Young and Warbick as Officers of the Land Purchase Department, 10 June 1880, AJHR, 1880, G-5, p 14.
380. 'Native Land Sales Bill', 15 June 1880, NZPD, vol 35, pp 267–272.
381. Ibid, p 267.
382. See Michael Macky, 'Crown Purchasing in the Central North Island Inquiry District, 1870–1890', report commissioned by the Crown Law Office, 2004 (Wai 1200 ROI, doc A81), pp 82–83.
383. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 87–88, 996–997.
384. Pairama Tahere (doc G17), p 12.
385. David Armstrong, 'The Native Land Court and Crown Purchasing in Te Waimate–Kaikohe in the Nineteenth Century', report commissioned by the claimants, 2016 (doc AA52), p 44.
386. Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 63.
387. Brissenden, schedule, 24 July 1874, AJHR, 1875, G-7, p 16.
388. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 692.
389. Pairama Tahere (doc N20(b)), p 56.
390. *Omahuta* (1875) 2 Northern MB, 128, 130, 164 (doc A49); Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 45.
391. *Omahuta* (1875) 2 Northern MB, 173–174 (doc A49).
392. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 45.
393. Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 63.
394. Pāpāhia's advance was recorded as part of the Crown's outlay on the purchase in the Land Purchase Department ledgers:see Preece to McLean, 3 July 1875, AJHR, 1875, C-4, p 2.
395. Preece indicated that the owners gave Wī Tana Pāpāhia some of the purchase money, which could have been in recognition of rights over the block, although another possibility is that this was reimbursement for his contribution to the cost of the block's survey: Preece to

Native Minister, 3 July 1875, AJHR, 1875, C-4, p 2; *Omahuta* (1875) 2 Northern MB, 133 (doc A49).
396. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 46.
397. Closing submissions for Wai 246 (#3.3.249), pp 82–84.
398. Closing submissions for Wai 1509, Wai 1512 and Wai 1539 (#3.3.301), p 7; closing submissions for Wai 1384, annex B (#3.3.286(b)), pp 89–90; closing submissions for Wai 1509, Wai 1512, and Wai 1539 (#3.3.301), p 7; closing submissions for Wai 49 and Wai 682 (#3.3.382(b)), pp 89–91.
399. Nelson had referred to Holdship as Holdership: Derby, '"Fallen Plumage"' (doc A61), pp 114–115, 118; Horsley, 'A History' (doc A57), pp 35, 90–91.
400. Derby, '"Fallen Plumage"' (doc A61), p 87; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 725–727.
401. Derby, '"Fallen Plumage"' (doc A61), pp 105, 114–116.
402. Ibid, pp 117–118.
403. Ibid, pp 117, 121.
404. Ibid, pp 121–122, 128–131.
405. Ibid, p 136.
406. Ibid, pp 126, 135–136.
407. Ibid, p 150.
408. Ibid, pp 149–151.
409. Ibid, p 151.
410. Ibid, pp 152–153.
411. Ibid, p 154.
412. Derby explained that the Crown was apparently authorised to take such action under section 25 of the Native Land Court Act 1880: Derby, '"Fallen Plumage"' (doc A61), p 157.
413. M P Kawiti to J Bryce, 8 May 1882 (cited in Derby, '"Fallen Plumage"' (doc A61), p 157).
414. Derby, '"Fallen Plumage"' (doc A61), p 157.
415. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 731; Derby, '"Fallen Plumage"' (doc A61), p 157.
416. Bryce, marginalia to petition of Hone Tiaki and 34 others, 12 June 1882 (Derby, '"Fallen Plumage"' (doc A61), p 158).
417. Derby, '"Fallen Plumage"' (doc A61), pp 158–159.
418. Ibid, pp 159–160.
419. Gill to Greenway, 3 May 1883 (cited in Derby, '"Fallen Plumage"' (doc A61), p 162).
420. Derby, '"Fallen Plumage"' (doc A61), pp 167–170; Thomas, 'The Native Land Court' (doc A68), p 148.
421. Greenway to Gill, 20 May 1883 (cited in Derby, '"Fallen Plumage"' (doc A61), p 176).
422. Derby, '"Fallen Plumage"' (doc A61), p 176.
423. Ibid, p 177.
424. Ibid, pp 178–182.
425. Ibid, p 185.
426. Closing submissions for Wai 250 and Wai 2003 (#3.3.272(b)), pp 36–37.
427. Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), pp 57–58.
428. Ibid, pp 52, 55.
429. Referring to the subsequent Court hearing to determine title, Clarkson commented that 'The large discrepancy between the offered prices of 10 shillings and 30 shillings an acre, versus the eventual price accepted by Maori – 1 shilling 3 pence – was not explained in the [Native Land Court] minutes': ibid, p 55.
430. Ibid, pp 53–55.
431. Ibid, p 53.
432. Ibid, pp 52–53.
433. *Pakanae* (1875) 2 Northern MB 175 (doc A49); Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), p 40.
434. Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), p 41.
435. Ibid, pp 43–46.
436. Ibid, pp 9, 55–56.
437. Ibid, pp 39–40, 42; *Pakanae* (1875) 2 Northern MB 175 (doc A49).
438. Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), pp 42, 56–57. The £50 tāmana was presumably the payment to Hōne Mohi Tāwhai and others, as Pairama Te Tao was the second listed owner of Pakanae 4 and the sole owner of Pakanae 6: *Pakanae* (1875) 2 Northern MB 223–224 (doc A49).
439. Rosaria Hotere and Jane Hotere, amended statement of claim, May 2017 (Wai 974 R01, claim 1.1.108(b), S0C), p 9; closing submissions for Wai 974 (#3.3.245), pp 13–14; see 'Papers relating to Native Disturbance at Otaua, Hokianga', AJHR, 1879, G-9.
440. Closing submissions for Wai 974 (#3.3.245), pp 13–14.
441. William Webster to Native Minister, 4 September 1879, AJHR, 1879, G-9, p 2; S von Sturmer to Under-Secretary, Native Department, 3 October 1879, AJHR, 1879, G-9, pp 2–3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 742–743.
442. *Mangamaru* (1887) 9 Northern MB 3, 28 (doc A49); Berghan, 'Northland Block Research Narratives' (doc A39(d)), vol 5, pp 69, 428.
443. McLean, instructions, November 1871, AJHR, 1875, G-7, p 7.
444. Brissenden to McLean, 3 August 1874, AJHR, 1875, G-7, p 16.
445. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 702–703.
446. Ibid, p 703.
447. Crown closing submissions (#3.3.407), pp 27–28.
448. Thomas, 'The Native Land Court' (doc A68), p 193.
449. Ibid, pp 149, 194.
450. Ibid, pp 183–184, 193–195.
451. Ibid, p 196.
452. Ibid, p 196.
453. Bayley, 'Aspects of Maori Economic Development and Capability' (doc E41), pp 67, 73–74, 77–83.
454. Thomas, 'The Native Land Court' (doc A68), p 209.
455. Ibid.
456. Ibid, p 202.
457. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1147, 1150–1151.
458. Ibid, p 1146.
459. See Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 11, pp 157, 165, 379–380, 382, 484–485, 501.

460. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1150, 1155.
461. Waitangi Tribunal, *Ngawha Geothermal Resource Report*, Wai 304, pp 49–51. It is assumed that Mair's discussions were with non-sellers Hōne Heke Ngāpua and Te Tane Haratua, who are recorded as having addressed the Court; there is no evidence that any 'sellers' attended the hearing or that they had even been notified of it.
462. Thomas, 'The Native Land Court' (doc A68), pp 222–223; Berghan, 'Northland Block Research Narratives' (doc A39(i)), vol 10, pp 135–139; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 813, pp 800–801.
463. Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 96.
464. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1150, 1154.
465. Berghan, 'Northland Block Research Narratives', vol 10 (doc A39(i)), p 145; Berghan, 'Northland Block Research Narratives', vol 13 (doc A39(l)), p 801.
466. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 441–444.
467. 'Report of Native Land Laws Commission', AJHR, 1891, G-1, p x.
468. More Tukariri to Maxwell, 9 March 1896 (Berghan, supporting papers (doc A39(n)), vol 4, p 2796); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1153.
469. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1153–1154.
470. Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 11, p 162.
471. Walzl, 'Overview of Land Alienation' (doc U1), p 93; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 741–742.
472. Berghan, 'Northland Block Research Narratives' (doc A39(d)), pp 155–163; Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 11, pp 168–169; Berghan, 'Northland Block Research Narratives' (doc A39(k)), vol 12, pp 128–129.
473. Crown closing submissions (#3.3.407), p 18.
474. Rose Daamen, 'Report on the Alienation of the Parahirahi Block', report commissioned by the Waitangi Tribunal, 1992 (doc E1), pp 10–14.
475. Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), p 15; Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, p 140.
476. Clarkson, 'Pakanae and Kokohuia Lands' (doc A58), pp 32–33. Clarkson recorded that the land was titled under both section 17 of the 1867 statute and under section 23 of the Native Lands Act 1865.
477. See Waitangi Tribunal, *Ngawha Geothermal Resource Report*, Wai 304.
478. Closing submissions for Wai 974 (#3.3.245), pp 16–17; closing submissions for Wai 53(#3.3.370(b)), pp 22–33.
479. Closing submissions for Wai 53 (#3.3.370(b)), pp 27–31.
480. Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), pp 4, 6.
481. Daamen notes that Maning 'crossed out 1869 and wrote 1867 on the standard form': Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), p 8.
482. As with the initial title investigation, no record of the rehearing survived: Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), p 9; Waitangi Tribunal, *Ngawha Geothermal Resource Report*, Wai 304, p 36.
483. Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), pp 12–14.
484. Treasury voucher (cited in Dr Donald Loveridge, 'The Acquisition of Parahirahi D Block by the Crown', report commissioned by the Waitangi Tribunal, 1992 (doc E5), p 26); Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), pp 18–19.
485. Williams, *Te Kooti Tango Whenua*, p 277.
486. Loveridge, 'The Acquisition of Parahirahi D Block by the Crown' (doc E5), Loveridge, 'The Acquisition of Parahirahi D Block by the Crown' (doc E5), pp 27–29.
487. Loveridge, 'The Acquisition of Parahirahi D Block by the Crown' (doc E5), pp 29–30.
488. Ibid, p 32.
489. Differing legal opinions were presented on this question to the Ngawha geothermal resource (Wai 304) inquiry. However, the Tribunal observed that 'the qualified restriction on alienation made by the court in 1885 was clearly within its powers under s 4 of the Native Land Division Act 1882'. We furthermore note that section 5 of the Government Native Land Purchase Act 1877 stated that the provisions of that Act 'shall not alter or repeal any other enactment restraining the purchase or acquisition of Native lands, or any estate or interest therein': Waitangi Tribunal, *Ngawha Geothermal Resource Report*, Wai 304, pp 70–71.
490. Loveridge, 'The Acquistion of Parahirahi D Block by the Crown' (doc E5), p 51; Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), pp 25–26.
491. Loveridge, 'The Acquisition of Parahirahi D Block by the Crown' (doc E5), p 103; Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), p 37.
492. Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), pp 35–37.
493. Ibid, p 36.
494. Ibid, pp 41–42, 46–47.
495. Closing submissions for Wai 974 (#3.3.245), p 17; closing submissions for Wai 53 (#3.3.370), p 29.
496. Daamen, 'Report on the Alienation of the Parahirahi Block' (doc E1), p 93.
497. Ibid, p 85.
498. Closing submissions for Wai 990, Wai 1467, and Wai 1930 (#3.3.274(a)), pp 21–22.
499. Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, pp 271–272.
500. Mitai Penetaui to Minister for Lands, 4 January 1895 (cited in Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 273).

501. Aranui and Wharepapa to Native Minister, 7 February 1895 (cited in Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 272); closing submissions for Wai 990, Wai 1467, and Wai 1930 (#3.3.274(a)), p 22.
502. Maxwell to Sheridan, 22 March 1895 (cited in Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 273).
503. Berghan, 'Northland Block Research Narratives' (doc A39(e)), vol 6, p 274.
504. Ibid.
505. Closing submissions for Wai 990, Wai 1467, and Wai 1930 (#3.3.274(a)), p 22.
506. The Hauturu claims settled by the Ngāti Manuhiri Claims Settlement Act 2012 and the Te Kawerau ā Maki Claims Settlement Act 2015 include Wai 280, Wai 487, Wai 532, and Wai 567.
507. Closing submissions for Wai 1544 and Wai 1677 (#3.3.261(b)), p 19; submissions in reply for Wai 678 (#3.3.519), p 5.
508. Submissions in reply for Wai 678 (#3.3.519), p 5; closing submissions for Wai 1384 (#3.3.286(b)), p 89.
509. Closing submissions for Wai 1384 (#3.3.286(b)), p 89.
510. Closing submissions for Wai 2206 (#3.3.400), pp 238–239.
511. Tamihana Akitai Paki, statement of claim, August 2008 (Wai 2243, claim 1.1.376, SOC), p 1; closing submissions for Wai 1544 and Wai 1677 (#3.3.261(b)), p 19; closing submissions for Wai 1384 (#3.3.286(b)), p 89; submissions in reply for Wai 678 (#3.3.519), pp 3–4.
512. Submissions in reply for Wai 678 (#3.3.519), p 6.
513. Closing submissions for Wai 1544 and Wai 1677 (#3.3.261(b)), p 19; submissions in reply for Wai 678 (#3.3.519), p 5.
514. Crown closing submissions (#3.3.405), pp 3–4.
515. Peter McBurney, 'Northland: Public Works & Other Takings: c1871–1993', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A13), p 462.
516. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 6.
517. Ibid, pp 7–8.
518. Ibid, pp 8–9.
519. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 813, p 60.
520. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 10–11. The Act was able to be invoked once an offer had been made for the block in question.
521. McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 468.
522. Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts', report commissioned by the Mahurangi and Gulf Islands Districts Collective Committee in association with Crown Forestry Rental Trust, 2010 (doc A36), pp 567–568; Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 9–11.
523. Tuhaere to Rolleston, 11 March 1882, p 4 (cited in Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 11).
524. Local schedule to the Special Powers and Contracts Act 1883 (no 27), https://nzetc.victoria.ac.nz/tm/scholarly/tei-BIM1083Spec-t1-g1-t2-body1-d2.html, accessed 8 August 2022; Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 12.
525. The Court awarded the land to 'the descendants of Maki and Mataahu – viz to Te Kawerau, including Rahui, the daughter of Te Kiri': Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 14–15. See also McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 470–472.
526. McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 470–471.
527. Ibid, pp 471–472.
528. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, p 66; McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 472.
529. McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 473.
530. Ibid, pp 472–473.
531. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 17.
532. McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 473–474.
533. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, p 67; we note McBurney states this payment was £30: McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 474.
534. McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts' (doc A36), pp 571–577.
535. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 18–19.
536. Ibid, p 18.
537. Ibid, pp 24–26.
538. Ibid, pp 26–27.
539. McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 477, 479.
540. Ibid, pp 479–480, 482.
541. Ibid, pp 482, 485–496.
542. Ibid, p 479.
543. Ibid, pp 481–482. Johnson noted that Cadman's withdrawal of the offer was not publicly notified, and so legally the 1881 *Gazette* notice had remained in force: Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 32.
544. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 77–78; McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 481–483, 491.
545. McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 484.
546. Ibid, p 491.
547. Ibid, pp 491–492; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 80–81.
548. McBurney, 'Northland: Public Works & Other Takings' (doc A13), p 492.
549. Ibid, pp 493–496.

550. 'Little Barrier Island Purchase Bill', 18 October 1894, NZPD, vol 86, p 893.
551. Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), p 46.
552. McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 497–499.
553. Ibid, p 500; Johnson, 'Report on the Crown Acquisition of Hauturu' (doc E8), pp 57–58.
554. McBurney, 'Northland: Public Works & Other Takings' (doc A13), pp 486–487, 490–491.
555. Crown closing submissions (#3.3.407), pp 28–29.
556. Ibid, pp 28–29.
557. Ibid, p 31.
558. Ibid, p 33.
559. See the evidence of Dr Donald Loveridge to the Central North Island inquiry on the impact of the minimum price requirement: Dr Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by the Crown Law Office, 2004 (Wai 1200 ROI, doc A77); Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 582.
560. Kemp to Under-Secretary, Native Department, 24 June 1873, AJHR, 1873, G-8, p 23.
561. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 937–938; Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 6, p 194.
562. AJLC, 1879, sess II, no 6, p ii.
563. Ibid, pp 6–8.
564. Stirling, 'Eating Away at the Land' (doc A15), pp 135–136, 142, 145; Tom Bennion, *Maori and Rating Law*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 20, 24.
565. Bennion, *Maori and Rating Law*, p 24; Crown and Native Lands Rating Repeal Act 1888, s 6.
566. 'A Narrative of the Premier's Trip through the Native Districts of the North Island', AJHR, 1895, G-1, p 18.
567. Ibid, p 27.
568. Dr Donald Loveridge, 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910: A Preliminary Survey', report commissioned by the Crown Law Office (Wai 1200 ROI, doc A77), p 190.
569. Ibid, p 192.
570. See, for example, claimant closing submissions (#3.3.213), pp 35–39; claimant submissions in reply to Crown closing submissions (#3.3.429), pp 11–13; claimant submissions in reply (#3.3.462), pp 4–5, 10.
571. Crown closing submissions (#3.3.407), p 28.
572. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 699.
573. It should be noted that this did not include eight purchases by Auckland's Provincial Government for which no price data was available: 'Lands Purchased and Leased from Natives in North Island', AJHR, 1885, C-7, pp 2–5.
574. 'Dealings with Native Lands', 20 June 1883, AJHR, 1883, G-6, pp 2–4.
575. 'Return of Lands Passed through the Native Land Court', no date, AJHR, 1883, G-6, pp 2–3.
576. 'Report by the Trust Commissioner, Auckland', 12 July 1876, AJHR, 1876, G-8, p 2.
577. 'Return of Proceedings of the Haultain to Native Land Court from Minister, 12 July 1876 to 30 June 1877', 1877, AJHR, 1877, G-8, p 2.
578. Auckland Provincial Council, Report of the Committee on Native Land Purchase, May 1875 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 699).
579. 'Native Affairs', 15 November 1877, NZPD, vol 27, p 236.
580. Armstrong and Subasic, supporting documents (doc A12(a)), vol 8, pp 2:1066–2:1068.
581. McDonnell to Clarke, 22 October 1874, AJHR, 1875, G-7, pp 22–23; McDonnell to St John, February 1875, AJHR, 1875, G-7, p 29; McDonnell to McLean, no date, AJHR, 1875, G-7, p 30; McDonnell to Clarke, 9 June 1875, AJHR, 1875, G-7, p 31.
582. McDonnell to Pollen, 2 June 1873 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 758).
583. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 758.
584. This was also observed to be the case in the Te Rohe Pōtae district: Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 1470–1471.
585. 'General Report on Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p 8.
586. McDonnell to Pollen, 7 April 1873, AJHR, 1875, G-7, p 2.
587. 'General Report on Native Lands and Native Land Tenure', 11 July 1907, AJHR, 1907, G-1C, p 8.
588. 'Report and Recommendation on Petition of Tamaho Maika and Others', AJHR, 1926, G-6A, pp 2–3.
589. Derby, '"Fallen Plumage"' (doc A61), pp 184–185, 200.
590. Kirk to Minister of Lands, 'Report on Native Forests and the State of the Timber-Trade', 16 November 1885, AJHR, 1886, C-3, pp 21–22.
591. Edwin Mitchelson, evidence to Commission on Timber and Timber-building Industries, 12 May 1909, AJHR, 1909, H-24, pp 583, 585.
592. 'Papers relative to Extension of Whangarei–Kamo Railway', AJHR, 1891, II, D-13, pp 1–2.
593. See Heale to Chief Judge Fenton, 7 March 1871, AJHR, 1871, A-2A, p 18.
594. Chief Judge Fenton to Fox, 16 November 1872 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 767–768).
595. 'Immigration and Public Works Loan Bill', 29 September 1873, NZPD, vol 15, p 1458.
596. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 663.
597. Preamble to 'A Bill Intituled – An Act to Regulate the Sale,

Letting, and Disposal of Native Lands', https://nzetc.victoria.ac.nz/tm/scholarly/tei-B1M878Nati-t1-g1-t2-body1-d1.html, p 2.
598. See, for example, Hōne Mohi Tāwhai's comments in 'Address in Reply', 1 June 1880, 'Want of Confidence', 25 June 1880, NZPD, vol 35, pp 22, 546.
599. 'Address in Reply', 1 June 1880, NZPD, vol 35, p 22; see also 'Native Land Sales Bill', 20 July 1880, NZPD, vol 36, pp 379–380.
600. 'Want of Confidence', 25 June 1880, NZPD, vol 35, p 546.
601. 'Want of Confidence', 25 June 1880, NZPD, vol 35, p 546; 'Native Land Sales Bill', 20 July 1880, NZPD, vol 36, pp 379–380; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 981–983.
602. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1150.
603. See ss 41–43 of the Land Act 1877 Amendment Act 1882.
604. See, for example, 'Governor's Speech', 16 June 1876, NZPD, vol 20, p 6; 'Governor's Speech', 15 July 1879, NZPD, vol 31, pp 5–6; Bryce, 17 October 1879, AJHR, 1879, G-1, pp 14–15.
605. Ward, *National Overview*, vol 2, pp 115, 235 & 240.
606. Stout was referring to one of the new leasehold tenures introduced by the Liberals in the Land Act of 1892, that is the lease in perpetuity (a 999-year leasehold grant) which became available to settlers: 'Native Land Purchase and Acquisition Bill', 31 August 1893, NZPD, vol 81, p 523.
607. 'Native Land Court Bill', 28 September 1894, NZPD, vol 86, p 388.
608. Section 132 of the Native Land Court Act 1894 provided that when Māori owners or Māori incorporated owners (through their committee) applied to the land board in their district to sell land, and the land board, having secured the consent of the Governor, proceeded to sell the land by auction, the Colonial Treasurer might survey any such lands or construct or maintain roads or other works which would help render the land available for settlement; the repayment of such moneys being a first charge on moneys so spent (section 133(a)) before repayment of the sale proceeds to the Maori owners. These provisions were not for 'thirds' payments, and applied specifically to Māori land sold under the provisions of the Native Land Court Act 1894.
609. Mueller to Sheridan, 20 June 1894 (Berghan, supporting papers (doc A43), vol 3, pp 1467–1470).
610. Maxwell to Sheridan, 27 October 1894 (Berghan, supporting papers (doc A43), vol 3, p 1605).
611. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1150–1151.
612. The purchase also included the 5,200 acre Kaitaia block (outside our inquiry district): Berghan, 'Northland Block Research Narratives' (doc A39(j)), vol 11, pp 159–160.
613. 'Lands Purchased and Leased from Natives in North Island', AJHR, 1894, G-3, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1895, G-2, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1896, G-3, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1897, G-3, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1898, G-3, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1899, G-3, p 2; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1900, G-3, pp 2, 4.
614. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 674.
615. Crown closing submissions (#3.3.407), p 31.
616. Dr Donald Loveridge, summary of 'The Development of Crown Policy on the Purchase of Maori Lands, 1865–1910', November 2004 (doc A77(b)), pp 17–18.
617. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 526.
618. Crown closing submissions (#3.3.407), p 31.
619. 'Immigration and Public Works Loan Bill', 29 September 1873, NZPD, vol 15, p 1458.
620. Crown closing submissions (#3.3.407), p 4.
621. Closing submissions for Wai 2425 (#3.3.367), pp 43–45.
622. Closing submissions for Wai 1665 (#3.3.380), pp 42–43.
623. Closing submissions (#3.3.213), pp 68–69; reply submissions for Wai 2063 (#3.3.544), pp 78–79.
624. Claimant submissions in reply (#3.3.429), p 11.
625. Reply submissions for Wai 2063 (#3.3.544), pp 92–93.
626. Closing submissions (#3.3.213), pp 42–43; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 667.
627. Claimant closing submissions (#3.3.213(a)), p 19.
628. Claimant closing submissions (#3.3.213), p 52; see Thomas, 'The Native Land Court' (doc A68), pp 60, 121.
629. Claimant closing submissions (#3.3.213), p 54.
630. Claimant submissions in reply (#3.3.429), p 3.
631. Claimant closing submissions (#3.3.213), p 43.
632. Claimant closing submissions (#3.3.213(a)), pp 19–20.
633. Ibid, p 20.
634. Claimant closing submissions (#3.3.213), pp 7, 10.
635. Claimant submissions in reply (#3.3.462), pp 3–4, 10–12.
636. Claimant closing submissions (#3.3.213(a)), p 25.
637. Claimant submissions in reply (#3.3.533), pp 10–11.
638. Crown closing submissions (#3.3.407), pp 3–4.
639. Ibid, p 35.
640. Ibid, pp 6–7.
641. Ibid, pp 4, 7.
642. Crown closing submissions (#3.3.406), pp 56–58.
643. Section 59 specified that the Court 'shall make inquiry'.
644. Crown closing submissions (#3.3.406), pp 58–59.
645. Crown closing submissions (#3.3.407), p 17.
646. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, pp 85–90.
647. Eru Nehua, statement, no date, AJHR, 1871, A-2A, p 34.
648. Te Wheoro and Pāora Tūhaere, joint evidence, 18 February 1871, AJHR, 1871, A-2A, p 26.
649. Hemi Tautari, response to questions, no date, AJHR, 1871, A-2A, p 30.

650. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 7.
651. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 771.
652. 'Native Land Bill', 25 August 1873, NZPD, vol 14, p 604.
653. Ibid, p 606.
654. Native Land Act 1873, s 24.
655. *Te Waka Maori a Niu Tireni*, 29 October 1873 (cited in Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 439).
656. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 457.
657. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 631.
658. 'Interim Report on Native Lands and Native-land Tenure: Whangarei, Hokianga, Bay of Islands, Whangaroa, and Mangonui', 10 June 1908, AJHR, 1908, G-1J, p 5.
659. Thomas, 'The Native Land Court' (doc A68), p 116.
660. Native Land Act 1873, ss 25–30.
661. Ralph Johnson, *The Trust Administration of Maori Reserves, 1840–1913*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 77–79.
662. Johnson, *The Trust Administration of Maori Reserves*, pp 74, 83–84.
663. Ibid, pp 83–84.
664. Jenny E Murray, *Crown Policy on Maori Reserved Lands, 1840–65, and Lands Restricted from Alienation, 1865–1900*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 49.
665. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 525.
666. Waitangi Tribunal, *Te Urewera*, 8 vols, Wai 894 (Wellington: Legislation Direct, 2017), vol 3, p 1291.
667. Crown closing submissions (#3.3.407), pp 3–4.
668. A system of village homestead special settlements was established on Crown lands in various regions in 1886 as a way of assisting unemployed urban families onto farms during a time of economic recession; see Evelyn Stokes, 'The Muriwhenua Land Claims Post 1865', report commissioned by the Waitangi Tribunal, 2002 (Wai 45 ROI, doc R8), pp 105–107.
669. 'General Results of Village Homestead Special-Settlements', 31 March 1889, AJHR, 1889, C-5, pp 1, 3.
670. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, pp 85–90.
671. Curnin, evidence, 14 May 1891, AJHR, 1891, G-1, pp 171–173.
672. Brissenden, memorandum, 30 December 1874, AJHR, 1875, G-7, pp 26–27.
673. 'Statement Relative to Land Purchases, North Island', no date, AJHR, 1876, G-10, p 1.
674. Maning to Fenton, 5 July 1876 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 772–773).
675. Fenton, evidence, 24 August, 1880, AJHR, 1880, I-2A, pp 45–46.
676. McKerrow to Minister of Lands, 3 September, 1878, AJHR, 1878, H-17, p 5.
677. 'Land Possessed by Maoris, North Island', 16 July 1885, AJHR, 1886, G-15.
678. 'Native Lands in the Colony', AJHR, 1891, G-10.
679. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1032.
680. 'Aid to Public Works and Land Settlement Bill', 1 September 1899, NZPD, vol 108, p 658.
681. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 634.
682. Ibid; Waitangi Tribunal, *He Whiritaunoka*, Wai 898, vol 1, p 522.
683. Ward, *National Overview*, vol 1, pp 77–78 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 343).
684. Judge Maning to McLean, 7 October 1870 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 346).
685. Judge Maning to McLean, 29 September 1870 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 346).
686. 'Native Lands Act Amendment Act', 1 August 1867, NZPD, vol 1.1, p 267.
687. 'Report of Commissioner of Native Reserves', 19 July 1871, schedule, AJHR, 1871, F-4, pp 9–13.
688. Maning to McLean, 17 May 1870 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 345).
689. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 459.
690. Thomas, 'The Native Land Court' (doc A68), p 120.
691. Murray, *Crown Policy on Maori Reserved Lands*, p 77.
692. Heaphy, 'Report from the Commissioner of Native Reserves', AJHR, 1871, F-4, p 12; Berghan, 'Block Research Narratives' (doc A39(j)), vol 11, pp 230–231; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1885, C-7, p 3.
693. The Crown had made advance payments on the Otangaroa block, but when the Court awarded the block to 34 owners, it abandoned its efforts to acquire it: Horsley, 'A History' (doc A57), pp 56, 60, 65–66, 88–90.
694. 'Land Possessed by Maoris, North Island', AJHR, 1886, G-15, pp 13–14.
695. The post-1880 blocks on the list (determined by checking against Thomas, 'The Native Land Court' (doc A68), apps E, F; 'Report of Commissioner of Native Reserves', 19 July 1871, schedule, AJHR, 1871, F-4, pp 9–12) were Otetao, Te Popo, Whawharu A–B, Horotiu A–B, Ratakamaru A–I, Whataipu, Mauiui A–B, Poroti 2–4, and Puhipuhi 4.
696. Thomas, 'The Native Land Court' (doc A68), p 122.
697. 'Land Possessed by Maoris, North Island', AJHR, 1886, G-15, p 14.
698. Berghan, 'Northland Block Research Narratives' (doc A39(h)), vol 9, p 368; *Whauwhau Pounamu 2* (1867) 2 Whāngārei MB 9–10 (doc A49).
699. Return of certificates issued by Native Land Court from 1 November 1865 to 30 June 1867, AJHR, 1867, A-10C, p 5.
700. Berghan, 'Northland Block Research Narratives' (doc A39(h)), vol 9, p 369.
701. 'Native Views on Native Land Legislation', AJHR, 1888, G-7, p 1.
702. 'Bills', 12 July 1892, NZPD, vol 75, p 391; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1033–1034.

703. Komene had specifically queried or objected to sections 3, 11, 15–17, 24, 26, 31; alienation restrictions were addressed in section 12: 'A Narrative of the Premier's Trip through the Native Districts of the North Island', AJHR, 1895, G-1, pp 28–31.
704. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1201–1202. Heke was referring to the Native Land Court Act 1894 and its prohibition on Māori leasing or selling land to third parties. According to Armstrong and Subasic, Heke considered it 'a great inconsistency' that Māori were denied complete control over their lands but had to take full responsibility for rates.
705. Lewis, evidence, 13 May 1891, AJHR, 1891, G-1, p 156.
706. Lewis, evidence, 12 May 1891, AJHR, 1891, G-1, p 146.
707. 'Land Possessed by Maoris, North Island', AJHR, 1886, G-15, pp 13–14; Rigby, 'Validation Review' (doc A56), app A.
708. Specific closing submissions for Wai 620, 1411–1416, 2239 (#3.3.305(a)), pp 74–77; closing submissions for Wai 179, Wai 1524, Wai 1537, Wai 1541, Wai 1681, Wai 620, Wai 1673, Wai 1917, and Wai 1918 (#3.3.393(b)), pp 168–170.
709. Barry Rigby, 'Horahora Local Study', report commissioned by the Waitangi Tribunal, 2016 (doc A70), pp 23–24, 29.
710. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, p 88; Rigby, 'Horahora Local Study' (doc A70), p 35.
711. 'Notice of Entry into Negotiations for Acquisition of Native Lands by Her Majesty', 16 July 1895, *New Zealand Gazette*, 1895, no 54, pp 1099–1100 (cited in Rigby, 'Horahora Local Study' (doc A70), p 36).
712. Rigby, 'Horahora Local Study' (doc A70), p 36.
713. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 88–89; Rigby, 'Horahora Local Study' (doc A70), pp 35–36.
714. Rigby, 'Horahora Local Study' (doc A70), p 36.
715. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1147.
716. Pereri Mahanga (doc U21), para 68.
717. Rigby, 'Validation Review' (doc A56), app B; Thomas, 'The Native Land Court' (doc A68), p 117.
718. Thomas, 'The Native Land Court' (doc A68), app A.
719. Rigby, 'Validation Review' (doc A56), app B; see also Thomas, 'The Native Land Court' (doc A68), p 117.
720. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 3, p 1293.
721. Ibid. It should be noted that Taniora Arapata argued that James Clendon had promised a 100-acre reserve from the Omaunu sale: Berghan, 'Northland Block Research Narratives' (doc A39(i)), vol 10, p 147.
722. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 53.
723. Ibid, p 55.
724. Ibid.
725. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 28.
726. 'Deeds No 67 – Arawhata-Totara No 1, Hokianga District', Turton, *Maori Deeds of Land Purchases in the North Islands*, vol 1, p 93.
727. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 55.
728. *Te Arawhatatotara* (1876), 3 Northern MB, 269 (cited in Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 55).
729. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), pp 55–56.
730. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 36.
731. Ibid, pp 28–29.
732. Webster to Preece, 1 October 1877 (cited in Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, pp 30–31).
733. Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), pp 55–56; Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, pp 28–30; Webster explained that Hirini Taiwhanga and the other owners pointed out the end of the Te Arawhatatotara block closest to Kaikohe as the land Te Matenga Taiwhanga wanted reserved: Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, p 30.
734. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, pp 19–26; Armstrong, 'The Native Land Court and Crown Purchasing' (doc AA52), p 59.
735. Berghan, 'Northland Block Research Narratives' (doc A39(c)), vol 4, pp 20–25.
736. Rigby, 'Validation Review' (doc A56), app A, p 2.
737. Closing submissions for Wai 1508 and Wai 1757 (#3.3.330), p 63.
738. Herbert Rihari (doc R14), p 61; *Tunapohepohe* (1875), 2 Northern MB 96–103 (doc A49).
739. *Tunapohepohe* (1875), 2 Northern MB 96 (doc A49).
740. Herbert Rihari (doc R14), p 61; *Tunapohepohe* (1875), 2 Northern MB 98, 103 (doc A49).
741. The block name was mistranscribed as Tunapahepahe: Brissenden to McLean, 24 June 1875, AJHR, 1875, G-7, p 33.
742. Berghan, 'Northland Block Research Narratives' (doc A39(g)), vol 8, pp 415–416.
743. Thomas, 'The Native Land Court' (doc A68), p 120.
744. Murray, *Crown Policy on Maori Reserved Lands*, p 34.
745. 'Native Lands Frauds Prevention Bill', 29 August 1870, NZPD, vol 9, p 361; 'Instructions to Trust Commissioners under the Native Lands Frauds Prevention Act 1870', AJLC, 1871, no 23, p 162.
746. 'Native Lands Frauds Prevention Bill', 29 August 1870, NZPD, vol 9, p 361.
747. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 2, p 847.
748. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 456–457.
749. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 388.
750. 'Instructions to Trust Commissioners under the Native Lands Frauds Prevention Act 1870', AJLC, 1871, no 23, p 162.
751. Sewell, circular to Trust Commissioners, 18 March 1871, AJHR, 1871, G-7A.
752. Murray, *Crown Policy on Maori Reserved Lands*, p 35.

753. 'Report relating to Alienation of Lands by Natives in Auckland Province', 14 July 1876, AJHR, 1876, G-8.
754. 'Report of Lands Alienated by Natives in Auckland Provincial District', 12 July 1877, AJHR, 1877, G-6.
755. 'Report relating to Alienation of Lands by Natives in Auckland Province', 14 July 1876, AJHR, 1876, G-8; 'Report of Lands Alienated by Natives in Auckland Provincial District', 12 July 1877, AJHR, 1877, G-6.
756. 'Report relating to Alienation of Lands by Natives in Auckland Province', 14 July 1876, AJHR, 1876, G-8; 'Report of Lands Alienated by Natives in Auckland Provincial District', 12 July 1877, AJHR, 1877, G-6.
757. 'Report on Removal of Restrictions on Sale of Native Lands', 14 May 1886, AJHR, 1886, G-11, p 3.
758. 'Native Land Administration Bill', 11 June 1886, NZPD, vol 54, p 463.
759. Lewis, evidence to Commission on Native Land Laws, 12 May 1891, AJHR, 1891, G-1, p 156.
760. Lewis, evidence to Commission on Native Land Laws, 12 May 1891, AJHR, 1891, G-1, p 157.
761. Thomas, 'The Native Land Court' (doc A68), pp 214–217; Hira Te Taka and 65 others, petition, 3 October 1893, AJHR, 1893, I-3, p 23.
762. Thomas, 'The Native Land Court' (doc A68), p 218.
763. Murray, *Crown Policy on Maori Reserved Lands*, p 34.
764. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 436; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 495.
765. Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, pp 73–74; Thomas, 'The Native Land Court' (doc A68), p 61.
766. Thomas, 'The Native Land Court' (doc A68), p 61; Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, pp 77–79.
767. Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, pp 79–83, 88–89.
768. Ibid, p 84; Barry Rigby, 'The Crown, Maori, and Mahurangi: 1840–1881', report commissioned by the Waitangi Tribunal, 1998 (doc E18), p 116.
769. Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, p 84.
770. Ibid, pp 85–86.
771. Maori Real Estate Management Act Amendment Act 1877, ss 2, 8; Berghan, 'Northland Block Research Narratives' (doc A39(f)), vol 7, pp 87–88.
772. Counsel for Te Whakapiko noted that Opuawhanga is 'sometimes mistakenly called Opuawhango': closing submissions for Wai 156 (#3.3.401(c)), pp 37–48.
773. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 396–397.
774. Closing submissions for Wai 156 (#3.3.401(c)), pp 37–38; *Opuawhanga 2* (1867) 1 Whāngārei MB 140–141 (doc A49).
775. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 396–397, 402; Thomas, 'The Native Land Court' (doc A68), p 65; Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), p 17.
776. Thomas, 'The Native Land Court' (doc A68), pp 65–66; see also Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), pp 18–22.
777. Thomas, 'The Native Land Court' (doc A68), pp 64–65.
778. Marie Tautari (doc AA157), p 4 fn 10; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 410.
779. Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), p 18.
780. Thomas, 'The Native Land Court' (doc A68), pp 64–65; see also Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), pp 18–22.
781. Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), p 18 n; Marie Tautari (doc AA157), pp 21–22.
782. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 400–401; S Woon to Auckland Superintendent, 9 December 1873 (cited in Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), p 18).
783. Haultain to McLean, 18 July 1871, AJHR, 1871, A-2A, p 5.
784. Marie Tautari (doc I37(a)), p 28; Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 403, 405.
785. Thomas, 'The Native Land Court' (doc A68), pp 65–66; Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), pp 18–22.
786. Thomas, 'The Native Land Court' (doc A68), pp 65–66; see also Armstrong, 'Ngati Hau "Gap Filling" Research' (doc P1), pp 18–22.
787. Berghan, 'Northland Block Research Narratives' (doc A39(l)), vol 13, pp 404–407.
788. 'Sufficiency' was defined as land 'equal to an aggregate amount of not less than fifty acres per head for every Native man woman and child resident in the district' in the 1873 Act (s 24), and not less than 25 acres of first-class land, 50 acres of second-class land, and 100 acres of third-class land per man, woman, and child in the 1893 Act (s 15).
789. 'Native Land Bill', 25 August 1873, NZPD, vol 14, p 604.
790. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 439.
791. Rigby, 'Validation Review' (doc A56), p 3.
792. Claimant closing submissions (#3.3.213), p 44.
793. Ibid, pp 39–40.
794. See 'Papers relating to Native Disturbance at Otaua, Hokianga', AJHR, 1879, G-9, pp 2–3.
795. Marie Tautari (doc I37(a)), p 12.
796. Waitangi Annette Wood (doc S12), p 5.
797. Crown closing submissions (#3.3.407), pp 7, 28.
798. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 397; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 403.
799. Derby, '"Fallen Plumage"' (doc A61), p 202.
800. Bruce Stirling, 'Ngati Whatua and the Crown', report commissioned by the Crown Forestry Rental Trust and the Ngati Whatua o Kaipara ki te Tonga Claims Committee, 1998 (doc E20), pp 426–427.
801. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), p 118.
802. Claimant closing submissions (#3.3.213), p 60.

Page 1176: Table 10.1
The figures in this table are based on enclosures in Brissenden to McLean, 24 June 1875, AJHR, 1875, G-7, pp 32–34.

Page 1178: The Northland Timber Trade in the Late Nineteenth Century

1. David Alexander, 'Land-Based Resources, Waterways and Environmental Impacts', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A7), pp 142–143.
2. Ibid, p 144.
3. Ibid, p 145.
4. Ibid, p 144.
5. Ibid, pp 143–145.
6. Ibid, p 145.
7. Ibid, pp 143–144.
8. Ibid, p 146.
9. Ibid, pp 146–147.
10. Nicholas Bayley, 'Aspects of Maori Economic Development and Capability in the Te Paparahi o Te Raki Inquiry Region (Wai 1040) from 1840 to c 2000', report commissioned by the Waitangi Tribunal, 2013 (doc E41), p 76.
11. Alexander, 'Land-Based Resources, Waterways and Environmental Impacts' (doc A7), p 189; Bayley, 'Aspects of Maori Economic Development and Capability' (doc E41), p 77.
12. Bayley, 'Aspects of Maori Economic Development and Capability' (doc E41), p 74.

Page 1225: Table 10.2

The figures in this table are based on David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), pp 1148–1149; 'Native Lands in the Colony', AJHR, 1891, sess II, G-10; 'Return of Lands Purchased and Leased in North Island', AJHR, 1894, G-3; AJHR, 1895, G-2; AJHR, 1896–1900, G-3.

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

Huihui tatou ka tu, wehewehe tatou ka hinga.

—Kotahitanga Paremata, Waitangi, 14 April 1892[1]

11.1 Hei Tīmatanga Kōrero / Introduction

By 1865, the Crown had proclaimed its sovereignty over the whole of New Zealand; asserted its authority in this district and in the central North Island through warfare; established colonial governance institutions for settlers in which Māori had little or no voice; broken promises to establish and sustain a national Māori assembly and a system of local self-government through rūnanga; and established a land titling and transfer system that aimed to support the rapid alienation of Māori land.

All of these policies had been damaging both to Te Raki Māori interests and to the Crown–Māori partnership. But none had fully broken down Te Raki Māori independence. On the contrary, in 1865 Māori in this district retained a very significant degree of day-to-day autonomy. The Crown, for example, could mediate in disputes but not fully enforce its laws. The period from 1865 to 1900 was one of major change and challenge for Māori in this district and throughout New Zealand. Governing power was now fully in the hands of settlers, who were growing in numbers and confidence, and who were increasingly determined to bring Māori lands and people into the colonial system. During this period, the Crown, through successive colonial Governments, pursued policies aimed at accelerating immigration; transferring Māori land to settlers; breaking down tribal 'communism'; hastening Māori submission to the colony's laws; establishing local government for settlers; asserting control over land, fisheries and other resources; and ensuring that Māori made significant financial and land contributions to local and national development.

These policies constrained Māori economic development, undermined Māori health and well-being, and challenged the mana of Māori communities. The Native Land Court, after a positive beginning under the Native Lands Act 1862, began to operate very differently under the Native Lands Act 1865; it imposed significant costs on Māori communities, undermined hapū authority, and paved the way for further alienation of Māori land (see chapter 9). During the 1870s alone, under the Crown's new title system, the Native Land Court provided several hundred thousand acres of this district's land with a modified customary title which conferred on the owners nothing more than the right to alienate their individual interests; the Crown offered no collective legal title (see chapter 9).[2] The Government purchased more than a quarter of the district's land (see chapter 10).[3]

During the same decade, successive colonial Governments also asserted control over shellfish and fishing grounds;[4] county councils – most of them dominated by settlers – began to operate in the Te Raki inquiry district;[5] and resident magistrates were increasingly able to assert authority over Māori, albeit with some exceptions.[6] In addition, the settler population grew rapidly from the late 1870s, especially in the southern part of the district (see appendix 11).

Up until the mid-1860s, Te Raki Māori had sought to engage with the colonial Government and to some extent experiment with colonial laws and institutions, as a means of advancing development. During the period covered by this chapter, as Māori progressively felt the destructive effects of government policies on their lands, economic well-being, and sphere of authority, they increasingly asserted their rights to autonomy and self-government, in accordance with the treaty.

Over two decades, Te Raki Māori leaders embarked on a range of sustained political initiatives. 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. At the same time, they sought freedom from the Crown's laws and institutions that unfairly impacted on them, especially the Native Land Court and land laws. In pursuit of these objectives, they petitioned the colonial Parliament and the Queen, met with and wrote to Ministers, and proposed legislation. Some communities sought to withdraw entirely from engagement with colonial authorities.

Consistently, Māori leaders argued that they had rights under he Whakaputanga and te Tiriti to make their own laws and manage their own affairs. Rangatira explained that they were not rejecting the Queen or the treaty relationship under which she had offered her protection for their lands and guaranteed their rangatiratanga. Nor were they rejecting the right of the colonial Parliament and Government in New Zealand to pass laws. They sought arrangements in which Māori and settler institutions could coexist under the Queen's protection; indeed, they asked the colonial Parliament to provide legal recognition and protection for their institutions.

Ultimately, the colonial authorities rejected most of their proposals, and in particular were unwilling to recognise any significant transfer of authority away from colonial institutions. By the end of the century, most of this district's land had been titled by the Native Land Court, and the last remaining territories would soon follow; the Government and local authorities were able to enforce colonial laws and gather taxes from Māori communities; and Māori remained on the economic and social margins of emerging settler communities. By 1900, the vision of Te Raki leaders for an autonomous Māori system of government had given way to a much more limited system established under government authority. In sum, the transfer of authority from Māori to the Crown was complete throughout most of the district, and very close elsewhere.

Claimants told us that the Crown failed to protect the tino rangatiratanga of Te Raki Māori during this critical period and instead deliberately undermined Māori autonomy and self-government, marginalising Māori from national decision-making and variously dismissing, rejecting, and seeking to co-opt and control Māori in their

attempts to develop institutions for self-government.[7] Claimants said that, throughout the period covered by this chapter (and beyond), the Crown continued to gradually extend its de facto sovereignty in a manner inconsistent with te Tiriti.[8]

In the Crown's assessment, it had a right to assert its laws and system of government over the whole of New Zealand, it provided adequate mechanisms for Māori to exercise tino rangatiratanga during the period covered by this chapter, and it also provided for adequate Māori representation in the colonial Parliament.[9]

11.1.1 Purpose of this chapter

Chapters 4 and 7 considered the treaty compliance of the Crown's exercise of kāwanatanga in the inquiry district from 1840 until 1867 and its impact on Te Raki Māori tino rangatiratanga. This chapter continues the analysis of this tension into the period from 1865. We examine, from a treaty perspective, how the Crown sought to assert what it considered to be its own paramount sovereignty in the inquiry district, and the implications this had for Māori initiatives to maintain their rangatiratanga over their lands and communities.

The purpose of this chapter is to investigate claims that Crown actions, omissions, legislation, and policy undermined Māori autonomy and institutions of self-government in the latter part of the nineteenth century. As with the preceding chapters on the relationship between rangatiratanga and kāwanatanga, from 1840 to 1865, the issues in this chapter centre on the Crown's treaty duty to recognise and respect the Māori right to exercise tino rangatiratanga over their lands, resources, and other taonga, including their right to exercise tino rangatiratanga in respect of issues concerning their communities. The overarching aim in exploring these issues is to assess the extent to which the Crown's efforts to assert its legal and political authority in the inquiry district complied with its treaty obligations.

11.1.2 How this chapter is structured

We begin this chapter by considering claimant and Crown submissions, and previous Tribunal guidance on relevant issues, in order to identify the issues for determination (section 11.2).

We then consider the central issues over three distinct periods: from 1865 to 1878 (section 11.3), from 1878 to 1887 (section 11.4), and from 1888 to 1900 (section 11.5). Within each of these sections, we set out our analysis of the issues, then our findings in terms of treaty principles. In the final sections of the chapter, we summarise our findings (section 11.6) and we describe the prejudice experienced by Te Raki Māori as a result of treaty breaches (section 11.7).

11.2 Ngā Kaupapa / Issues

This chapter concerns claims that, during the years from 1866 to 1900, the Crown acted in ways that were inconsistent with the treaty agreement – by failing to provide Te Raki Māori with sufficient representation in the colonial Parliament; by failing to recognise and provide for Te Raki Māori institutions of self-government at hapū, tribal, and national levels; by failing to respond adequately to petitions and protests from Te Raki Māori; and also by using force to assert its practical authority over Te Raki Māori.

In this section, we consider claimant and Crown submissions on these matters, and also consider guidance from previous Tribunal reports, before identifying issues that remain for determination.

11.2.1 What previous Tribunal reports have said

As discussed in chapter 4, our findings about the Crown–Māori relationship will necessarily reflect this district's unique circumstances, including the conclusion from stage one of our inquiry that rangatira 'consented to the treaty on the basis that they and the Governor were to be equals', each with distinct spheres of influence, in an arrangement that would require further negotiation over time.[10]

Nonetheless, previous Tribunal reports can provide valuable guidance on the issues that we are considering. In this chapter, these concern the political relationship between Te Raki Māori and the Crown, including their relative authority and spheres of influence. As we noted in chapter 4, the Tribunal has consistently found that the

treaty guaranteed Māori rights to autonomy, self-determination, and self-government over the full range of their affairs and through institutions of their choosing, at local, tribal, and national levels; that these rights constrained or fettered the Crown's power of kāwanatanga; and that the relationship between Crown and Māori spheres of influence was subject to ongoing negotiation and adjustment in which neither side could impose its will.[11]

In the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (1988), that inquiry panel noted that, from the 1860s, the Crown increasingly sought to assert its authority over Māori populations and over their lands and resources. A growing settler population, the transfer of political responsibility to colonial institutions of government, Crown warfare against Māori, and hardening settler attitudes all influenced a growing Crown determination to break Māori control of land and resources.[12]

With respect to Māori political representation, several Tribunal reports have found that Māori were entitled to fair, meaningful, and effective representation in the colonial Legislature.[13] Yet, the Tribunal has found, the four seats granted to Māori in 1867 were neither proportionate on a population basis nor adequate to provide for effective representation of Māori rights and interests. In the *Maori Electoral Option Report* (1994), the Tribunal found that Māori members 'could have little influence' and were easily outvoted on matters of importance to themselves. As a result, Māori increasingly sought political influence through their own autonomous institutions; for example, by aligning with the Kīngitanga or by appealing for rights under section 71 of the New Zealand Constitution Act 1852.[14]

In *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims* (2010), the Tribunal found that, through representation in Parliament, Māori 'did have some voice', but 'it cannot be said that their representation allowed them anywhere near the same degree of expression and power that Pākehā had'.[15] Māori representation, for much of New Zealand's history, 'never . . . came anywhere near a level to proportionately match that of Pākehā'. This 'seems to us to be a direct undermining of the Treaty's article 2 promise of tino rangatiratanga', since 'how were Māori leaders meant to lead and represent their people within the framework of the State, if they were not given reasonable opportunity to do so?'[16] As a result of this imbalance, the Māori members had 'only nominal power' and were unable to redress wrongs done to Māori through the legislative process.[17] Similarly, in *He Whiritaunoka: The Whanganui Land Report* (2015), the Tribunal found that Māori members 'were powerless to block legislation that harmed Māori', and therefore lost faith in the parliamentary system.[18]

This, then, was the context in which Māori in this district and elsewhere increasingly attempted to assert their rights to self-government in accordance with he Whakaputanga and the treaty. In *He Maunga Rongo: Report on Central North Island Claims, Stage One* (2008), the Tribunal considered in detail options for Māori self-government during the period covered by this chapter, and also considered the relationship between parliamentary representation and autonomous institutions. It found that Māori were entitled under article 2 of the treaty to meaningful power at a national level, either through their own institutions of government or through representation in colonial institutions, or a combination of both. That power had to be sufficient to ensure that Māori rights and interests were not 'swamped' by those of settlers, especially as the settler population grew.[19] This, in its view, required the Crown to ensure that institutions of government were established in a manner that actively protected tino rangatiratanga. The Tribunal also found that article 3 of the treaty guaranteed Māori rights of representative self-government at a national level, on the same basis as settlers.[20]

The Tribunal found in *He Maunga Rongo* that several models were available for Māori self-government during this period, including (among others) recognition of district rūnanga and komiti with meaningful powers, and recognition of a national Māori parliament.[21] Yet the Crown either ignored or missed these opportunities.[22] In particular, the Tribunal found that the Crown had

missed a critical opportunity by failing to recognise the Kotahitanga Paremata when it was established during the 1890s:

> When Maori set up their own elected body – self-funded and with an elaborate electoral system, rules, and a very large degree of popular support – the Crown should have worked with it, encouraged it, and empowered it.

The Paremata was entirely consistent with the Crown's kāwanatanga and the treaty guarantee of tino rangatiratanga. The Crown's failure to 'incorporate Kotahitanga into the machinery of the State, and share power with Maori in a meaningful way at the central level' was a 'serious breach of the principles of the Treaty'.[23]

11.2.2 The claimants' submissions

In the claimants' view, from the mid-1860s – once the military crisis in Waikato had passed – 'the Crown quickly moved to reduce or disestablish any manifestation of Māori political autonomy'.[24] The Crown, claimants alleged, pursued policies that individualised land interests, destroyed tribal structures, and encouraged both land loss and swamping of the Māori population.[25]

Although Te Raki Māori attempted to work with and within colonial institutions, the 'token and ineffective' representation in the colonial Parliament meant they had no effective means of protecting tino rangatiratanga from the decisions of the settler majority.[26] The Maori Representation Act 1867 established four Māori electorates at a time when Māori were entitled to many more on a population basis. Parliamentary under-representation allowed settlers to make law for Māori and contributed to a breakdown in the treaty relationship from the 1870s onwards.[27] Claimants submitted that the Crown ignored or rejected Māori protests and recommendations for improving representation.[28]

Claimants told us that, from the 1870s, Te Raki Māori sought to persuade the Crown to recognise autonomous political institutions. In particular, they sought Crown recognition of a Māori parliament, and of self-governing Māori districts under section 71 of the Constitution Act. Māori regarded themselves as having a right to manage their own affairs; this arose from their pre-treaty relationships with British kings, from he Whakaputanga in 1835, from the treaty in 1840, and from the agreements reached and commitments made at Kohimarama in the 1860s.[29]

Claimants described Te Raki leaders as seeking Crown recognition for Māori autonomy and institutions of self-government through a succession of major hui at Waitangi, Ōrākei, and elsewhere; through petitions to the colonial Parliament and the Queen; through Bills in Parliament; by taking a leading role in the national Kotahitanga movement in the late 1880s and 1890s; by declaring their authority within tribal boundaries; and by other means. In the claimants' assessment, the Crown alternately dismissed, rejected, and sought to control these initiatives, while pressing ahead with policies aimed at asserting its authority and opening Māori land for settlement.[30]

Claimants told us that te Tiriti guaranteed tino rangatiratanga over Māori peoples, lands, and other taonga; provided for the Crown to exercise kāwanatanga over settlers on lands that had been legitimately acquired from Māori; and provided for a partnership or shared authority, to be negotiated between Māori and the Crown, wherever the populations intermingled.[31] Claimant counsel submitted that, in breach of these provisions, the Crown instead imposed its government and legal regime on Māori, and obstructed, marginalised, or ignored Te Raki Māori attempts to create institutions through which they could exercise their tino rangatiratanga.[32]

11.2.3 The Crown's submissions

The Crown asserted that, notwithstanding our conclusion in stage 1 of this inquiry, and notwithstanding the ongoing right of Māori to exercise local 'chieftainship' over their people and lands, it acquired sovereignty over the whole of New Zealand in 1840, and therefore had a right to assert its own laws and authority over Māori.[33] The Crown submitted that, at the Kohimarama Conference in 1860 (which we refer to in this report as the Kohimarama

Rūnanga; see chapter 7), Te Raki Māori unambiguously accepted the Queen's authority and laws, and from that time sought self-government only under the Crown's authority.[34]

In counsel's submission, the Crown provided adequately for the ongoing exercise of tino rangatiratanga from that time. The Crown made no concessions on the historical issues in this chapter. After initially making little attempt to impose British law on Te Raki Māori, 'from the 1860s onwards, the Crown provided mechanisms for Northland Māori to exercise tino rangatiratanga in respect of their lands and taonga' through rūnanga (in the 1860s) and Maori Councils (from 1900).[35] The Crown said it was under no obligation to recognise or establish self-governing Māori districts, and caused no prejudice to Te Raki Māori by choosing not to do so.[36] The Crown also submitted that, from 1867, Te Raki Māori had been fairly and adequately represented in Parliament,[37] and that there was no evidence of Māori complaints about the number of Māori electorates during the period covered by this chapter.[38] It noted that during the 1890s, 'there were various calls by Māori for greater autonomy and self-determination over their own affairs'. In particular, it noted the Kotahitanga movement sought to 'persuade the Crown to accept the proposal for a separate Māori Parliament'. The Maori Councils Act 1900 was a compromise solution, the Crown submitted, 'granting the power of local self-government to Māori communities'.[39]

11.2.4 Issues for determination

The claimants contend that during the period under consideration in this chapter the Crown did not recognise and respect Māori rights of tino rangatiratanga, autonomy, and self-government, and instead continued to assert its authority over Te Raki Māori without their consent. The Crown's view is that it made sufficient provision for tino rangatiratanga through institutional arrangements such as rūnanga and the much later Maori Councils. The overarching issue for this chapter to determine is therefore a simple one:

- Did the Crown recognise and support institutions and initiatives through which Te Raki Māori could exercise their rights of tino rangatiratanga?

This issue question is considered by examining three key strategies Te Raki Māori employed in the time period under review; namely, by attempting to engage with the Crown's institutions (broadly speaking, during 1865 to 1878); by developing new institutions for local and regional self-government (1879 to 1887); and finally, by working through te Kotahitanga to establish a system of national self-government, then finally reaching accommodation with the Crown over new institutional arrangements (1888 to 1900).

11.3 Did the Crown Recognise and Support Institutions and Initiatives through which Te Raki Māori Could Exercise Tino Rangatiratanga in 1865–78?

11.3.1 Introduction

By 1865, notwithstanding the collapse of Grey's rūnanga (the 'new institutions'), Te Raki Māori communities continued to exercise a significant degree of autonomy over their day-to-day affairs. Māori still outnumbered settlers by some margin in the north of the district;[40] the Native Land Court had only just begun the process of converting customary title to legally cognisable titles;[41] for the most part, Māori also continued to resolve internal disputes among themselves, with government officials exercising authority only when rangatira consented;[42] and relationships between Māori and settlers in our inquiry district were typically harmonious, partially because settlers still relied on Māori goodwill for their security and livelihoods.[43] Indeed, one member of the House of Representatives in 1871 commented that Ngāpuhi were 'so powerful' that the Government did not dare to establish settler militia, and that northern settlers live 'on the sufferance of the Natives'.[44]

Nonetheless, for this district's leaders, the treaty relationship was a source of frustration. In particular,

the work of the Native Land Court, from 1866, became a growing burden on Māori communities (see chapter 9).[45] Nor were Te Raki Māori experiencing the political partnership or economic benefits they expected as part of the treaty relationship. At the Kohimarama Rūnanga, the Governor had promised Māori a national assembly and local self-government, as well as an economic partnership under which Māori would contribute land, and the Government would build roads, bridges, and schools, thereby developing the conditions necessary for mutual prosperity. Aside from its brief experiment with rūnanga, the colonial Government had by the end of the decade delivered on none of these promises.[46] Very few roads had been built north of Auckland,[47] and the first native schools appear to have been established in 1872 on lands gifted by Māori.[48]

From the late 1860s onwards, the colonial Government intensified its efforts to break down tribal 'communism' and hasten Māori submission to the colony's systems of law and authority. The Maori Representation Act provided for the establishment of four Māori electorates in the House of Representatives, as a temporary measure to encourage Māori engagement with colonial law-making. The Native Land Act 1873 aimed to accelerate purchases of Māori land by converting collective customary landholdings into individually held, tradeable shares (see chapter 9, section 9.5.3). This, in turn, opened the way for Crown land purchasing on a large scale: between 1875 and 1880, Government agents acquired over 430,000 acres of Māori land (from a district total of 2.13 million acres).[49] During the 1870s, the colonial Parliament enacted legislation asserting control over Māori fisheries,[50] and in the wake of the abolition of the provinces, established a system of local government that quickly fell under settler control.[51] As we noted earlier, at a local level, the settler population grew rapidly, especially in the south of this inquiry district, and government authorities sought – albeit with mixed success – to enforce colonial law over Māori.[52]

The Government saw its approach to Māori assimilation as important for the colony's economic objectives and as reducing the risks of further Crown–Māori warfare, which it held responsible for slowing the North Island's development. As discussed in chapter 10, the Government's development objectives were underpinned by heavy investment in public works and assisted immigration, funded through borrowing which was to be repaid through the profits made from the purchase and on-sale of Māori land. Settler politicians sometimes differed over the speed with which Māori should be pressed to submit to this new economic and political order, but few disagreed with its ultimate assimilative purpose.[53] Historian Dr Vincent O'Malley has argued that, as the Crown sought to assimilate Māori into its own system of law and authority, it could attempt to ignore or suppress Māori institutions, or it could attempt to co-opt Māori to enforce colonial law. He observed that, as Native Minister from 1869 to 1876, Donald McLean typically pursued this co-option strategy.[54]

These policies, by their very nature, challenged Te Raki Māori authority and Māori expectations of the treaty relationship. In their dealings with the colonial Government during the late 1860s and early 1870s, Te Raki leaders continued to pursue a treaty partnership based on peace and mutual prosperity, and to this end they generally continued to accommodate and cooperate with the colony's laws and institutions. They might be protective of their own authority within their sphere, but they were also committed to the treaty relationship. As the latter decade wore on and Māori communities increasingly felt the impacts of the Court's titling operation, land alienation, and other policies, the district's leaders pursued a different course. They continued to engage with colonial authorities but increasingly sought recognition of their rights to govern themselves, in accordance with the treaty guarantee of tino rangatiratanga. They sought Crown recognition of committees to provide Māori self-government at a local level, and at times also suggested that Māori should have their own legislature.

In this and other sections, we are seeking to address one central issue: Did the Crown recognise and support institutions and initiatives through which Te Raki Māori

could exercise their rights of tino rangatiratanga? For the period from 1865 to 1878, we will consider:

- To what extent was the Government able to enforce colonial law on the ground in this district during the period?
- Was Māori representation in Parliament sufficient to protect the tino rangatiratanga of Te Raki Māori?
- What was the Crown's response to Te Raki Māori proposals for local self-government?
- What was the overall state of the treaty relationship between Te Raki and the Crown by 1878?

11.3.2 Tribunal analysis

(1) *To what extent was the Government able to enforce colonial law on the ground in this district during the period 1865–78?*

A critical test of government authority is its ability to enforce law. As we have seen in preceding chapters, from 1840 the colonial Government sought to enforce law in this district but with limited impacts; to a very significant degree, Te Raki Māori continued to live according to their own laws and to adjudicate disputes among themselves, and local officials were able to enforce the colony's laws only when Māori consented. While this continued to be the case in the late 1860s, a combination of factors – conflict among Māori, an increasingly assertive Government, and a desire among Māori to encourage peaceful Pākehā settlement of their district – all combined to lead Te Raki Māori towards increased engagement with the colony's legal system.

(a) Had these changes resulted in a greater ability on the part of the Government to enforce its authority during the years 1865–68 immediately after the retrenchment of the rūnanga?

After withdrawing support from the Bay of Islands and Mangonui Rūnanga, the Government sought to encourage Te Raki Māori to comply with the colony's laws. Within this district, it relied on four resident magistrates assisted by Māori assessors and karere (constables). The magistrates in 1868 were Edward Williams (Waimate and Hokianga), Robert Barstow (Bay of Islands), William B White (Mangonui), and Harcourt Aubrey (Whāngārei and Kaipara). At that time, the Government also employed 28 rangatira as assessors across the whole of the north, along with 17 karere.[55]

As noted earlier, Māori continued to outnumber settlers by a significant margin north of Whāngārei – a consequence of the Crown's failure up to that point to open the district with roads and bridges, its retention of large areas of land that had been purchased from Māori but not yet opened for settlement, and its failure to deliver the townships that Governors Thomas Gore Browne and George Grey had promised.[56]

When the Native Land Court had begun its hearings in Te Raki in Whāngārei in March 1865, about two-thirds of the district remained in Māori ownership, the rest having passed to the Crown and settlers through a combination of purchasing and the settlement of old land claims.[57] With limited access to trading opportunities, the Māori economy continued to rely on land sales and subsistence agriculture, and (for cash, which was increasingly needed because of the costs of attending Court sittings) on extractive industries such as kauri trading and gum digging.[58]

The experiment with government rūnanga had provided means by which rangatira and Crown officials could meet – either formally at annual meetings or informally on other occasions – to negotiate over the intersection (at a local level) between the rangatiratanga and kāwanatanga spheres. From a Te Raki Māori perspective, this was an important step towards attracting settlers and development to the district, in accordance with the promises made by Gore Browne and Grey.[59] The rūnanga had also provided a mechanism for bringing the district's leaders together to adjust significant inter-hapū disputes, including questions of land title, though there were occasions on which Māori communities did not accept rūnanga decisions.[60]

Although the rūnanga only operated for a few years, they were clearly valued in this district by rangatira and local officials alike (we discuss the operation of the rūnanga in chapter 7, see section 7.5). When the

Māori Assessors in the North in 1868

An 1868 return listed the following rangatira as assessors in the north: Mangonui – Wiremu Kingi, Paraone, Puhipi Te Ripi, Penetito te Huhu, H R Hukatere, P Wharekauri; Hokianga – Tamahote Anga, Moetara, Hoterene Wi Pou, T Tai, Aperahama Taonui, Mohi Tawhai; Waimate – Hira te Awa, Riwhi Hongi, Wi Kaire, Hemi Marupo, Wi Pepene; Russell – Tamati Waka Nene, Hori Maka te Ngere, H Tawatawa, Wi Te Tete; Kaipara: Te Hemara, Arama Karaka, Te Keene, W Kereti, Wiremu Rewiti, Wi Tomairangi, H Kingi Tuhua. The return also listed three wardens: Kingi Hori Wira (Waimate), P Papahia (Hokianga), and Rangaunu (Mangonui). Four karere were employed in each of Waimate, Hokianga, and Russell, and five at Kaipara.[1]

Government withdrew its support and reduced the number of assessors, a gap was created which both Māori and the Government sought to fill.[61] To a significant degree, Te Raki Māori managed their sphere of authority as they had before 1861, adjudicating disputes among themselves and involving Crown officials only when they saw some purpose; for example, when a magistrate was needed to mediate, or when Pākehā were involved and matters therefore needed to be managed in ways that would not discourage settlement and trade.[62]

The Crown, meanwhile, became increasingly determined to exercise authority over hapū and to ensure that Māori complied with the colony's laws (see chapter 7 and chapter 9, section 9.3). The Native Land Court was a significant step towards this objective, as we discuss in chapter 9. From the late 1860s onwards, local officials also became increasingly determined to enforce the colony's laws with respect to inter-personal and inter-group disputes, many of which were caused by Crown and settler land purchasing activities. In practice, however, the small number of Crown officials was far from adequate to enforce the colony's laws, and local officials continued to rely on Māori involvement and consent. Te Raki Māori compliance with the colony's laws was not so much enforced as negotiated.[63]

In one significant example, in 1866 local officials were unable to arrest the assessor Hare Poti after he shot and killed another rangatira, Te Ripi, for adultery. After this incident, Poti and 70 of his people fortified themselves in a pā at Kirioke (near Kaikohe) and declared they would resist any attempted arrest. Ngāpuhi called a large hui, attended by some 400 people, where the matter was discussed. Some rangatira were willing to hand Poti over for trial, but many believed the matter should be resolved in a more traditional manner through Poti making some recompense to Te Ripi's kin. The resident magistrate (Williams) sought advice from the Native Minister. Fearing that any use of force would cause an outbreak of war when the colony was already in a volatile state, the Government instructed Williams to let the matter lie. While Poti was never arrested, the situation was ultimately resolved within Ngāpuhi when Poti made a gift of land to Te Ripi's people.[64]

During 1867, there were two major inter-hapū conflicts in the district. Both arose from disputed land transactions, both involved fatalities, and both were resolved not by the Government – whose encouragement of land transactions was the underlying cause – but by the intervention of neutral rangatira. One of these conflicts concerned a 3,000-acre block of land at Ahuahu, near Waimate. Two closely related hapū, Ngāti Hineira and Te Uri Taniwha, reached agreement that they would divide the block of land between them and retain it permanently in Māori ownership. Another hapū, Ngāre Hauata, asserted rights to a portion of the land and threatened to place it before the Court and then sell it. The leaders met but could not reach agreement. Shots were fired after Te Uri Taniwha disrupted a survey, and both sides then built pā and began fighting, resulting in the deaths of at least three Te Uri Taniwha and two Ngāre Hauata. At its peak, some 500 armed men were involved.[65]

There was a brief ceasefire at the end of July when the combatants heard that the missionary Henry Williams had died. Hostilities then resumed in early August, before Āperahama Taonui, Tāmati Waka Nene, and several other leading Hokianga rangatira arrived – with an armed party of more than 100 – to mediate. Under their influence, the combatants agreed to make peace so long as the land remained unoccupied and was not placed before the Court. The Government formally thanked the Hokianga rangatira for ending the conflict, which local officials had feared would become a general war encompassing all of Ngāpuhi. Four years later, the leaders of Te Uri Taniwha and Ngāre Hauata agreed to divide the land.[66]

Although Edward Williams went to considerable lengths to mediate in this conflict, including riding between the fighting lines (as his father had done), it is notable that the Government was unable to intervene effectively and does not appear to have considered any attempt to bring about peace through armed intervention; rather, it was neutral rangatira, with much greater force at their disposal than the Government could command, who brought the conflict to an end.[67] Soon afterwards, another conflict broke out at Mangonui under similar circumstances when a land dispute erupted after an attempted purchase. On that occasion, the Resident Magistrate and Native Land Court Judge, William B White, was able to negotiate a resolution.[68]

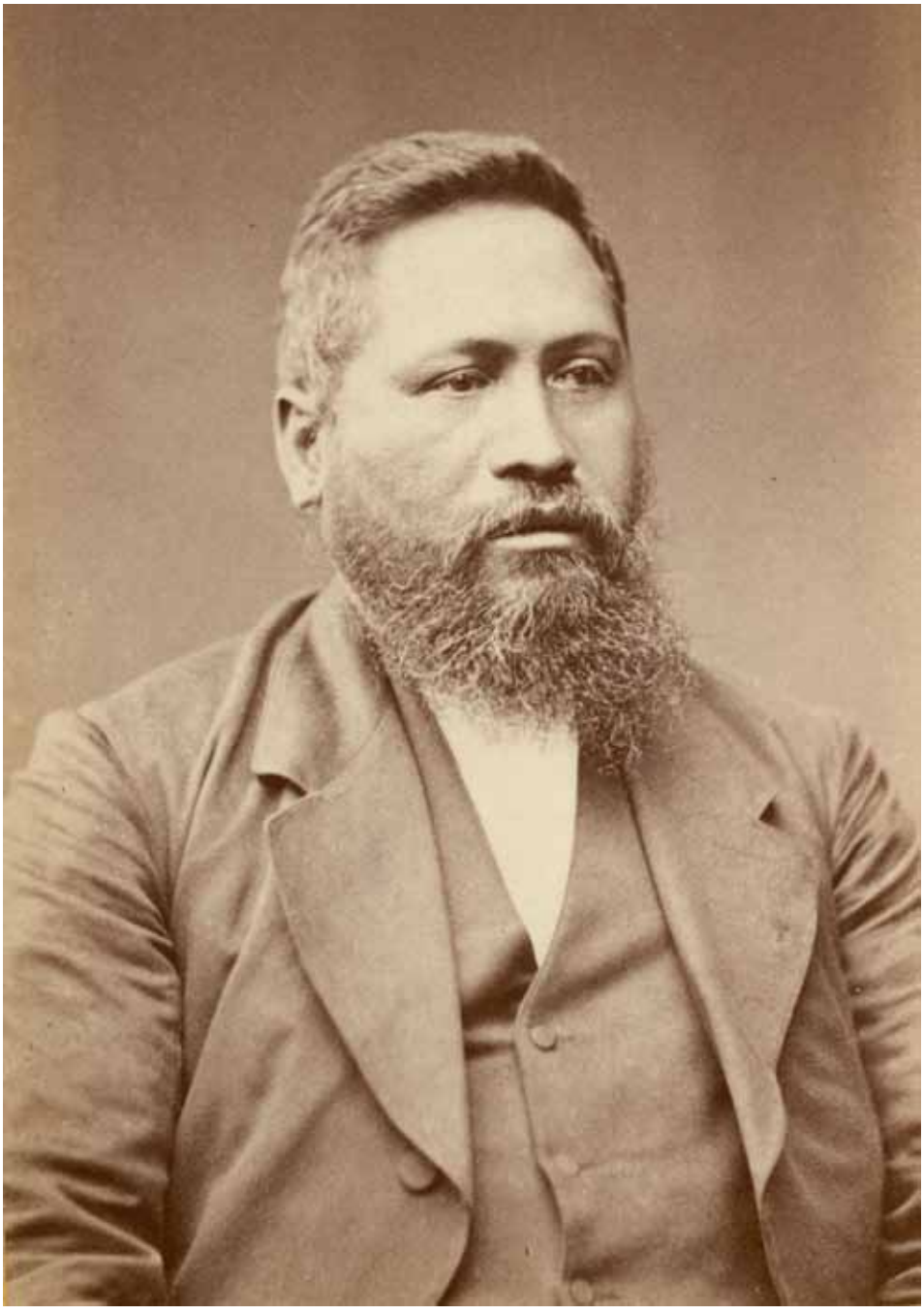
Historians David Armstrong and Evald Subasic gave several other examples of Māori communities living according to their own laws during the late 1860s, and sometimes enforcing those laws against settlers – even in Kaipara and Mahurangi where settlers outnumbered Māori.[69] In another conflict at Kaikohe in November 1867, two men were killed and the rangatira Renata Te Pure was severely injured. Again, neither Williams nor the Native Minister felt able to intervene.[70] Williams also reported in 1868 that Māori communities insisted on settling internal disputes among themselves, and he had considerable difficulty committing Māori for trial or imposing sentences.[71] White reported similar difficulties, writing that he was heavily reliant on assessors and other rangatira, and that any attempt to imprison a Māori of rank would endanger peace in the district.[72]

(b) What was the significance of the 1868 Hokianga War?

The so-called 'Hokianga War' of April 1868 provided a clear example of the limits of the Crown's authority at this time, and in particular the extent to which law 'enforcement' was then a matter of negotiation between the Government and rangatira on competing sides. The 'war' arose from another land dispute, this time between Ngāti Kurī and Te Rarawa over a small parcel of coastal land at Whirinaki. After Te Rarawa resisted Ngāti Kurī attempts to survey the land and place it before the Court, both parties built pā on the block. Te Rarawa marked a boundary on the road beside their pā and said they would shoot any man who crossed it (women and children were allowed to pass). Several Ngāpuhi rangatira, including Hōne Mohi Tāwhai of Te Hikutū, then arrived to mediate. While the mediation was occurring, a Ngāpuhi and Ngāti Kurī rangatira named Nuku attempted to pass the Te Rarawa line and was shot and killed.[73]

Tāwhai then wrote to the Acting Native Minister, J C Richmond, asking the Government to endorse a Ngāpuhi response against Te Rarawa. In an official translation of this letter, Tāwhai said the Government had been 'powerless to act' on previous occasions when rangatira had been killed in the north, and so Ngāpuhi would 'take the matter in our own hands . . . we should act as soldiers and policemen and go and ask that the murderer be given up, if his people refuse to do so, then fight'. If the Government approved this action, Tāwhai would hand the killer over to the resident magistrate so he could be placed on trial; if the Government did not approve, Ngāpuhi would return to the 'manners and customs . . . practised by our forefathers'.[74]

By approaching the Minister, in our view, Tāwhai sought to ensure that any Ngāpuhi enforcement action would not cause conflict with the Government and settlers; and also to achieve utu for Nuku's death without initiating a potentially dangerous and costly conflict with Te Rarawa. Yet this was also a clear assertion of mana



Hōne Mohi Tāwhai of Te Māhurehure and Te Uri o Te Aho, a prominent Hokianga rangatira during the nineteenth century. He was appointed an assessor of the Native Land Court and was called upon to mediate in important disputes such as the Hokianga war in 1868. However, he became disillusioned with the operation of the Court, and petitioned Parliament throughout the 1870s for reforms of Crown policy, including the repeal of the Native Land Act 1873 and the end of Crown purchasing. A strong believer in working with the Crown on issues concerning Māori, he was elected the member of the House of Representatives for Northern Maori in 1879. As a member, he argued in Parliament that the treaty guaranteed Māori equal voting rights, and he advocated for legislation to replace the Native Land Court with Māori committees.

from a rangatira who had only recently been involved in brokering the peace at Ahuahu. As Tāwhai's letter indicated, Ngāpuhi could do as they wished – but they desired an outcome that would not undermine their broader goal of securing peace and prosperity in the north.[75]

Richmond arrived in the district later that month on a previously scheduled trip.[76] With several neutral rangatira, he visited Hokianga to mediate in the dispute. Faced with Ngāpuhi's threat of war, Te Rarawa agreed to give up the alleged killer, Heremia Te Wake of Ngāti Manawa, so he could face trial under the colony's laws. Richmond then left for the Bay of Islands, and Te Rarawa handed Te Wake to the magistrates Barstow and Williams, who committed him for trial on a charge of murder. The magistrates had neither a jail in Hokianga nor sufficient staff to guard Te Wake. The day after his arrest, he escaped and returned to his people. The magistrates wrote asking Te Rarawa to give him up, but in the iwi's view, the magistrates' failure to hold him meant the matter was now at an end.[77]

Tāwhai then wrote again to Richmond signalling that Ngāpuhi intended to fight. While Tāwhai asked for the Government's approval and support from its soldiers, he also (again) said that Ngāpuhi would go ahead regardless.[78] Officials feared that any attempt to re-arrest Te Wake would endanger settlers' lives and potentially draw the Government into a costly fight with Te Rarawa, at a time when the Crown was still engaged in military conflicts in southern Taranaki and on the East Coast. Accordingly, Richmond wrote letters to Te Rarawa leaders asking them to give up Te Wake in order to keep the peace between themselves and Ngāpuhi.[79] Tāwhai sent a long letter expressing frustration at the Minister's stance and accusing the Government of being willing to go to war for land (in Taranaki) but not to uphold the law: 'The people who . . . trample on the laws, you approve of them . . . [Yet] We who are carrying out and follow correctly the principles of the law are forsaken.'[80]

On 11 May, Te Hikutū and their Ngāpuhi allies sent a party of several hundred to attack a Te Rarawa pā at Te Karaka. The attack was repulsed, and one of the attackers killed. Te Hikutū then withdrew, and Tāwhai wrote again to the Native Minister, asking for guns and a man-of-war.[81] The Government sent the Hauraki Civil Commissioner, James Mackay, with several Hauraki and Waikato rangatira. In return for assurances of peace, and after several days of negotiation, Te Rarawa agreed to hand over Te Wake, who was taken to Auckland for trial.[82] As Mackay's report made clear, Te Rarawa feared Ngāpuhi but not the Government. On the contrary, 'we are looked on with contempt, and the bulk of the Native population think it would be an easy matter to drive us from the North altogether'.[83]

Nonetheless, Tāwhai was willing to allow the colony's legal system to take its course, and in this respect it was a significant adjustment on the part of a senior Ngāpuhi rangatira. In July, Tāwhai called a major hui at Herd's Point (Rāwene) with the intention of discussing means of maintaining peace and order in the district. Some 200 Māori attended, including most Hokianga leaders and some from Kaikohe, Waimate, and Matauri. Te Rarawa did not attend – Te Wake was awaiting trial at this point – and nor did rangatira from the Bay of Islands. The hui agreed on a set of recommendations which, in essence, provided that Māori would comply with and enforce the colony's laws.[84]

Accordingly, Tāwhai and others petitioned the House of Representatives asking that Hokianga once again have its own magistrate (as Williams' area was now too large), that assessors be reappointed, and that the area also be granted soldiers, lockups for prisoners, and schools. The petition promised that rangatira would assist in enforcing the law, and, significantly, that Māori would accept the sentences imposed, including prison terms.[85]

The Government sought advice from Williams and other officials, who warned that Māori would neither fully accept English laws nor enforce law against their own kin; rather, they were seeking alternative means of dispute resolution so that local land conflicts would not draw in the wider tribe and threaten to engulf the district. Williams also advised that Tāwhai was not seeking Pākehā soldiers, but for Ngāpuhi to be sworn in as soldiers. In effect, Ngāpuhi were seeking official approval for them to uphold the law themselves after the Government's retrenchment of Grey's rūnanga policy (see chapter 7,

The Supreme Court in Auckland, where in 1869 Heremia Te Wake was tried for the murder of Ngāti Kurī rangatira Nuku in the 1868 Hokianga War.

section 7.5.2(5)). Nonetheless, officials recognised this as potentially a very significant advance in cooperation between the Government and Māori, and one that should be encouraged. The Government instructed Williams to find two new assessors and build a lockup and school at Waimā.[86]

(c) What was the significance of Heremia Te Wake's Supreme Court trial and conviction in 1868?

Meanwhile, in September 1868, the contest for authority in the north moved to the Supreme Court in Auckland, where Te Wake was placed on trial charged with murdering Nuku. The trial took place before Justice George Arney and a Pākehā jury. Te Wake, who pleaded not guilty, was represented by J C MacCormick, and the prosecution by Frederick M Brookfield.[87] MacCormick defended Te Wake on two grounds: first, that there was doubt about whether he had fired the fatal shot, or whether it was fired by his younger brother, Te Kawau; secondly, the incident had taken place under circumstances in which 'the ordinary rules of law could not be applied'. He explained that, in Hokianga, as in many parts of the North Island, it was not possible to apply English law 'in all its strictness' to incidents among Māori:

> the Maoris in many districts owed no authority, no subjection to the law. Would it be said that English law at this present time really was in force throughout the whole of this

> Northern Island . . . Would it not be equally absurd to say that the Maoris generally believed that they were amenable to English law in all its strictness.[88]

MacCormick therefore argued that the case must be judged under Māori customary law. Under that law, he contended, a state of war had existed, and those who killed could therefore not be judged as murderers.[89] This reflected the Te Rarawa view of matters. From their perspective, the killing was justified because Te Rarawa and Ngāti Kurī were at war, and Nuku had defied repeated warnings not to cross the boundary. Tāwhai did not take this view of the matter, although he, too, was assessing the incident through the lens of tikanga. He gave evidence that the killing had not taken place during a time of war, and it therefore was unjustified. According to his translated evidence: 'When both pas are fighting we do not call it murder. The two pas were not fighting when Nuku was shot.' Tāwhai said that Nuku was unarmed and had no hostile intent. Furthermore, as a result of the mediation, the main parties had agreed to meet in person and resolve the dispute. From a Ngāpuhi perspective, then, the killing was also unjustified under tikanga.[90]

The broader question concerned the extent to which the Supreme Court should determine the case according to customary law. MacCormick had argued in court for the recognition of tikanga. In our view, he was undoubtedly correct to assert that the Crown had little authority in Hokianga – as was evident from Te Wake's escape, the Government's unwillingness to use force to re-arrest him, the clear assertions by Ngāpuhi and Te Rarawa of their right to use force if they chose, and Mackay's admission that northern Māori held government authority in contempt. These were circumstances where tikanga was clearly to the forefront. But the trial was being held in Auckland, where the Government did have authority, and in a court that applied the colony's laws. Brookfield and Justice Arney, both representatives of the Crown's authority though in different capacities, rejected MacCormick's arguments.

For the prosecution, Brookfield said that MacCormick had raised 'a new and most monstrous proposition' that Māori 'who had placed themselves under British law should . . . be allowed to commit murder, and be able to shelter themselves under the plea of Maori custom'. Brookfield rejected the view that Nuku had been killed as an act of war:

> When two tribes came together and fought, they were not justified, for they had courts to appeal to. They were under British rule and had no more right to . . . fight out their quarrels with guns than Englishmen had.

All who had gathered at the pā were committing illegal acts and were therefore equally culpable in the murder.[91]

Early in the trial, Justice Arney had expressed his view on the application of customary law, saying that no court 'could admit of any native customs being brought forward as an excuse for the taking of human life'. In his summing up, he reiterated this. He said this was the first time a Pākehā jury had sat on a case of this kind – that is, a case 'arising from an inter-tribal quarrel'. It was therefore important for its potential influence on Māori and their relationship with the law. It was the judge's assessment:

> the jury should not hesitate to pronounce that English law could reach cases of this kind. They were not there to administer the Maori revenge, but to administer law to the Maori, and that with justice and mercy. They would evade their duty if they were to tell the Maori that their law did not reach cases of this kind.[92]

The all-Pākehā jury could consider the surrounding circumstances, including the extent to which Te Wake might have been provoked, and they could consider Māori customary law in that context, but he concluded they should deliver their verdict according to English law.[93] Any other approach would be an invitation to Māori 'to go back and commence an internecine war'. The jury convicted Te Wake of murder, while making a recommendation of mercy. Justice Arney – as required under the colony's law – sentenced Te Wake to death, but passed the jury's recommendation for mercy to the Governor, expressing hope that Te Wake's life would be spared. The judge also

hoped that the verdict would serve as an example to other Māori: 'Henceforth the Maori will know that if he kill a Maori under such circumstances as you have killed Nuku, it is murder.'[94] A few days later, the Governor commuted the death sentence, imposing a new sentence of penal servitude for life.[95]

Neither Te Rarawa nor Ngāpuhi were satisfied. Te Rarawa did not regard the killing of Nuku as murder and furthermore regarded the Government as siding with Ngāpuhi, after ignoring some 10 or more other killings in northern Māori communities (including three of Te Rarawa rangatira) over the preceding decade or so. For Ngāpuhi, the decision to commute the death sentence meant that justice had not been served. Auckland newspapers speculated that Te Wake would be released after some 12 to 18 months. If that was the case, Hōne Mohi Tāwhai told the Mangonui resident magistrate William B White, 'we, the whole of Ngapuhi chiefs, have made up our minds that henceforth no murderer, either native or European, shall be given up to the English for trial'. Since English law was 'a sham and a burlesque' (White's translation), Tāwhai said that Ngāpuhi would 'execute all who may commit murder in our district in our own way'.[96] The response of both parties suggests that the Court's enforcement of British law had not been an appropriate solution for this kind of dispute, concerning a killing that occurred in the context of armed intertribal conflict.

Tensions remained high in the north while Te Wake remained in prison. In January 1869, according to a newspaper report, Te Rarawa were debating whether to join the Government in its wars against 'the Hauhau' or to have 'a skirmish with Ngapuhi' over Te Wake.[97] The Government's handling of this incident had done little to secure its authority in the region; on the contrary, it had aroused opposition from both Ngāpuhi and Te Rarawa. In March 1869, Te Wake escaped from Mount Eden Gaol. Officers pursued him, shooting at him several times before he got away.[98]

Te Wake was then able to make his way (via Māngere and Kaipara) back to his people in the north. The Government does not appear to have made any attempt to recapture him, and later in the year Te Rarawa and Ngāpuhi made peace over the whole affair, with Ngāpuhi giving an assurance that Te Wake would not be harmed. By 1870, he was employed at Rāwene in a store owned by the former magistrate James Reddy Clendon.[99]

For Te Rarawa, the matter could not be completely closed until Te Wake obtained a pardon. Accordingly, leaders of the tribe raised the issue with the Government, and in 1873 the Native Minister, John Sheehan, told the House of Representatives that Nuku's killing was not a murder but an act of war, the opposite of what the Supreme Court had found. Sheehan also said that Te Rarawa, when they handed Te Wake to the Government, had not expected him to be treated as a murderer, but rather had anticipated his release. Te Wake had for some years been free and 'walking about the streets of Russell'. It was better for the dignity of the law that he be pardoned.[100] Accordingly, in 1874 Te Wake handed himself in to the Hokianga resident magistrate Spencer von Sturmer, swore an oath of allegiance, and was pardoned.[101]

Even the manner of the pardon was something of an insult to the Crown's authority. The Government had initially insisted that Te Wake hand himself in at the Supreme Court in Auckland. When Te Wake refused to travel, the Government relented. Despite the Court's emphasis on the importance of enforcing British law in this case, the effort appeared to have failed. Instead, the conflict between Te Rarawa and Ngāpuhi was resolved through tikanga. As Judge Frederick Maning wrote of this incident, in his typical style, 'the time has not come yet wherein we are able to either pardon or punish natives in the north except in exactly such manner as they themselves, in their high mightiness choose'.[102]

(d) To what extent did the Crown's authority on the ground change during the 1870s?

As Te Wake's escape from jail and subsequent pardon suggest, government officials continued to exercise very limited authority on the ground in this district during the late 1860s and early 1870s.[103] As Armstrong and Subasic observed, rangatira were 'unwilling to simply abandon their own customs and adopt Pakeha law'.[104] Williams, in 1872, reported that Māori remained reluctant to involve

him in their 'quarrels', or else involved him as a neutral mediator rather than as a magistrate.[105] The situation was different in Hokianga, but this was likely due to the determination of Tāwhai and other rangatira to maintain peace among Māori and cooperate with the Government. In 1870, the Government had appointed Spencer von Sturmer as Hokianga resident magistrate, not only acceding to Tāwhai's request to re-establish the position but also agreeing to his preferred candidate. In 1870, Tāwhai and Te Tai Pāpāhia adjudicated on a case of accidental death at Waimamaku, and Tāwhai also attempted to develop his own code of law, which he sent to the Native Minister. In 1872, von Sturmer reported that he was having little difficulty enforcing law.[106]

Elsewhere in the district, Māori continued to take enforcement action among themselves and against settlers without involving the Government at all,[107] or to resist officials' attempts to enforce law. When a Whangaroa man, Heremiah Papu, shot another (Timoti Raharuhi) for pūremu (adultery) in 1874, the district's leaders refused to intervene. That this action was regarded a just cause for utu is indicative of the seriousness of the offence. They told Edward Williams that he would have to arrest Papu himself – when Papu was heavily armed and determined to resist. Williams did not have sufficient force available. When Tāwhai and Wī Kātene attempted to intervene, Whangaroa leaders said they would consider handing Papu over, but then took several weeks to deliberate on the matter. Among other things, they objected to the law being applied in this instance when several other killers had gone unpunished.[108]

In the meantime, Governor Sir James Fergusson visited the district, and rangatira raised the matter in their meeting with him. Fergusson then wrote to Native Minister Donald McLean:

> leaving it to the Natives themselves to deliberate . . . upon an open question whether a murderer shall be surrendered appears to . . . be injurious to their good Government and to throw contempt upon the administration of justice.[109]

Ultimately, the matter was resolved not by the Government but by Hōne Mohi Tāwhai, who persuaded Papu to hand himself in. Papu was taken to Auckland and tried in the Supreme Court, where he was convicted of murder and sentenced to three years in prison, the sentence being reduced because of provocation and was considerably lighter than Te Wake's. Ngāpuhi, meanwhile, finally resolved the matter in accordance with their own tikanga when an armed party of Raharuhi's relatives led by Mangonui Kerei visited Whangaroa and claimed his remains. According to Williams' accounts, they were met by a Ngāti Uru party; friendly speeches and mere and other weapons were exchanged, and Raharuhi's remains were removed 'without rancour'.[110]

After Papu's imprisonment, according to Armstrong and Subasic, 'northern Maori seem to have been more inclined to accept the application of English law, and indeed this was the last instance in which the issue was in serious doubt'.[111] We do not entirely agree that this was the last case; as we will see, there were much later instances of Te Raki Māori openly resisting, or ignoring, the Government's authority. Nonetheless, there does appear to have been a change of attitudes from about this time. Von Sturmer in 1876 and Williams in 1877 both reported that Māori were increasingly willing to accept the Court's authority, and that constables were increasingly able to carry out arrests – even of rangatira – without having to involve the district's Māori leaders.[112]

This appears to have been a significant shift, for which there is no definitive explanation. On the one hand, by 1876 Te Raki Māori were feeling the combined effects of the Native Land Court and the Government's 'frenzied' land purchasing activities (discussed in chapters 9 and 10). Together, these developments undermined community authority and might have made Māori feel less able to resist the colony's laws, though these events also led Te Raki leaders to assert their independent authority, as we will see throughout this chapter.[113]

On the other hand, increased acceptance that colonial law and the courts might have a useful role to play perhaps

reflected a desire among Te Raki Māori to engage with the Government and the settler population in ways that would advance peaceful settlement and therefore bring prosperity. This was the approach Hōne Mohi Tāwhai had advocated, though – as Te Raki leaders quickly came to learn – adaptation and increased settlement did not necessarily produce the results that Māori hoped for. In any case, adaptation was by no means complete in the 1870s. As we will see later in this chapter, for many years to come there would continue to be occasions on which Te Raki Māori resisted government authority or bypassed colonial law and resolved disputes among themselves, especially when those disputes concerned land.[114]

(2) *Was Māori representation in Parliament sufficient to protect the tino rangatiratanga of Te Raki Māori?*

As discussed in chapter 7, when the first New Zealand general election was held in 1853, very few Māori were eligible to vote. The franchise was available to males aged 21 and over who met a property test that did not apply to Māori customary land. During the late 1850s and early 1860s, colonial politicians discussed various options to enfranchise Māori. Many reasoned that separate Māori representation within the colonial Parliament was better than separate institutions.

Accordingly, in 1867 the Maori Representation Act provided for the establishment of four temporary Māori seats in the House of Representatives (the lower house), including one seat for the territories north of Auckland. In 1876, the seats were made permanent. In 1872, the Crown also appointed two Māori members to the Legislative Council (the upper house).

Claimants regarded Māori representation as inequitable and insufficient to protect Māori rights and interests.[115] The Crown submitted that Māori representation was fair and adequate because of the Māori seats provided from 1867 onwards.[116] The Crown noted that 'since the creation of the Māori electorates, Māori members of Parliament have been appointed to significant positions within government, including Acting Prime Minister'.[117] It further submitted that between 1890 and 1930, 'the ratio of population per seat was comparable for non-Māori and Māori'.[118]

(a) The Maori Representation Act 1867

The Maori Representation Act came into effect on 10 October 1867, establishing four Māori electorates: three in the North Island and one in the South Island. The Northern Maori electorate encompassed all territories north of the Manukau Harbour. All Māori males (including 'half-castes') aged over 21 were entitled to vote, and any Māori who was entitled to vote could stand as a candidate, provided he had not been convicted of a 'treason felony or infamous offence'.[119]

The Act also provided for provincial councils to establish Māori electorates, though none did before the councils were abolished in 1876.[120] Section 12 provided that the Act would remain in force for five years; once it expired, any Māori members of the House of Representatives or of a provincial council would remain in office only until the subsequent election. Some historians have interpreted the exclusion of voters accused of treason as a deliberate attack on the rights of Māori who had fought against the Crown in recent wars, but the provision merely echoed the wording of the franchise provision in the earlier New Zealand Constitution Act 1852.

As the preamble to the Maori Representation Act explained, its purpose was to temporarily enfranchise Māori who would otherwise be excluded from voting 'owing to the peculiar nature of the tenure of Maori land', and the need to protect them by providing a special franchise – enfranchisement being 'expedient for the better protection of the interests of Her Majesty's subjects of the Native race'.[121]

The Bill's principal sponsor, the recently re-elected Napier member (and soon to be Native Minister) Donald McLean, presented the legislation as a means of giving Māori a voice in the House, and thereby securing peace in the colony.[122] All efforts to govern Māori had failed, he said, because rangatira had seen them as attempts to

subvert Māori authority. For example, Māori throughout New Zealand continued to resent the Crown's arrest and execution of Maketū in 1842.[123]

In this speech, McLean gave no serious consideration to the option of recognising Māori rights to self-government; rather, he assumed that Māori discontent arose from their lack of representation in the House, which led to them having 'no voice in making the laws by which they are to be governed'. He also recognised that Māori paid a large portion of the colony's taxes, possessed about three-quarters of North Island land, and had a population of some 40,000 to 47,000; on all these grounds, he said, they were entitled to greater representation.[124]

McLean gave little explanation for the number of Māori electorates, except to acknowledge that it was 'limited' and that it would give Māori 'a voice in the administration of the country'.[125] As is clear from the debates, the number was determined not by reference to any principle but by political horse-trading; in particular, South Island members were resistant to any initiative that might increase the North Island's influence. The Government neither supported nor opposed the legislation, leaving McLean to lobby other members for their votes, which he won by limiting Māori influence so it would not swamp, or even challenge, that of settlers. Even then, the Bill passed only after its supporters agreed to back the establishment of two temporary electorates for West Coast goldminers to strengthen South Island representation.[126]

McLean and other members who supported the Māori franchise saw it as little more than an experiment to determine how Māori would perform in Parliament. These members believed that parliamentary representation would tend to 'elevate' Māori and hasten assimilation.[127] Some members argued that the initiative gave Māori equal rights with settlers, notwithstanding an obvious imbalance in the number of electorates (discussed later).[128] Some saw Māori representation as an answer to criticism from Britain about the colony's treatment of Māori.[129] Though the Act was not specifically intended to reward Māori loyalty to the Crown, some members believed it would have that effect as candidates could not stand if they had been 'attainted or convicted' of treason or other serious offences.[130]

Among those who opposed the measure or expressed misgivings, some believed the Māori electorates were too large to be workable,[131] while some said Māori would not understand House proceedings and would therefore be vulnerable to undue influence from other members;[132] accordingly, there was considerable debate about whether Māori should be represented by settlers instead of their own people.[133] Some members opposed universal male Māori suffrage, regarding it as a 'dangerous' precedent that would lead settlers to demand the same for themselves.[134] The Bay of Islands member, Hugh Francis Carleton, vehemently opposed any special representation for Māori, though he did not ultimately vote against the legislation.[135]

While there is no evidence of the Crown directly consulting Māori about the Maori Representation Act, or even informing Māori that such a measure was being contemplated, some members did claim to be familiar with Māori views. The Parnell member, Charles Heaphy, told the House that Māori had not forgotten the promises made at the Kohimarama Rūnanga – namely, that similar conferences would be held each year, with opportunities for input into government policy and legislation. Māori also remembered the Native Commission Act 1865 (see chapter 7, section 7.3.2(5)) and 'often asked . . . what steps would be taken to give them a share in the representation'.[136] That Act provided for the establishment of a Māori-dominated commission to inquire into the best way of conferring the franchise on Māori temporarily – that is, until they could secure Crown-derived titles for their lands – but also to consider more generally how best to admit Māori to 'equal political rights', and to report to the Governor and the General Assembly on all other matters affecting Māori interests and well-being.[137] Heaphy's comments may reflect those made by Ngāti Whātua living in his electorate. His words may suggest that Māori were seeking information about the establishment of a national council or national conference of rangatira, empowered

to advise on legislation as well as on Māori representation within the colonial assembly. It does not seem that a commission under the Act was ever appointed.

Few members, if any, appear to have considered whether four electorates would be sufficient to provide Māori with representation that was meaningful, effective, or proportionate to their numbers. Members were far more concerned about proportionality between the North and South Islands than they were with that between Māori and settlers.[138] One legislative councillor, the retired army officer Andrew Russell, said that he would have preferred six Māori electorates but it 'would not have been carried through the other House'. He regarded four as better than none,[139] as he

> could not conceive a greater political injustice than was done [to Māori] in transferring their government from the Queen to the colonists, and placing them under laws in the making of which they had no voice, made by an Assembly in which they had no seat.[140]

If McLean's Māori population estimates were correct, one electorate was being established for every 10,000 to 11,750 Māori.[141] By contrast, at the time the Maori Representation Act was being debated, there were 72 general electorates for an estimated settler population of 204,114, an average of 2,835 settlers per electorate.[142] If Māori electorates had been allocated on the same population basis, Māori would have been entitled to between 12 and 14 electorates (see appendix 11). In Te Raki, where the available evidence suggests that Māori remained in the majority,[143] the disparity appears to have been even greater. Whereas all Māori north of the Manukau Harbour shared a single representative, settler voters – with a smaller population – had five, at least for the time being.[144] Among settler politicians, population was by this time regarded as the principal basis for allocating general electorates, though property ownership and contributions to taxation were also regarded as relevant factors, and populations did vary from seat to seat as a result of political trade-offs.[145] On all these criteria, Māori in general, and Te Raki Māori in particular, were entitled to far greater representation than they were granted.[146]

Certainly, Māori in this district did not respond positively. They criticised the Government for lack of consultation, regarded the number of Māori electorates as entirely inadequate, and argued for either equal representation or a separate Māori assembly. Mangonui magistrate, William B White (whom we first discussed in chapter 6), reported that the Maori Representation Act was 'useless as far as [Māori] are concerned'.[147] And Kerikeri magistrate, Robert Barstow, told his superiors that Māori were 'utterly indifferent' to the whole matter:

> they say that we Pakehas have passed a law that they should be represented and how; that this preliminary procedure is wrong, that we should have consulted them as to the number of representatives, and the manner of electing them, that, as we have initiated the plan, we had better carry it out.[148]

No rangatira of significance stood for the Northern Maori electorate in 1868, and very few voted.[149]

(b) Te Raki Māori representation in practice

Te Raki Māori had not sought or been consulted about representation in Parliament, though as we have seen, in 1865 the Weld Government had been able to pass legislation to give effect to their intention that Māori should be consulted via a native commission. Te Raki Māori were thus initially sceptical about the 1867 legislation. In their view, Māori and settlers should have had an equal say in making the colony's laws. At a major hui in the Kaipara district in February 1868, many Ngāpuhi and other northern leaders rejected the colonial Government's offer of representation in the House of Representatives, on grounds that four members was nowhere near sufficient. Wiremu Pōmare of Kawakawa commented, 'we cannot consent to four members being elected. Let there be equal numbers on the Maori side and on the Pakeha side, and the thing would be at once established.'[150]

Winiata Tomairanga of Mangonui also objected: even 'if there were four Maoris and twenty Europeans, we cannot approve'. Other rangatira attended from Hokianga, Kaipara, Mahurangi, and Ōrākei; all agreed that Māori and settlers should have equal representation. Pāora Tūhaere of Ngāti Whātua – one of the few who had advocated for Māori representation – described the Māori electorates as another example of the Government promising equality and failing to deliver, and he expressed scepticism about the Government's motives.[151]

Throughout the north, rangatira were of the same view, as shown by annual reports from resident magistrates. From Waimate, Edward Williams reported that Māori were 'certainly not satisfied with the Native Representation Act'. They objected on two grounds: first, that they believed a member of one tribe could not represent another, and secondly, that Māori deserved equal representation. Māori leaders 'remark that if they were allowed as many members as the Pakeha there might be something in it. But what, say they, are four among so many?'[152]

From the Mangonui district (which encompassed Whangaroa), William B White reported:

> The Native Representation Act has not attracted much interest amongst the people of this district. It is generally considered as useless as far as they are concerned – the number of representatives being too few; they contend there should be a representative from each tribe, and a chamber separate from the whites.[153]

Many Ngāpuhi leaders felt that the Hokianga spiritual leader Āperahama Taonui was best suited to the task of representing the tribe in Parliament, but he was as sceptical as other rangatira about the usefulness of a single seat.[154] Williams described a conversation in which Taonui outlined his concerns in a compelling critique of the new system:

> He first wished to know the motive for introducing Maori Members into the House. When told it was that the Maoris might have a voice in the Legislature, he replied, 'Very good; you say there are to be four Maori Members and about seventy Pakehas; what are these four to do among so many Pakehas; where will their voices be as compared with the Pakeha voices? How are they to understand anything the Pakehas say, or the Pakehas anything the Maoris say? Is each man to have his interpreter by his side? If not, are they to listen to the Pakeha talk without understanding a word that is spoken – speak without being understood – give the Aye when asked to do so without knowing what they Aye to, and by-and-bye, when some new Act bearing upon the Maoris is brought into operation, be told, Oh, you assisted in passing it? It will not do.'[155]

Taonui then suggested that a younger Māori might first try the position out and report back to his elders to determine whether there was any benefit in parliamentary representation.[156] The first election for Northern Maori took place on 15 April 1868 at Barstow's house in Russell.[157] According to the resident magistrate Williams, notices had been sent 'far and wide' advising rangatira of this event, yet when election day came, they showed 'no interest'. Instead, sometime after the appointed hour, a small group appeared and nominated Frederick Nene Russell,

Year	Member
1868–71	Frederick Nene Russell
1871–75	Wī Kātene
1876–79	Hori Tawhiti
1879–84	Hōne Tāwhai
1884–87	Ihaka Hakuene
1887 by-election	Wī Kātene
1887–90	Hirini Taiwhanga
1891–93	Eparaima Te Mutu Kapa
1893–1909	Hōne Heke Ngāpua

Table 11.1: Northern Maori members of the House of Representatives, 1868–1909.

Frederick Nene Russell, who was elected the first member of the House of Representatives for Northern Maori in 1868. He was a staunch critic of the Stafford Government and the new system of Māori seats, which he feared would undermine Māori autonomy. He remained in Parliament only two years.

the son of a Kohukohu timber trader and his Ngāpuhi wife, Herina Tuku (Tamati Waka Nene's niece). As there was no opposition, Russell was declared elected.[158]

Although he was young (in his mid-twenties) and not a prominent rangatira, Russell was educated, wrote and spoke in English and Māori, and was well connected among settlers and Ngāpuhi; his mother was a close relative of Tāmati Waka Nene.[159] He was supposed to represent the entire district north of the Manukau, but the size of his electorate and the manner of his election both counted against him. Leaders of Ngāti Whātua, Te Rarawa, and Te Aupōuri all informed the Government that Russell could not speak for them.[160] Bay of Islands rangatira subsequently denied having known about the election and also refused to support him.[161]

The new member used his first speech in the House to criticise the system of Māori representation, arguing that the Māori members did not understand proceedings in the English language. Either Māori should have their own assembly, he said, or they should be able to elect trusted settlers to represent them, or 'they had better not be represented at all; for sitting in those seats the whole Maori race became responsible for the acts of the Assembly'.[162] In this, he echoed Taonui's concern that, by accepting seats in the House, Māori were giving up independence without acquiring any meaningful influence in return. Russell remained in the House for only two years, during which time he had little prominence, though he did vote consistently against the Government.[163] In September 1870, he retired from public life and took an appointment as a clerk in the Native Department.[164]

In 1869, Donald McLean became Native Minister and soon visited the north. At Waimate, Wiremu Kātene (Ngāti Hineira, Te Uri Taniwha) told him that 'the requirements of the Maori race cannot be carried out by the [Pākehā] assembly', and that Māori throughout the north wanted two national assemblies, one for Māori and one for settlers: 'let each make laws and submit them to each other . . . by this means peace would be attained in this island'. Kātene added that he had seen no good come from Māori representation in the House, and that even the most able Māori member would be unable to achieve the results Māori sought.[165] Others at the hui supported Kātene's views.[166] At another hui in April 1870, Kātene told McLean and Governor Sir George Bowen that Māori and settlers 'should enjoy equal legislative rights':

> The only great power in the Island is the meeting of the Assembly at Wellington . . . If it be a good thing to introduce

> Maori members into the Parliament, do not select a single one only to represent the Northern tribes. At present we are not properly represented.[167]

The model proposed by Kātene was for separate Māori and settler assemblies which would review each other's laws – effectively forming part of a single legislature, with the Māori and colonial Parliaments operating in partnership. Kātene did not spell out the precise constitutional relationship: how, for example, might any disagreements be negotiated, would both houses have a right of veto, and would both operate under the Queen's mana? Nonetheless, his proposal provided a potential starting point for further exploration. Over the following decades, Te Raki leaders would continue to advocate for some form of Māori parliament (see sections 11.4 and 11.5). McLean responded that Kātene's views deserved careful consideration and he indicated that the Government was willing to consider greater powers for Māori at a local level.[168]

The official account of McLean's 1870 visit also noted that Ngāpuhi were by this time taking greater interest in political representation.[169] In February 1871, some 1,200 Māori (from a population of about 12,000[170]) gathered at Hokianga and Waimate to observe polling for the general election, and 508 of those voted in the Northern Maori electorate. Whereas the 1867 election had been uncontested, on this occasion there were three candidates, all from the Bay of Islands and upper Hokianga: Kātene, Hirini Taiwhanga of Ngāti Tautahi and Te Uri o Hua (whom we discuss in sections 11.4.2 and 11.4.3), and Hōne Peeti of Ngāi Te Whiu. In a tight contest, Kātene was the successful candidate.[171]

Māori voters holding land under Crown grant also appear to have influenced the general election result for the newly established Mangonui and Bay of Islands general electorate, their votes contributing to the defeat of long-serving representative Hugh Carleton, who had led parliamentary opposition to Māori representation.[172]

Armstrong and Subasic suggested that one factor behind this increased interest in political representation was Premier Julius Vogel's plans for rapid growth in government spending on public works: Te Raki Māori had 'no doubt realised that their Member of Parliament could play a key role in directing such essential funding into their own districts'. Governor Bowen, too, in his April 1870 visit, had placed some emphasis on the franchise as a means to influence government policy and public works spending.[173] Kātene and other candidates may have also hoped to change the system from within; as discussed in section 11.3.2(3), one of Kātene's first acts was to propose the re-establishment of rūnanga in the territories north of Auckland.[174]

Certainly, Te Raki leaders had come to see parliamentary representation as an avenue for the exercise of influence on colonial authorities. They sent Kātene to Wellington with instructions and took steps to monitor his performance as their representative.[175] Other than Ngāpuhi, northern tribes continued to regard the election as an irrelevance. Te Rarawa refused to take part because they were not willing to be represented by a Ngāpuhi rangatira, and the same was true for Ngāti Whātua at Kaipara. Even at Waimate, some 40 or 50 eligible Māori voters refused to cast their votes, apparently because they were not satisfied with the candidates on offer.[176]

Partly because of these concerns, throughout the 1870s and beyond, Māori advocated for increased representation in the colonial Parliament. In 1871, the Eastern Maori member Karaitiana Takamoana moved that the number of Māori representatives increase to 12 – three for each existing electorate. The House voted against the increase, though it did support Takamoana's proposal that Māori be represented in the Legislative Council.[177]

In 1872, Parliament extended the life of the temporary Māori electorates by five years but again rejected proposals to increase the number of Māori representatives.[178] In 1875, the Southern Maori member Hōri Kerei Taiaroa introduced a Bill to increase the number of Māori electorates to seven, which was still considerably short of equitable representation on a population basis. He noted that the House had seen similar Bills 'for several years past' and rejected all of them. Parliament did so again on this occasion.[179] Several times during the decade, Māori from around New Zealand sent petitions seeking increased Māori representation.[180] In 1876, the Māori

electorates became permanent without any increase in representation.[181]

In debating proposals to increase the number of Māori electorates, Māori members continued to point out that Māori were not equitably represented and were unable to exercise meaningful influence even on matters of direct concern to their communities, such as land laws.[182] They argued that Māori must either be represented fairly or have their own legislature.[183] Kātene in 1871 said Māori representation 'may be likened to a cap which does not hide all the hairs of the head'. It was not possible for Māori members to travel throughout their very large districts, let alone address all their issues or represent all tribes.[184]

Some prominent settler politicians (including Sir George Grey, who was then in opposition) appeared to be sympathetic to increased representation.[185] But many opposed any increase, fearing that Māori would somehow 'swamp' settlers in the House,[186] or upset the balance between the North and South Islands.[187] Some said existing representation was sufficient for Māori to air their grievances – an argument that suggested Māori enfranchisement was little more than a form of consultation, as distinct from a sincere attempt to provide them with fair representation or a meaningful share of power.[188]

Others said that Māori under-representation was fair because 'a large number [of Māori] repudiated the Queen's sovereignty',[189] or did not accept the colony's laws, or did not pay their fair share of the colony's taxation.[190] This argument ignored the very significant contributions Māori made to the colony's development through land and customs duties.[191] Some argued that Māori should not have increased representation because property-owning Māori could also vote in general electorates – a straw argument since this 'dual franchise' had also been available from the outset to settlers, some of whom voted in multiple electorates.[192]

Professor Keith Sorrenson, in his 1986 history of Māori representation in Parliament, wrote that Māori members were 'largely powerless' in the House. They sometimes held the balance of power when settler members were divided, and were able to exercise some influence through the Native Affairs Committee, but were outnumbered and their views ignored even on matters of vital interest to them, such as Native Land Acts. In his view, Māori representation was little more than 'token' in a Parliament that was otherwise determined to acquire Māori land and oppose Māori autonomy.[193]

Our view is that representation in Parliament gave Māori from this and other districts a voice in the colonial Legislature but little more than that. For the period covered by this chapter, Māori representation was not equitable on a population basis. Nor was it sufficient to effectively protect Māori interests or treaty rights from the policies and actions of the settler majority. Nor, furthermore, was it sufficient to adequately represent all tribal interests in the Northern Maori electorate. We agree with Sorrenson that the inadequacy of Māori representation was a significant factor in Māori seeking a parliament of their own.[194]

(3) *What was the Crown's response to Te Raki Māori proposals for local self-government?*

From his election in 1871, Wiremu Kātene pursued two major objectives: development of infrastructure in the north, in order to advance economic prosperity; and local self-government for northern Māori. In his first major speech, a translation of which appears in the *New Zealand Parliamentary Debates*, he joined with the Rodney member, Harry Farnall, to propose a £100,000 boost for roading and other public works north of Auckland. Kātene said the Government was borrowing vast sums of money from London and taking considerable customs duties from northern Māori, yet almost none of this funding was being spent in the region:

> If the neglect hitherto manifested towards these [northern] districts is to continue, I am not able to say what the consequences will be. The Ngapuhi are well known, and they will not be content to keep paying money while others derive all the benefits. Some of the Maori districts have been well treated and cared for by the Government, but the Ngapuhi, on the other hand, have protected the Europeans and also the Government, and all we get in return is the imposition of taxes.[195]

The Government responded by offering a much lesser sum than was sought, £40,000 over four years, while proposing that roads be funded by imposing rates on customary Māori lands. Kātene and other Māori members objected strongly to this proposal, which would inevitably have resulted in land loss; instead, they suggested that Māori might give lands or labour in return for roading.[196]

Later that month, Kātene moved a motion asking the Government to establish a system of local self-government for territories north of Auckland. Kātene's proposal was for a partnership body, comprising equal numbers of Māori and settlers, which would govern and administer regional or local affairs. The functions of this rūnanga would include gathering taxes; forming and repairing roads; fostering education; settling Māori–Māori and Māori–settler disputes; enforcing decisions made by the resident magistrate; and managing relationships between northern Māori and the colonial Government.[197]

Introducing the measure, Kātene said it would overcome Māori objections to the payment of rates and taxes, ensure that money raised was spent on local initiatives instead of being diverted to other parts of the colony, and require Māori and settlers to work together for mutual benefit. In a lucid explanation of the political realities of the day, Kātene pointed out that northern Māori could easily set up a rūnanga on their own, but its authority would not be respected except by the communities who had set it up. Passing a Bill would give it authority to enforce its decisions against settlers and Māori alike.[198]

Kātene's motion lapsed after Native Minister McLean proposed to 'assimilate' the proposed rūnanga into the existing system of local road boards.[199] In 1871, McLean introduced the Native Districts Roads Boards Bill, which applied to any part of the colony where Māori remained a majority of the population. It allowed the Governor to establish boards, comprising Māori and settlers, to manage local roading projects. The boards would receive some government funding but would also be empowered to impose rates on Māori lands, irrespective of whether those lands had passed through the Court.[200] There was initial confusion about the Act's intended effect on settlers' lands within any native roading district; however, the Attorney-General later confirmed that settlers' lands would continue to be subject to the existing local authority rating regime.[201]

While this was far less than Kātene had sought, it at least provided for Māori communities to exercise some measure of control over local rating and roading, when the alternative would mean subjecting Māori to settler-controlled roading boards. Effectively backed into a corner, Kātene voted for the legislation and attempted to persuade his people to support its implementation. The measure won little support from Te Raki Māori, who rightly saw it as an attempt to force them to pay more for public works when they were already paying – with little corresponding benefit – through customs duties, rates on land held under Crown grant, and sales of land to the Government at modest prices. Kātene told his constituents that he had sought a much more comprehensive measure for local self-government. Because of these reservations, Te Raki Māori made no attempt to bring the Act into force in their territories; nor did Māori in other districts show any enthusiasm. As a result, the Act was never used.[202]

The following year, 1872, was a time of instability in the colonial Parliament.[203] Premier William Fox, who had held office since 1869, resigned on 6 September. The new Government, led by Edward Stafford, lasted only a month before it was defeated by a ministry under the leadership of the legislative councillor, George Waterhouse. In turn, Waterhouse lasted only six months as Premier before he resigned and was replaced by Fox. For a brief period during September and October 1872, the votes of Māori members determined whether Governments survived or not. In order to win their votes, successive Premiers promised to return confiscated lands and increase Māori political influence.[204]

One result was that a long-discussed proposal to appoint two Māori members to the Legislative Council finally came to fruition in November 1872;[205] another, also in November, was that Wiremu Kātene was appointed to the Executive Council and so became New Zealand's first Māori Minister of the Crown. In December, the

Wiremu Kātene (d1895) of Ngāti Hineira and Te Uri Taniwha. He was the second member of Parliament for Northern Maori, being elected in 1871. He was appointed to the Executive Council in 1872, becoming New Zealand's first Māori Minister of the Crown. In Parliament, Kātene promoted the development of roads and infrastructure in the north and local self-government for Māori communities. To achieve these goals, he promoted rūnanga with equal Māori and settler representation that would carry out a range of functions, including developing roads and resolving local disputes.

Western Maori member Wī Parata was also appointed to the Executive Council.[206] While neither held portfolios or sat in Cabinet, they were expected to advise Cabinet Ministers on Māori affairs and liaise with Māori communities, building support for government policies.[207]

A third result was the introduction of the Native Councils Bill 1872, which provided Māori communities with a significant measure of local self-government. In the House, McLean presented this Bill as a response to the considerable number of petitions and letters the Government had received from Māori around the country seeking greater control over their own affairs, particularly with respect to land. McLean noted that the Bill was likely to apply to 'two or three districts, where such Councils had been asked for by the people'.[208] McLean did not specify those districts, though other members referred to Wairarapa, the Central North Island, the East Coast, and Northland. Kātene told the House that this Bill was what he had been seeking when McLean had instead introduced the Native Districts Road Boards Bill.[209]

According to Dr O'Malley, the establishment of native councils was consistent with McLean's general strategy of co-opting Māori institutions of self-government and bringing them into the fold of the colonial Government's authority wherever possible.[210] In Te Urewera, for example, McLean had recently concluded a peace agreement under which the Government recognised the right of Tūhoe and Ngāti Whare to manage their own affairs through a council of chiefs, Te Whitu Tekau.[211] As Dr O'Malley explained, the Government could not afford to ignore Māori institutions altogether if it wanted to bring Māori under the colony's laws; nor could it use active suppression without risking armed resistance. Co-option was the only remaining strategy, and it 'had the benefit . . . of marshalling Maori institutions in aid of the assimilationist aim'.[212]

Under the Bill's provisions, in any territory where most people were Māori or most land was in Māori customary ownership, Māori could ask the Governor to establish a native district with a council comprising six to 12 elected Māori, a Māori president appointed by the Government, and the resident magistrate. The council would be empowered to investigate land titles, resolve land disputes, and make regulations covering matters such as public health and safety, sale of liquor, and livestock and animal control. The Bill did not provide for hapū control

of land transactions but otherwise offered a significant step towards Government recognition of Māori rights to local self-government. In many respects, it provided for a system very much like Grey's 1860s rūnanga.[213]

It is significant, in our view, that this Bill emerged after Māori members had briefly held the balance of power. Under those rare circumstances, while they did not possess the numbers to push through legislation against the wishes of the settler majority, they did possess leverage that in the normal state of affairs was not available to them in the political system. Similar political circumstances would later contribute to the establishment of Maori Land Councils (section 11.5).

On this occasion, however, the legislation did not pass. The Māori members spoke in favour, and a significant proportion of settler members supported it. But there was also opposition from some members, who felt it would undermine the Native Land Court (McLean's view was that it would assist the Court) and grant Māori too much power over lands and settlement.[214] Kātene asked the objectors 'if it was for the Europeans alone to conduct Native affairs'; he proposed that Māori and Europeans should 'join together' for this purpose. This was another expression of his commitment to partnership, after his 1871 attempt to establish a joint settler–Māori rūnanga for Northland and his earlier proposal for Māori and settler assemblies able to review each other's legislative proposals.[215]

Seeing that the Bill did not have sufficient support, McLean withdrew it.[216] This was a significant blow to Māori leaders in this district and elsewhere. A few days afterwards, the Hokianga resident magistrate Spencer von Sturmer wrote to McLean saying there was

> a whisper going about amongst the people here, with reference to the 'treaty of Waitangi', some change, or additional protection the people seem to want, but as they have said nothing definite I can only speak of it as a whisper.[217]

In 1873, McLean introduced a new and watered-down Native Councils Bill, with fewer regulatory powers and a much more limited role over land title applications. McLean made it clear that this Bill was designed only for a few districts where the colonial Government had little or no practical authority:

> It was intended that this Bill should not apply to the north of Auckland, or to any districts where there were English Courts of law for settling disputes; but to such districts as those of the Urewera, Ngatiporou, and some parts of the Waikato. The Government desired to apply the measure, because in many of those districts the Natives had expressed a wish that some such law should be enacted, to enable them to take part in the management of their own affairs.[218]

Even this very limited measure was too much for many settler members. McLean again withdrew the Bill, saying he would make further modifications and bring it back in 1874. That did not happen, and for the rest of the decade the House did not consider any further proposals for Māori self-government at local or any other level.[219] The colonial Parliament did, however, pass Native Land Acts in 1873, 1874, 1877, and 1878, all intended to accelerate individualisation of customary Māori land title against Māori wishes. As we have discussed in the preceding chapters, the 1873 Act provided all those found by the Land Court to be owners in a block of land with individually held, tradeable shares, which contributed significantly to Māori land alienation in this district during the rest of the 1870s (see chapter 9, section 9.5.2, and chapter 10).[220]

Kātene's elevation to the Executive Council came at a price to him and Te Raki Māori. While he acquired some influence with Ministers, he was no longer free to speak out against government policies and was obliged instead to advocate on the Government's behalf amongst Māori. As a result, his constituents came to regard him as the Government's man, not their representative.[221] One of Kātene's last acts during this term was to vote for abolition of provincial councils, which he blamed for the lack of spending on public works north of Auckland.[222] In 1876, he was defeated at the general election.[223]

In our view, Wiremu Kātene's proposal for local self-government north of Auckland was an important attempt to provide for the district's development in a manner that

was consistent with the treaty relationship. Reflecting Te Raki Māori thinking at the time, it provided for Māori and settlers to work together in partnership through one institution. As Kātene explained, Māori would not object to rates and taxes if they had an effective voice in determining how those funds were used.

Kātene also recognised and clearly expressed that by this time, local self-government could only be fully effective if it was established by statute, and its decisions were therefore enforceable against settlers. His view reflected the shift in the colony's power balance since the late 1850s. When establishing institutions, Māori not only wanted Crown recognition as part of a functioning treaty partnership, but crucially by this time also *needed* Crown recognition in order for Māori institutions to operate effectively amid a growing settler population.

The Government clearly recognised that some form of local self-government was practicable at that time, and McLean responded with a series of legislative proposals offering Māori this in some degree. The Native Districts Roads Boards Act was a very limited response to Kātene's proposal. McLean's subsequent Native Councils Bills of 1872 to 1874 represented meaningful if limited attempts to provide for Māori rangatiratanga at a local level under the colonial Government's authority. On each occasion, Parliament missed an opportunity to recognise and provide for that local self-government.

The failure of these Bills, and the enactment of the Native Land Act 1873 and subsequent amendments, provided clear evidence for Te Raki Māori that Parliament was not willing to recognise their right of self-government or protect their interests. These events contributed to their loss of faith in Parliament and later calls for a national Māori legislature.

(4) *What was the overall state of the treaty relationship between Te Raki Māori and the Crown by 1878?*

(a) 1868–75: A mutually beneficial partnership?

Notwithstanding the colonial Parliament's rejection of Kātene's efforts to establish self-government for the north, Te Raki leaders continued to pursue Crown recognition of their rights to tino rangatiratanga, and remained committed to a treaty relationship based on peace and mutual prosperity. During the 1870s, that mutual prosperity aspect remained elusive; Māori communities had some sources of income from gum digging and occasional road building projects, but otherwise remained marginalised from the cash economy, while changes in land tenure undermined their efforts to develop land.[224]

During the early 1870s, McLean and other Government representatives visited the north regularly, and these hui provided Te Raki leaders with opportunities to express any grievances, including concerns about the district's lack of development, and to test the Crown's attitude to the treaty relationship. On these occasions, it was usual for rangatira to acknowledge their enduring relationship with the Queen, whom they continued to see as a protector in accordance with pre- and post-treaty arrangements. Typically, these sentiments were rendered in the settler press as expressions of loyalty, and in our view this was true in the sense that Te Raki leaders believed they had a personal relationship with the Queen.[225]

In March 1873, Ngāpuhi invited McLean and Governor Bowen to Waitangi for the unveiling of a memorial to the Hokianga leader Tāmati Waka Nene. Nene had been instrumental in establishing pre-treaty trading relationships, persuading Te Raki leaders to sign te Tiriti, and ensuring that the colonial Government survived the Northern War.[226] Bowen was coming to the end of his term and was reluctant to attend, but officials persuaded him, and so avoided what Ngāpuhi would have regarded as an insult.[227] The Governor stayed at the hui for a day, unveiling the memorial and praising Nene and Ngāpuhi for their 'unswerving loyalty'.[228]

McLean stayed on for the rest of the hui, where Te Raki leaders emphasised that the treaty was 'a solemn obligation binding on both sides':

> For 30 years the provisions of the Treaty of Waitangi had been respected, and as far as it was possible had been adhered to by the Ngapuhi and Rarawa tribes. They felt that this was an occasion, when so many of their young chiefs were growing up, to impress upon their minds the last solemn and dying injunctions of their chief and relative Tamati Waka, which

were to preserve intact the terms of the treaty, and to live in perpetual friendship with the European people.[229]

Here, Te Raki leaders were reminding the Government's representatives that the treaty established a basis for Māori and Pākehā to live together in mutual benefit. They then made a series of requests of the colonial Government, seeking freedom from restrictions on sales of ammunition and liquor, the replacement of older native assessors with younger ones who were more familiar with English language and law, and government support for the establishment of schools, which (in the words of the *Daily Southern Cross*) would educate their children 'to become good subjects, and to take part in the administration of the public affairs of the country'.[230]

In an event that had tremendous significance to Ngāpuhi and particularly Ngāti Hine, Maihi Parāone Kawiti asked the Government to assume responsibility for the flagstaff on Maiki Hill. According to the same newspaper, Maihi Parāone said that his people had restored the flagstaff in 1858 as a symbol of reconciliation and a symbol of Māori commitment to live in peace with the Government and settlers. Māori had gone to 'some pains and trouble' to complete this restoration, and now asked the Government to accept the offering and 'clothe the flagstaff'.[231]

As Dr O'Malley explained, when the flagstaff had been restored in 1858, the Government had been 'desperate to avoid being seen to have any involvement . . . that might oblige it to defend Maiki Hill'. Even 12 years after the Northern War, it remained nervous about Ngāpuhi power – a nervousness that increased as the colony then became embroiled in war. The Government therefore ignored the flagstaff, allowing it and the flag upon it to fall into disrepair. Now Maihi Parāone was asking the Government to maintain the flagstaff in good condition – in essence, as a sign of respect – and in so doing to 'ensure that the mana of the flagstaff, and the mana of those who had made the momentous decision to erect it, were suitably acknowledged'.[232]

In our view, Maihi Parāone can also be seen as requesting that the Government pay closer attention to the treaty relationship and to its obligations within that relationship. Just as the Government had neglected the flag, it had also neglected the north. In the choice of issues raised, rangatira alluded to some of their concerns about the state of the partnership, such as discriminatory laws and exclusion from full participation in the colonial system of government.[233]

At that point, the full impacts of the Land Court and government land purchasing had not yet been felt, and Te Raki Māori continued to seek a partnership with the Government based on peace and mutual benefit, through which their district might be developed and play its full part in the colonial economy. Ngāpuhi at this time retained some faith in McLean and the colonial Government, but – as we will see – they were approaching a point where that faith would be sorely tested.

McLean, in response to Maihi Parāone, repeated earlier commitments to consult regularly with Te Raki leaders on matters of significance to them and the colony. He said that the country was now in a state of peace, and that a 'great step in advance' had been taken in Crown–Māori relations because Māori were now represented in Parliament and could express their wishes directly to the nation's leaders. He promised to ensure the flag was flown on ceremonial occasions and to look into the provision of teachers for schools.[234]

Several other events from the early 1870s underlined the sacredness of the treaty relationship to Ngāpuhi. In 1871, Ngāti Rangi opened a church, St Michael's, on the site of Ōhaeawai Pā where, a generation earlier, Ngāpuhi had inflicted a terrible military defeat on the British (see chapter 5). Ngāti Rangi leader Heta Te Haara established the church 'as a symbol of peace and a memorial to the valor of the troops'.[235] Some 400 metres from the church, 47 slain British soldiers lay buried where they had fallen on the battlefield. With permission from the Government, Ngāti Rangi disinterred them and moved their remains to the church's cemetery, which we visited during our inquiry. A burial service was conducted on 1 July 1872, and a memorial stone cross was erected:

St Michael's Church, 2013. The church was established by Ngāti Rangi leader Heta Te Haara on the site of Ōhaeawai Pā, where Ngāpuhi had defeated a British force in July 1845 as it attempted to take the pā. Bishop Waiohau Te Haara said that the church was built after the return of a (mostly Ngāpuhi) Māori touring group that visited England in 1863–64. Dorothea Weale (Mihiwera), an influential philanthropist, paid for the group's trip home and refused offers to reimburse her, suggesting they build a church instead. Weale made donations to the building of both St Michael's and the Church of the Good Shepherd at Mangakahia, and she is still remembered by Ngapuhi with great respect.

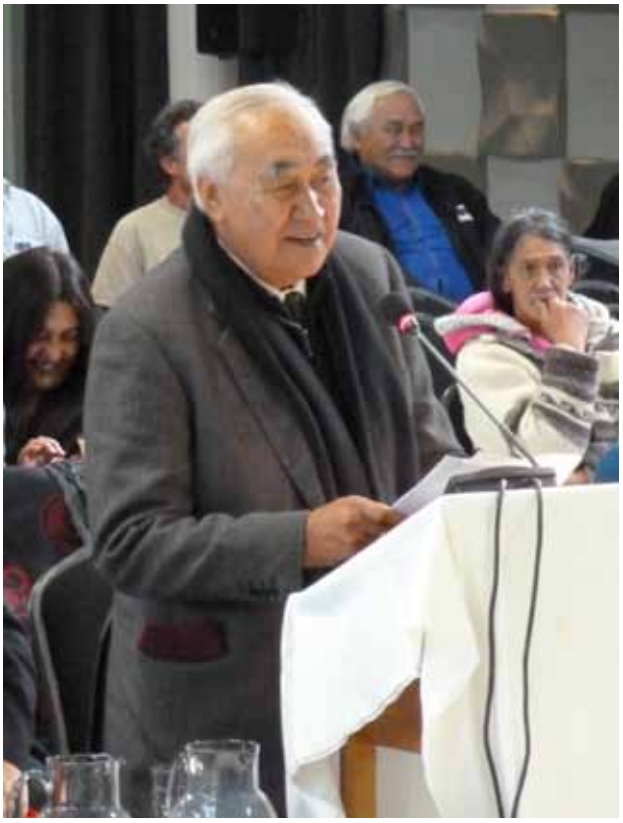
> He Tohu Tapu tenei o Nga Hoia me nga Heramana o Te Kuini i hinga i te whawhai ki konei ki Ohaeawai i te tau o to tatou Ariki 1845. Ko tenei Urupa na nga Maori i whakatakoto i muri iho i te Maunga Rongo.

Heta Te Haara's grandson Te Waiohau Te Haara provided a translation:

> This is a sacred monument for the soldiers and the [sailors] of the Queen who fell in the battle here at Ohaeawai in the year of our Lord 1845. This cemetery was laid out by Maori after the restoration of peace.[236]

Scholar Dr Merata Kawharu described a very different set of events which nonetheless also demonstrated Ngāpuhi commitment to keeping their side of the treaty bargain. At the time of the treaty, the principal chief at Waitangi was Te Kēmara of Ngāti Rāhiri and Ngāti Kawa. Other rangatira of that hapū included Marupō and Hōne Heke who had also signed te Tiriti, and later fought against the Crown during the Northern War. By the 1860s, leadership of the hapū had passed to a new generation, principally to Te Tane Haratua and Hemi Marupō, both of whom, over several decades, 'led initiatives that aimed to protect, promote and advocate for hapū mana'.[237]

During the 1860s, they were members of the Bay of Islands Rūnanga, where they worked with and alongside government officials in the administration of the district. In 1872, they opened the district's first native school at Oromāhoe on gifted land, reflecting the desire of Ngāpuhi



Bishop Waiohau Te Haara, the grandson of Ngāti Rangi leader Heta Te Haara, who established St Michael's church in 1871, presenting evidence during hearing week four at Turner Events Centre, Kerikeri, 2013.

leaders to ensure that their children were equipped to participate in the colonial economy and government. 'Broadly speaking,' said Dr Kawharu:

> the 1870s was still a time where Haratua and others throughout Ngāpuhi retained a degree of support for the Crown, the governor and/or the Queen. They wanted to operate within the bounds of a kaupapa that was framed by mutuality and partnership.[238]

Another example of how Te Raki leaders approached the treaty partnership can be found in their handling of conflict within Māori communities. As discussed in section 11.3.2, during the 1870s Māori communities became increasingly willing to place disputes before district courts and magistrates, their leaders having decided that this was a necessary step if they were to encourage settlement and commerce.[239]

The enduring Te Raki Māori desire for peace, partnership, and mutual prosperity was also evident when the Crown's representatives again visited the north during the mid-1870s, though by this time, as the Crown's land titling and purchasing programmes were accelerating, Māori leaders were showing some signs of frustration with the Crown. The new Governor, Sir James Fergusson, spent a few days in the district during June 1874, attending hui at Ōhaeawai, Hokianga, Mangonui, and Whangaroa.[240]

At Ōhaeawai, Te Haara acknowledged his people as living 'under the protection of our most gracious Queen'. Past conflicts had been buried at Maiki, and Ngāpuhi now wanted to live in peace and 'advance the prosperity of this island'. The treaty had been protected and its provisions 'should not be ignored', Māori and the Crown having become 'mutually engaged in maintaining [the Queen's protective] authority and her laws'.[241] In the 1880s and 1890s, Te Haara would become one of the leaders of the Kotahitanga movement which sought the establishment of a Māori parliament.

At Hokianga, Tāwhai (Te Māhurehure), Wiremu Tana Pāpāhia (Te Rarawa), and others welcomed the Governor before expressing numerous grievances about the Crown's laws and neglect of the district. Specifically, they were unhappy with the Native Land Act 1873, and wanted schools, roads, a doctor, a jail so they could enforce the colony's laws, and an increase in European settlement. If they wanted more settlement, the Governor responded, they should sell more land. As Armstrong and Subasic noted, this rather missed the point: before Māori communities could attract settlers, they needed roads and bridges. At Mangonui, rangatira also sought Crown investment in roads and schools. In January 1875, when McLean visited the Bay of Islands, Mangonui, and Whangaroa, the same topics were raised.[242]

By this time, partly due to Kātene's influence, spending

on public works was accelerating. A June 1875 return shows almost £10,000 in expenditure on northern roads in the preceding year, including links from Whāngārei to the Bay of Islands, and on to Hokianga and Mangonui.[243] This was far less than Kātene had sought, but was nonetheless a marked increase from 1872, when spending in the district totalled £765.[244] Substantial progress had also been made on a telegraph line from Kaipara to the Bay of Islands; indeed, this was the largest telegraph project in the country at the time.[245]

Road building provided temporary employment opportunities for Māori communities and opened up connections between settlements.[246] But the benefits were offset by other developments. Timber and gum, previously the dominant sources of employment for northern Māori, had been in decline after 1870.[247] Attempts to establish other industries, such as inshore whaling, flax dressing, and flour milling, were hampered by lack of access to development capital.[248]

Most significantly, Māori communities were increasingly feeling the harmful effects of Native Land Court hearings. As discussed in chapter 9, those included hefty survey and court fees; costs of food and lodgings during lengthy court hearings; lost income from other ventures; and competition for award of title as unresolved disputes were brought into the foreground.[249] Even more importantly, the Crown's system for recording ownership of and titling Māori land (as set out in the Native Lands Act 1865 and the Native Land Act 1873) undermined community authority, made land development all but impossible, and contributed to significant land alienation.[250] Several hundred thousand acres of Te Raki land passed through the Court in the decade after 1865 (see chapter 9),[251] and this opened the way for an acceleration in the Government's land purchasing.

In late 1876, shortly before his death in January 1877, McLean acknowledged that the Government had achieved its policy objectives for the north. It had purchased large areas of Māori land in the preceding few years.[252] Most of the remaining land, in his view, was either owned under Crown-derived title or was before the Court awaiting title; and as a result of these developments, McLean regarded Māori assimilation as already well advanced. As he put it, 'the time has arrived when the Ngapuhi and Rarawa tribes may be considered as upon an equal footing with the Europeans'. McLean's view however, was that the Crown should stop purchasing Māori land in the district, since any further sales would deny Māori communities sufficient land to play a full part in the developing economy. The district, in other words, had reached a tipping point.[253]

In sum, the mid-1870s was a watershed for Te Raki Māori in their approach to the treaty relationship. From the 1850s through to the 1870s, they had pursued partnership with the colonial Government under the Queen's mana in the hope of advancing economic development and fulfilling the original treaty goals: peace and prosperity for Māori and settlers alike. The colonial Parliament and Government had responded with laws that undermined Māori autonomy, undermined development, and enabled land alienation. From this point, Te Raki Māori began to pursue a different approach to the treaty partnership.

(b) 1875–78: Did Te Raki Māori begin to lose faith in the Crown?

From the mid-1870s, as the impacts of the Land Court and government land purchasing were being felt, Ngāpuhi leaders became increasingly vocal about their rights under the treaty and the harm they believed had been done by the colonial Government's laws and policies. In 1874, Hōne Mohi Tāwhai and others petitioned the House seeking the repeal of the Native Land Act 1873. Further petitions were sent later that decade: in 1876 by Hirini Taiwhanga, Maihi Parāone Kawiti, and others; and in 1877 again by Tāwhai.[254] The latter sought repeal of existing Native Land Acts; an end to Crown purchasing; replacement of the new Native Minister, John Sheehan; and establishment of 'clear laws, which will result in the union of the two races'.[255]

In the absence of any Crown-sanctioned local rūnanga, Te Raki Māori attempted to find other ways to exercise local self-determination. In Hokianga, the abolition of provincial councils and establishment of counties in 1876 provided an opportunity for Māori to influence

decisions over public works.[256] Under the Counties Act 1876, the franchise was based on ownership of rateable property under Crown grant, so Māori owning land under customary title were excluded.[257] When elections were held in 1876, most of the northern county councils were dominated by settlers. The exception was Hokianga, where Tāwhai and other rangatira held sufficient land under Crown grant to influence the election, forming a majority on the council as a whole and dominating two of its ridings.[258] More Māori were elected in 1878, including Hapakuku Moetara and Wharerau.[259]

Settlers were outraged, claiming that they were being 'taxed by non-ratepayers'.[260] Local officials also objected; Judge Maning of the Native Land Court wrote that 'the cannibal element' had taken over the council, turning the world 'clean upside down'.[261] There was similar outrage over Māori influence in the Mangonui-Bay of Islands general electorate at the 1876 and 1879 elections.[262] Officials therefore worked to diminish Māori influence. First, where road boards existed, their chairmen refused to give election officials the names of Māori qualified to vote. Secondly, the local registrar Edward Williams systematically removed Māori from the electoral roll, claiming that they did not meet the property qualification as their lands were collectively owned. This decision was later upheld by an official inquiry led by the Whanganui member of the House, John Bryce, who opposed the Māori franchise. Bryce also found the registrar had a conflict of interest since his brother was an election candidate. By the early 1880s, none of the northern councils had Māori representatives.[263]

At around this time, in the Hokianga and elsewhere, Te Raki leaders began to develop local committees to maintain order, manage relationships with the Crown's officials and legal system, and arrange land titles before the formal involvement of the Court. We introduced these matters in chapter 9 but return to them here. Hirini Taiwhanga, Hōne Mohi Tāwhai, Maihi Parāone, and numerous others were instrumental in this movement.[264]

In 1874, Maihi Parāone established Te Rohe Pōtae o Ngāti Hine over Ngāti Hine territories, extending from Waiōmio in the north to Mōtatau and Hikurangi in the south. According to historian Paul Thomas:

> The area was under [Maihi Parāone] Kawiti's overall authority and was divided into four sections with each section controlled by a group of representatives who held the land on behalf of larger groups of people.[265]

Maihi Parāone informed the Crown, settlers, and other Māori 'about the boundaries of the Rohe Potae and its guiding principles'.[266] Within Te Rohe Pōtae o Ngāti Hine, the Native Land Court was prohibited, as were surveys and land sales.[267] Maihi Parāone allowed settlers and settler industries into this territory through a series of carefully controlled leases, and also developed Māori-run gum-digging, timber, flax, and flour-milling businesses, using the proceeds for community projects.[268] Ngāti Hine's evidence was that 'Te Rohe Potae o Ngati Hine . . . served to deter the Government from trespassing on Maori land'.[269]

In 1876, Maihi Parāone established Te Rūnanga o Ngāti Hine, a tribal governance structure to provide leadership and protect Ngāti Hine autonomy within Te Rohe Pōtae o Ngāti Hine. As Ngāti Hine witness Pita Tipene described, Maihi Parāone 'saw that tribal structures were breaking down', and so he established structures that ensured 'cohesion and enhancement of tribal authority'.[270] Te Rūnanga not only provided leadership for Ngāti Hine but also acted to 'whakaoti rarurarū' (which we translate as 'resolve conflict'). In that sense, Mr Tipene said, it was 'like a court that provided a public forum where justice was provided within the tribe'.[271] Ngāti Hine enacted its own tribal laws, requiring offenders to pay fines to Maihi Parāone, the kaiwhakawā (judge).[272] Maihi Parāone threatened to prosecute Europeans who entered the territory without authorisation.[273] Ngāti Hine claimants told us:

> Maihi was consistently trying to maintain peace and work with the Crown, however in doing so he consistently sought

> to maintain rangatiratanga over our people, affairs and land. He continued [to] demand that Ngati Hine be allowed to live in accordance with our own tikanga and law, and he did not see that the Pakeha law had dominance over Ngati Hine.[274]

As well as establishing Te Rūnanga, Maihi Parāone opened a large hall at Taumārere, which he built as a courthouse (for both Māori and settler law), and as a parliament or place of governance where the Rūnanga could meet.[275] The house was called Te Porowini o Ngati Hine (The Province of Ngāti Hine), the name reflecting Maihi Parāone's decision that Ngāti Hine would forge their own self-governing path, one that acknowledged the Queen's mana but was independent of the colonial authorities and also the rest of Ngāpuhi.[276]

As we discussed in chapter 7 (see section 7.4.2(1)), after his visit to the Bay of Islands in 1858, Governor Gore Browne had given Maihi Parāone Kawiti a seal, with the handle in the shape of Queen Victoria's hand. It was a symbol of tino rangatiratanga and unity with the Queen under the treaty. Maihi Parāone called it Te Hiiri o Te Rongomau (the Great Seal of Peace).[277] According to the claimant Richard Dargaville, 'provincial seals' were also given to Pōmare II and Te Tirarau and the three seals were placed in Te Porowini.[278] A later Governor, Sir George Phipps (the Marquess of Normanby), visited Te Porowini in 1876 and commended it as an example of a Ngāti Hine desire 'to assimilate your mode of life to that of the Europeans', and to 'foster harmony and good feeling between the two races'.[279]

During his tour, Normanby also visited Te Tii Waitangi, where a temporary nīkau whare rūnanga – called Te Tiriti o Waitangi – had just been opened. During the hui, rangatira reminded the Governor that their forebears had gathered at Te Tii to debate the treaty, and that the treaty relationship extended back further to exchanges between northern rangatira and the monarchs King George IV and King William IV. Rangatira expressed their enduring wish for Māori and settlers to live in peace and unity under the treaty, and the Governor expressed his pleasure that Māori were willing to 'fully confirm and ratify the acts of their forefathers'.[280]

As Armstrong and Subasic noted, Te Raki Māori were waiting for the Governor also to 'confirm and ratify' the treaty. Indeed, in our view, the rangatira intended to emphasise the continuity between pre-treaty and post-treaty times – including (as discussed in our stage 1 report) the Te Whakaminenga tradition of Ngāpuhi collective leadership, and the pre-treaty tradition of trade, mutual protection, and alliance between Te Raki rangatira and the Crown.[281]

Ihaka Hakuene told the Governor he intended to build a new wooden wharenui at Te Tii, which he would 'set aside . . . as a meeting-place for Ngapuhi for ever and ever'. Once the Governor had departed, rangatira discussed business matters with McLean, raising their by now recurring concerns about ammunition, schools, roads, land disputes, and the desire for settlement. Normanby also visited Mangonui and Whangaroa.[282]

The construction of these new whare rūnanga suggests a growing determination by Hakuene and others to bring renewed focus to the treaty and Māori rights to self-government. Over the subsequent years, Ngāpuhi leaders would build this site as (in the words of historian Dame Claudia Orange) 'a centre for inter-tribal discussions on treaty-related matters'.[283] Among other things, it would become a centre for Ngāpuhi tribal self-government (section 11.4.2), and for the intertribal Waitangi and Kotahitanga parliaments during the 1880s and 1890s respectively (sections 11.4.2 and 11.5.2).[284]

In March 1878, Native Minister Sheehan attended a large hui at Kaikohe. There, according to a letter subsequently published in *Te Wananga*, Ngāpuhi and Te Rarawa rangatira asked the Government

> to look into all matters connected with our lands which were dealt with by the laws of the years 1873 and 1874, in respect of the bungling which was enacted by these laws of 1873 and 1874 of the old Government, which Government was conservative, exclusive, and injurious, and which is not now in power.

The rangatira saw these 'injurious' laws as a reflection on the colony's constitution, under which a settler-dominated Legislature made laws for Māori, and 'obstructing Governments' administered the country. They asked that all Bills be translated and circulated among Māori before any debate in Parliament. They also asked for the Māori electorates to be replaced with a new parliamentary system in which there would be an upper house, a house of representatives 'for English only', and another house of representatives 'for Maoris only':

> If such were the constitution of the Parliament of New Zealand we then should know that the Europeans and the Maoris were each concerned in devising and passing laws for all. And we, the Maori people, should also know that we were not to bear the heavy part of the burden laid on by the laws . . .[285]

This resembled Wiremu Kātene's 1871 proposal for a Māori assembly sitting alongside the colonial Parliament, with each able to review the other's legislation. In Kātene's proposal, the rangatira did not mention any upper house; we presume that would have remained, and the system as a whole would operate under the Queen's protection in accordance with Te Raki Māori understanding of the treaty.

By this time, the settler population had overtaken that of Māori in the north. The distribution was however uneven, with Māori continuing to outnumber settlers by a considerable margin in the Hokianga county, and by a small margin in the Bay of Islands and Mangonui-Whangaroa, while being outnumbered in Whāngārei, Hobson (which covered northern Kaipara), and other counties. Settlers heavily outnumbered Māori in the country as a whole (see appendix 11). As this influx continued, the rangatira said, 'there is not any law by which the Maori can hold his place with the Europeans in the land'. If the change was not made, it would be 'in vain that the Maori people vote Maori members into the European House', and 'useless for Natives to send petitions in days to come to the House of Parliament as now constituted'.[286]

This letter from Ngāpuhi and Te Rarawa rangatira was significant because it was a call for a national Māori legislature, and also because the rangatira drew an explicit link between mass, Crown-funded immigration and the loss of Māori authority. Largely because of assisted immigration, during the 1870s the national settler population almost doubled over the course of the decade, and more than doubled in the Auckland Province.[287] Sheehan's response to the letter is not recorded.[288]

Te Raki Māori frustration with the colonial Parliament is likely to have been exacerbated by the fraught relationship between some Ngāpuhi rangatira and the member for Northern Maori from 1876 to 1879, Hori Karaka Tawhiti (Te Ihutai), who became a Minister of the Crown and was regularly accused of voting against the tribe's wishes.[289] When Tawhiti was elected, McLean actively courted his support, providing passage and accommodation during his journey to Wellington. Tawhiti was then appointed as a Minister in the Executive Council, against the wishes of a majority of Ngāpuhi leaders, who wanted him to oppose the Government. In August, they raised funds to send Hirini Taiwhanga to Wellington so he could check that Tawhiti was voting according to Ngāpuhi wishes.[290] When the Government fell in 1878, Ngāpuhi leaders sent Tawhiti a telegram urging him to support the rival Government led by Sir George Grey.[291]

In April 1878, Governor Phipps again visited Hokianga and the Bay of Islands, but in contrast to previous visits, there was very little ceremony and only a few short speeches.[292] Sheehan then visited Hokianga in May. The *New Zealand Herald* gave a brief account, noting that Hōne Mohi Tāwhai complained that the district had been 'so long utterly neglected'. The newspaper also reported that Sheehan 'gave audience to all natives who had requests to make or grievances to be righted, and their name was legion'. No further details were recorded.[293]

By this time, Te Raki Māori were increasingly focused on securing their rights under the treaty and on developing autonomous institutions at local and intertribal levels. While they continued to engage with the colonial authorities, they concentrated more and more on freedom from

colonial law and securing recognition of their article 2 right of self-government. We will consider those developments in section 11.4.[294]

11.3.3 Conclusions and treaty findings

Under article 2, Te Raki Māori were guaranteed the exercise of tino rangatiratanga and the right of autonomous self-government in their social, spiritual, economic, environmental, and political affairs. They had rights to conduct their own affairs in accordance with tikanga: to control and manage their resources, to make collective decisions and resolve internal disputes in accordance with their own values, to manage external relationships including their relationships with the Crown and settlers, and to determine their own institutional structures. They also had a right to representative self-government on the same basis as settlers, in accordance with article 3 of the treaty. The Crown was obliged to recognise and respect Māori rights of tino rangatiratanga and self-government, and in particular, to provide legal recognition for institutional arrangements that supported Māori autonomy and self-government. Where settler interests were affected, the Crown could negotiate with Māori communities, but it could not override their wishes or impose institutional arrangements without their consent.

During this period, Te Raki leaders advanced several institutional models for Māori decision-making. They advocated for equal or at least substantially increased representation in Parliament, for a parallel Māori parliament that could operate alongside the colonial Parliament as part of a single Legislature, and for the establishment of self-governing rūnanga in this district. The Crown provided for limited and inadequate Māori representation in the colony's legislature, while rejecting Māori calls to recognise and support Māori institutions of self-government.

(1) *Parliamentary representation of Te Raki Māori*

The Maori Representation Act was initially intended as a temporary arrangement, and provided for Māori to have four representatives – far fewer than they were entitled to on a population basis. The number was not determined by any principle but by political negotiations over the balance between South and North Islands representation. This was a clear example of the colonial Parliament placing settler concerns above Māori rights. There was no consultation with Māori in this district or elsewhere about the establishment of Māori electorates, or about the number or location of those electorates. This was despite the fact that Parliament had earlier recognised the principle, in the Native Commission Act 1865, that Māori leaders should be invited to form a standing commission, including only a small number of Pākehā, which could consider and report to the Governor and the General Assembly on the best way to enfranchise Māori so that they might enjoy 'equal political rights' with other subjects of Her Majesty. It is significant that this promising initiative, which might have led to real dialogue between rangatira and Parliament on the proposed Māori seats, did not come to fruition. Furthermore, no provision was made for Māori to be represented in the Executive or the upper house (the Legislative Council).

By excluding women from the franchise, the New Zealand Constitution Act 1852 and the Maori Representation Act 1867 imported the formal gendered constraints placed on women in British public life. The historians Drs Manuka Henare, Hazel Petrie, and Adrienne Puckey argued that these restrictions were 'contrary to the customary political systems in Te Taitokerau', where the position accorded to Te Raki Māori women was 'vastly different' from that recognised in nineteenth-century British law.[295] They pointed to:

> [a] number of examples from oral tradition and more recent history [that] indicate that far from being merely the passive recipients of respect, women from Te Taitokerau behaved as rangatira in their own right and took active leadership roles.[296]

As such, while the restrictions on the franchise were no greater for Māori women than Pākehā women, for Māori women these restrictions arose from a culture alien to their own. Alongside being culturally inappropriate, the

exclusion of Māori women from public life and politics within the colony's system infringed on their ability to exercise their rangatiratanga and meant they 'encountered new risks' in exercising their customary rights and obligations.[297]

The treaty did not entitle the Crown to impose institutional arrangements on Māori without their consent. In this respect, the Crown clearly failed, as Māori from this district made clear in their initial responses to the new electorates. The Crown was obliged to ensure that Māori were represented in a manner that was fair and equitable (among themselves, and as between themselves and settlers), and sufficient to ensure that colonial law makers could not interfere with the tino rangatiratanga of Māori communities. The initial, temporary allocation of four Māori representatives was by no means equitable; settler politicians did not intend it to be. Initial Māori reaction suggested that they did not believe the Māori electorates would be sufficient to adequately represent all northern tribes, or to protect their interests from harm by settler politicians.

With respect to representation in the colonial Parliament, the Crown had two related obligations: first, to provide for fair and equitable Māori representation in comparison with the settler population; and, secondly, to provide for representation sufficient to protect their treaty-guaranteed rights and interests, including the guarantee of tino rangatiratanga, from the actions of the settler majority. We have already found (in chapter 7) that Māori representation was not equitable on a population basis in 1867 when the Māori seats were established. As we noted, Māori would have been entitled to between 12 and 14 electorates at that time if Māori electorates had been allocated on the same population basis (see appendix 11). Although the settler population grew rapidly during the 1870s, Māori were still significantly under-represented throughout the decade. By our calculations, on a population basis they were entitled to 10 electorates at the time of the 1874 census on an overall population basis (see appendix 11).

On several occasions during the 1860s, Te Raki Māori expressed their dissatisfaction with Māori representation in Parliament and advocated for Māori and settler representation to be equal. In their view, if they were to be involved in the colony's law-making, it should be on a partnership basis.[298] In 1869, Wiremu Kātene and other Te Raki rangatira called for the establishment of a Māori legislature and for the establishment of a system under which Māori and settler legislatures would submit laws to each other for approval.[299] In 1878, Te Raki leaders again called for a Māori legislature, reasoning that it was 'in vain' for Māori to send members to a settler-dominated Legislature and 'useless' for them to send petitions.[300]

During the period under consideration, the Crown did not actively entertain any proposal for a separate Māori legislature, or for Māori equality within the existing Parliament. It did on several occasions consider increasing the number of Māori electorates in the House of Representatives, and sometimes it came close to passing legislation to that effect. As discussed earlier, Māori members introduced Bills to increase representation in 1871, 1872, 1875, and 1876. During this decade, Māori from around the country also sent numerous petitions supporting an increase. In 1872, the House of Representatives voted to increase the number of Māori electorates to five, but the Legislative Council rejected the measure.[301] In 1876, the Māori electorates became permanent without any increase in representation. The Crown increased Māori representation only once during this period, by adding two Māori members to the Legislative Council, where they formed a tiny minority of the council's 49 members.

During debates on this issue, Māori members consistently argued that they were under-represented and that they were too few to have meaningful influence on legislation affecting their people. As we will see, these arguments continued well into the next decade. We note that the Crown did not address this aspect of Māori political activity in their submissions in our inquiry.[302]

A fact that should not be lost sight of is that many settler members were sympathetic to these views. But others opposed any increase in representation, usually for reasons that were at best paternalistic and self-interested, or racist. At various times, opponents of equitable representation claimed that Māori were not sufficiently

educated, civilised, or loyal to deserve fair representation; or that they did not make sufficient financial contribution to the colony, notwithstanding the vast tracts of cheap Māori land that were already in Crown possession by the 1870s. Sometimes, settler members objected on grounds that increased Māori representation would also mean increased North Island representation, as if Māori rights were contingent on the population balance between the islands. Often, settler members expressed overt fear that equitable Māori representation would 'swamp' or diminish settler influence.

Whatever the views of individual settler members of the Legislature, the Crown's treaty obligation was to provide a system that was fair and equitable, and that protected Māori rights and interests from the settler majority. As we found in chapter 7, four Māori representatives were not sufficient to represent the diverse interests of all New Zealand hapū and iwi, let alone exercise enough power to protect the tino rangatiratanga of New Zealand's Māori from the impacts of policies favoured by the settler majority.

Representation provided Māori with a voice in the colonial Parliament but (at least in the absence of other constitutional safeguards) inadequate protection for treaty rights. Te Raki leaders raised this issue at the first election in 1868, and on several occasions in Parliament. The reality was that the colonial Government did not intend Māori members to exercise significant influence over the colony, only to bring Māori views and grievances to Parliament's attention. As Wiremu Kātene experienced, Māori could lobby other members to exercise some influence over budget or policy decisions, but could not force the settler majority to accept Māori rights of autonomy and self-government, or prevent the enaction of legislation that undermined tino rangatiratanga. Hence, some Te Raki Māori regarded parliamentary representation as 'useless.'[303]

It is not clear what proportion of Māori representatives, if any, would have ensured that the colonial Parliament always made decisions that were consistent with its upholding of tino rangatiratanga, and we presume that is why Te Raki leaders sought recognition of alternative models under which a separate Māori assembly could share in the making of laws. In later decades, Te Raki leaders would turn these ideas into tangible legislative proposals, which we will consider later. For now, it is sufficient to observe that one Māori member could not adequately represent the diverse hapū and tribal interests of Te Raki, or protect tino rangatiratanga from the decisions of the settler majority in Parliament. Moreover, the Crown turned down multiple opportunities to at least partially address this issue by increasing representation.

Accordingly, we find that:

- By providing for Māori representation in the House of Representatives through the Maori Representation Act 1867 without first engaging with Te Raki Māori, and in particular without seeking their input on the number and size of electorates, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te houruatanga/the principle of partnership.
- By effectively denying the great majority of Māori representation in the General Assembly, and then providing for the election of only four Māori members to the House, including only one for all northern Māori, when they were entitled to between 12 and 14 on a population basis in 1867, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te mana taurite/the principle of equity. The Crown also breached this principle by failing to ensure that Māori were represented in the Legislative Council and in provincial assemblies (the Auckland Provincial Council in the case of Te Raki Māori).
- By rejecting legislative proposals to increase Māori representation during 1871, 1872, 1875, and 1876, the Crown breached te mātāpono o te kāwanatanga, te mātāpono o te mana taurite me te mātāpono o te houruatanga/the principles of equity and partnership.

(2) *Proposals for rūnanga and native committees*

As discussed in section 11.3.2, in 1871 Wiremu Kātene sought parliamentary agreement for a proposal to establish a system of local self-government for territories north of Auckland, through rūnanga with equal Māori and

settler representation. The rūnanga were to be empowered to carry out a wide range of functions in respect of roading, schools, dispute resolution, and managing relationships with the colonial Government. They were not to be empowered to deal with titles or the administration of Māori lands, but – with the Native Land Court only recently beginning its work in the district – these functions were not yet causing significant concern for Te Raki Māori. Kātene's partnership model had potential to provide Māori with a meaningful say over development of the district, in a manner that aligned Māori and settler interests.

There can be no question that the model was within the scope of what colonial authorities considered possible at that time. The functions provided for in the Bill were similar to those already devolved to the local road, harbour, and other boards operating under the authority of central and provincial government. And its partnership model provided for less Māori influence over local affairs than had previously been provided for under Grey's new institutions, or under the 1871 Te Urewera peace agreement in which the Crown recognised the right of Tūhoe to local self-government under its authority. Yet the proposal was scarcely debated in Parliament; nor is there any evidence of the Crown entering any meaningful negotiations over its future. Instead, as we have set out, McLean introduced his own counter-proposal, the Native Districts Highway Boards Act 1871, which provided Māori with far more limited powers, did not serve their interests, and was therefore never used.

In 1872, when rival parliamentary factions were courting Māori members for support, McLean introduced the Native Councils Bill, providing for elected Māori committees to investigate land titles, resolve land disputes, and carry out a number of the health and social well-being functions of local government. With respect to land, this Bill went further than Kātene's towards securing Māori self-government. McLean appears to have intended that the Bill formalise the Urewera peace agreement. Yet it did not pass, and neither did the watered-down version introduced the following year. Māori members supported both Bills, but their wishes were overruled by the settler majority, a result that reflected the relative lack of power of Māori members and (as discussed in chapter 7) the absence of any legal or constitutional provision for the recognition and exercise of tino rangatiratanga.

Although McLean's Bills were mainly aimed at districts where there was very little settlement or Crown presence, it would clearly have been possible to establish (or recognise existing) councils in northern and rural parts of Te Raki, where substantial tracts of Māori land remained in customary ownership and the settler population had not yet overwhelmed Māori – such as the territories that later became Te Rohe Pōtae o Ngāti Hine. Indeed, the establishment in the mid-to-late 1870s of Te Rūnanga o Ngāti Hine and other structures intended to exercise Ngāti Hine's autonomy were important assertions of hapū rangatiratanga and their political authority in the region. The Crown could have formally recognised these existing institutions and frameworks for governance, as Ngāti Hine consistently pushed senior Crown officials to do. The fact that the Crown did not formally recognise or provide for similar institutions was a serious missed opportunity.

Accordingly, we find that, by failing to take the opportunities offered by Wiremu Kātene's 1871 proposal for the establishment of rūnanga based on partnership in districts north of Auckland, and the Native Councils Bills of 1872 and 1873, the Crown breached te mātāpono o te houruatanga/the principle of partnership; it also acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori and give effect to proposals for their self-government at a regional and local level in breach of te mātāpono o te tino rangatiratanga.

11.4 Did the Crown Recognise and Support Te Raki Māori Institutions of Local and Regional Self-Government in 1878–87?

11.4.1 Introduction

In the wake of the Northern War, and up to the early 1870s, Te Raki Māori had largely survived the Crown's challenges to their autonomy, and to a large degree continued to

manage their own affairs and engage with the Crown by choice. By the end of the 1870s however, the challenges to Māori authority had increased significantly. The Land Court's destructive impacts, large-scale Crown purchasing of Māori land, growth in the settler population, and ongoing economic marginalisation all combined to undermine Māori community authority and jeopardise the vision of the treaty partnership that Te Raki leaders sustained.[304]

During the 1880s, the rate of land alienation would slow (see chapter 10, section 10.3.2), but the other challenges continued, and new challenges emerged. As settlers assumed control of county councils, they increasingly demanded the right to tax Māori land and communities, and the colonial Parliament responded by providing for rates to be charged on some customary lands.[305] These demands placed significant pressure on Māori communities, which typically had very few sources of cash other than declining gumfields and occasional labour on roads.[306]

Te Raki Māori responded in a variety of ways. Tribal leaders took further steps to develop autonomous Māori services and institutions: local committees were formed to deal with land disputes and to manage health, education, and social well-being; and regional Waitangi and Ōrākei parliaments were established to debate the issues facing their people and consider how they might best manage their relationship with the Crown.

They also engaged with the Kīngitanga, seeking a common approach to the pursuit of Māori self-government. And they continued to engage with the Crown, seeking freedom from destructive laws and policies, and recognition of their rights of self-government in accordance with their understanding of he Whakaputanga and te Tiriti.[307] Some communities, meanwhile, sought to avoid contact with local officials as they pursued spiritual deliverance from the yoke of government authority.

As discussed in section 11.3, the overarching issue for this chapter to determine is therefore a simple one: Did the Crown recognise and support institutions through which Te Raki Māori could exercise their rights of tino rangatiratanga?

For the period from 1878 to 1887, we are also concerned with the following more specific issues:

- How did Māori electoral rights change in this period?
- What were the purposes of the Ōrākei and Waitangi parliaments?
- What were the Crown's responses to petitions and letters from Te Raki Māori?
- What led to the rise of prophetic movements in Hokianga, and how did the Crown enforce authority over them?
- To what extent did the Crown support Te Raki Māori komiti and rūnanga?

11.4.2 Tribunal analysis

(1) *How did Māori electoral rights change in this period?*

During the late 1870s and into the 1880s, Māori electoral rights continued to be a matter of considerable debate in the colonial Parliament. In particular, settlers increasingly objected to the 'dual franchise', under which the small number of Māori who owned property under Crown grant could vote in general electorates (settlers with property could also vote in multiple electorates).[308] From the late 1870s through to the end of the century, the colonial Parliament steadily liberalised the settler franchise while limiting Māori rights to vote in general electorates. During the same period, members of Parliament periodically proposed to reduce or even eliminate the Māori electorates. Consistently, Māori representatives opposed these measures, arguing that voting rights were protected by the treaty.[309] In 1878, when these matters were debated, the Northern Maori member Hori Karaka Tawhiti accused the colonial Parliament of having already stolen Māori authority over land and said they were now trying to steal their electoral rights.[310]

While this debate was occurring, Hirini Taiwhanga petitioned the colonial Parliament, repeating the call of Kaikohe Māori for a Māori house of parliament, explicitly framing this as a response to Māori under-representation. He wrote that Māori were British subjects under the treaty, yet '[t]here are 127 Europeans in the New Zealand

Legislature [both houses], and only 6 Maoris'. As the settler population grew, or as settlers acquired universal suffrage, this 'oppression' would only worsen. The only solution Taiwhanga could see was 'a third branch of the Legislature . . . established for the Maori race'. Only if this branch was established would the Crown be justified in removing Māori rights to vote for the settler assembly. The Native Affairs Committee, chaired by John Bryce, made no recommendation.[311]

The following year, the Qualification of Electors Act 1879 introduced universal suffrage for settler males, subject only to a residency qualification.[312] It also introduced a more liberal property qualification, under which 'a large number of small freeholders' became entitled to additional votes.[313] As introduced, the legislation made no provision for Māori to vote in general electorates, which the Government sought to justify on grounds that Māori customary lands were not yet liable for rates.[314] Many members regarded the proposal as disenfranchising Māori property owners at the same time as the settler property franchise was being liberalised. Māori representatives said they would accept the measure only if the number of Māori electorates was substantially increased. Hōne Mohi Tāwhai, who had succeeded Tawhiti as Northern Maori member, argued that property-based voting rights had been guaranteed to Māori under article 3 of the treaty, and he asked why recent immigrants should be entitled to vote as property owners yet Māori 'to whom the country belongs' could not:

> If you are strong in keeping away from us this right of voting, I simply say this: that some great trouble will arise in the northern part of this Island. . . . the roads in that part of the country will be stopped.[315]

The Bill was then amended to provide that a Māori man could vote on the general roll if he was registered as a ratepayer or was the sole owner of a property worth £25 or more.[316] This was a more restrictive property test than that applied to settlers, and because it excluded collectively held land, its effect was to exclude many Māori who had been entitled to vote under the previous property test. According to the historian Neill Atkinson, '[t]his sleight of hand would soon produce the intended effect, with the number of Maori on general rolls falling from 2115 in 1879 to 918 in 1881'.[317] The impact was particularly significant in the Bay of Islands electorate, where Māori votes had been influential in determining the election result.[318] By 1886, there were only 82 Māori on the Bay of Islands general roll, from a total of 1,088 electors.[319]

During the 1870s and early 1880s, as the settler population grew, the number of general electorates also increased. At the 1866 election, there had been 70 general electorates; by 1878, the number had grown to 84; and this was further increased to 91 in 1881. Each increase ensured that a significant population gap was maintained. In 1881, each settler electorate represented 5,384 people, and each Māori electorate represented 11,024 (see appendix 111). Premier John Hall asserted that Māori were not entitled to 'strictly proportional representation' because the Legislature 'makes laws and imposes taxes which they do not obey and do not pay'. In Hall's view, underrepresentation was therefore 'a salutary lesson' for Māori, whose 'most certain means of being placed upon the same footing as Europeans in the matter of political power is to subject themselves entirely to the same laws and obligations'.[320] Some members regarded Māori as overtaxed and argued for increased representation;[321] meanwhile, others argued that Māori electorates should be done away with altogether.[322]

In a forceful speech, Hōne Mohi Tāwhai argued that the Māori seats had been guaranteed by the Queen under article 3 of the treaty, and if anything should be done away with, it was the 'treacherous' House of Representatives. He said that Māori had signed te Tiriti, allowing the Queen to appoint a Government 'to protect the Native race and ward off such evils as might threaten them', but, he asked:

> What has happened? The Government that was appointed by the Queen to look after the Maori race, to guard them from evil, has travelled in the opposite direction, and has tried as much as possible to oppress us.[323]

Tāwhai said his relatives had protected settlers and honoured their relationship with the Crown. His own father, Mohi Tāwhai, had fought against Hōne Heke during the Northern War. Yet the Crown responded by denying Māori rights and enacting laws that opposed the treaty, which were then implemented by Crown officials in ways that exacerbated the harm. He demanded Parliament give effect to the guarantees:

> I have made myself acquainted with the Treaty of Waitangi, and I say that we are thereby endowed with privileges which the Europeans do not wish us to exercise. But why should we be deprived of such privileges? We cannot set this treaty on one side. We cannot ignore it, because if we do, we should be ignoring that which Her Majesty the Queen conferred upon us. It is the general cry among the Maoris of this island that the different measures passed by this House are not in accordance with what is contained in that treaty. I quite agree, and say that if that treaty were adhered to strictly, there would not be so much ill-feeling between the two races.[324]

Through the rest of the decade, Māori continued to petition the colonial Parliament seeking an increase in representation.[325] Yet in 1887, the Government proposed to reduce the size of the House, cutting the number of settler electorates from 91 to 70, and the number of Māori electorates from four to three.[326] All of the Māori representatives opposed this measure, pointing out that Māori were already under-represented, that Māori electorates were excessively large, and that increased Māori representation was necessary to protect Māori from damaging laws.[327] Then Northern Maori member Hirini Taiwhanga said he would accept reduction or indeed abolition of the Māori electorates, but only if the Native Land Court was abolished and Māori were first granted self-government:

> If they do not want any of us in the House we are quite willing to have a Council of our own . . . The Maoris should be allowed to administer their own affairs . . . I have the majority of Maori people at my back when I say we do not want to 'chum' with the English at all, because we have no chance in any Court of law, and we have no chance in this House here. Here we are four members against ninety-one Englishmen. If ninety-one oxen pull against four oxen, what are the four to do?[328]

But if Parliament was not willing to recognise Māori rights to self-government, it would be 'a great shame' to reduce the number of Māori members, Taiwhanga said. 'The Maori representation is small enough as it is.'[329]

In general, the settler members were far more concerned about the balance between town and country representation than about Māori, but some echoed the views of the Māori members. Former Premier Sir George Grey, an ardent assimilationist, said it was widely acknowledged that Māori representation was 'a sham': '[E]very member here knows that in truth the Natives have never had their fair share of representation, and never exercised in this House the power that they ought to have done.'[330]

Ultimately, the Government's hand was forced. Faced with the prospect of losing its majority, it agreed to retain the four Māori electorates in return for the support of Māori members for a reduction in the number of general seats.[331]

(2) *What was the significance of the Ōrākei and Waitangi parliaments?*

From 1879, leaders of northern tribes – Ngāpuhi, Te Rarawa, Ngāti Whātua, and others – began to gather regularly for major hui in locations throughout the north, including Ōrākei, Waitangi, Rāwene, Aotea (Kaipara), and elsewhere. On one level, these 'parliaments' revived the tradition of the Kohimarama Rūnanga by bringing major tribal groups together to discuss their relationship with the Government; on another, they reflected the growing focus of Te Raki and other northern leaders on treaty rights, and in particular on establishing institutions for Māori self-government.[332]

These parliaments continued to meet throughout the 1880s; the 'Ōrākei' parliaments were convened by Ngāti Whātua at various locations, and the Waitangi parliaments convened by Ngāpuhi and Te Rarawa. They

provided a forum where Māori could discuss matters such as the Land Court, land alienation, rates, taxes, and government interference in Māori fisheries and traditional hunting; and also a platform for coordinated approaches to the Queen and colonial authorities. At times, northern leaders sought to reach an accommodation with the Kīngitanga – one that would unite all northern tribes in their responses to the Crown.

(a) The 1879 Ōrākei parliament

The first Ōrākei parliament was held in February and March 1879 at Ōrākei in Auckland. Its host and principal organiser was Pāora Tūhaere of Ngāti Whātua, who believed that Māori–Crown relations would have proceeded along a smoother and more harmonious track if the Crown had kept its promise at the 1860 Kohimarama Rūnanga to convene annual hui of Māori leaders. When his attempts to persuade the Crown of his case fell on deaf ears, he took the initiative himself.[333]

The hui took place in a purpose-built whare named Kohimarama and was attended by some 300 Māori, mainly from Ngāti Whātua, Ngāpuhi, and Mahurangi hapū. King Tāwhiao sent his secretary, Te Ratu. Also present were the government official Henry Tacy Kemp; John Bryce, then a member of the House of Representatives; and various other Pākehā observers.[334]

During opening proceedings, Tūhaere said the purpose of the hui was to breathe new life into the treaty. Thirty-nine years had passed since it had been signed, and many Māori did not understand its true meaning. Tūhaere then read the full text of te Tiriti and (also in te reo) the full text of Governor Gore Browne's 1860 speech at the Kohimarama Rūnanga, which in Tūhaere's view, 'repeated and confirmed' the articles of the te Tiriti. A report on the Ōrākei parliament, in which all speeches were translated into English, was included in the Appendices to the Journals of the House of Representatives.[335]

Discussions took place over many days and traversed all of the issues concerning Māori communities at this time: inadequate parliamentary representation, the Native Land Court, land alienation, rates and taxes, economic development, increasing government regulation of Māori fisheries, and more. Rangatira debated the nature of the treaty relationship, and in particular the balance between autonomy and partnership. Arama Karaka Pī, who had signed te Tiriti in 1840, said it had unified Ngāpuhi and the Queen, in accordance with the vision set down by Hongi Hika a generation earlier. Ngāpuhi 'hoped to be united with the pakeha' but also 'wished that Hongi should have the same power as the Queen'.[336]

Te Hemara Tauhia (Ngāti Rongo of Mahurangi) said he was present when te Tiriti was signed and recalled the discussions between Captain Hobson and rangatira. Since the days of Hongi, Ngāpuhi had sought friendship with and protection from Britain. As Tauhia saw it:

> They placed all their thoughts before the Queen, and left them for her to consider, and to devise measures for their benefit. The words of the Queen were that the mana of the chiefs would be left in their possession, that they were to retain the mana of their lands, fisheries, pipi-grounds, forests. These were the stipulations of the Queen in reply to the terms agreed to by Ngapuhi. Another promise of the Queen was that she would protect these Islands, lest foreign nations should come and fight against the people of these Islands. These were the only words of the Queen that I heard.[337]

Tauhia's understanding, then, is clear: Māori would retain their traditional authority, while the Queen would provide protection. This understanding, in our view, was reflected in the consistent stance of Te Raki leaders throughout the period covered by this chapter: that they were loyal to the Queen even as they sought freedom from the colony's laws and government. Other rangatira referred to te Tiriti as a charter for peace, under one God, one sovereign, and one law, but with guarantees that the Queen would protect Māori, who would retain control of their lands, forests, and fisheries.[338]

On the sixth day, the hui adopted a series of resolutions about the meaning and effect of te Tiriti. According to the Government's record of proceedings, those present resolved to stay loyal to the Queen, remain friendly to settlers, stand aside from any conflict that might erupt between Māori and the Crown, and 'adhere to the terms

Three scenes of the 1879 Ōrākei Parliament. The middle scene depicts the Parliament in action inside the purpose-built whare, 'Kohimarama'. The Ōrākei and Waitangi Parliaments, which continued to meet throughout the 1880s, brought together iwi and hapū to discuss common issues and to raise their concerns with the Government ministers and officials who attended.

of the Treaty of Waitangi and the Conference of the Kohimarama for ever'.[339]

These initial resolutions were printed in English. The remaining resolutions, printed in Māori, affirmed Māori rights under te Tiriti. Resolution 6 provided: 'Ma tenei runanga e whakamana kia tuturu tonu te mana rangatiratanga o nga iwi o enei motu kei ngaro i o tatau uri.' We translate this as: 'This Parliament will ensure that the highest chiefly authority [mana rangatira] of the people of these islands is maintained, so our descendants will not lose it.' Other resolutions confirmed the rights of Māori people to harvest fish, shellfish, eels, and birds within their tribal territories, notwithstanding any government regulations or claims to the contrary. These resolutions were clear statements of Māori rights under article 2 of the treaty.[340]

Having dealt with these principles, Tūhaere questioned whether it was still possible to exercise mana and rangatiratanga as guaranteed by te Tiriti in his address to the conference:

> When the Queen established her authority in this Island she promised that the chieftainship of the Maori people should be preserved to them. She has not deprived the chiefs of their mana. She left a share of the mana of the Island to the Native chiefs. That Treaty of Waitangi left the rights of the soil with the Maori chiefs. She also left the fisheries to the Maoris. She did not deprive us of those. She also left us the places where the pipis, mussels, and oysters, and other shell-fish are collected. . . . Let your opinions be clear, because there are many grievances in this Island, and it is for you to suggest some means by which they may be redressed. Let us see whether the stipulations made in the Treaty of Waitangi are still in force or not.[341]

In his view, the Native Land Court had taken Māori authority and replaced it with Crown grants.[342] Other rangatira said te Tiriti had brought protection from foreign powers other than Britain, but the Crown had since neglected the guarantees of mana and rangatiratanga. This, rangatira agreed, was not the fault of the Queen herself but of the colonial Government.[343] In order to resolve these grievances, Tūhaere emphasised the importance of Māori discussing them with Crown officials, as they had at the Kohimarama Rūnanga in 1860. Speaking after Tūhaere, Ngāti Whātua rangatira Te Keene observed that subsequent Governors after Gore Browne had failed to fulfil the promise to reconvene the Kohimarama Rūnanga, but 'now the Maoris have taken it upon themselves to hold a yearly Conference in a sort of way, and this is one of them.'[344]

The following day, the hui passed a series of resolutions aimed at preserving Māori control over lands and abolishing the Native Land Court.[345] At the close of the hui, it was agreed that the parliament would meet annually, and that Kaipara and Ōrākei Māori would attend the first hui at the new Tiriti o Waitangi meeting house at Waitangi.[346] This first Ōrākei parliament established key themes – protection of mana Māori, and rejection of laws that diminished that mana – which would be repeated at subsequent Māori parliaments in Waitangi, Aotea (Shelly Beach, Kaipara), and elsewhere in the north over the next few years.[347]

Soon after the parliament had concluded, Grey (who was then Premier) and Sheehan (the Native Minister) visited the Bay of Islands. On this occasion, the discussion at the meeting focused more on economic and social issues than self-government. While Te Raki leaders reiterated their desire to live in peace, they also raised a number of grievances, including their desire for railways and schools. Grey's response was that any action to develop the region would depend on their providing a share of the funds.[348]

In a subsequent report to the Native Secretary, the Hokianga resident magistrate Spencer von Sturmer noted that Māori were becoming increasingly distrustful of the Crown and were holding numerous hui where they discussed the treaty and Native Land laws. Their 'sullenness', he said, arose from their 'knowledge that their former power and influence . . . is rapidly passing away', as settlers increased in 'both numbers and territorial wealth'.[349]

(b) The 1879 Kīngitanga hui

In May 1879, the Kīngitanga hosted a major hui to discuss peace terms with the Crown. Many thousands of people attended, including sizeable contingents from Ngāpuhi

and other Te Raki tribes. The relationship between Ngāpuhi and the tribes of Waikato and Te Rohe Pōtae (the 'King Country') was traditionally fraught. They had clashed during the Musket Wars, and in the 1860s Ngāpuhi leaders had briefly considered entering the war against Waikato. But the 1870s had led to something of a thaw, as both sides searched for ways to resist the Crown's policies and protect their mana. King Tāwhiao had a representative at the Ōrākei parliament, and would have attended himself had he not been unwell.[350]

During the hui, Tāwhiao insisted that his father Pōtatau Te Wherowhero had been 'ancestor of all people' and 'chief of this Island, of you all'. Having succeeded his father, Tāwhiao now insisted, 'I have the sole right to conduct matters in my land – from the North Cape to the southern end. No one else has any right.'[351] In effect, Tāwhiao was calling on all iwi to unite behind him in defiance of the colonial Government. While those at the hui shared common ground in their opposition to Government policies, many – including the leaders of this district – could not accept Tāwhiao claiming mana over them. For the next two days, rangatira debated Tāwhiao's authority and declared themselves either for or against the Kīngitanga. For Ngāpuhi and Te Rarawa leaders, Tāwhiao's stance left them with little option.[352] According to the *New Zealand Herald*, Hōne Mohi Tāwhai told the hui that Ngāpuhi had allowed the treaty to be made and had placed themselves under the Queen's protection:

> Governor Hobson arrived amongst the Ngapuhis, the Treaty of Waitangi was made, and the whole of my parents came under that treaty. They agreed to hand over all their lands and their bodies and all their heirs after them to be under the power of the Treaty of Waitangi. From the time of my parents until now, as I stand here, they have all been under the Treaty of Waitangi. Our lands, our bodies, our children, – they are all under the Treaty of Waitangi. The Treaty of Waitangi was agreed to by all the tribes of the Island as far as Taiaroa. Secondly, respecting the chieftainship, – it belongs to the whole of the people assembled here. From the days of our ancestors we put ourselves under the protection of the Queen until this day, and I am still under her protection.[353]

Other northern rangatira spoke in similar terms. Tūhaere's view was that Te Rarawa, Ngāpuhi, and Ngāti Whātua 'should be left to themselves'.[354] North Island Māori resistance to the Government would therefore continue along two parallel tracks: Te Raki iwi would continue to accept the Queen's protection, even as they sought freedom from the colony's Government and laws; Waikato and Te Rohe Pōtae iwi would be loyal to the Māori King.

(c) The 1881 Waitangi parliament

The second Ōrākei parliament took place in March 1880, again with a significant Te Raki presence. Te Hemara Tauhia of Ngāti Rongo told those gathered that Māori had attempted to engage with Crown institutions 'and now we see the evil of them'.[355] Through the impacts of the Native Land Court, councils, road boards, and Crown agents, his people in Mahurangi and Kaipara no longer had sufficient land. The hui resolved that the Court should be abolished, that surveys and Crown titling should cease, and that remaining lands should remain under inalienable customary title.[356]

The rangatira at this parliament placed considerable emphasis on he Whakaputanga, through which Britain recognised the mana of Te Whakaminenga, the pre-treaty gathering of northern rangatira. The rangatira reasoned that te Tiriti had affirmed this relationship, and therefore provided a precedent for Crown recognition of Māori parliaments.[357] The third Ōrākei parliament, held in early March 1881, addressed many of the same issues as the 1880 parliament.[358]

By 1881, Ngāpuhi leaders had completed their new whare rūnanga at Te Tii Waitangi. Many hapū contributed to the £300 cost. According to the Ngāi Tāwake rangatira Mangonui Rewa (also known as Mangonui Kerei), the house was built to 'remind us all of the Treaty of Waitangi' and its child, 'the Treaty of Kohimarama'.[359] In our inquiry, Ngāti Hine provided evidence that the structure existed as 'a focal point for the discussion of Te Tiriti issues and a tangible reminder of the pledges that had been made by Maori and the Queen'.[360] Alongside the new whare, Ngāpuhi leaders erected a sandstone monument bearing the text of te Tiriti in te reo Māori.[361]

The whare rūnanga, Te Tii, shortly after its completion at Waitangi, where the first Waitangi parliament met in 1881. Some 3,000 people from throughout the North Island attended the hui, which called on the Government to recognise a national Māori parliament. The regional committee Te Komiti o te Tiriti o Waitangi was established during the 1881 parliament to provide for Māori self-government at the local and intertribal level.

The first Waitangi parliament began on 23 March 1881. Ngāpuhi leaders invited the Governor, Sir Arthur Gordon, to attend and unveil the treaty monument. He declined, possibly on the advice of the Government; although Gordon had been in the colony for a short time only, he was already differing from his Ministers over the Government's arbitrary arrest and detention of ploughmen from the Parihaka community in southern Taranaki. Some Ngāpuhi leaders interpreted Gordon's absence as a reflection of the Government's attitude to the treaty itself. The Government instead sent the Native Minister, William Rolleston.[362]

Long before the hui, senior Ngāpuhi rangatira had met to discuss the agenda. Āperahama Taonui, one of the few surviving treaty signatories, was a leading voice in these discussions. As mentioned in chapter 5, Taonui had fought against Hōne Heke and Kawiti during the Northern War, but later became disillusioned with the Government's land

policies and was determined, in Dr Orange's words, to take 'positive steps . . . towards fulfilment of the treaty's promises'. He brought together rangatira of significant mana – Maihi Parāone Kawiti, Hāre Hongi Hika, Kīngi Hori Kira, Mangonui Rewa, and Heta Te Haara – to undertake the practical work required to bring this project to fruition. At the first two Ōrākei parliaments, rangatira had affirmed that the Queen had guaranteed their mana, but the colonial institutions of government had then set it aside. From this time, therefore, Te Raki Māori leaders determined to adopt Taiwhanga's 1878 proposal for a separate Māori parliament.[363]

The hui itself was a huge undertaking. Some 3,000 people attended from throughout the North Island, for whom Ngāpuhi supplied 'a stack of food three feet high, and half-a-mile long'.[364] The meeting opened with a brief welcome to Rolleston, followed by a haka so large it 'was distinctly heard at Russell, six miles off'. Then, with little fanfare, Ngāpuhi rangatira began to set out their vision.[365]

According to newspaper reports, Wi Raukawa was one of the first to speak: 'Welcome Treaty of Waitangi,' he said. 'We would like to know your opinion, if favourable or otherwise, to us Ngapuhi. Hold fast [to] the Treaty of Waitangi!' The former member of the House of Representatives, Wiremu Kātene, said he spoke for everyone present: 'There should be two Parliaments – one English, and another Maori.' Kātene also demanded the return of confiscated lands and the restoration of Māori control over customary fishing grounds and shell fisheries, and he assured the Governor of Ngāpuhi's enduring loyalty to the Crown.[366]

Ihaka Hakuene asked, 'Let the Colonial Office seal be handed to us.' Maihi Parāone said;

> My request is that we Maoris be allowed to manage our own concerns. Let there be a committee appointed to consider Maori subjects. The great thing is, that Maoris should consider and have the management of their own affairs.[367]

Maihi Parāone then read out the treaty. While the *New Zealand Herald* did not specify which text he read, we presume he read te Tiriti. He declared:

> Government has milked the cow of New Zealand; therefore evils are among us. Five tribes have agreed to keep our lands, and that a committee shall manage our own affairs. . . . Let the committee be appointed under the sanction of the treaty of Waitangi.[368]

Taiwhanga added his voice: 'The reason for two Parliaments is – for 41 years we have been suffering with your laws.'[369] Next, Mangonui Rewa spoke: 'You gave us a treaty; now give us a Parliament.' Hōne Mohi Tāwhai, the Northern Maori member of the House of Representatives at the time, said that Ngāpuhi 'are all agreed re the Maori Parliament'.[370] Te Hemara Tauhia of Mahurangi added: 'We have tried your Parliament, and have found it wanting.'[371] Whanganui leaders had also begun to establish regional parliaments,[372] and were present at this hui. Mete Kingi of Whanganui added his voice to the call for a national Māori legislature, as did Tawiau from Kaipara. So, too, did Pāora Tūhaere of Ngāti Whātua: 'Let us have a Parliament to ourselves. Let [the] Government watch it. Don't put it down till you see evil from it. The Parliament in Wellington have broken the treaty.'[373]

Previously, Te Raki leaders had suggested a Māori parliament operating alongside the colonial one as part of a single legislature. Here, they seemed to be suggesting a fully autonomous parliament making laws for Māori yet recognised by the colonial Parliament. From the available evidence, it is not clear whether any of the rangatira went into detail about how the two parliaments might work together, especially where Māori and settler interests intermingled. Ihaka Hakuene's request for the Colonial Office seal was, in effect, a request for Te Raki Māori to exercise the Queen's authority in New Zealand. The seal, provided by the Colonial Office to New Zealand Governors, was used on official documents to represent sovereign authority.

As well as making their case for a national Māori parliament, rangatira set out the many ways in which the colony's Legislature and Government had – in their view – breached the treaty guarantees, including confiscation and acquisition of land, imposing taxes on dogs and livestock, and allowing settlers to take fish and shellfish from

traditional fishing grounds.[374] The dog tax was 'formerly 5s, now 10s, next 20s, then horses, cows, and fowls,' said Mangonui.[375] 'I approve of the treaty, but not of the dog tax,' added Hamiora Ngatiura.[376]

Dr Kawharu, in our inquiry, noted that the Ōrākei parliaments of 1879 and 1880 had not promoted the establishment of a parallel Māori system of government but instead had focused on 'unity and building relationships with the government'. This new direction was a response to the failure of colonial authorities to protect tino rangatiratanga.[377]

While Rolleston acknowledged that 'some of the branches of the treaty' had been broken, he gave no encouragement on any of the points raised by the rangatira.[378] Regarding the establishment of a Māori Parliament, he said,

> I am unable to say how your proposal would work. Is the native Parliament to make laws for the Europeans? Is the present Parliament at Wellington to cease to legislate for both races? . . . I should mislead you if I were to tell you that any laws would be allowed to be passed out of the Parliament at Wellington.[379]

While issues of relative jurisdiction would have required further consideration and negotiation, Rolleston was not open to this possibility; rather, he asserted that all authority must remain with the colonial Parliament. As discussed in chapter 7, that was not an arrangement that Te Raki Māori had ever consented to. Nor did Rolleston address the underlying issue, which was the inadequate provision under the colony's constitution for Māori to meaningfully influence laws affecting them.

Unsurprisingly, Rolleston would not promise to hand over the Colonial Office seal, which he said could only be used by the Government in Wellington. Regarding the dog tax, which we discuss further in section 11.5.2(12), he suggested that Māori petition the Government seeking suspension of the law. He acknowledged that Māori were concerned about settlers making use of the foreshore and taking fish and shellfish, but the 'law of nations' provided that access should be free. Kātene said Māori understood this law and regarded it as fair in towns such as Russell, but not in traditional fishing grounds and those bordering Māori lands: 'our pipi beds are our own'. Concluding the hui, Rolleston undertook to consider the issues raised, while making 'no rash promises'. If Māori had grievances, he said, they should take them up with the colonial Parliament.[380]

Yet the experience of rangatira to date was that the colonial Parliament did not respond in a way that gave Māori any hope that their rights and interests would be recognised or protected. Several months later, one sympathetic member of the House asked,

> how is it that we repeatedly hear the Native members asking, without response, why the Treaty of Waitangi is not adhered to – why the liberties and political rights there secured to them are not admitted? How is it that we find the same sentiments and the obligations of the Treaty perpetuated in the Constitution Act, and still no notice is taken of them?[381]

In any case, Ngāpuhi leaders did not wait: during the 1881 Waitangi parliament they established Te Komiti o te Tiriti o Waitangi, a regional committee established to provide for self-government throughout the tribal rohe (see section 11.4.2(5)(a)).

(d) The 1885 and 1887 Waitangi parliaments

In the years after the first Waitangi parliament, northern leaders continued to hold annual hui, typically attended by many hundreds of people from throughout the district. Ōrākei parliaments were held at Reweti in 1882 and at Aotea (Kaipara) in April 1883, March 1884, and March 1885.[382] Discussions continued to focus on te Tiriti and numerous grievances about the colony's laws and government, including the impacts of the Native Land Court, government land purchasing, and taking Māori land for roads.[383]

In 1882, Ngāpuhi leaders petitioned the Queen seeking establishment of a Māori parliament; and two years later, King Tāwhiao visited London with another petition, also calling for a Māori parliament and self-government. On both occasions, the Colonial Office said it could not get

involved in New Zealand affairs. Since the 1881 Waitangi parliament, Te Raki leaders had also sent several petitions to the colonial Parliament, seeking recognition of treaty rights and relief from harmful laws. None of these petitions led to significant responses from the Government. By the end of 1884, Te Raki leaders were considering another delegation to London. We return to all of these matters later, in section 11.4.2(3).[384]

The Ōrākei parliament met again at Aotea in March 1885.[385] Reports indicated there was considerable depth of feeling among all northern tribes about what they regarded as ongoing breaches of their rights. There was 'a strong feeling among the natives that they have not been well treated by the Government', the *New Zealand Herald* reported. One common grievance was the immense cost of Native Land Court hearings; another was

> the somewhat cavalier manner in which their petitions have been treated by Parliament. They complain that they have sent petition after petition to the House, but nothing is ever heard of them.[386]

We will consider the substance of Te Raki Māori petitions later, in section 11.4.2(3).

The third Waitangi parliament took place in March 1887 and was attended by the Native Minister John Ballance. According to one newspaper report, the parliament was the largest gathering of Te Raki Māori for many years, with 500 in attendance, including '[e]very representative and distinguished chief of the Ngapuhi' and a large contingent from Te Rarawa.[387] Very little is recorded of the exchange between Ballance and rangatira. The Minister said he 'wished, on behalf of the Government, freely to acknowledge the binding nature of the treaty of Waitangi'. This did not mean that the treaty could not be modified, 'but it must be done with the consent of all'. In response, Maihi Parāone 'spoke at considerable length, principally with reference to the treaty of Waitangi . . . complaining that it had not been carried out in the spirit in which it was framed'. He nonetheless 'expressed gratification that the Government considered it as binding'.[388]

The following day, Ballance held a meeting with about 200 rangatira, who raised numerous grievances about land, the Land Court, public works, and government debt. As an example of the bias Māori perceived in government actions, Takotorua of Te Rarawa complained that Māori land was being taken without consultation to build roads connecting settlers' properties. Ballance claimed to have done a great deal for Māori, which earned a scornful response. Maihi Parāone said that existing laws must be reformed or 'he could not abide by them', and instead 'as regarded himself, his people, and his lands, he was quite prepared to govern them with his own laws'.[389]

Notwithstanding his professed commitment to the treaty, Ballance said that repealing existing laws and allowing Māori to govern themselves 'would be very disastrous to their cause'. Furthermore, 'there could not be two law making bodies in the same country'.[390] We presume that at some point in the hui, Te Raki leaders had raised their proposal for a Māori parliament, or Ballance had otherwise heard of it. While he and Te Raki leaders shared a view of the treaty as binding, they did not share an understanding of what the agreement meant.

Rangatira asked Ballance to return the following day as they had so many concerns still to raise with him, but he declined and said they could visit his hotel in Russell if they wanted further discussions.[391] The hui continued without him, passing several resolutions, which had a significant focus on land. They included:

2. The Treaty of Waitangi must be preserved intact, as we regard such Treaty to be our only means of retaining our rights as formerly demanded by our ancestors in a letter written by them to George the Fourth . . .
3. All Native Land Court Acts, and the Native Land Administration Act 1886, should be repealed, and a new law be made under the provisions of the 71st clause of the New Zealand Constitution Act, 1852. All native transactions, whether formerly or hereafter, should come under this jurisdiction.
4. All native lands in the Northern Electoral District to be dealt with under the provisions of the Treaty of Waitangi.
5. These propositions or resolutions are open for adoption by the natives in any other district in New Zealand.

6. That [Northern Maori member] Ihaka Hakuene be requested during the next session to move that the Representation Act, 1867, be repealed, and move in place thereof, 'That a Maori Protection Bill be introduced'.[392]

In sum, the resolutions were proposing a system of local self-government for northern Māori, empowered among other things to deal with land title adjudication. The Native Land Administration Act 1886 (discussed more fully in chapter 9) provided for more community control over Māori land than previous Māori land laws, and so put a brake on sales of Māori land for a short period in the 1880s; however, many Māori opposed the Act for other reasons, including a provision allowing government agents to bypass safeguards against sale.[393]

Maihi Parāone moved the resolutions with support from Pāora Tūhaere and Te Tirarau Kūkupa, and the hui passed them unanimously.[394] Others in attendance included Ihaka Hakuene, Hirini Taiwhanga, Wī Kātene, Hōne Mohi Tāwhai, Takotorua of Te Rarawa, Matiu Te Aranui of Mangakāhia, and Eru Nehua of Whāngārei. Together these leaders represented territories extending from Auckland to the far north.[395] The reference to George IV was presumably intended to mean William IV, to whom northern rangatira wrote in 1831 seeking a trading alliance and protection from foreign threats and unruly settlers. Nine years later when they signed te Tiriti, many rangatira believed they were strengthening and reinforcing this essential bargain.[396] Maihi Parāone and other rangatira sent these resolutions to the Government, which did not respond directly.[397]

After Hirini Taiwhanga was elected to the House of Representatives in September 1887, he introduced a series of focused legislative proposals aimed at implementing the resolutions of the Waitangi parliament and granting Māori autonomy and self-government.

Taiwhanga's Maori Lands Empowering Bill 1887 proposed to repeal all existing Native Land legislation and instead establish an elected national committee of 25 Māori representatives who would award title to Māori lands and oversee land administration, including surveys, sales, leases, and mortgages of Māori land throughout New Zealand. Under the Bill, all Māori men and women aged 21 or over were entitled to vote for the national committee.[398] The Maori Lands Empowering Bill received its first reading on 14 October 1887 but was never debated.[399]

Taiwhanga's Maori Relief Bill 1887 provided for the Government to fund a deputation of Māori to London, for the purposes of persuading the Crown to bring the Maori Lands Empowering Bill into force and establish self-governing Māori districts under section 71 of the Constitution Act 1852.[400] Māori sent a large petition in support of the Maori Relief Bill. It received a first reading in May 1888 but was never debated.[401] The Premier, Harry Atkinson, dismissed it as 'utterly useless . . . a mere scrap of a Bill [that] would not provide anything'.[402] Taiwhanga responded by filibustering during debates on government Bills affecting Māori land, at times speaking for several hours to slow progress.[403]

Taiwhanga also introduced a Bill to disestablish the Native Land Court and to prohibit individual Māori landowners from selling their shares directly to the Crown. Under the Native Land Administration Act 1886, which applied at the time, block committees would still be able to sell to the Government or to private buyers. The Native Land Court Act 1886 received its first reading in May 1888, on the same day as the Maori Relief Bill. It, too, was never debated.[404]

In October 1887, Taiwhanga also proposed the introduction of a broader measure repealing all colonial legislation applying to Māori and establishing a national system of Māori self-government in partnership with the Crown. According to a brief column in the *New Zealand Herald*, the proposed Maori Protection Bill was 'a more pretentious measure' which 'has for its object the protection of the Maori race and their lands'. The Bill proposed 'to repeal the Maori representation as existing, and instead [have] one Maori representative in the [General] Assembly and one in the Imperial Parliament'. A Māori council would be constituted 'for managing native affairs'. This council would be elected by Māori and would 'deal with sanitary matters, schools, Maori land, moneys, and disputed land claims'.[405]

Under the Bill, a court would also be established

to investigate land claims specified in a schedule, and including lands in Mangonui, Hokianga, Kaipara, and Whangaroa. The proposed court would be able to investigate claims arising before or after the Treaty of Waitangi, a move that in the *New Zealand Herald*'s view would 'probably take us back to the days of Captain Cook' and provide plenty of business for lawyers. Finally, a special council comprising three 'honest and true foreigners', whom Taiwhanga intended to be selected from among people of Samoan, Rarotongan, or Fijian descent, would 'be charged with the question of settling roads and railways through Maori lands'. The Bill also proposed to repeal 35 Acts affecting Māori or their lands.[406] The *Herald* reported that Taiwhanga had approached the Native Minister seeking support for the Bill, which was unlikely to be forthcoming. As the parliamentary session was close to an end, the Bill would instead 'meet an untimely fate'. This Bill was never introduced.[407]

Of Taiwhanga's legislative proposals, the Maori Protection Bill – effectively proposing a system of Māori self-government with courts and an elected governing body – was the most comprehensive. The other Bills addressed specific issues of concern to Māori; in particular, abolition of the Court and its replacement with a new land titling system. Further discussion would no doubt have been necessary to bring any of Taiwhanga's proposals to fruition and to determine the relative jurisdictions of Māori and colonial institutions. But so far as we can determine, the colonial authorities did not engage in that discussion, nor engage with the underlying principle of Māori authority over Māori land. The proposed legislation reflected the considered wishes of the northern leaders gathered at the Waitangi parliament, yet was simply ignored in Wellington. This was clearly a missed opportunity.

After Taiwhanga's death in 1890, his successor, Eparaima Kapa, introduced another Bill similar to the Native Rights Bill, but it was also never debated (see section 11.5.2(1)).[408]

(3) *What were the Crown's responses to Te Raki Māori petitions and letters?*

During the late 1870s and throughout the 1880s, Te Raki Māori sent numerous petitions and appeals to the Crown requesting recognition of and protection for their treaty rights. As well as petitioning the House of Representatives, Te Raki leaders in 1882 and 1883 appealed directly to the Queen in London. At times, these appeals focused on perceived breaches of the treaty, concerning land laws, rates, and other matters. For example, in 1881 Te Hemara Tauhia petitioned the House saying it 'should not make any more laws affecting Maori lands, for they will be the cause of wars between the races'.[409] On several occasions, Te Raki leaders outlined their vision for Māori self-government, asking the Crown to give legal recognition to a Māori parliament or local committees.

(a) 1882: Hirini Taiwhanga's petition to the Queen

Hirini Taiwhanga was a leader of Ngāti Tautahi and Te Uri o Hua. Taiwhanga's father, Rāwiri, had fought with Hongi Hika during the wars of the 1820s; and his mother, Mata Rawa, was a Te Arawa war captive. After returning from war, Rāwiri became the first Te Raki leader to adopt Christianity, and he pioneered the development of agriculture and horticulture in the district. He signed te Tiriti in 1840 and raised his children as mission-educated Christians.[410]

Hirini Taiwhanga was educated at St John's College, Auckland, and trained as a carpenter and then as a surveyor who provided maps for the Native Land Court; at the time he was the only Māori in this role. Taiwhanga married twice. His first wife was Mere Pohoi, the daughter of the Kaikohe leader Wī Hongi; this marriage enhanced Taiwhanga's mana within the hapū. Mere had several children before she died in 1876. Taiwhanga then married Sarah Ann Moran, an Irish migrant with a child from a previous marriage. Their wedding attracted considerable media interest because it was rare at that time for a Māori man to marry a settler woman.[411]

From the late 1860s, Taiwhanga was prominent in Ngāpuhi affairs. He frequently took part in Waitangi and Ōrākei parliaments, spoke at hui with visiting Governors and Ministers, and was a perennial candidate for the Northern Maori electorate. By the mid-1870s, he was an outspoken critic of government policies, clashing with officials over land claims and electoral rights.[412] His

Hirini Taiwhanga of Ngāti Tautahi and Te Uri o Hua, who received a mission education and also attended St John's College, Auckland. He trained as a carpenter and surveyor, working for the Native Land Court. A prominent figure in Ngāpuhi affairs, Taiwhanga was an outspoken critic of the Crown's policies on Māori land and electoral rights, and he petitioned for greater self-government for Māori communities and for the repeal of the Crown's Native Land legislation. His staunch opposition to Crown policies did not endear him to Crown officials or the settler press, which sought to publicly undermine his standing and character. He travelled to London in 1882 to personally petition Queen Victoria for recognition of the Crown's breaches of the treaty and the establishment of a Māori parliament. In 1887, he was elected member of the House of Representatives for Northern Maori, and he introduced legislative proposals that would have implemented the resolutions of the 1885 and 1887 Waitangi Parliaments. However, his proposals were rejected and never debated.

outspokenness and determination took a considerable personal toll, earning him a reputation among government officials and agents as an 'agitator'.[413] The claimant Hōne Pikari (Te Uri o Hua) told us that Taiwhanga was 'a fighter' who campaigned tirelessly for tino rangatiratanga and 'to keep the New Zealand Government in check'.[414]

Disputes with the Government during the 1870s and early 1880s either directly or indirectly cost Taiwhanga his job, his livelihood, his family land, and a school he had established at Kaikohe. Specifically, in 1873 he was fired and lost his licence as a surveyor after a dispute with Judge Maning.[415] Soon afterwards, he established a school at Ōpanga (Kaikohe) for Māori and European children,[416] but in 1881 he was forced to sell the 45-acre site to repay a mortgage that had funded a trip to Wellington so he could present petitions to the Government. Taiwhanga occupied the school's site for two-and-a-half years, refusing to leave until the Whangaroa leader Paora Ururoa and other rangatira intervened. During his occupation, the Government closed his school.[417]

After almost a decade of petitions, protests, visits to Wellington, and attendance at parliaments and hui, Taiwhanga resolved to petition the Queen.[418] In March 1882, he called a meeting at Kaikohe, where he asked members of Hongi Hika's family to accompany him to London for 'the purpose of making known the wrongful acts of the Government of New Zealand towards the Native people'.[419] By involving Hongi's whānau, not only

was Taiwhanga seeking to add their mana to the project but he was also placing his petition in the context of a Crown–Ngāpuhi relationship established by Hongi in 1820 and reinforced, from a Ngāpuhi perspective, by he Whakaputanga in 1835 and te Tiriti in 1840. Judge Maning acknowledged that '[T]he Treaty of Waitangi grievance is coming to a head'.[420]

Hōne Mohi Tāwhai opposed the petition, which was not signed by any Hokianga rangatira. According to Armstrong and Subasic, this was essentially for tactical reasons: Tāwhai was at the time seeking Government support for a system of native committees with meaningful powers of self-government.[421]

Support for Taiwhanga's petition was otherwise unanimous among the most senior leaders from Whangaroa, the Bay of Islands, Whāngārei, and Mangakāhia. Alongside Taiwhanga, signatories included Hāre Hongi Hika (Ngāti Uru, Ngāti Tautahi, Te Tahawai), Kīngi Hori Kira (Ngāi Tūpango), Mangonui Rewa (Ngāi Tāwake, Te Patukeha), Maihi Parāone Kawiti (Ngāti Hine), Parore Te Āwhā (Te Rōroa, Ngāti Ruangāio), and Parore's nephews Wiremu Reweti Puhi Te Hihi and Hakena Parore.[422] Āperahama Taonui was also a key supporter prior to his death in 1882.[423]

Taiwhanga sent the petition to the Governor in August 1882, asking that it be forwarded to the Queen. The original has not survived, so we rely on the official English translation, which is reproduced in full in appendix 1. The petition stated that through the treaty, the Crown had become 'protector of New Zealand – to protect and cherish the Maori tribes'. But in the years since, colonial Governments had started wars in the Bay of Islands, Taranaki, and Waikato; seized and confiscated Māori land; invaded Parihaka; and committed numerous other 'evils' – all in response to Māori who were attempting to retain their lands in accordance with the treaty.[424]

In addition, the colonial Government had enacted numerous laws that were 'against the principles embodied in the Treaty', including all of the Native Land Acts brought into effect since 1862 without the consent of rangatira throughout the country, and the Immigration and Public Works Act 1870 through which £700,000 had been borrowed and spent. These laws were unjust and had caused great disorder and inflicted great suffering on Māori people.[425]

The petitioners told the Queen that they believed she had 'no knowledge as to the deeds of wrong that gave us so much pain, and which create lamentation among the tribes'. Europeans had said that the colonial Government made war under the Queen's authority, 'but our decision was that such acts were not sanctioned by you, O Queen, whose benevolence towards the Maori people is well known'. Rather, 'disorderly work' had been carried out 'so that a path might be opened up to seize Maori lands'. Here, Taiwhanga and his fellow petitioners were clearly distinguishing between the Queen, in whom was vested 'the sole authority affecting the Waitangi Treaty', and the actions of colonial Governors and Governments who had acted in breach of that agreement.[426]

The petitioners assured the Queen that there were 'no expressions of disaffection' towards her by the Māori tribes, 'including the tribes of the King'; they revered the Queen and beseeched her to hear their plea. They appealed that she would:

> not permit increased evils to come upon your Maori children in New Zealand but sanction the appointment of a Royal English Commission to abrogate the evil laws affecting the Maori people.

They also asked the Queen:

> to establish a Maori Parliament, which shall hold in check the European authorities who are endeavouring to set aside the Treaty of Waitangi; to put a bridle also in the mouth of Ministers for Native Affairs who may act as Ministers have done at Parihaka, so that all may be brought back to obey your laws; and to prevent the continued wrongs of land matters which are troubling the Maori people through days and years; and to restore to the Maoris those lands which have been wrongfully confiscated according to the provisions of the Treaty of Waitangi; and to draw forth from beneath the many unauthorized acts of the New Zealand Parliament the concealed treaty, that it may now assert its own dignity.[427]

As the petition made clear, the Government's November 1881 invasion of the pacifist settlement Parihaka had further galvanised Ngāpuhi and other Māori in their determination to secure self-government in accordance with the treaty. Ten Ngāpuhi ploughmen were among those arrested at Parihaka, and the invasion raised fears among Māori throughout the country that this was to be the Government's new approach. As the petition explained:

> Armies were sent to Parihaka to capture innocent men that they might be lodged in prison; to seize their property and their money, to destroy their growing crops, to break down their houses, and commit other deeds of injustice. We pored over the Treaty of Waitangi to find the grounds on which these evil proceedings of the Government of New Zealand rested, but we could find none.[428]

As was typical for Te Raki leaders, the petitioners attributed the strife to the colonial Government, not the Queen. They were aware that the Governor, Sir Arthur Gordon, had opposed the invasion.

Parore Te Āwhā donated £300 to send Taiwhanga, Reweti, and Hakena to London, where they hoped to deliver the petition to the Queen in person.[429] Government officials in New Zealand were openly derisive, but nonetheless feared that some in London might take Taiwhanga's requests seriously. The Native Secretary, Thomas Lewis, thus developed a plan to undermine the mission by preparing a file attacking Taiwhanga's record and character. This was to be sent to the New Zealand agent in London, Francis Dillon Bell, so he could complete a 'hatchet-job' (Lewis's term) before Taiwhanga arrived.[430]

To prepare that file, Lewis sought reports from the resident magistrates James Stephenson Clendon (Hokianga) and William B White (Mangonui), Russell court clerk J H Greenway, and Judge Maning. They rehashed stories about Taiwhanga's record as a surveyor and his resistance to the sale of his Opanga block, as evidence of his poor character and 'scheming' nature.[431] Clendon, Greenway, and White all made the patently false assertion that Taiwhanga had no support from Te Raki leaders; they said that most rangatira had ridiculed his mission and denied that he represented them, and the few signatories had been duped, having little idea of the petition's content or purpose. In fact, those who signed were among the district's most senior rangatira, and Hika and Maihi Parāone had long track records in petitioning or appealing to the New Zealand Government. There is no evidence of any later repudiation of Taiwhanga's mission by Te Raki leaders.[432] The fact that he was later elected Northern Maori member of the House of Representatives also suggests he had support among Ngāpuhi.[433]

Maning, in contrast to the other officials, acknowledged that the petition was widely supported and reflected the 'growing dissatisfaction with their present position and prospects'. He wrote that Taiwhanga attributed this to deliberate Crown breaches of the treaty, whereas in Maning's view, Taiwhanga and his supporters had 'but a very vague and loose idea of what the "Tiriti" really is, or what benefits it confers on them'. Like other officials of his time, Maning regarded the treaty as granting the Crown sovereignty while reserving few or no rights to Māori other than those of citizenship. The real source of Te Raki Māori dissatisfaction, Maning wrote, was economic decline, for which the judge held Māori entirely responsible due to their 'indolent' ways.[434]

Lewis forwarded the report to Bell in London, and Bell promised to ensure the British government was aware of its contents.[435] According to Dr Orange, Bell then 'took pains to belittle the appeal [from Taiwhanga] and discredit the petitioners'.[436] Taiwhanga arrived in London in June 1882, where he was supported by the Aborigines' Protection Society.[437] He was not granted an audience with the Queen, but – with the society's assistance – did meet the Secretary of State for the Colonies, Lord Kimberley, along with several members of Parliament. After the nature of the petition was explained, Lord Kimberley said it 'ought to have been presented to the Governor and Government of New Zealand in the first instance'. Without hearing from them, he could give no definite answer. Taiwhanga and other rangatira then spoke. According to the official record of the meeting:

> Firstly, they complained that the Treaty of Waitangi had not been upheld, and urged that it should be maintained, and the English and Native races governed according to it; secondly, they desired that steps should be taken to unite more closely the English and the Native race, instead of the latter being treated by the former as a horse treated his enemy – kicking him away.[438]

They also asked that Te Whiti be freed.[439]

Although Taiwhanga and others spoke in Māori, the official account records only the English translation. When Kimberley pressed on why the petition had not been sent to the New Zealand Government, Wiremu Puhi Te Hihi replied that the colonial authorities 'had not acted as the Queen would have done under similar circumstances', and that Māori had grievances throughout the country. Kimberley responded that bypassing the colonial Government 'would not tend to the union of the English and Native races', and that the treaty 'was very simple, and provided that the possession of land was to be respected'. He did not see raupatu as a treaty matter: 'the point was whether they [the confiscations] were just'. What was more:

> The management of the land of New Zealand was absolutely handed over to the New Zealand Government, and the Queen was advised by the Ministers of the colony in regard to these matters, and not by himself, as there could not be two governments for one country.[440]

Lord Kimberley therefore referred the petition back to the colonial Government, in effect rejecting any British responsibility for honouring the terms or spirit of the treaty. He later passed the petition on to the Queen, with a recommendation that no action be taken.[441]

As discussed in chapter 7, Britain had granted responsible government to the colonial Government in 1856, but the Governor had initially retained responsibility for Māori affairs. During the 1860s however, responsibility for Māori affairs was progressively handed to the colony – a process that was essentially completed by February 1865 (with the exception that the Governor retained direct authority over imperial troops, which remained in New Zealand until 1870). Nonetheless, New Zealand was not fully independent of Britain, and would not become so until the mid-twentieth century. British authorities therefore retained some rights to involve themselves in New Zealand affairs. In constitutional terms, the colonial Governor was required to follow the Queen's Instructions, and he was required to accept ministerial advice because the Queen (through the Colonial Office) had instructed him to. In the 1880s, those Instructions still provided that the British government would have to approve some legislation, and that the Governor had discretion to refuse Ministers' advice in some circumstances. Furthermore, the Queen could issue new Instructions. However, those issued after 1865 contained no explicit protections for Māori treaty rights.

The colonial authorities would no doubt have vigorously resisted any attempt by the Colonial Office or British Parliament to interfere in response to Taiwhanga's petition, and such a course would likely have provoked a constitutional crisis. But, at the very least – having failed to adequately protect treaty rights in New Zealand's constitutional arrangements – Britain could have exercised considerable moral pressure on the colonial Government as it would in 1885, following Tāwhiao's visit to London (see section 11.4.2(3)(d)). On this occasion, as on others, it chose not to. This was not a matter of law but of constitutional convention. It was also a matter of practical convenience for both governments – the colonial Government because it wanted to retain final authority over all domestic affairs, and the imperial government because it did not have to resolve any questions of treaty breach that might arise. We agree with Dr Orange that 'Britain had abdicated responsibility for the treaty and for Maori affairs'.[442]

In response to the petition, the Premier, Sir Frederick Whitaker, wrote a memorandum further criticising Taiwhanga's character and arguing that the petition had little support. With respect to the treaty breaches alleged in the petition, Whitaker responded that most

had occurred when the colonial Governors – in effect the imperial government – had responsibility for Native affairs.[443] Essentially, this was a denial of the roles played by settler Governments alongside the Governors in initiating the Taranaki and other wars.[444]

Turning to events since the 1860s when settlers had been granted responsibility for Māori affairs, Whitaker asserted that the capture and incarceration of Te Whiti was justified, and the Native Land Acts were 'not restrictive but enabling'. Their purpose was to 'relieve the Maori owners from the monopoly held by the Government; and to enable them to sell their lands to whomsoever they pleased'. The Acts were in no way compulsory: 'The Maoris were and are at liberty to avail themselves of the powers conferred, or to abstain from doing so, at their pleasure.'[445]

In our view, in light of consistent Māori protest over the Native Land Acts and their impacts on their collective landholdings (discussed in chapter 9), this was disingenuous at best. Whitaker did not respond to concerns over the Immigration and Public Works Act, except to claim that no land had ever been taken from Māori other than by confiscation, and that £700,000 had been spent to acquire lands that had been 'unprofitable waste'. In Whitaker's view,

> The general legislation of the Colony as to the Maoris has been more than just – it has been exceptionally favourable to them. When laws have been made applicable to the people of the Colony, the object has, in many instances, been to except the Maoris from their stringency; and there is no instance in which they have been placed in a less favourable position than the European population.[446]

He gave the example of Māori exemptions from property taxes, while ignoring Māori contributions to the colony's development through customs duties and land sales. Whitaker concluded:

> It may, indeed, with confidence be asserted generally, that there is not, and has not been, anything on the statute-book of the Colony, or in the conduct of the Colonial Legislature, as regards the Maoris, to which reasonable exception can be taken.[447]

Settler media in New Zealand meanwhile subjected Taiwhanga to further criticism after his estranged Pākehā wife arrived in Auckland alleging she had been abandoned in poverty during his trip – a charge Taiwhanga vehemently denied, and he threatened to sue for libel.[448]

On his return to New Zealand, Taiwhanga attended several hui and also met Kīngitanga representatives, briefing them on the disappointing outcome.[449] After the British government sent official word that it would not investigate the petition, Parore Te Āwhā expressed his disbelief:

> I myself sent those person[s] to England to lay our grievances before the Queen – that is, before all her governing power – because all the grievances that we, the Maoris, suffer from arise from the Colony of New Zealand; hence our petition for the establishment of a Native Parliament in New Zealand.

Parore said that the petition had not been sent 'with the object of trampling on the authority of the Government of New Zealand'. However, the petitioners – and the Māori people – believed 'that the Queen's authority should be exercised directly over us'. They sought this arrangement because 'it is the Europeans of New Zealand who oppress the Maori people'.[450] Once again, Te Raki Māori – and in this case, a treaty signatory – were drawing a clear distinction between the Queen's protection, which they accepted, and the authority of colonial institutions of government over Māori, which they did not.

Colonial officials regarded Taiwhanga's mission as a failure and believed it would dampen Te Raki Māori enthusiasm for similar ventures in future. But that did not occur. Within months of his return, Taiwhanga was raising funds for a return trip, in the hope of placing his petition before the British House of Lords. Ngāpuhi very quickly raised £600 to support this mission, proposing to again send Taiwhanga and two other rangatira. This

renewed initiative was similarly aimed at asserting treaty rights and addressing injustices such as the Waikato raupatu and the invasion of Parihaka. A new cause of concern was the increasing use by settlers of Māori fishing grounds without permission, contrary to the treaty. Taiwhanga also considered a Supreme Court action on these matters.[451]

(b) 1883: Māori members of the House of Representatives appeal to the Aborigines' Protection Society

As in 1882, the Northern Maori member Hōne Mohi Tāwhai did not support Hirini Taiwhanga's initiatives, though he was sympathetic to Taiwhanga's underlying cause; at the time Taiwhanga was visiting London, Tāwhai was attempting to persuade the Government to establish native committees which he hoped would restore a significant measure of Māori self-government.[452]

Other Ngāpuhi leaders shared Taiwhanga's support for a separate Māori parliament. They continued to see value in forging closer ties with the Kīngitanga, while remaining unwilling to accept any inference that the King had mana over them. In April 1883, Maihi Parāone, Mangonui Rewa, Ihaka Hakuene, Taiwhanga, and 80 other Ngāpuhi attended a major hui at Whanganui where another petition to the Queen was discussed. The hui decided that King Tāwhiao should travel to London and petition the Queen directly – a decision the Ngāpuhi leaders were willing to accept so long as Tāwhiao visited Waitangi. Tāwhiao declined.[453]

In July of that year, Hōne Mohi Tāwhai and the other Māori members (Wiremu te Wheoro, Henare Tomoana, and Hōri Kerei Taiaroa) wrote to the Aborigines' Protection Society, which had earlier supported both Taiwhanga and Tāwhiao during their visits to London. The letter was sent at a sensitive time for both the Government and Māori leaders: Tāwhiao was preparing for his visit to London (section 11.4.2(3)(d)); other Māori leaders were attempting to persuade the Government to establish a system of Māori self-government through committees with meaningful powers (section 11.4.2(3)(e)); and the Government was seeking Māori agreement to open the King Country.[454]

The members' letter set out Māori grievances about land laws, the Native Land Court, Crown purchasing, and more broadly, the workings of the colonial Government. We have only an English translation. Māori, the members wrote, were at risk of being 'swept from the land of the forefathers'. While they acknowledged the Queen's protective authority, 'Our protest is against the breaking of the bond of Waitangi by the Colonial Government, which being a party to a suit in the question of lands, acts also as its judge.'[455]

In their view, 'an elective body of Maoris' should be established to make laws for all Māori, determine questions of land title, raise taxes, and oversee public works, subject to the Governor's approval. In this way, the rangatira signalled their acceptance of the Queen's protective authority and also the role of the Governor as the Queen's representative, while seeking freedom from 'the evils that destroy us', those evils arising from the settler-dominated system of colonial Government.[456] They added:

> Every year . . . laws are made taking the control of land more out of our hands, and vesting it in the Minister for Native Affairs, and our voices being but four are powerless against eighty-seven representing the European portion of the population in the New Zealand Parliament.[457]

The Aborigines' Protection Society forwarded the letter to the Colonial Office, drawing attention to its 'special importance . . . because it puts in an intelligible form the views of the most influential Natives as to the best mode of settling the questions at issue between the races'. The society also expressed regret that the Māori members of the House 'should be unable to obtain from the Colonial Government those reasonable concessions to Native feeling' they were seeking.[458]

The Colonial Office sought an explanation from the New Zealand Government. Native Minister John Bryce (best known for leading the Crown's invasion of Parihaka in 1881)[459] responded that the letter was 'an attack made from an irresponsible quarter in London [the Aborigines' Protection Society], prompted, there is little doubt, by

some tenth-rate politician . . . with probably a petty grievance against the Government'.[460] The 'tenth-rate politician' might have been a reference to Taiwhanga or to a settler named David McBeth who was an associate of Taiwhanga's and a vocal opponent of the Government's invasion of Parihaka. McBeth later acknowledged that he had been at a meeting of the members and other Māori leaders in Wellington when the letter was written. The letter 'was the joint production of the meeting, and its substance had, I believe, been before thoroughly discussed in Maoriland'. Although he was not the author, McBeth arranged for it to be sent to London and published in newspapers there.[461]

Regarding the substance of the letter, Bryce wrote that the Māori members' proposals were impractical and undesirable. First, Bryce said, there was little hope of a Māori decision-making body being able to agree among themselves or make decisions that Māori in general would accept. Secondly, he continued, Māori were scattered among a much larger settler population, making separate Māori and settler jurisdictions impossible. In Bryce's view, it was therefore 'self-evident that the Maoris must cast in their lot with the Europeans, accepting their institutions and laws'. Any other approach 'would assuredly result in disaster to the Native race'.[462] Here, the Minister was acknowledging that the colonial Government's assisted immigration policies had created significant practical difficulties for the exercise of tino rangatiratanga.

At the time, Bryce was negotiating with Māori in Te Rohe Pōtae and Waikato over the establishment of separate Māori jurisdictions and would later, albeit with extreme reluctance and cynicism, sponsor native committees legislation. Though he was personally hostile to Māori self-government, he clearly regarded separate institutions as a possibility if they were established under government authority, their powers were limited, and they could be used to hasten the opening of Māori land for settlement.[463]

(c) 1883–85: Te Raki Māori petitions

With Tāwhiao pursuing his own course, Ngāpuhi leaders again considered sending a further delegation to London,[464] and to this end Te Komiti o te Tiriti o Waitangi (discussed in section 11.4.2(5)) began to draft a petition calling on the Crown to establish a Māori parliament and honour its treaty guarantees. In December 1883, a Bay of Islands court official sent the Native Department what appears to be an unfinished draft:

> I. Make good those portions of the Treaty of Waitangi that have been broken;
>
> In as much as the Queen's right of purchase has not been carried out in a proper [manner] by her Land Purchase Agents in connection with Maori lands since the making of the Treaty of Waitangi;
>
> In as much as the Government have set aside her conditions
> In as much as the law has been trampled upon by them
> For the Treaty of Waitangi is 'the law' for New Zealand.
>
> II. Foreshores, pipibanks and fishing places—(1) that the 'mana' of those places be returned to the natives,
>
> (2) so that they should be as they were in Hone Heke's time.
>
> III. The wrongful purchase of Native Lands in former times—(1) paying for land with . . .
>
> (2) the simple pointing out of land . . . and being taken as indicating the boundaries
>
> (3) and the subsequent unauthorized survey of land without a proper person to point out the lines.
>
> IV. Native Land Courts—(1) to entirely abolish the Native Land Court
>
> (2) that our claims to land be adjudicated upon in accordance with the Treaty of Waitangi
>
> (3) that the acts relating to the Native Land Court which dealt a blow to the Treaty of Waitangi be abolished.
>
> V. The wrongful imprisonment of Te Whiti . . .
>
> VI. To alter the present (constitution of the) Parliament of New Zealand—(1) Europeans only make the laws
>
> (2) they should both have equal power to assent or dissent
>
> (3) so that they may have equal power in making laws.
>
> VII. The government laws relating to confiscation . . . that they be given back to the natives.

> VIII. The imposition of taxes on lands held according to Maori custom to be abolished—(1) That this law be abolished
> (2) This act is not in accordance with the Treaty of Waitangi. . . .[465]

While clearly an early draft, this text is consistent with the objectives that Te Raki leaders had set out elsewhere: abolition of the Court, return of confiscated lands, release of Te Whiti, restoration of Māori control over customary fisheries, and establishment of a legislature in which Māori and settlers would have equal say and could review each other's Bills.

Discussion about a Ngāpuhi petition or delegation to London continued in 1884 at the Ōrākei parliament and elsewhere.[466] With Taiwhanga now embroiled in legal issues arising from the claim that he had abandoned his wife, the former Northern Maori member Wiremu Kātene became the public face of the campaign.[467] The *New Zealand Herald* reported that the proposed mission sought 'local self-government' for Māori, in accordance with the treaty. In particular, Māori sought 'freedom from European rates and taxes', including the dog tax, which we discuss later, in section 11.5.2(12).[468]

Kātene sought advice from the Government about the proposed journey to London and was told – by Native Minister John Ballance – that they would 'get no redress of any grievance' from the British government:

> The reason is plain, and ought to be known to the Maoris . . . The Colony has a constitution and Parliament of its own, and the Government and Parliament of England cannot interfere . . . The Maoris must seek redress from their own Parliament in which they have their representatives.[469]

In other words, Māori seeking relief from unwelcome colonial laws had no recourse other than to the settler-dominated body that was making those laws. Again, the path to redress from Britain was blocked. We reiterate here that the Crown had established the colonial Parliament and granted it authority over Māori affairs without consulting Māori, and without providing sufficient safeguards to ensure that colonial authorities would meet the Crown's treaty obligations; and furthermore, that the Crown did retain some residual power to reject the advice of the New Zealand Government (see chapter 7, section 7.3).

While Ngāpuhi for the time being abandoned any further plans to send a delegation to London, Kātene and six other rangatira instead sent a petition to the House of Representatives asking that it be forwarded to British authorities. It is not clear whether this was the komiti's petition or another, as the petition does not appear in the House of Representatives' records.[470]

In 1885, Kātene sent yet another petition asking that Parliament consider the previous year's petition 'relative to restoring the clauses of the Treaty of Waitangi which have been abrogated'.[471] Armstrong and Subasic presumed that Kātene 'then despatched the petition to the Queen', but we have seen no evidence to confirm that. Nor have we seen any evidence that the Government in New Zealand took any action.[472]

(d) 1884: King Tāwhiao's visit to England

In the meantime, King Tāwhiao had been in London during July and August 1884, presenting his petition which sought the establishment of a national Māori parliament and government; self-governing Māori districts declared under section 71 of the Constitution Act 1852; the return of confiscated lands; and a system for mediation between Māori and colonial authorities. Like Taiwhanga, he appealed to the Queen in the hope that she would recognise their rights to autonomy and self-government when colonial authorities would not.[473]

Tāwhiao, like Taiwhanga, received a warm welcome from the Aborigines' Protection Society, while the New Zealand Government attempted to ensure he did not meet the Queen.[474] The society hosted Tāwhiao and his party, and endeavoured to arrange meetings with British authorities. The New Zealand Government, 'determined to thwart the mission', told the Colonial Office that Tāwhiao was a private citizen with support from no more than 1,000 Māori.[475]

Tāwhiao's attempts to meet the Queen were blocked, but he did win an audience with Lord Derby, the Secretary of State for the Colonies, who acknowledged that the

treaty was 'a serious and a binding thing', and that Māori and settlers had very different views about land tenure and justice. Nonetheless, Derby had to acknowledge that Britain had long since handed power to the New Zealand colonial Government and could not act even if the Government had failed in its treaty duties:

> New Zealand is very far off. It is the experience of all the world that countries cannot be effectually administered by persons at a distance, and that the wish of the inhabitants must be consulted. In accordance with that view, the Crown and government of this country many years ago handed over to the inhabitants of New Zealand an almost entire power of managing their own affairs. Consequently it is for us, as I am sure the members of this delegation are fully aware, a very difficult and complicated matter to interfere in questions which we have practically, whether legally or not, handed over for many years past to be dealt with by the local authority.[476]

Having granted responsible government to the colonial authorities, Derby said, 'we cannot take back rights we have given, even if it could be shown . . . that those rights had not been used in the best manner'. Nonetheless, Derby said he would seek a response from the New Zealand Government and then consider the petition. But he encouraged Māori to put aside any idea of living in separate communities and instead to 'live under one law and subject to the same rules'.[477]

What concerned Tāwhiao and other Māori leaders was that responsible government had been handed to just some inhabitants of New Zealand, the settlers, and it was they who had effective control over the colony's rules and laws, as the Crown had provided no effective constitutional safeguards for Māori autonomy and self-government. As we have already noted, the imperial government retained some residual rights to involve itself in New Zealand affairs but had abdicated any responsibility for the treaty.

The Colonial Office therefore forwarded Tāwhiao's petition, like that of Taiwhanga, to the New Zealand Government. In response, the Premier, Robert Stout, flatly rejected the vast bulk of what Tāwhiao sought, claiming that it was 'quite certain that . . . there has been no infraction of the Treaty of Waitangi' since British troops left New Zealand in 1865; that autonomous Māori districts were unnecessary because the Native Land Court provided opportunities to deal with Māori land 'according to Native customs or usages'; and that Māori could if they wished establish local self-government under the Counties Act 1876.[478]

Stout said that what Tāwhiao was seeking was a Māori parliament 'which would not be under the control of the General Assembly'. Ministers did 'not deem it necessary to point out the unreasonableness and absurdity of such a request', but did note that Māori were already represented 'by able chiefs' in the House of Representatives and Legislative Council, and 'have practically no local affairs to look after' that could not be managed by native committees. Stout made no mention of consistent Māori protest over the powerlessness of native committees, the Native Land Court's role in destroying communal Māori authority over land, the significant underrepresentation of Māori in Parliament, or the exclusion of most Māori from the county council franchise.[479]

In the wake of Tāwhiao's visit to England, the House of Commons debated the issue of indigenous rights in a British colony with a settler Government, and questions were asked about the imperial government's commitment to the treaty. Mr John Gorst, member for Chatham (who had been a resident magistrate in Waikato in the early 1860s and had retained a strong interest in New Zealand) was scornful of the imperial government's answer to the chiefs' petition, and suggested its attitude to them might be captured in these words:

> It is true we made a Treaty with you; but since the time we made that Treaty it has been convenient to us to hand over the entire territory so acquired from you to the Colonial Administration. If you complain that the solemn pledges given by Great Britain have been violated, do not come to us

> here in London, but apply to the Colonists in New Zealand, and see if you can persuade them of the truth of your complaints.

Lord Randolph Churchill (father of Sir Winston) argued strongly for the importance of treaty rights. This, he said,

> was not a case of ordinary internal government between the Government of New Zealand and the people who lived in that country, but it was a case in which the obligations of the Queen of England towards the Native Races were distinctly raised; and he wanted to know what action on the part of the Colonial Government, could relieve the Advisers of the Crown of the responsibility which they had, as Advisers of the Crown, to secure the carrying out of this most sacred of Treaty obligations? . . . If the Imperial Government had divested themselves of this responsibility for the faithful observance of Treaty rights such a monstrous doctrine would lead to any amount of injustice and oppression in the treatment of Native Races.[480]

In response, the Prime Minister, William Gladstone, supported the principle that when Englishmen were granted 'representative' institutions, they were also given 'virtually and substantially full control over the Native Races'.[481] Soon afterwards, Secretary of State Lord Derby, wrote to Governor Sir William Jervois in New Zealand, making it clear that Britain no longer accepted any responsibility for the treaty:

> under the present constitution of New Zealand the government of all her Majesty's subjects in the Islands is controlled by Ministers responsible to the General Assembly, in which the Natives are efficiently represented by persons of their own race.[482]

Therefore, it was 'no longer possible to advise the Queen to interfere actively in the administration of Native affairs any more than in connection with other questions of internal Government'. Furthermore, the imperial government could not give any instructions about the applicability 'of a treaty which it no longer rests with them to carry into effect'.[483]

Nonetheless, Derby did attempt to exert some moral pressure on the colonial Government. He expressed confidence that it 'will not fail to protect and to promote the welfare of the Natives by a just administration of the law, and by a generous consideration of all their reasonable representations'. And he concluded,

> I cannot doubt that means will be found of maintaining to a sufficient extent the rights and institutions of the Maoris without injury to those other great interests which have grown up in the land, and of securing to them a fair share of that prosperity which has of necessity affected in many ways the conditions of their existence.[484]

In essence, then, the imperial government regarded the original treaty promises as remaining in force – including the maintenance of Māori rights and institutions, and the expectation that Māori would share in the colony's prosperity. But these promises were now the colonial Government's responsibility. The outcome of Tāwhiao's petition therefore rested with a colonial Government that had already rejected it.

Tāwhiao's mission and its fate aroused great interest among Ngāpuhi. In April 1885, major hui at Kawakawa and Te Tii Waitangi discussed the mission. About 500 Te Raki Māori attended the Waitangi hui, where they were joined by Tāwhiao and a 140-strong delegation. Ōrākei parliament leaders Pāora Tūhaere (who was linked by marriage to both Ngāpuhi and Waikato) and Te Hemara Tauhia also attended. Their purpose was to discuss an alliance encompassing all upper North Island tribes in support of te Tiriti – and a possible combined delegation to London.[485]

In the view of Mangonui magistrate Helyar Bishop, Ngāpuhi were 'constantly in a state of agitation and dissatisfaction', very suspicious of the Government which

they saw as 'an opposing power, determined to grind them down as low as possible', and 'constantly harping upon the Treaty of Waitangi, embassies to England, Acts, which they contend are ultra vires . . . petitions to the Queen etc'. Like other colonial officials, Bishop could not comprehend any real source of grievance, attributing it to a combination of self-aggrandising leaders and a desire for 'some sort of wild home-rule'.[486]

Northern rangatira had called the hui in the hope that Māori could speak in future with one voice, increasing their influence with the Crown. To this end, they drafted 'an everlasting covenant' declaring the union of the northern tribes and the Kīngitanga under the treaty. Notwithstanding the previous responses from the colonial and imperial governments, northern leaders expressed some optimism that a joint approach might finally resolve issues such as confiscated lands and increasingly urgent concerns about government regulation of customary fisheries.[487]

Tāwhiao, however, insisted that he sign the covenant as King, implying, in Dr Orange's words, 'an unacceptable subordination of Ngapuhi to Waikato'.[488] Maihi Parāone made attempts to salvage the situation, and he and a handful of other northern rangatira signed the document under protest, but most Ngāpuhi leaders refused. The King, meanwhile, sought support for his own petition, which was signed by some members of Ngāti Hao and Te Pōpoto under the leadership of Maria Pāngari (discussed further in section 11.4.2(4)), the granddaughter of Tiriti signatory Patuone. Despite much common ground between Kīngitanga and northern Māori aspirations, there would be no enduring alliance.[489]

(e) 1886–87: Te Raki Māori petitions and appeals to the Government

Early in 1886, Ballance visited the Bay of Islands as part of a North Island tour, in which the Minister sought support for new Māori land law proposals aimed at restoring some degree of community control over decisions to alienate Māori land.[490] Ministerial visits to the north had been rare since McLean's death in 1877,[491] and as Armstrong and Subasic observed, on occasions when Ministers did visit, Māori leaders no longer placed so much emphasis on 'expressions of loyalty and references to the historical relationship between the Crown and Maori'.[492]

Responding to questions about Kātene's petitions, Ballance asserted that the treaty 'had been faithfully kept' and that Parliament was willing to deal with any Māori grievances, 'but if they are not well founded, how could Parliament redress them?'[493] According to Armstrong and Subasic:

> Patronising claims by Government Ministers that one disaffected individual had somehow duped the northern tribes into opposing benign Government measures are clearly and demonstrably false.[494]

Ballance's tone in this hui can be contrasted with his stance in Te Rohe Pōtae and Waikato the previous year, where he promised Māori 'large powers of self-government', a pledge that his Government subsequently refused to honour.[495]

Through the rest of the decade, Te Raki leaders continued to protest and appeal to the Government through means that included petitions, letters, and questions in Parliament. In July 1886, Kātene and nearly 12,000 others petitioned the House asking that their rights to shellfish beds and fisheries be secured:

> They say that those places were secured to them by the Treaty of Waitangi, in the year 1840. They pray that they may be returned to them, in accordance with the provisions of that treaty.

On this occasion, the Native Affairs Committee recommended that the Government 'as soon as possible' convene an inquiry to define and secure Māori rights 'as far as possible'.[496]

Five years later, in June 1891, then Northern Maori member Eparaima Kapa asked whether the Government intended to consider the petition. The Native Minister, Alfred Cadman, undertook to consider this 'large and

important' matter once the House went into recess at the end of August.[497] Parliament's only response was the Oyster Fisheries Act 1892 (discussed in section 11.5.2), which regulated oyster fisheries while providing that the Governor could specify districts where Māori could take oysters for personal consumption.[498]

In March 1887, Maihi Parāone wrote to Ballance about land issues, asking that the Crown 'let the Maoris be ruled in accordance with their own custom', and that it govern for all New Zealanders instead of imposing injustice on Māori while giving 'care and attention . . . to your European people'.[499] Two months later, Hāre Hongi Hika told a visiting member of the House of Lords that the New Zealand Parliament consistently passed laws that were contrary to the treaty and disregarded any efforts by Māori members to enact better laws. The colonial Government generally mismanaged Māori affairs.[500]

In 1888, Maihi Parāone wrote again, this time to the Governor, complaining that the Crown had ignored his previous petitions.[501] Te Raki leaders also sent numerous petitions to the colonial Parliament addressing specific grievances concerning land, fisheries, and other resources that were subject to treaty guarantees.[502] Consistently, their experience was that the Crown took little or no action.

In sum, then, by the end of the 1880s Te Raki leaders had appealed to the Crown in numerous ways seeking redress from harmful laws and for the establishment of a system of government that protected their right of tino rangatiratanga. The district's leaders sent petitions, wrote to and met with Ministers, and travelled to London, all without adequate responses. While the Government engaged on occasions, it was unwilling to engage with Māori understanding of the treaty, or to consider any options that might meaningfully transfer power from the colonial institutions of government.

The consistent rejection of their appeals to the colonial and imperial governments, and the dismissive nature of their responses, would ultimately strengthen the resolve of Te Raki Māori leaders to pursue Māori self-government and to build a broader coalition of Māori throughout the country – a point we will return to in section 11.5.

(4) *What led to the rise of prophetic leaders in Hokianga and how did the Crown enforce authority over them?*

While Te Raki tribal leaders responded to the steady encroachment of Crown authority during the 1880s by engaging with the Government and seeking recognition of Māori institutions, some northern Māori attempted to withdraw from the influence of Government by remaining on papatupu (customarily owned) lands and avoiding as far as possible the reach of the Land Court, Crown officials, and local government. Some of these groups coalesced around prophetic leaders who foresaw both political and spiritual deliverance for their people.

During the 1880s, three related prophetic movements emerged in Hokianga as more localised responses to the encroachment of the authority of the Government and the harmful effects of its land policies. The first of these leaders was Maria Pāngari, the daughter of Āporo Pāngari, of the Upper Waihou district. Her family were members of the Catholic Church, but were also described by Dr Bronwyn Elsmore as belonging to one of the 'old tohunga' lines.[503] In February 1885, Maria Pāngari claimed to experience a vision of Jesus Christ, and foretold his return on 28 March that year.[504] The *New Zealand Herald* characterised her prophecy in this way:

> on the ranges of the Hokianga crowds of defeated Maori's will immediately assemble, a great river will then suddenly appear from Heaven and wash all the spirits of the departed there congregated, and all will become white as the pakeha, and reign with Christ.[505]

In a short time, Maria Pāngari gained a large following among Hokianga Māori. Her followers established a camp near an existing kāinga at Waioro Stream, north of Kaikohe. The historian Dame Judith Binney wrote that 'most of the people were kin to Patuone, and most, like Maria herself, were Roman Catholic believers.'[506] Spencer von Sturmer, the resident magistrate in Hokianga, reported 'large numbers of Natives from all parts flocked to her settlement, amongst others nearly all the Natives from the Upper Waihou, Hokianga.'[507] Press reports on

the number of Pāngari's followers ranged between 200 and 1,500, although Armstrong and Subasic considered that 'the lower figure seems more likely'.[508] Regardless, this suggests that at least a sizable portion of the Māori population in Hokianga, which totalled 2,364 in 1886, engaged with this movement in some capacity.[509]

Alcohol was banned among Pāngari's followers, and many apparently sold their possessions in preparation for the millennium, including their horses, cattle, and crops – some for a mere tenth of their value.[510] They erected a house in preparation for Christ's arrival.[511] They also ceased attending the Native Land Court. Armstrong and Subasic recorded that purchasers took advantage of their absence to divest some followers of their land interests.[512]

Maria Pāngari's rise as a spiritual leader prompted anxiety among the settler population, and she received substantial coverage in the settler press. A report from the Magistrate's Court at Russell indicates the member of Parliament for the Northern Maori district, Ihaka Hakuene, visited the settlement but found no intention to harm settlers.[513] On 27 March, Maria Pāngari travelled to Kawakawa to visit Maihi Parāone and address the settlers to warn them of her prophecy.[514]

Maria Pāngari and her followers – who were reported to number about 350 at the time – attended the Waitangi parliament in April 1885 (see section 11.4.2(2)). Pāngari's group were amongst the only supporters of King Tāwhiao's proposed union between Te Raki Māori and the Kīngitanga, and a compact was formed between Ngāti Hao and the Kīngitanga.[515] Maria Pāngari and her followers then joined Tāwhiao when he returned to Waikato on 8 May, and travelled on to Taranaki with the intention of visiting Parihaka. However, Maria died before they arrived and was buried at Pātea.[516]

Ani Kaaro (Ngāti Hao) assumed leadership of the movement when Maria died, having been among the party that travelled to Waikato and Taranaki. The wife of Ngākete Hāpeta, she was the daughter of chief Hohaia Patuone and Harata, and the granddaughter of the esteemed Ngāti Hao rangatira, Patuone. After Maria's death, Ani led the group on to Parihaka to spend time with the prophet Te Whiti o Rongomai III and his relative Tohu Kākahi (Ngāti Te Whiti) who spread a message of peaceful resistance to land confiscations and the millenarian belief that God would restore Māori rangatiratanga and land throughout the Waihou Valley.[517] Upon their return to Hokianga, Ani Kaaro and her followers sought to gain further support from the local community and distributed gifts from Te Whiti.[518] In July 1885, a group of women disrupted the survey of Motukaraka; they were reported to declare 'themselves to be adherents of Te Whiti, the Parihaka prophet'.[519]

In 1887, Maria Pāngari's sister, Rēmana Hi, made a rival claim for leadership of the movement when Ani Kaaro was out of the district.[520] Rēmana Hi's descendant, Makarita Tito, told us that 'Rēmana had disputed the best way to get Ngāti Hao (Hau) lands closed from milling and European settlement'.[521] Ani Kaaro ordered that Rēmana and her followers be removed from their settlement, even though they included her own father, Hohaia Patuone. Rēmana Hi camped nearby at Ōkaihau, and relations between the groups remained poor.[522] However, in August 1887 Ani Kaaro was reported to have informed Hokianga Police Inspector Francis McGovern that she no longer considered herself a prophet. McGovern later reported that, although meetings still occurred at Ani's camp, 'nothing whatsoever bordering on Hauhauism prophesying' took place.[523] In August 1889, there were still 33 people at the camp when McGovern visited, but he 'did not believe that any disturbance would occur'.[524]

Press reports frequently referred to adherents of this new movement as 'cannibals', which Armstrong and Subasic describe as 'an appellation stemming from an unsubstantiated rumour'. Nevertheless, Rēmana Hi and her followers attracted substantial attention from both settlers and Hokianga Māori.[525] As a result of these allegations, several local rangatira met at Waihou in May 1887 to consider their responses. Some were concerned that the charge of cannibalism would undermine Ngāpuhi relations with Pākehā; others, including Hohaia Patuone's son, that their close relatives had joined the movement.[526]

Two elements of this meeting provide insight into the relative authority of rangatira and government officials at the time. First, the Ngāti Hau rangatira Eru Nehua said he had raised the matter with the Native Minister John

Ballance, who had written in response to say he believed the group should be dispersed but that he agreed to leave the matter to 'the chiefs of Ngapuhi'. On the one hand, this exchange suggests there was a degree of mutual respect between Ngāpuhi leaders and the Minister; on the other, it suggests that the Government still regarded its power to intervene in Ngāpuhi matters as limited.[527]

Secondly, the Rāwene constable Edwin Hughes attended the meeting with warrants to arrest three members of the group for ignoring summons to appear in court. When Hughes said he intended to arrest the trio, rangatira told him not to; they would go into the settlement and subdue Rēmana's followers, and only afterwards could he make arrests. The constable agreed to this position. Nehua then led a party of some 150 into the enclosure where Hi and her followers, dressed all in white, had been completing a ritual. A small group attacked Nehua and his party with sticks, but they were quickly subdued. While Nehua attempted to dismantle the camp, one of his party freed the captives – his relatives – and they escaped into nearby hills. According to newspaper reports, Nehua was dismayed by this turn of events and announced that he would not intervene again.[528]

A week later, McGovern visited the camp. Rēmana denied the accusation of cannibalism, and the inspector acknowledged that he had no evidence that would justify any charge. Nonetheless, he warned Rēmana and her people that they would be arrested if they broke any laws. In early July, a Pākehā shopkeeper named William Hearn stumbled into the group's sacred enclosure, ignoring several warning signs. Rēmana's followers seized him, tied him up, took the £1 he was carrying, then released him.[529]

In response to this incident, McGovern and the resident magistrate (Bishop) led a party of 21 armed men (including two Native constables and a group of civilian 'special constables'[530]) into Rēmana's camp. An interpreter attempted to read an arrest warrant and was ignored, then asked to leave. A group of Rēmana's followers armed with sticks, mere, and other weapons then set upon the official party, and a fight broke out, ending when the police fired shots, wounding one man. Police arrested Rēmana and 22 of her supporters, charging them with assault and resisting arrest. In court, Rēmana said her movement stood for peace – hence its white clothing – but 'the pakehas had no right on their sacred ground'. She and her followers were convicted, and most were sentenced to prison terms which ranged from one to three months.[531] After their release, Rēmana's followers returned to Upper Waihou where they continued their spiritual practices.[532] In June 1890, Bishop reported that the movement was not likely to cause any further trouble.[533]

It is clear that these movements emerged in a period of political and social crisis for Te Raki Māori in which the encroachment of government authority was increasingly threatening Māori lands and livelihoods, and there were few, if any, effective channels for political expression – especially for wāhine Māori. Each prophet envisioned a time of redemption and victory for their people, and their beliefs and practices enabled their followers to prepare for it.[534]

The experience of Rēmana and her followers also provides insight into the ongoing contest between the Government and Māori over enforcement of colonial law. Although most Te Raki Māori were by this stage complying with the colony's laws, it remained unclear whether they felt compelled to or chose to in order to maintain peaceful relations with the Crown and settlers. As this example shows, the consent, or at least acquiescence of rangatira was still needed for law enforcement, in some conflicts at any rate. In chapter 9, we also described the 1888 clash over gum royalties at Porotī, which escalated into armed conflict. After the resident magistrate failed to settle the dispute, Maihi Parāone and other rangatira intervened and mediated a resolution.[535] The Government's monopoly on use of force to settle disputes was not yet complete. The next major test would occur in Hokianga in 1898, as we will see in section 11.5.2(12).

(5) *To what extent did the Crown support Te Raki Māori komiti and rūnanga to provide for local self-government?*

(a) Te Komiti o te Tiriti o Waitangi

When Te Raki leaders established the first Waitangi parliament in 1881, they committed to establishing a system of Māori self-government at local and intertribal levels.

Through the parliaments, they developed a system of northern regional decision-making by tribal representatives and laid the groundwork for the later development of national institutions through the Kotahitanga movement. At a Ngāpuhi tribal level, they created a committee of senior rangatira – Te Komiti o te Tiriti o Waitangi – as an alternative to the colonial Government and courts. Dr Kawharu named its members as Rai Pāngari, Hare Matenga, Werohia Haehae, Hōne Peti, Heremaia Hiku, Rewiri Kohiparu, Akuhata Haki, Iraia Ruka, Wi Kaire Tui, Pairama Tipa, Titore Tango, and Tukaru Tango.[536] The Komiti met at Te Tii and, according to Dr O'Malley, appointed its own police 'and engaged in a wide range of judicial and social functions, including investigations into land titles'.[537] The first such title hearing was held in April 1881. Other functions included managing land negotiations with the objective of preserving as much as possible in Māori hands, and lobbying the Government over Ngāpuhi concerns.[538]

Within a few years, a network of informal local committees was operating under the auspices of Te Komiti o te Tiriti o Waitangi. Into the 1890s, Kaikohe, Hokianga, Whangaroa, and Bay of Islands committees were playing significant roles in managing local disputes, keeping land out of the Court, and negotiating with Crown officials on behalf of their people.[539] Te Rūnanga o Ngāti Hine continued to operate, and indeed was among the most active and powerful of the local committees.[540]

To local Crown officials, tribal rūnanga and komiti were something of a threat, both on a personal level and to the Crown's objectives. In 1884, the Mangonui magistrate Helyar Bishop complained that Te Komiti o te Tiriti o Waitangi

> has been appointed imbued by general consent with large judicial powers, and members travel round the northern districts, adjudicating in cases of every description. Some decisions of a most extraordinary character have been told to me, but the Natives appear to invariably manage to ultimately settle the disputes by mutual consent, and they loyally uphold and carry out the dicta of these curiously-composed tribunals.[541]

Bishop, badly misreading the situation, said this 'agitation' could be attributed to a few disaffected individuals and would not last long.[542] Ngāpuhi leaders were nonetheless aware that their committees had no status under the colony's laws. The committees could make and enforce decisions with the consent of Māori communities, but there was little prospect of local officials or settlers accepting those decisions as binding. Indeed, at times local officials explicitly rejected the legitimacy of committees, insisting that the Government alone could apply and enforce law.[543]

Nor could the committees guarantee that their decisions, including those concerning land titles, would be final. As Paul Thomas noted, 'If any of those involved were dissatisfied with the decision, they could apply to the Native Land Court and receive a legally binding title determination.'[544] A case in point was the Te Pupuke block, which we discuss in chapter 9 in relation to the Native Land Court.[545] On other occasions however, the komiti were able to secure agreement among Māori before the lands went to Court, reducing the risk that there would be lengthy and costly hearings.[546] In our view, the lack of legal authority makes the operation of these komiti all the more remarkable, especially as, according to the available sources, it seems that dissent from their decisions was rare.

(b) Māori proposals for statutory recognition of komiti

While Te Raki leaders developed and operated their own institutions, they also recognised that statutory recognition was becoming increasingly important. Komiti could make decisions about land rights or take steps to resolve disputes, but without statutory powers there was no guarantee that their decisions would be respected by the Crown, settlers, or indeed all Māori.

During the early 1880s, rangatira from this and other districts made a series of attempts to establish committees that had legal standing, backed by an Act of Parliament. In 1880, then Northern Maori member Hōne Mohi Tāwhai travelled throughout the north, discussing a proposal for legislation that would empower local Māori committees with

> authority to enquire into disputes arising in the district in connection with the surveying of land, applications for the investigation of title to lands, and the sale of lands upon the application of the persons interested in the land under dispute.[547]

Tāwhai had support both from other Māori members and from Māori leaders in many parts of the country. In October 1880, he had presented his proposals to Native Minister Bryce, who promised to draft a Bill for the House of Representatives to consider. Bryce resigned soon afterwards (because other Ministers were refusing to fully support his hard-line stance against the Parihaka community) and his temporary replacement, William Rolleston, refused to consider the Bill on grounds that no Māori committee could have any authority outside its own tribal rohe.[548]

In July 1881, the Eastern Maori member Henare Tomoana introduced the Native Committees Empowering Bill, which was a modified and somewhat watered-down version of Tāwhai's proposal. Tomoana's objective was to give legal powers to the Māori committees already in place in Te Raki and elsewhere by making their decisions enforceable under the colony's legal system.[549]

This Bill allowed Māori committees to inquire into minor civil disputes, and pass bylaws 'for the better suppression of intemperance, and the regulation of social order'. Committees could also inquire into land titles with the parties' consent, but could not make binding decisions; rather, the Native Land Court would be required to 'take judicial notice' of the decisions of committees when making its own rulings.[550]

Tomoana told the House that Māori throughout the country wanted statutory recognition of their right 'to control their own local affairs' under a system of local government. They sought statutory recognition because the Crown 'had control over all the affairs of the colony'.[551]

Hāre Hongi Hika and 20 other rangatira petitioned the House asking that the Bill be passed into law. When the House considered the Bill during 1882, the Māori members spoke in favour and said there was strong support among their communities.[552] According to Tāwhai:

> The Maori people considered it was a necessary thing to have a measure of this kind passed, that they might appoint Committees throughout their districts to manage their internal affairs, and to decide upon cases cropping up amongst themselves.[553]

The Bill was not an attempt to establish Māori authority separate from the Queen, he argued; the colonial Parliament was established under the Queen's authority, and the committees could be established under the same authority.[554]

Settler members of the House also supported the Bill, but for different reasons. The main ground was that the Bill gave Māori very little power and would be of some assistance to the Court.[555] In Dr O'Malley's assessment, the support reflected a common view that limited self-government under a Crown-sanctioned scheme was better (that is, more likely to lead to assimilation) than ongoing tolerance of informal Māori self-government outside the rubric of the colony's laws.[556]

As one member put it, the Bill would 'give the Natives an opportunity of seeing what they could do if they had a little self-government'.[557] A small number of members genuinely supported Māori self-government. Wairau member Harry Dodson pointed out that Britain had many county laws, and distinct laws for the various countries in the United Kingdom: 'he would be glad to see many of the Native affairs at present dealt with in that House intrusted to the Natives themselves'.[558]

But other members were implacably opposed, either because they opposed any legislation that treated Māori as a special class, or because they simply regarded Māori as incapable of self-government.[559] Bryce, who by the time of the debate was once again the Native Minister, was in this camp. He opposed the Bill on grounds that it treated Māori and settlers differently, and that it proposed a 'very radical' change to New Zealand's system of justice.[560] His entire policy aimed towards 'assimilating the treatment of the Maoris to the treatment of the Europeans'.[561]

Tāwhai countered that Bryce should not then be called 'Native Minister', and should hand his power over to one of the Māori members. Tāwhai cited the treaty. If Bryce

thought the Bill gave Māori too much power, he should consider what the treaty said: 'namely, that the Maoris were to have as many powers and privileges as are given to British subjects'. The Bill, in Tāwhai's view, would bring Māori and settlers closer, by allowing Māori 'to administer the law among themselves'.[562]

Other members pointed out that Parliament had enacted many laws that treated Māori differently from settlers.[563] Newton member William Swanson said he could not help but laugh when members spoke about one law for all New Zealanders: 'Let a Maori go and buy a gun, let him try to lease or sell his land, then see whether there was one law for the Maori and European.' In Swanson's view, if Māori wanted the committees, the House should agree.[564] The Southern Maori member Hōri Taiaroa commented that it was 'not fair that you should confine to yourselves – that is to say, the Europeans – the sole management of affairs affecting the Native race'.[565]

Ultimately, Bryce's hand was forced by a combination of political pressure and Māori protest. In spite of his opposition, the Bill passed its second reading by a considerable margin, creating a very real possibility that it might ultimately become law. The Government was also facing potentially embarrassing questions from the Colonial Office in London over Parihaka and the petitions from Taiwhanga and Tāwhiao. At the same time, the Government was desperate to open Te Rohe Pōtae to the main trunk railway, and the leaders of that district were making that conditional on Crown recognition of their right to self-government.[566] Māori in other districts were similarly demanding self-governing institutions, including recognition of the rights of tribal komiti to determine land titles.[567]

Bryce, in response to these pressures, determined to establish native committees, but without the powers that Māori sought. He therefore sought to delay further consideration of Tomoana's Bill until 1883, when he introduced another competing measure.

(c) The Native Committees Act and northern committees

Bryce's Native Committees Bill 1883 allowed committees to investigate land titles 'for the information of the Court'. As Dr O'Malley has observed, the committees were to have no power to pass local bylaws, could not try cases of theft or assault, were debarred from investigating disputes over matters worth more than £20, could investigate cases involving less than this sum only with the consent of both parties, and had no power to levy fines.[568]

Nonetheless, when Bryce introduced the Bill, he claimed that it delivered what Māori had been asking for.[569] Tāwhai and other Māori members voted in favour, presumably on the basis that the Bill was better than nothing. The Bill passed through the House without dissent. In the Legislative Council, several members questioned the wisdom of establishing a statutory body that had no real power and was intended to (in one member's words) 'throw a little dust into the eyes of the Native members'.[570] Nonetheless, the measure passed in September 1883.[571] In Dr O'Malley's view, the committees were 'practically impotent from the outset'.[572]

Early in 1884, native committee districts were proclaimed under the Native Committees Act for the Bay of Islands (also encompassing Hokianga and Mangonui) and Kaipara. Local reaction was mixed. On the one hand, there was competition for places on the Bay of Islands Native Committee, and a large turnout for elections at Hokianga.[573] The Hokianga magistrate Spencer von Sturmer concluded that Māori were trying to 'work' the Act in the hope that they could use it to create meaningful local self-government.[574]

On the other hand, many Te Raki Māori were sceptical, regarding the committee, with justification, as an inferior Crown-sponsored version of their existing network of committees under Te Komiti o te Tiriti o Waitangi.[575] According to the magistrate Bishop, 'the Ngapuhis do not like the idea of their self-constituted tribunals being overshadowed by a body endowed by law with certain judicial powers'.[576] It was not the judicial powers that Māori objected to, however, but the weakness of those powers.

The elected members of the Bay of Islands Native Committee were Hōne Mohi Tāwhai, Heremia Te Wake, Te Maungake, Te Tai, Hare Ngāmanu, Kuatakaki, and Hare Mahenga. Tāwhai (who retired from Parliament at the 1884 election) was elected as chairman. Before taking

office, the members were required to take an oath of allegiance to the Crown. The committee operated for five years and dealt with in excess of 50 land title applications. Modest fees covered most administrative costs. Tāwhai received an annual stipend of £50 to cover his own salary and that of a clerk. In contrast, Native Land Court judges received £600 a year.[577]

Despite the election of the Bay of Islands Native Committee, many Te Raki Māori chose not to engage with it. One objection was that the committee lacked real power, though other concerns were that the committees were underfunded, and that the districts were far too large to provide for meaningful local government. Many Te Raki leaders reasoned that they continued to be better served by their own informal rūnanga or komiti, which also operated with the consent of the parties but were not under the Crown's control. Those committees continued to operate in parallel to the Bay of Islands Native Committee, though Te Komiti o te Tiriti o Waitangi refrained from investigating questions of land title between 1884 and 1889 while the official committee was functioning.[578]

(d) The demise of the native committees

In 1887, three prominent northern rangatira – Tūhaere, Maihi Parāone, and Taiwhanga – advocated for the abolition of the Bay of Islands Native Committee, which they saw as an agent of the Government and as facilitating the Court's work instead of providing a genuine Māori alternative.[579] Tāwhai responded to these concerns by appealing to both the Government and the House of Representatives for increased powers, reasoning that the committee was more efficient, more effective, and far less expensive than the Land Court at resolving land and other disputes. In Tāwhai's view, it was necessary to work under the Crown's authority in order to achieve solutions that were binding on all parties and therefore durable. Nonetheless, the Government responded by warning Tāwhai that the committee's powers were indeed limited and must not be exceeded. In the wake of this disappointment, the Bay of Islands Native Committee became less active and ultimately ceased operations in the late 1880s.[580]

Until that time, and notwithstanding the constraints under which it performed, the Bay of Islands Native Committee had been one of the more active in New Zealand, and it operated for as long as any committee formed under the 1883 Act.[581] Like others around the country, the committee could not overcome its lack of meaningful power. Historians have concluded that Parliament had never intended to grant Māori any proper degree of autonomy or self-government, and that the Government then deliberately frustrated the committees' efforts. Dr O'Malley concluded that the committees' failure was deliberate and preordained.[582]

We agree, and we see the Government's rejection of Tāwhai's requests as clear evidence of this. Tāwhai was a senior leader – the son of one of the Crown's key Northern War allies, a former member of the House, a rangatira who had a long track record at mediating disputes in the north and at working constructively with the Government – yet when he sought meaningful power, the Government did not give his ideas serious consideration. This was an opportunity to strengthen local autonomy within the machinery of the State, and the Government rejected it.

In 1891, a few years after the Bay of Islands Native Committee ceased to function, the Native Land Laws Commission concluded that the Native Committees Act was 'a hollow shell' which 'mocked and still mocks the Natives with a semblance of authority'. Māori wished only for 'a living Act, giving them power to do something for themselves'.[583] The commission also recommended that land titles should be determined by Māori komiti or rūnanga, as Te Raki Māori had been seeking, though the Government did not adopt this recommendation.[584] As the Bay of Islands Native Committee became less active, Te Komiti o te Tiriti o Waitangi resumed its former functions, including those concerning informal land title adjudication. Te Komiti remained active until at least 1907, far outlasting the Government-sanctioned committees.[585]

Te Rūnanga o Ngāti Hine also continued to operate throughout this period, and Ngāti Hine became increasingly assertive as its authority faced challenges during the 1880s. Two significant events during 1886 and 1887 provide some insight into the strength of Ngāti Hine independence and into the challenges Ngāti Hine faced

in the absence of support from the Crown for Māori self-government. In 1886, a young Ngāti Hine rangatira, Wiki Moeanu, threatened to take a Native Land Court claim over Te Rohe Pōtae o Ngāti Hine lands at Mōtatau. On hearing of this, Maihi Parāone Kawiti wrote to the Native Minister (Ballance) describing the boundary of the Rohe Pōtae and warning that the Government should not interfere: no survey, title hearing, or sale would be permitted.[586] He wrote:

> Kore e ahei kia pakarua e tetahi tangata ke atu mo te mea Kei au te mana pupuri me te mana ki runga a ki tenei whenua.
>
> These boundaries cannot be encroached upon by any other person for I have the power to hold the land and the mana over it.[587]

Wiki also wrote to the Native Minister, and the Native Department began to make plans to survey the block. Maihi Parāone then wrote again, declaring that the land was reserved under the treaty and section 71 of the New Zealand Constitution Act. In a clear assertion of tikanga over the colony's property law, Maihi Parāone said that the reserve had been created by the whole of his people, so no individual could make a decision to survey. When the Native Department persisted with its preparations, Maihi Parāone warned the Native Minister that any attempt to survey the land would result in fighting.[588]

Faced with this open defiance of the colony's laws, Ballance relented and negotiated with Maihi Parāone over how to resolve the dispute. In itself, this was a remarkable outcome – a reflection of Maihi Parāone's continued strength and the Government's unwillingness to test his resolve. Of the options Ballance presented to him, Maihi Parāone rejected the Court and the Bay of Islands Native Committee. Parāone then suggested that the matter be placed before Te Komiti o te Tiriti o Waitangi, which Ballance rejected.[589]

Finally, both agreed on an arbitration committee with one appointee each from the Crown, Maihi Parāone, and Moeanu. The committee ruled in Maihi Parāone's favour, acknowledging that Te Rohe Pōtae o Ngāti Hine remained in customary ownership and Maihi Parāone therefore retained his rights as principal rangatira. Notably, the committee observed that the result would have been different in the Court, where Maihi Parāone's role as paramount chief would have carried less weight.[590]

In April 1887, after a major hui at Waiōmio, Ngāti Hine published *Ko te Ture mo te Whenua Papatupu*, a document that described the boundaries of their territories and declared their enduring mana, in accordance with he Whakaputanga, te Tiriti, and section 71 of the New Zealand Constitution Act. In calling to Māori throughout the motu, it asserted:

> [W]hakarongo nga iwi Maori, puta noa ki nga topito e wha o te motu nei, ki te rongo ehau nei e mea ana nga pire me nga ture ate kawanatanga kia whakakorea rawatia atu te mana o matou o nga Maori i runga io matou whenua papatupu me nga ture me nga tikanga ano a matou a nga Maori o Niu Tireni kia kauwa rawa matou nga Maori e whaimana ki runga ki a matou ture me a matou tikanga katoa a te Maori.[591]
>
> The Maori people, from the four corners of this Island, listen for I have heard of the bills and legislation of this government . . . will effectively remove forever our mana of the Maori over our birthright (lands) and laws and rules that belong to us the Maori of New Zealand so that we have no more mana over what is ours as Maori.[592]

Ngāti Hine had therefore gathered to examine he Whakaputanga, te Tiriti, and the Constitution Act:

> Katahi ka huihuia te whakaminenga nui o ngati hine ka tirotirohia aua pukapuka ka tahi Kamatauria kei ora ano nga Iwi Maori me o ratou whenua Katoa me a ratou tikanga katoa me to ratou mana katoa a kua tino mohiotia inaia nei kei nga Maori ano to ratou mana ki o ratou whenua papatupu me a matou tikanga katoa kia matou whakamaori ano.[593]
>
> At once we gathered the people of Ngati Hine to look at and discuss those books and were clear that the Maori people

> were well, as are all of our lands, our laws, and our mana and we are clear now in the knowledge, that the Maori have full mana over their birthright (lands) and all of their laws as they relate to us as Maori.[594]

Te Ture then affirmed Maihi Parāone's 1876 decisions that they would not allow the Native Land Court, or surveys, or land sales within the defined territories, but the lands would remain whenua papatupu (customary lands), in which Māori would retain absolute authority.[595] Te Rohe Pōtae o Ngāti Hine remained in force for the rest of the century, despite efforts by Crown officials to undermine it.[596] Te Rūnanga o Ngāti Hine, established in 1876, remains in operation to this day.[597]

11.4.3 Conclusions and treaty findings

During the period from 1878 to 1888, as Te Raki Māori faced significant challenges to their authority and livelihoods, they responded by establishing institutions of self-government at local and regional levels, and by seeking legal recognition for Māori rights of self-government.

At a local level, they established and sought legal recognition and empowerment of Māori komiti, so they could conduct title investigations, manage land transactions, and carry out other administrative and judicial functions. The continued assertions of authority by Te Rūnanga o Ngāti Hine and the maintenance of their Rohe Pōtae are notable reflections of their determination to realise the treaty agreement as Māori understood it, to resist the Government's misinterpretation, and always to maintain a dialogue with the Government in an attempt to ensure that it came to understand the significance of the treaty to Māori.

At a national level, Te Raki Māori sought the establishment of a Māori house of parliament to work alongside the colonial Parliament, so laws could be enacted that would benefit both peoples. They presented their proposals to the Crown through regional parliaments and other hui, petitions, letters, ministerial meetings, and even delegations to London. The colonial Government either dismissed or rejected most of these initiatives, denying that its legislative encroachments over Māori lands, resources, and people were in breach of the treaty. Its sole concession to Māori was the Native Committees Act 1883 which provided Māori with extremely limited powers of local self-government.

(1) *Proposals for a Māori parliament*

From the late 1860s, Te Raki Māori advocated for a Māori representative assembly, established as part of the colonial Legislature. These proposals were a response to the under-representation of Māori in Parliament, and the consequent inability of Māori representatives to influence legislation meaningfully. Kaikohe Māori raised this issue when they petitioned Parliament seeking 'a third branch of the Legislature . . . established for the Maori race'.[598] Te Raki leaders made a sustained attempt at the 1881 Waitangi parliament to persuade the Native Minister to establish 'two parliaments – one English, and another Maori'.[599] Maihi Parāone sought an elected committee to manage Māori affairs, 'appointed under sanction of the treaty of Waitangi'.[600]

Hirini Taiwhanga's 1882 petition to the Queen sought the establishment of a Māori parliament to 'hold in check the European authorities who are endeavouring to set aside the Treaty of Waitangi'.[601] In 1883, Hōne Mohi Tāwhai and the other Māori members of the House of Representatives also wrote to the Aborigines' Protection Society seeking the establishment of 'an elective body of Maoris' to make laws, determine land titles, raise taxes, and oversee public works.[602] The 1883 petition of Te Komiti o te Tiriti o Waitangi called for Māori to have 'equal power in making laws'.[603] Te Raki Māori raised the issue again at Waitangi in 1887 when the Native Minister was present.[604]

None of these proposals represented a rejection of the treaty relationship between Queen and Te Raki Māori, nor of the authority of the colonial Government over settlers. Consistently, Te Raki leaders were careful to explain that any Māori legislature would exist under the Queen's protective mantle, as part of their direct personal relationship with her.[605] The proposals did, however, amount to a clear rejection of the colonial Government's assumed right to

exercise power over Māori. Alongside their proposals for a Māori parliament, Te Raki leaders called for the abolition of the Native Land Court and its replacement with Māori committees, along with the repeal of all laws affecting Māori land.

While some details varied from one proposal to the next, they all claimed the right to a Māori legislature that would operate alongside the existing settler-dominated one and act as a check on its power. Some proposals called for Māori and settler assemblies to make legislative proposals to each other; under other proposals, the Legislative Council would continue to exist, presumably with the power to determine whether Bills from the Māori or settler assemblies would proceed. The discussions in 1885 about a possible alliance between Ngāpuhi and the Kīngitanga, whose relationship had often been tense historically, reflected just how much Ngāpuhi rangatira had lost faith in the Crown and its institutions.

Behind the specific details of these proposals and discussions was a wish for freedom from, and political leverage against, the harm caused by the settler-dominated Legislature. During the 1880s, that Legislature accelerated its assimilationist agenda, imposing new taxes and rates on Māori, and extending the Crown's control over Māori lands, fisheries, and other resources. In the words of Hōne Mohi Tāwhai's petition, Māori wanted to be 'free from the evils that destroy us'.[606] Te Hemara Tauhia said, 'We have tried your Parliament, and have found it wanting.'[607] Tāwhai, in 1881, asked why the Queen had appointed a Government to look after Māori interests, and it had instead 'tried as much as possible to oppress us.'[608]

Ministers responded in various ways, without seriously engaging with Māori demands for recognition of their tino rangatiratanga. They said variously that they could not see how a Māori legislature would work, dismissed such proposals as being of no use, rejected the possibility that two legislative bodies could coexist, and denied that the colonial Parliament had ever enacted legislation in breach of the treaty. In 1887, the House of Representatives did not debate any of Hirini Taiwhanga's legislative proposals. Most often, when Te Raki Māori sought Crown recognition for a Māori parliament, the Crown simply took no action.

There were notable exceptions in 1882 and 1883, when the petitions of Te Raki leaders were sent to the imperial government in London. Then, fearing embarrassment over the litany of grievances they raised, the colonial Government went on the offensive, impugning Hirini Taiwhanga's character and credibility, denying that there had been any breaches of the treaty since the colonial Government acquired responsibility for Māori affairs, and dismissing out of hand any possibility of Māori exercising powers of self-government, either because Māori were incapable as a people or because there were already too many settlers in the country. In our view, these responses were plainly racist and dismissive of deeply held Māori concerns.

The experiences of Taiwhanga and other petitioners highlighted the insurmountable difficulty Māori faced in seeking justice from Britain. As we noted in chapter 7, Ngāpuhi and Te Raki hapū considered that they had a direct relationship with the monarch herself through the treaty. However, whenever they appealed to the Queen for protection and redress, her imperial government referred the matter back to colonial authorities in New Zealand, as the conduct of Māori policy was regarded as a matter of internal governance. In effect, Māori were stuck with a constitutional arrangement they had not consented to, under which the Crown would protect their interests only to the extent agreed by settler representatives in a Parliament where Māori voices were swamped. Māori had signed te Tiriti on the understanding that the Crown would protect them *from* settlers, yet in effect it had handed control *to* settlers.

During these years, when the lasting significance of the establishment of the colonial Parliament and Government became clear to Te Raki Māori, they placed their faith in te Tiriti. They demanded that the New Zealand Government recognise the agreement they had entered into in 1840 and acknowledge its obligation to respect and uphold their

tino rangatiratanga – and when that did not work, they demanded their rights from the Queen, on whose behalf her representative had signed te Tiriti. Te Tiriti emphasised their equal rights in governance and their authority within their own sphere. Te Tiriti had also provided for a kāwanatanga sphere, but not one that exercised authority over Māori, at least not without their consent.

Over many years, and particularly since the Northern War, Te Raki Māori had accepted the Queen as exercising an authority protective of their rights – but that authority had since been delegated, without adequate safeguards, to a settler community that was now numerically and politically dominant. We note that New Zealand was not yet legally independent of Britain (see chapter 7), and would not become so until well into the twentieth century; the colonial Government's responsibility for Māori affairs was a matter of constitutional convention, and of convenience for both the British and New Zealand governments.

Certainly, the relationship between any national Māori assembly and the colonial Parliament would have required careful consideration and negotiation to define their respective powers and jurisdictions, and develop processes by which any overlaps between the rangatiratanga and kāwanatanga spheres could be negotiated. But these issues were far from insurmountable. The Crown had facilitated the Kohimarama Rūnanga in 1860 and had promised to establish annual assemblies; and Te Raki Māori were already meeting annually (or more often) and framing legislative proposals at the Ōrākei and Waitangi parliaments. These parliaments were confined to the rangatiratanga sphere and offered the Crown numerous opportunities to enter negotiations in order to work out the practical details by which kāwanatanga and tino rangatiratanga could coexist in the nation's legislative arrangements – but in the period from 1879 to 1887, the Crown missed or declined all of those opportunities.

Even if the Crown was reluctant to give legal recognition to a Māori parliament, it was obliged to at least engage on the underlying issue: Māori were seeking some form of institutional arrangement that protected their tino rangatiratanga from self-serving settler law-making, and instead provided for them to exercise effective authority over the rangatiratanga sphere. The Crown was obliged to provide a meaningful response, but did not.

Accordingly, we find that:

- By declining to enter negotiations over the establishment of a Māori parliament despite repeated requests by Te Raki Māori (specifically, in Hirini Taiwhanga's 1878 petition, at the Waitangi parliament in 1881, in Hirini Taiwhanga's 1882 petition, in Hōne Mohi Tāwhai's 1883 petition, and on several other occasions during the 1880s), the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. This was also in breach of te mātāpono o te houruatanga/the principle of partnership.
- By impugning the credibility, integrity and status of Ngāpuhi leaders who petitioned the Queen in 1882 and 1883, in order to ensure that they would not meet the Queen and in order to prevent serious inquiry by the imperial government into the treaty issues they raised, the Crown committed a serious breach of its obligation to act in good faith towards its treaty partner, in breach of te mātāpono o te houruatanga/the principle of partnership.

(2) *Native committees*

In 1880, Hōne Mohi Tāwhai proposed a Bill to establish district native committees which would be empowered to inquire into disputes over land title, survey, and sale.[609] In essence, the Bill would have given legal authority to Māori committees that were already undertaking this type of work in Te Raki and elsewhere, and would thereby have provided an alternative to the Native Land Court.

When the Government declined to support the Bill, Tāwhai worked with Eastern Maori member Henare Tomoana on the Native Committees Empowering Bill

1881, which provided for local self-government over minor civil disputes, liquor, and a range of other health and social order matters, and allowed native committees to conduct preliminary inquiries into land titles before the Native Land Court made final decisions. This measure had strong parliamentary support and was likely to pass, until Native Minister John Bryce intervened, opposing the land title provisions, threatening not to implement the Bill even if it passed, and orchestrating a delay so it would not pass during the 1882 session.

Bryce then introduced a competing and much weaker measure, which became the Native Committees Act 1883 – an Act that established district native committees while providing them with few meaningful powers over land title or any other matter. The Act was not a sincere effort to empower Māori but a cynical attempt by the Native Minister to prevent Parliament from establishing native committees with genuine power. It was condemned in the Legislative Council as providing 'no power whatever' to Māori,[610] and the 1891 Native Land Laws Commission reported that it 'mocked and still mocks the Natives with a semblance of authority'.[611] The Tribunal, in other reports, has agreed with this assessment, as do we.[612]

Accordingly, we find that the Native Committees Empowering Bill 1881 and the Native Committees Bill 1883 presented significant opportunities for the Crown to provide for Māori autonomy and self-government at a local level. By declining to pursue these opportunities, by instead establishing committees that lacked real power or authority, and by declining Te Raki Māori requests to increase the powers of committees established under the Native Committees Act 1883, the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga/the principle of partnership.

(3) *Redress/petitions*

During the period from 1879 to 1887, Te Raki Māori sent numerous petitions and other requests to the House of Representatives, and two to the Queen, raising concerns about the colonial Government's actions and seeking recognition of their rights under the treaty. Specifically, Hirini Taiwhanga and other Ngāpuhi leaders petitioned the Queen in 1882; Hōne Mohi Tāwhai and others wrote to the Aborigines' Protection Society in 1883, asking that the letter be forwarded to the imperial government; Wiremu Kātene petitioned the House of Representatives in 1884, also asking that the petition be forwarded to the imperial government; and Te Raki Māori raised treaty issues with the Government or House of Representatives on several occasions during the period from 1886 to 1888, through meetings, letters, and petitions.

Consistently, the experience of Te Raki Māori was that the imperial government refused to accept responsibility, and the colonial Government denied any treaty breach or cause for grievance, and took no other action. On rare occasions, such as the Government's response to Kātene's 1886 petition about customary fisheries, the Crown's response was delayed and inadequate.

The treaty principle of redress provides that, where the Crown has breached the treaty by assault on or sustained undermining of the tino rangatiratanga or autonomy of a tribe or hapū, and thereby causes them harm, it is obliged to provide redress; that is, to put matters right.[613] The obligation to provide redress arises from the Crown's duty to act reasonably and in good faith towards its treaty partner. Any redress should restore the Crown's honour and restore the mana and status of Māori.[614] While we are not in a position to make findings about the substance of every matter raised with the Crown through the petitions, letters, and hui during the period from 1878 to 1887, it is clear that the Crown was not adequately recognising or providing for the tino rangatiratanga of Te Raki Māori, and that it ignored or rejected numerous requests to address that matter.

Accordingly, we find that the Crown, by ignoring or rejecting petitions and other requests from Te Raki Māori for recognition of their tino rangatiratanga (in particular Hirini Taiwhanga's 1882 petition, the 1883 letter to the Aborigines' Protection Society, Wī Kātene's 1884 petition, and further petitions and letters from 1886 to 1888), the

Crown breached its duty of good faith, and te mātāpono o te whakatika/the principle of redress.

11.5 Did the Crown Recognise and Support Te Raki Māori Attempts to Establish National Institutions of Self-Government in 1888–1900?

11.5.1 Introduction

From the late 1880s, Te Raki leaders worked with others around the country in pursuit of a pantribal system of Māori self-government. Ngāpuhi and other northern tribes laid the groundwork in a series of northern parliaments between 1888 and 1891, culminating in the first 'Kotahitanga' (unity) parliament at Waipatu in the Hawke's Bay in May 1892, attended by well over 1,000 people. From then, Kotahitanga parliaments met annually until 1902.[615]

In the face of increasing challenge from the colonial Government and a growing settler population, the movement pursued several, inter-related objectives: abolition of the Native Land Court; preservation of remaining Māori lands; recognition of Māori community authority over land; establishment of Māori institutions to determine land ownership and manage lands; and establishment of a national parliament elected by and making laws for Māori. Kotahitanga leaders regarded these objectives as being consistent with Māori rights under te Tiriti o Waitangi, he Whakaputanga, and the New Zealand Constitution Act 1852, and Te Raki leaders saw themselves as having a particular responsibility to ensure that te Tiriti was honoured.[616]

The Kotahitanga parliaments (which we refer to as Paremata) were large, well-attended events, and the movement had broad support among Māori, except among tribes that were aligned with the Kīngitanga. More than 37,000 Māori (from an estimated population of about 45,000) were said to have signed a Kotahitanga pledge setting out the movement's key objectives.[617] Although places in the Kotahitanga Paremata were reserved for men, komiti wāhine organised and ran the Paremata, and were instrumental in advancing Kotahitanga as a mass social movement.[618]

In pursuit of their various objectives, Kotahitanga leaders sent petitions, lobbied Ministers, prepared legislation, and organised boycotts of land sales and the Native Land Court. Although they sought recognition of their right to self-government, they were careful to respect the Queen and colonial authorities, and asked the colonial Parliament to adopt their legislative proposals. Kotahitanga leaders understood that any institution for Māori self-government would require the colonial Government's recognition and support: first, so that colonial and Māori authorities could work together in an effective treaty relationship; and secondly, so that the Government and settlers would respect Māori laws and institutions.[619]

Accordingly, they appealed to the colonial Government and Parliament through meetings, petitions, and other means. In support of their case, they cited the treaty and its guarantees, and the many harmful impacts of colonial law and government on Māori communities.

The Government's responses varied. During the early-to-mid-1890s, some Ministers expressed sympathy for Kotahitanga aims and saw potential for the Government to work with the movement's leaders.[620] But the Government's greater priority was to open Māori land for settlement, and it was willing to make concessions only where it saw common ground between Kotahitanga goals and its own.[621] It therefore rejected Kotahitanga proposals for the abolition of the Court and for community control over Māori lands.[622] The Government also consistently rejected the demands for the Kotahitanga Paremata to be recognised as a law-making body: in the view of Ministers, the colony could have only one legislature, and they were not prepared to consider any option that limited the authority of the colonial Parliament.[623]

In the absence of constitutional protections for treaty rights, Kotahitanga leaders could not compel the colonial Government to recognise and respect institutions of Māori self-government. Later in the decade however, a combination of political circumstances, changing Kotahitanga tactics, and growing pressure from Kotahitanga and other Māori movements drew the Government into negotiations over Māori land and local self-government. These negotiations led to significant concessions, including a temporary halt to the Crown's land purchasing programme, and

legislation to establish local Maori Councils with a range of health and social functions, and Maori Land Councils to manage Māori lands.[624]

As in other sections, we are concerned with one central issue: Did the Crown recognise and support institutions through which Te Raki Māori could exercise their rights of tino rangatiratanga, autonomy, and self-government? Within that broad issue, in this section we are concerned with several key themes:

- What was the role of Te Raki Māori in establishing the Kotahitanga movement?
- How did the colonial Government respond to the Kotahitanga Paremata during the period from 1890 to 1895?
- Why did Kotahitanga and the colonial Government negotiate for the establishment of Maori Councils during the period from 1895 to 1900, and what were the results?
- What caused the Hokianga 'Dog Tax War' in 1898, and what was the impact in terms of authority on the ground?

Heta Te Haara of Ngāti Rangi, chairman of the Kotahitanga northern committee and leader of Kotahitanga in the north, as painted by Gottfried Lindauer in 1915. Te Haara established St Michael's church at Ōhaeawai in 1871.

11.5.2 Tribunal analysis

(1) *What was the role of Te Raki Māori in establishing the Kotahitanga movement?*

During the period from 1888 to 1892, Te Raki leaders worked with other rangatira from around the country to prepare the way for the establishment of Kotahitanga as a pantribal movement. Northern leaders held regional parliaments, made further attempts to engage with the Kīngitanga, and continued to press Ministers to acknowledge their treaty rights and recognise and provide for Māori self-government. During these years, Ngāpuhi leaders came to see themselves as having a special responsibility to ensure that the treaty was honoured, given the tribe's status as the first people to sign te Tiriti. The various hui culminated in the first Kotahitanga Paremata, held at Waipatu (Hawke's Bay).

(a) 1888–89: establishing Kotahitanga

During 1888, a series of major intertribal hui throughout the North Island laid the foundations for the establishment of Kotahitanga as a pan-iwi movement pursuing Māori self-government. The first of these hui was at Waitangi, where Pāora Tūhaere and Heta Te Haara were selected to lead proceedings. Much of the hui's focus was on the impacts of the Native Land Court on the mana and rangatiratanga of Māori communities: leaders spoke of how individualised land titles had severed ancestral relationships and broken down hapū authority, and by these means prepared land for sale. The hui was unanimous that the Native Land Court should be abolished,

Crown purchasing of Māori land should cease, and the Native Land Administration Act 1886 should be amended to provide for full community control.[625]

While seeking land law reform, rangatira also sought recognition of their rights to govern themselves and make their own laws. To this end, Maihi Parāone read out he Whakaputanga, and rangatira debated te Tiriti and their rights to self-government under the 1852 New Zealand Constitution Act. Rangatira at the hui resolved to send a petition to the House of Representatives outlining their 'grievance[s]', and proposing a national Māori assembly be 'formed, sanctioned, and authorised by Government to deal with all matters connected with native affairs'. If the colonial Government would not approve of 'such reasonable requests, founded as they are on treaty rights and equity', the rangatira resolved that they would make another approach to the Queen.[626] According to Dr Orange, the proposed assembly would operate as part of the colonial Legislature, 'reviewing all proposed legislation and able to submit its own proposals to government'.[627]

Whereas the previous Ōrākei and Waitangi parliaments had been instigated by northern tribes, from this point on the leaders of those parliaments deliberately sought to broaden the movement to encompass the rest of the country.[628] After the Waitangi hui, Te Haara, Tūhaere, and other northern leaders took their proposals to major hui around the country – to Waiapu (East Cape), to Ōmahu (Hawkes Bay), and to Wairarapa, culminating at Pūtiki (Whanganui). Iwi from these regions either had remained neutral or had fought alongside the Crown during the New Zealand Wars. According to Dr Orange, at the Pūtiki hui:

> it was finally agreed that inter-tribal differences should be overridden by all the tribes of the North Island forming kotahitanga. A national Maori parliament was to be established so that the Waitangi treaty could be properly implemented; in particular land would be controlled almost entirely by Maori. A new covenant had now been entered into, whereby chiefs and people would work towards restoring Maori welfare. Some chiefs hailed the agreement as more significant than the treaties of Waitangi or Kohimarama.[629]

The Pūtiki hui established a committee of senior rangatira – including Maihi Parāone, Tūhaere, and the Whanganui leader Te Keepa Te Rangihiwinui – to travel to Wellington during the next parliamentary session with the aim of informing themselves about and responding to any proposed legislation that would affect Māori. The hui also developed its own legislative proposals, which centred on the abolition of the Native Land Court and amendment of the Native Land Administration Act 1886 to shore up Māori collective land rights and end Crown purchasing.[630]

During 1888, Tūhaere and other leaders wrote to the Government, appealed to the Queen, and worked with Māori members of the House seeking implementation of their land proposals. The Government took no action. Rather, against vehement opposition from Māori throughout the country, the colonial Parliament enacted the Native Land Act 1888. This repealed the Native Land Administration Act 1886, which had provided for some degree of community control over land alienation, and instead allowed individual Māori owners to lease, sell, or otherwise dispose of their shares as they saw fit.[631] In effect, this was a return to individual 'free trade' in Māori land. The Government sought to justify this measure as empowering Māori owners, though it removed the previous Act's provisions for community decision-making.[632] Taiwhanga, in the House, was scathing about this measure: 'It is a Bill that is going to rob us of our lands and kill the Native people.'[633]

(b) The 1889 Waitangi Parliament and the Kotahitanga Pledge

The March 1889 Waitangi parliament was attended by some 1,500 people.[634] Again, rangatira raised the question of self-government, with particular respect to land and local authority taxes.[635] According to Dr Orange,

> while the usual discussion of grievances took place, an important new development was the drawing up of a pledge of union under the treaty. Those who signed the pledge committed themselves to kotahitanga and recognised the mana of the treaty under which a Maori government would be set up.

> From Waitangi, the document was sent to all tribes for signing, following the precedent set by the treaty in 1840.[636]

The *Auckland Star* reported that the pledge was drawn up by Ngāpuhi leaders. As to its content:

> representatives of the various tribes throughout the Island promise to stand by and assist each other in their endeavours to have laws affecting the Maoris and their lands rectified in accordance with justice to both races.[637]

In the view of Armstrong and Subasic, this pledge (sometimes referred to as a deed of union) became 'the centrepiece of the Kotahitanga movement, and its initial signing at Waitangi was the movement's official birth'.[638]

Government officials and settler newspapers did not understand the significance of this hui, and their reports were dismissive. The *New Zealand Herald* claimed it showed Māori 'had but few grievances, and none of any importance', and would be 'perfectly happy and contented' if not for a handful of leaders 'who make their living . . . by agitation'.[639] Magistrate Helyar Bishop wrote to the Native Minister in his habitual fashion in June 1889 saying that the hui served no purpose other than 'keeping alive political agitation' and impoverishing those who attended.[640]

(c) The 1889 Ōrākei hui

The 1889 Waitangi parliament was followed weeks later by a major hui at Ōrākei, attended by 500 rangatira from throughout the North Island. According to the *New Zealand Herald*, it was larger and more representative than the original Kohimarama Rūnanga had been. Wiremu Kātene, Mitai Tītore, and Hirini Taiwhanga all attended, but Maihi Parāone Kawiti was unable to be there. King Tāwhiao was not present but sent a letter expressing support for the hui, and also warning those assembled to be patient in the face of the Crown's opposition.[641]

According to press coverage, Pāora Tūhaere opened the hui by saying that its purpose was 'to destroy all the troubles that have arrived on this island' and 'make the natives and Europeans one people'. This, he said, was the purpose of the treaty. It protected Māori lands and rights but had been broken by the Government, with the result that Māori had lost their lands and chiefs had lost their status. The Pūtiki meeting had agreed to restore the treaty, and Tūhaere's wish was 'to make all of the native tribes one in asserting their rights against the Government'.[642]

Tūhaere explained that Māori concerns were sourced in the Crown's decision to transfer responsibility for Māori affairs to the colonial Government. Māori had not been consulted about that decision. Since then, colonial authorities had been governing Māori and enacting laws that caused them hardship. Although Māori were represented in the colonial Parliament, they received no benefit from this. Through the colonial system of government, 'the mana of the chiefs diminished'. After Tūhaere and others had spoken, the Kotahitanga pledge was handed around for signing; even before the hui, it reportedly had signatures from a 'large number' of leading rangatira and 426 others.[643]

The meeting was attended by several Ministers, members of the House, and officials. Māori leaders raised several concerns, asking whether the treaty had provided for the Native Land Court, or the rating of Māori lands, or government control over the foreshore and traditional fishing grounds, which had become an increasingly pressing concern. The Native Minister, Edwin Mitchelson, and the Attorney-General, Sir Frederick Whitaker, gave speeches about the Government's policies.[644]

Whitaker agreed that the treaty was binding but he did not understand which part of the treaty had been breached. He said that the guarantee of native lands was not breached by the Native Land Court as, prior to land going before the Court, Māori were free to organise their land ownership as they pleased. He also acknowledged that the Government had proceeded with the enactment of further Native Land laws in spite of considerable opposition from Māori but said this was because the Māori approach to land was always 'taihoa', and the colonial Parliament 'liked not only to talk but to do something'. When Hirini Taiwhanga attempted to speak, the Ministers objected and left the meeting.[645]

Te Whakakotahitanga i raro i te Mana o te Tiriti o Waitangi.

'Ko matou ko nga Rangatira o te Whakaminenga o nga Hapu o te Iwi Maori, o nga Motu e rua o Aotearoa me te Waipounamu me era atu Motu e tata ana ki enei; kua karangatia nei ko Nui Tireni, "Ka Huihui nei i runga i te Kotahitanga o matou Tinana me o matou whakaaro," i te nui hoki o to matou hiahia kia tino whakaukia te tu o tenei whakakotahitanga—

'No reira ka whakarite ka whakaae, ka whakapumau rawa i te whakakotahitanga o nga Rangatira me nga Mana; i te whenua i te tangata ki raro i te Mana o te Tiriti o Waitangi, o te ono o nga ra o Pepuere, kotahi mano e waru rau e wha tekau.

'I te mea kua oti nei to whakatuturu e nga Rangatiratanga katoa o ia Hapu o ia Hapu, e noho ana i ia wahi i ia wahi o Aotearoa me te Waipounamu, o te iwi Maori: te whakaae ki te kotahitanga o te tangata katoa, Tane Wahine o te Iwi Maori kia whakaturia he Runanga Ariki, me te Runanga Nui, e tenei whakakotahitanga kia Kowhiria i roto i nga Rangatiratanga nga Tangata matou roto i aua Runanga e rua.

'I whakaturia enei Runanga i raro i te Mana o nga Ritenga Whakaaetia e te Runanga Kaumatua, i tu ki Waitangi i te rua tekau ma waru o nga ra o Oketopa, ko tahi mano e waru rau e toru tekau ma rima, me te Mana hoki o te Tiriti o Waitangi o te ono o nga ra o Pepuere, tau kotahi mano e waru rau e wha tekau; i raro hoki i te Mana o te Ture Nui mo Nui Tireni, Rarangi 71, o te toru tekau o nga ra o Hune, kotahi mano e waru rau e rima tekau ma rua.

'I te mea e Tino Whakaaetia ana e enei Runanga e rua kia Tu, – Ka whakahaerea nga ritenga mo te Whakatu i nga Mana mo te Runanga Nui i runga i nga ritenga Pooti, haunga te Runanga Ariki. Heoi, i te Mana kua tukua nei e nga Hapu katoa o te Iwi Maori, ki nga Mema o aua Runanga – e rua i runga ite Pootita-nga, – ka taea e aua Runanga te Tino Whakatu he Kawanatanga mo te Iwi Maori, i raro i te Mana o te rarangi 71 o te Ture Nui mo Nui Tireni, o te tau kotahi mano e waru rau e rima tekau ma rima.

'Ka whakaaetia e nga Rangatiratanga katoa o ia Hapu o ia Hapu, o nga wahi katoa o nga Motu e rua, Aotearoa me te Waipounamu, kia tu he Kawanatanga mo te Iwi Maori.

'Ka whakaaetia hoki e tenei Kotahitanga kia whai mana te Kawanatanga i whakaturia nei ki te mahi Ture tiaki i nga whenua o te Iwi Maori, me era atu Mana e mahi ai taua Kawanatanga.

'Ko nga Tangata katoa, Tane, Wahine, Tamariki o nga Motu e rua Aotearoa me te Waipounamu o te Iwi Maori, – Ka Tino Whakaae i te Mana Whakahaere Tikanga o nga Whenua, i raro i nga Ture katoa e Pahitia e te Pureniata o te Iwi Maori, me ona Runanga e rua o te Kotahitanga ki te Tiriti o Waitangi.

'Na he whakapumautanga mo enei kupu i runga ake nei, koia ka tuhi matou i o matou Ingoa me o matou Tohu ki raro iho nui.'[1]

Unification under the Mana of the Treaty of Waitangi.

'We the leaders of the Whakaminenga of the iwi Māori, of the North and South Islands and the other islands adjoining these, which are together known as 'New Zealand', gathering together in unity of our bodies and minds, and in our earnest desire that this unification should be fully realised—

'We consent to the unification of all Rangatira and all Mana within the territories and people covered by the Authority of the Treaty of Waitangi of 6 February 1840.

'The leadership of every hapū in these islands, of all of the Maori people, have confirmed the unification of all, men and women of the Māori people, and have consented to establish an Upper House [Runanga Ariki] and Lower House [Runanga Nui], chosen from among the Māori people.

'These Assemblies are constituted under the mana of the Runanga Kaumatua [council of elders], held at Waitangi on 28 October 1835, and also the mana of the Treaty of Waitangi of 6 February 1840; and subject to the mana of section 71 of the New Zealand Constitution Act, of 30 June 1852.

'The Runanga has also agreed on the procedures for establishing the Assemblies – the Runanga Nui will be elected by the people, but not the Runanga Ariki. However, under the authority of all hapū of the Māori people, the Assemblies may establish a Government for the Māori people, under the mana of section 71 of the New Zealand Constitution Act 1852.

'The leadership of every hapū from every part of these islands recognises the mana of this Government for the Māori people.

'In accordance with this agreement to unify, they also acknowledge the power of the [Māori] Government to make laws for the protection of Māori lands, and to exercise other powers of Government.

'All Persons, all Māori men, women, and children of both Aotearoa and te Waipounamu, fully recognise the mana whakahaere tikanga [which we understand as governing and law-making authority[1]] of the lands, subject to all laws passed by the Parliament of the Māori people and its two Houses of Te Kotahitanga to te Tiriti of Waitangi.

'As a confirmation of these words, we therefore write our Names and Marks below.'

Settler newspapers were similarly dismissive of Māori concerns, the *New Zealand Herald* opining that these hui 'might be useful . . . if the natives would honestly set their minds to anything practical' and if, 'to begin with, they would endeavour to devise means to improve their own social condition instead of complaining endlessly about the treaty'.[646]

(d) Further attempts to align with the Kīngitanga: the Pukekawa hui in May 1890

Early in 1890, Kotahitanga leaders were among 1,500 Māori who attended a Kīngitanga hui at Pukekawa, Waikato. There, Tāwhiao asked all present to acknowledge him as King and unite behind a Kīngitanga parliament, able to make its own laws, entirely independent of the colonial Parliament. This new parliament, known as Te Kauhanganui, was to meet every May. Kotahitanga and Kīngitanga leaders were aware that they could increase their influence with the Government if they united. Nonetheless, according to the *New Zealand Herald*, Tāwhiao's proposal was 'rather coldly received', at least by the northern tribes. Hirini Taiwhanga led a large Te Raki contingent who remained unwilling to unite under the King's mana, and who also differed from the King on the practical realities of establishing Māori self-government:

> Taiwhanga . . . pointed out to Tawhiao that no good could come of it unless he came under the Treaty of Waitangi. If he wanted a native Council to deal with native affairs, it must be under the law and authorised by Parliament. Tawhiao, however, refused in any way to recognise the European Parliament.[647]

On hearing this, Taiwhanga walked out of the meeting 'and was quickly followed by the other Ngapuhis'. After this, the entire meeting broke up.[648] While Tāwhiao's continued insistence that he be recognised as King was undoubtedly a factor, the two movements also envisaged different relationships with the colonial Parliament. Te Raki leaders had long since come to the view, given

changes in circumstances since 1840, that Māori self-government could only be sustained with the recognition and support of the colonial authorities. Tāwhiao continued to press for a more independent course; he had petitioned the Queen in 1884, but did not acknowledge the colonial Government as having authority even to recognise his own.

(e) The Kotahitanga northern committee: preparation for the first Kotahitanga Paremata

Very soon after the Pukekawa hui, northern leaders held their own meeting at Ōmanaia, where they took a critical step towards uniting all non-Kīngitanga Māori. According to Dr Orange,

> The meeting, representative of all the north, was chaired by Hone Mohi Tawhai. Though aloof from the treaty movement in the early 1880s, Tawhai had shared with Aperahama Taonui a sense of spiritual revelation: both men had the prophetic vision of a solution [for] Maori difficulties, through he tikanga nui (a great law) to be worked out in 1890.[649]

Tāwhai's experience with the underpowered native committees might also have influenced him to align with Kotahitanga. The choice of Ōmanaia as a site for the hui was no accident: this had been a sacred location for Taonui's followers. The meeting appointed an organising committee for northern Kotahitanga. Heta Te Haara of Ngāti Rangi was named as chairman of the committee and leader of Kotahitanga in the north.[650]

Such was the mana associated with this role, claimants told us, that Te Haara's people recall him as 'he tumuaki ia no Te Tiriti o Waitangi i whakawahia ia e nga iwi e rua e Aotearoa me te Waipounamu' (which claimant Te Waiohau te Haara translated as: 'one of the founders [tumuaki] of Te Tiriti o Waitangi, he uplifted [whakawahia] all – both of the people of New Zealand and the South Island').[651] Three other leaders – Raniera Wharerau of Te Māhurehure, Hapukuku Moetara of Ngāti Korokoro, and Pene Tāui of Ngāti Rangi – were appointed to travel throughout the country gathering signatures on the Kotahitanga pledge. According to Dr Orange, this marked 'final acceptance by Ngapuhi' of their role as initiators of the treaty relationship, and therefore of their 'special responsibility to see the treaty implemented'.[652]

The first meeting of this new northern Kotahitanga committee took place at Kaikohe on 15 to 16 April 1891, with leaders of Ngāpuhi, Ngāti Whātua, Te Rarawa, and Te Aupōuri in attendance. Kaikohe was chosen because it was regarded as '"te upoko o te wheke", the belly of the octopus, whose tentacles spread throughout Ngāpuhi'. A new house was built for the occasion, aptly named Kotahitanga.[653]

At the hui, the leaders of these northern tribes agreed to 'unite as one body' under the name Whakakotahitanga.[654] According to Ngāti Rāhiri tradition, Te Tane Haratua suggested that name 'in an effort to emphasise and endorse the importance of unity as a strategy to bring attention to major issues'.[655] The hui also agreed to form a subcommittee to travel to Wellington with Northern Maori member of the House of Representatives Eparaima Kapa for the forthcoming parliamentary session. Although newspaper coverage was scant, the *Northern Advocate* reported that the hui was 'said to be the largest meeting that has ever been held North of Auckland'.[656]

While preparations continued, Te Raki leaders also continued to engage with the colonial Government and its representatives, seeking recognition of treaty rights and freedom from damaging land laws; for example, rangatira appeared before the Native Land Laws Commission in 1891 seeking a new land title system operated by Māori komiti or rūnanga according to tikanga.[657]

After Hirini Taiwhanga's death, Eparaima Kapa was elected at a by-election in February 1891 to represent Northern Maori. In July 1891, Kapa introduced a Native Land Administration Bill to the colonial Parliament. This Bill provided for a portion of existing land to be set aside as a 'Maori Estate Fund', and for non-transferrable shares in the fund to be issued to every Māori adult and child.[658] All other Māori customary lands would be vested in an elected national Maori Council, which would be responsible for managing those lands and distributing proceeds from sale, lease, or other uses to the owners. The Bill was never debated.[659]

(2) *How did the colonial Government respond to the Kotahitanga Paremata and Kotahitanga proposals during the period 1890–95?*

From 1892 and for the rest of the decade, the Kotahitanga movement held regular national parliaments where leaders from throughout the country gathered to debate issues of common concern. In particular, the movement's leaders continued to seek freedom from harmful laws, and recognition of Māori rights to self-government at local and national levels.

To this end, Kotahitanga petitioned the colonial Parliament in 1893; and from 1894 to 1896, the Ngāpuhi leader and Northern Maori member Hōne Heke Ngāpua introduced Bills to Parliament seeking recognition of the Kotahitanga Paremata's right to make laws for Māori. The movement built considerable support among Māori, and also sought to pressure the colonial Government by arranging for boycotts of the Court and land alienation.

The Government's primary concern at this time was opening more Māori land to a growing settler population. Although some Ministers were sympathetic to Kotahitanga aims and were willing to consider some options for local Māori self-government, there were limits to what could be achieved in a parliamentary system that offered very few safeguards for treaty rights.

(3) *What were the objectives of the 1892 Kotahitanga Paremata?*

(a) The April 1892 Waitangi hui

The first national Kotahitanga hui was scheduled for Waitangi in April 1892 and set out to make final arrangements for the inaugural national Kotahitanga Paremata at Waipatu in June. This was a major event in its own right, attended by more than 1,300 men, women, and children. The Treaty of Waitangi hall was decorated for the event: at the front was a red flag with the words 'Te Tiriti o Waitangi' in large white letters, alongside which a painting depicted a kaumātua and a rangatahi together, with the quotation 'Huihui tatau ka tu: wehiwehi tatau ka hinga' (United we stand, divided we fall).[660]

In an opening speech, Heta Te Haara of Ngāti Rangi described the hui's agenda as being he Whakaputanga, te Tiriti o Waitangi, section 71 of the Constitution Act 1852, and the desire for peace among all people of New Zealand.[661] Raniera Wharerau of Te Māhurehure chaired the event, telling those present that the Kotahitanga pledge had 20,934 signatures to date, a very substantial proportion of the Māori population, then estimated to number about 45,000.[662]

Much of the discussion at the hui concerned what the attendees considered the destructive influence of the Native Land Court on the land tenure, livelihoods, and authority of Māori communities. Rangatira raised many other grievances, including land alienation, rates, the dog tax, and the destruction of shellfish grounds. Underlying these concerns was a lack of Māori influence over law-making and government, which rangatira at the hui regarded as a breach of their rights under te Tiriti and section 71 of the New Zealand Constitution Act.[663]

The hui established an organising committee to make arrangements for Kotahitanga elections and the Waipatu Paremata. Te Raki rangatira on the committee included Iraia Kūao, Rē Te Tai, Hemi Kepa Tupe, Hōne Heke Ngāpua, and Mitai Tītore.[664] Hōne Sadler (Ngāti Moerewa) told us that Kūao 'believed vehemently that Te Tiriti empowered him to exercise his rangatiratanga and mana and determine the management and allocation of his hapū lands', and was 'aware of future consequences if [that] mana was diminished in any way'. Iraia's father and uncle had signed te Tiriti on behalf of Ngāti Rangi.[665]

The Government was represented at this hui by the Native Minister Alfred Cadman and the newly appointed Executive Council member James Carroll, of Ngāti Kahungunu. Carroll spoke first, reminding those present that he was there as a member of the Executive representing the Māori people, and also as a representative of East Coast tribes. He commended the assembled rangatira for uniting in common purpose and encouraged them to develop 'practical' proposals over issues such as land, rates, and the dog tax, which could then be placed before the colonial Parliament.[666] He supported their attempts to organise nationally and spurred them to develop proposals for 'local self-government', and 'just and sensible' plans to protect their land interests. If they did so, he 'felt

certain that legislation by universal consent would ratify their decision.'[667]

But he also encouraged the rangatira to focus their efforts on 'practical' policies, and discouraged them from pursuing 'unattainable' goals that would not be acceptable to the Pākehā majority.[668] By this, we presume he meant to discourage them from pursuing any plan for recognition of their assembly as a Māori parliament with law-making powers, on the grounds that settler politicians would not accept such a measure, and (in the absence of constitutional safeguards) it would therefore never come to fruition.

Cadman's speech had a different tone. He encouraged Māori to accept the colony's laws, said that Māori had difficulty with the Native Land Court because they were not willing to reach out-of-court agreements among themselves, warned that taxes on Māori must increase as settlers were paying too much, and said the dog tax must be enforced so that local authorities would have money for roads and other public works.[669] Most strikingly, he said the treaty had been 'broken years ago by both parties', the Crown by withdrawing its pre-emptive right, and Māori by selling land to settlers. This breach had become 'so wide that he did not think anything could mend it'. The *New Zealand Herald* reported that the speech was not well received.[670]

Cadman and Carroll were the Liberal Government's two Ministers with direct responsibility for Māori affairs, yet they had divergent approaches. Carroll had been a member of the Native Land Laws Commission which recommended that hapū be awarded community title to their lands and given a significant say over land administration. Cadman, who had been Native Minister for little more than a year, had rejected that advice, and was instead pursuing a course aimed at opening more Māori land for settlement. His policies included abolition of the Native Department, abolition of the roles of Māori assessors, expansion of the Court's role, and increased Crown purchasing of Māori land. The Premier John Ballance was a former Native Minister with some sympathy for Māori aspirations over land, though like other Ministers he was not prepared to accept any challenge to the authority of the colonial Parliament. By encouraging Kotahitanga leaders to tread a cautious path, Carroll appears to have been reflecting his awareness of what was possible in the then political climate.[671]

(b) The June 1892 Kotahitanga Paremata at Waipatu

Two months after the Waitangi hui, the first meeting of the Kotahitanga Paremata took place at Waipatu in the Hawke's Bay. Its full name was Te Kotahitanga o te Tiriti o Waitangi – the unity of the Treaty of Waitangi.[672] More than 1,000 Māori attended.[673] Kotahitanga adopted the same structure as the colonial Parliament, with a bicameral legislature comprising a 93-member lower house (Te Rūnanga Nui, or Te Whare o Raro) and a 50-member upper house (Te Whare Ariki). Elections had been held, by district, in the preceding week.[674]

Reflecting this district's share of the national population and prominence within the movement, 28 members of Te Rūnanga Nui and eight members of Te Whare Ariki were from 'Te Pōti o Ngāpuhi'.[675] Of the four Ministers, two were from Ngāpuhi: Raniera Wharerau and Mitai Tītore. The Hauraki leader Hamiora Mangakāhia was elected as Pirimia (Premier).[676]

Membership of Te Whare o Raro comprised leaders from much of the country outside of Waikato, Te Rohe Pōtae, and Taranaki – territories dominated by the Kīngitanga or the Parihaka spiritual movement. Representation was much greater among North Island tribes than South. The Ngāpuhi members represented a broad cross-section of hapū and territories.[677] The claimants Hineāmaru Lyndon and Louisa Collier told us that Pōmare Kīngi's appointment to Te Whare Ariki was a reflection of his mana and the depth of expectation his people placed on him. He took part 'to keep alive our tino rangatiratanga', which encompassed a right to govern and to self-determination in all things.[678]

While the upper and lower whare were reserved to male rangatira, men and women attended the Paremata in broadly equal numbers, and women were instrumental in the movement: raising funds, organising the hui, administering the movement, and building support among Māori communities. Wāhine rangatira such as Meri Te

Te Raki Members of Te Whare Ariki, 1892

Te Raki members of Te Whare Ariki in 1892 were: Wiremu Kātene (Ōhaeawai, Tautoro), Hemi Kepa Tupe (Whangaroa), Pōmare Kīngi (Whatitiri), Maihi Parāone Kawiti (Waiōmio, Taumārere), Eramiha Paikea (Kaipara), Miti Kakau (Hokianga), Rē Te Tai Maunga (Te Rarawa, Hokianga), and Timoti Puhipi (Te Rarawa, Ahipara).[1]

Te Raki Members of Te Whare o Raro, 1892

Te Raki members of Te Whare o Raro in 1892 were:

- *Te Rarawa:* Mitai Kaukau (Hokianga ki te Kauru), Taniora Moto (Mangamuka), Rē Te Tai Maunga (Hokianga), Heremia Te Wake (Hokianga, Whangapē), Peri Paraihe (Hokianga, Whangapē), Timoti Puhipi (Ahipara, Kaitara, Te Awanui).
- *Te Rarawa/Ngāpuhi:* Muriwai Hepiki (Waihou ki te Kauru), Kaipo Hotereni (Waihou ki te Kauru), Ngakuru Pana (Waimamaku).
- *Ngāpuhi:* Hemi Tupe (Whangaroa), Karena Kiwa (Whangaroa), Pere Riwhi (Whirinaki, Hokianga), Mohi Wikitahi (Waimā), Raniera Wharerau (Waimā), Te Paki Wihongi (Kaikohe), Mitai Tītore (Mangakāhia, Ahuahu), Wī Kātene (Ōhaeawai, Tautoro), Pene Tāui (Oromāhoe, Waimate), Maihi [Parāone] Kawiti (Waiōmio, Taumārere), Te Kaka Porowini (Te Kāretu, Pēwhairangi), Kereama Papaka (Waikara), Pōmare Kīngi (Whatitiri), Riwai Taikawa (Whāngārei, Kaihou), Wiki Te Pirihi (Whāngārei, Kaihou).
- *Ngāti Whātua:* Hemi Parata (Te Awaroa, Kaipara), Eremiha Paikea (Kaipara), Wikiriwhi Hemana (Kaipara), Netana Patuawa (Ōpanaki, Maunganui).[2]

Tai Mangakāhia of northern Hokianga (Te Rarawa) also became prominent in political roles as the movement grew. This reflected a long tradition of wāhine rangatira in Te Raki and elsewhere: Meri Te Tai Mangakāhia was the daughter of Te Rarawa leader Rē Te Tai, and a great-niece of Pāpāhia who had signed te Tiriti for the tribe. Yet, the prominence of women leaders also reflected other factors, including the debate within Māori and Pākehā communities about women's suffrage and equal rights, and the frustrations that Māori women felt over the impacts of Crown policies on their communities.[679] Also significant was the nature of Māori political organisation: the Kotahitanga Paremata were mass hui attended by whole whānau, where informal discussions, sharing of experiences, and building of connections were just as important as the formal business.[680]

Meri Te Tai Mangakāhia was married to the Kotahitanga Premier, Hamiora Mangakāhia, and both played prominent roles as the movement evolved. When the Kotahitanga Paremata opened on 14 June 1892, Hamiora began proceedings with an appeal for unity, saying that the establishment of a Māori government and legislature was consistent with Māori rights under the treaty and the New Zealand Constitution Act.[681] In his view, the treaty provided a place for settlers to live in New Zealand and the Crown to govern over them. But it also guaranteed

Māori 'te mana o ratou whenua' (the mana over their lands). Alluding to the Crown's attempts to govern over Māori, he added,

> Ki to tatou ritenga e kore rawa e tae atu tetahi Rangatiratanga ki te whakahaere ritenga o te taonga kei raro i te mana i whakaaetia ki tetahi Rangatiratanga.
>
> According to our custom one chieftain would never proceed to arrange conditions for the property under the mana accorded to another chieftain.[682]

The Kotahitanga Paremata passed a series of resolutions echoing those agreed at Waitangi two months earlier. They asserted that it was for the Kotahitanga Paremata to make laws for Māori people and lands, and the colonial Legislature should no longer do so. They repeated their decision to boycott the Native Land Court and called for Māori assessors to resign.[683] The Paremata debated alternatives to the Court and options for administering uncultivated Māori lands, resolving that Māori committees should be properly empowered to manage these functions. Other resolutions concerned rating of Māori lands, and policies on native schools and sanitation, among a range of matters.[684]

The Government was represented at the hui by Carroll and the Cabinet Minister Joseph Ward, who encouraged those present to believe that their proposals would be taken seriously in the colonial Parliament. Ward acknowledged that, since 1840, there had been 'many troubles . . . many injustices . . . [and] many mistakes made', which had resulted in Māori lands being unjustly taken. He suggested that at some future time a tribunal 'might be necessary to look into errors that have been committed, with a view to putting them right as far as possible'.[685] Ward also acknowledged the difficulties that Court processes had created for Māori communities and said the Government would welcome practical measures for addressing these difficulties.[686]

While acknowledging Māori grievances, he also reminded Kotahitanga leaders that settlers dominated the political system, and the Government therefore had to act in accordance with settler wishes. In practice, this might mean compelling Māori to open lands for settlement just as South Island estates were being opened. Ward therefore encouraged Kotahitanga leaders to develop a workable plan for settlement that did not create further injustice.[687] His comments would have reinforced those made by Carroll at the Waitangi hui in April; Carroll, too, had suggested that the Government might adopt Kotahitanga proposals, if those proposals were acceptable to Ministers and to the Government's settler constituency. For Kotahitanga leaders, the Government's land development objectives did not necessarily create a difficulty: Kotahitanga did not oppose settlement; they simply wanted Māori to control their own affairs.[688]

(4) *What was the Government's response to the 1892 Kotahitanga proposals?*

After the conclusion of the Kotahitanga Paremata at Waipatu, more than 30 representatives travelled to Wellington, where they asked the colonial Government to endorse their decisions concerning Māori lands. In particular, they asked that the colonial Parliament enact no laws concerning Māori lands, impose no rates or taxes on Māori lands, and cease all Court hearings in the North Island. They met Cadman, who offered no support for their proposals and indicated that the Government intended to press ahead with its own legislation (which we discuss later).[689]

Kotahitanga leaders then approached the Premier (Ballance) in August 1892, asking that he adopt the Kotahitanga Paremata's decisions, especially those concerning the Native Land Court and native committees. Ballance undertook to consider their views. There is no record of his taking any further action, though this is likely because he was already ill with the cancer that would claim his life in 1893. Richard Seddon would be appointed Acting Premier after Ballance's death in April 1893.[690]

The Government members James Carroll and William Rees as well as the opposition member Sir George Grey expressed sympathy for Kotahitanga aims, and they

worked on legislative proposals, though were ultimately unable to win support from a majority in the colonial Parliament. Grey met Kotahitanga leaders in August and promised to introduce legislation granting a substantial degree of hapū self-government. Under his proposal, hapū or tribes would form into municipalities or incorporations empowered to raise taxes, make bylaws, prohibit sales of liquor, determine land interests, and manage all land dealings within hapū boundaries. He did not propose to abolish the Native Land Court but expected it would rapidly become redundant under this proposed system. In Grey's view, each hapū should have 'power to manage all its own local affairs'. He also proposed the establishment of a national assembly comprising hapū representatives, who would meet annually and propose legislation to the colonial Parliament.[691]

Grey's Native Empowering Bill, as introduced on 31 August 1892, was a weaker measure than he had promised Kotahitanga leaders; Grey appears to have modified the Bill while it was being drafted, in the hope of winning Government support. As introduced, the Bill proposed to allow the Governor to establish Māori boroughs, which (at the Governor's discretion) could have some or all of the powers of a local authority, and would also be empowered to manage their own lands subject to regulations approved by the Governor. However, the Bill made no mention of a national assembly, and it proposed to reintroduce Crown pre-emption – a measure that Kotahitanga leaders were not consulted on and did not support.[692]

The Bill was introduced to the House near the end of the 1892 parliamentary session but was never debated.[693] Ballance promised to circulate the Bill for consultation over the summer and then adopt it as a government measure, but the Premier died before that could occur, and Grey was in poor health for much of 1893. The Bill never returned to the House.[694]

Carroll and Rees, meanwhile, worked on the Native Committees Act 1883 Amendment Bill, which proposed to empower district Māori committees to determine land titles and manage dealings in Māori lands. Rees argued that the Native Land Court system was infringing on Māori rights and delaying settlement, and that more land would be opened for settlement if Māori communities were able to manage their own affairs. While the measure won some support in the settler press, it also shed light on the significant rift within the Government over Māori land policy. Carroll introduced the Bill to Parliament in September 1892, but he did not have government support. This Bill, too, was never debated.[695] Rees, who had long worked with Tūranga leader Wī Pere to try to achieve legally recognised Māori community titles, continued to advocate publicly for hapū self-government in respect of land. In his view, it was 'astonishing' that the Crown persisted with the Native Land Court system and individual shareholding when so many politicians and judges knew how destructive the system was, and how much delay it caused in opening land for settlement.[696]

Cadman also introduced his own legislative measures during the second session of Parliament in 1891.[697] The Native Land Court Bill 1892 proposed some reforms to the Court and also aimed to strengthen the Government's control of the land market. It was considered and rejected by the Joint Committee of the House and Council, we presume because Ballance had promised to consult Māori about changes to Māori land laws.[698] The colonial Parliament did enact another measure, the Native Land Purchases Act 1892, which authorised Government borrowing for the purchase of Māori land, provided for a partial restoration of Crown pre-emption by authorising it to declare certain areas off limits to private purchasers, and allowed the Government to unilaterally remove any existing legal restrictions on sale.[699] Introducing this Bill, Cadman said it would allow the Government to 'relieve' Māori of 'surplus' lands, and would not impose costs on taxpaying settlers as any borrowed money would be repaid through profits from land sales.[700]

The Māori members of the House objected to this legislation, which they saw as enabling further Government purchase from individual Māori at below-market prices – 'swindling', to use the word of Hoani Taipua. Eparaima Kapa emphasised that Māori continued to seek community control: whenever the Government wanted land, it should go to the whole community openly instead of 'going in an underhand manner to one or two persons'.[701]

The Māori members specified the clauses and provisions they objected to, but the Act passed into law with those provisions intact.

The 1892 session was therefore significant for the relationship between Kotahitanga and the colonial Parliament. Carroll and Ward had encouraged Kotahitanga leaders to make 'practical' legislative proposals to the House with a particular focus on land, and Carroll had promised to do his utmost to bring those proposals to fruition. Kotahitanga leaders had done what he suggested: they had debated numerous practical issues regarding land, rating, and other matters, and had approached the House with proposals for local land administration by Māori communities. Carroll, Rees, and Grey had then brought forward legislation that could have gone at least some way towards meeting Kotahitanga objectives. But Māori aspirations for self-government and community control over land continued to depend on winning a majority in a settler-dominated Parliament, and that was not possible without clear Government support. Much therefore depended on Ballance's promise to consult over summer before bringing a government measure to the colonial Parliament in 1893.

The colonial Parliament also enacted one other measure of significance to Te Raki Māori, and more generally for the treaty relationship. The Oyster Fisheries Act 1892 introduced a licensing regime in response to the plundering and destruction of oyster beds by commercial interests in several parts of the country, including the Bay of Islands and Whāngārei.[702] Māori in this and other districts had for many years been raising concerns about their loss of authority over traditional shellfish grounds,[703] and Te Raki Māori had specifically raised concerns about commercial use and depletion of oyster fisheries in 1886, and again in the colonial Parliament in 1891 and at the Waitangi hui in April 1892.[704]

Introducing the Bill, Seddon told the House:

> There was Whangarei Harbour, once famous for its oysters, but now there was scarcely an oyster to be got there at all. Further north the same thing had occurred, and had been going on until recently. At Russell, not long ago, somewhere about six or seven hundred bags of oysters were shipped away. That in itself would not have been so objectionable were it not that, in the process of removing these six or seven hundred bags, as many more oysters as would perhaps fill another eight hundred bags had been ruthlessly destroyed.[705]

As introduced, the Oyster Protection Bill provided no protections for Māori customary rights. Kapa spoke briefly, making clear that Māori members had not been consulted and did not fully understand the measure, and asking that Māori rights in traditional fishing grounds be protected.[706] Although the Government had been regulating fisheries since the 1860s, previous Acts had contained general provisions recognising treaty or customary rights, whereas this Act did not. As the Tribunal found in its *Report on the Muriwhenua Fishing Claim*, the Oyster Protection Act presumed that the Crown had unrestricted authority over the foreshore and inshore fisheries; prohibited Māori customary fishing unless explicitly authorised; and provided that any residual Māori rights could be limited to specific areas and species, limited to personal (not commercial) use, and subject to Government regulation as if Māori had no systems of their own for fisheries' management. These assumptions were to remain in Māori fishing legislation throughout the following century. Furthermore, while numerous licences were subsequently issued to settler commercial interests, very few Māori reserves were ever created.[707] We will consider claims about fisheries in a later volume of this report.

(5) *What were the objectives of the 1893 Kotahitanga Paremata?*

So far as we can determine, no consultation took place early in 1893 over Grey's Native Empowering Bill or any other legislative proposal about Māori lands. Ballance and Grey were both in declining health, and Cadman – having shepherded his Native Land Purchase Act through the colonial Parliament – had his attention on other matters, including a dispute with Māori over mining rights at Parawai and the disruption of government surveys in Te Urewera.[708]

The second Kotahitanga Paremata took place at

Members of Te Whare o Raro, the lower house of the Kotahitanga Paremata, elected during the 1893 Paremata at Waipatu, Hawke's Bay. Four members were from Hokianga and five from the Bay of Islands, with Te Whatahoro of Ngāti Kahungunu the Premier.

Waipatu in April 1893, with several hundred members and observers present. The lower house was smaller, with 58 members attending, including four from Hokianga and five from the Bay of Islands.[709] Raniera Wharerau of Te Māhurehure was selected as a Minister in a newly formed Government, and Te Whatahoro of Ngāti Kahungunu replaced Hamiora Mangakāhia as Premier.[710]

As in 1892, the policy discussions focused on developing Kotahitanga as a vehicle for national Māori self-government, and on abolishing the Court and establishing mechanisms for local self-government with respect to land.[711] The Paremata formed a committee to examine the colony's land laws,[712] and members also discussed tactics for achieving their objectives; in particular, the steps they should take to gain recognition from the Crown and the colonial Parliament. In this, they fell into two camps.

One, with strong support from Ngāpuhi, favoured pursuing Crown recognition of a fully independent Kotahitanga Paremata and Government. The principal advocate for this position was the 24-year-old Ngāti Rāhiri leader Hōne Heke Ngāpua, a grand-nephew of the Northern War leader Hōne Heke Pōkai (see chapter 5). Heke had attended the 1892 Paremata as a government observer, and was not a member of the Paremata but was nonetheless allowed to speak. Supporters of his position viewed it as consistent with he Whakaputanga and the treaty, and believed that Kotahitanga should establish its constitutional independence before resolving more practical matters such as land administration.[713]

But Kotahitanga members were also aware that they needed recognition from the colonial Government – otherwise any Kotahitanga laws would be ignored or broken. Some members, led by the legislative councillor and former Southern Maori member Hōri Kerei Taiaroa, argued

Meri Te Tai Mangakāhia (1868–1920), of northern Hokianga, one of many rangatira who played a prominent role in Māori political movements. During the 1893 Kotahitanga Paremata, Mangakāhia was the first woman to speak in Te Whare o Raro, and she proposed that women should be able to stand as candidates and have voting rights in the Paremata. She argued that there were many women landowners who were knowledgeable about land management and that the Queen might be more ready to listen to a petition from her 'Maori sisters'.

that the colonial Parliament would never accept Heke's proposal, and that Kotahitanga should therefore pursue more moderate goals that might win the favour of settler politicians.[714]

The two camps did not necessarily differ in their final objectives but rather in their tactical approaches: Taiaroa preferred an incremental approach that might win some gains in the short term; Heke preferred to begin with the principle of Kotahitanga self-government lest it otherwise become compromised. This, in our view, was the distinction that Carroll had been referring to when he warned Kotahitanga in 1892 to take a 'practical' approach and not pursue what was 'unattainable'. This same debate would continue among Kotahitanga leaders – and Māori leaders more generally – throughout the decade.[715]

Taiaroa's Bill was titled Te Ture Huinga Whakamana Kotahitanga o Nga Iwi Maori, which was translated at the time as The Federated Maori Assembly Empowering Bill. The Bill was mainly focused on Māori self-determination in respect of land. Under its provisions, the Kotahitanga Paremata would establish district committees to determine land ownership and manage land dealings on behalf of Māori owners. The Paremata would make regulations to guide these activities and would hear any appeals from the district committees. The Governor would ratify any land title decisions, and once title was determined, Māori would be placed on the same footing as Europeans in terms of land dealings ('Ko te mana hoko o nga Maori kia rite tonu ko nga Pakeha').[716]

In constitutional terms, the Bill acknowledged the authority of the Governor and therefore the Crown, but bypassed colonial institutions: the Court would be abolished, and colonial Ministers and Parliament would no longer exercise any authority over Māori land. Several Kotahitanga members objected to the provision placing Māori land on equal footing with that of Europeans, fearing that this would open the way to more land sales. The former Kotahitanga Premier Hamiora Mangakāhia argued that this provision breached the treaty. Taiaroa's intention seems to have been that district committees would administer Māori lands and would be free to sell, lease, mortgage, or develop them, as Europeans were. Mangakāhia and others might have interpreted the provision as transferring mana from hapū to committees, or as authorising individuals to sell.[717]

Several members of the Paremata, and the Ngāpuhi representatives in particular, objected to the Governor having any authority under the Bill, seeing this as

undermining their authority as rangatira. Hōne Makoare said, 'Ko Kaikohe me Tautoro kei raro tonu i a maua ko taku tuakana ko Kuao. E kore rawa ahau e pai kia riro mai aku whenua ki raro i enei ture.' (We translate this as: 'Kaikohe and Tautoro are under my mana and that of my brother Kuao. I do not consent to my lands being placed under these laws.') Raniera Wharerau asked that the Bill be deferred to 1894, to allow for consultation with Māori communities. He said his people would oppose the Bill: 'ko tenei pire e mahia atu ana hei patu ia ratou.' ('this bill is being made to kill them').[718] Nonetheless, the Kotahitanga Paremata voted narrowly (25 to 22) to send the Bill to the colonial Parliament, alongside a petition setting out broader Kotahitanga objectives.[719] We will consider the Government's response in section 11.5.2(6).

The 1893 Paremata took place at a time of widespread public debate about women's suffrage in the colony's political system. This was also an issue within Kotahitanga, which had followed the colonial system by restricting the vote to men. During the 1893 Paremata, Meri Te Tai Mangakāhia proposed that women should have voting rights and be able to stand as candidates for the Kotahitanga Paremata. On 18 May, she spoke in the Paremata's lower house, the first woman to do so.[720]

Mangakāhia and other wāhine rangatira shared many of the same concerns as the male Kotahitanga leaders, including those about the harmful impacts of the Court, land alienation, rates, and other elements of colonial law and authority.[721] Wāhine rangatira also had other concerns. Many possessed mana over property and resources, and had significant resource management responsibilities, yet were excluded from decision-making in the colonial and Kotahitanga Paremata alike. Furthermore, they were frustrated at the limited impact that male rangatira were having within the colonial system, and felt they might be more effective. As Mangakāhia explained to the Paremata:

> He nui nga tane Rangatira o te motu nei kua inoi ki te kuini, mo nga mate e pa ara kia tatou, a kaore tonu tatou i pa ki te ora i runga i ta ratou inoitanga. Na reira ka inoi ahau ki tenei whare kia tu he mema wahine.
>
> Ma tenei pea e tika ai, a tera ka tika ki te tuku inoi nga mema wahine ki te kuini, mo nga mate kua pa nei kia tatou me o tatou whenua, a tera pea e whakaae mai a te kuini ki te inoi a ona hoa Wahine Maori i te mea he wahine ano hoki a te kuini.[722]
>
> There have been many male leaders who have petitioned the Queen concerning the many issues that affect us all, however, we have not yet been adequately compensated according to those petitions. Therefore I pray to this gathering that women members be appointed.
>
> Perhaps by this course of action we may be satisfied [that it is correct for women members of Kotahitanga to petition the Queen] concerning the many issues affecting us and our land. Perhaps the Queen may listen to the petitions if they are presented by her Māori sisters, since she is a woman as well.[723]

Members of the Paremata expressed sympathy for the proposal that the Kotahitanga franchise should be extended to Māori women. However, the Paremata made no decision and instead moved on to other business. Mangakāhia and others went on to found a network of komiti wāhine which operated nationally and at tribal and marae levels – though we have found no specific evidence of their operation in this district. At a national level, the komiti operated with the same formality as the Kotahitanga Paremata and debated many of the same issues. From 1894, the Paremata routinely sought input from women leaders before making decisions. The 1894 Paremata also revisited the question of female enfranchisement, and the question was raised again in subsequent years before the 1897 Paremata finally granted wāhine the vote.[724]

(6) *What was the Government's response to the 1893 Kotahitanga petition?*

After the 1893 Kotahitanga Paremata ended, the movement's leaders sent a petition to the colonial Parliament. While the Paremata had adopted Taiaroa's Bill, the petition also sought recognition for the Paremata's authority as a law-making body. Dated 27 May 1893, and signed by Te Keepa Te Rangihiwinui and 55 others, the petition opened with a declaration:

> Ko o koutou kai inoi, me nga tamariki, me nga uri o te iwi Maori nui tonu i ata koropiko, i ata rere marie ki raro i te mana o te Karauna o Ingarangi i noho mai i te tau 1835, me te tau 1840, I runga I te Tiriti o Waitangi, ka whakaurua nga Maori o Niu Tireni, ki roto ki te mana me te Rangatiratanga o Ingarangi o te ao katoa.[725]

In the official translation, this was rendered as a statement that Māori had 'acknowledged and bowed to the authority of the Crown of England since 1835', and in 1840 'by virtue of the Treaty of Waitangi' had been 'declared to the whole world as British subjects'.[726] However, the word for 'acknowledged' (ata koropiko), does not necessarily indicate subservience or that Māori 'bowed to the authority of the Crown', and nor does the term 'whakaurua' (which can be translated as inclusion or aligning with). Furthermore, as discussed earlier, Te Raki Māori clearly acknowledged the Queen's protective authority, but they saw this as distinct from the colonial Government's executive authority. In our view, it is significant that the petitioners so explicitly linked he Whakaputanga and te Tiriti, and their statement can be understood as meaning that Māori had acknowledged and aligned with the Queen of England's mana and imperial power in 1835 (consistent with their requests for protection from foreign threat) and had affirmed that alliance in 1840.

The petitioners went on to explain that they had always sought to live in peace with settlers, and through those connections to acquire knowledge and prosperity. The petitioners viewed the establishment of the colonial Parliament in 1854 as a source of trouble between Māori and the Crown: Māori had not understood that decision, they said, and had feared its consequences.[727] Petitioners reminded the Government that many of them had fought alongside the Crown during the 1860s, and without that support the Crown would have lost its authority ('kua mutu te mana o te Karauna') and been forced from New Zealand. Yet, since the wars, the colonial Parliament had established the Native Land Court and enacted laws that had caused great trouble and suffering ('nga raruraru me nga mate') to Māori.[728]

The petitioners said that Māori sought only the right to manage their own lands, in order to advance their prosperity as settlers were able to do. Year after year, they had sought just laws, with no response: 'ko nga karanga me nga inoi a matou, kia whakaorangia matou e rite ana ki te reo tangata, e wawaro ana, ano he hau.' (This was translated as: 'our prayers only sound as from afar, and are treated as the murmuring of the wind.')[729]

The Kotahitanga leaders therefore asked the House:

(1) He whakahoki mai ki nga iwi Maori te mana whakahaere i o ratou whenua me o ratou rawa katoa, me te mana whakahaere i to ratou tikanga hei oranga mo te iwi Maori me te rangimarietanga me te pai mo enei motu katoa.
(2) Me tuku mai te mana ki te Runanga e kiia ana Te Huinga Whakamana Kotahitanga Maori o Niu Tireni, hei Kawanatanga mo ratou ake ano.
(3) Kia rua nga Runanga, kia kotahi te Runanga Ariki, ko aua Ariki he mea whiriwhiri i nga tino Rangatira toto heke iho, he mea ata karanga ratou mo taua Runanga.
(4) Kia kotahi Runanga he tangata Maori he mea kowhiri mai ratou e nga iwi me nga hapu hei reo mo te iwi mo roto i taua Whare Runanga.
(5) Ma taua Runanga Kotahitanga e tuku he mana, ki nga Komiti Takiwa, o ia Takiwa, o ia Takiwa, ko aua Komiti he tangata Maori, ta ratou mahi he rapu i nga take whenua, me nga wehewehenga whenua me nga mea katoa e mahia ana e ratou i runga i te pono me te tika.

In the official record, these clauses were translated:

(1) That the right to manage our own property be given back to us, so that peace and happiness may reign throughout these islands.
(2) That the power to govern the Natives be delegated to the Federated Maori Assembly of New Zealand.
(3) That the said Assembly consist of an Upper and a Lower House. The Upper to consist of the chiefs by birth.
(4) And the Lower House shall consist of Natives who shall be elected by the different tribes to represent them in the Assembly.
(5) The said Federated Assembly to have power to appoint District Committees comprised of Maoris, who shall

> investigate titles to Native Lands, and subdivide the same, according to the rules of equity and good conscience.

The petitioners also enclosed Taiaroa's Bill, asking that it be enacted – an outcome that Taiaroa was confident of achieving on grounds that his Bills were similar to those put forward by Grey and Carroll in 1892.[730] The petition was sent to both Houses of the colonial Parliament, and to the Governor.[731] At a meeting in Wellington in August, three of the four Māori members of the House undertook to support the petition; the Southern Maori member Tame Parata declined on grounds that his constituents had not taken part in the Waipatu hui.[732]

The Legislative Council's Native Affairs Committee, which considered the petition in August, concluded that it was of a 'grave constitutional character' and referred it to the Government without a recommendation.[733] In September, the Northern Maori member Eparaima Kapa told the House that Māori were still waiting for a definite response from the Government. He said Kotahitanga leaders were seeking a direct yes or no: would the Government implement the petition or not? Yet, Kapa said, the Government's only response so far had been that it would consider 'practical' suggestions. In Kapa's view this meant nothing.[734]

Kapa said that Te Raki and Kotahitanga leaders had tried on several occasions to introduce legislation providing for Māori self-government: Hirini Taiwhanga in the late 1880s, Kapa himself in 1891, and then through Grey and Carroll in 1892. In Kapa's view, the petition was yet another occasion on which Māori had asked the colonial Parliament to enact a law providing for Māori self-government, as Māori were entitled to under the treaty, and the colonial Government had taken no action.[735]

Carroll, in response, said the Government's view was clear: it would take no action on the petition. He repeated the Government's position that it would consider any 'practical' proposals that Māori might make, but it did not accept that the treaty provided any rights that Māori did not already enjoy: 'The Treaty of Waitangi, so far as it went, guaranteed to them their lands. The Maoris at the present time owned their lands. They got their titles from the Crown.' In return for that, Māori had granted the Crown power to govern. The only departure from the treaty, Carroll said, was the Crown waiving its pre-emptive right. Carroll said that Grey's Bill was 'incomprehensible', and Taiwhanga's Bills in the late 1880s did not deliver what Māori really wanted.[736]

Carroll now appeared less sympathetic to Kotahitanga objectives than he had been the previous year, when he had given an encouraging speech at the Waitangi hui and then drafted and introduced a Bill aiming to provide for local Māori control over land titling and administration. As an Executive Councillor speaking in Parliament, Carroll was obliged to express a Government view, and the Government now appeared less willing to entertain Māori aspirations for self-government. Ballance's death was likely a factor in this, as was the determination of the new Premier, Richard Seddon, to step up the Liberal Government's land purchasing activities.[737] The Kotahitanga Paremata's stance against the Court and land sales was therefore a direct threat to the Government's objectives.[738] Carroll's comments on the treaty also suggest he was following a Government line which – despite persistent protest from Māori over many decades about their understanding of the treaty – relied entirely on the English text.

These events once again highlighted the lack of safeguards for Māori interests and treaty rights within the country's constitution and political system. Kotahitanga leaders had brought proposals to the colonial Parliament in 1892 and had been told to wait so that consultation could take place. When that consultation did not occur, Kotahitanga leaders had returned to Parliament in 1893 with detailed proposals that were grounded in the treaty and had broad popular support among Māori, yet the Government simply declined to engage; and, with just four representatives in a 74-member Legislature, Māori could do little to compel that engagement. Rather, Māori were dependent on the sympathies of the settler majority, and in particular on the views of government leaders.

Certainly, there were practical matters that would have required negotiation. If the colonial Parliament was to engage seriously with the proposal to delegate law-making

and governing powers to the Paremata Maori, there were significant questions to be worked through about the relationship between colonial and Māori authority in circumstances where Māori and settler interests overlapped.

But the Federated Maori Assembly Empowering Bill did not require full delegation of law-making powers: it sought only to empower Māori committees, overseen by the Paremata Maori, to take responsibility for land titling. This was not dissimilar in principle to what Ballance had promised Māori during the 1880s,[739] what the Native Land Laws Commission had recommended in 1891 (section 11.4.2(5)), what Carroll and Rees had proposed in their Native Committees Act 1883 Amendment Bill (section 11.5.2(4)), and what Ballance had promised to consult on during the 1892-to-1893 recess. The Government did not engage on this proposal, and nor did it engage on the underlying issues raised in the petition: the destructive effects of the Native Land Court and land alienation, and the rights of Māori to self-government.

(7) *How did Te Raki leaders respond to the Government's rejection of the 1893 petition?*

At the Kotahitanga Paremata at Waipatu in April 1893, some Te Raki rangatira had advocated for Māori to withdraw from the House of Representatives. Pene Tāui of Ngāti Rangi had suggested that Kotahitanga leaders petition the colonial Parliament asking for the repeal of the Maori Representation Act, while other Te Raki rangatira suggested a temporary boycott.[740]

Their reasoning was that the Crown regarded four members as sufficient to protect Māori interests, and would never change its view so long as Māori continued to participate in the law-making process. Other rangatira argued that it was better for Māori members to remain, since the colonial Parliament would continue to legislate for Māori whether they were present or not. The Kotahitanga Paremata did not come to a final resolution, but did agree that any future Māori members of the House should represent Kotahitanga.[741]

Kotahitanga leaders renewed their criticisms of the colonial Parliament in August 1893 when the Native Land Purchase and Acquisition Bill was introduced. This Bill was aimed at opening up the remaining seven million acres of North Island Māori land and proposed an element of compulsion: specifically, under the Bill's provisions, the Government could select areas of land it wanted to open for settlement and require Māori landowners to sell or lease.[742]

Kotahitanga leaders expressed their opposition to the Bill in a petition to the colonial Parliament.[743] They also sent a deputation to meet the Governor, the Earl of Glasgow. Seddon, who had recently appointed himself Native Minister, also attended at the Governor's request. As was often the case, Te Raki rangatira were prominent in the meeting, where they argued that this and other Bills affecting Māori land were being rushed through Parliament without proper consultation.[744]

Eparaima Kapa (who represented Te Raki Māori in the colonial Parliament and Te Aupōuri in the Kotahitanga Paremata) said it was 'quite useless for native members to raise their voices in the House', because they were consistently outvoted. He and Western Maori member Hoani Taipua had therefore resolved to boycott the consideration of this and other Māori land Bills by the Native Affairs Committee 'lest their own countrymen should accuse them of assisting to pass the Bills they were powerless to improve'.[745]

At the same meeting, Kotahitanga leaders once again framed their concerns in constitutional terms. The former member of the House Wī Parata argued that Governor Hobson's 1839 instructions, as well as the treaty and the Constitution Act, had provided for Māori self-government. Yet the Crown's policies since the establishment of the colonial Parliament in 1854 had been 'a total departure' from those earlier policies.[746] Although Governor Glasgow said his powers were now 'nominal', he undertook to inform the Secretary of State in London and suggested that the colonial Government might also listen to the concerns of Kotahitanga leaders.[747] As discussed in chapter 7, the Governor did retain some residual power to reject Ministers' advice, but those powers could only be used in rare circumstances; the Colonial Office had updated its instructions to Glasgow in September 1892 to clarify this point.[748]

Eparaima Mutu Kapa, who was elected Northern Maori member of the House of Representatives in 1891. Kapa followed Taiwhanga by introducing a Native Land Administration Bill to the colonial Parliament, but his Bill, like Taiwhanga's, was never debated in the House.

Kapa asked the Premier to visit the north and hear Māori views first-hand before making any decisions,[749] but the Government pressed ahead. The Native Affairs Committee did make some amendments to the Native Land Purchase and Acquisition Bill – by replacing compulsory sale or lease with compulsory negotiation. While this was a significant change, a simple majority of owners could opt to sell, irrespective of the wishes of remaining owners.[750] The Act was mainly aimed at other districts but nonetheless was significant given that it came so soon after Kotahitanga had raised concerns about land retention.[751]

In response to these developments, leading rangatira from the Bay of Islands, Hokianga, Whangaroa, and Kaitāia met in October 1893, resolving that they would not stand a candidate at the next election due to the unfairness of the colonial political system. They decided that 'the Treaty of Waitangi is now null, for it is clearly mentioned in that treaty that the natives were to have full control of their lands whereas at present the Government have [control]'. One rangatira said the Queen had 'two hands – the right for the Europeans and the left for Maori', symbolising that the colony's laws and political system discriminated unfairly against Māori.[752]

It is not clear what changed between that meeting and the election in December, but three Kotahitanga-aligned candidates stood for Northern Maori at the election. Notably, they were from neighbouring tribes. Heke of Ngāpuhi, then aged 26, won the electorate from Poata Uruamo (Ngāti Whātua) and the incumbent, Kapa of Te Aupōuri.[753] This was the first Northern Maori election in which women could vote. According to newspaper coverage, women attended candidate meetings throughout the Bay of Islands, Hokianga, and Kaipara, and whole families visited polling booths on election day. Of 59 votes cast at one Auckland booth, 25 were by women.[754]

Members of the Kotahitanga upper house were also elected to Eastern and Western Maori.[755] The Kotahitanga Paremata continued to debate the role of the Māori members of the House of Representatives. Although there was a further call in 1895 to boycott the House, the Paremata resolved to keep sending representatives until such time as its own authority was recognised.[756]

(8) *What was the purpose of the Premier's visit to the north in 1894?*

The strength of opposition to the 1893 land laws convinced Seddon that he needed a better understanding of Māori perspectives before his Government could press ahead with its land settlement plans. For this reason, he

and Carroll embarked on a tour of the North Island Māori communities during March and April.[757]

According to the official record, the Government aimed to 'push civilisation and settlement' into remaining territories where Māori retained significant lands – but it also sought to do so fairly, in a manner that would overcome Māori resistance and bring Māori and settlers closer together. To this end, the Premier visited Māori communities along the Whanganui River; in Te Rohe Pōtae, Waikato, and neighbouring Ngāti Tūwharetoa territories; and in parts of this district.[758] According to Seddon's biographer, Tom Brooking, the Premier left Wellington as a 'bullying colonialist' who regarded Māori as a dying race in possession of vast, unused estates, and returned with his views somewhat modified – though his Government nonetheless subsequently pushed ahead with a large-scale land purchasing programme.[759]

In this district, Seddon held meetings at Porotī, Waiōmio, Waimate, and Waimā. Rangatira at these hui questioned Seddon about local authority representation, taxes, land disputes about 'surplus' lands and old land claims (see chapter 6, section 6.8.2), the Native Land Court, the Native Land Purchase and Acquisition Act 1893 (see chapter 10, section 10.3.2), and the constitutional relationship between Māori and the colonial Government.[760] As he did in other districts, Seddon encouraged Te Raki Māori to make lands available for settlement. He told the Porotī hui that the growing settler population made it 'imperative' that Māori offer lands for sale or lease. He said that Māori might deal with lands through tribal committees or individually, so long as the lands were opened up.[761] At Waimā, he said that pressure from settlers was building so quickly that Māori must give way or else 'disaster will be bound to follow' and Māori would be responsible. The Government, he said, was 'following on the lines of the Treaty of Waitangi in a colonising spirit, when we say that the title to the land must be ascertained, and that the land must be utilised'.[762] Seddon's emphasis on the importance of using land would become a common Liberal refrain.

At Waiōmio, Wiremu Pōmare, Maihi Parāone Kawiti, and other rangatira invited Seddon to attend the next Kotahitanga Paremata at Pākirikiri (East Coast), where they would lay out their grievances and proposed solutions. Seddon responded by referring to the Kotahitanga Paremata as 'absolutely powerless', on the basis that it could pass no laws and give no redress for Māori grievances:

> There can only be one Parliament, and we can recognise only the representatives elected to that Parliament. I may read what takes place at this native meeting in Gisborne, but what will weigh with me more will be the utterances of your members in Parliament in respect to questions affecting the Native race . . . If you rely upon your representatives in Gisborne to grant you redress you will be relying on a broken reed . . . they will do their best, but the responsibility for governing the country must rest with the Parliament.[763]

He also told the hui there was 'one Queen . . . one sovereignty, the sovereignty which your forefathers agreed to accept when the Treaty of Waitangi was signed', and 'one law, which is just as binding on the Maori as upon the pakeha'.[764] He did not shrink from taunting the Ngāpuhi leaders, saying they had fallen so far that other tribes now had to speak for them, and their refusal to raise specific grievances during the hui forced him to conclude that they must be 'a contented, well-satisfied and happy people'. Pōmare, in response, said it was well known that Te Raki Māori had grievances, but they would express them through Kotahitanga.[765]

At Waimā, after subjecting the Premier to detailed questioning about the Native Land Purchasing and Acquisition Act,[766] rangatira explained that the Kotahitanga Paremata would develop and submit new legislative proposals for adoption by the colonial Parliament.[767] According to the official record, Rē Te Tai said he had a 'prayer' to Seddon and Carroll, asking them to sanction any Bill to which the Kotahitanga Paremata unanimously agreed.[768]

Seddon encouraged Kotahitanga leaders to meet and then place their proposals before the colonial authorities, but warned that the Kotahitanga Paremata should not ask for law-making powers. He said that the colonial Parliament was '[as] open to the Native race as it is open to the pakeha', and in order to 'obtain justice', Māori needed only to agree among themselves and then make

'respectful' submissions through their own elected members.[769] He continued:

> This is what the pakehas do – they hold their meetings, they have their associations, they discuss each question affecting both races, they come to conclusions, and the members are the mouthpieces of the pakeha and those who have held those meetings. It is with that object in view that I am here in person. I want to remove the false impression that has gained ground here year by year that there was no redress for the Natives from the New Zealand Parliament. I want them to believe that the Parliament is their friend if they go the right way to work . . .[770]

Any Bill that was 'respectfully worded' would be introduced and given a first reading; any that improved on existing laws would receive due consideration and would be likely to pass; but any that did not benefit the colony or was 'unconstitutional' would be thrown out. By this, we understand Seddon to mean that he would not accept any proposal that undermined the authority of the Crown or the ability of the colonial Parliament to exercise authority over Māori. This was consistent with the Liberals' view of the treaty as a land guarantee, but not with the Te Raki Māori understanding of the treaty as an agreement that provided for Crown and Māori spheres of authority. In this regard, the Premier said:

> If in your Bill you ask to have a Parliament of your own – to ignore the present Parliament and to set aside the authority of the Queen – I tell you now at once it would not be allowed to be introduced. There can only be one Parliament and one authority in this country and that is the authority of Her Most Gracious Majesty Queen Victoria. Your forefathers ceded this, it was in your interests, and it is in the interest of us all to maintain that position.[771]

Having made this point, Seddon repeated that the colonial Parliament was open to Māori and was their only possible source of redress, though they must accept the will of the majority. If that Parliament did not accept what Kotahitanga leaders wanted, then 'as loyal subjects of the Queen and as colonists you must submit with good taste, and believe it was all done for the best'.[772]

While the Premier did not see the treaty as Te Raki Māori did, his experiences at the hui did leave some impression. Seddon now had first-hand experience of Māori communities and knowledge of the range of issues they faced. He was impressed by the rangatira he met and their detailed knowledge of the colony's land laws. The northern hui reinforced the strength of Ngāpuhi and Te Rarawa determination to work collectively with other tribes through the Kotahitanga Paremata, while also reassuring the Premier that they would seek approval from the colonial Parliament for any legislative proposals. Seddon's subsequent negotiations, particularly in Te Urewera, further reinforced the determination of Māori leaders to retain their autonomy and rights of self-government. Although the Government would soon press ahead with its land purchasing plans, Seddon's experiences during this tour also began to open him to the possibility of Māori self-government, at least at a local level under the Government's authority.[773]

(9) *What was the Government's response to the Native Rights Bill 1894?*

On their way back to Wellington, Seddon and Carroll passed through Gisborne, where Kotahitanga leaders were preparing for the next Kotahitanga Paremata. While we are not aware of any formal meeting, the leaders did attend a banquet together. The *Poverty Bay Herald*, seemingly relying on an official briefing, repeated Seddon's warning that he and his Government would never grant legislative powers to the Kotahitanga Paremata. The newspaper did, however, report favourably on Kotahitanga proposals to amend the colony's land laws and it suggested that the colonial Parliament might be willing to adopt those proposals.[774]

Kotahitanga leaders were not deterred by Seddon's warnings. Meeting at Pākirikiri on the East Coast, they strongly endorsed Hōne Heke Ngāpua's Native Rights Bill which sought to grant the Kotahitanga Paremata

authority to make laws for Māori people.[775] Heke subsequently introduced his Bill to the colonial Parliament. In its preamble, the Bill said that many laws affecting Māori were 'inadequate and unjust', retarding development of the colony and causing great loss among Māori, and for that reason settlers and Māori alike would benefit if Māori were able to make their own laws. The Bill therefore contained two substantive clauses.[776] They read:

> 2. A Constitution shall be granted to all the persons of the Maori race, and to all persons born of either father or mother of the Maori race who are or shall be resident in New Zealand, providing for the enactment of laws by a Parliament elected by such persons.
> 3. Such laws shall relate to and exclusively deal with the personal rights and with the lands and all other property of the aboriginal native inhabitants of New Zealand.[777]

Whereas the House had not debated Hōri Kerei Taiaroa's 1893 Bill, it did allow an introductory debate for Heke's. Submitting his legislation, Heke said it had widespread support among Māori; more than 7,000 had signed petitions asking that it be adopted. He read the full texts (in English) of the 1835 Declaration of Independence and the Treaty, both of which, in his view, justified a right of Māori self-government. He also read an 1886 letter from King Tāwhiao to then Native Minister Ballance, seeking powers similar to those Heke now claimed for all Māori.[778]

Heke told the House that rangatira who had signed te Tiriti had made it clear that they had no wish to be 'harassed by any other Power, or have their own power trodden down by a foreign Power'. They had consented only after his uncle Hōne Heke signed, and only on the basis that no law would ever be passed that contravened the treaty.[779] According to the *New Zealand Parliamentary Debates*, Heke said,

> Section 2 of that Treaty gave the Natives full right to the soil of New Zealand, and . . . it was only natural for the Natives to suppose that they ought not to be harassed by any laws passed by the House in respect of their lands. In fact, the Natives, as far as he knew, were under the impression that their lands were not to be disturbed in any shape or form.[780]

Yet, Heke said, the colonial Parliament had persisted for many years in enacting laws that impinged on these rights. Māori leaders, he asserted, had consistently sought to have their treaty rights recognised and upheld, but to no avail. Although Britain had given assurances that the treaty remained in force, Heke continued, settlers and their political representatives in New Zealand took the view 'that the Treaty was nothing at all'.[781]

In his assessment, Parliament had either deliberately or negligently enacted law after law that brought disaster to Māori, and it was therefore only reasonable that Māori be granted sole rights to enact laws for themselves. Section 71 of the Constitution Act had recognised exactly that right when it provided for districts in which Māori would govern themselves according to their own laws and customs. Heke assured the House that the Bill had widespread support from Māori, and would, if enacted, resolve 'the Native question' – a term that settler politicians frequently used as shorthand for tensions between Māori and the colonial Government, and in particular tensions over land settlement. If the Bill was not enacted, Heke said, Māori would 'make their last effort to go to England' to appeal for justice.[782]

Seddon did not join the evening debate, and it seems that very few government representatives were present.[783] It was left to James Carroll to present the Government's view. Carroll rejected the Bill and all of Heke's arguments. He repeated the government line that the treaty did no more than make Māori into British subjects and guarantee them possession of land. At no time, he said, had Parliament legislated to remove those rights, except by removing the Crown's right of pre-emption, which had then necessitated the establishment of the Native Land Court. Echoing comments that Seddon had made during his visit to the north, Carroll said that the colonial Parliament had passed laws aimed at Māori advancement and progress, but Māori 'took up a negative position, and did not appreciate anything done by the Legislature, or

anything done by the Europeans, or by those who represented them in Parliament'.[784] Heke's proposals, he said, were 'vague, indefinite, and outside of practical politics'; it was best if Māori were freed from the 'delusion' that they might obtain a right to legislate for themselves.[785]

As we have noted elsewhere, the Liberals' view of the treaty differed markedly from that of Kotahitanga leaders, and that of Te Raki Māori leaders throughout the years since 1840. Te Raki leaders had made plain their understanding of the treaty at hui over many decades in letters, protests, petitions, and by other means, and Heke in his speech to Parliament had continued in this tradition, carefully explaining that rangatira who signed te Tiriti did so in order to protect their lands and authority from external threat, in the belief that their autonomy would not be threatened, and they would not be subject to foreign laws. Carroll's views reflected the political reality of 1890s New Zealand: a Pākehā-dominated Parliament would not accept any challenge to its own authority as the colony's Legislature, and nor would the Government of which Carroll was a part.

Among other members of the House, the opposition leader Robert Stout said that the treaty had been regularly violated, and while he supported some degree of local self-government for Māori over their lands, he did not believe it was possible to have two national law-making bodies or to establish autonomous Māori districts when the populations were increasingly intermingled.[786]

Other members likewise rejected Heke's proposals. Some believed that Māori should have greater community control over their lands, while others supported rapid assimilation of Māori into settler society, mainly through the continued individualisation of Māori land interests. The Clutha member Thomas McKenzie was a rare exception, offering to vote for the Bill because 'the Maoris could not possibly make a worse mess of their own affairs than had been made of them by the several European administrations of the colony'.[787]

After a fairly brief debate (nine members spoke), the House adjourned for supper. Only a handful of members returned, leaving the House without a quorum, ending the debate and killing the Bill.[788]

In our view, the introduction of the Native Rights Bill provided a significant opportunity for the colonial Government to engage with Kotahitanga leaders about their treaty rights, and in particular their rights to autonomy and self-government. Certainly, the Bill raised practical and constitutional questions that would have required further discussion. Although the proposed law-making authority was restricted to 'personal rights . . . lands and all other property', the Bill did not explain how that power might operate where the Māori and colonial spheres overlapped, as they inevitably would; for example, over rating of Māori lands, control over public works, management of shellfish beds and fishing grounds, and resolution of intercommunity disputes. Resolving these issues would have been complex in this district and elsewhere, but with good faith on both sides, in our view the issues were not insurmountable.

Seddon, in his northern meetings, had asked that Kotahitanga leaders be respectful of the Crown's authority and that of the colonial Parliament, and he had warned that the Government would not support any measure in which the Kotahitanga Paremata sought 'a Parliament of your own' in which they would 'ignore the present Parliament and . . . set aside the authority of the Queen'.[789] We consider that the Native Rights Bill was sensitive to these terms. It did not directly challenge the authority of the Queen or the colonial Parliament, and was therefore respectful of the kāwanatanga sphere. In fact, it sought from the colonial Parliament a delegated authority under which the Crown would recognise the Paremata's right to legislate on Māori affairs. The Bill was certainly consistent with article 2 of the treaty, which provided for Māori autonomy and self-government under institutions of their choosing.

The Bill also reflected the wishes of Māori from this district, as Seddon later acknowledged when he told the House in October that northern Māori were 'home rulers' who wanted 'to establish Native rights, to have a Parliament of their own, to govern themselves'.[790] This was a reference to the Irish Home Rule movement, which sought self-government and a national parliament for Ireland during this period. In the *He Maunga Rongo*

Left and below: **A Kotahitanga Paremata hui at Pākirikiri near Gisborne in 1894. It was at this gathering that Kotahitanga leaders endorsed Hōne Heke Ngāpua's Native Rights Bill.**

report, the Tribunal described the movement as 'a very significant model of political and national pluralism'. The Irish Home Rule Movement was widely discussed, and many New Zealand politicians were sympathetic to its aspirations. The Tribunal noted that in the New Zealand context, Home Rule 'applied to a distinct people living under their own customs and laws, rather than a separate geographical territory or "state" such as Ireland'.[791] Through proposals such as Heke's Native Rights Bill, the language of Home Rule that was 'so acceptable to [the] New Zealand government in the 1890s, was adopted by Maori and thrown back in the faces of settler politicians'.[792] Yet, the colonial Government did not seriously engage in discussion about the Native Rights Bill or the underlying Kotahitanga ambitions. On the contrary, Seddon insisted that Māori recognise the authority of the colonial Parliament over them, even though that was not and never had been part of the treaty agreement.

Although Heke's Bill sought a broad law-making authority for the Kotahitanga Paremata, he and other Kotahitanga leaders were mainly concerned with Māori community authority over Māori lands. To this end, at its April meeting the Kotahitanga Paremata had approved another Bill, drafted by Wī Pere, the Eastern Maori member of the House and a member of Te Whare Ariki. Pere's Native Lands Administration Bill 1894 was considerably more modest than Heke's. It proposed to enable district native committees, already empowered by the Native Committees Act 1883, to determine relative interests in Māori land. Then, elected block committees would farm, lease, or sell the lands in accordance with owners' wishes.[793]

The most novel feature of Pere's Bill was that it specifically addressed the constitutional relationship between colonial and Kotahitanga spheres of authority. It provided that the colonial Parliament could enact future amendments to the Bill only with the support of Kotahitanga.[794] In this way, the colonial Parliament would have retained constitutional supremacy while delegating to Māori the practical authority over Māori lands. Pere introduced his Bill to the colonial Parliament in July 1894, but it was never debated.[795] This, too, was a point at which the Crown rejected an opportunity to engage in dialogue with Kotahitanga leaders over Māori self-government and the protection of Māori lands. By October, according to the Western Maori member Ropata Te Ao, more than 10,000 Māori had petitioned Parliament seeking the enactment of

Influential Ngāpuhi leader Hōne Heke Ngāpua of Ngāti Rāhiri, Ngāi Tāwake, Ngāti Tautahi, Te Matarahurahu, and Te Uri o Hau. Heke was the grand-nephew of Hōne Heke Pōkai and was elected the member of the House of Representatives for Northern Maori in 1893. He served until 1909, when he died of tuberculosis, aged only 40. A significant figure in the Kotahitanga movement, he worked to promote legislation for the recognition of Māori treaty rights and the establishment of a Māori parliament. During the Dog Tax War of 1898, he personally intervened, travelling on horseback from Kawakawa to Otātara to avert the conflict. Heke was held in high regard by both Māori and Pākehā. Upon his death, Sir James Carroll and other Māori members of Parliament returned him to Kaikohe for burial, and some 8,000 people came to mourn his passing.

the two Kotahitanga Bills.[796] Te Ao urged the Government to adopt the Kotahitanga Bills in preference to its own, but it chose not to. In short, as the historian Dr Grant Phillipson has written, 'the government was not yet ready to consider an accommodation with Kotahitanga.'[797]

While the colonial Parliament did not seriously engage with the two Kotahitanga Bills, in October 1894 it did enact the Native Land Court Act. Among other things, that Act restored Crown pre-emption over Māori lands throughout New Zealand, providing support for the Government's land purchasing ambitions (see chapter 10, section 10.3). Seddon vowed at this time to 'break the annual record for Maori land purchase'.[798] More than 6,000 Māori signed a petition opposing this measure, which Heke described as 'nothing other than legalised robbery' because it removed private competition from the land market and therefore would allow the Crown to acquire Māori lands at below-market price. He argued in Parliament that the Crown could not restore pre-emption without Māori consent, and urged it to instead reconsider Pere's Bill.[799] Carroll, having opposed pre-emption as a member of the 1891 Native Land Laws Commission, now argued in favour, presenting it as an alternative to individual free trade.[800]

The Native Land Court Act also provided for Māori landowners to form incorporations in order to sell or manage their lands. This might, at least in principle, have been consistent with the Kotahitanga objective that Māori should have collective authority to manage their territories. However, the measure did not fully empower owners to do so and seems rather to have been aimed at streamlining the alienation of Māori lands. Indeed, by this time many settler newspapers viewed purchases from incorporations as more efficient than purchase from individual owners.[801]

During the period from 1 April 1894 to 31 March 1898, the Government acquired nearly 2.3 million acres of North Island Māori land – about one-third of what had remained in Māori possession.[802] In this district, a boycott of the Native Land Court and organised resistance to land sales (discussed in chapters 7, 9 and 10) meant that the impact was significantly less. The historian Dr Barry Rigby recorded Crown purchases in this district totalling 38,083 acres during the period 1 April 1894 to 31 March 1898, amounting to about 1.8 per cent of the inquiry district. More than half of that was in the Mangakāhia taiwhenua, where a few large purchases accounted for the bulk of the land sold.[803]

After Tāwhiao died in August 1894, Kotahitanga made overtures to his successor King Mahuta. Raniera Wharerau and Pene Tāui were among a delegation of Kotahitanga leaders who visited the Kīngitanga Parliament, Te Kauhanganui, in May 1895, seeking Mahuta's signature on the Kotahitanga Pledge and his commitment to work together in common cause. The Kotahitanga leaders were careful to convey that the pledge did not affect the King's mana: he stood as King in the tradition of Te Wherowhero and Tāwhiao. The Kotahitanga leaders said that Mahuta's signature was being sought in order to unite all Māori so they could reclaim their 'mana motuhake' (which we translate as their independent authority). Mahuta's view was that, in the spirit of unity, Kotahitanga could as easily align behind him – and so the two movements continued to pursue their goals separately.[804]

(10) *What were the Government's responses to Heke's Native Rights Bill in 1895 and 1896?*

The Paremata met at Ōhinemutu in 1895 and agreed to send Heke's Native Rights Bill back to the colonial Parliament for further consideration. Kotahitanga leaders were aware that Parliament was unlikely to pass the Bill: Wī Pere said the Bill would not be enacted until all Māori land was alienated, by which time there would be no territory left for it to apply to. Nonetheless, Kotahitanga leaders sought to test the Government's resolve. Heke spoke with newspapers in an attempt to win settler support.[805] The Native Rights Bill was reintroduced in October 1895 but was never debated.[806]

In June 1896, Heke tried a third time. Reintroducing the Native Rights Bill, he told the House that every Act of Parliament affecting Māori lands was harmful to Māori and, by its nature, was in violation of the treaty.[807] The Bill expressed the views of the Kotahitanga parliament, which represented the vast majority of Māori in both islands.[808]

By this time, more than 6,000 Māori had petitioned the House in support of the Bill.[809]

Māori electorate members spoke in favour, but other members were opposed.[810] As had been the case in the preceding two years, the principal argument against the Bill was that it was impracticable, on grounds that the country could not have two parliaments.[811] Seddon asked Heke to withdraw the Bill without debate, since it would inevitably be defeated and that would inflame Māori opposition to the Crown. The Premier said that a Māori parliament could not possibly serve Māori interests, and argued that the colonial Government 'must take up a firm attitude' that 'the mana of the Queen must reign supreme from one end of the colony to the other'.[812]

While Seddon rejected Heke's proposal, he hinted that some form of local self-government might be possible, if only to provide 'something for the Natives to do', as he put it.[813] Seddon evidently meant an arrangement similar to the Urewera District Native Reserve Bill, which was then before Parliament.[814] As finally enacted in October 1896, this Act established a 'Native reserve' of some 656,000 acres, a commission with a majority of Tūhoe members to determine land titles within it, committees to manage hapū lands, and a general committee to provide local self-government for the Urewera district. Although the Act did not specify the general committee's powers, this being left to the Governor in Council, Seddon explained that the Act was intended to leave Tūhoe 'to manage their own affairs'. By 'seeing they are not interfered with and no European allowed in their midst, they can govern themselves in accordance with their own traditions'.[815]

The Act had its origins in Seddon's visit to Te Urewera in 1894, when Tūhoe leaders asked the Premier to exclude the Native Land Court from their core territories and instead to recognise the mana of their organising committee, Te Whitu Tekau. Seddon promised to negotiate over these matters, but before any negotiations had taken place, the Government initiated trig and road surveys through Tūhoe lands, provoking Tūhoe leaders to defend their authority by disrupting the surveys.[816] In April and again in May 1895, the Government sent police and troops into the district to prevent any further disruption.[817] Tensions escalated, and war was only narrowly averted after Carroll is believed to have promised to set aside Te Urewera as a reserve under Māori authority, and to have acknowledged that the time had come for the long-delayed Te Urewera delegation to go to Wellington.[818] For the Government, this conflict highlighted the risks arising from its Māori land policies and opened Ministers up to the possibility of a compromise arrangement in which Māori would exercise local self-government under Crown authority.

During 1895, Seddon and Carroll negotiated with Urewera leaders, reaching agreement that the district would be established as an inalienable reserve governed by Māori through a district committee.[819] Seddon had entered these negotiations viewing Te Urewera as a special case: a district that had almost no settlement, was essentially self-governing, and above all, it seemed to him not to be a region where there would be Pākehā settlement. Acknowledging the reality of local self-government, in his view, was a means towards obtaining recognition of the Crown's overarching authority.[820] Furthermore, in Seddon's judgement, the Act would not impede settlement, as it applied to lands that settlers would not want.[821] Tūhoe leaders, like those of Kotahitanga, reasoned that recognition of the Crown's authority was a necessary step towards protecting and securing their rights of self-government. In following this strategy, Tūhoe leaders followed advice they had received from Te Kooti: 'It takes the law to put the law right.'[822]

The content of Seddon's speech on Heke's Native Rights Bill 1896 – his concern about inflaming Māori views, his willingness to consider local self-government outside of Te Urewera, and his attempt to calm settler members by making light of the powers that would be granted to Māori – all suggest that Kotahitanga pressure was beginning to influence the Government's views.

Heke declined to withdraw the Native Rights Bill, on the grounds that it had been framed by the Kotahitanga assembly, which sought an answer. The Bill was defeated by a margin of 31 to seven.[823] The Crown's failure to seriously engage with the Native Rights Bill, or at least its objectives, was a deliberate rejection of the opportunity to provide for an effective Māori voice in the making of the

colony's laws. The Kotahitanga assembly had already been operating for several years and had shown itself capable of developing legislative proposals. What remained to be worked out was the relationship between Māori and colonial assemblies, including questions about their respective jurisdictions and how any differences would be resolved. In our view, these were matters that were entirely possible to resolve. However, the Crown did not attempt to negotiate. Instead, it rejected the proposal for recognition of the Kotahitanga Paremata out of hand, maintaining barriers to the exercise of tino rangatiratanga.

(11) *Why did Kotahitanga and the colonial Government negotiate for the establishment of Maori Councils and Land Councils during the period 1896–1900, and what were the results?*

From the mid-1890s, there were noticeable changes in Kotahitanga priorities and in the Government's attitude to Māori self-government. The colonial Parliament enacted legislation in 1896 providing for a form of local self-government in Te Urewera, and from 1897 until the end of the century, the Government negotiated with Kotahitanga and other Māori leaders over legislation for the rest of the country.

Several factors combined to influence the Government towards this change of course and to make it politically acceptable to the Government's settler constituency. By 1895, the scale of Māori support for Kotahitanga and Kīngitanga,[824] the success of the Native Land Court boycott, and escalation in the Urewera survey dispute all created pressure for the Government to accommodate Māori views. From 1896, some leaders within Kotahitanga led a move to moderate their objectives, with a focus on land retention and local self-government within the colonial system. This shift made a political accommodation more palatable for the Government and its settler constituents.

At the same time, Māori influence on Government policy was increasing. The closeness of the 1896 election left Māori members of the House with more leverage than they had previously experienced.[825] In 1898, Carroll was appointed Native Minister, and he influenced the Government towards a 'taihoa' policy aimed at supporting Māori to retain and develop their remaining lands. Over the following years, the Young Maori Party, a group of young professional men who worked for social and economic reforms, alongside a commitment to the continuation of Māori language and culture, would increasingly influence both government and Kotahitanga policies.[826]

By the late 1890s, the Government had largely achieved its land purchasing objectives.[827] Increasingly concerned about landless Māori, the Government temporarily halted its purchasing of Māori lands in 1899. In 1900, the colonial Parliament enacted the Maori Councils Act, which provided for local self-government over health and social matters; and the Maori Lands Administration Act 1900, which handed control over land titling and alienation to district Maori Land Councils.

These institutions were not what Kotahitanga or the Kīngitanga sought in terms of Māori self-government, nor what they believed they were entitled to under the treaty. Nonetheless, the two Acts marked a concession that allowed Māori some degree of control over their lands and affairs – and they reflected a compromise between Māori aspirations and what was acceptable to the colonial Government. We turn next to consider how this compromise came about.

(a) How did negotiations between the Government and Kotahitanga leaders develop between 1896 and 1897?

While the Government was not willing to recognise the Kotahitanga Paremata, its experience in Te Urewera had made it open to exploring options for a form of local self-government elsewhere. Through their many protests and acts of resistance, Māori leaders had persuaded the Government that their concerns needed to be taken seriously; failing to do so, Ministers understood, could undermine the Government's land purchasing objectives and create risks of conflict. Seddon and other colonial leaders reasoned that it was better to recognise local Māori authorities within the colony's system of government than have a powerful, autonomous Māori parliament operating outside colonial law. As in Te Urewera, they offered concessions partly to provide for Māori self-government and partly to contain it.[828]

In August 1896, while the Urewera legislation was before the House, the Government convened a conference of Māori leaders in Wellington. Some 200 attended from all parts of the country. The conference passed a resolution asking that block committees be empowered to manage Māori lands, and Seddon expressed support, saying that the time had arrived when Māori should govern themselves 'under certain circumstances', including the management of land. Past Governments had made mistakes, he said, by not granting Māori the responsibility that was warranted.[829]

This was a significant step, and heralded the beginning of a series of negotiations between the Government and Māori leaders which would continue until legislation was passed in 1900. As we will see, these negotiations would escalate tensions within Kotahitanga and ultimately divide the movement. Whereas some Kotahitanga leaders remained resolute in their determination to achieve full autonomy from the colonial Government, others were more willing to compromise in order to secure an agreement and protect their remaining lands.[830] During this period, Te Raki leaders and delegates, including Heke, continued to advocate for the recognition of an autonomous Māori parliament.[831]

These divisions were evident among the Māori members of the House, who gave the Urewera District Native Reserve Act a mixed reception. The Eastern Maori member Wī Pere described it as 'the first time on record in New Zealand' that the colonial Parliament had adopted a Bill under which 'the Maori owners of the soil are allowed to manage their own affairs'.[832] In Heke's view however, the Act did not provide sufficient protection for article 2 treaty rights. While he agreed with Seddon that Tūhoe had a right to govern themselves, the Act was 'a sham' and 'simply a shadow' which did not guarantee any right of self-government, but left it to the Governor in Council to make final decisions about the extent to which Te Urewera would be self-governing. Seddon had promised Tūhoe 'the full rights conferred upon them by the Treaty of Waitangi', but the Act did not confer those rights. Rather, Heke said it was intended to 'entrap' Tūhoe, to bring them 'a certain distance' towards acceptance of Crown authority before imposing on them the colony's laws, taxes, and rates.[833] In *Te Urewera* (2015), the Tribunal found that this legislation was consistent with the treaty and provided a basis for Māori self-government under Crown protection, though the Crown later 'totally failed' to honour its promises or protect Tūhoe mana motuhake.[834]

The tensions within Kotahitanga were again evident by 1897, a year that also marked 60 years since Queen Victoria's coronation. The historian Dr Donald Loveridge described the first session of the colonial Parliament as 'unusual', in that it was largely concerned with New Zealand representation at the Queen's Jubilee celebrations in London later in the year.[835] For Māori, who continued to view the treaty in personal terms, this was a significant milestone. During the debate on 'Congratulations &c on the Queen's 60th Year of Reign', Heke and other Māori members offered their own congratulations to Queen Victoria on the significant occasion. Speaking in English, Heke expressed 'every feeling of loyalty' towards the Queen, and explicitly recognised that 'by the articles of the Treaty of Waitangi we have recognised her sovereignty'. The treaty, 'the contract made between Her Majesty's representative and the Native chiefs . . . in 1840', lay at the heart of his kōrero. He drew a clear distinction between the Queen and her Governments – and indeed, between the Queen and the Crown. Referring to the Northern War, he said that his grand-uncle Hōne Heke Pōkai fought for reasons that 'were those of a patriotic man who felt a wrong had been committed against his people'. The feeling of 'disloyalty' amongst the Natives who opposed Her Majesty's troops in the early days was on account of the departure from the contract made in the treaty. Those Māori who took up arms recognised that 'some of the articles of the treaty had been broken by the rulers in New Zealand, representing the British Crown', and they had the right to protest. Europeans, however, had not understoood this. The Māori view was that the treaty was sacred and must be honoured, but '[i]t was broken, and that was the cause of the wars'.[836]

The speech is significant for its stated recognition of the Queen's sovereignty: the first time, as far as we are aware, that a Ngāpuhi leader had used the English term

'sovereignty', as opposed to 'mana'. But he referred more often to the feelings of 'loyalty' of himself and his people to the Queen; that is, to the kind of relationship they felt they had with the monarch.

In April 1897, the Paremata met at Pāpāwai in Wairarapa. Responding to the Government's rejection of the Native Rights Bill, Kotahitanga leaders considered a proposal to send Heke to London early the following year, in a last attempt to persuade British authorities to intervene.[837] They also approved an address for the Queen, drafted by Heke, to be sent to London for the Jubilee celebrations in June 1897.[838] However, it appears the message was altered before it was sent, possibly by Wī Pere.[839] The final message, after acknowledging the Queen's 'mana' and protection, asked her to approve a law prohibiting sale of Māori lands. They requested that 'the land remaining to your Maori people could be reserved to them forever as a perennial source of life'. Having lost so much land, the message said, Māori now wanted to cultivate what they had, or lease any excess to settlers.[840]

One of the Wairarapa leaders, Hoani Parāone Tūnuiārangi, was part of the official delegation to the Jubilee celebrations in June. He met with the Secretary of State to discuss the petition. While the British government followed its usual course by declining to intervene, Tūnuiārangi's actions achieved their objective, which was to increase pressure on the New Zealand Government to cease land purchasing. Loveridge observed that the request for Māori lands to be reserved from sale was well received in the New Zealand press.[841] The message also created division within Kotahitanga. On one hand, many leaders, including Heke, saw it as inappropriate for such a significant ceremonial occasion; on the other, the message had pre-empted the proposed delegation to London in 1898 and had publicly committed Kotahitanga leaders to a policy based on land law reform, when many in the movement also sought constitutional change.[842]

Seddon arrived back in New Zealand in September 1897.[843] That October, Kotahitanga leaders met again at Pāpāwai, before sending a delegation to Wellington to meet Seddon and Carroll. There, Seddon promised to address Māori concerns about land. He urged Māori not to sell their lands and explained that the Government did not wish to buy if it would leave Māori landless; rather, it intended to legislate to ensure that Māori retained sufficient lands for their needs. In this, Seddon was influenced by the Government's experiences in the South Island where it had recently set aside 65,000 acres for landless Māori. The Premier also said that the work of the Native Land Court would soon be completed (some reports said the Government would abolish it, and others that the Court had little left to do as most Māori land titles had already been determined). Responding to Tūnuiārangi's actions, Seddon reiterated that the imperial government could not intervene, and he urged Māori to work with colonial authorities, saying that no redress could come from anywhere else.[844]

From about this time, the Kotahitanga movement was increasingly influenced by 'moderate' leaders whose priorities were more acceptable to the Government. But some Kotahitanga leaders continued to hope for constitutional reform, as did Kīngitanga leaders. Under King Mahuta, the Kīngitanga began to pursue this agenda by working through the colonial authorities, in a similar manner to Kotahitanga. Mahuta's advisor, Henare Kaihau, stood for the Western Maori electorate in 1896, defeating several Kotahitanga-aligned rangatira. In November 1897, Kaihau introduced a Bill aimed at establishing a system of Māori self-government: the Maori Council Constitution Bill, which provided for the establishment of a national Maori Council with full authority over Māori lands and fisheries, and power to levy taxes, create laws, and appoint magistrates.[845] The Bill acknowledged the Queen's mana while bypassing her colonial authorities. This was the same distinction as Heke had drawn in his speech for the Queen's Jubilee.[846]

In November 1897, Seddon held a series of meetings with Kotahitanga and Kīngitanga leaders. He rejected Kaihau's proposal for a national Maori Council. In a letter to the Chair of Te Kotahitanga, he warned that they should 'not be led away into thinking that Parliament will give up control of the Maori people and the Maori lands'. The colonial Parliament must retain mana over all New Zealand lands and would never agree 'that any persons in

the Colony [should] be wholly independent of it.'[847] But he said the Government might accept other elements of the Bill, and expressed willingness to consider it again during the 1898 session if Kaihau arranged for copies to be circulated around the country.[848]

Seddon also outlined his own tentative plan for Māori land administration, which would go on to form the basis of the Maori Lands Administration Act 1900. Under his plan, district land boards would be established with responsibility for land titling and administration. Among other things, the boards would set aside reserves for Māori landowners and lease any remaining lands to settlers. The Native Land Court would be abolished, and sales of Māori land would cease. The proposal bore significant resemblance to the many proposals Māori members of the House had brought forward since the early 1880s, except that the land boards would have government and Māori members, because Seddon reasoned that some government involvement was needed to protect Māori interests. The Premier agreed to meet Māori leaders in 1898 to flesh out his proposal, and he urged Kīngitanga and Kotahitanga leaders to reach an agreed position.[849] He insisted that Māori movements come to a joint position since, in his view, 'One party wants one way and one party wants some other.'[850]

In fact, the goals of Kīngitanga and Kotahitanga leaders had much common ground, not least regarding the principles of Māori self-government and protection of land. The differences between Māori and the Government were far greater. Nonetheless, Kotahitanga and Kīngitanga leadership took his comments seriously. During December, they formed a joint council to work on their response – a highly significant occurrence given the movements' previous difficulties in working together.[851]

This council, with Heke among the Ngāpuhi representatives, met in Wellington for several weeks. One newspaper noted that wāhine rangatira attended and played active roles in the meeting. While the leaders in attendance agreed with Seddon on some points concerning land law, they favoured Kaihau's Maori Council proposal – which provided for national Māori self-government – over Seddon's limited and paternalistic land board plan. The prospect of a national Maori Council was said to have support from Ngāpuhi and other Kotahitanga tribes, and from Kīngitanga iwi such as Ngāti Maniapoto.[852]

By the end of 1897, then, the Kotahitanga and Kīngitanga movements were working together, and the Government was offering some concessions to Māori self-government, albeit far less than either Māori movement sought. With Kotahitanga continuing to pursue the dual strategy of seeking self-government while saving the land, much would depend on the promised 1898 discussions.

(b) What was the outcome of the Government's 1898 negotiations with Kotahitanga and Kīngitanga leaders?

During 1898, Kīngitanga and Kotahitanga leaders continued to collaborate in the hope of achieving their common goals. They agreed on the principle that Māori should govern themselves and on many of the details of how such a system might work. They also agreed on the abolition of the Native Land Court and the preservation of remaining Māori lands. At a major hui on Mahuta's territory at Waahi in April, the leaders of the two movements continued to negotiate those details. Kotahitanga leaders were willing to use Kaihau's Bill as a basis for further discussion and to adopt many of its proposals. Accordingly, a large committee was formed with representatives from Ngāpuhi and all other tribes at the hui. The key point of contention naturally arose from Mahuta's insistence that any Māori government be established under his mana, whereas Kotahitanga leaders believed it should be established under the mana of the Paremata Maori.[853]

Carroll and Seddon also attended this hui, distributing copies of a Native Land Protection and Administration Bill, which added further detail to their plans for Māori land. Mahuta, Kaihau, and the Kīngitanga leader Tana Taingākawa all asked that the Government approve a Maori Council with full powers of self-government, in accordance with the treaty. Seddon refused, saying it would be 'impossible . . . to get through Parliament', a statement that was undoubtedly true, given Heke's experiences with the Native Rights Bill.[854]

The Ministers said they could respond to Māori aspirations, but could only go so far. Their Bill proposed to end

almost all land sales, set aside reserves for Māori occupation, provide for land boards to lease remaining Māori lands on behalf of the owners, and provide assistance for Māori to develop their lands. In broad terms, these policies reflected what Te Raki and Kotahitanga leaders had been seeking. The critical differences concerned authority. Māori sought a system of land administration operating under the authority of a Māori legislature and run by Māori; the Government sought a system operating under the colony's authority, with substantial government representation on the land boards. The Ministers were not willing to give way on either point.[855] In Carroll's view, the Government's proposal achieved the same object as Kaihau's. Both Ministers urged Māori leaders to reach agreement quickly so that legislation could be passed. Seddon said the Government would not force the system on Māori – but they otherwise risked losing their lands and therefore their existence as a people.[856]

The Waahi meeting was one of a series Seddon and Carroll attended early in 1898. They had visited Waituhi in March, and after Waahi, travelled to Ōtorohanga, Rotorua, and Pūtiki before attending the Paremata Maori at Pāpāwai in May. The Government's land administration plans divided Māori and inflamed Pākehā. Settler newspapers, during this period, were filled with objections to the proposal that sales of Māori land should cease. Māori leaders, on the other hand, sought far greater powers of self-government than Seddon was willing to offer, but were divided on how to achieve this in the face of the Government's negotiating position.[857]

Seddon did not visit this district during his tour. Rather, as discussed in section 11.5.2(12)(b), he sent troops in response to a Hokianga protest against the collection of dog taxes. Open warfare was averted only because of the actions of Heke and other rangatira, who mediated between the protestors and the Government. For much of 1898, Heke was required in the north to ease tensions and prevent any further outbreaks of armed resistance. More importantly, having told Māori that they would lose their lands if they did not reach terms with the Government, the Premier had also demonstrated the lengths he would go to in order to assert the Government's authority.

The Pāpāwai hui occurred soon after the Hokianga conflict. Mahuta had been invited to continue the joint discussions but did not attend, and nor did Henare Kaihau.[858] At the Paremata, Kotahitanga supporters were split over their response to the Government's plan. Some – mainly those from the North Island's eastern and southern coasts – wanted to adopt Seddon's Bill and negotiate for its improvement. This 'moderate' group wanted greater powers of self-government than Seddon was offering, but was prepared to make some concessions in order to secure an end to land purchasing. Its leaders redrafted Seddon's Bill, proposing much stronger protections for Māori landowners while also suggesting that the Paremata be recognised as an advisory body able to review and propose legislation to the colonial Parliament.[859]

Others at the Paremata, including leaders from this district and many senior leaders of the Kotahitanga government, asked Seddon to delay his Bill so they could consult their people. This 'home rule' group continued to press for adoption of Heke's Native Rights Bill providing for a fully autonomous Māori parliament.[860] In the months after the Pāpāwai hui, both Kotahitanga factions lobbied the Government independently, as did the Kīngitanga which continued to push for adoption of Kaihau's Bill. Māori sent numerous petitions, both for and against Seddon's proposals.[861] When the Government introduced its Native Lands Settlement and Administration Bill in September 1898, Seddon included none of the amendments proposed at Pāpāwai.[862]

In select committee hearings, the Hokianga rangatira Herepete Rapihana (attending in Heke's absence) asked that the Government prohibit sales of Māori land and otherwise defer any consideration of Māori land law until after the 1899 meeting at Waitangi. Rapihana emphasised that Māori in the north had not yet seen the Bill, let alone been consulted about it.[863] Ngāpuhi leaders also wrote to the Premier asking him to end land sales.[864]

'Moderate' Kotahitanga leaders expressed a preference for their own legislation but nonetheless said they would support the Bill in order to prevent further land sales. Underlying their position was an acceptance of Seddon's view that Māori could seek protection only by

applying to the colonial Parliament.[865] Heke was absent from Wellington for the entire debate, instead remaining in the north, apparently to ensure that there would be no repeat of the Dog Tax War, and to raise money around the North Island for legal fees and fines that Hokianga Māori had incurred from failing to pay the tax.[866] In the end, the Bill was deferred for further consideration the following year, and Kaihau's Bill was never debated.[867]

By the end of 1898, Māori were divided into at least three broad camps: the 'moderate' and 'home rule' sections of Kotahitanga, and the Kīngitanga, each engaging distinct policies and tactics in pursuit of their people's welfare. The Government was pursuing a fourth track: one that offered less in terms of self-government than any Māori wanted but, because of its promise that land sales would end, was nonetheless sufficient to win support from a significant portion of the Māori leadership.

The Government's actions can be viewed through two lenses. On the one hand, Seddon and Carroll engaged extensively with Māori during the year, brought draft legislation to Kīngitanga and Kotahitanga meetings, and made significant concessions over Māori land. That this occurred was a reflection of the considerable influence exerted by Kotahitanga, Kīngitanga, and other Māori leaders throughout the country. On the other hand, the Government gravely limited the scope of the consultation. It was willing to concede ground on land but not on political authority. Ministers were unwilling to consider recognition of a Māori parliament in any form, even as an advisory body. They were also unwilling to consider land boards that did not include government representatives. In *The Wairarapa ki Tararua Report* (2010), the Tribunal found, and we agree, that the Government managed the 1898 negotiations with the deliberate aim of marginalising more 'radical' leaders such as Heke, who had sought recognition for an autonomous Māori parliament.[868]

That the Government was able to do this to some degree reflected the political skill shown by Seddon and Carroll, and in particular their cultivation of relationships with 'moderate' Kotahitanga leaders. But, more broadly, the Government was able to determine the scope of the negotiations because the power now rested with it. Kotahitanga leaders could build pressure but exert very little leverage. That was due to the population imbalance in the country by this time; the significant threat that government policies and actions posed to Māori land and political authority; and (as mentioned on several occasions earlier) the lack of safeguards for treaty rights.

(c) The origins of the Maori Councils Act 1900 and the Maori Lands Administration Act 1900: the outcomes of the 1899–1900 negotiations

By March 1899, when the Kotahitanga Paremata was held at Waitangi, the momentum had all but gone from the 'home rule' debate. More than 1,000 people turned out to greet Seddon and the Governor, Uchter Knox (the fifth Earl of Ranfurly). Ranfurly, in a particularly patronising speech, urged Māori to set aside past grievances and abandon their 'useless' meetings. Seddon met with Heke and other leaders, where the discussion focused on the previous year's 'Dog Tax War' and taxes and rates of local authorities. Seddon acknowledged Māori grievances and suggested that collection of dog taxes might be handed to Māori authorities. He also arranged for the Governor to pardon the Hokianga leaders who had been imprisoned after that conflict.[869]

After Seddon had left, Kotahitanga leaders met among themselves. Previous divisions had not healed, and attendance, at 300, was less than organisers had expected. Plans for a deputation to England were briefly revived and then shelved for lack of funding, and Heke, Te Heuheu Tūkino, and Hamiora Mangakāhia were appointed to travel around New Zealand in a bid to heal divisions and restore support for the movement.[870] Soon afterwards, Seddon and Carroll met Kīngitanga leaders in Auckland, who continued to press for the Maori Council Constitution Bill. Seddon refused to support the Bill but encouraged Kīngitanga leaders to work with the colonial Parliament and offered Mahuta a place in the Legislative Council.[871]

By the time Parliament reconvened in June, the focus for all of the various Māori movements was on the shape of any future land legislation. Since 1894, Māori members of the House had been introducing 'home rule' Bills to Parliament, but in 1899 they did not. Instead, Parliament

Premier Richard Seddon visiting Waitangi just before the March 1899 Kotahitanga Paremata. During his visit, the Premier met with Hōne Heke Ngāpua and other Māori leaders to discuss issues such as the Dog Tax conflict of the previous year, the Crown's native land policies, and local rates.

considered numerous petitions about Seddon's proposals, most seeking amendments. Before the Native Affairs Committee, all of the Māori members said they and their constituents were willing to support legislation that would protect remaining Māori lands.[872] As Heke told the Committee, his constituents wanted far more than the Government was offering, but Seddon's Bill at least provided an opportunity to make some progress and bring to an end the system of Crown pre-emption and purchasing that had been in place since 1894.[873]

The various Māori movements agreed on the broad principles of land legislation but differed significantly on some details, such as the relative powers of land councils and block committees. The Government and Māori members negotiated intensively before Seddon introduced a series of legislative proposals to the House in early

October, and continued to negotiate while the legislation was debated. Although the Māori members regarded it as a compromise, they all agreed that the legislation represented some progress and should pass in order to protect the remaining Māori lands from purchase.[874] Seddon's willingness to negotiate in detail during this period in part reflects his determination to reach agreement with Māori, but it also appears to have been influenced by political considerations. While these negotiations were occurring, the Government faced two no confidence votes in the House and was kept in office by the Māori members.[875]

Whereas Māori members wanted the legislation passed, most Pākehā members either disagreed with the principle or were unwilling to pass such a significant measure late in the parliamentary session. As a holding measure, the House enacted legislation ending all new sales of Māori land to the Crown until a new system could be agreed.[876]

An election was held in December, and Seddon's Liberal Government was returned with an increased majority. The 'home rule' section of Kotahitanga stood against Kaihau and Pere, but both retained their seats. Immediately after the election, Seddon appointed Carroll Native Minister – the first Māori to hold the position.[877] During the first six months of 1900, there were further rounds of negotiations between the Government, Kīngitanga, and Kotahitanga. Again, these focused on details of the land council legislation rather than on any further 'home rule' proposal.[878]

At the Kotahitanga Paremata in March 1900, Heke worked with Pere and an increasingly influential Āpirana Ngata to develop an agreed Kotahitanga position, which they then took to a Kīngitanga hui.[879] Describing his motivation at the time, Heke said it was 'useless to oppose the Government policy', so Kotahitanga had adopted it and proposed some amendments.[880] Kīngitanga leaders thought the Kotahitanga proposal was too favourable to the Government and settlers.[881]

Carroll, meanwhile, developed his own counter-proposal while also working with Ngata and some of the 'moderate' Kotahitanga leaders on a measure to establish Maori Councils with responsibilities for some health and social issues. The Minister visited marae in various parts of the country (though not including Te Raki) to explain these proposals, and he consulted with Kotahitanga and Kīngitanga leaders before introducing draft legislation to Parliament in September. There was further negotiation, disagreement between Kīngitanga and Kotahitanga representatives, and considerable redrafting before the Maori Lands Administration Act 1900 was finally passed in October.[882]

The Act divided the North Island into Maori Land Districts, each with a Maori Land Council that would have majority Māori membership, and provided new safeguards to protect Māori lands from sale.[883] The Maori Land Councils were to perform some of the functions of the Native Land Court and had additional powers to set aside papakāinga and mahinga kai (cultivation) lands as inalienable reserves. Māori landowners could voluntarily vest their lands in trust with the councils, which were empowered to raise finance and lease the vested lands.[884] Thus the Act provided for some degree of hapū control over decisions to offer land for lease, although that control was lost once the land was handed over to a council for administration.[885] Heke told the House that the Bill was 'a compromise', and not one of which he particularly approved; Kotahitanga leaders had succeeded in modifying it but had not got all they wanted.[886] He would have preferred that the House acknowledge that it could not pass good law for Māori, and instead hand the power to Māori so they could prepare their own law.[887] Nonetheless, he supported the Bill since it provided some opportunity for Māori owners to manage their lands. The Bill passed and came into force on 20 October 1900.

Two days earlier, the Maori Councils Act 1900 had also come into force. This Act aimed 'to confer a Limited Measure of Local Self-government' on Māori communities. It provided that the Governor could declare 'any district a Maori district' where a Maori Council would be elected by Māori, and empowered to make bylaws about health, sanitation, liquor, animal control, and a range of other matters concerning the welfare of Māori communities.[888] There was also provision for a general conference of delegates from the councils to be held annually, where it was envisaged that they would have policy input at a national level.[889]

In the House, Carroll described this legislation as more important than any land law and as 'the first real effort' to give Māori any degree of local self-government with respect to social well-being.[890] Ngata had worked with Carroll to develop the legislation, which Heke endorsed, saying it was 'desired by the Maori people' and would add legal weight to decisions made by rangatira, empowering them to deal with issues arising in their communities.[891] We discuss the provisions and operation of the Maori Land Administration Act 1900 and the Maori Councils Act 1900 further in a subsequent volume of our report.

Armstrong and Subasic saw the Maori Councils Act as an attempt to revive the rūnanga model which the Crown had abandoned three-and-a-half decades earlier.[892] And the Central North Island Tribunal regarded it as a well-intentioned but a 'somewhat pale shadow' of what the Kotahitanga movement had sought.[893] The Crown in this inquiry submitted that these Acts had resulted from compromise between Kotahitanga, Kīngitanga, and the Government, and we agree. The Crown also submitted that all of the parties supported this compromise, and on that we do not agree.[894] Rather, the Māori position reflected a final reluctant acceptance of what was possible within a settler-dominated political system that almost entirely disregarded their continued appeals for their tino rangatiratanga to be recognised and supported. The Māori position also reflected the fact that the available alternative – continued Government land purchasing – was worse.

Taken together, then, the Maori Councils Act and Maori Lands Administration Act reflected major concessions on the part of Te Kotahitanga and the Kīngitanga, reluctantly made in the face of sustained, high-level government pressure. The establishment of the Maori Councils and Maori Land Councils provided for some degree of local self-government over matters such as health and animal control, but did not secure full Māori control over their lands and resources; nor did they provide for an autonomous Māori assembly capable of enacting or at least influencing legislation while protecting tino rangatiratanga against the encroachments of the colonial Legislature.[895] In the words of the Tribunal in *The Whanganui River Report* (1999), 'This legislation . . . fell far short of providing for Maori self-government.'[896] We will consider these laws and their impacts in detail in later chapters.

(12) *What caused the Hokianga 'Dog Tax War' in 1898, and what was the impact in terms of authority on the ground?*

Having considered the national context in which Te Raki Māori leaders sought provision for their tino rangatiratanga, we now return to an important episode in Hokianga in the final decade of the nineteenth century to shed light on the struggle between kāwanatanga and rangatira for authority in the district. While leaders such as Heke and Herepete Rapihana were negotiating with the Government, many other rangatira were attempting to maintain authority on the ground. While they had some success, such as with local komiti and the Native Land Court boycott, they also faced significant pressures. By 1891, the settler population had surpassed that of Māori in all of the district's taiwhenua except Hokianga, which tipped in the settlers' favour between 1891 and 1896 (see appendix II).

Many northern Māori were facing significant economic hardship, reflecting a range of factors which included the depletion of gumfields and declining access to traditional food sources.[897] Local officials were increasingly able to assert authority over Māori; for instance, by arresting and charging them for rare breaches of colonial law (see the example of Rēmana Hi in section 11.4.2).[898] And the northern county councils were increasingly attempting to assert their authority over Māori lands and communities by charging rates and taxes, though Māori owners frequently refused to pay.[899]

One of the means by which local officials and authorities sought to assert their control over Māori communities was through an annual dog registration tax. Officials gathered the tax throughout the north from the early 1890s, imposing a significant burden on already impoverished Māori communities. Many communities initially refused to pay, regarding the tax as one of many unwarranted intrusions in their affairs, alongside the Court, rates, other taxes, and controls on hunting native birds; but by the middle of the

decade, faced with threats of fines or imprisonment, most reluctantly complied.[900]

In 1898, Te Huihui, a Hokianga group with links to Te Whiti, were determined to resist the tax and government authority more generally. Faced with threats of arrest and imprisonment, they agreed to use force if necessary to protect themselves. In response to this show of Māori resistance, Seddon sent in troops – the Crown's first military incursion into Ngāpuhi territories since the Northern War. Just as armed conflict was about to break out, Heke and other rangatira intervened, brokering an agreement that ended the so-called 'Dog Tax War'. Te Huihui leaders were then arrested and imprisoned, and Te Huihui agreed to comply with the law.[901]

Ipu Absolum of Te Māhurehure told us that the dog tax was part of a broad suite of government policies that impoverished Māori communities and separated them from food sources, as part of a deliberate and systematic attempt to assert authority.[902] Haami Piripi saw the conflict as 'a response to pākehā control over Māori rangatiratanga', which ended in 'a stand-off between a growing Crown authority and a waning network of rangatira with mana whenua'.[903]

Many historians have expressed similar views. Armstrong and Subasic saw the conflict as '[t]he most direct manifestation of the struggle for authority between the Northland hapu and the Government during the last two decades of the nineteenth century'.[904] Other historians, such as James Belich, Richard Hill, and Adrienne Puckey, saw it as the decisive event in the Crown's attempts to establish de facto sovereignty in this district.[905] We consider below the origins and purpose of the tax, the events of the 'war', and the implications for Crown and Māori authority.

(a) How did Te Raki Māori respond to the dog tax?

The Dog Registration Act 1880 replaced numerous provincial ordinances relating to dog attacks on livestock.[906] The Act required all dog owners to register their dogs annually with the county council or other local authority and to pay a registration fee, which was initially set at 10 shillings per dog but later reduced to a minimum of 2s 6d. Upon registration, the council was required to issue a collar for the dog and record details of the dog and its owner. Section 13 provided that dogs without collars could 'be deemed to be unregistered, and any person or his agent upon whose land such dog may be found, or any person duly authorized by the local authority, may destroy any such dog'. This was later amended to allow police or local authorities to seize unregistered dogs and to sell any that were not claimed within a week.[907]

(i) *How did Te Raki Māori initially respond to the tax?*

From the beginning, Māori in this district and throughout the country opposed the tax, regarding it as part of a broader pattern of unwarranted Crown and local authority interference in their lands and communities.[908] During the early 1880s, local magistrates recommended that the Act not be applied in northern counties where Māori outnumbered settlers, as most Māori would refuse to pay, and any attempt at enforcement would lead to trouble. Accordingly, most Te Raki counties initially chose not to enforce the tax either against Māori or settler communities.[909]

Mangonui and Hobson were the only counties in this district to attempt to gather the tax from Māori communities during the early 1880s. While the Act required dog owners to pay for registration at the county office or face penalties, the Mangonui County Council appointed a native constable to proactively visit Māori communities and enforce the tax. Several Māori from Parapara and Taipa refused to pay and were prosecuted. According to press reports, the resident magistrate (Bishop) imposed 'a nominal fine', which they also refused to pay. Two constables went to Taipa with a warrant. When they attempted to take one of the settlement's horses away in lieu of payment, a group of Māori set upon them, knocking both down and kicking one of them. A local rangatira – apparently a member of the Mangonui Native Committee – intervened, allowing the constables to go free so long as they left the horse.[910] Five Māori were then charged with assault and fined a combined total of £30.[911]

Soon afterwards, Mangonui Rewa petitioned the House of Representatives asking that the tax only be enforced in

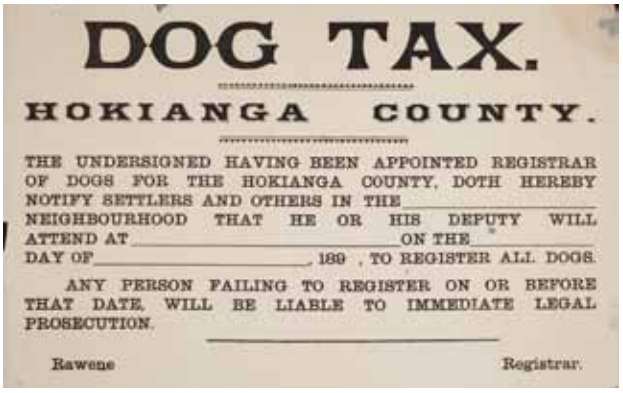
Ipu Absolum of Te Māhurehure at Tuhirangi Marae, during hearing week 13 in June 2015. In August 2016 at Tauteihiihi Marae, Kohukohu, she presented evidence on the dog tax resistance of Hōne Tōia, rangatira and tohunga of Te Māhurehure. She described the distress of the people and their uri caused by the Crown's aggressive actions and the removal and incarceration of Hōne Tōia at gunpoint.

towns, not in Māori communities, and that councils not send police into Māori communities or the bush to search for unregistered dogs. The petitioners noted that the incident had been resolved only because members of the native committee had intervened to keep the peace. The Government undertook to consider exempting Mangonui County from the tax but took no immediate action.[912]

In 1884, the Mangonui County Council decided against strict enforcement of the Act within Māori communities. The Hobson County Council also abandoned its attempts after Māori consistently refused to pay. These incidents demonstrate the uneasy balance between government and Māori authority on the ground at this time, and the fact that Māori retained numerical supremacy outside the main settlements. In the Mangonui incident, the Government was ultimately able to enforce compliance, but not without considerable trouble, and then only with the aid of Māori leaders.[913]

The tax was also a significant issue at the Waitangi and Ōrākei parliaments during the early 1880s – and indeed was one of the catalysts for Te Raki leaders to decide to pursue self-government. At the 1881 Waitangi Parliament, Rewa predicted that the Government would soon begin taxing 'horses, cows and fowls', and gave this as a reason for establishing a Māori parliament.[914]

In this district and elsewhere, the tax was one of many Crown initiatives that Māori perceived as either actually or potentially undermining their livelihoods and interfering with their community authority. In 1882, the Crown and Native Lands Rating Act provided that rates could be charged on Māori lands within five miles of a road.[915] Waitangi and Ōrākei parliaments also discussed



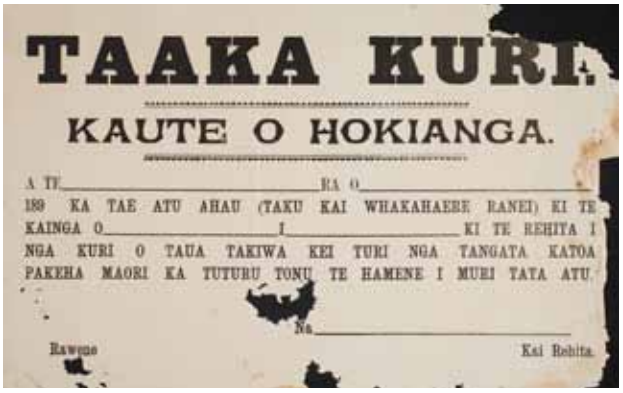
DOG TAX.

HOKIANGA COUNTY.

THE UNDERSIGNED HAVING BEEN APPOINTED REGISTRAR OF DOGS FOR THE HOKIANGA COUNTY, DOTH HEREBY NOTIFY SETTLERS AND OTHERS IN THE _____ NEIGHBOURHOOD THAT HE OR HIS DEPUTY WILL ATTEND AT _____ ON THE _____ DAY OF _____ 189 , TO REGISTER ALL DOGS.

ANY PERSON FAILING TO REGISTER ON OR BEFORE THAT DATE, WILL BE LIABLE TO IMMEDIATE LEGAL PROSECUTION.

Rawene Registrar.



TAAKA KURI.

KAUTE O HOKIANGA.

A TE _____ RA O _____
189 KA TAE ATU AHAU (TAKU KAI WHAKAHAERE RANEI) KI TE KAINGA O _____ I _____ KI TE REHITA I NGA KURI O TAUA TAKIWA KEI TURI NGA TANGATA KATOA PAKEHA MAORI KA TUTUHU TONU TE HAMENE I MURI TATA ATU.

Na _____

Rawene Kai Rehita.

Posters from Rāwene requiring residents to register their dogs and pay an annual registration fee, known as the dog tax. The Hokianga group Te Huihui resisted Government attempts to enforce the payment of the tax and rejected the Crown's authority over Māori communities.

numerous other policies, including sheep taxes, fencing laws, and controls on hunting, which together interfered with Māori autonomy and undermined access to food sources.[916]

As discussed in section 11.4.2, in 1884 Te Komiti o te Tiriti o Waitangi prepared a petition seeking Māori self-government, including 'freedom from European laws, and especially . . . rates and taxes', a freedom that tribal leaders regarded as their right under the treaty.[917] Māori members of the House also raised the dog tax in the colonial Parliament. Te Raki leaders emphasised the considerable value that Māori placed on dogs, especially because they were necessary for pig hunting, which remained a vital food source.[918]

(ii) *How did Te Raki Māori respond after the Bay of Islands County Council resumed enforcement in 1888?*

For nearly five years, none of the northern councils attempted to gather the tax. That changed in 1888, when the Bay of Islands and Rodney County Councils resumed enforcement of the Act for both Māori and Europeans. In Rodney, a county that covered southern Kaipara and Mahurangi, the council took this decision in response to a complaint from a Pākehā sheep farmer.[919] We have no details of the Bay of Islands council's reasons.[920]

While a small number of Māori willingly registered their dogs, most did not. The council issued summonses against some Ngāti Hine, including their leader, Maihi Parāone Kawiti, and this sparked a round of negotiation between Māori and the Government. In particular, Maihi Parāone raised the issue with Pāora Tūhaere and other leaders of the nascent Kotahitanga movement, who were then in Wellington promoting a Bill to reform Māori land law and abolish the dog tax in Māori districts. The Kotahitanga leaders approached the Native Minister, Edwin Mitchelson, asking for time to allow Māori to debate their response. Although the court case went ahead, Mitchelson (with Seddon's knowledge) arranged that no enforcement action would be taken until after the next annual hui at Waitangi.[921]

At the court hearing in September 1888, Maihi Parāone told the Mangonui magistrate (Bishop) that Māori law overrode any local bylaw or tax and, since the tax was an infringement against the treaty, he and his people were justified in ignoring it entirely. Bishop repudiated these arguments, saying that his role was to administer the same laws for Māori and Europeans alike and that any resistance would cause 'serious trouble'. If Maihi Parāone did not like the law, he could appeal to Parliament, but he must nonetheless 'suffer the penalties' for evading it. Although Bishop ruled against Maihi Parāone, newspaper reports do not record any sentence being imposed.[922]

Following this judgment, the Bay of Islands Native

Committee wrote to the county council, which resolved that it would not enforce the tax against anyone, Māori or settler, until it had received further instructions from the Government. The council took this course in part to preserve equality of Māori and settlers before the law, and partly to encourage Māori compliance, since (councillors reasoned) Māori would be equally harmed by any reduction in spending on the roads.[923]

Hirini Taiwhanga and other leaders then raised the issue at the Waitangi hui in March 1889, and again at the Ōrākei hui later that month. The Government was represented at Waitangi by Attorney-General Frederick Whitaker. His comments were not recorded at the time, and Māori and county officials later disputed what he had said. Rangatira, and some settlers, recalled him as promising to lighten or suspend the impact of the tax on them, and they had understood this to mean that the tax would not be enforced. But county officials recalled Whitaker as saying that enforcement was a matter for them. Whitaker addressed the issue again at Ōrākei a few weeks later, offering sympathy to Māori but making no promises.[924]

In the end, so far as we can determine, Whitaker took no action at a national level. The Bay of Islands County Council, sensing that it had little support from the Government and that any further attempt at enforcement would 'risk a breach of the peace', decided not to gather the tax for the time being, nor to enforce any penalties against Maihi Parāone and his people.[925]

(iii) *How did Te Raki Māori respond after all northern counties resumed enforcement in 1892?*

For 18 months, no further attempts were made to collect the tax in Northland. Then, between December 1890 and October 1891, the Whāngārei, Whangaroa, Hokianga, and Bay of Islands councils all decided to resume collection. Whāngārei was first to move and was followed in June 1891 by Whangaroa and Hokianga, which promised to cooperate on collection and enforcement activities, while the Bay of Islands followed suit in October, passing a resolution to resume collection.[926]

The decision was part of a broader (and coordinated) attempt by councils to assert authority over Māori, and more particularly to transfer a greater portion of the land tax (rates) burden onto their communities. Also in 1891, both the Bay of Islands and Hokianga councils wrote to the Government arguing that settlers were bearing an unfair share of the costs of roading and other public works. Growth in the settler population no doubt influenced this thinking and might have given the councils greater confidence that they could successfully enforce the tax.[927]

From this time and throughout the rest of the decade, the district's local authorities were determined to enforce the tax irrespective of Māori opposition. They regarded this as a point of principle – a means of forcing Māori to share the cost of local infrastructure, even though Māori communities typically lacked the financial resources to do so, and notwithstanding their contributions to roading in other ways, such as offering land and labour. At a public meeting at Waimate in October 1891, Bay of Islands county clerk J W Williams threatened to use force against Māori who did not comply. The issue, in his view, was that 'the old chiefs considered it derogatory to their dignity to contribute to county revenue.'[928]

In response, Hōne Peeti said that Māori would not get rid of their dogs, which were needed for hunting, and nor would they pay the tax. Since Māori owned much of the county's land, and settler sheep farmers only a small portion, Māori were entitled to keep their dogs, and if any harmed a sheep there were other legal remedies.[929] Hare Matenga informed the Native Department that '[a]ll the Natives north of Auckland are quite determined that they will not pay the tax to the end'.[930]

Although the Bay of Islands County Council was determined to enforce the tax, it felt unable to do so without the support of central Government. Accordingly, the council wrote to Alfred Cadman, Native Minister in the newly formed Liberal Government, asking him to visit the district and encourage Māori to comply with the law.[931]

Cadman duly attended the Waitangi parliament in April 1892. There, he acknowledged that the previous Government had asked local authorities not to enforce the tax, but that circumstances had since changed. He said that local councils now needed the money to fund

roads and other public works which would benefit Māori and settlers alike, and were therefore 'determined not to allow the natives to escape payment any longer'. Instead of resisting the law, Māori 'should be grateful for having been allowed to escape the payment [for] so long'. He could not support any system of taxation that 'imposed heavy burdens on the pakeha and allowed the Maori to escape altogether'.[932]

(iv) *Initial resistance and eventual compliance, 1892–94*

Most Te Raki leaders regarded this as a breach of Whitaker's 1889 promise to lighten the burden from the tax. In July 1892, Hōne Mohi Tāwhai wrote to the Minister, asking him to 'show pity for the sorrow of Ngapuhi caused by the dog tax and to act as Sir Frederick Whitaker . . . did'.[933] Rangatira held a series of meetings in Kaikohe, Whangaroa, and Whāngārei, resolving not to pay the tax, and some wrote to the Bay of Islands County Council asking it not to impose the tax until Parliament had considered the matter. In August, the Waiōmio komiti Māori published a notice in the *Northern Luminary* saying that Māori would not pay the tax and had rights over their own territories under the Constitution Act 1852. The notice asked the Bay of Islands registrar of dogs to deal with the komiti instead of approaching individual Māori.[934]

Nonetheless, the northern councils resolved to collect the tax and take enforcement action against any Māori who did not pay. Although Tāwhai opposed the tax, he encouraged other Hokianga Māori to comply with the law. When some refused, the local constable issued summonses, targeting leading rangatira in order to encourage compliance among others. The *New Zealand Herald* reported that the Court was well attended by Māori and Pākehā, all of whom saw the significance of Māori being brought into the colony's tax system. The court imposed the legal minimum fine of one shilling but imposed heavy court costs, creating a deterrent to any further resistance. According to the *Herald*, there was 'no disobedience of summons; no plea of exemption upon racial grounds; and . . . the fines were promptly paid'.[935] By August, most Hokianga communities were paying the tax.[936]

Elsewhere in the district, Māori were determined to resist. In response to the Waiōmio komiti's notice, Cadman instructed the Mangonui magistrate (Bishop) to 'point out to the Natives the trouble they are likely to bring upon themselves in refusing to pay'.[937] Bishop duly followed these instructions, imposing fines ranging from £2 to £4 on nine Māori at Kawakawa and two at Kerikeri for their refusal to comply.[938] When the fines were not paid, Constable Haslett of Kawakawa seized horses from two Waiōmio rangatira. The horses were then sold to cover the fines. In December, Haslett targeted several more non-payers, imprisoning one at the Kawakawa jailhouse until he complied and threatening others with prison terms. On one occasion, shots were exchanged, but no one was hurt. Haslett's actions, particularly the threat of imprisonment, persuaded Bay of Islands leaders that the costs of non-compliance were too high. Enforcement activities also resulted in very reluctant compliance in Whāngārei and Whangaroa by early 1893.[939]

Kaikohe Māori held out for longer. In September 1892, they wrote to the Government about summonses issued against their leaders, warning, 'Stop it lest trouble should arise.' And more than a year later, in October 1893 they were still holding out, notifying the magistrate James Stephenson Clendon that they would refuse to pay, in accordance with their rights under section 71 of the New Zealand Constitution Act. Clendon wrote back, saying the only authority in the district was the law that he was charged with enforcing. Heke sought a compromise, asking the Bay of Islands County Council to halve the tax in return for compliance; the county clerk, H W Williams, refused. The issue dragged on, and in April 1894 Clendon asked the Government for a greater police presence so arrests could be made.[940]

By May 1894, Kaikohe Māori had also erected a pā at Iringa and were threatening to fire on constables or any other trespassers. That month, Clendon imposed fines on eight Kaikohe Māori. Six appeared in court and were charged the minimum one shilling fine, but another two refused to appear and were fined £5 each. Kaikohe leaders visited other communities seeking support, but this was

not forthcoming, and by mid-May 1894 the Kaikohe community also abandoned their efforts to resist.[941]

During the next two years, Te Raki leaders made occasional appeals or protests to the council or central Government, but to no avail. In 1894, the House of Representatives rejected a petition from Wī Hongi and his supporters, who asked for their district to be excluded from the Act in accordance with their rights under the treaty and the New Zealand Constitution Act.[942] During his visit in 1895, Seddon told Māori to shoot their dogs if they wanted to pay less tax: 'I do not like seeing so many dogs about the Native pas. I would rather see children.'[943]

In 1896, the Bay of Islands County Council rejected an offer from Bay of Islands Māori to provide labour in lieu of rates and dog tax payments.[944] In 1897, Taipari Heihei of Mangamuka wrote to the Government offering to withdraw his hapū from Kotahitanga in return for relief from the dog tax and rates. He also petitioned Parliament, asking that 'certain taxes may not be imposed in the Mangamuka district, in order that his tribe may be kept loyal to the Government of New Zealand'. Such actions provide an insight into the desperation of Māori communities to be spared the financial burden arising from these charges.[945] Even in June 1898, after the Dog Tax War (discussed in the following section), Kaikohe leaders continued to seek a compromise, writing to the council to ask for remission of the tax because they had built a road. The council's consistent stance was that it would collect the tax from settlers and Māori alike.[946]

(b) The Dog Tax War

The final conflict in this contest for authority occurred in May 1898, when the Government sent troops to arrest members of Te Huihui, the Hokianga spiritual community that was refusing to pay the dog tax and more broadly rejected the Crown's authority to impose rates, taxes, and laws over Māori. The leader of Te Huihui was Hōne Riiwi Tōia of Te Māhurehure, the grandson of Arama Karaka Pī.[947] Te Huihui had been trained (by Taonui) in the teachings of the Hokianga prophet Papahurihia,[948] and also had links with Te Whiti o Rongomai's pacifist community at Parihaka. Politically, Te Huihui shared the aspirations of Te Kotahitanga and many Te Raki Māori communities to have freedom from the yoke of Crown authority.[949]

(i) *How did the Government respond to Te Huihui's initial opposition to the dog tax?*

Te Huihui had their main settlement at Hauturu in the southern Hokianga hills, where they were largely able to remain aloof from Crown authority. But in February 1896, a group of 250 followers set up a camp at the Mangatoa gumfield, a few kilometres west of Kaikohe. The group's combination of religious observance and resistance to Crown authority made it appear threatening to local settlers and officials. Some saw it as an attempt to establish another Parihaka: one constable reported that it would need to be suppressed in a similar manner with a 'considerable and properly appointed force'.[950]

Officials also suspected, without conclusive evidence, that Te Huihui had hostile intentions and was stockpiling firearms and powder. Constables searched the camp in March 1896 but found no weapons, and Te Huihui leaders insisted they had peaceful intentions. Nonetheless, rumours continued to mount among settlers and officials. On 20 March, the resident magistrate Clendon ordered Te Huihui to disperse within a week. Premier Richard Seddon was notified, and he instructed the police to take immediate steps to disarm Te Huihui, who 'have joined the fanatics'.[951] On 27 March, Clendon relented, allowing Te Huihui to remain in their camp so long as they relinquished their firearms. Te Huihui duly handed over 14 muskets, and Clendon reported that the matter was at an end, Te Huihui's 'ulterior intentions' having been 'completely crushed'.[952]

Soon afterwards, Tōia made several attempts to reach an accommodation with the Government. In early April, he and 171 others wrote to Seddon asking for £300, and that the Premier respond to 'this application of your humble servant, for these money's which should reach my hands for my means of subsistence have failed me'.[953] According to Armstrong and Subasic, Te Huihui had accumulated debts while in camp at Mangatoa, which the depleted

gumfield had not been sufficient to cover.[954] In return, Tōia offered 'a part of [his] regard in the days that are to come, let this be a regulation between you and me and my people under your "mana"', under which the Government would have the 'care' of Tōia's lands, both under customary and Crown title: 'Your might and mine will be upon these lands I will give the management of these lands for us and our descendants.'[955]

Crown officials read this letter as implying that Tōia was offering land for sale, though the meaning is not altogether clear. The references to Seddon's mana and to preservation of land for future generations under the might of both Te Māhurehure and the Crown suggest a different motive, in which Tōia was offering to cooperate with the Government in return for relief from impoverishment and an assurance that his people's lands would be protected. The Government does not appear to have responded directly; rather, it passed the letter to Clendon and to land purchasing officials, who decided to wait for an approach from Te Huihui.[956]

Tōia then attempted to raise a £500 loan from the Bank of New Zealand using some of his lands as security. When the bank turned him down, he approached the Government again in early May asking for it to intervene on his behalf 'so that the money may be forthcoming'.[957] He repeated this request later in May, and again in June, but the Government did not respond.[958] Tōia then wrote to the Government in July, seeking 'stringent laws' for the Native Land Court. While his meaning is not clear, Armstrong and Subasic suggested he was seeking an amendment to the law to allow him to obtain Crown title while acting as a trustee for his people, and by this means raise funds by borrowing against the land.[959]

In September, he wrote again, asking for a response 'lest trouble arise amongst us because of your way of doing things'.[960] He said he remained well disposed towards the Government, while also asking that it return the muskets confiscated in May. The Government asked Clendon, who advised against returning the weapons; he reported that Tōia was still holding monthly meetings agitating against the payment of rates and taxes, including the dog tax.[961] The Justice Secretary wrote, telling Tōia to refrain from 'disturbing the people's minds, by telling them that they should not fulfil the requirements of the law. This is a very foolish proceeding on your part.' He also advised Tōia to contact a land purchase officer if he wanted to sell land.[962] Te Huihui were clearly impoverished, and this appears to have been a major factor in the community's opposition to taxes. It is significant, then, that, after six letters from Tōia and his people, the Government offered no solution other than Te Huihui selling their lands.

At some point, Te Huihui returned to their lands at Hauturu, distant from any Pākehā settlement. Nonetheless, Hokianga county officials, determined to assert their authority and encouraged by the Government's stance on compliance with the law, continued to pursue Te Huihui for payment of dog taxes. Te Huihui adopted a course of passive resistance, refusing to pay the taxes, or local rates, or place any lands before the Native Land Court. In May 1897, Hokianga police arrested 13 Te Huihui supporters for repeated non-payment of the tax. Three who did not pay their fines were sentenced to one-month prison terms, which they served at Mount Eden after refusing offers to have the fines paid on their behalf.[963] To this point, the police had enforced the tax on unregistered dogs. In June, the council asked Harry Menzies, the county's newly appointed dog registrar, to proactively collect the tax. Menzies was given four sub-collectors, three Māori and one Pākehā, and was paid one shilling for every dog registered.[964]

In August 1897, Tōia wrote to the Government again, asking that Hokianga be exempt from the dog tax. There is no record of a response, and a note on the letter indicates that Government officials wanted the law enforced. In September, the police arrested two more rangatira for non-payment of fines. They were also imprisoned. These enforcement actions, taken without apparent regard for Te Huihui's inability to pay, reinforced the determination of Te Huihui leaders and members to avoid or resist the tax. The Hokianga County Council told the police that 50 more Te Huihui supporters were waiting to be arrested, as imprisonment made them heroes among their

community.[965] Similarly, we note, Taranaki men had willingly been arrested for fencing or ploughing up land the Crown claimed as confiscated, 20 years earlier.

(ii) ***Why did the Government send troops into Hokianga?***

Although the situation calmed towards the end of the year, the Crown's actions made Tōia and his followers increasingly determined to resist further demands for the dog tax. In the first few months of 1898, Menzies visited Hauturu, collecting the names of 51 dog owners and issuing new dog tax demands (at two shillings sixpence per dog).[966] Rangatira told Menzies they would not pay, and Menzies issued notices for them to appear in court for non-payment. The court adjourned the cases at Tōia's request, and he arranged for county officials and Te Huihui to meet at Pukerimu on 28 April.[967]

In the lead-up to the trial, which was now scheduled for early May, Menzies and possibly other county officials told the defendants they would be sent 'to a cold country [where] their bones would crack'.[968] This provocation raised the stakes in an already tense situation. Aware of the Crown's treatment of Te Whiti and Te Kooti in preceding decades, Te Huihui supporters took the threat at face value and genuinely feared they would be sent to prison in the South Island if they did not pay the tax. Women and children took to sleeping in the bush outside the camp so they would not be caught.[969]

On 28 April, Tōia and a large group of supporters met as planned with county officials at Pukemiru, swearing that they would not pay the dog taxes, and nor would they stop shooting kererū out of season or comply with any other European laws. Nor would they accept imprisonment if that meant being sent to a cold climate for life; rather, they would fight to the death.[970] Tōia informed local officials that his people were determined to travel to Rāwene carrying arms. They would forcibly resist any attempt to enforce the law but would not harm settlers. He supported this with a telegram underlining that any arrest attempt would lead to bloodshed.[971]

Hokianga officials called for reinforcements, and the Government, determined to quash the resistance and conclusively assert its authority, sent a sizeable military force with instructions to arrest Tōia and his supporters.[972] When an advance party of seven police from Auckland arrived in Rāwene on 1 May, a group of Tōia's men visited the town to investigate, but left after assuring local clergy and settlers that they would not initiate any conflict.[973] The advance party was followed on 2 and 3 May by a military force comprising 120 soldiers – most of the colony's infantry – with various armaments including two cannon and two machine guns.[974] Seddon and other Ministers gathered on the wharf in Wellington to farewell the *Hinemoa*, which carried the bulk of these troops.[975] The *New Zealand Herald* thought the force something of an overreaction, while acknowledging that its size would be likely to deter resistance.[976]

The troops' arrival further escalated tensions. Several neutral rangatira (Pene Tāui, Heremia Te Wake, Hōri Hare, Hapakuku Moetara, and Rē Te Tai)[977] intervened and sought time to diffuse the situation. Tōia retreated to Otātara (near Waimā), and relatives, including reinforcements from Te Rarawa, and from Kaikohe and Whirinaki, began to join him. Tōia agreed not to take any aggressive action, but sought immunity from prosecution for himself and his people. The commanding officer of the military forces, Lieutenant Colonel Stewart Newall, insisted on unconditional surrender, and on 5 May ordered his troops inland towards Waimā.[978]

Early that afternoon, the troops reached as far as Ōmanaia, where the neutral rangatira again met Newall, this time carrying a letter from Tōia who asked that no hostilities begin until he had spoken with the Northern Maori member of the House Hōne Heke, who was due to arrive that night. Newall offered an apparent compromise, agreeing to spend the night at the Waikarami schoolhouse and not advance to Otātara until noon on 6 May. In reality, however, he knew the troops had no chance of reaching Waimā that night, difficulty transporting the machine guns having slowed their progress earlier that day.[979] Nevertheless, this delay in the troops' advance appears to have prevented significant casualties on both sides. Te Huihui had set up ambush positions along the road

Government troops at Rāwene, Hokianga. The troops were sent in May 1898 to quell Māori resistance to dog taxes and to arrest Te Huihui leader Tōia and his supporters. Northern Maori member Hōne Heke Ngāpua and neutral rangatira Pene Tāui, Heremia Te Wake, Hōri Hare, Hapakuku Moetara, and Rē Te Tai convinced Tōia and his supporters to give up their arms, thus ending the Dog Tax War and preventing significant casualties on both sides.

from Ōmanaia to Waimā, and according to one Hokianga constable, 'could have slaughtered our men without being seen'. Instead, a message from Tōia reached his sentries just in time to avoid hostilities. Only two shots were fired: by some accounts, these were warning shots; by others, they narrowly missed one of the army officers.[980]

Heke arrived at Kawakawa on the afternoon of 5 May and rode straight for Otātara, where he attempted to persuade Tōia and his followers to surrender – the alternative being Crown–Māori warfare in Ngāpuhi territory. Te Huihui agreed to consider what Heke said and meet again in the morning. Heke then went to Newall's camp, where the Lieutenant Colonel repeated his promise to wait until midday before advancing. In the morning,

Heke and several of the neutral rangatira met Tōia and his supporters once more. According to the report in the *New Zealand Herald*, Tōia 'rose and said that he and his followers had decided not to defy the law'. They would give up their arms and 'submit and be peaceful'.[981]

Heke then telegraphed the Premier, who in turn telegraphed Newall, ordering him to remain in position until further notice. This message arrived at 11am, an hour before the planned advance. At 11.30 am, Heke walked into the soldiers' camp with Tōia and four other Te Huihui leaders: Hōne Mete, Romana te Paehangi, Rakene Pehi, and Makara. Heke explained that they were surrendering unconditionally. Tōia and his supporters then handed over 14 guns with ammunition and the five Te Huihui leaders were arrested.[982]

Over the next few days, 11 more Te Huihui leaders were arrested, and Te Huihui supporters handed in 25 more firearms. Seddon and other Ministers insisted on the relinquishment of the weapons, believing that Te Huihui were more heavily armed than in fact they were. One of the arrested men was Hōhepa Tāwhai, whose father Hōne Mohi Tāwhai had done much to find accommodation between Māori and Crown systems of law, and whose grandfather Mohi Tāwhai had aided the Crown during the Northern War.[983] These arrests ended the so-called 'Dog Tax War', this district's final act of armed Māori resistance against the Crown, and one of the last anywhere in New Zealand.[984]

(iii) *What was the impact of this conflict on the Crown's relationship with Te Raki Māori?*

The 'Dog Tax War' was the first occasion since the Northern War in which the Government had sent armed forces with hostile intent into Ngāpuhi territories. As settler newspapers pointed out in the aftermath, this action was not about collecting a tax: the revenues involved were minor, and the tax's impact 'trivial'.[985] Rather, this action was about asserting the Crown's authority over Māori and discouraging other Māori from resistance or the pursuit of independence. It was, as Seddon wrote to Heke as the conflict was unfolding, about the Government's determination to ensure that its laws were enforced, and that Māori complied with the same laws as Pākehā.[986]

In this, it was effective. Many historians have seen this as a pivotal and perhaps decisive event in the Crown's assertion of substantive sovereignty within this district.[987] That is also our view. From this point, although Te Raki Māori might at times disagree with the Crown, and although some Māori land remained under customary authority (largely centered in Te Rohe Pōtae o Ngāti Hine, with some further land around the Hokianga harbour, south-eastern Bay of Islands and Whangaroa),[988] there was little realistic prospect of Māori resisting the Government's enforcement of its laws.

If, as many scholars have argued, state monopoly on use of force is the fundamental test of substantive sovereignty, through its actions the Crown did effectively assert its authority over Te Raki Māori.[989] We have no doubt that Te Huihui sentries could have inflicted significant harm on the government force, and (as Heke observed at the time) the outcome of any initial battle was not a foregone conclusion. But Heke's intervention and Tōia's surrender both reflected an underlying reality that Ngāpuhi could not bear the devastating cost of war with the Crown – so submission became the only viable course.[990]

Seddon's biographer Tom Brooking has argued that the Premier was also aiming to discourage Kotahitanga leaders from any further pursuit of 'home rule'.[991] As we have seen, Kotahitanga objectives did indeed change course from about this time: leaders including Heke no longer pressed the Government to recognise the Paremata Maori or allow Māori to determine their own laws; rather, Kotahitanga pursued accommodation with the Crown aimed at providing for limited and local forms of self-government under Crown control. At a district level, immediately after the conflict Heke and other leaders undertook to dissuade their people – many of whom sympathised with Te Huihui – from any further resistance to the colony's laws.[992]

After their arrests, the Te Huihui prisoners were taken to Auckland and charged with 'conspiracy to levy war against the Queen in order to force her to change her

A mural at Rāwene on the wall by the ferry dock, painted by local artist Dallon August in remembrance of the 1898 Dog Tax War. Kuia Ipu Absolum told the Tribunal that the mural 'reminds all of Te Māhurehure of the oppression that they faced every time they cross over the river'.


GOD DEFEND AOTEAROA

measures, and conspiring by force to prevent the collection of taxes'. Some were also charged with unlawful assembly and assault. The charge of the conspiracy to levy war was dropped after the defendants pleaded guilty on the other charges.[993] At their trial in the Supreme Court in July, their lawyer (Fred Earl) attempted to persuade the judge (Justice Edward Connolly) that Te Huihui's actions were a legitimate protest under the treaty, reflecting Māori understanding that they were to be left in undisturbed possession of their lands and personal property, and therefore free of the colony's laws and taxes.[994] Judge Connolly rejected these arguments, convicting all 15 defendants, sentencing Tōia and three other leaders to 18 months' hard labour, and imposing £10 fines and good behaviour bonds on the others, who were imprisoned until they paid.[995]

After this trial, the Hokianga County Council went ahead with proceedings against 38 other Te Huihui supporters, seeking payment of the dog taxes. The magistrate (Clendon) fined each of the defendants five shillings. With court costs, the total amount demanded of Te Huihui exceeded £90. After protests by Ngāpuhi rangatira, the fines were remitted on condition that Te Huihui stay out of 'trouble', but costs of about £50 were still imposed.[996] Each of these convictions represents a clear assertion of Government authority over a Māori community.

In March 1899, after deputations from Pene Tāui and other Hokianga leaders, the Governor, acting on Seddon's advice, used his power of clemency to release Hōne Tōia and other imprisoned Te Huihui leaders. As discussed earlier, Seddon announced this decision at the 1899 Kotahitanga Paremata, where he was seeking the support of Te Raki leaders for his Māori land proposals.[997] Seddon also conceded that the Hokianga County Council 'had not acted wisely or judiciously' in its dog tax enforcement, and had cost the colony far more than it could raise through the tax.[998]

In evidence to this inquiry, Ipu Absolum of Te Māhurehure said the dog tax must be seen alongside land taxes, wheel taxes (on carts and wagons), prohibitions on hunting, and confiscation of firearms used in hunting, as 'part of an overall system that impoverished our people while separating them from the resources that sustained them'. Trials, fines, and imprisonment of Te Māhurehure men further impoverished the hapū, taking them from their mahinga kai and other work that provided for the well-being of their whānau. The Government's enforcement action was not only an assertion of its authority over that of rangatira but also forced Te Māhurehure into the colony's cash economy, making them 'a dependent people' and denying them their independence.[999] Patu Hohepa (Te Māhurehure) said the Crown's invasion of Waimā and imprisonment of Te Huihui leaders 'was raupatu in the worst possible sense because it almost drove our people to starvation'.[1000] We agree with claimants that the Government used the dog tax and the threat of force to assert authority over Māori communities.

There was one further confrontation in the district between a rangatira and his followers and a posse of armed police. Five years after the 'Dog Tax War', a dispute erupted between owners of the Tautoro land block, which was part of the former Rohe Pōtae o Ngāti Hine. The rangatira Iraia Kūao had arranged to partition this block, with the intention that his portion remain as customary land. Other owners wanted to place the whole block before the Tokerau Maori Land Council for title determination, but Kūao threatened to shoot anyone who pursued this course.[1001]

When attempts to negotiate a resolution failed, Kūao and a group of followers began to prepare for an armed response. A contingent of 20 armed police travelled from Auckland in September 1903, entering Kūao's settlement with warrants to arrest the rangatira and his supporters on charges of threatening to kill. Instead, Kūao and his supporters surrendered themselves and handed over their firearms. They were issued fines (ranging from £200 for Kūao to £50 for others) and released on condition that they keep the peace. While in custody, Kūao gave an assurance that he would allow the Land Council to adjudicate on the disputed land.[1002] Although no shots were fired, this appears to have been the last incident in which Te Raki Māori considered armed resistance against Government authority.[1003] In Belich's view, it was also the moment at

which the Crown's sovereignty conclusively arrived in the north. We will consider that point in the next volume of our report.[1004]

11.5.3 Conclusions and treaty analysis

(1) *The Kotahitanga parliaments*

From the late 1880s through to the mid-1890s, the Kotahitanga movement, in which Te Raki rangatira played a central role, developed numerous proposals for Māori autonomy and self-government at local and national levels, all of which the Crown rejected or ignored. Specifically:

- Following the 1889 Ōrākei parliament, Pāora Tūhaere proposed the establishment of a national Māori assembly which would propose laws to the colonial assembly, and review laws from it. Tūhaere also proposed the abolition of the Native Land Court and the creation of a system of tribal governance over Māori land. After the hui, he wrote to the Government with his proposals, and it took no action.
- The first Kotahitanga Paremata in 1892 resolved that it would make laws for Māori people and lands, and the colonial Legislature should no longer do so; and that native committees should replace the Native Land Court. A delegation then visited Wellington, where they placed their proposals before the Premier and Native Minister, neither of whom took any action.
- Other members of the House did respond. Sir George Grey promised to draft and introduce a Bill providing for local self-government and for a national Māori assembly that would propose laws for consideration by the colonial Parliament. Grey's Native Empowering Bill 1892 was weaker than promised, but did nonetheless make some provision for local self-government. It was introduced but never debated.
- In 1892, James Carroll and William Rees drafted the Native Committees Act 1883 Amendment Bill, which aimed to empower native committees to determine title and manage dealings in Māori lands – essentially the powers that Māori had expected of the original Act. This, too, was introduced but never debated.

Between 1893 and 1896, Kotahitanga provided several more opportunities for the Crown to engage with its leaders with a view to recognising Māori self-government:

- The Federated Maori Assembly Empowering Bill 1893 provided for district committees established under section 71 of the New Zealand Constitution Act, empowered to determine land ownership and manage landholdings.
- The 1893 Kotahitanga petition proposed to establish an autonomous Māori parliament, consisting of an upper and lower house, to govern all Māori (or at least all who had signed the Kotahitanga pledge). It also proposed a system of district committees empowered to determine titles and manage lands.
- The Native Rights Bill 1894 provided for the establishment of a separate parliament for Māori, which would make laws dealing with the personal rights, lands, and property of all Māori people. The Bill was reintroduced in 1895 and again in 1896 but was not debated.

Ministers gave varying responses to these proposals. Some, such as Joseph Ward in 1892, were sympathetic, acknowledging that injustices had occurred and offering hope that initiatives for Māori autonomy and self-government might be considered. Others insisted that the treaty guaranteed Māori no more than citizenship rights and secure title to their lands; that the Crown, as a matter of law, was entitled to control Māori lands, fisheries, and other resources; that the colonial Parliament had never enacted laws that breached the treaty, except to abandon Crown pre-emption; and Māori must comply with settler laws and taxes. They held these views notwithstanding careful explanations made by Hōne Heke Ngāpua and other Kotahitanga leaders about the basis for Māori self-government in he Whakaputanga, and the New Zealand Constitution Act.

To a significant degree, Kotahitanga leaders were seeking no more than the Crown's legal recognition for local komiti and national paremata that were already operating.

With respect to local self-government, legal recognition of native committees was clearly possible for the Crown: rūnanga had been tried in the 1860s, and native committees in the 1880s. Hōne Mohi Tāwhai first proposed to establish native committees with legal authority over land disputes in 1880. This would have formalised the role played by bodies such as Te Komiti o te Tiriti o Waitangi in the Bay of Islands. However, this proposal was not taken up, and the committees that were eventually established under Bryce's Native Committees Act 1883 lacked real power and foundered as a result. Te Raki rangatira, including Wiremu Pōmare and Maihi Parāone Kawiti at Kawakawa, and Wiremu Kātene, Hōne Peeti, and Hōne Heke at Waimate, argued again before the Native Land Laws Commission in 1891 for land titles to be determined by native komiti or rūnanga.[1005] Struck by the consistent calls for thorough reforms, the commissioners recommended that komiti and rūnanga be established to determine questions of land ownership and boundaries. But these calls and recommendations were also ignored.[1006] Carroll's 1892 native committees legislation was a further, significant opportunity for the Crown to have delivered on its obligation to protect the tino rangatiratanga of Māori communities with respect to their lands. The Federated Maori Assembly Empowering Bill 1893 was another very significant opportunity. The Crown missed them both.

With respect to proposals for national self-government, the Crown's failure to seriously engage with the Native Rights Bill was a particularly significant missed opportunity to provide for an effective Māori voice in the making of the colony's laws. The Kotahitanga assembly had already been operating for several years and had shown itself capable of developing legislative proposals. In contrast, the colonial Parliament had been unresponsive to the persistent petitions of Te Raki Māori seeking greater representation in government, and relief from the effects of the Crown's Native Land legislation and the dog tax. In this context, it is not surprising that Te Raki Māori strongly supported the Kotahitanga Paremata and, as Armstrong and Subasic observed, that Kotahitanga became:

> the primary vehicle both for the airing of their grievances, and just as importantly, for the realisation of their long-standing political aspirations for self-government and control over their land.[1007]

The independent voice of Te Raki Māori within Kotahitanga was best captured by Hōne Heke Ngāpua, whose Native Rights Bill became the centrepiece of the Kotahitanga strategy from 1893, the same time as he was also elected to represent the Northern Maori electorate in Parliament.

In its *He Maunga Rongo* report, the Tribunal concluded:

> the key point which prevented the Crown accepting a national Maori body to draft laws (or regulations) for Maori lands was not that it was inconceivable, impractical, or unreasonable by the standards of the time.[1008]

The Tribunal noted that, over the late 1880s and 1890s, Ballance and Seddon had submitted draft Bills to national Kotahitanga hui, indicating that 'the Crown could and did work with such meetings of representative Maori leaders'. In these exchanges, the will of Māori was made known to the Government, and it would have been no great leap of principle or practice to establish a more permanent provision for Māori input into legislation affecting them.[1009] What remained to be worked out was the relationship between Māori and colonial assemblies, including questions about their respective jurisdictions and how any conflicts would be resolved. We acknowledge that Heke's Bill went further than previous Te Raki Māori proposals towards the establishment of a separate system of government; in this, Heke's proposal appears to have reflected the depth of Ngāpuhi Māori frustration with the colonial Parliament. With good will on both sides, any differences could have been resolved. But the Crown did not attempt to negotiate over these matters; it rejected the Kotahitanga proposal out of hand. We agree with the conclusion of the Central North Island Tribunal in *He Maunga Rongo* that, in the end:

> [I]t came down to economic self-interest. Settlers considered they had an equal or predominant interest in Maori lands, that those lands must in fact be transferred to them, and that ultimate power over them must be retained by the settler Government. (These points emerge very clearly in the parliamentary debates and other documentation of the time.) This was the reason why Home Rule was acceptable for the Irish but not for Maori.[1010]

More broadly, the Crown rejected a historically unique opportunity to make provision in New Zealand's constitutional arrangements for Māori tino rangatiratanga or autonomy at a national level, or for the Paremata Maori, in a manner that secured meaningful power for both treaty partners and allowed them to work constructively together. Māori had done the hard work by creating a representative assembly with very broad support. They had also met their obligations under te mātāpono o te whakaaronui tētahi ki tētahi/the treaty principle of mutual recognition and respect by sustained engagement with the Crown over a number of years in order to achieve mutual understanding and mutually acceptable outcomes. They could not perhaps accept some colonial institutions. Parliament was seen as overwhelmingly representative of settler interests, and along with the Native Land Court, both were viewed as hostile to Māori treaty rights and damaging to their communities. But they recognised that it was in their best interests to reach accommodation with the New Zealand Government and Parliament, and to secure their recognition of tino rangatiratanga. By the late 1890s, the Kīngitanga was also prepared to recognise the colonial Parliament, thus removing a key obstacle to agreement between the various parties. Yet, when Seddon did enter meaningful negotiations at that time, he sought to divide Kotahitanga and pursued a model that significantly curtailed Māori influence at a national level, and provided for local self-government that was limited (particularly in respect of land) and operated under the Crown's control.

Accordingly, we find that:

- By rejecting Kotahitanga proposals for Māori autonomy and self-government in the early 1890s, and in particular by rejecting the Native Committees Act 1883 Amendment Bill 1892, the Federated Maori Assembly Bill 1893, the Kotahitanga petition 1893, and the Native Rights Bill 1894 (including when it was reintroduced in 1895 and 1896), the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga/the principle of partnership.
- By failing to enter meaningful negotiations over the Kotahitanga proposals until the late 1890s, the Crown breached te mātāpono o te houruatanga/the principle of partnership.

(2) *The 'Dog Tax War'*

As with its rejection of the Kotahitanga proposals and other proposals for Māori self-government, the Crown's imposition of the dog tax and encouragement for county councils to enforce the tax reflected its overarching aim to realise its substantive sovereignty in the north. It imposed the tax and supported enforcement without regard to its treaty obligations, despite Maihi Parāone Kawiti, Hōne Tōia, and other rangatira invoking the treaty agreement both during the disputes and in the trials they were subjected to afterwards. The tax was imposed over communities that had not accepted the authority of the Crown's systems of national or local government; it amounted to taxation without adequate representation; and the imposed fines were punitive and impoverishing. The Crown's subsequent arrest of Te Huihui followers at gunpoint was an unnecessary and disproportionate use of force, which was intended to intimidate Māori in this district and elsewhere, serving as a warning that the Crown would not tolerate open defiance of its authority.

Accordingly, we find that:

- By supporting and encouraging this district's county councils to enforce the dog tax on communities that lived on customary Māori land and had not consented to the Crown's system of national or local government, the Crown breached te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga/the principle of partnership.
- The Crown's arrest at gunpoint of Hōne Tōia and other followers of Te Huihui was disproportionate, overly punitive, and calculated to intimidate Māori. This was in breach of te mātāpono o te mana taurite/the principles of equity and te mātāpono o te kāwanatanga. It was also in breach of te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga/the principle of partnership.

11.6 Whakarāpopototanga o ngā Whakataunga/Summary of Findings

In respect of parliamentary representation for Te Raki Māori, we find that:

- By providing for Māori representation in the House of Representatives through the Maori Representation Act 1867 without first engaging with Te Raki Māori, and in particular without seeking their input on the number and size of electorates, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te houruatanga/the principle of partnership.
- By effectively denying the great majority of Māori representation in the General Assembly, and then providing for the election of only four Māori members to the House, including only one for all northern Māori, when they were entitled to between 12 and 14 on a population basis in 1867, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te mana taurite/the principle of equity. The Crown also breached this principle by failing to ensure that Māori were represented in the Legislative Council and in provincial assemblies (the Auckland Provincial Council in the case of Te Raki Māori).
- By rejecting legislative proposals to increase Māori representation during 1871, 1872, 1875, and 1876, the Crown breached te mātāpono o te kāwanatanga, te mātāpono o te mana taurite me te mātāpono o te houruatanga/the principles of equity and partnership.

In respect of Te Raki Māori proposals for rūnanga and native committees, we find that:

- By failing to take the opportunities offered by Wiremu Kātene's 1871 proposal for the establishment of rūnanga based on partnership in districts north of Auckland, and the Native Councils Bills of 1872 and 1873, the Crown breached te mātāpono o te houruatanga/the principle of partnership; it also acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori and give effect to proposals for their self-government at a regional and local level in breach of te mātāpono o te tino rangatiratanga.
- The Native Committees Empowering Bill 1881 and the Native Committees Bill 1883 presented significant opportunities for the Crown to provide for Māori autonomy and self-government at a local level. By declining to pursue these opportunities, by instead establishing committees that lacked real power or authority, and by declining Te Raki Māori requests to increase the powers of committees established under the Native Committees Act 1883, the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga/the principle of partnership.

In respect of proposals for a Māori Parliament, we find that:

- By declining to enter negotiations over the establishment of a Māori parliament despite repeated requests by Te Raki Māori (specifically, in Hirini Taiwhanga's 1878 petition, at the Waitangi parliament in 1881, in Hirini Taiwhanga's 1882 petition, in Hōne Mohi Tāwhai's 1883 petition, and on several other occasions during the 1880s), the Crown acted

inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. This was also in breach of te mātāpono o te houruatanga/the principle of partnership.

- By impugning the credibility, integrity, and status of Ngāpuhi leaders who petitioned the Queen in 1882 and 1883, in order to ensure that they would not meet the Queen and in order to prevent serious inquiry by the imperial government into the treaty issues they raised, the Crown committed a serious breach of its obligation to act in good faith towards its treaty partner, in breach of te mātāpono o te houruatanga/the principle of partnership.

In respect of Te Raki Māori appeals for redress and petitions, we find that:

- The Crown, by ignoring or rejecting petitions and other requests from Te Raki Māori for recognition of their tino rangatiratanga (in particular, Hirini Taiwhanga's 1882 petition, the 1883 letter to the Aborigines' Protection Society, Wī Kātene's 1884 petition, and further petitions and letters from 1886 to 1888), the Crown breached its duty of good faith, and te mātāpono o te whakatika/the principle of redress.

In respect of the Kotahitanga parliaments, we find that:

- By rejecting Kotahitanga proposals for Māori autonomy and self-government in the early 1890s, and in particular by rejecting the Native Committees Act 1883 Amendment Bill 1892, the Federated Maori Assembly Bill 1893, the Kotahitanga petition 1893, and the Native Rights Bill 1894 (including when it was reintroduced in 1895 and 1896), the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga/the principle of partnership.
- By failing to enter meaningful negotiations over the Kotahitanga proposals until the late 1890s, the Crown breached te mātāpono o te houruatanga/the principle of partnership.

In respect of the 'Dog Tax War', we find that:

- By supporting and encouraging this district's county councils to enforce the dog tax on communities that lived on customary Māori land and had not consented to the Crown's system of national or local government, the Crown breached te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga/the principle of partnership.
- The Crown's arrest at gunpoint of Hōne Tōia and other followers of Te Huihui was disproportionate, overly punitive, and calculated to intimidate Māori. This was in breach of te mātāpono o te mana taurite/the principles of equity and te mātāpono o te kāwanatanga. It was also in breach of te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga/the principle of partnership.

11.7 Ngā Whakahāweatanga/Prejudice

On numerous occasions between 1865 and 1900, Te Raki Māori engaged with the Crown seeking recognition of institutions that would protect and provide for the ongoing exercise of tino rangatiratanga and self-government. Consistently, the Crown ignored, dismissed, rejected, or undermined these proposals. In 1883 and 1900, the Crown enacted legislation providing for very limited Māori authority over local affairs and lands, but neither was intended to provide for the fullest expression of Māori self-government.

From the mid-1860s, the relationship between the Crown and Te Raki Māori entered a new phase. With the Crown's side of the Crown–Māori relationship now in the hands of the colonial Government, the Crown abandoned its attempts to govern Māori through indirect rule and instead pursued a course aimed at breaking down traditional Māori systems of authority, hastening Māori submission to the colony's laws and institutions of government, and opening Māori lands for settlement

on a massive scale. To most settler politicians during this period, the treaty did not guarantee Māori mana and tino rangatiratanga, encompassing full, independent authority over their territories and resources.[1011] Nor, in their view, did it provide for an enduring relationship between the Crown and Māori based on mutual peace and prosperity. Rather, to them, the treaty guaranteed only that Māori could own their customary lands and exercise citizenship rights, while authority was reserved for the colony's institutions of government.

Te Raki Māori responded to this new policy direction in two ways. First, they demonstrated their commitment to the treaty relationship by acknowledging their acceptance of the Queen's protection, seeking trade and settlement within their rohe, offering military and diplomatic assistance to the Crown, and working with the Crown's courts and other institutions to manage Māori–settler relationships. Secondly, they sought new means of expressing and protecting their tino rangatiratanga rights. They established new institutions at local, regional, and national levels, and sought Crown recognition of their enduring rights to self-government and their right to be protected from laws that encroached on their mana and tino rangatiratanga.

Notwithstanding these efforts, the Crown succeeded in its objectives. Having asserted its claim to sovereign authority through a series of North Island wars, the Crown then progressively undermined Māori tribal authority. Over time, the Native Land Court and Crown purchasing severed traditional relationships with land and resources. State-sponsored immigration left Māori in a minority in their traditional territories. When Māori sought economic advancement, the Crown demanded that they first submit to the colony's laws, give up land for public works, and pay rates, taxes, and duties which further threatened land and community authority.

During the 1880s, the Crown also began to assert its authority by force: arresting and imprisoning members of Hokianga prophetic communities, and then sending soldiers against Te Huihui, an impoverished Hokianga community who rejected the Crown's authority and would not pay its taxes. By sending such a large force, the Premier clearly intended to overawe Te Huihui and all of Ngāpuhi, and indeed to set an example to all Māori who sought to maintain their independence. It took Māori mediation to ensure that bloodshed was averted, though it could not save Hokianga men from prison and from fines that they could not afford. The grief and bitterness left by the Government's response is still evident today.

The immediate effect was to pressure Te Huihui into submission, even though they were living on customary lands and had never accepted the colonial Government's right to tax them or enforce its laws over them. But there was a broader, chilling effect on Te Raki Māori autonomy. For many decades, both sides had avoided open conflict, knowing that the costs would be too high. Now, the Crown was prepared to embrace open conflict, believing that it had the stronger force. From that point, Māori knew that the Crown would back its presumed sovereignty with arms. Ngāpuhi leaders ensured that the conflict ended without bloodshed, and to this extent they exercised their tino rangatiratanga; but their efforts could not prevent Māori submission to an overarching Crown authority.

Even within the colonial system of government, the Crown was not prepared to share meaningful power. The Crown's few concessions to Māori autonomy during this period were tokenistic and manifestly inadequate, failing to provide for tino rangatiratanga even at a local level, or to protect Māori from systematic attacks on their authority and resource rights. At no point was it willing to give Māori effective power within the colony's system of government, in recognition of their tino rangatiratanga. Ngāpuhi and Kotahitanga leaders were urged to bring their proposals to the Government, and did so year after year, through every channel at their disposal; yet their representations appeared to be met with little interest, with patronising suggestions to redirect their efforts, or with complete rejection. By 1900, the Crown had extended its practical authority over much of the district, and the capacity of Te Raki Māori to exercise their tino rangatiratanga had been commensurately weakened.

By 1900, Māori in most parts of the district could no longer fully exercise the rights traditionally associated with tino rangatiratanga, including rights to possess,

manage, and develop traditional lands and resources; resolve internal disputes; enter trade and economic alliances; and defend their rights and territories, independent of Crown interference. It is not clear that the Crown's reach was yet complete into every part of the district, but the capacity of Te Raki Māori to resist the Crown's practical authority was much diminished.

Further, the Crown's actions took a severe toll on its relationship with Te Raki hapū, the effects of which were evident to us throughout our hearings. Te Raki Māori had seen this relationship in personal terms, as part of a sacred bond between rangatira and the Queen, in which she would protect them from the harms of colonisation. By 1900, the Crown had made clear that it did not see the relationship in these terms, and that any exercise of Māori authority, however limited, must occur under the control of colonists and their institutions, and on their terms.

Notes

1. 'United We Stand, Divided We Fall': 'The Native Meeting at Waitangi', *New Zealand Herald*, 21 April 1892, p 6; David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), p 1282.
2. Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68), p 21.
3. Dr Barry Rigby, 'Validation Review of the Crown's Tabulated Data on Land Titling and Alienation for the Te Paparahi o Te Raki Inquiry Region: Crown Purchases, 1866–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A56), p 3; Crown closing submissions (#3.3.407), p 13; claimant closing submissions (#3.3.213), p 35.
4. For example, the Fish Protection Act 1877. See also Anne-Marie Jackson, 'Erosion of Māori Fishing Rights in Customary Fisheries Management', *Waikato Law Review*, vol 21 (2013), p 65.
5. Bruce Stirling, 'Eating Away at the Land, Eating Away at the People: Local Government, Rates and Maori in Northland', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A15), pp 40–43, 100–103; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 83.
6. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 65–66, 905–910.
7. Claimant closing submissions (#3.3.228), pp 17–19, 172–176; amended closing submissions for Wai 49 and Wai 682 (#3.3.382(b)), pp 18–22.
8. Claimant closing submissions (#3.3.228), pp 18–19.
9. Crown closing submissions (#3.3.402), pp 6–7, 25–27, 29–32, 166.
10. 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 529.
11. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, pp 175–176; Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims*, Wai 1200, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 166, 173–174.
12. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22, 2nd ed (Wellington: Government Printing Office, 1989), p xvi.
13. Waitangi Tribunal, *Maori Electoral Option Report*, Wai 413 (Wellington: Brooker's Ltd, 1994), pp 3–4, 12, 37; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 208, 242–243, 305–306, 338–339; Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, Wai 215, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 381, 385; Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, Wai 903, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 401.
14. Waitangi Tribunal, *Maori Electoral Option*, Wai 413, p 6.
15. Waitangi Tribunal, *Tauranga Moana*, Wai 215, vol 1, pp 382–383.
16. Ibid, p 385.
17. Ibid, p 383.
18. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 400–401; see also Waitangi Tribunal, *The Te Roroa Report*, Wai 38 (Wellington: Brooker and Friend Ltd, 1992), p 184.
19. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 242–243, 305–306.
20. Ibid, p 177, see also pp 383–384; Waitangi Tribunal, *Te Urewera*, Wai 894, 8 vols (Wellington: Legislation Direct, 2017), vol 2, p 871.
21. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 367–368.
22. Ibid, pp 371–372, 384–385.
23. Ibid, pp 384–385.
24. Claimant closing submissions (#3.3.228), p 171, see also pp 17, 29.
25. Ibid, pp 172–173, 175.
26. Ibid, pp 259–261; amended closing submissions for Wai 49 and Wai 682 (#3.3.382(b)), pp 23–24; Te Waimate Taiamai and Kaikohe Taiwhenua opening statement (doc E58), pp 43–45; closing submissions for Wai 2005 (#3.3.264), pp 31–32; Waihoroi Shortland (doc AA81), pp 19–21.
27. Claimant closing submissions (#3.3.228), pp 259, 278–279.
28. Ibid, pp 260–261.
29. Ibid, pp 172–177.
30. Ibid, pp 17–19, 172–177; amended closing submissions for Wai 49 and Wai 682 (#3.3.382(b)), pp 18–22.
31. Claimant closing submissions (#3.3.228), pp 7–8.
32. Ibid, pp 8–9.
33. Crown closing submissions (#3.3.402), pp 25–27, 29–32.
34. Ibid, pp 89–90, 128–129, 165–166.
35. Ibid, pp 6–7.
36. Ibid, pp 111–116.

37. Crown closing submissions (#3.3.402), pp 116–118, 166; Crown memorandum filing answers to post-hearing questions (#3.2.2681(a)), para 38.
38. Crown closing submissions (#3.3.402), p 118; see also memorandum 3.2.2681(a), para 38.
39. Crown closing submissions (#3.3.402), pp 126–129.
40. Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), pp 62–63. Census results show Māori outnumbering non-Māori in Mangonui and Hokianga until the 1890s: 'Results of a Census of the Colony of New Zealand 5th April 1891', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1891-census/1891-results-census/1891-results-census.html#d50e396114, ch 16, tbl 15, app C, tbl 4, accessed 17 November 2021.
41. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 341.
42. Ibid, pp 422–423, 436, 451–454, 910–911.
43. Ibid, pp 892–893.
44. Robert Creighton, 4 October 1871, NZPD, vol 11, p 106.
45. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 65.
46. Ibid, pp 952–953, see also p 548.
47. By October 1871, members of the House of Representatives debated funding for Waitematā–Whāngārei, Whāngārei–Kaipara, Kaipara–Bay of Islands, Bay of Islands–Hokianga, and Mangonui–Ahipara roads: 'Public Works North of Auckland', 4 October 1871, NZPD, vol 11, p 96.
48. Mary Gillingham and Suzanne Woodley provided evidence that by 1879 there were 17 native schools operating in Northland, and 14 were situated on land gifted by Māori. However, none of the sites gifted by 1879 had been conveyed to trustees as required under the legislation, and in most cases the amount of land initially gifted by Māori for the school sites is not known: Mary Gillingham and Suzanne Woodley, 'Northland: Gifting of Lands', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A8), pp 37–39; Merata Kawharu (doc W10(a)), p 14; John Barrington, 'Northland Language, Culture and Education – Part One: Education', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A2), p 78.
49. The Crown purchased some 439,000 acres between 1 January 1875 and 31 December 1880: Rigby, 'Validation Review' (doc A56), p 4, app A. The Pakiri 2 and 3 purchases were also confirmed in 1881 and accounted for a further 19,532 acres.
50. For example, the Fish Protection Act 1877. See also Anne-Marie Jackson, 'Erosion of Māori Fishing Rights in Customary Fisheries Management', p 65. Fisheries legislation and the establishment of a local government system is discussed further in part 2 of this stage 2 report.
51. Bruce Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), pp 40–43, 100–103; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 83.
52. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 65–66, 905–919.
53. Ibid, pp 14, 20, 40, 46, 647, 902, 910; see also Vincent O'Malley, 'Runanga and Komiti: Maori Institutions of Self-government in the Nineteenth Century' (doctoral thesis, Victoria University of Wellington, 2004) (doc E31), pp 91–92; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 748–749, 781–783, 824, 1025–1026, 1372–1373; Giselle Byrnes, ed, *The New Oxford History of New Zealand* (Wellington: Oxford University Press, 2009), pp 120–121, 180–181, 209.
54. O'Malley, 'Runanga and Komiti' (doc E31), pp 91–92.
55. 'Nominal Roll of the Civil Establishment of New Zealand on the 1st July, 1868', AJHR, 1868, D-13, pp 3, 13–16, 18–24, 26, 28. White remained as a resident magistrate until 1878 while also serving as a Native Land Court judge: see 'Mangonui: Farewell to Mr White RM', *New Zealand Herald*, 5 April 1878, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 305–306.
56. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 40–42, see also p 453.
57. From 1840 to 1865, the Crown purchased some 482,115 acres of land in this district (or 482,525 acres according to Dr Barry Rigby). Old land claims and pre-emption waiver purchases accounted for another 274,592 acres, bringing the total of 740,465 acres in a district totalling 2,132,148 acres: Dr Barry Rigby, corrections to validation reports (doc A48(e)), p 2.
58. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 41–42, 52–56.
59. Ibid, pp 171–177, 449; O'Malley, 'Northland Crown Purchases' (doc A6), pp 161–164.
60. Armstrong and Subasic discussed the operation of the rūnanga in detail: see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), section 1.3.2. For examples of Te Raki Māori resisting, rejecting, or bypassing rūnanga decisions, see pp 208–209, 227–228, 265.
61. Ibid, p 449.
62. Ibid, pp 449–450, 454.
63. Armstrong and Subasic discussed these matters in detail: ibid, pp 448–498 (for the period 1864–70), 905–919 (for the period 1871–81).
64. Armstrong and Subasic described this incident in detail: ibid, pp 463–467.
65. Ibid, pp 414–416.
66. Ibid, pp 416–419.
67. Ibid, p 418.
68. Ibid, pp 422–423.
69. For examples, see ibid, pp 467–470, 472, 477, 482–483.
70. Ibid, pp 469–470.
71. Ibid, p 469.
72. Ibid, p 472.
73. These events are described in newspaper coverage of Te Wake's trial: 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 8 September 1868, p 6; 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 9 September 1868, p 4; 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 423–424; 'Report by Mr Commissioner MacKay Relative to

the Surrender of Te Wake, Etc', AJHR, 1869, A-16, pp 3–4; 'Native Disturbance at Hokianga', 29 July 1868, NZPD, vol 2, pp 146–153.
74. Hone Mohi Tawhai to Native Minister, 3 April 1868 (David Armstrong and Evald Subasic, supporting documents (doc A12(a)), vol 5, pp 1:1880–1:1896); see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 424–425.
75. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 449, 497.
76. Richmond was accompanying the Governor General, Sir George Bowen. The visit had been arranged for the Duke of Edinburgh who cancelled a planned visit to New Zealand after an assassination attempt in Sydney: 'The Governor's Journey to the North', *New Zealand Herald*, 20 April 1868, p 3.
77. In his letter, Tāwhai noted that they had no weapons and 'all the weapons we have are our hands only': Hōne Mohi Tāwhai to Governor, 28 April 1868 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 5, p 1:1924); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 425–426, 428. Dame Whina Cooper, born in 1895, was Heremia Te Wake's daughter.
78. The magistrates placed Te Wake in a doorless shed. At the time of his escape, he was guarded by Barstow and two other officials, Hopkins and William Clarke (a magistrate's clerk and surveyor respectively; both were sons of the Chief Protector George Clarke senior). Edward Williams tried to persuade neutral Māori to guard Te Wake, but they refused: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 425–426; 'Bay of Islands', *Daily Southern Cross*, 7 May 1868, p 3.
79. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 429–431.
80. Tāwhai to Richmond, 18 May 1868 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 5, p 1:1964); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 430–431.
81. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 431–432.
82. Ibid, pp 432–435, 438.
83. 'Report by Mr Commissioner MacKay Relative to the Surrender of Te Wake, Etc', AJHR, 1869, A-16, pp 3–4.
84. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 484–487, see also p 490.
85. Ibid, pp 486–488.
86. Ibid, pp 490–492, see also pp 485, 488.
87. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 8 September 1868, p 6.
88. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 439–440.
89. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 439–440.
90. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 8 September 1868, p 6.
91. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 440–441.
92. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 440–441.
93. MacCormick had observed that Māori defendants had a right to have their case heard by a Māori jury, but that he had selected a jury of Europeans: 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4. The Juries Amendment Ordinance 1844 made provision for Māori to serve on mixed juries if the trial involved the property or person of another Māori. The law changed in 1868. A Māori accused of a crime against another Māori could claim trial before an all-Māori jury, but no Māori could serve on a jury in a criminal case if either accused or victim was a non-Māori. Separate rules for Māori remained in place until 1965: see 'Juries', *Te Ara – the Encyclopedia of New Zealand*, http://www.TeAra.govt.nz/mi/1966/juries, accessed 5 October 2022.
94. 'Supreme Court – Criminal Sittings', *New Zealand Herald*, 10 September 1868, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 440–441.
95. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 442.
96. 'The Hokianga Murder', *New Zealand Herald*, 11 September 1868, p 3; 'The Hokianga Murder', *New Zealand Herald*, 15 September 1868, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 438, 442.
97. 'Hokianga', *New Zealand Herald*, 1 January 1869, p 3.
98. 'Escape of Prisoners from the Stockade', *New Zealand Herald*, 4 March 1869, p 4.
99. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 442–443.
100. Sheehan, 1 October 1873, NZPD, vol 15, p 1541 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 445).
101. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 445–446.
102. Maning to von Sturmer, 3 April 1874 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 445).
103. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 446.
104. Ibid, p 910.
105. Ibid, pp 911–912.
106. Ibid, pp 495, 912; Jack Lee, *Hokianga* (Auckland: Reed, 1996), p 194.
107. For examples, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 913.
108. Ibid, pp 914–917.
109. Governor Fergusson to D McLean, 26 May 1874 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 918).
110. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 918–919; *New Zealand Herald*, 9 July 1874, p 2.

111. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 919.
112. Ibid, pp 920–922.
113. Ibid, p 919.
114. Ibid, p 919, see also pp 76–77, 744, 1104–1105, 1095–1097, 1367–1389.
115. For example, see claimant closing submissions (#3.3.228), pp 259–262, 278–279.
116. Crown closing submissions (#3.3.402), pp 116–118, 166; Crown memorandum filing answers to post-hearing questions (#3.2.2681(a)), para 38.
117. Crown closing submissions (#3.3.402), p 116.
118. Ibid, p 117.
119. Maori Representation Act 1867, ss 2–6, 12, sch.
120. Ibid, s 11.
121. Ibid, preamble.
122. Donald McLean, 14 August 1867, NZPD, vol 1, pt 1, pp 457–458.
123. Ibid.
124. Ibid, p 458, see also pp 336–337.
125. Ibid, p 459.
126. Maurice Peter Keith Sorrenson, 'A History of Maori Representation in Parliament', in Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: 'Towards a Better Democracy'* (Wellington: Government Printer, 1986), p B19; Waitangi Tribunal, *Maori Electoral Option*, Wai 413, p 5.
127. 'Native Representation Bill', 14 August 1867, NZPD, vol 1, pt 1, pp 459, 461; see also William Reynolds, 21 August 1867, NZPD, vol 1, pt 1, p 520.
128. J C Richmond, 14 August 1867, NZPD, vol 1, pt 1, p 460.
129. Henry Harrison, 14 August 1867, NZPD, vol 1, pt 1, p 461.
130. For example, see Legislative Councillor Colonel William Kenny, 13 August 1867, NZPD, vol 1, pt 1, p 416. All members of Parliament were required to take an oath of allegiance to the Queen. The same restriction applied to all voters under the New Zealand Constitution Act 1852, s 8.
131. Carleton, 21 August 1867, NZPD, vol 1, pt 1, p 518; Harry Atkinson, 21 August 1867, NZPD, vol 1, pt 1, p 520; see also John Richardson, 6 September 1867, NZPD, vol 1, pt 2, p 807.
132. William Reynolds, 21 August 1867, NZPD, vol 1, pt 1, pp 520–521; John Richardson, 6 September 1867, NZPD, vol 1, pt 2, p 806.
133. For example, see Arthur Atkinson, 14 August 1867, NZPD, vol 1, pt 1, p 461; Robert Graham, 14 August 1867, NZPD, vol 1, pt 1, p 462.
134. William Reynolds, 21 August 1867, NZPD, vol 1, pt 1, pp 520–521.
135. Carleton, 14 August 1867, NZPD, vol 1, pt 1, pp 463–464; Carleton, 21 August 1867, NZPD, vol 1, pt 1, pp 517–518.
136. Charles Heaphy, 14 August 1867, NZPD, vol 1, pt 1, p 459; Donald Loveridge, 'The Development and Introduction of Institutions for the Governance of Maori 1852–1865', report commissioned by the Crown Law Office, 2007 (doc E38), pp 256–259.
137. The Act empowered the Governor to issue a commission directed to comprise not less than 20 nor more than 35 Māori, and to not less than three nor more than five Europeans. The Weld Government fell a month after the Bill was passed, and Loveridge said that the idea of the Commission 'quickly fell out of favour': Loveridge, 'The Development and Introduction of Institutions' (doc E38), pp 258–259, 283.
138. For example, see J C Richmond, 14 August 1867, NZPD, vol 1, pt 1, p 460; Arthur Atkinson, 14 August 1867, NZPD, vol 1, pt 1, pp 460–461; John Hall, 14 August 1867, NZPD, vol 1, pt 1, p 462.
139. Andrew Russell, 6 September 1867, NZPD, vol 1, pt 2, p 810.
140. Andrew Russell, 13 August 1867, NZPD, vol 1, pt 1, p 414.
141. Donald McLean, 14 August 1867, NZPD, vol 1, pt 1, pp 457–458, see also pp 336–337.
142. William Reynolds, 3 September 1867, NZPD, vol 2, p 705. The settler population estimate was from 31 December 1866; see also Premier John Hall, 12 August 1881, NZPD, vol 39, pp 470–471. The December 1867 census took place after the Maori Representation Act 1867 came into force. It found the settler population to be 218,637 – an average of 3,037 voters per electorate: 'Abstracts of Certain Principal Results of a Census of New Zealand Taken in December, 1867', 10 June 1868, AJHR, 1868, D-1, p 4.
143. O'Malley, 'Northland Crown Purchases' (doc A6), p 62.
144. There were four general electorates: Mangonui (which encompassed the Far North and Whangaroa), Bay of Islands, and Marsden (Whāngārei), and Northern Division (encompassing rural territories from the Manukau Harbour to Whāngārei, including Kaipara). Northern Division had two representatives: Alan McRobie, *New Zealand Electoral Atlas* (Wellington: Government Printing Office, 1989), pp 32–33.
145. Donald McLean, 14 August 1867, NZPD, vol 1, pt 1, pp 457–458; Frederick Weld, 29 August 1865, NZPD, vol E, pp 368–369; William Stafford, 26 September 1865, NZPD, vol E, pp 597–598. There was considerable population variation among settler electorates at the time (see Weld and Stafford), but nothing approaching the disparity between Māori and general electorates. In Britain, voting rights were traditionally based solely on property ownership. However, during the nineteenth century the franchise was gradually liberalised, and ultimately universal male suffrage was adopted in 1918. New Zealand followed a similar but more rapid path, introducing near universal male suffrage in 1879 and universal suffrage in 1893.
146. At 1865, Māori retained possession of 55 per cent of the territory in this inquiry district, and a greater proportion of the territory north of Mahurangi: Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), pp 15–16.
147. Report from W B White, Resident Magistrate, Mangonui, 5 September 1868, in AJHR, 1868, A-4, p 37; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
148. Report from J C Barstow, Resident Magistrate, Bay of Islands, 7 March 1868, in AJHR, 1868, A-4, p 8; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
149. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 583–584.

150. 'Maori Representation – the Meeting at Kaipara', *Daily Southern Cross*, 10 March 1868, p 2; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 582.
151. 'Maori Representation – the Meeting at Kaipara', *Daily Southern Cross*, 10 March 1868, p 2.
152. Report from E M Williams, Resident Magistrate, Waimate, 1 June 1868, AJHR, 1868, A-4, pp 25–26; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
153. Report from W B White, Resident Magistrate, Mangonui, 5 September 1868, AJHR, 1868, A-4, p 37; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
154. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
155. Report from E M Williams, Resident Magistrate, Waimate, 1 June 1868, AJHR, 1868, A-4, p 31 (app F); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586.
156. Report from E M Williams, Resident Magistrate, Waimate, 1 June 1868, AJHR, 1868, A-4, p 31 (app F); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586. Williams assumed that Taonui was not willing to stand until he had determined that the salary was worth claiming.
157. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 584–585.
158. Report from E M Williams, Resident Magistrate, Waimate, 1 June 1868, AJHR, 1868, A-4, pp 25, 31; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 583–584. Russell's father was the prominent timber trader George Frederick Webster, who lived among Ngāti Hao and married Tāmati Waka Nene's niece Herina Tuku. After Webster's death in 1855, his brother-in-law, John Webster, became Frederick's legal guardian and took over his education. In the 1866 general election, Webster was elected to represent Napier: Jennifer Ashton, *At the Margin of Empire: John Webster and Hokianga, 1841–1900* (Auckland: Auckland University Press, 2015), pp 97–98, 100, 104, 138–139; 'Native Intelligence', *Daily Southern Cross*, 2 May 1868, p 5; Claudia Orange, 'Treaty of Waitangi – Māori Responses to the Treaty – 1880 to 1900', *Te Ara – the Encyclopedia of New Zealand*, https://www.teara.govt.nz/en/photograph/37970/first-maori-mps-frederick-nene-russell, last modified 20 June 2012.
159. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 584; 'Native Intelligence', *Daily Southern Cross*, 2 May 1868, p 5; see also 'Monthly Summary for the English Mail', *Daily Southern Cross*, 2 May 1868, p 5; John Cracroft Wilson, 14 August 1868, NZPD, vol 2, p 494.
160. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 585.
161. Ibid, p 589.
162. Frederick Nene Russell, 14 August 1868, NZPD, vol 2, p 493.
163. 'The North', *Otago Witness*, 1 October 1870, p 3.
164. 'The Daily Southern Cross', *Daily Southern Cross*, 30 September 1870, p 2.
165. 'Visit of the Hon D McLean to the North', *New Zealand Herald*, 13 January 1870 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 588). For Kātene's hapū, see Te Waimate Taiamai and Kaikohe Opening Statement (doc E58), p 26.
166. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 589.
167. 'Visit of the Governor to the North', AJHR, 1870, A-7, p 7; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 589–590.
168. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 590.
169. 'Visit of the Governor to the North', AJHR, 1870, A-7, p 7; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 590.
170. Wiremu Kātene, 6 September 1871, NZPD, vol 10, p 256.
171. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 591–592. Hōne Peeti was the leading candidate among those who voted at Waimate, but Kātene won with support from Hokianga: see Williams to McLean, 15 February 1871, AJHR, 1871, F-6A, p 11. For Peeti's hapū, see of John Rameka Alexander (doc H7), p 7. There was competition in all of the Māori electorates in 1871, whereas in 1868 only two had been contested: Sorrenson, 'A History of Maori Representation', pp B22–B23.
172. D B Silver, 'Hugh Francis Carleton', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1c5/carleton-hugh-francis, accessed 19 June 2020. Regarding Māori influence on the election, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 591, 593. For insight into Carleton's views on Māori rights, see Hugh Francis Carleton, 21 August 1867, NZPD, vol 1, pt 1, pp 517–518; Carleton to Colonial Secretary, 1 November 1858, in 'Papers Relative to the Right of Aboriginal Natives to the Electoral Franchise', AJHR, 1860, E-7, pp 4–6.
173. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 591.
174. Wiremu Kātene, 19 October 1871, NZPD, vol 11, p 427.
175. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 592.
176. Ibid, pp 591–592.
177. 'Maori Representation', NZPD, vol 10, pp 471–472, 477; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 593–594.
178. 'Maori Representation Bill', 4 October 1872, 11 October 1872, 17 October 1872, NZPD, vol 13, pp 566, 595, 768; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 580.
179. Sorrenson, 'A History of Maori Representation', p B24; Taiaroa, 13 September 1876, NZPD, vol 22, p 230.
180. For examples, see Hori Kerei Taiaroa, 7 October 1875, NZPD, vol 19, p 319; petition of H M Rangitakaiwaho and others, 29 August 1876, AJHR, 1876, J-6, pp 1–2.
181. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 580, 613.

182. For examples, see Wi Parata, 13 August 1872, NZPD, vol 12, p 451; Karaitiana Takamoana, 13 August 1872, NZPD, vol 12, pp 453–454; Hori Kerei Taiaroa, 13 August 1872, NZPD, vol 12, p 454; Wiremu Kātene, 7 October 1875, NZPD, vol 19, p 321.
183. Karaitiana Takamoana, 7 October 1875, NZPD, vol 19, p 320; Wiremu Kātene, 7 October 1875, NZPD, vol 19, p 321; Wi Parata, 7 October 1875, NZPD, vol 19, pp 321, 322; Karaitiana Takamoana, 15 September 1871, NZPD, vol 10, p 477.
184. Wiremu Kātene, 15 September 1871, NZPD, vol 10, pp 476–477. For speeches by other Māori members, see pp 474, 477; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 593–594.
185. For examples, see Jerningham Wakefield, 15 September 1871, NZPD, vol 10, pp 472–473; Edward Stafford, 13 August 1872, NZPD, vol 12, p 455 (Russell wanted the Bill thrown out); Sir George Grey, 13 September 1876, NZPD, vol 22, p 240; Robert Stout, 13 September 1876, NZPD, vol 22, pp 233–234.
186. William Gisborne, 4 November 1879, NZPD, vol 33, p 20; Reader Wood, 4 November 1879, NZPD, vol 33, p 21; Seymour George, 4 November 1879, NZPD, vol 33, pp 80, 81; William Russell, 4 November 1879, NZPD, vol 33, pp 92–93.
187. William Swanson, 4 October 1872, NZPD, vol 13, p 562; 'Maori Representation Bill', 4 October 1872, NZPD, vol 13, p 566. South Island members were determined to preserve the island's numerical dominance over the North even though the North by this time had roughly the same total population.
188. Donald McLean, 15 September 1871, NZPD, vol 10, p 472; Donald McLean, 13 August 1872, NZPD, vol 12, p 450; William Fox, 15 September 1871, NZPD, vol 10, p 476.
189. William Fox, 15 September 1871, NZPD, vol 10, p 476.
190. John Hall, 12 August 1881, NZPD, vol 39, pp 471–472.
191. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 70, 82.
192. For examples, see William Buckland, 13 August 1872, NZPD, vol 12, p 454; William Reynolds, 13 August 1872, NZPD, vol 12, p 454; see also Legislative Council member Walter Mantell, 11 October 1872, NZPD, vol 13, pp 592–593.
193. Sorrenson, 'A History of Maori Representation', pp B23, B26.
194. Ibid, p B26.
195. Wiremu Kātene, 6 September 1871, NZPD, vol 10, p 256; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 956. Farnall, the Rodney member, estimated that Māori in the north paid annual customs duties of about £40,000, or £12 per head: Tom Bennion, *Maori and Rating Law*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 7.
196. Wiremu Kātene, 12 September 1871, NZPD, vol 10, pp 362–363, see also pp 358–359, 476; Wiremu Kātene, 4 October 1871, NZPD, vol 11, pp 96, 105.
197. Wiremu Kātene, 19 October 1871, NZPD, vol 11, p 427.
198. Ibid.
199. Donald McLean, 19 October 1871, NZPD, vol 11, pp 427–428.
200. Native Districts Road Boards Act 1871, ss 3, 5(8).
201. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 960.
202. Ibid, pp 955–961. For Kātene's speech on the Bill, see Wiremu Kātene, 27 October 1871, NZPD, vol 11, pp 604–605; see also Bennion, *Maori and Rating Law*, pp 9–10.
203. 'Resignation of Ministers', 5 September 1872, NZPD, vol 13, p 156; 'Want of Confidence', 4 October 1872, NZPD, vol 13, p 579. McLean served as Native Minister in all of these ministries other than Stafford's.
204. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1995), p 270; Sorrenson, 'A History of Maori Representation', p B23; *Evening Post*, 17 December 1872, p 2.
205. Sorrenson, 'A History of Maori Representation', pp B23–B24. The Māori legislative councillors were Mōkena Kōhere (Ngāti Porou) and Wi Tako Ngātata (Te Āti Awa). Their appointments brought the total number of legislative councillors to 49. Thereafter, the council usually had two Māori members until it was abolished in 1950.
206. Ward, *A Show of Justice*, p 270; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 593; see also *Evening Post*, 17 December 1872, p 2; 'The General Assembly', *Southland Times*, 10 September 1872, p 2.
207. Bowen to Secretary of State for the Colonies, 6 November 1872 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 7, p 2:322); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 593.
208. Donald McLean, 22 October 1872, NZPD, vol 13, p 895.
209. Wiremu Kātene, 22 October 1872, NZPD, vol 13, p 897.
210. O'Malley, 'Runanga and Komiti' (doc E31), pp 93–94.
211. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, p 870.
212. O'Malley, 'Runanga and Komiti' (doc E31), p 92.
213. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 888; O'Malley, 'Runanga and Komiti' (doc E31), p 94; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 302.
214. O'Malley, 'Runanga and Komiti' (doc E31), pp 94–95; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 733–734.
215. Wiremu Kātene, 22 October 1872, NZPD, vol 13, p 897.
216. O'Malley, 'Runanga and Komiti' (doc E31), p 95.
217. Von Sturmer to McLean, 27 October 1872 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 889).
218. McLean, 30 September 1873, NZPD, vol 15, p 1514.
219. O'Malley, 'Runanga and Komiti' (doc E31), pp 96–98; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 733–734.
220. Report on Petition of Maihi Paraone Kawiti and 269 others, 25 October 1876, AJHR, 1876, I-4, p 27 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 8, p 2:492).
221. For examples of criticism of Kātene, see 'The General Elections', *Te Wananga*, 12 February 1876, p 79; 'Correspondence', *Te Wananga*, 12 February 1876, p 88.
222. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 962–963.
223. Ibid, p 595.

224. Ibid, pp 41–43, 68–70.
225. For examples, see ibid, pp 896–901.
226. Ibid, pp 889–890.
227. Ibid, p 889.
228. 'The Monument to Tamati Waka Nene', *Daily Southern Cross*, 20 March 1873, p 2; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 890.
229. 'Meetings of the Natives', *Daily Southern Cross*, 22 March 1873, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 890.
230. 'Meetings of the Natives', *Daily Southern Cross*, 22 March 1873, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 891.
231. 'Meetings of the Natives', *Daily Southern Cross*, 22 March 1873, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 891.
232. Vincent O'Malley, '"A Living Thing": The Whakakotahitanga Flagstaff and its Place in New Zealand History', *Journal of New Zealand Studies*, Victoria University of Wellington, no 8 (2009), pp 47–49.
233. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 890, 892.
234. 'Meetings of the Natives', *Daily Southern Cross*, 22 March 1873, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 891–892.
235. Waiohau Te Haara (doc H18), pp 4, 9–10.
236. Te Waiohau Te Haara (doc B17), paras 43–46; 'St Michael's Church – Ohaeawai', Ministry for Culture and Heritage, https://nzhistory.govt.nz/media/photo/st-michaels-church-ohaeawai, accessed 27 July 2020. Queen Victoria later wrote to the Governor expressing her appreciation to Ngāpuhi over the soldiers' reburial: 'The Monument to Tamati Waka Nene', *Daily Southern Cross*, 20 March 1873, p 2.
237. Merata Kawharu (doc W10(a)), p 14; Mary Gillingham and Suzanne Woodley, 'Northland: Gifting of Lands' (doc A8), p 27.
238. Merata Kawharu (doc W10(a)), p 14.
239. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 920–922, see also pp 912–918 for examples of Māori non-compliance with colonial laws during the early 1870s.
240. Heta Te Haara and others to Governor Fergusson, 18 May 1874 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 10, pp 2:1709–2:1711).
241. Ibid.
242. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 894–896.
243. Public Works Statement, AJHR, 1875, E-3, p 13; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 964–966.
244. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 962.
245. Public Works Statement, AJHR, 1875, E-3, p 27; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 932.
246. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 966–969.
247. Ibid, pp 924–927, 935.
248. Ibid, pp 935–936, 939–940.
249. Ibid, pp 52–56, 79, 912, 950.
250. Ibid, pp 807–811.
251. Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 21; statement of claim 1.3.2(c).
252. Dr Barry Rigby noted that, within the district, the Crown acquired 294,753 acres between 1875 and 1876: Rigby, 'Validation Review' (doc A56), p 4, app A.
253. Donald McLean, 'Statement Relative to Land Purchases, North Island', AJHR, 1876, G-10, p 1 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 668).
254. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 695–696, 861, 865, 867.
255. Maihi P Kawiti and 269 others, petition, AJHR, 1876, I-4, p 27 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 863).
256. In the north, counties were established for Mangonui (including Whangaroa), Bay of Islands, Hokianga, Whāngārei, and Rodney: Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), p 18.
257. Counties Act 1876, ss 40–41; editorial, *Waikato Times*, 14 November 1876, p 2.
258. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 598; 'County Elections', *New Zealand Herald*, 20 January 1877, p 1 (supplement); see Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), app D, p 277.
259. Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), pp 187–188.
260. 'A Semi-Maori County Council', *New Zealand Herald*, 15 January 1877, p 5; Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), p 187.
261. Maning to von Sturmer, 27 December 1876 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 598).
262. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 597–598.
263. Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), pp 188–190; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 596–598, 601.
264. O'Malley, 'Runanga and Komiti' (doc E31), p 181, see also p 99; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 175.
265. Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 175.
266. Ibid.
267. Peter Clayworth, 'A History of the Motatau Blocks, c1880–c1980', report commissioned by the Waitangi Tribunal, 2016 (doc A65), p 53.
268. Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 175; Clayworth, 'A History of the Motatau Blocks' (doc A65), pp 49–50.

269. Ngāti Hine, evidence (doc M24), p 53.
270. Pita Tipene (doc AA82), p 8.
271. Ibid, p 11.
272. Ngāti Hine, evidence (doc M24), pp 53, 124; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1346–1348.
273. Ngāti Hine, evidence (doc M24), p 52.
274. Ibid, p 114.
275. Pita Tipene (doc AA82), pp 8, 12; Ngāti Hine, 'Te Wahanga Tuarua – Whenua' (doc M25(d)), pp 6–7.
276. Ngāti Hine, evidence (doc M24), pp 49–50, 52–53, 124; see also 'The Kawakawa Hall', *New Zealand Herald*, 3 April 1876, p 3. Maihi opened the hall with a public meeting attended by settlers and Māori. A Union Jack flew in the hall, and Maihi was reported as acknowledging the Queen as sovereign, though we do not know what he said in Māori.
277. Maihi Paraone Kawiti to Taonui, 24 March 1876, translated in Erima Henare (doc D14(d)), p [13]. The seal would subsequently be applied to important Ngāti Hine documents, such as 'Ko Te Ture Mo Nga Whenua Papatutu', Maihi Paraone's declaration of ownership, which was sent to the Government in 1887: Pita Tipene (doc AA82), pp 13–14.
278. Richard Dargaville (doc P40), paras 12–23.
279. 'Northern Tour of His Excellency The Governor', *Daily Southern Cross*, 18 May 1876, p 3.
280. 'The Native Welcome', *Daily Southern Cross*, 13 May 1876, p 3.
281. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 897–898.
282. 'The Native Welcome', *Daily Southern Cross*, 13 May 1876, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 897–898, 900.
283. Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin, 1987), pp 196–197.
284. Ibid, pp 221–222; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1010, 1276.
285. Correspondence, *Te Wananga*, 3 August 1878, p 390; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 900–901.
286. Correspondence, *Te Wananga*, 3 August 1878, p 390; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 900–901.
287. 'Results of a Census of New Zealand, Taken for the Night of the 27th February, 1871', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1871-census/1871-results-census.html, accessed 17 November 2021; 'Census of New Zealand 1881', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1881-census/1881-results-census.html#idsect1_1_573294, accessed 17 November 2021; Jock Phillips, 'History of Immigration – The Great Migration: 1871 to 1885', *Te Ara – the Encyclopedia of New Zealand*, accessed 16 February 2022.
288. Correspondence, *Te Wananga*, 3 August 1878, p 390; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 900–901. The Government had spent £447,000 on State-funded immigration during 1875, about $65 million in today's terms: 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 480.
289. 'Hori Karaka Tawiti', *Te Wananga*, 12 August 1876, p 294 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 10, p 2:1649); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 595; see also 'Native Land Court Bill', 7 August 1877, NZPD, vol 24, p 258; Hori Karaka Tawhiti, 30 October 1877, NZPD, vol 26, p 585. Tawhiti's father was the Pākehā shipbuilder David Clark, and his mother was Parehuia, the daughter of Te Ihutai rangatira Te Wharepapa: Manuka Henare (doc O20), p 40 fn 107.
290. 'Hori Karaka Tawiti', *Te Wananga*, 12 August 1876, p 294 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 10, p 2:1649); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 595; 'Native Land Court Bill', 7 August 1877, NZPD, vol 24, p 258.
291. Hori Karaka Tawhiti, 30 October 1877, NZPD, vol 26, p 585. In his early speeches, Tawhiti acknowledged that Māori had many grievances against the Crown, but blamed others – the provincial government, or Crown purchasing agents – not the Government. After Grey became Premier, Tawhiti became more outspoken, insisting that Māori be consulted on matters affecting them, in particular about land laws, and be strongly opposed to attempts to reduce Māori electoral rights (regarding land, see 'Native Land Sales Suspension Bill', 16 October 1877, NZPD, vol 26, p 315; 21 October 1878, NZPD, vol 30, p 968; regarding electoral rights, see 'Electoral Bill', 25 October 1878, NZPD, vol 30, p 1111).
292. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 901.
293. 'The Native Minister's Visit to the North', *New Zealand Herald*, 24 June 1878, p 3 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 902).
294. See Orange, *The Treaty of Waitangi*, pp 189–191; Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), pp 264–265.
295. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 235, 510.
296. Ibid, p 234.
297. Ibid, p 510.
298. For examples, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 582, 585–586, 588–589.
299. Ibid, pp 588–589.
300. Correspondence, *Te Wananga*, 3 August 1878, p 390; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 900–901.
301. William Swanson, 4 October 1872, NZPD, vol 13, p 562; 'Maori Representation Bill', 4 October 1872, NZPD, vol 13, p 566; 'Maori Representation Bill', 14 October 1872, NZPD, vol 13, p 636.
302. Crown closing submissions (#3.3.402), pp 116–118, 166.
303. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 585–586, see also pp 900–901.
304. Ibid, pp 72, 82–83, 909–910, 997–998; Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p [230].

305. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1116–1119, 1122–1123.
306. Ibid, pp 1124–1125, 1129, 1134.
307. Ibid, pp 1087–1088.
308. For examples, see William Buckland, 13 August 1872, NZPD, vol 12, p 454; William Reynolds, 13 August 1872, NZPD, vol 12, p 454; see also Legislative Council member Walter Mantell, 11 October 1872, NZPD, vol 13, pp 592–593.
309. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 593–606.
310. Hori Karaka Tawhiti, 25 October 1878, NZPD, vol 30, p 1111.
311. Petition of Hirini Taiwhanga, AJHR, 1878, I-3, p 7; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 602. Tawhiti was one of three Māori on the Native Affairs Committee, the others being Hori Kerei Taiaroa and Hoani Nahe. The eight settler members were Bryce, John Ormond, William Fox, Richard Hobbs, Ebenezer Hamlin, William Rolleston, John Sheehan, and Frederick Carrington: AJHR, 1878, I-3A.
312. The Act enfranchised any male aged 21 or over who had lived for 12 months in New Zealand and six months in their electorate: Qualification of Electors Act 1879, s 2(2); Neill Atkinson, 'Parliament and the People: Towards Universal Male Suffrage in 19th Century New Zealand', *New Zealand Journal of Public and International Law*, vol 3, no 1 (June 2005), p 166.
313. John Hall, 31 October 1879, NZPD, vol 33, p 11; Qualification of Electors Act 1879, s 2(1). The Act allowed all settler males to vote if they possessed freehold property worth £25 or more (about $4,500 in today's terms). In the view of some members, the measure opened the way for wealthy men to vote in several electorates, and indeed to buy properties for that purpose; for example, see Sir George Grey, 31 October 1879, NZPD, vol 33, pp 11–12.
314. The Government introduced this Bill as a companion measure to the Maori Representation Bill 1879. Together, these Bills would have removed all Māori from the general roll while making the future of the Māori electorates uncertain. The Premier, John Hall, explained the proposal to reduce Māori voting power on two occasions: John Hall, 31 October 1879, NZPD, vol 33, p 11; John Hall, 17 August 1881, NZPD, vol 39, p 592.
315. Hōne Mohi Tāwhai, 31 October 1879, NZPD, vol 33, p 22.
316. 'Qualification of Electors Bill', 11 November 1879, NZPD, vol 33, p 182.
317. Atkinson, 'Parliament and the People', p 174. The 1881 figure comprised 682 freeholders and 236 ratepayers, from a male population of about 23,993: 'Census of New Zealand 1881', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1881-census/1881-results-census.html#idsect1_1_573294, app 1, tbls 1–2, accessed 17 November 2021.
318. Hōne Mohi Tāwhai, 31 October 1879, NZPD, vol 33, p 22. The electorate was known as 'Bay of Islands' from 1881; previously it was 'Mangonui and Bay of Islands'.
319. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 610; 'Results of a Census of the Colony of New Zealand, Taken for the Night of the 28th March 1886', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1886-census/Results-of-Census-1886/1886-results-census.html#d50e560620, ch 35, accessed 17 November 2021. In the same year, there were 12 Māori electors in Marsden and three in Rodney.
320. John Hall, 12 August 1881, NZPD, vol 39, p 472.
321. John Sheehan, 12 August 1881, NZPD, vol 39, p 491; see also Sheehan, 12 August 1881, NZPD, vol 39, pp 613–614; John Lundon, 17 August 1881, NZPD, vol 39, p 524; William Hurst, 12 August 1881, NZPD, vol 39, pp 498–499.
322. James Wallis, 17 August 1881, NZPD, vol 39, pp 607–608; Samuel Andrews, 17 August 1881, NZPD, vol 39, p 606, see also p 597.
323. Hōne Mohi Tāwhai, 16 August 1881, NZPD, vol 39, p 547.
324. Ibid, p 548.
325. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1044–1045.
326. 'Parliamentary', *Taranaki Herald*, 8 December 1887, p 2.
327. Hoani Taipua, 5 December 1887, NZPD, vol 59, p 308; Hirini Taiwhanga, 5 December 1887, NZPD, vol 59, p 307; James Carroll, 5 December 1887, NZPD, vol 59, pp 307–308; Tame Parata, 5 December 1887, NZPD, vol 59, pp 336–337; Hirini Taiwhanga, 5 December 1887, NZPD, vol 59, p 352; Hoani Taipua, 6 December 1887, NZPD, vol 59, pp 373–374; Tame Parata, 6 December 1887, NZPD, vol 59, p 376.
328. Hirini Taiwhanga, 5 December 1887, NZPD, vol 59, p 352. Taiwhanga also said that settler politicians were happy to talk about abolishing Māori representation but 'they do not want to abolish [our] land'.
329. Hirini Taiwhanga, 5 December 1887, NZPD, vol 59, p 307.
330. Sir George Grey, 5 December 1887, NZPD, vol 59, p 314.
331. 'Parliamentary', *Taranaki Herald*, 8 December 1887, p 2; see also Henry Fitzherbert, 8 December 1887, NZPD, vol 59, p 497; James Carroll, 8 December 1887, NZPD, vol 59, p 499; Representation Acts Amendment Act 1887, s 2.
332. Orange, *The Treaty of Waitangi*, pp 192, 196–198; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 264–265; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 903–904, 1026–1027.
333. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 269. Te Hemara Tauhia of Ngāti Rongo worked with Tūhaere to organise this and other Ōrākei hui, but Tūhaere led the hui throughout.
334. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 904. John Bryce would later become Native Minister.
335. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, sess 2, G-8, p 8.
336. Ibid, pp 11–12; see also Richard Dargaville and Cheyne Foley (doc N5), para 10.
337. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, sess 2, G-8, p 17; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 273. Tauhia had sought refuge with his relative Pōmare II during the 1830s to escape the fighting that took place in Mahurangi.
338. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, sess 2, G-8, pp 13, 16, 18, 25.

339. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, sess 2, G-8, p 30.
340. Ibid.
341. Ibid, p 16.
342. Ibid, p 30; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 274.
343. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 274–275.
344. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879–II, G-8, p 18.
345. Ibid, p 35; see also 'The Maori Parliament at Orakei', *New Zealand Herald*, 8 March 1879, p 5.
346. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 904–906; see also 'Native Meeting at Orakei', *New Zealand Herald*, 26 February 1879, p 2; 'The Orakei Native Meeting', *New Zealand Herald*, 1 March 1879, p 5; 'The Maori Parliament at Orakei', *New Zealand Herald*, 8 March 1879, p 5.
347. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 276–277; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 944–946, 1002–1003.
348. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 906–907.
349. Von Sturmer to Native Secretary, 7 May 1880 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 907–908).
350. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 908–910; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 277.
351. 'Te Kopua Meeting', AJHR, 1879, sess I, G-2, p 3; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 278.
352. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 773–777; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 278.
353. 'Te Kopua Meeting', AJHR, 1879, G-2, p 4; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 278.
354. 'Te Kopua Meeting', AJHR, 1879, G-2, p 4; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 279.
355. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, G-8, p 27; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 944.
356. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 282–287; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 944–946, 1002–1003.
357. Orange, *The Treaty of Waitangi*, p 195.
358. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1002–1004.
359. 'Paora Tuhaere's Parliament at Orakei', AJHR, 1879, sess II, G-8, p 31.
360. Ngāti Hine, evidence (doc M24), pp 52, 123; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 902–904. In 1922, the whare was replaced with a new building which still stands at Te Tii.
361. Ngāpuhi leaders commissioned an Auckland stonemason to construct the monument. It is now known as Te Tii Memorial: *New Zealand Herald*, 14 August 1880, p 4, col 7. See also Orange, *The Treaty of Waitangi*, pp 196–198.
362. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1083; Orange, *The Treaty of Waitangi*, pp 200–201; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 289–290. Regarding Ngāpuhi response to the Governor declining his invitation, see 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 1, pp 1–3. The petition is in Armstrong and Subasic's supporting papers: doc A12(a), vol 11, pp 3:334–3:336. Regarding Gordon and Parihaka, see Hazel Riseborough, *Days of Darkness: Taranaki, 1878–1884* (Wellington: Allen & Unwin, 1989), pp 123–124, 129–130.
363. Orange, *The Treaty of Waitangi*, p 199; see also Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 288.
364. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3; Orange, *The Treaty of Waitangi*, p 198.
365. 'The Opening of the Great Native Meeting at Waitangi', *New Zealand Herald*, 24 March 1881, p 5; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 289.
366. 'The Opening of the Great Native Meeting at Waitangi', *New Zealand Herald*, 24 March 1881, p 5; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 289.
367. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
368. Ibid. The five tribes referred to are Ngāpuhi, Te Rarawa, Te Aupōuri, Ngāti Whātua, and Ngati Rongo/Mahurangi.
369. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
370. 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 March 1881, p 6.
371. Ibid; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1085–1086.
372. O'Malley, 'Runanga and Komiti' (doc E31), p 121.
373. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
374. Ibid.
375. 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 March 1881, p 6.
376. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
377. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 294.
378. 'The Opening of the Great Native Meeting at Waitangi', *New Zealand Herald*, 24 March 1881, p 5; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 290.
379. 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 March 1881, p 6.
380. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
381. Joseph Tole, 17 August 1881, NZPD, vol 39, pp 618–619. Tole also noted that Premier John Hall's attitude was: 'the sooner the Natives became acquainted with our institutions and complied with our laws the better'.
382. Armstrong and Subasic, 'Northern Land and Politics' (doc A12),

pp 1003–1005, 1087, 1088, 1090, see also pp 943–944. In 1883, Ngāti Whātua opened a new parliament house – named Aotearoa – at Aotea. Ngāti Whātua leaders planned to erect a stone monument in front of the house with the words of te Tiriti and the Treaty inscribed on it: 'Native Meeting at Kaipara', *New Zealand Herald*, 30 January 1893, p 6.

383. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1090–1091.

384. 'Another Maori Mission to England', *Nelson Mail*, 18 November 1884; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1119.

385. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1090.

386. 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 21 April 1885, p 6.

387. In its coverage, the *New Zealand Herald* noted that the rangatira attending included Maihi Parāone Kawiti, Taurau Kūkupa, Hōne Mohi Tāwhai, Pāora Tūhaere, and Īhaka Te Tai Hakuene: 'Bay of Islands News', *New Zealand Herald*, 9 March 1887, p 5.

388. 'Bay of Islands News', *New Zealand Herald*, 9 March 1887, p 5; see also 'Wellington News Notes', *New Zealand Herald*, 24 February 1887, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1091–1092.

389. 'Meeting of Northern Natives', *Auckland Star*, 16 March 1887, p 3.

390. Ibid.

391. Ibid.

392. The first resolution appointed Kīngi Hori Kira as chairman of Te Komiti o te Tiriti o Waitangi.

393. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 6, p 4010.

394. 'Maori Parliament at the Bay of Islands', *Auckland Star*, 11 March 1887, p 3.

395. 'Bay of Islands News', *New Zealand Herald*, 9 March 1887, p 5; 'Meeting of Northern Natives', *Auckland Star*, 16 March 1887, p 3.

396. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 111–116. Hongi Hika had met George IV in 1820, but no letters were exchanged: *He Whakaputanga me te Tiriti*, Wai 1040, pp 98–108.

397. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 610, 1092.

398. Maori Lands Empowering Bill 1887, cls 6, 7, 10, 14, 15; *Poverty Bay Herald*, 22 December 1887, p 2. The committee could either determine the title itself, or validate any agreeement reached out of court.

399. 'First Readings', 14 October 1887, NZPD, vol 58, pp 62–63.

400. Maori Relief Bill 1887, cls 3, 4.

401. 'First Readings', 18 May 1888, NZPD, vol 60, p 137; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1074–1075; 'Sydney Taiwhanga', *Te Aroha News*, 21 January 1888, p 8.

402. Major Atkinson, 21 December 1887, NZPD, vol 59, p 953.

403. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1075.

404. Native Land Court Act 1886 and s 20 of the Native Lands Administration Act Repeal Bill 1887, cl 2; Native Land Administration Act 1886, ss 15, 20; 'First Readings', 18 May 1888, NZPD, vol 60, p 137.

405. 'Lobby Gossip', *New Zealand Herald*, 29 October 1887, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1074–1075.

406. 'Lobby Gossip', *New Zealand Herald*, 29 October 1887, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1074–1075.

407. 'Lobby Gossip', *New Zealand Herald*, 29 October 1887, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1074–1075.

408. Native Lands Administration Bill 1891; 'First Readings' NZPD, vol 72, p 50; Dr Donald Loveridge, draft evidence as edited and completed by Crown counsel, 2015 (doc Z1(b)), pp 19–20.

409. Report on 'Petition of Hemara Tauhia and 32 Others', 19 July 1881, AJHR, 1881, I-2, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 868.

410. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 248, 250; Claudia Orange, 'Hirini Rāwiri Taiwhanga', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/taiwhanga-hirini-rawiri, accessed 14 February 2022.

411. Orange, 'Hirini Taiwhanga'; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 330, 848–851.

412. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1048. For Taiwhanga's extensive involvement in political activities and land protests during the 1870s, see pp 565, 591, 595, 603–604, 608–609, 855–856, 859, 861–862, 865–866, 898, 906–907, 974–975, 1001–1003, 1008, 1021.

413. Ibid, pp 859, 1052, 1056, 1058.

414. Hōne Pikari (doc W11), pp 12–13.

415. Taiwhanga's maps produced for the Native Land Court frequently included lands the Crown had already taken or awarded to settlers under the old land claims process. Judge Maning refused to accept any of these plans. In 1873, on the recommendation of Maning and Mangonui resident magistrate William B White, Taiwhanga lost his licence as a surveyor and was forced to take up road work in order to feed his large family. His licence was later restored: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 330, 848–852.

416. Ibid, p 1048.

417. Ibid, pp 1048–1050.

418. Ibid, p 1051.

419. Tāwhai to Native Minister, 25 January 1882 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1051).

420. Maning to Webster, 2 April 1882 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1051).

421. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1065.

422. Ibid, pp 1051–1053.

423. Ibid, p 1056.

424. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 1, pp 1–3 (Armstrong and Subasic, supporting papers (doc A12(a)), vol 11, pp 3:334–3:336).

425. Ibid.

426. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 1, pp 1–3 (Armstrong and Subasic, supporting papers (doc A12(a)), vol 11, pp 3:334–3:336).
427. Ibid, p 2 (p 3:335).
428. Ibid.
429. 'The Maori Deputation to the Queen', *New Zealand Times*, 3 May 1882, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1053.
430. Lewis to Native Minister, 4 May 1882 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1053).
431. Maning, memorandum, no date (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1056, see also pp 1054–1058). James Stephenson Clendon was the son of the former magistrate James Reddy Clendon.
432. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1054–1055.
433. Ibid, p 1065.
434. Maning, memorandum, no date (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1056–1058).
435. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1059.
436. Orange, *The Treaty of Waitangi*, p 207.
437. 'Anglo-Colonial Notes', *Auckland Star*, 15 August 1882, p 2; Orange, *The Treaty of Waitangi*, p 207. The Aborigines' Protection Society was founded in 1837 and, along with other humanitarian organisations of the time, had significant influence on British policy towards New Zealand's colonisation (including its approach to the treaty). The Society advocated for policies aimed at 'protecting the defenceless, and promoting the advancement of uncivilized Tribes': Aborigines' Protection Society, *Report of the Parliamentary Select Commitee on Aboriginal Tribes (British Settlements): Reprinted with Comments by the Aborigines Protection Society* (London: William Ball, 1837).
438. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 2, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1061–1062.
439. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 1, p 2; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1080, 1085.
440. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 2, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1061–1062.
441. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 2, no 4, p 6; see also Orange, *The Treaty of Waitangi*, p 207.
442. Orange, *The Treaty of Waitangi*, p 207.
443. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 3, p 5.
444. See Waitangi Tribunal, *The Taranaki Report*, Wai 143 (Wellington: Legislation Direct, 1996), p 380.
445. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 3, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1059–1060.
446. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 3, p 5.
447. Ibid, p 6.
448. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1059–1060. For an example of settler newspaper coverage of Taiwhanga's petition, see *New Zealand Times*, 12 August 1882, p 2. Taiwhanga's troubled relationship with his second wife, Sarah Moran, also received extensive and lurid coverage. In the wake of her accusations against Taiwhanga, he was arrested after his return to New Zealand in 1883, charged with abandonment; but the case was dismissed. From then on, the pair lived apart, though Moran continued to seek child maintenance payments until Taiwhanga's death in 1890. During the 1890s, Sarah appeared in court several times for public drunkenness: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1048, 1062–1064; 'Sydney D Taiwhanga's Domestic Troubles', *New Zealand Herald*, 5 July 1879, p 6; 'Sydney Taiwhanga's Family – A Melancholy Tale', *Nelson Evening Mail*, 30 September 1882, p 6; 'Law and Police', *New Zealand Herald*, 27 July 1885, p 3; 'Police Court', *Auckland Star*, 26 July 1883, p 2.
449. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1063.
450. Parore Te Awha to Native Office, AJHR, 1883, A-6, 25 April, 1883, pp 6–7 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1063).
451. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1064–1065.
452. Ibid.
453. Ibid, p 1066.
454. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 927; F W Chesson to the Earl of Derby, 12 October 1883, IUP/BPP, vol 17, pp 128–129.
455. Wi Te Wheoro, Hōne Mohi Tāwhai, Henare Tomoana, and H K Taiaroa to F W Chesson, secretary, Aborigines' Protection Society, 16 July 1883 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 998–999).
456. Ibid.
457. Wi Te Wheoro, Hōne Mohi Tāwhai, Henare Tomoana, and H K Taiaroa to F W Chesson, Secretary, Aborigines' Protection Society, 16 July 1883 (cited in O'Malley, 'Komiti and Runanga' (doc E31), p 196).
458. F W Chesson to the Earl of Derby, 12 October 1883, IUP/BPP, vol 17, pp 128–129; O'Malley, 'Komiti and Runanga' (doc E31), p 196.
459. John Bryce was a Whanganui farmer and settler politician who served in local and provincial politics during the 1860s, and in the House of Representatives for much of the period between 1866 and 1891. He was a controversial and abrasive Minister of Native Affairs from 1879 to January 1881 and again from November 1881 to 1884. Aside from the invasion of Parihaka, he was best known for an 1860s incident in which a farmer militia he was leading caught and killed two Māori boys who had been chasing pigs on a settler's farm. Among Whanganui Māori he was known as 'Bryce kōhuru' ('Bryce the murderer'): Hazel Riseborough, 'John Bryce', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2b44/bryce-john, accessed 12 August 2021.

460. Native Minister to Governor, 11 January 1884 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 999). Kawharu and O'Malley also described these events: Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 299–300; O'Malley, 'Runanga and Komiti' (doc E31), pp 195–198.
461. 'McBeth, the Maoris, and the Aborigines Protection Society', *Poverty Bay Herald*, 28 November 1883, p 2; Ward, *A Show of Justice*, p 292.
462. Native Minister to Governor, 11 January 1884 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 999). Kawharu and O'Malley also described these events: Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 299–300; O'Malley, 'Runanga and Komiti' (doc E31), pp 195–198.
463. Regarding the Native Committees Act, see Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 927–930. Chapter 8 of that report discusses Bryce's negotiations with Te Rohe Pōtae Māori.
464. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1066–1067.
465. Greenway to Under-Secretary, Native Affairs, 5 December 1883 (cited in Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 300–301). James Hamlyn Greenway was a clerk and interpreter at the Resident Magistrate's Court at Russell.
466. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1066–1067.
467. Ibid.
468. 'Another Maori Mission to England', *New Zealand Herald*, 18 November 1884 (see Armstrong and Subasic, supporting documents (doc A12(a)), vol 11, p 3:98); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1119.
469. Ballance to Kātene, 18 November 1884, 'The Maoris and Appeals to England', *Auckland Weekly News*, 29 November 1884, p 6 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 11, p 3:281); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1067; see also *New Zealand Times*, 18 September 1884, p 2, col 4.
470. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1068; see also petition of Wiremu Kātene and 6 others, 5 November 1884, AJHR, 1884, I-2, p 16.
471. Petition of Wiremu Kātene and others, AJHR, 1885, I-2, p 30; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1068.
472. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1068.
473. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 986–987. Tāwhiao's party included the Waikato rangatira Wiremu Te Wheoro (Ngāti Naho), Topia Tūroa of Whanganui, Patara Te Tuhi (Tāwhiao's secretary), and a translator.
474. Orange, *The Treaty of Waitangi*, pp 211–212.
475. Ibid, p 212.
476. George Rusden, *History of New Zealand*, 2nd ed, 3 vols (Melbourne: Melville, Mullen and Slade, 1895), vol 3, pp 356–357; see also Orange, *The Treaty of Waitangi*, pp 212–213.
477. Rusden, *History of New Zealand*, vol 3, pp 356–357; see also Orange, *The Treaty of Waitangi*, pp 212–213.
478. 'Despatches from the Governor of New Zealand to the Secretary of State', AJHR, 1885, A-1, p 32; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1073–1074.
479. 'Despatches from the Governor of New Zealand to the Secretary of State', AJHR, 1885, A-1, p 32; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1073–1074.
480. Hansard's Parliamentary debates, House of Commons, 3rd series, vol 294, 4 June 1885, cols 1770–1771; vol 302, 1885, cols 1247–1248, 1253, 1261–1264, 1257–1258, 1771. Mr Gorst took advantage of a debate in the House on salaries and expenses of government departments to raise the issue because it 'was the only opportunity afforded him of doing so'.
481. Hansard's Parliamentary debates, House of Commons, 3rd series, vol 294, 4 June 1885, col 1264.
482. Derby to Governor Jervois, 23 June 1885, AJHR, 1885, A-2A, p 12.
483. Ibid.
484. Ibid.
485. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1068–1069; 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 21 April 1885, p 6; Orange, *The Treaty of Waitangi*, p 217.
486. H W Bishop to Native Secretary, 30 April 1885 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1069, 1119).
487. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1068–1069; Orange, *The Treaty of Waitangi*, p 217. Regarding fishing rights, see Anne-Marie Jackson, 'Erosion of Māori Fishing Rights in Customary Fisheries Management', p 65.
488. Orange, *The Treaty of Waitangi*, p 217.
489. 'The Result of Tawhiao's Northern Tour', *New Zealand Herald*, 11 May 1885, p 5; Orange, *The Treaty of Waitangi*, p 217; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1068–1069, 1091.
490. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1103–1104. By restoring a small measure of communal control, Ballance hoped to persuade Māori – particularly those in Te Rohe Pōtae and the central North Island – to place their lands before the Court and offer them for sale. The proposals were later enacted in the Native Land Administration Act 1886, under which elected block committees would make decisions to sell or lease land. Any subdivision, sale, or lease would be administered by a Crown-appointed commissioner. The Crown could purchase directly from owners or a block committee.
491. Premier John Hall visited the Bay of Islands in 1882, but there is no record of him holding any significant meetings with Māori: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1109. So far as we can tell, John Bryce did not visit the north at any time during his 1879-to-1884 tenure as Native Minister.
492. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1070.

493. 'The Native Minister at the Bay of Islands', *New Zealand Herald*, 12 April 1886, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1070.
494. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1071.
495. 'Notes of Native Meetings', AJHR, 1885, G-1, p 27; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1035. Ballance's attitude towards Waikato and Te Rohe Pōtae leaders also hardened between the 1885 and 1886 tours: see Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 2, pp 1103–1104.
496. Petition of Wiremu Kātene and 11,976 others, AJHR, 1886, I-2, pp 27–28.
497. Kapa and Cadman, 24 June 1891, NZPD, vol 71, p 220.
498. Oyster Fisheries Act 1892, s 14; Jackson, 'Erosion of Māori Fishing Rights in Customary Fisheries Management', p 65.
499. Kawiti to Native Minister, 15 March 1887 (cited in Ngāti Hine, evidence (doc M24), pp 124–125).
500. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1071.
501. Ngāti Hine, evidence (doc M24), pp 125–126.
502. See, for example, Merata Kawharu (doc W10(a)), p 14.
503. T G Hammond, 'Our Maori Work', *The Outlook*, vol 16, no 15, p 33 (cited in Bronwyn Elsmore, *Mana from Heaven: A Century of Maori Prophets in New Zealand* (Auckland: Reed Books, 1999), p 268).
504. Elsmore, *Mana from Heaven*, p 268.
505. 'Another Maori Seer', *New Zealand Herald*, 16 March 1885, p 5.
506. Judith Binney, 'Ani Kaaro, Maria Pāngari, Rēmana Hane', in *The Book of New Zealand Women: Ko Kui Ma Te Kaupapa*, ed Charlotte Macdonald, Merimeri Penfold, and Bridget Williams (Wellington: Bridget Williams Books, 1991), pp 334–335.
507. Spencer von Sturmer, 'Report', AJHR, 1885, G-2, p 2 (cited in Elsmore, *Mana from Heaven*, p 269).
508. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1097.
509. The census found that the total Ngāpuhi population in Hokianga was 1,850 in 1886: 'Results of a Census of the Colony of New Zealand, Taken for the Night of the 28th March 1886', Statistics New Zealand, https://www3.stats.govt.nz/historic_publications/1886-census/Results-of-Census-1886/1886-results-census.html#d50e560620, ch 126, accessed 17 November 2021.
510. Elsmore, *Mana from Heaven*, p 269.
511. Ibid.
512. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1098.
513. 'Religious Frenzy among the Northern Natives', *New Zealand Herald*, 26 March, 1885; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1098.
514. 'The Maori Prophetess', *New Zealand Herald*, 7 April 1885, p 5.
515. Binney, 'Ani Kaaro, Maria Pāngari, Rēmana Hane', p 336. Regarding the number of Pāngari's supporters, see 'The Maori Prophetess', *New Zealand Herald*, 7 April 1885, p 5.
516. Elsmore, *Mana from Heaven*, pp 272–273.
517. Judith Binney, Vincent O'Malley, and Alan Ward, *Te Ao Hou: The New World, 1820–1920* (Auckland: Bridget Williams Books, 2018), p 122.
518. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1099–1100.
519. Ibid, p 1100.
520. Ibid, p 1101.
521. Makarita Tito (doc AA129), p 16.
522. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1101; Makarita Tito (doc AA129), p 16.
523. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1101.
524. Ibid.
525. Ibid; 'Outbreak of Fanaticism Amongst the Natives', *New Zealand Herald Supplement*, 4 June 1887, p 1.
526. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1101–1102; 'Outbreak of Fanaticism Amongst the Natives', *New Zealand Herald Supplement*, 4 June 1887, p 1.
527. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1101; 'Outbreak of Fanaticism Amongst the Natives', *New Zealand Herald Supplement*, 4 June 1887, p 1.
528. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1101; 'Outbreak of Fanaticism Amongst the Natives', *New Zealand Herald Supplement*, 4 June 1887, p 1.
529. 'The Hauhau Prisoners', *New Zealand Herald*, 26 July 1897, p 5. The *Herald* report said that Hearn got lost during a fog.
530. Section 28 of the Justices of the Peace Act 1882 authorised the swearing in of special constables where any 'tumult, riot, or felony' has taken place or is expected, and the existing constabulary is not sufficient to keep the peace.
531. 'The Hauhau Prisoners', *New Zealand Herald*, 26 July 1887, p 5. The magistrate discharged two elderly women and one man who was ill.
532. Elsmore, *Mana from Heaven*, p 279.
533. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1103.
534. Ibid, p 1104.
535. Ibid, pp 1039–1041, 1043–1045.
536. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 294–295.
537. O'Malley, 'Runanga and Komiti' (doc E31), p 181.
538. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 730, 1016–1017, 1024–1025, 1158–1159, 1175–1176; see also Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 294–295; Orange, *The Treaty of Waitangi*, p 217.
539. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1346–1348; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), pp 170–172.
540. Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 170.
541. Bishop to Native Secretary, 12 May 1884 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1011–1012).

542. Ibid (p 1011).
543. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1012–1013, 1016–1017; O'Malley, 'Runanga and Komiti' (doc E31), pp 186–187.
544. Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 168, see also pp 171–172 for an example of komiti decisions being contested in court.
545. See Alexandra Horsley, 'A History of the Otongoroa, Te Pupuke, and Waihapa Blocks (Whangaroa), 1874–1990', report commissioned by the Waitangi Tribunal, 2016 (doc A57).
546. Orange, *The Treaty of Waitangi*, p 217.
547. Draft Bill, enclosed in Tāwhai to Native Under-Secretary, 21 January 1881 (cited in O'Malley, 'Runanga and Komiti' (doc E31), p 186).
548. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1012–1013, 1016–1017; O'Malley, 'Runanga and Komiti' (doc E31), pp 186–187.
549. O'Malley, 'Runanga and Komiti' (doc E31), p 188.
550. Ibid, pp 187–188; Native Committees Empowering Bill 1881, ss 11, 16.
551. Henare Tomoana, 15 September 1881, NZPD, vol 40, p 661; O'Malley, 'Runanga and Komiti' (doc E31), p 188.
552. O'Malley, 'Runanga and Komiti' (doc E31), pp 188–189.
553. Hōne Mohi Tāwhai, 13 July 1882, NZPD, vol 42, p 300.
554. Ibid, pp 299–300.
555. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1014–1015.
556. O'Malley, 'Runanga and Komiti' (doc E31), p 190.
557. Major Harris, 13 July 1882, NZPD, vol 42, p 303.
558. Harry Dodson, 13 July 1882, NZPD, vol 42, p 305.
559. O'Malley, 'Runanga and Komiti' (doc E31), pp 190–193.
560. John Bryce, 13 July 1882, NZPD, vol 42, p 296.
561. John Bryce, 3 August 1882, NZPD, vol 43, p 127.
562. Tāwhai, 3 August 1882, NZPD, vol 43, p 128.
563. O'Malley, 'Runanga and Komiti' (doc E31), p 191.
564. William Swanson, 13 July 1882, NZPD, vol 42, p 304.
565. Hori Taiaroa, 3 August 1882, NZPD, vol 43, p 128.
566. O'Malley, 'Runanga and Komiti' (doc E31), pp 193–198; John Bryce, 3 August 1882, NZPD, vol 43, pp 127–128. Bryce attempted to defer the Bill for six months so he could introduce a competing measure, but lost. Nonetheless, the Government kept the Bill down the order paper for the rest of the parliamentary session: 'Native Committees Empowering Bill', 3 August 1882, NZPD, vol 43, p 137.
567. For example, see Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, pp 468–470; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 445.
568. O'Malley, 'Runanga and Komiti' (doc E31), p 201.
569. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 927–928.
570. Sir George Whitmore, 29 August 1883, NZPD, vol 46, p 341.
571. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1014–1015.
572. O'Malley, 'Runanga and Komiti' (doc E31), p 201.
573. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1016.
574. Von Sturmer to Native Secretary, 20 April 1885 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1016).
575. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1016–1017.
576. Bishop to Native Secretary, 12 May 1884 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1017).
577. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1019–1020, 1022, 1024.
578. Ibid, pp 1018–1024; Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century* (Wellington: Huia, 1998), pp 164–165, 168.
579. Clayworth, 'A History of the Motatau Blocks' (doc A65), p 55; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 169.
580. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1023–1026.
581. O'Malley, *Agents of Autonomy*, p 181; O'Malley, 'Runanga and Komiti' (doc E31), pp 206, 211–212, 225, 227, 231.
582. O'Malley, *Agents of Autonomy*, pp 163–164; O'Malley, 'Runanga and Komiti' (doc E31), p 216.
583. 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws', AJHR, 1891–II, G-1, p xvi; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1025.
584. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1188, 1190–1191; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 171.
585. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1024–1025.
586. Clayworth, 'A History of the Motatau Blocks' (doc A65), pp 56–58.
587. M P Kawiti to Ballance, 5 December 1885, original in te reo with Native Department translation (cited in Clayworth, 'A History of the Motatau Blocks' (doc A65), p 57).
588. Clayworth, 'A History of the Motatau Blocks' (doc A65), p 58.
589. Ibid, pp 57–63.
590. Ibid.
591. 'Ko Te Ture mo te Whenua Papatupu', p 9 (cited in Erima Henare (doc D14(b)), p [66]).
592. Erima Henare, translations (doc D14(d)), p 6.
593. 'Ko Te Ture mo te Whenua Papatupu', p 9 (cited in Erima Henare (doc D14(b)), p 66).
594. Erima Henare, translations (doc D14(d)), p 6.
595. Ibid, p 9.
596. Mr Clayworth described officials' various attempts to break open the Rohe Pōtae o Ngāti Hine during the 1890s. The Crown succeeded in 1900 with the introduction of Maori Land Councils and papatupu

block committees: Clayworth, 'A History of the Motatau Blocks' (doc A65), pp 65–74.
597. Pita Tipene (doc A A82), pp 11–12.
598. Petition of Hirini Taiwhanga, AJHR, 1878, I-3, p 7; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 602; F E Maning to E M Williams, 15 August 1868 (Armstrong and Subasic, supporting papers (doc A12(a)), p 1:2238).
599. 'The Opening of the Great Native Meeting at Waitangi', *New Zealand Herald*, 24 March 1881, p 5; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 289.
600. 'The Great Native Meeting at Waitangi', *New Zealand Herald*, 28 March 1881, p 3.
601. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, encl 1, pp 1–2.
602. Wī Te Wheoro, Hōne Mohi Tāwhai, Henare Tomoana, and H K Taiaroa to F W Chesson, secretary of the Aborigines' Protection Society, 16 July 1883 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 998).
603. Greenway to Under-Secretary, Native Affairs, 5 December 1883 (cited in Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 300–301).
604. 'Meeting of Northern Natives', *Auckland Star*, 16 March 1887, p 3.
605. See, for example, Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1063.
606. Wi Te Wheoro, Hōne Mohi Tāwhai, Henare Tomoana, and H K Taiaroa to F W Chesson, secretary of the Aborigines' Protection Society, 16 July 1883 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 998–999).
607. 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 March 1881, p 6 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1085–1086).
608. Hōne Mohi Tāwhai, 16 August 1881, NZPD, vol 39, p 547.
609. O'Malley, 'Runanga and Komiti' (doc E31), pp 186–187.
610. Sir George Whitmore and Frederick Whitaker, 29 August 1883, NZPD, vol 46, p 341; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 925.
611. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, 1891, G-1, p xvi.
612. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, Wai 1130, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 230; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 318–319.
613. Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report*, Wai 27 (Wellington: Brooker and Friend, 1992), p 272; Waitangi Tribunal, *The Ngawha Geothermal Resource Report*, Wai 304 (Wellington: Legislation Direct, 1993), p 101.
614. Waitangi Tribunal, *The Tarawera Forest Report*, Wai 411 (Wellington: Legislation Direct, 2003), p 29.
615. Te Ara, 'Story: Kotahitanga – Unity Movements', New Zealand Government, https://teara.govt.nz/en/kotahitanga-unity-movements/page-3, accessed 7 July 2022.
616. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), ch 6.
617. Ibid, p 1280.
618. See Angela Ballara, 'Wāhine Rangatira: Māori Women of Rank and their Role in the Kotahitanga Movement of the 1890s', NZJH, vol 27, no 2 (October 1983), pp 129, 131.
619. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), ch 6.
620. Ibid, pp 1290, 1304–1305; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 205.
621. For example, the Native Land Court Act 1894 made some provision for collective management of land by incorporated owners: Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 366; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1304–1305.
622. For example, see Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1290–1291, 1305.
623. For example, see 'Pakeha and Maori: A Narrative of the Premier's Trip Through the Native Districts of the North Island', AJHR, 1895, G-1, pp 19–20.
624. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), section 6.4.
625. 'Te Huihuinga a nga Tangata Maori ki Pewhairangi', *Korimako*, 16 April 1888, p 2; see also 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 7 April 1888, p 6.
626. 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 7 April 1888, p 6.
627. Orange, *The Treaty of Waitangi*, pp 221–222; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1277; 'Native Meeting at the Bay of Islands', *New Zealand Herald*, 7 April 1888, p 6; 'Te Huihuinga a nga Tangata Maori ki Pewhairangi', *Korimako*, 16 April 1888, p 2.
628. Orange, *The Treaty of Waitangi*, pp 224–225.
629. Ibid, p 222.
630. Ibid.
631. Native Lands Act 1888, s 3.
632. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1380–1381; Waitangi Tribunal, *The Hauraki Report*, Wai 686, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 752.
633. Hirini Taiwhanga, 25 July 1888, NZPD, vol 62, pp 268–269.
634. 'Reports from Officers in Native Districts', AJHR, 1889, G-3, p 1.
635. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1093; Ward, *A Show of Justice*, p 298.
636. Orange, *The Treaty of Waitangi*, p 223.
637. 'Native Meeting', *Auckland Star*, 27 March 1889, p 5.
638. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1278.
639. 'The Native Meeting at Waitangi', *New Zealand Herald*, 14 March 1889, p 6.
640. Bishop to Native Secretary, 15 June 1889 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1095).

641. 'Native Meeting at Orakei', *New Zealand Herald*, 28 March 1889, p 6.
642. Ibid; see also 'Native Meeting', *Auckland Star*, 27 March 1889, p 5.
643. 'The Native Meeting at Orakei', *New Zealand Herald*, 29 March 1889, p 6.
644. Ibid.
645. Ibid.
646. Editorial, *New Zealand Herald*, 28 March 1889, p 6.
647. 'Native Meeting near Mercer', *New Zealand Herald*, 6 May 1890, p 5.
648. Ibid; Loveridge, draft evidence (doc Z1(b)), p 5.
649. Orange, *The Treaty of Waitangi*, p 224.
650. Ibid.
651. Waiohau Te Haara (doc B17), paras 27–34.
652. Orange, *The Treaty of Waitangi*, p 224.
653. Renata Tane of Ngāti Kawa (cited in Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 310).
654. 'The Kaikohe Native Meeting', *Northern Advocate*, 22 April 1891, p 2.
655. Merata Kawharu (doc W10(a)), pp 15–16.
656. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1280; 'The Kaikohe Native Meeting', *Northern Advocate*, 22 April 1891, p 2.
657. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1190–1191; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 171.
658. Native Lands Administration Bill 1891, ss 21–25.
659. Native Lands Administration Bill 1891; 'First Readings' NZPD, vol 72, p 50; Loveridge, draft evidence (doc Z1(b)), pp 19–20.
660. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1280–1282.
661. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi, Aperira 14, 1892' (Auckland: Wiremu Makura (William McCullough), 1892), p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1283.
662. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi, p 8. By 1898, the petition was said to have the signatures of more than 37,000 Māori. The historian Claudia Orange has questioned this figure in light of official census figures which showed a Māori population of 45,000. However, Hōne Heke in 1895 argued that the census figures underestimated the Māori population: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1280.
663. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi', p 9.
664. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1283–1287; 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi', p 9.
665. Hone Sadler (doc B38), pp 8–9.
666. 'The Native Meeting at Waitangi', *New Zealand Herald*, 21 April 1892, p 6; Loveridge, draft evidence (doc Z1(b)), p 8.
667. 'The Native Meeting at Waitangi', *New Zealand Herald*, 28 April 1892, p 5; Loveridge, draft evidence (doc Z1(b)), p 9.
668. 'The Native Meeting at Waitangi', *New Zealand Herald*, 21 April 1892, p 6; Loveridge, draft evidence (doc Z1(b)), p 8.
669. 'The Native Meeting at Waitangi', *New Zealand Herald*, 23 April 1892, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1214.
670. 'The Native Meeting at Waitangi', *New Zealand Herald*, 23 April 1892, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1214.
671. Graham Butterworth, 'Alfred Jerome Cadman', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2c2/cadman-alfred-jerome, accessed 14 January 2022; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1304–1305; Tim McIvor, 'John Ballance', in *Dictionary of New Zealand Biography,* Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2b5/ballance-john, accessed 26 March 2022. Regarding Ballance's Māori policies, see section 11.4.2.
672. Orange, *The Treaty of Waitangi*, p 225. The parliament ran from 14 June until mid July.
673. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1288.
674. Ibid, p 1288; see also Orange, *The Treaty of Waitangi*, p 225; Ballara, 'Wahine Rangatira', pp 132, 316.
675. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), pp 316–318; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1288; Lindsay Cox, 'Kotahitanga: The Search for Maori Political Unity' (MA thesis, Massey University, 1991), fol 80.
676. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 318; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1288; 'The Maori Parliament', *Evening Post*, 30 June 1892, p 3.
677. For a full list of members of Te Whare o Raro, see Cox, 'Kotahitanga', p 80.
678. Hineamaru Lyndon and Louisa Collier (doc J23), p 3.
679. Ballara, 'Wāhine Rangatira, pp 133–136; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, 3 vols (Wellington: Legislation Direct, 2010) vol 2, p 520. For Meri Mangakāhia's descent, see Angela Ballara, 'Meri Te Tai Mangakāhia', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2m30/mangakahia-meri-te-tai, accessed 26 January 2022, and Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 197.
680. Ballara, 'Wāhine Rangatira', p 133.
681. 'The Maori Parliament', *Evening Post*, 30 June 1892, p 3.
682. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi', pp 12–13; Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 312. Translation by Jane McRae, quoted in Kawharu.
683. 'Nga Korero o te Hui o te Whakakotahitanga i tu ki te Tiriti o Waitangi, pp 24–25; 'The Maori Parliament', *Evening Post*, 25 June 1892, p 3; *Evening Post*, 25 June 1892, p 2; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1289.
684. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1289–1290; see also Loveridge, draft evidence (doc Z1(b)), p 11.

685. 'Taxing Native Lands', *New Zealand Herald*, 28 June 1892, p 5; Loveridge, draft evidence (doc z1(b)), pp 13–14.
686. 'Hon J G Ward at Waipatu', *Poverty Bay Herald*, 28 June 1892, p 3.
687. Ibid; 'Taxing Native Lands', *New Zealand Herald*, 28 June 1892, p 5.
688. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1289–1290.
689. Loveridge, draft evidence (doc z1(b)), pp 14–15, 17–18; 'Parliamentary News', *New Zealand Herald*, 3 August 1892, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1290–1291. The delegation included Whanganui rangatira Keepa Te Rangihiwinui and former members of the House Wī Pere, Wī Parata, and Henare Tomoana.
690. 'Parliamentary News', *New Zealand Herald*, 9 August 1892, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1290–1291. The newspaper reports suggested that the Kotahitanga delegates asked only for the Court's procedures to be simplified, and Armstrong and Subasic understood this as meaning that Kotahitanga leaders modified their position on abolition of the Court in response to the setback they had received from Cadman. It is also possible that the newspaper misunderstood their position. Regarding Ballance's illness, see Tim McIvor, 'On Ballance: A Biography of John Ballance, Journalist and Politician, 1839–1893' (doctoral thesis, Victoria University of Wellington, 1984), fols 8, 388.
691. 'Native Affairs', *New Zealand Herald*, 31 August 1892, p 5; 'Parliamentary News', *New Zealand Herald*, 12 September 1892, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1292–1293.
692. Native Empowerment Bill 1892, cls 2, 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1292–1293.
693. 'Parliamentary News', *New Zealand Herald*, 1 September 1892, p 5.
694. Ballance died on 27 April 1893, and the House resumed on 22 June 1893: NZPD, vol 79; Tim McIvor, 'John Ballance', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2b5/ballance-john, accessed 14 January 2022. Grey went to England in March 1894 and did not return before his death in 1898: 'Sir George Grey', *New Zealand Herald*, 8 March 1894, p 4. Regarding Grey's health, see 'Sir George Grey and the Native Land Question', *New Zealand Herald*, 24 January 1893, p 5.
695. 'First Readings', 16 September 1892, NZPD, vol 78, p 150.
696. Ibid; 'Important Auckland Questions', *Auckland Star*, 26 October 1892, p 2; 'Native Land Law Reform', *New Zealand Herald*, 28 November 1892, p 6.
697. Loveridge, draft evidence (doc z1(b)), p 17.
698. Ibid, pp 17–20. The Native Land Court Bill 1892 was a modified version of Cadman's Native Lands Bill 1981.
699. Native Land Purchases Act 1892, ss 3–4, 14, 16; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, p 1369.
700. Native Land Purchases Bill, 19 August 1992, NZPD, vol 77, p 221.
701. Ibid, pp 228–231.
702. Oyster Fisheries Bill, 8 July 1892, NZPD, vol 75, p 361.
703. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp xv–xvi.
704. 'W Katene and Others', 24 June 1891, NZPD, vol 71, p 220; 'The Native Meeting at Waitangi', *New Zealand Herald*, 21 April 1892, p 6.
705. Richard Seddon, 8 July 1892, NZPD, vol 75, p 361.
706. Oyster Fisheries Bill, 8 July 1892, NZPD, vol 75, p 364. Cadman had also inspected the Kerikeri oyster beds earlier in 1892 and was reported to have 'found wanton destruction everywhere', to a degree that would wipe out the fishery if it was not protected: 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 April 1892, p 5.
707. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp xv–xvi, 81–82; see also Waitangi Tribunal, *Ngai Tahu Sea Fisheries*, Wai 27, pp 144–146; Jackson, 'Erosion of Māori Fishing Rights in Customary Fisheries Management', p 65.
708. 'Mr Cadman and the Ureweras', *Bay of Plenty Times*, 13 February 1893, p 2; regarding Grey's absence, see 'Telegraphic', *Bay of Plenty Times*, 17 April 1893, p 2.
709. Paremata Maori: Waipatu 1893, *Proceedings of the Second Kotahitanga Parliament, April–May 1893* (Hastings: George and Young, 1893), p 82.
710. Ibid, p 2.
711. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1293–1295.
712. 'Hastings', *Daily Telegraph*, 22 April 1893, p 3.
713. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1293–1295. At the time, Heke was employed as a clerk for the Native Land Court in Wellington. Although he was not a member of the Paremata, he was a member of the Kotahitanga organising committee.
714. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1293–1295; Paremata Maori: Waipatu 1893, *Proceedings*, pp 5, 8–12.
715. 'The Native Meeting at Waitangi', *New Zealand Herald*, 21 April 1892, p 6; Loveridge, draft evidence (doc z1(b)), p 8.
716. Federated Maori Assembly of New Zealand (Petition of the), AJHR, 1893, J-1, pp 3, 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1294.
717. Paremata Maori: Waipatu 1893, *Proceedings*, pp 67–68.
718. Ibid.
719. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1294–1295.
720. Ballara, 'Wahine Rangatira', p 133.
721. Ibid, pp 133–134.
722. Paremata Maori: Waipatu 1893, *Proceedings*, pp 62–63.
723. Translation by Charles Royal, in *The Book of New Zealand Women*, p 413.
724. Ballara, 'Wahine Rangatira', pp 136–138.
725. 'Petition of the Federated Maori Assembly of New Zealand', AJHR, 1893, J-1, p 3.
726. Ibid, p 1; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1295.
727. 'Petition of the Federated Maori Assembly of New Zealand', AJHR, 1893, J-1, p 1.
728. Ibid.

729. Ibid, p 2.
730. Ibid, pp 1–2; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1295. Regarding Taiaroa and his supporters being confident of winning support, see Paremata Maori: Waipatu 1893, *Proceedings*, pp 22, 67–68.
731. Eparaima Kapa, 5 September 1893, NZPD, vol 81, p 637.
732. 'Parliamentary Notes', *New Zealand Herald*, 2 August 1893, p 5.
733. AJLC, 1893, no 6, p 1 (cited in Loveridge, draft evidence (doc Z1(b)), pp 31–33).
734. Eparaima Kapa, 5 September 1893, NZPD, vol 81, pp 637–638.
735. Ibid, p 638.
736. James Carroll, 5 November 1893, NZPD, vol 81, p 638.
737. Tom Brooking, *Richard Seddon, King of God's Own: The Life and Times of New Zealand's Longest Serving Prime Minister* (London: Penguin, 2014), p 145.
738. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1304–1305.
739. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1046–1047.
740. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1297–1298.
741. Ibid.
742. Native Land Purchase and Acquisition Bill 1893, no 90–1, preamble, cls 7, 8. Seddon had spoken in June about introducing some form of compulsory purchase, similar to the Government's plans for the vast South Island rural estates: Dr Donald Loveridge, '"In Accordance with the Will of Parliament": The Crown, the Four Tribes and the Aotea Block, 1885–1899', report commissioned by the Crown Law Office, 2011 (Wai 898 R01, doc A68), pp 163–164.
743. Reports of the Native Affairs Committee, AJHR, 1893, I-3, p 11; 'Today's Parliament', *Evening Post*, 9 August 1893, p 3.
744. 'Native Affairs', *New Zealand Herald*, 12 September 1893, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1297. Seddon attended at the Governor's invitation. Alfred Cadman had stepped down as Native Minister in June, and Seddon formally took over the portfolio in early September.
745. 'Native Affairs', *New Zealand Herald*, 12 September 1893, p 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1297.
746. 'Native Affairs', *New Zealand Herald*, 12 September 1893, p 5.
747. Ibid.
748. Ripon to Glasgow, 26 September 1892, in AJHR, 1893, A-2, p 27. After Glasgow had rejected some of the Government's Legislative Council appointments, the Colonial Office instructed him to follow ministerial advice except where imperial interests were affected, or he was certain that the Ministers were advising a course that the Legislature and constituency would not accept (in which case he should dismiss the Ministers and attempt to form a new Government).
749. Brooking, *Richard Seddon*, p 264.
750. Regarding the final Act, see Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1405–1407; see also Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, p 474; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 585; Brooking, '"Busting Up" the Greatest Estate of All', pp 85–86. Regarding the amendments, see Eparaima Kapa, 3 October 1893, NZPD, vol 82, p 941; 'Late Political', *Daily Telegraph*, 13 September 1893, p 3; Native Land Purchase and Acquisition Bill 1893 (90–1), cl 7; Native Land Purchase and Acquisition Bill 1893 (90–3), cl 7.
751. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 2, pp 1405–1407.
752. 'Dissatisfied Maoris', *New Zealand Herald*, 21 October 1887, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1296.
753. Freda Rankin Kawharu, 'Hōne Heke Ngāpua', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2n12/ngapua-hone-heke, accessed 18 January 2022.
754. 'Maori Elections: Northern District', *New Zealand Herald*, 21 December 1893, p 5; *New Zealand Herald*, 14 December 1893, p 4.
755. Wī Pere was elected in Eastern Maori and retained his seat until 1905, when he was defeated by Apirana Ngata. Ropata Te Ao was elected in Western Maori and retained the seat until the next election, when he was defeated by the Kīngitanga candidate Henare Kaihau. Tame Parata, who held Southern Maori from 1885 to 1911, was not aligned with either movement though he was sympathetic to their causes. Carroll chose to stand aside from Eastern Maori and contest a general electorate.
756. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1298–1299.
757. Brooking, *Richard Seddon*, p 265.
758. 'Pakeha and Maori', AJHR, 1895, G-1, p 2.
759. Brooking, *Richard Seddon*, p 265.
760. 'Pakeha and Maori', AJHR, 1895, G-1, pp 17–34; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1218.
761. 'The Premier in the North', *New Zealand Herald*, 16 March 1894, p 6.
762. 'Pakeha and Maori', AJHR, 1895, G-1, p 28.
763. Ibid, pp 19–20.
764. Ibid.
765. Ibid, pp 19–21.
766. Ibid, pp 26–31.
767. Ibid, p 34.
768. Ibid.
769. Ibid, pp 20, 24–25.
770. Ibid, p 34.
771. Ibid.
772. Ibid.
773. Brooking, *Richard Seddon*, pp 271, 277.
774. 'The Premier and the Maori Parliament', *Poverty Bay Herald*, 11 April 1894, p 2.
775. Native Rights Bill 1894, preamble; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1298–1299.
776. Native Rights Bill 1894, preamble; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1298–1299.

777. Ko te Pukapuka Nama 5 o te Perehitanga. Tuunga. Tuawha o te Paremata o te Kotahitanga o te Iwi Maori o Nui Tirene o te 7 o Maehe, 1895 (Auckland: Wiremu Makara, 1895), p 48 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1299).
778. Hōne Heke Ngāpua, 10 September 1894, NZPD, vol 85, pp 551–553.
779. Ibid, pp 551–553.
780. Ibid, p 553.
781. Ibid.
782. Ibid.
783. Ibid, p 555.
784. James Carroll, 10 September 1894, NZPD, vol 85, pp 554–555.
785. Ibid.
786. Stout to James Carroll, 10 September 1894, NZPD, vol 85, pp 554–555.
787. Thomas McKenzie, 10 September 1894, NZPD, vol 85, p 560.
788. 'Parliament', *New Zealand Herald*, 11 September 1894, p 6.
789. 'Pakeha and Maori', AJHR, 1895, G-1, p 34.
790. Richard Seddon, 28 September 1894, NZPD, vol 86, p 371.
791. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 205, 373.
792. Ibid, pp, 372–374.
793. Native Lands Administration Bill 1894, pts III, IV, V. In many respects, this Bill resembled Ballance's Native Lands Administration Act 1886, as well as more recent proposals such as Carroll's Native Committees Act 1883 Amendment Bill 1892. Ballance's Native Lands Administration Act 1886 had in turn borrowed some concepts from Pere's Native Lands Act Amendment Bill 1884, though Ballance's did not go as far towards giving effect to Māori rights. For a commentary on the Bill and its proposed impact on the Native Land Court, see Dr Grant Phillipson, '"An Appeal from Fenton to Fenton": The Right of Appeal and the Origins of the Native Appellate Court', NZJH, vol 45, no 2 (October 2011), p 181; see also Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 2, pp 1020, 1034, 1046–1048, 1054–1055.
794. Native Lands Administration Bill 1894, cl 45.
795. 'First Readings', 31 July 1894, NZPD, vol 84, p 192; Wī Pere, 28 September 1894, NZPD, vol 86, pp 375–376; Ropata Te Ao, 28 September 1894, NZPD, vol 86, p 384; Ropata Te Ao, 2 October 1894, NZPD, vol 86, p 478; see also Phillipson, '"An Apppeal from Fenton to Fenton"', p 181.
796. Ropata Te Ao, 2 October 1894, NZPD, vol 86, p 478.
797. Phillipson, '"An Appeal from Fenton to Fenton"', p 181.
798. Seddon to McKenzie, 29 October 1894 (as quoted in Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 559).
799. Hōne Heke Ngāpua, 21 September 1894, NZPD, vol 86, p 231; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1146.
800. James Carroll, 21 September 1894, NZPD, vol 86, pp 230–231; Hōne Heke Ngāpua, 21 September 1894, NZPD, vol 86, pp 232–232, 353.
801. Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 2, pp 1283–1284. For an example of settler newspaper views on incorporation, see 'Native Land Legislation', *Poverty Bay Herald*, 6 June 1894, p 2.
802. According to Richard Boast, private purchasers acquired another 423,184 acres: Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island, 1865–1921* (Wellington: Victoria University Press, 2008), p 202. The data relate to the financial years ending 31 March 1895. See also Brooking, '"Busting Up" the Greatest Estate of All', pp 78–81. The Government estimated that about seven million acres of North Island land remained in Māori possession in 1893: Native Land Purchase and Acquisition Act 1893, preamble.
803. Rigby, 'Validation Review' (doc A56).
804. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1310–1311; Ranginui Walker, *Ka Whawhai Tonu Matou: Struggle Without End* (Auckland: Penguin Books, 2004); 'Te Pipoata a te Kotahitanga', *Paki o Matariki*, 22 August 1895, p 2.
805. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1302–1303.
806. 'Bills Discharged', 2 October 1895, NZPD, vol 91, p 15.
807. Hōne Heke Ngāpua, 24 June 1896, NZPD, vol 92, pp 304–305.
808. Ibid, p 319.
809. Rōpata Te Ao, 24 June 1896, NZPD, vol 92, p 306.
810. 'Native Rights Bill', 24 June 1896, NZPD, vol 92, pp 304–321.
811. Loveridge, draft evidence (doc Z1(b)), pp 64–67.
812. Richard Seddon, 24 June 1896, NZPD, vol 92, pp 312, 320.
813. Ibid, pp 311–312.
814. See Richard Seddon, 24 June 1896, NZPD, vol 92, p 312; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 990–993.
815. Seddon, 25 September 1896, NZPD, vol 96, pp 166–167; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 975–976.
816. Te Urewera Māori became concerned over these surveys as a result of the confused messages they had received from Crown officials that had led them to believe that the land was being surveyed for a Native Land Court hearing. For a further discussion of the timing and basis for these surveys, see Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 890–924.
817. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 922–924.
818. Ibid, pp 880–881; see also Judith Binney, 'Te Mana Tuatoru: The Rohe Potae of Tuhoe', NZJH, vol 31, no 1 (April 1997), pp 117–131.
819. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 990–993.
820. Ibid, pp 990–993, 1002.
821. Seddon, 25 September 1896, NZPD, vol 96, pp 166–167; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 891, 975–976. Carroll also emphasised this point, telling the House that the land was fit for no one other than Tūhoe, not suitable for settlement, and 'it is their ardent wish that this land should be preserved to them': Carroll, 24 September 1896, NZPD, vol 96, p 157.
822. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, p 929.
823. 'Native Rights Bill', 24 June 1896, NZPD, vol 92, p 321.
824. More than 35,000 Māori had signed the Kotahitanga pledge by May 1895, according to the *New Zealand Herald*: Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1305.
825. Loveridge, draft evidence (doc Z1(b)), pp 138, 152.

826. Though never a formal political organisation, the Young Maori Party, as they were often known, was a group of ex-pupils of Te Aute College who formed the Te Aute Students Association in 1897. Officially, they called themselves Te Kotahitanga o Te Aute, or Te Kotahitanga Hou. Their leaders included Āpirana Ngata, Te Rangi Hīroa, and Māui Pōmare: Binney, O'Malley, and Ward, *Te Ao Hou*, pp 147–148.
827. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1309, 1317.
828. John Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1909* (Oxford: Oxford University Press, 1969), p 91; Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, pp 525, 528.
829. 'Native Meeting', 29 August 1896, in *Native Meetings at Wellington, 1896* (1896; repr Christchurch: Kiwi Publishers, 2003), p 16; Loveridge, draft evidence (doc Z1(b)), p 79.
830. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1306–1313; see also Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, pp 526–529.
831. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1310–1311.
832. Wī Pere, 25 September 1896, NZPD, vol 96, p 192.
833. Hōne Heke, 25 September 1896, NZPD, vol 96, p 188.
834. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, p 1002 and vol 4, p 1658.
835. Loveridge, draft evidence (doc Z1(b)), p 82.
836. Hone Heke, 8 April 1897, NZPD, vol 97, pp 55–56.
837. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1305–1307.
838. Ibid.
839. In a dispatch to the Governor, the Secretary of State declared that he had received 'for presentation to the Queen, an address from Mr Wi Pere, member of the House of Representatives, and other representative Maori': Chamberlain to Earl of Ranfurly, 9 July 1897, AJHR, 1898, A-2, p 10; Loveridge commented that only one version of the message had ever been uncovered, and that 'on the limited evidence available it would appear that the changes were made by [Wi] Pere': Loveridge, draft evidence (doc Z1(b)), p 84; Brooking suggested that the message was drafted by Pere, Hāmuera Mahupuku, and Hoani Tūnuiārangi, with Carroll's knowledge: Brooking, *Richard Seddon*, p 217.
840. Brooking, *Richard Seddon*, pp 217–218, 297; Loveridge, draft evidence (doc Z1(b)), pp 83–84; Armstrong and Subasic, 'Northern Land and Politicts' (doc A12), p 1307.
841. Loveridge, draft evidence (doc Z1(b)), pp 84–85; editorial, *New Zealand Herald*, 3 May 1897, p 4.
842. Brooking, *Richard Seddon*, pp 217–218; Loveridge, draft evidence (doc Z1(b)), pp 83–84; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1307; Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, p 521; see also 'Our London Letter', *Evening Star*, 6 September 1897, p 3; 'Wellington Notes', *Press*, 11 May 1897, p 5; 'The Maori Address to the Queen', *New Zealand Herald*, 11 May 1897, p 5.
843. 'Return of the Premier: Welcome in Wellington', *Otago Daily Times*, 9 September 1897, p 3.
844. 'The Maori Parliament: Deputation to the Premier', *Evening Post*, 26 October 1897, p 2.
845. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1309–1310.
846. Loveridge, draft evidence (doc Z1(b)), pp 85–86; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1309–1310.
847. Seddon to Timi Waata Rimini, 26 November 1897 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 13, p 6:36a); see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1308.
848. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1308; Loveridge, draft evidence (doc Z1(b)), pp 88, 90–91.
849. Loveridge, draft evidence (doc Z1(b)), pp 89–91; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1310.
850. Seddon to Timi Waatana Rimini, 26 November 1897 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 13, p 6:36a); see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1310.
851. Loveridge, draft evidence (doc Z1(b)), p 91.
852. Ibid.
853. Ibid, pp 93–94.
854. 'The Premier', *Auckland Star*, 5 April 1898, p 2; Loveridge, draft evidence (doc Z1(b)), pp 95–97; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1308, 1311–1313.
855. 'The Native Meeting at Huntly', *New Zealand Herald*, 30 March 1898, p 5; 'The Premier', *Auckland Star*, 5 April 1898, p 2; Loveridge, draft evidence (doc Z1(b)), p 94; see also Brooking, *Richard Seddon*, pp 300–301.
856. 'The Native Meeting at Huntly', *New Zealand Herald*, 30 March 1898, p 5; 'The Premier', *Auckland Star*, 5 April 1898, p 2; Loveridge, draft evidence (doc Z1(b)), p 94; see also Brooking, *Richard Seddon*, pp 300–301.
857. Loveridge, draft evidence (doc Z1(b)), pp 99–105.
858. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1310–1311.
859. Ibid, pp 1311–1313; Loveridge, draft evidence (doc Z1(b)), pp 100–102; see also Williams, *Politics of the New Zealand Maori*, pp 99–103; Brooking, *Richard Seddon*, pp 300–302; Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, pp 518–523. Among other things, this group proposed that the land boards would have Māori majorities, owners would be able to retain some of the lands for their own use rather than vesting title in the boards, the Court would be abolished, and most Māori lands would be free of rates and taxes.
860. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1311–1313; Loveridge, draft evidence (doc Z1(b)), pp 100–102.
861. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1311–1314, 1317.
862. Loveridge, draft evidence (doc Z1(b)), pp 107–108, 110–115.
863. Ibid, p 111.
864. Ibid, p 117.

865. Loveridge, draft evidence (doc z1(b)), pp 112–115.
866. Ibid, p 117.
867. Ibid, p 116.
868. Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, vol 2, pp 528–529.
869. 'The Governor's Tour', *New Zealand Herald*, 16 March 1899, p 6; 'The Premier and the Maoris', *New Zealand Herald*, 17 March 1899, p 6; Brooking, *Richard Seddon*, pp 312–313.
870. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1315–1316; Loveridge, draft evidence (doc z1(b)), pp 120–121; Brooking, *Richard Seddon*, pp 313–314.
871. Loveridge, draft evidence (doc z1(b)), pp 121–122.
872. Ibid, pp 126–135.
873. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1318–1320; Loveridge, draft evidence (doc z1(b)), pp 130–132; 'Political Notes', *Evening Post*, 6 October 1899, p 6; editorial, *New Zealand Herald*, 5 October 1899, p 4.
874. Loveridge described these events in detail: Loveridge, draft evidence (doc z1(b)), pp 138–150. Heke objected to the land boards taking over Native Land Court functions without corresponding funding, but was willing to vote for the legislation.
875. Loveridge, draft evidence (doc z1(b)), pp 138, 152.
876. Native Land Laws Amendment Act 1899, s 3. The Crown might in certain circumstances complete purchases already under way. By section 5, the Act was to remain in force 'only until ten days after the last day of the next session of Parliament': Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1318–1319; Loveridge, draft evidence (doc z1(b)), pp 150–153; 'Political Notes', *Evening Post*, 6 October 1899, p 6; editorial, *New Zealand Herald*, 5 October 1899, p 4.
877. Loveridge, draft evidence (doc z1(b)), pp 156–157.
878. Loveridge described these negotiations in detail: draft evidence (doc z1(b)), pp 156–165.
879. Loveridge, draft evidence (doc z1(b)), pp 156–162.
880. 'Native Politics', *Auckland Star*, 26 June 1900, p 8.
881. Loveridge, draft evidence (doc z1(b)), pp 160–165.
882. Loveridge described these events in detail: draft evidence (doc z1(b)), pp 167–188; see also Brooking, *Richard Seddon*, pp 324–329.
883. Terry Hearn, 'Social and Economic Change in Northland c 1900 to c 1945: The Role of the Crown and the Place of Maori', report commissioned by the Crown Forestry Rental Trust (doc A3), 2006, pp 99–100; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1 p 381; see Maori Lands Administration Act 1900, ss 22–25.
884. Terry J Hearn, 'Social and Economic Change in Northland, c 1900 to c 1945: The Role of the Crown and the Place of Maori', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A3), p 100; see Maori Lands Administration Act 1900, s 29(1); Paul Hamer and Paul Meredith, '"The Power to Settle the Title"? The Operation of Papatupu Block Committees in the Te Paparahi o Te Raki Inquiry District, 1900–1909', report commissioned by the Waitangi Tribunal, 2016 (doc A62), p 28.
885. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1405; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 3, pp 1574–1576; Waitangi Tribunal, *The Whanganui River Report*, Wai 167 (Wellington: GP Publications, 1999), p 163.
886. Hōne Heke, 12 October 1900, NZPD, vol 115, pp 188–189; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1321.
887. Hōne Heke, 3 October 1900, NZPD, vol 114, p 501; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1320.
888. Hearn, 'Social and Economic Change in Northland' (doc A3), p 758; Maori Councils Act 1900, ss 3, 15–16.
889. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1 p 381; see Maori Councils Act 1900, s 29.
890. James Carroll, 12 October 1900, NZPD, vol 115, p 203 (cited in Loveridge, draft evidence (doc z1(b)), p 183).
891. Hōne Heke, 12 October 1900, NZPD, vol 115, p 203 (cited in Loveridge, draft evidence (doc z1(b)), p 184).
892. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1405.
893. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 277, see also p 396.
894. Crown closing submissions (#3.3.402), p 171.
895. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 368, 396–397.
896. Waitangi Tribunal, *The Whanganui River Report*, Wai 167, p 163.
897. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 92–93, 94–96.
898. Ibid, pp 1102–1103. In May 1898, Clendon noted that there was very little 'crime' among Māori communities: 'The Native Disturbance at Hokianga', *New Zealand Herald*, 3 May 1898, p 4.
899. Bruce Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), pp 19–21.
900. Armstrong and Subasic described these events in detail: 'Northern Land and Politics' (doc A12), pp 1326–1397. See also Richard Hill, *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand* (Palmerston North: Dunmore Press, 1995), pp 135–137; Angela Ballara, 'Hōne Riiwi Tōia', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/2145/toia-hone-riiwi, accessed 9 February 2022.
901. Armstrong and Subasic described the conflict in detail: 'Northern Land and Politics' (doc A12), pp 1359–1397.
902. Ipu Absolum (doc X53), p 9; Ipu Absolum, transcript 4.1.25, Tauteihihi Marae, Kohukohu, p 595; see also Haami Piripi (doc Q11), p [13]67.
903. Haami Piripi (doc Q11), p [13].
904. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1326.
905. James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Penguin Press, 1996), p 268; Hill, *The Iron Hand in the Velvet Glove*, p 137; Adrienne Puckey, 'The Substance of the Shadow: Maori and Pakeha Economic Relationships, 1860–1940: A Northern Case Study' (doctoral thesis, University of Auckland, 2006), fol 177.
906. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1327; 'Injuries by Dogs', 24 June 1880, NZPD, vol 35, p 477.

907. Dog Registration Amendment Act 1882, s 5; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1327–1328.
908. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1334–1335; see also 'The Maoris and the Dog Tax', *New Zealand Herald*, 28 September 1888, p 6.
909. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1330–1331.
910. 'Mangonui', *New Zealand Herald*, 15 June 1883, p 6.
911. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1330–1331.
912. Ibid, pp 1331–1332.
913. Ibid, pp 1332–1333.
914. 'The Native Meeting at Waitangi', *New Zealand Herald*, 25 March 1881, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1122, see also pp 1094, 1193–1194.
915. Stirling, 'Eating Away at the Land, Eating Away at the People' (doc A15), pp 19–20.
916. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1122; Ballara, 'Hōne Riiwi Tōia'.
917. 'Another Maori Mission to England', *New Zealand Herald*, 18 November 1884 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 11, p 3:98); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1119.
918. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1340; 'The Native Scare in the North', *New Zealand Herald*, 3 May 1898, p 5; see also Ballara, 'Hōne Riiwi Tōia'; Hill, *The Iron Hand in the Velvet Glove*, p 134.
919. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1335; 'Council Meetings', *New Zealand Herald*, 18 October 1888, p 3. In this report, the Hobson County Council also discussed police action against dog tax defaulters, but it was not clear whether these were Māori or non-Māori.
920. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1334–1335.
921. Ibid, p 1335.
922. 'The Maoris and the Dog Tax', *New Zealand Herald*, 28 September 1888, p 6; *Auckland Star*, 28 September 1888, p 2; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1335.
923. 'Bay of Islands County Council', *New Zealand Herald*, 28 September 1888, p 3.
924. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1338–1339; 'Sheep Owners and Maori Dogs', *New Zealand Herald*, 21 October 1891, p 6. The Minister might have referred to section 3 of the Act, which allowed the Governor to suspend the Act's operation in parts of the country.
925. County chairman to Native Minister, 3 December 1891 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1337–1339).
926. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1339–1340.
927. Ibid, pp 1120, 1193–1194. Regarding coordination between councils, see 'Due North: A Trip to Hokianga', *New Zealand Herald*, 19 March 1892, p 1 (supplement). Between 1882 and 1888, the Government had paid rates on Māori land directly to local authorities and then recovered the funds through stamp duties charged on any alienation. From 1888, the Government no longer provided direct funding, leaving local authorities to gather rates directly from Māori: Bennion, *Maori and Rating Law*, pp 24–25.
928. 'Sheep Owners and Maori Dogs', *New Zealand Herald*, 21 October 1891, p 6.
929. Ibid.
930. Matenga to Native Under-Secretary, 15 October 1891 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1340).
931. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1340–1342.
932. 'The Native Meeting at Waitangi', *New Zealand Herald*, 23 April 1892, p 5. Regarding local authority funding, see 'Due North: A Trip to Hokianga', *New Zealand Herald*, 19 March 1892, p 1 (supplement).
933. Hone Mohi Tāwhai to Native Mnister, 26 July 1892 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1342–1343).
934. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1345–1347.
935. 'The Maoris and the Dog Tax', *New Zealand Herald*, 11 July 1892, p 5.
936. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1345.
937. Cadman minute, 5 September 1892 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1347).
938. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1347.
939. Ibid, pp 1347–1350.
940. Ibid, p 1352.
941. Ibid, pp 1353–1354.
942. Ibid, pp 1355–1356.
943. 'Pakeha and Maori', AJHR, 1895, G-1, p 32.
944. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1355–1356.
945. Report on Petition of Taipari Heihei, AJHR, 1897, I-3, p 3.
946. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1355–1356.
947. Ibid, p 1360; Haami Piripi (doc Q11), p [5]. Arama Karaka Pī's half-brother Te Mokaraka was another leader of Te Huihui.
948. Ipu Absolum (doc X53), pp 4, 6.
949. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1360.
950. Constable Gordon to Inspector of Police, Auckland, 21 March 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1367).
951. Seddon to Commissioner of Police, 25 March 1896 (Armstrong and Subasic, supporting documents (doc A12(a)), vol 14, p 7:333); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1367.

952. Clendon to Justice Secretary, 30 March 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1368).
953. Tōia to the Government, 8 April 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1368–1369).
954. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1369–1370, 1372–1373.
955. Tōia to the Government, 8 April 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1369).
956. Armstrong and Subasic thought that Tōia was specifically asking for an assurance that the Government would not take land in lieu of any unpaid rates and taxes: 'Northern Land and Politics' (doc A12), pp 1369–1370.
957. Tōia to the Government, 7 May 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1371).
958. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1371.
959. Ibid, pp 1371–1372.
960. Hone Tōia to the Government, 22 September 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1372).
961. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1372.
962. Justice Secretary to Tōia, 21 October 1896 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1372).
963. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1373, fn 3311.
964. Ibid, p 1375.
965. Ibid, p 1374.
966. Judge's notes (Ipu Absolum, supporting papers (doc X53(a)), p 7). The taxation rate is noted in 'The Maori Rising', *New Zealand Herald*, 9 July 1998, p 3.
967. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1376; Armstrong and Subasic, supporting documents (doc A12(a)), vol 14, pp [168]–[169].
968. Armstrong and Subasic, supporting documents (doc A12(a)), vol 14, pp [168]–[169]; judge's notes (Absolum, supporting papers (doc X53(a)), p 7); see also 'The Maori Rising', *New Zealand Herald*, 9 July 1898, p 3. Most witnesses at the subsequent court hearing believed it was Menzies who made this statement; others attributed it to Hokianga councillors Alfred Andrews or William Burr. The court records indicate the statement was made more than once, possibly by Menzies and other officials.
969. 'The Maori Rising', *New Zealand Herald*, 9 July 1898, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1377–1378.
970. 'The Maori Affair at Rawene', *New Zealand Herald*, 16 May 1898, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1379–1380, 1381.
971. 'The Maori Affair at Rawene', *New Zealand Herald*, 16 May 1898, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1378.
972. Hill, *The Iron Hand in the Velvet Glove*, p 137; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1381–1382.
973. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1381–1382.
974. Ibid, pp 1383–1384; Brooking, *Richard Seddon*, p 304.
975. 'Despatch of Troops', *Evening Post*, 2 May 1898, p 5.
976. 'The Native Disturbance at Hokianga', *New Zealand Herald*, 3 May 1898, p 4.
977. 'The Maori Affair at Rawene', *New Zealand Herald*, 16 May 1898, p 6. Rē Te Tai was the father of Meri Te Tai Mangakāhia, who is discussed in section 11.5.2.
978. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1385–1387.
979. Ibid, pp 1386–1387.
980. Ibid; Belich, *Making Peoples*, p 268; 'The Rawene Native Difficulty', *New Zealand Herald*, 7 May 1898, p 5.
981. 'The Rawene Native Difficulty', *New Zealand Herald*, 7 May 1898, p 5; see also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1387–1388.
982. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1387–1390.
983. 'The Maori Rising', *New Zealand Herald*, 9 July 1898, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1391. Regarding Hōhepa Tāwhai, see Judge's notes (Absolum, supporting papers (doc X53(a)), p 26).
984. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1392–1393; Hill, *The Iron Hand in the Velvet Glove*, p 89.
985. For example, see 'The Native Disturbance at Hokianga', *New Zealand Herald*, 3 May 1898, p 4.
986. 'The Rawene Native Difficulty', *New Zealand Herald*, 9 May 1898, p 5.
987. For example: Belich, *Making Peoples*, p 268; Hill, *The Iron Hand in the Velvet Glove*, p 137; Puckey, 'The Substance of the Shadow', fol 177; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1326.
988. Hamer and Meredith, '"The Power to Settle the Title?"' (doc A62), p 51; Thomas, 'The Native Land Court in Te Paparahi o Te Raki' (doc A68), p 234.
989. Belich, *Making Peoples*, p 268.
990. Hill, *The Iron Hand in the Velvet Glove*, p 135; Belich, *Making Peoples*, p 268; 'The Rawene Native Difficulty', *New Zealand Herald*, 7 May 1898, p 5.
991. Brooking, *Richard Seddon*, p 306. Brooking also said that Seddon, mindful of his Government's narrow majority, shored up Pākehā votes in the north before the 1899 election. There is also evidence that Seddon was concerned about how the dog tax conflict might be perceived in Britain: see *New Zealand Herald*, 9 May 1898, p 5; *Observer*, 14 May 1898, p 2.
992. 'The Rawene Native Difficulty', *New Zealand Herald*, 10 May 1898, p 6.

993. Judge's notes (Absolum, supporting papers (doc x53(a)), p 2); 'The Maoris and the Dog Tax', *New Zealand Herald*, 5 July 1898, p 3; 'The Maori Rising', *New Zealand Herald*, 9 July 1888, p 4; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1396.
994. 'The Maori Rising', *New Zealand Herald*, 9 July 1898, p 3; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1326, 1372–1373. The *Auckland Star* similarly explained that Te Huihui had banded together 'to insist on the right of the Maoris to govern themselves and their lands under the provisions of the Treaty of Waitangi': 'The Maori Trouble', *Auckland Star*, 16 May 1898, p 2.
995. Judge's notes (Absolum, supporting papers (doc x53(a)), p 32).
996. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1397–1399.
997. 'The Governor's Tour', *New Zealand Herald*, 16 March 1899, p 6; Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1396.
998. 'The Premier and the Maoris', *New Zealand Herald*, 17 March 1899, p 6.
999. Ipu Absolum (doc x53), pp 4, 9.
1000. Patu Hohepa, transcript 4.1.18, Tuhirangi Marae, Waimā, p 43.
1001. 'The Land Dispute at Kaikohe', *New Zealand Herald*, 25 April 1903, p 3. Peter Clayworth described these events in detail in 'A History of the Motatau Blocks' (doc A65), pp 85–97. See also Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1434–1436.
1002. Clayworth, 'A History of the Motatau Blocks' (doc A65), pp 94–97, 100–102.
1003. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 1439.
1004. Belich, *Making Peoples*, p 269.
1005. Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 1179–1184.
1006. Ibid, pp 1190–1191.
1007. Ibid, p 1304.
1008. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 378.
1009. Ibid, p 374.
1010. Ibid, p 378.
1011. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 512.

Page 1289: Māori Assessors in the North in 1868
1. Nominal Roll of the Civil Establishment of New Zealand on the 1st July, 1868', AJHR, 1868, D-13.

Page 1300: Table 11.1
The figures in this table are sourced from David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), app 5, p 1548.

Page 1359: Te Whakakotahitanga i raro i te Mana o te Tiriti o Waitangi.
1. 'The Whakaupoko o Nga Kirihipi a te Kotahitanga', Paki o Matariki, 22 August 1895, p 3. Kotahitanga leaders brought this pledge to King Mahuta in May 1895, seeking his signature.

Page 1359: Unification under the Mana of the Treaty of Waitangi.
1. In *Te Mana Whatu Ahuru*, the Tribunal referred to Te Rohe Pōtae leaders' use of the term 'mana whakahaere' in a June 1883 petition to Parliament. The Tribunal described mana whakahaere as referring to 'full control and power', including rights of autonomy, self-determination, and self-government. In the particular context in which it was used, it also referred to an expectation that Māori authority would be guaranteed by statute, providing for the practical exercise of the treaty guarantee of tino rangatiratanga in an environment of increased settlement: Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 2, pp 1030–1031, 1124–1125, 1127–1128.

Page 1364: Te Raki Members of Te Whare Ariki, 1892
1. Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), p 318; David Armstrong and Evald Subasic, 'Northern Land and Politics, 1860–1910', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A12), p 1288.

Page 1364: Te Raki Members of Te Whare o Raro, 1892
1. Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), p 317.

CHAPTER 12

KŌRERO WHAKATEPE ME NGĀ TAUNAKITANGA
CONCLUSIONS AND RECOMMENDATIONS

Kua eke i runga i te waka Kotahi. Kia mahara tatou kei hoe whakatuara. Kia tika ano te tikanga o te hoe ki to te hunga o te ihu. Kei huri te hunga o te kei ki te hoe whakamuri.

Now that we have all embarked in one canoe, let us be careful that we do not pull backwards. Let all pull in the same direction, as those who sit in the bows; do not let the people in the stern paddle in the opposite direction.

—Wiremu Pohe of Te Parawhau, speaking at the Kohimarama Rūnanga on Tuesday, 7 August 1860[1]

12.1 Te Paparahi o Te Raki, 1840–1900: Summary and Conclusions

In 1840, Te Paparahi o Te Raki was a complex cultural and political landscape home to thriving hapū and iwi whose histories spanned many generations. Northern hapū and iwi trace their origins to the early explorers from Hawaiki, including Kupe, and Nukutawhiti and Ruanui who established settlements on the Hokianga harbour before exploring the forested interior of the district. Several other waves of settlers arrived over subsequent generations, carried by the many different waka which made landfall in the north, including *Uru-ao*, *Kurahaupō*, *Tākitimu*, *Tinana*, *Māmaru*, *Māhuhu-ki-te-rangi*, *Mātaatua*, *Moekākara*, *Tainui*, and *Te Arawa*. The claimants in our inquiry told us of how their tūpuna who arrived in Te Raki travelled throughout the district, settling in different places, and naming the landscape they found. Over many generations, Te Raki hapū intermarried, collaborated, and on occasion came into conflict forming a network of whakapapa connections, and diverse and intersecting rights in lands and resources that straddled different parts of the district.

In the decades before they signed te Tiriti o Waitangi, Te Raki rangatira had begun incorporating a small but growing population of Pākehā settlers, as well as new technologies and trading relationships into their communities. The economic benefits of increased contact with the wider world, however, were unevenly distributed among the district's population. While it remained modest, the Pākehā presence did not threaten longstanding forms of social and political organisation. Diverse and adaptable, Māori of the inquiry district held a deep connection with the natural environment and governed themselves

– as they had for centuries – according to the tikanga guiding their tribal polities and daily lives.

This first part of our stage 2 report into Te Raki claims has primarily considered the interactions of Te Raki Māori with their treaty partner – the Crown – from the first signings of te Tiriti on 6 February 1840 until the close of the nineteenth century. As the preceding chapters have demonstrated, this engagement was diverse in nature: beneficial in certain times and places and destabilising in others. At various points during this period, the Māori–Crown relationship involved negotiation and cooperation; but there was also armed conflict. Māori engaged with colonial land and settlement policies, accepting some but always determined to exercise their tino rangatiratanga and resist the Crown's assimilationist policies and its asserted sovereignty when it infringed on their autonomy.

Our purpose in traversing this relationship in the north over approximately six decades has been to address the core issues of grievance and alleged treaty breach the claimants in this inquiry raised. Following our stage 1 inquiry into the meaning and effect of He Whakaputanga o te Rangatiratanga o Nu Tireni/the Declaration of the Independence of New Zealand (1835) and te Tiriti, we have revisited ngā mātāpono o te Tiriti/the principles of the treaty to ensure that they reflect the expectations of both Te Raki Māori and the British signatories.

The Crown made a number of important concessions concerning Te Raki Māori claims of treaty breach which we have acknowledged and welcomed. Some of these concessions were general in nature and, the Crown argued, needed case-by-case demonstration. The Crown did not make a concession relating to its assumption of sovereignty, despite the agreement reached at Waitangi to share authority with Māori as the colony went forward; nor did it concede any failure on the part of the Crown to engage in any meaningful way with the sustained efforts of Te Raki Māori to assert their tino rangatiratanga through their own paremata and tribal komiti.[2]

Overall, we were struck by the shared weight of injustice claimants and witnesses told us resulted from the imposition of the Crown's authority on the region and its people – whether by force or by resolute assertion of its legislative and administrative authority. In this concluding section, we briefly set out our earlier thematic conclusions and collate for quick reference the particular findings of breach and prejudice made in this report. We then present our recommendations, under section 6 of the Treaty of Waitangi Act 1975, of actions the Crown should take to compensate for or remove such prejudice.

12.1.1 Early interactions between the Crown and Te Raki Māori and the Northern War

Our stage 1 report concluded that the agreement in te Tiriti provided for the tino rangatiratanga, the full authority and independence of Te Raki Māori communities to coexist with the British Crown's kāwanatanga, or governance. The Crown would exercise authority over settlers, thereby keeping the peace and protecting Māori.[3] Where Crown and Māori populations mingled and their spheres of influence overlapped, the treaty partners would negotiate arrangements that served their mutual interests. Māori agreed to transact their lands with the Crown, but not exclusively; nor is it clear that the Crown would even have a right of first refusal. They understood also that the Crown had agreed to return any lands improperly acquired from them before te Tiriti was signed. Rangatira appear to have agreed further that the Crown's kāwanatanga responsibilities included protecting Māori from foreign threats.[4] Despite this agreement, the Crown proceeded to assert sovereignty almost immediately, claiming Māori consent, despite the fact that it had not explained its intention to do so and what this might entail during the treaty hui.

The Crown declared sovereignty over the North Island and then all the islands of New Zealand in two proclamations issued by the Queen's representative Captain Hobson in May 1840. The *London Gazette* published the proclamations that October. These steps are accepted in international law as marking the establishment of British sovereignty in this country.[5] As a result the rest of the world no longer recognised the independent authority of the rangatira and iwi of Aotearoa New Zealand. It was clear from the wording of the May proclamations that the British considered a 'cession' of sovereignty to have taken

place. These steps, however, were entirely at odds with Te Raki Māori understanding of the treaty agreement reached only months before. The Crown made no effort to explain to rangatira the process by which it would assert sovereignty over the whole country, or that it intended to establish a government and a legal system entirely under its control.

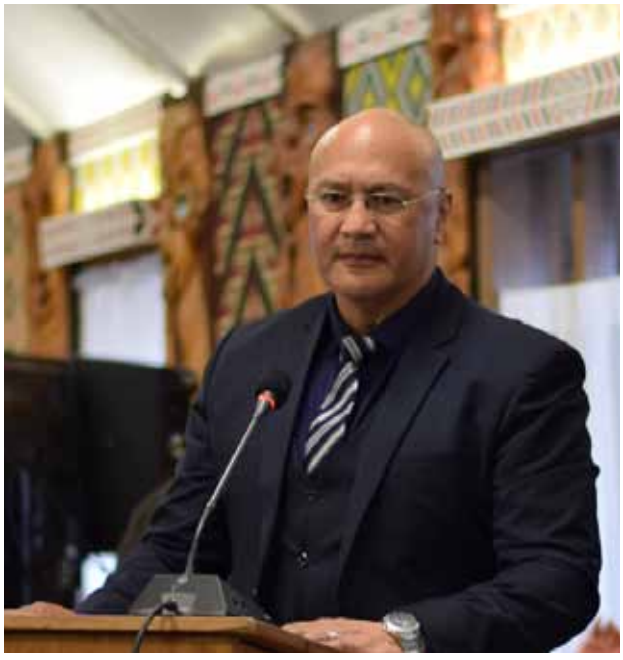
The Crown's proclamation of sovereignty heralded the introduction of foreign legal concepts not explained to Te Raki rangatira before they signed te Tiriti. One was the doctrine of radical title, by which the Crown assumed paramount ownership over all the land of New Zealand, while Māori customary title survived the change in sovereignty as a 'burden' or qualification on it. The Crown thus became the sole source of title to land, and the legal authority to make unilateral decisions about Māori rights and interests in land and how far they would be recognised was vested in the Crown.[6] On the basis that only the Crown could extinguish 'native title', the Crown introduced its pre-emption policy, asserting the exclusive right to enter land transactions with Māori. British officials viewed the Crown's radical title and its exclusive right of pre-emption as fundamental to their ability to govern the new colony, to manage and encourage British settlement, and to introduce an orderly system of legal land titles. Yet these imported legal concepts also reflected British assumptions of cultural superiority. The Crown assumed it would control the colonial land market, and gave little thought to the role Te Raki Māori expected to play in the development and settlement of the colony.

Through the reports of parliamentary select committees on 'aboriginal tribes' in the Empire (1837) and British settlements, and 'the present state of the Islands of New Zealand' (1838), the Crown was relatively well informed on aspects of Māori land tenure.[7] The British government had also been influenced by humanitarian and missionary views on the importance of protecting Māori rights prior to the signing of te Tiriti.[8] However, the view that Māori only owned lands they physically occupied also became increasingly influential among Crown officials and colonists.[9] It was considered that all other lands were 'waste' or 'wild' lands, and following the Crown's assertion of its sovereignty, would become its demesne.[10] Thus, despite Lord Normanby's recognition of Māori ownership of all lands in New Zealand in 1839, and the treaty itself, some of his successors at the Colonial Office, notably including Lord Russell and Earl Grey, proposed that the Crown should claim ownership of lands it considered unoccupied or unused, by virtue of its radical title.[11]

Land and resources were vital to Te Raki hapū and their exercise of tino rangatiratanga. Rights in land were derived from ancestral relationships, and occupation and use, reflecting and sustaining intimate bonds between hapū and whenua. Under tikanga, hapū territories intersected and overlapped as resources were held in common and shared with other groups. As leaders, rangatira were responsible for the maintenance and distribution of these rights, as well as the protection of their people's shared mana.[12] Even as inter-hapū coordination increased from the early 1800s, they remained independent and autonomous within their spheres of authority.[13] Prior to 1840, Māori had transacted land with settlers within the context of their own laws, and the tikanga of tuku whenua (see chapter 6, section 6.3) continued to underpin these arrangements. Rangatira consented to te Tiriti on the basis that the Crown would enforce the Māori understanding of pre-treaty land transactions, and therefore return land settlers had not properly acquired.[14] However, the Crown's assertion of pre-emption and paramount title to the land placed Māori rights within a British legal paradigm and made them vulnerable to alienation. Rather than acknowledging Māori authority over their land and resources, Crown officials and colonists instead engaged in debates about how their rights were to be defined and therefore, contained and then extinguished.

The legal principle of radical title would find application in an important early issue for both treaty partners: the first Land Claims Commission's investigation of pre-1840 land transactions. Rangatira expected the Crown to seek their agreement on the nature, shape, and processes for any investigation into pre-1840 land transactions. However, even before the signing of te Tiriti, the Crown quickly moved to establish the first Land Claims Commission based on Australian precedent where

Clockwise from left: **Ashanti Neems, Brooke Loader, and Coral Linstead-Panoho, some of the claimant counsel who presented closing submissions during Waitangi Tribunal hearings.**



Clockwise from top left: **Daniel Watkins, Darrell Naden, and David Stone, some of the claimant counsel who presented closing submissions during Waitangi Tribunal hearings.**

indigenous rights had not been recognised. Pākehā commissioners with little or no knowledge of customary law or local circumstances were appointed to investigate these claims. Where the transaction was made on equitable terms, grants would be issued to settlers, and the commissioners were to report on any 'surplus' land which the Crown could claim for itself – that is, any land in excess of what the commission determined had been legitimately purchased but exceeded the area settler claimants could be granted under the law (though this limit was later relaxed in some cases). As we have discussed in chapter 6, despite adaptations in practice, pre-1840 transactions were not absolute alienations, but rather conditional allocations of rights to land and resources under tikanga. This was the law of New Zealand as it was understood and enforced by Māori at the time of transaction. That knowledge was available to the Crown through missionary writings and the inquiries of parliamentary select committees during the late 1830s.[15] However, the Crown's directions to commissioners (and their subsequent investigations) largely assumed that land arrangements were to be assessed in terms of purchase and sale, and failed to adequately consider the customs and standards of Māori society. Thus, through the first Land Claims Commission, the Crown seized the power to determine and dominate the process for identifying land rights, and Te Raki Māori tikanga was supplanted without their consent.

It is no surprise then, that where settler claims were numerous, such as the Bay of Islands and Hokianga, the work of the first Land Claims Commission could prompt indignation and suspicion. Mistrust of the new colonial Government's intentions grew as rangatira learned of the intention to claim 'surplus' lands, and to acquire and profit from their lands more generally.[16] Steps the colonial Government took to control trade and the timber industry also stoked Māori fears. The June 1841 New Zealand Customs Ordinance contributed to a significant economic downturn in the district (see section 4.4). The Crown introduced new requirements and duties on imported goods at the Bay of Islands, Hokianga, and Whāngārei harbours. The resulting decline in trade, together with the decision to move the capital to Auckland in 1841, prompted many settlers to depart from the district and a resulting collapse of food prices.[17] There was no evidence that colonial authorities informed Te Raki Māori of their intentions to take these steps or introduce controls over their long-established trading activities. Rangatira had been told during the Tiriti discussions that the capital would remain in the Bay of Islands, and that they would continue to benefit from trading opportunities. While external changes in the whaling and timber industries contributed to the economic decline in Te Raki, Crown officials at the time recognised that the customs duties and decision to move the capital were primary factors in the district's economic collapse. By 1844, Governor FitzRoy himself was convinced the Crown had caused the economic downturn, and wrote that the British flag had become a symbol of economic 'oppression'.[18]

Despite the steps the Crown took to assert authority over the lands and economy of the district during the early 1840s, its power and influence on the ground was far from clearly established. Te Raki leaders continued to enforce their own laws, and the Crown's rudimentary police force remained insufficient to exercise substantive control over Te Raki Māori communities. However, while the Crown had made only limited attempts to govern Te Raki Māori up to that time, those efforts posed a significant threat to the on-going exercise of Māori authority. The number of muru conducted against Pākehā increased during this period as settler transgressions against tikanga became more frequent and Māori anxieties about their political and economic circumstances grew.[19] Tensions escalated in July 1844, when Hōne Heke Pōkai led a taua muru to Kororāreka, and following a confrontation with a police magistrate, felled the flagstaff on Maiki Hill. In response, Governor Robert FitzRoy sent troops to the Bay of Islands.[20]

The frustration of many 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. The Crown nonetheless failed to consider

the underlying concern of Heke, Kawiti, Pūmuka and others that te Tiriti was being ignored and that the Crown intended to impose its laws on and subordinate Māori. Governor FitzRoy attempted to bolster support for the Crown at an important hui held at Waimate in September 1844, making a number of key promises including the return of surplus lands. However, he also ignored opportunities for dialogue with Hōne Heke on more than one occasion and instead threatened military action against Heke and his allies, and chastised rangatira for not intervening in muru conducted against settlers.[21] In response to the second felling of the flagstaff in January 1845, FitzRoy had a warrant issued for Heke's arrest, and militarised Kororāreka. Following the third felling, the flagstaff was rebuilt again, and fortified, despite missionary warnings that Heke and Ngāpuhi would regard this as a provocative act.[22] War broke out following the fourth felling of the flagstaff in March 1845, when British officers evacuated Kororāreka and began to shell the town to prevent it from falling into Māori possession. Māori responded by looting and burning the town though they protected and assisted resident settlers.[23]

Throughout the Northern War, the Crown was the aggressor, using the threat of military force to impose the sovereignty it believed had been acquired in 1840. FitzRoy had issued instructions that permitted the arrest of 'rebel' leaders as 'hostages' for the good behaviour of their communities whether they had taken up arms or were merely deemed to be in support. 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. Pōmare II, who was suspected of assisting the 'rebellion', was arrested and taken with his daughter to Auckland, where he had to give up land rights and acknowledge that their detention was justified as a condition of release. The Crown was 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. Some Hokianga rangatira, including Tāmati Waka Nene, Rawiri Taonui and Hōne Mohi Tāwhai, fought against Heke, but had a range of reasons for doing so. Fearful of the impact of a Crown invasion of their lands, they had made an agreement with the Governor at Waimate in September 1844 to keep Heke under control and were bound to that commitment as a matter of mana. However, in pressuring hapū to take sides, the Crown took advantage of divisions within Ngāpuhi, and caused lingering resentment among 'rebel' and 'neutral' hapū alike.

Ultimately, there is no greater indictment of the British policy for colonisation of New Zealand than that within a few years of signing te Tiriti with Te Raki Māori, they embarked on a war against them. Despite all the cautions Lord Normanby expressed about engagement with Māori and the importance of protecting their interests, the British failed to make sufficient efforts to form relationships of equality and mutual respect with rangatira as agreed under the treaty. Instead, the Crown's recourse to the use of force reflected an expectation of colonial officials that they would defend the Queen's authority, establish British power and make New Zealand safe for the incoming settlers. The impact of the Northern War on the district and its peoples is difficult to overstate. Te Raki Māori suffered loss of life, dislocation, destruction of property, taonga and food sources, hardship, and increased internal division during the conflict and its immediate aftermath. Longer-term consequences included loss of leadership, stigmatising of the families of both 'rebel' and 'loyal' leaders, economic decline, and a breakdown of the Māori–Crown relationship in the district for many years. Over the following decades, the Crown abandoned its treaty obligations and sought to assert its control over the district through assimilationist policies and the acquisition of Māori land. Te Raki Māori who had fought against the Crown sought reconciliation, re-erecting the flagstaff which they named 'Te Whakakotahitanga o Ngā Iwi', accepting the second Land Claims Commission, and attempting to establish shared townships (see chapter 7, section 7.4.2).

With Respect to this Early Period of Interaction between the Rangatiratanga and Kāwanatanga Spheres of Authority, and the Northern War, We Made the Following Findings

In respect of the proclamation of sovereignty and the establishment of a Crown Colony government, we find that the Crown acted inconsistently with the guarantees in article 2 of the treaty 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 a sole right of pre-emption, which was clearly expressed in neither 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 tētahi ki tētahi / 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.

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 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.

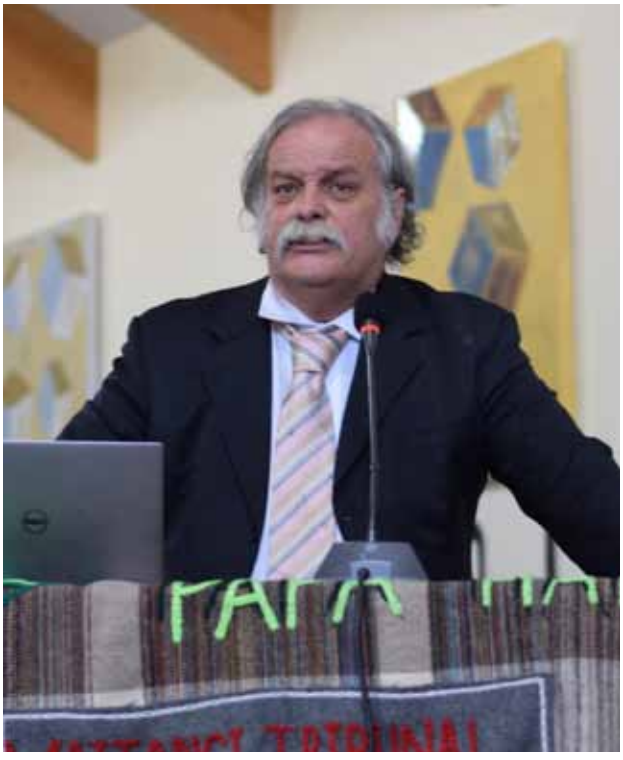
- By initially insisting on submission and land confiscation as conditions of peace, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te matapopore moroki me te mātāpono o te houruatanga / the principles of active protection and partnership.
- By refusing to engage and 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.

12.1.2 The Crown's land fund model and early policies for colonial development

As the Tribunal has previously observed, the Crown accepted at an early stage that to ensure the success of its new colony in Aotearoa New Zealand, it had a responsibility 'to legitimise and assist orderly colonisation'.[24] Lord Normanby's 1839 instructions for Governor Hobson placed paramount importance on the Crown's sole right of purchase under pre-emption. In order to maintain a land-fund for the promotion of British settlement and colonial development, the Crown would need to acquire 'the unsettled lands' of New Zealand at low cost and sell them on at higher prices. Normanby observed that settlers already in New Zealand had obtained '[e]xtensive acquisitions of such lands'. To address this difficulty, Hobson was to appoint a commission which would report to the Governor on whether the land had been 'obtained on equitable terms', who would then make the final decision on the issue of a Crown grant.[25] These twin policies for Crown purchasing under pre-emption and investigation of pre-1840 transactions were directed at establishing the Crown's control over land and facilitating 'the introduction of capital and of settlers'. However, in carrying out these interventions, Hobson was to act in accordance with a further priority clearly stated in Normanby's instructions, the protection of Māori interests which the British government had already recognised.[26]

There was a clear tension in these instructions between the Crown's protective intent and the imperative to acquire large areas of land from Māori at low prices. The challenge of meeting both goals through the Crown's policy for the investigation of pre-treaty transactions and its purchasing policy could have been overcome had its officials sought early engagement with Te Raki Māori, and acquired the consent of rangatira for institutional arrangements that would recognise and respect their tino rangatiratanga and faciliatate a treaty partnership. How to determine Māori ownership of land, and how settler rights in land could be accommodated without causing harm to their communities were matters of great concern for Te Raki Māori. Furthermore, Māori had a shared interest in the economic development of the district which could and should have formed the basis for these negotiations. However, following the signing of te Tiriti, Crown officials failed to involve Te Raki Māori in decisions about its land policies despite the clear room for accommodation and evidence of huge Te Raki Māori interest and involvement in the economic development of the district. Preoccupied with the concerns of settlers and the need to acquire large tracts of land at low cost, the Crown consigned Māori to the role of providers of land for settlement.

In the early 1840s, there were very few Pākehā in New Zealand qualified to engage with Māori on the Crown's behalf, or to provide advice on customary rights and laws. For these services, the Crown was obliged to rely on the services of missionaries and their sons who had lived in Māori communities and were familiar with their language. Responsibility for protecting Māori interests



was placed in the hands of the Chief Protector of the Aborigines, the missionary George Clarke (senior), and his small staff of 'sub-protectors'. During this period, the Chief Protector was tasked with identifying customary rights and protecting Māori interests before the first Land Claims Commission, although his major concern was to ensure that settlers' title would not be challenged in the future. He was also primarily responsible for overseeing the Crown's purchasing of land. However, Clarke was conflicted in both respects. He was a major land claimant both on his own behalf, and as a member of the Church Missionary Society, and quickly encountered difficulty navigating the conflicting imperatives of his dual duties of protection and land purchase which he acknowledged at the time.[27]

A further challenge facing the colonial Government was that in its haste to secure New Zealand as a colony during the latter part of 1839, the British government failed to make any adequate provision for funding it.[28] With its resources spread thin across the significant policy challenges of purchasing Māori land, and investigating pre-1840 transactions throughout the country, the Crown struggled to establish its land policies on an equitable footing. When the Land Claims Commission began its work in January 1841, the lack of provision for surveys on anything like the scale required for this undertaking caused delays in issuing grants and resulted in confusion over what lands had been awarded. By the time FitzRoy arrived as the new Governor at the end of 1843, the commissioners had only reported on about half of the claims before them, and very few grants had been awarded. The Crown also struggled to establish its land purchasing programme and only made one purchase in Te Raki during the 1840s in the Mahurangi and Omaha block, though

From left: **Eve Rongo, Gerald Sharrock, and Ihipera Peters, some of the claimant counsel who presented closing submissions during Waitangi Tribunal hearings.**

this was a vast area of land estimated at approximately 220,000 acres.[29] Clarke, who conducted the purchase, carried out no investigation into customary rights in the area, and the deed was signed in Auckland in April 1841 by only 22 Hauraki rangatira.[30] This purchase failed to meet the Crown's own standards of the time. As the Crown conceded in our inquiry, it breached the treaty and the disadvantage caused to the Mahurangi Māori who did not take part in the original transaction was 'permanently locked in place'.[31]

Upon his arrival, FitzRoy inherited a colony with substantial debts and little finance available to stimulate the colonial economy through purchasing and opening land for settlement.[32] In order to quell growing dissatisfaction with the land fund model, and hasten the transfer of land to settlers, FitzRoy made a series of dramatic policy changes. He began intervening in the work of the Land Claims Commission to speed up the process, removing the requirement that grants be surveyed and that cases be decided by two commissioners. He also intervened in the process by making 12 grants for claims in the district that had been previously disallowed and increasing the area that could be granted to settlers for many more of the unsurveyed awards.[33] These measures compounded the damage to Māori rights already caused by the commissioners' practice of validating transactions they knew to be incomplete and still in Māori occupation. FitzRoy promised Māori the return of 'surplus lands' from the old land claims but this did not happen.[34]

FitzRoy also implemented a pre-emption waiver system in 1844, which enabled settlers to directly purchase land from Māori provided that certain conditions were met. The implementation of this policy again offered Te Raki Māori little protection despite intended safeguards. These

were regularly ignored or circumvented, and the Crown's scrutiny of pre-emption waiver claims was highly deficient. Notably no tenths reserves as promised in FitzRoy's waiver proclamations of 1844 were set aside. Even where claims were disallowed for failure to meet specified conditions, the Crown did not return those lands to the Māori owners, but deemed them to 'revert' to the Crown on the basis of its assumption of radical title. In the end, despite FitzRoy's attempt to address delays and confusion in the granting of titles, his policies only produced more of both.

Upon succeeding FitzRoy as Governor, in 1845, George Grey quickly took steps to end the waiver scheme, re-assert Crown pre-emption under the Native Land Purchase Ordinance 1846, and introduce new penalties for settlers entering into informal lease agreements. He also took steps to abolish the position of Chief Protector of Aborigines which he saw as ineffectual and expensive.[35] Under the Land Claims Ordinance 1846, he appointed a further commissioner, Henry Matson, to investigate and settle pre-emption waiver claims, and attempted to confirm the validity of FitzRoy's grants under the Quieting Titles Ordinance 1849. Despite Grey's acknowledgement that FitzRoy's policies and their application had done injustice to Māori, both his interventions essentially served the interests of settlers, and offered no protection to kāinga, cultivations, and wāhi tapu.

The problem of unsurveyed grants continued into the mid-1850s, and Grey's Quieting Titles Ordinance was a 'dead letter' by the time the Land Claims Settlement Act 1856 was enacted by the newly established colonial Legislature.[36] The procedures established by this and an Extension Act passed in 1858 favoured colonists and the Crown at the expense of Māori. Former New Zealand Company agent Francis Dillon Bell was appointed to head the second Land Claims Commission in 1857, and over the next five years, he confirmed or increased grants resulting in the transfer of some 175,000 acres of land to old land and pre-emption waiver claimants. His decisions also resulted in the defining of some 100,000 acres of land the Crown owned by reason of 'scrip' and its claim to the 'surplus' for both pre-treaty and pre-emption waiver 'purchases' (see chapter 6, section 6.1.3). In many cases, decades had passed since these pre-1840 transactions were first undertaken. However, the passage of time did not change the fact that they were not absolute sales but rather customary arrangements, conditional, ongoing, and with an unextinguished underlying Māori title. 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.

Decades of Māori petition and protest followed these awards, and prompted limited, cursory, and narrowly focused inquiries: including the Houston commission (1907), the Native Land Claims Commission (1920), and the Sim commission (1927). The culmination of this process was the more thorough Myers commission (1946), which acknowledged the outstanding grievances 'in equity and good conscience'.[37] However, the Myers commission proceedings were premised on the assumption that the first investigations by the land claims commissions had been conducted thoroughly and properly whereas the ratification process had been flawed from the outset. The commission also presumed that legal title to the 'surplus' lands was vested in the Crown, and offered flawed remedies and inadequate compensation.

During the 1850s, the Crown also implemented its land purchase policies in Te Raki. In 1848, Governor Grey set out a vision for the transformation of the colony that was shorn of the caution and concern for protecting Māori interests which had previously been expressed by Normanby and Clarke, and cynically dismissed Māori claims over large areas of lands where multiple groups held interests.[38] Having faced armed resistance in Te Raki and other parts of the North Island, he envisaged the Crown asserting its control over extensive swathes of the country through large-scale purchases ahead of settlement, the payment of nominal prices, and restriction of Māori to small reserves required for their subsistence. To this end, Grey also rejected appeals from settlers and Māori for legal recognition for private leasing of Māori land, despite being aware that Te Raki Māori continued to lease their lands informally and some preferred this

way of transacting their land. However, the Crown viewed leasing as an obstacle to its purchasing ambitions and the expansion of its authority through the extinguishment of native title.

Grey's framework for Crown purchasing would be applied to great effect by Donald McLean and the Native Land Purchase Commissioners employed by the Native Land Purchase Department, following its establishment in 1854. Over the following years, McLean exercised little oversight over his land purchase commissioners in Te Raki, who employed a range of tactics intended to secure purchases for the Crown and overcome or circumvent opposition. Officials held out material benefits to Te Raki Māori as incentives for transacting their land with the Crown, and accepting the low prices it set. They were promised townships, roads and economic opportunities which were slow to follow or never eventuated at all. Ten per cent clauses were included in the deeds of two Whāngārei purchase blocks promising to provide owners of a block with a share in the rising value of their land when it was on-sold (see chapter 8, section 8.5). However, this commitment was never fully carried out, and the scheme was abandoned after only a handful of payments were made to owners many years after the land was purchased.

Under McLean, the Native Land Purchase Department made a minimal effort to ensure Te Raki Māori retained sufficient lands for their present and future sustenance, development, and capacity to fulfil their cultural obligations. Rather than monitoring the effect of the purchases on hapū, McLean sought to implement a policy whereby Māori would repurchase the lands they required for their kāinga and cultivations from the Crown (at greatly increased prices) thus securing individual Crown grants, the benefits of which he proclaimed at every opportunity. Unsurprisingly, repurchase was largely rejected by Te Raki Māori, despite McLean's hope that it would bring their communities under the control of the colonial Government. In the absence of any systematic policy on land retention, the granting of reserves was left entirely to the discretion of the land purchase commissioners who reserved only 13,940 acres of land between 1840 and 1865 – a small fraction of the some 482,000 acres it purchased during that period.[39] Overall, the Crown's purchasing policies and practices sought to confine Te Raki Māori to an essentially marginal position in the colonial economy.

With Respect to the Crown's Land Fund Model and Policies for Colonial Development, We Made the Following Findings

In respect of the first Land Claims Commission, we find that:

- The Land Claims Ordinance 1841 was inconsistent with the guarantees in article 2 of te Tiriti, in breach of te mātāpono o te tino rangatiratanga, 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.
- The Crown failed to provide a parallel role for Māori alongside the British commissioners in determining whether pre-treaty transactions were valid and ensuring that Māori intentions were understood, respected, and safeguarded; give effect to the promises made by the Crown's representative to Māori at Waitangi and Māngungu, both verbally and within te Tiriti; acknowledge and incorporate reference to tikanga (customary law) in a meaningful way, and give weight to tikanga in assessing the purpose and nature of the transactions alongside British law; ensure that all customary owners of land involved in each transaction had been identified and had consented to transactions involving lands in which they had interests (only two witnesses were required to confirm a 'sale'); and require the commissioners to ascertain the nature of those transactions as Māori understood them, thus limiting the nature and effectiveness of their inquiry, and impeding determination of the real character of the transactions as undertaken under

tikanga at the time. These failures facilitated the conversion of conditional occupation rights into absolute conveyances under British law.

- The Land Claims Ordinance 1841 also failed to give guidance as to fairness of price, specify the measures needed to give effect to joint Māori and Pākehā occupancy arrangements and underlying trusts, or require commissioners to protect kāinga and other sites in active Māori occupation, investigate equity of outcome, advise on the sufficiency of land remaining in possession of hapū, and ensure that reserves were specified and protected in grants.
- These shortcomings were not offset by the involvement of protectors, who were concerned more with securing the titles granted to settlers and the progress of the colony than with ensuring justice for Māori. The Crown was thus also in breach of te mātāpono o te matapopore moroki / the principle of active protection and te mātāpono o te mana taurite / the principle of equity.
- Māori were prejudicially affected by these failures which resulted in the transformation of allocations of land made under tikanga for the use of settlers into permanent alienations under British law in breach of the guarantees of article 2 of the treaty. In our view, this was an expropriation of tino rangatiratanga.

In respect of the Crown's development of its purchasing policy, we find that:

- The Crown failed to engage with Te Raki Māori in developing its purchasing and settlement policy during the 1840s, and prioritised its political and economic objectives at the expense of Māori interests and treaty-protected rights in breach of te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga / the principle of partnership.
- By denigrating the validity of Te Raki Māori rights in land and accepting the principle that those rights could be extinguished over large tracts of land at low cost, while hapū and iwi could be confined to small reserves for cultivation and occupation, Crown policy breached te mātāpono o te houruatanga / the principle of partnership, te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development, and te mātāpono o te matapopore moroki / the principle of active protection.

In respect of FitzRoy and Grey's policies towards the validation of old land claims, we find that that:

- The Crown through Governor FitzRoy's actions in expanding grants beyond commissioners' initial recommendations, issuing grants where the commissioners had recommended none, and issuing unsurveyed grants for the benefit of settlers breached te mātāpono o te tino rangatiratanga and te mātāpono o te mana taurite me te mātāpono o te matapopore moroki / the principles of equity and of active protection.
- Despite acknowledging the injustice to Māori on the one hand and the Crown's duty to support their rights on the other, Governor Grey failed to do anything effective to ensure that those rights were protected. The Crown Quieting Titles Ordinance 1849 aimed to remove uncertainty about settlers' title in Crown granted lands, but provided inadequate protections for enduring Māori customary interests. By enacting the ordinance, the Crown was therefore in breach of te mātāpono o te mana taurite me te mātāpono o te matapopore moroki / the principles of equity and of active protection.
- Grey offered little more to Māori in terms of ensuring occupied sites and wāhi tapu were reserved in grants to settlers despite his clear acknowledgement of the Crown's duty in this regard. That failure was in breach of te mātāpono o te matapopore moroki / the principle of active protection.

In respect of the Crown's pre-emption waiver policy, we find that:

- The administration of the waiver policy was deeply flawed from the outset, Crown scrutiny was deficient to the point of negligence with the result that intended protections set out in FitzRoy's proclamations were able to be evaded,

and expected benefits failed to materialise in breach of te mātāpono o te matapopore moroki / the principle of active protection.

- Governor Grey's Land Claims Ordinance 1846 and his options of August 1847 for the settlement of waiver claims favoured settler and Crown interests over those of Māori in breach of te mātāpono o te mana taurite / the principle of equity and te mātāpono o te matapopore moroki / the principle of active protection.

In respect of the Bell commission and the Crown's policies on scrip and surplus lands, we find that:

- The taking of the 'surplus' from old land claims can only be seen as an effective confiscation of some 51,980 acres from pre-treaty land arrangements undertaken under tikanga, and breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te houruatanga me te mātāpono o te whakaaronui tētahi ki tētahi; and by failing to honour promises that such land would return to Māori, the Crown disregarded its duty to act in the utmost good faith, and breached te mātāpono o te houruatanga / the principle of partnership.
- The Crown's surplus land policy applied in respect of both old land claims and pre-emption waiver purchases breached te mātāpono o te tino rangatiratanga; te mātāpono o te houruatanga / the principle of partnership; te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect; te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development; and te mātāpono o te matapopore moroki / the principle of active protection.
- The Land Claims Settlement Act 1856 and Extension Act 1858 breached the principle of te mātāpono o te tino rangatiratanga, as well as te mātāpono o te mana taurite me te mātāpono o te matapopore moroki / the principles of equity and of active protection.
- By failing to require that adequate reserves were set aside out of the areas deemed sold and awarded to settlers or taken by the Crown as surplus under the Land Claims Settlement Act 1856 and Extension Act 1858 the Crown breached te mātāpono o te matapopore moroki / the principle of active protection.
- By passing the Land Claims Settlement Act 1856 and Extension Act 1858 without any opportunity for Māori to express their views on either how settler grants were to be resolved or the Crown's right to take the surplus, the Crown breached te mātāpono o te whakaaronui tētahi ki tētahi me te mātāpono o te mana taurite / the principle of mutual recognition and respect, and the principle of equity.
- The Crown failed to institute an impartial and fair process whereby Māori who had been adversely affected by the defects in the first ratification procedures could gain redress. Instead, the second Land Claims Commission, under a single Pākehā commissioner, Francis Dillon Bell, exceeded its function of defining European grants and Māori reserves. Bell acted to obtain as much land from Māori as he could for the Crown and suggested legislative amendments and gazetted rules for that purpose in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te mana taurite / the principle of equity; te mātāpono o te matapopore moroki / the principle of active protection; and te mātāpono o te whakatika / the principle of redress.
- The Crown asserted a right to lands subject to claims for which scrip had been awarded or that had been disallowed, and its officials took deliberate and sometimes questionable steps to gain as much land for the Crown as possible. In the case of Motukaraka and Waitapu, the Crown claimed land (by falsification of boundaries) to which it clearly was not entitled. These actions were in breach of article 2 guarantees of tino rangatiratanga over lands and resources, and in breach of te mātāpono o te tino rangatiratanga.

- The Crown sought to maximise the return on its earlier issue of scrip on extremely generous terms to the settlers concerned in breach of te mātāpono o te matapopore moroki me te mātāpono o te mana taurite / the principles of active protection and equity, resulting in prejudice to Māori throughout the inquiry region but, in particular, to hapū based in Hokianga, who lost 14,029 acres by this means.
- The disparity between how Pākehā and Māori were treated within the later stages of the Crown's validation procedures was in breach of te mātāpono o te matapopore moroki me te mātāpono o te mana taurite / the principles of active protection and equity.
- The disposal of the claims of children of marriages between Māori women and settlers (the 'half-caste claims') also contrasted with the treatment of settler claims. The potential to have provision made for the mothers and their children under the Land Claims Settlement Act 1856 proved illusory, they were among the last claims to be examined, and few grants were issued despite promises to the contrary. This too breached te mātāpono o te matapopore moroki me te mātāpono o te mana taurite / the principles of active protection and equity.
- By privileging settler and its own interests over those of Māori and failing to ensure that problems arising from the first commission were dealt with and rectified in a fair and timely manner; and to ensure that hapū were left with sufficient lands; and by reason of its scrip and surplus land policies, the Crown breached te mātāpono o te tino rangatiratanga, te mātāpono o te mana taurite / the principle of equity; and te mātāpono o te whakatika / the principle of redress.

In respect of the Crown's implementation of its purchasing policy, we found that:

- By limiting the ability of Māori to exercise all the rights of ownership through failing to provide legal recognition for existing lease arrangements in an attempt to induce Māori to part with their land, the Crown breached te mātāpono o te tino rangatiratanga and te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development.
- By not adequately considering Te Raki Māori views and interests and by implementing a land purchase policy after 1848 that favoured the interests of settlers, and sought to bring Te Raki Māori communities under the control of British institutions and laws through assimilationist policies, the Crown breached te mātāpono o te houruatanga / the principle of partnership, te mātāpono o te tino rangatiratanga, and te mātāpono o te mana taurite / the principle of equity.

In respect of the Crown's purchasing practices on the ground, we found that:

- By employing land purchasing tactics that prioritised the interests of settlers and colonial development above the interests of Te Raki hapū and iwi, the Crown acted inconsistently with its duty to act in good faith towards its treaty partner, in breach of te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te mana taurite / the principle of equity.
- By not dealing with Te Raki Māori in good faith with regard to price setting for their land, and utilising its monopoly advantage to insist on the low maximum prices it would pay, the Crown breached te mātāpono o te houruatanga / the principle of partnership.
- By paying nominal prices which reduced the ability of hapū to develop their remaining land if they so wished and enter the economy on an equal footing with settlers, the Crown breached 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 tino rangatiratanga.
- By failing to adequately implement its 10 per cent commitment to Te Raki Māori as recorded in certain purchase deeds, the Crown breached te mātāpono o te houruatanga / the principle of partnership, and te mātāpono o te kāwanatanga.

- By failing to take timely steps to meet its commitment to ensure that Te Raki Māori would receive collateral benefits they were promised, the Crown breached te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development.
- By failing to ensure that hapū communities each retained a land and resource base to meet their present and future requirements for sustenance and fulfilment of cultural obligations, to provide opportunities for development, and to enable them to participate in the national economy, the Crown breached te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development and te mātāpono o te matapopore moroki / the principle of active protection. It also breached te mātāpono o te tino rangatiratanga.
- By failing to make adequate statutory provision for the creation of secure titles for native reserves for hapū, and by failing to ensure that reserves were surveyed and their boundaries clearly marked, the Crown breached te mātāpono o te houruatanga / the principle of partnership, te mātāpono o te kāwanatanga, and te mātāpono o te tino rangatiratanga.
- By failing to act reasonably, honourably, and in good faith, to engage with its treaty partner, and involve Te Raki Māori in decision-making about the alienation and settlement of their lands, the design and implementation of its land purchasing programme and its policy for colonial development in the inquiry district in the period 1840 to 1865, the Crown breached te mātāpono o te houruatanga / the principle of partnership, 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 failing to uphold its own standards clearly articulated at the time and prioritising the purchase of large areas of land at low cost in order to serve the interests of settlers over respect for and recognition of Te Raki Māori interests, the Crown breached te mātāpono o te tino rangatiratanga, 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 matapopore moroki / the principle of active protection.

12.1.3 Constitutional change, the extinguishment of Māori title, and land alienation

The Crown's purchasing programme proceeded against the backdrop of significant constitutional change. During the first years after the treaty, the Crown's kāwanatanga powers were vested in the Governor, who retained ultimate decision-making power within the colony.[40] However, in 1852 the British Parliament passed the New Zealand Constitution Act, establishing a bicameral national legislature comprising an elected lower house (the House of Representatives) and an appointed upper house (the Legislative Council).[41] The Act also created six provincial governments, each with its own elected assemblies and superintendents.[42] The franchise was extended only to men who met a property test that excluded most Māori from voting in the first general elections. No provision was made for Māori representation in Parliament until four Māori seats were introduced in 1867. At the time, the Māori electorates provided Māori with far fewer representatives than they were entitled to on a population basis and were viewed as a temporary measure only. This arrangement also denied Māori women the franchise. Throughout the nineteenth century, Māori were consistently denied a proper place within colonial democratic institutions. As they became increasingly outnumbered by the growing settler population, Māori throughout New Zealand increasingly sought their own paremata that would be recognised and respected by the settler Government.

The first act of the New Zealand General Assembly was to pass a resolution calling for responsible government, that is, settler self-government, with the Governor

being advised by Ministers who were elected members of the new Parliament. Over the following years, the settler Government gradually assumed responsibility for Māori affairs, as Governor Gore Browne began to accept advice from Ministers. Governor Grey (appointed for a second time) subsequently accepted the principle of ministerial responsibility for Māori affairs in 1861, and the imperial government confirmed the principle of ministerial responsibility in 1864. In chapter 7, we found that the transfer of authority from imperial to colonial Government fundamentally undermined the treaty relationship. The Crown had promised to protect Māori in possession of their lands, the exercise of their chiefly authority, and in their independence. Yet the Crown failed to build any of these protections into the new constitution. Instead, the Crown progressively transferred authority to the very settler population from which it was supposed to protect Māori.

During this period of contest over responsibility for Māori affairs, the Crown had a number of options available to make some legal provision for Te Raki Māori rangatiratanga and tikanga. Most obvious was section 71 of the Constitution Act, which provided that the Queen, by Letters Patent, could establish native districts in which Māori would continue to govern themselves according to their own 'laws, customs and usages'.[43] However, the provision was not adopted by successive Governors, each of whom adopted a different approach to introducing colonial law and authority into the parts of New Zealand that remained largely outside of the Crown's substantive control. In 1860, in the climate of crisis created by the outbreak of the Taranaki war and growing support for

From left: **Jordan Bartlett, Kelly Dixon, and Linda Thornton, some of the claimant counsel who presented closing submissions during Waitangi Tribunal hearings.**

the Kīngitanga among many iwi, Governor Gore Browne called a national rūnanga of Māori leaders, thought to be well-disposed to the Crown, including many Te Raki rangatira. The purpose of the Kohimarama gathering was to defuse Māori opposition and concerns about the war and shore up support for the Crown's authority. However, the rūnanga provided Te Raki rangatira with a forum to directly express their wishes and grievances to the Crown, and thereby influence government policy. The Government published English translations of the proceedings in *The Maori Messenger/Te Karere Maori* which emphasised rangatira expressions of loyalty to the Queen, but the official translations did not fully reflect what was said in te reo Māori. While Te Raki rangatira acknowledged the Queen's mana and maru, they were not expressing submission to but partnership with the Crown. Te Raki rangatira also expressed no opinion on proposals to convert customary tenure into an English form of title. Despite Gore Browne's promises that Māori would be provided a means by which to consider and give input into Crown policy the following year, the Kohimarama Rūnanga was never reconvened.

In 1861, George Grey who had succeeded Gore Browne made the unilateral decision to abandon all future national rūnanga. In their place, he swiftly established 'new institutions', or district rūnanga, that would provide Māori with significant powers of local self-government, but no influence on Crown policy at a national level. The district rūnanga were to have a wide range of powers which local hapū rūnanga already exercised, including as a forum for resolving land disputes. Grey's policy did little more than add a layer of British legal authority to

Neuton Lambert (*left*) and Terena Wara, two of the claimant counsel who presented closing submissions during Waitangi Tribunal hearings.

existing structures, and he viewed the rūnanga as a means of introducing 'law and order' in Māori communities, and eventually amalgamating them into the colonial system of law and government.[44] Despite their limitations, Te Raki rangatira embraced these 'new institutions', and likely saw them as a means of advancing their partnership with the Crown and attracting settlers to their district. Grey visited the north in late 1861 seeking support for his policy, promising Māori that the rūnanga would endure forever and would bring benefits for their communities including townships, schools, and hospitals in the Bay of Islands and Hokianga.[45] The rūnanga were also sold as a way to provide rangatira greater access to the Governor, allowing him to better protect their interests.[46] For Te Raki Māori, these were important undertakings and it would have seemed that the Crown was taking a novel interest in their concerns. As we discussed in chapter 7, the district rūnanga had the potential to operate as an effective form of self-government and to give Māori greater control over the pace of settlement, though they only met once a year. However, only four years later this commitment was abandoned when the Crown withdrew its funding and support for the rūnanga in late 1864 in favour of a more directly assimilationist institution: the Native Land Court.

As in other parts of the country, the Crown's imposition of a new system of land tenure 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. In 1861, Native Minister

Frederick Weld claimed that, without individual title, Māori would lack the incentive to improve their land and 'unless they could have property and be afforded the means of progression by means of that property, all their efforts to rise would fail'.[47] Behind Weld's argument was the belief that the most efficient and economically productive form of land tenure essential to a civilised society was individual ownership. Settler politicians were also highly critical of what they considered to be the slow pace of land acquisition under Crown pre-emption as conducted by McLean's Native Land Purchase Department. It was acknowledged too that there had to be a fair means of investigating title and that the Crown taking that role when purchasing land was inequitable and had resulted in the outbreak of conflict.

The problem with the laws that were then imposed, member of the House of Representatives for Northern Maori Hōne Heke Ngāpua later observed, was that the individual, divisible rights to land they had created were antithetical to the relationship of Māori with their whenua. Indeed, he said, 'the Government . . . had made a big blunder in passing laws disregarding the true Native tenure and Native customs'.[48]

From 1862, the Crown began to abandon its policy of pre-emption which it previously set so much store by, in favour of a title conversion policy that would enable settlers to directly purchase land from Māori. The Native Lands Act 1862 allowed Māori a degree of control over the title conversion process and demonstrated some potential for a Crown–Māori partnership that might have provided for greater recognition of tikanga. However, a restructuring of the Native Land Court system as a national Pākehā-led court of record, codified by the Native Lands Act 1865, became an essential element of the Crown's policy of assimilation, as it sought to promote the economic development of the colony through the large-scale transfer of land ownership. Through the 1865 Act and subsequent legislation, the Crown sought to foster alienation by concentrating ownership in the form of individually tradeable shares in the hands of small groups of up to 10 selected owners recorded on a certificate of title by the Native Land Court. The intention had been to force Māori into subdividing their lands, but these owners represented many others. These unexpressed trust arrangements risked dispossession for those owners not included on titles, and the Crown's effort to amend the legislation in 1867 and 1869 offered little in the way of effective protections (see chapter 9, section 9.5). In response to growing criticism of the ten-owner rule, the Crown introduced a new system of memorials of ownership in 1873 which were to record the names of all owners, each of whom was awarded individually tradeable shares. Neither of the titles offered under either of these schemes offered Te Raki Māori the security and flexibility they sought. Certificates of titles had the effect of legally dispossessing hapū, while memorials of ownership were good for selling and little else. In the absence of any consultation with Māori, the Crown imposed upon them a series of Native Land laws that left both individuals and collectives unable to manage their lands in a way that promoted the stability of their communities or their economic interests. As the Crown conceded in our inquiry:

> the operation and impact of the native land laws, in particular the award of land to individuals and enabling individuals to deal with land without reference to iwi or hapū, made those lands more susceptible to partition, fragmentation and alienation. This undermined traditional tribal structures which were based on collective tribal and hapū custodianship of the land. The Crown failed to protect those collective tribal structures which had a prejudicial effect on the iwi and hapū of Northland and was a breach of the treaty and its principles.[49]

The damage inflicted upon Māori of our inquiry district was deep and enduring. In the first 10 years of the Native Land Court's operation in Te Raki over 300,000 acres of land, comprising 469 blocks, were titled.[50] At the outset of this period, the Crown withdrew from purchasing in Te Raki, having opened Māori land to direct purchase from settlers. However, in the early 1870s the Fox ministry returned to the practice of funding colonial infrastructure through the purchase and resale of cheap Māori land in

response to economic pressures and in pursuit of colonisation goals. Crown purchasers would now compete in a land market with private purchasers. The significant amount of land that had passed through the Native Land Court by the mid-1870s drove down prices. This trend would only continue over the remainder of the decade as a further 255,860 acres, comprising 202 blocks, would be titled between 1875 and 1880. It was during these years, that the Native Land Court 'cemented its dominance in Te Raki and emerged as a key element and ally in the Crown's land purchasing programme in the region.'[51]

The Crown further strengthened its purchasing position by assuming monopoly powers over lands declared under the Native Land Purchase Act 1877. This power allowed the Crown to further limit the ability of Māori to deal collectively with their lands and realise the best possible price, locking out competition as purchase officers gradually acquired individual shares. In this market for land, Māori landowners had access to few protections. The conduct of Crown purchase agents was calculated to prevent collective decision making, and practices such as tāmana, or advance payments ahead of title determination by the Native Land Court, were consciously employed to undermine Te Raki Māori capacity to retain land. The opaque and incremental nature of these payments left Māori landowners without a way of knowing what parts of their land might later be carved out by the Court for the Crown on the basis of its purchase of individual interests, or the extent of the loss to the hapū. Despite the fact that the Crown was aware of the effect that tāmana payments had on Māori, and apparently frowned on its use, it failed to stop the practice until 1894 when the Crown reasserted its right of pre-emption. Further, the Crown subverted its monitoring obligations by declining to adopt or make appropriate use of effective protective mechanisms that included independent valuations, restrictions on alienability, and creation of hapū reserves.

In our view, a treaty-consistent standard of Crown behaviour would have provided mechanisms for community control over whenua. Furthermore, it is evident that the Crown was able, even within a nineteenth century European paradigm, to provide for customary rights in land. We note the provision made for tribal titles in the Native Lands Acts of 1862 and 1865; and a tentative step towards providing a collective management of lands through incorporations and the election of committees in 1894. It appears, however, that only one tribal title was issued in the district, while the 1894 provision was regarded with suspicion and besides came too late to be of much use. By this stage, only a small percentage of land remained under customary title in the Te Raki district. Throughout the nineteenth century, the Crown remained convinced, at least with respect to the ownership and utilisation of land, that Māori would have to abandon their communal ways in order to participate in the developing economy and advance in civilisation. By design, the Crown's Native Land legislation and the advantages in purchasing Māori land the Crown legislated for itself gravely undermined the capacity of Te Raki hapū to retain and manage their lands. We therefore share the view of the Tribunal in *He Maunga Rongo* that the legislative regime for land introduced from 1862 was fundamentally inconsistent with the treaty, and that 'every purchase conducted under it was necessarily in breach of the Treaty'.[52]

The extent of land that transferred out of Māori hands during the nineteenth century reflects the overall effect of the Crown's native land policies in our inquiry district. From 1865 to 1900, the Crown purchased some 231 Māori land blocks in the district with a combined area of 588,707 acres.[53] Private purchasing occurred on a smaller scale during this time and resulted in the loss of at least a further 174,000 acres.[54] The Crown's purchase of such an extensive territory disrupted relationships within and between Te Raki hapū and their connections with whenua, awa, and ngahere, as well as minerals, and other resources. Instead, by the end of the nineteenth century, many Te Raki Māori lacked sufficient land for sustenance, let alone future development. Certain hapū, as has been established, were virtually landless. As claimant Hone Pikari told us, the Crown's insistence on buying from individuals, without

knowledge of the hapū, undermined Te Raki rangatira; '[they] lost substantial authority and control over the whenua, and once this authority was diminished, so was the mana of the rangatira'.[55] And we would add the mana and rangatiratanga of hapū, as the strength of community and collective control was undermined. The result was nothing less than economic, and in many respects cultural, destruction; in Mr Pikari's words, quite simply, 'the Crown has devastated us land-wise'.[56]

By the mid-1870s, the impact of the Crown's Native Land legislation and purchasing policies began to be felt across the district. From this point, Te Raki leaders gradually lost faith in the partnership that had seemed to be promised at Waitangi, and became increasingly vocal about their rights under the treaty and the clear harm they perceived the Crown's policies were doing to their communities. They petitioned the House of Representatives, and sent deputations to the Queen raising concerns about the colonial Government's actions and seeking recognition of their rights under the treaty. During these years, Te Raki rangatira offered the Crown alternatives to the assimilationist policies it had imposed on Māori. Rangatira from Te Raki, and outside the district, gathered at Ōrākei and Waitangi paremata during the 1870s and 1880s, where they adopted resolutions condemning the Crown's Native Land laws, and proposing local Māori systems of self-government. From the late 1880s, the national Kotahitanga movement developed numerous proposals for Māori autonomy and self-government at local and national levels, all of which the Crown declined.

Kotahitanga leaders were seeking no more than the Crown's legal recognition of local komiti and national paremata that were already operating. With respect to local self-government, statutory recognition of native committees was clearly possible for the Crown – rūnanga had been given official recognition in the 1860s and native committees in the 1880s although their powers had remained limited. Māori had already demonstrated their capacity to sustain a representative assembly with very broad support. Furthermore, during the 1890s, Seddon and Ballance had submitted draft Bills to national Kotahitanga hui, indicating that the Crown was already able to work with Māori leaders. Yet, when Seddon finally entered meaningful negotiations in 1899, he sought to divide Kotahitanga and curtail Māori influence at a national level. The Māori Councils and Māori Land Councils established in 1900 (which we discuss further in a forthcoming volume) provided for limited local self-government and operated under the Crown's control. From the evidence considered in this part of the report, it is clear why the Crown was unwilling to adequately provide for self-government in these years and address Te Raki Māori concerns and priorities regarding their lands, and why it failed to rein in purchasing officers' activities. Taking either course would have impeded purchasing and hindered the Crown's plans for the development of a colonial economy that favoured settlers while marginalising Māori.[57]

Throughout the nineteenth century, the Crown engaged minimally with Māori while imposing its vision over the colony's economic future. By the close of the century, having refused to recognise Te Raki Māori tino rangatiratanga, or provide statutory support for their institutions of self-government, the Crown once again attempted to impose authority on the district by force. The 'Dog Tax War' of 1898 was the first occasion since the Northern War in which the Government had sent armed forces with hostile intent into Ngāpuhi territories. The dog tax was imposed on communities that had not accepted the authority of the Crown's systems of national or local government, amounting to taxation without adequate representation. The fines imposed on those who refused to pay the tax were punitive and impoverishing. The arrival of soldiers in Hokianga in May 1898 to arrest members of Te Huihui was defused by Māori leaders, who prevented what could have been a violent confrontation. This action was disproportionate, and represented the Crown's near complete failure by the end of the nineteenth century to uphold the agreement it had entered with Te Raki rangatira under te Tiriti.

With Respect to the Constitutional Changes Implemented by the Crown and its Policies for Extinguishing Māori Title and Further Purchasing, We Make the Following Findings

In respect to the provision the Crown made for Te Raki Māori tino rangatiratanga as it took steps to establish institutions for settler self-government, we find that:

- The Crown failed to recognise, respect, and give effect to Māori political rights when it enacted a constitution that provided for provincial and national representative assemblies in 1852 without negotiating with Te Raki Māori, without ensuring that Te Raki Māori were able to exercise a right to vote alongside settlers, and without providing safeguards that would secure ongoing Te Raki Māori autonomy and tino rangatiratanga. These Crown actions and omissions, which came at a crucial juncture in New Zealand history, breached te mātāpono o te tino rangatiratanga. These actions also breached te mātāpono o te houruatanga me te mātāpono o te whakaaronui tētahi ki tētahi / the principles of partnership and of mutual recognition and respect.
- By providing for responsible government by colonial ministries from 1856, and ultimately allowing those ministries to assume responsibility for the Crown–Māori relationship, the Crown fundamentally undermined the treaty relationship. The Crown did not negotiate with Te Raki Māori, or provide safeguards to ensure that Māori could continue to exercise autonomy and tino rangatiratanga. This breached te mātāpono o te tino rangatiratanga. It also breached te mātāpono o te houruatanga me te mātāpono o te whakaaronui tētahi ki tētahi / the principles of partnership and of mutual recognition and respect.
- By failing to declare self-governing Māori districts under section 71 of the Constitution Act 1852, and thus to ensure provision was made for Māori autonomy within its own kāwanatanga framework, the Crown breached te mātāpono o te houruatanga / the principle of partnership.
- By effectively denying the great majority of Māori representation in the General Assembly prior to 1867, the Crown breached te mātāpono o te mana taurite / the principle of equity. The Crown also breached this principle by failing to ensure that Māori were represented in the Legislative Council and in provincial assemblies (the Auckland Provincial Council in the case of Te Raki Māori).

With respect to the significance of the Kohimarama Rūnanga, we find that:

- By calling the Kohimarama Rūnanga only after war had already broken out, the Crown ensured the rūnanga focused primarily on its own agenda, that is on seeking Māori approval for the war and on its own proposals for administration of Māori affairs rather than responding to the priorities of Māori leaders. This was inconsistent with the Crown's duty of good faith, in breach of te mātāpono o te houruatanga / the principle of partnership.
- Governor Grey's decision to cancel the planned 1861 national rūnanga and all future national rūnanga was inconsistent with the Crown's obligation of good faith. The decision was a critical missed opportunity to build a forum for regular dialogue between the rangatiratanga and kāwanatanga spheres. It denied Māori (including Te Raki Māori) opportunities for ongoing input into government policy on matters of fundamental importance to them, including questions of land titling and administration, local government, and justice. By denying this opportunity, the Crown was in breach of te mātāpono o te houruatanga / the principle of partnership.

With respect to Governor Grey's rūnanga, the 'new institutions', we find that:

- By promising Māori that rūnanga would exercise substantial powers to make and enforce local regulations, determine land ownership, and guide development in their districts, and then failing to give effect to rūnanga decisions, the Crown acted inconsistently with its obligation of good faith, and breached te mātāpono o te houruatanga me te mātāpono o te whakaaronui tētahi ki tētahi / the principles of partnership and of mutual recognition and respect.
- By first reducing the powers that rūnanga could exercise and then unilaterally withdrawing support for them after promising Māori that the scheme would endure forever, allow Māori to make law for their districts, determine land ownership and boundaries, control the pace of settlement and bring benefits, including the development of services and infrastructure leading to greater prosperity, the Crown acted inconsistently with its obligation of good faith, and therefore breached te mātāpono o te houruatanga / the principle of partnership.
- By failing to deliver on its 1858 promise that a township would be established at Kerikeri, and its 1861 promise that a township would naturally follow the establishment of district rūnanga, the Crown acted inconsistently with its obligation of good-faith conduct, and therefore breached te mātāpono o te houruatanga / the principle of partnership.

In respect of the establishment of the Native Land Court, we find that:

- By developing and implementing a system for title determination based on its own agenda to acquire more land, rather than the protection of Māori rights as guaranteed under article 2, the Crown breached te mātāpono o te tino rangatiratanga and te mātāpono o te matapopore moroki / the principle of active protection.
- The Crown's failure to seek Māori engagement on the provisions of the Native Lands Act 1862 was inconsistent with its duty to consult and gain the consent of Te Raki Māori on matters central to their guaranteed treaty rights, in breach of te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te tino rangatiratanga.

In respect of the restructure of the Native Land Court and the Native Lands Act 1865, we find that:

- By failing to make a good-faith effort to engage with and secure Māori consent in advance of the changes to the Native Land Court system, as set down in the Native Lands Act 1865, the Crown breached te mātāpono o te houruatanga / the principle of partnership, te mātāpono o te matapopore moroki / the principle of active protection, and te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect.
- By legislating unilaterally in 1865 to codify changes to the composition and decision-making powers of the Native Land Court, the Crown effectively removed Māori control of the title investigation and determination process, breaching te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga / the principle of partnership.
- By abolishing, without consultation, the flexible and tikanga-informed process the Court had originally employed to determine ownership in favour of a British system prioritising individual over collective rights, the Crown breached te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te tino rangatiratanga.

In respect of the appropriateness of titles awarded by the Native Land Court, we find that:

- The Crown introduced laws offering a title that failed to give legal expression to collective tenure and to accord with Te Raki Māori preferences. Such failures breached 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 and the guarantee of te tino rangatiratanga.
- The titles awarded to Te Raki Māori under nineteenth-century Native Land legislation and through the Native Land Court failed to provide the same certainty, stability, and protection as titles awarded in respect of general land and duly

registered under the Land Transfer Act. The failure of the Crown to provide an equivalently robust titling regime for Māori as that applying to the settler population (and which failed to equip whānau and hapū to participate in the colonial economy to the same degree) breached te mātāpono o te mana taurite / the principle of equity.

In respect of the Native Land Court's operation in Te Raki, we find that:

- The failure of the Crown to create a body in which Māori (in Te Raki and elsewhere) had the determining role when deciding questions pertaining to their own lands was a breach of te mātāpono o te houruatanga / the principle of partnership; and in respect of the Court it created, its failure to ensure that assessors had equal status and authority to judges throughout the period under consideration was a breach of te mātāpono o te mana taurite / the principle of equity.
- The failure to ensure adequate notification of hearings and that the costs involved in the conversion of customary title were shared appropriately and fairly among the parties who benefited, Crown as well as Māori, breached te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te mana taurite / the principle of equity.
- The Crown failed to monitor court processes to assure itself that the institution it had created was functioning in an appropriate manner and to ensure that statutes were appropriately rigorous, fully implemented, and effective. Those failures breached te mātāpono o te matapopore moroki / the principle of active protection.

In respect of the Te Raki Māori engagement with the Native Land Court and the consequences of that engagement, we find that:

- By rejecting all requests by Te Raki Māori for the right, opportunity, and authority to conduct title investigations through their own institutions, by empowering individual Māori to act independently of co-owners, and by employing questionable purchasing tactics, the Crown rendered engagement with the Native Land Court and its processes practically obligatory, thereby breaching te mātāpono o te tino rangatiratanga.
- The process of tenure conversion meant many Te Raki Māori incurred substantial debt, notably in the form of survey costs. Although the extinguishment of customary ownership principally served the interests of the Crown, Māori were forced to meet the costs, often through the loss of land. By failing to ensure that the costs of extinguishing customary Māori title in the Native Land Court were allocated according to the distribution of benefits arising from the process, the Crown breached te mātāpono o te mana taurite / the principle of equity, in breach of te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te matapopore moroki / the principle of active protection.

In respect of the forms of remedy and redress provided for Māori by the Crown's Native Land regime, we find that:

- The legislative provisions relating to Native Land Court re-hearings did not, at least until 1894, furnish a sufficiently robust appeal mechanism or process, while the Native Affairs Committee possessed only a power of recommendation, and was not intended to act (and did not act) as a de facto court of appeal. The failure of the Crown to provide a robust appeal mechanism was in breach of article 3 of the treaty and te mātāpono o te mana taurite / the principle of equity.
- The Crown, in being responsible for and failing to remedy these systemic deficiencies over a period of nearly 30 years, breached te mātāpono o te matapopore moroki / the principle of active protection and te mātāpono o te whakatika / the principle of redress.

In respect of the political and economic objects of the Crown's purchasing programme, we find that:

- By returning to land purchasing in the 1870s for the purpose of expediting Pākehā settlement, and doing so at the expense of Te Raki Māori rights to retain and develop large parts of their land within a mutually beneficial relationship, the Crown breached te mātāpono o te houruatanga / the principle of partnership, and te mātāpono o te whai hua kotahi

me te matatika mana whakahaere / the principle of mutual benefit and the right to development, as well as te mātāpono o te tino rangatiratanga.

- By assuming and imposing land purchase monopoly powers under the Government Native Land Purchase Act 1877 without the consent of Te Raki Māori and in the face of opposition, the Crown acted inconsistently with its duty to engage with Māori in good faith, in breach of te mātāpono o te houruatanga / the principle of partnership.
- By unilaterally reimposing Crown pre-emption through the Native Land Court Act 1894 in the face of express Te Raki Māori opposition and without adequate engagement with Te Raki hapū, the Crown breached te mātāpono o te houruatanga / the principle of partnership.
- By reimposing Crown pre-emption, the Crown denied Te Raki Māori potential benefits associated with a market in land. Its reimposition restricted the ability of Māori to develop and transfer their land in a way that other landowners were not subject to. This breached te mātāpono o te mana taurite / the principle of equity. Moreover, re-asserting its right to pre-emption actually heightened the Crown's obligations to protect the rights and interests of Māori landowners. Its failure to do so was thus a breach of te mātāpono o te matapopore moroki / the principle of active protection and te mātāpono o te kāwanatanga.
- By failing, through its legislation and policy, to promote land settlement opportunities and collateral benefits for Te Raki Māori equivalent to those afforded to Pākehā settlers, as promised, the Crown breached te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of equity and the principle of mutual benefit and the right to development.

In respect of the Crown's on the ground purchasing practices, we find that:

- By employing tāmana, or advance payments, the Crown deliberately undermined the capacity of Te Raki Māori to retain their lands and resources in breach of te mātāpono o te tino rangatiratanga.
- By conducting its purchasing in a manner calculated to undermine the capacity of hapū to reach and maintain decisions about land, the Crown also undermined established Te Raki Māori authority structures and social cohesion, breaching te mātāpono o te tino rangatiratanga.
- In addition, despite the objections of Te Raki Māori and the conclusions reached by several official investigations into this practice, the Crown failed to respond in a timely and effective manner with appropriate remedies. This failure was in breach of te mātāpono o te whakatika / the principle of redress.
- By failing to monitor and exercise effective control over the practices and activities of its purchasing agents the capacity of Te Raki Māori to retain and develop their lands was undermined, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development, and te mātāpono o te matapopore moroki / the principle of active protection.
- By deliberately designing purchasing processes and using tactics intended to lower the prices of Te Raki Māori land for its own benefit, the Crown acted inconsistently with its duty of good-faith conduct, and in breach of te mātāpono o te houruatanga / the principle of partnership. In this respect, the Crown was also in breach of te mātāpono o te mana taurite / the principle of equity.
- By intentionally acquiring vast tracts of Te Raki Māori land at much lower prices than it was worth, the Crown was in breach of te mātāpono o te mana taurite me te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principles of equity and of mutual benefit and the right to development.

- The Crown purchased land by acquiring individual interests, bypassing and thereby undermining community decision-making processes which had traditionally protected whānau and hapū lands. In doing so, the Crown acted inconsistently with its duty of good-faith conduct, in breach of te mātāpono o te houruatanga / the principle of partnership. It also breached te mātāpono o te tino rangatiratanga.

In respect of the steps the Crown took to protect Te Raki hapū interests, we find that:

- In failing to develop and implement a system to ensure Te Raki whānau and hapū retained land of appropriate quality and quantity for the well-being of present and future generations and their economic development, the Crown fell short of the protective duties inherent in the treaty partnership, breaching te mātāpono o te matapopore moroki / the principle of active protection, and te mātāpono o te houruatanga / the principle of partnership.
- The Crown failed to implement or enforce an effective policy for restricting the alienation of Māori land, and instead prioritised the needs of settlers, taking steps to reduce the effectiveness of existing restrictions, in breach of te mātāpono o te tino rangatiratanga, te mātāpono o te mana taurite / the principle of equity, te mātāpono o te matapopore moroki / the principle of active protection, and te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development.
- The Crown failed to develop and institute a clear policy for creating reserves on a basis agreed with Te Raki hapū leaders, in breach of te mātāpono o te houruatanga / the principle of partnership. The policies the Crown did introduce failed to balance its purchase goals with the creation of hapū reserves and to legally protect and respect such reserves as were established, in breach of te mātāpono o te matapopore moroki / the principle of active protection.
- The Crown failed to ensure that Te Raki whānau and hapū retained enough land and resources to meet their obligations under tikanga, to develop their lands, and to contribute to the colonial economy in successive generations, which breached te mātāpono o te tino rangatiratanga and te mātāpono o te matatika mana whakahaere / right of development.
- The Crown failed to ensure the implementation of effective protective legislation including legislation specifically addressing fraud prevention, and then circumscribed the exercise of those legislative protections that did exist or simply ignored them. This breached te mātāpono o te houruatanga / the principle of partnership and te mātāpono o te matapopore moroki / the principle of active protection.

In respect of parliamentary representation for Te Raki Māori, we find that:

- By providing for Māori representation in the House of Representatives through the Maori Representation Act 1867 without first engaging with Te Raki Māori, and in particular without seeking their input on the number and size of electorates, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te houruatanga / the principle of partnership.
- By effectively denying the great majority of Māori representation in the General Assembly, and then providing for the election of only four Māori members to the House, including only one for all northern Māori, when they were entitled to between 12 and 14 on a population basis in 1867, the Crown breached te mātāpono o te kāwanatanga me te mātāpono o te mana taurite / the principle of equity. The Crown also breached this principle by failing to ensure that Māori were represented in the Legislative Council and in provincial assemblies (the Auckland Provincial Council in the case of Te Raki Māori).
- By rejecting legislative proposals to increase Māori representation during 1871, 1872, 1875, and 1876, the Crown breached te mātāpono o te kāwanatanga, te mātāpono o te mana taurite me te mātāpono o te houruatanga / the principles of equity and partnership.

In respect of Te Raki Māori proposals for rūnanga and native committees, we find that:

- By failing to take the opportunities offered by Wiremu Kātene's 1871 proposal for the establishment of rūnanga based on partnership in districts north of Auckland, and the Native Councils Bills of 1872 and 1873, the Crown breached te mātāpono o te houruatanga / the principle of partnership; it also acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori and give effect to proposals for their self-government at a regional and local level in breach of te mātāpono o te tino rangatiratanga.
- The Native Committees Empowering Bill 1881 and the Native Committees Bill 1883 presented significant opportunities for the Crown to provide for Māori autonomy and self-government at a local level. By declining to pursue these opportunities, by instead establishing committees that lacked real power or authority, and by declining Te Raki Māori requests to increase the powers of committees established under the Native Committees Act 1883, the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga / the principle of partnership.

In respect of proposals for a Māori parliament, we find that:

- By declining to enter negotiations over the establishment of a Māori parliament despite repeated requests by Te Raki Māori (specifically, in Hirini Taiwhanga's 1878 petition, at the Waitangi parliament in 1881, in Hirini Taiwhanga's 1882 petition, in Hōne Mohi Tāwhai's 1883 petition, and on several other occasions during the 1880s), the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect. This was also in breach of te mātāpono o te houruatanga / the principle of partnership.
- By impugning the credibility, integrity and status of Ngāpuhi leaders who petitioned the Queen in 1882 and 1883, in order to ensure that they would not meet the Queen and in order to prevent serious inquiry by the imperial government into the treaty issues they raised, the Crown committed a serious breach of its obligation to act in good faith towards its treaty partner, in breach of te mātāpono o te houruatanga / the principle of partnership.

In respect of Te Raki Māori appeals and petitions, we find that:

- The Crown, by ignoring or rejecting petitions and other requests from Te Raki Māori for recognition of their tino rangatiratanga (in particular Hirini Taiwhanga's 1882 petition, the 1883 letter to the Aborigines' Protection Society, Wī Kātene's 1884 petition, and further petitions and letters from 1886 to 1888), the Crown breached its duty of good faith, and te mātāpono o te whakatika / the principle of redress.

In respect of the Kotahitanga parliaments, we find that:

- By rejecting Kotahitanga proposals for Māori autonomy and self-government in the early 1890s, and in particular by rejecting the Native Committees Act 1883 Amendment Bill 1892, the Federated Maori Assembly Bill 1893, the Kotahitanga petition 1893, and the Native Rights Bill 1894 (including when it was reintroduced in 1895 and 1896), the Crown acted inconsistently with its obligation to recognise and respect the tino rangatiratanga of Te Raki Māori, in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect. It also breached te mātāpono o te houruatanga / the principle of partnership.
- By failing to enter meaningful negotiations over the Kotahitanga proposals until the late 1890s, the Crown breached te mātāpono o te houruatanga / the principle of partnership.

In respect of the 'Dog Tax War', we find that:

- By supporting and encouraging this district's county councils to enforce the dog tax on communities that lived on customary Māori land and had not consented to the Crown's system of national or local government, the Crown breached te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga / the principle of partnership.
- The Crown's arrest at gunpoint of Hōne Tōia and other followers of Te Huihui was disproportionate, overly punitive, and calculated to intimidate Māori. This was in breach of te mātāpono o te mana taurite / the principle of equity and te mātāpono o te kāwanatanga. It was also in breach of te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga / the principle of partnership.

12.2 Recommendations

By 1900, the Crown had extended its substantive authority over much of Te Paparahi o Te Raki in breach of treaty principles, despite the objections, protests, and aspirations of many rangatira. In our view, from the very outset of the treaty relationship there were clear signs that the Crown's intentions for the colonisation of New Zealand were inconsistent with the undertakings it had made to Te Raki Māori prior to the signing of te Tiriti, and in the agreement itself. Hobson's proclamations of sovereignty were the first step to setting the treaty on a different course, whereby the Crown would assert itself as the superior authority. Only five years later, the Crown conducted a war to bring Ngāpuhi under its substantive sovereignty. In the following years, the Crown neglected Ngāpuhi concerns until it was assured of their 'loyalty'. From the 1850s, the Crown also began to make sweeping constitutional changes that further departed from te Tiriti and transferred responsibility for its treaty obligations to the colonial Government and settler-led Parliament without specific safeguards for Māori. As settler influence grew, the Crown sought to extend its authority into Māori communities as quickly as possible, and continued to prioritise settler demands for Māori lands and resources. The primary vehicle for the Crown's assimilationist policies was the Native Land Court, which undermined the rangatiratanga of hapū communities and disrupted their ability to exercise tikanga. As tribal structures were progressively eroded during this period, the Te Raki Māori economy was simultaneously dismantled, resulting in material poverty for many.

The prejudicial impacts of the Crown's nineteenth century acts and omissions were clearly apparent by 1900. They have been severe and lasting. Te Raki Māori now hold only a small proportion of the land in the district, and their tikanga has been marginalised. Instead of the equal authority they had been promised, their lives and resources are now governed by a range of local councils and Crown agencies in which they have only a limited place and role.

To settle these grievances and restore its honour, the Crown should now enter into discussions with Te Raki Māori about how full restoration of their tino rangatiratanga can be effected in a contemporary context. We are cautious not to pre-empt work that is likely ongoing to establish which groups should carry out these negotiations on behalf of the claimants. However, the negotiations will need to be sensitive to the different structures of tribal authority that exist in Te Raki, and within Ngāpuhi, and seek to provide for the exercise of both hapū and iwi rangatiratanga. In our view, a crucial first step will be for the Crown to recognise the agreement in te Tiriti as described in our stage 1 report, and our conclusion that the Crown did not acquire sovereignty through an informed cession by the rangatira who signed te Tiriti at Waitangi, Waimate, and Māngungu.[58] Only then can the parties move forward with a shared understanding, and begin to take steps towards giving practical effect to the agreement that they entered into in 1840, today.

Any new institutional arrangements agreed upon should provide for Te Raki hapū and iwi to exercise the tino rangatiratanga they were guaranteed in te Tiriti, alongside other Crown agencies and local authorities

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within their rohe. There are optimistic signs that this is not out of reach for the parties. We note that Te Raki Māori have remained committed to te Tiriti as the foundation for their relationship with the Crown, despite the fact that its guarantees and obligations have been neglected for so many years, and little redress for past breaches has been forthcoming. Furthermore, we are conscious that in recent years government organisations have begun taking a greater interest in treaty rights of Māori at a national and local level, and steps undertaken to provide some Te Raki hapū with a greater say in aspects of governance within their rohe. We have no doubt that this will be a complex task requiring perseverance and good will from both parties. For that reason, we think this work should begin as soon as possible to establish the basis upon which parties can together move forward towards a settlement.

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.

- That 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.
- That 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.
- That 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.

The Tribunal reserves the right to make further recommendations on the matters addressed in this part of our report in subsequent volumes.

Notes

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2. Crown statement of position and response (#1.3.2); Crown closing submissions (#3.3.402).
3. 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, 529.
4. Ibid, pp 524–525, 529.
5. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at 671, 690 (CA); Philip Joseph, *Joseph on Constitutional and Administrative Law*, 5th ed (Wellington: Thomson Reuters New Zealand Ltd, 2021), pp 52–53.
6. Joseph, *Joseph on Constitutional and Administrative Law*, p 47.
7. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 299–300, 306.
8. Ibid, p 299.
9. 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 R01, doc A81), pp 24–26.
10. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 45–47.
11. Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), p 30; Loveridge, '"An Object of the First Importance"' (Wai 863 R01, doc A81), p 55.
12. 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; 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.
13. Patu Hohepa, transcript 4.1.30, Terenga Parāoa Marae, Whāngārei, p [791].
14. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 523.
15. Ibid, pp 213, 300–31, 306.
16. Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996) (doc H2), p 74.
17. 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 247.
18. Dr Grant Phillipson, 'Bay of Islands Maori and the Crown,

1793–1853', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A1), p 311.
19. Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), p 86.
20. Ibid, pp 90–92; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329.
21. Johnson, 'The Northern War' (doc A5), pp 153–154; 'Shipping Intelligence', *Auckland Chronicle and New Zealand Colonist*, 16 January 1845, p 2.
22. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
23. Johnson, 'The Northern War' (doc A5), pp 196–200.
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29. See Barry Rigby, 'Pre-1865 Te Raki Crown Purchase Validation Report', report commissioned by the Waitangi Tribunal, 2015 (doc A53), app A; Dr Barry Rigby, corrections to validation reports (doc A48(e)), p 7; O'Malley, 'Northland Crown Purchases' (doc A6), pp 185–186.
30. O'Malley, 'Northland Crown Purchases' (doc A6), p 187.
31. Crown statement of position and concessions (#1.3.2), p 3; Crown closing submissions (#3.3.404), pp 2, 8.
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33. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 423.
34. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 346.
35. Loveridge, '"An Object of the First Importance"' (Wai 863 ROI, doc A81), pp 279–280.
36. Moore, Rigby, and Russell, *Old Land Claims* (doc H1), p 40.
37. Myers commission, report, AJHR, 1948, G-8, p 3.
38. Grey to Grey, 15 May 1848, IUP/BPP, vol 6, pp 24–25.
39. Rigby, corrections to validation reports (doc A48(e)).
40. Raewyn Dalziel, 'The Politics of Settlement', in *The Oxford History of New Zealand*, ed Geoffrey W Rice, 2nd ed (Auckland: Oxford University Press, 1992), p 88.
41. New Zealand Constitution Act 1852, ss 32–33, 40–42.
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43. New Zealand Constitution Act 1852, s 71.
44. Sir George Grey, October 1861, AJHR, 1862, E-2, p 10.
45. Sir George Grey, 6 November 1861 (cited in Armstrong and Subasic, 'Northern Land and Politics' (doc A12), p 174).
46. 'Memorandum of conversation between Sir Geo[rge] Grey and Natives assembled at Keri-keri', 7 November 1861 (cited in Vincent O'Malley, supporting documents (doc A6(a)), vol 6, pp 1890–1891); Armstrong and Subasic, 'Northern Land and Politics' (doc A12), pp 174–175.
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50. Excludes blocks for which the date of titling is not known: Paul Thomas, 'The Native Land Court in Te Paparahi o Te Raki, 1865–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A68), pp 17–19.
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52. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, *Stage One*, revised ed, Wai 1200, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 625.
53. Dr Barry Rigby, 'Validation Review of the Crown's Tabulated Data on Land Titling and Alienation for the Te Paparahi o Te Raki Inquiry Region: Crown Purchases, 1866–1900', report commissioned by the Waitangi Tribunal, 2016 (doc A56), p 3; Crown closing submissions (#3.3.407), p 13; claimant closing submissions (#3.3.213), p 35.
54. This figure was reached as the sum of the private purchase data provided by the Crown for the period from 1865 and 1905. The figure includes purchases where the date of purchase is unknown, but excludes all blocks that had their title determined by the Native Land Court after 1905. The figure also accounts for an error in the Tokawhero block, where the Crown data recorded the purchase of the whole block (2,777 acres), whereas the purchase only amounted to 694 acres: Crown data (#1.3.2(c)). In his evidence in this inquiry, Paul Thomas observed that the Crown's data on private purchasing may not be complete as it has relied on the block narratives produced by researcher Paula Berghan, and 'it is unclear how extensive and systematic Berghan's search for private purchase was'. As a result, our figure is most likely lower than the acreage actually purchased privately during this period: Thomas, 'The Native Land Court' (doc A68), p 257.
55. Hone Pikari (doc W11), p 15.
56. Ibid, p 17.
57. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, p 625.
58. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 526–527.

Dated at Wellington this 22nd day of December 2022

Judge Craig T Coxhead, presiding officer

Dr Robyn Anderson, member

Dr Ann R Parsonson, member

THE SEAL OF THE WAITANGI TRIBUNAL

APPENDIX I

HIRINI TAIWHANGA'S 1882 PETITION TO THE QUEEN

Source: AJHR, 1883, sess 1, A-6, pp 1–3

8 August 1882

To Her Majesty Victoria, the Good Queen of England, and the Empress of India,

Greeting:

Go forth, O our messenger, on the soft airs of affection, to remote lands, across the ocean that was trodden by Tawhaki,[1] to Victoria, the Queen of England, whose fame for graciousness has extended to all the kingdoms of the world, including New Zealand. O mother, the receiver of the sentiments of the great peoples and the small peoples under the shade of your authority, Salutations! May the Almighty preserve you on your Throne, and may men applaud you for your goodness to your peoples living in these Islands, who are continually directing their eyes toward you, the mother who is venerated by them.

O mother, the Queen! on account of the desire to protect these Islands, your father sent hither, in 1840, Captain Hobson. At that time the enlightened administration of England was discovered by us, and the Maori Chiefs came to the conclusion that England, in preference to other countries, should be the protector of New Zealand—to protect and cherish the Maori tribes of New Zealand. The conclusion brought about the Treaty of Waitangi, and the appointment of the first Governor, Captain Hobson.

In consequence of the ignorance of some tribes, including Hone Heke, the flagstaff was cut down at Maiki, Bay of Islands, for the tribes in question imagined that the flag was the symbol of land confiscation. Nevertheless, there was no blood in the flagstaff which had been cut down, making it needful to raise armies to fight the Maoris. If the Native Chiefs had been summoned to a conference at that time, and matters had been explained to them, there would have been no war; but the Europeans flew as birds to make war against Heke, which brought about the blood-shedding of both Europeans and Maoris.

In the year 1860 another evil was brought upon the Maori tribes by the Governor himself, who, without any grounds, drove Wiremu Kingi from his own lands at Waitara, and this war about land renewed the shedding of both European and Maori blood. On this occasion, O mother, the Queen! the grievous lamentation of this Island was raised, and

you recalled, in consequence, Governor Gore Browne, whose administration closed here. It was said by the Europeans that William King did wrong in opposing the Governor; that if William King and party had appealed to the Supreme Court, the Government act in that case would have been condemned. Hence the knowledge of the Taranaki tribes taking up that opinion, and retaining it up to the capture of Te Whiti and others, who did not oppose in fight the Government when it went with an army to Parihaka to enkindle Maori strife, thereby endeavouring to find a basis to make the Maoris do wrong, and then confiscate their lands.

In the year 1862, you, O Queen, sent hither Governor Grey to calm down the rain and the wind,[2] so that the sea of both races should be still. Governor Grey possessed much wisdom: he understands the Maori language, also the Maori customs. Notwithstanding, when he came the second time as Governor of these Islands, he rushed hastily away to Taranaki, and gave instructions for road-making on Maori territory, thereby bringing about a war and the slaying of many of both races. In the year 1863, the war was carried into Waikato, and the Maoris throughout the Island were unaware as to the reason why war had been made on the Waikato. Now, O Queen, the Waikatos had formed a land league, in accordance with the Treaty of Waitangi, to preserve their native authority over the land, which principle is embodied in the treaty.

O, the Queen! you do not consider that act of retaining their land to be unjust: but the Government of New Zealand held it to be wrong, inasmuch as war was declared against the Waikatos, and the confiscation of their land followed, although the Waikatos had no desire to fight—the desire came from the Governor and his Council. When the Waikatos were over-powered, armies of soldiers went forth to engender strife against the Maoris at Tauranga, at Te Awa-o-te Atua, at Whakatane, at Ohiwa, at Opotiki, at Turanganui, at Ahuriri, at Whanganui, at Waimate, and various other places. The motive impelling the projectors of these deeds to execute this work was a desire to confiscate the Maori lands, and to trample under the soles of their feet the Treaty of Waitangi. While these proceedings were being carried out, the weeping people wept, the lamenting people lamented, the agonized people were in agony, the saddened people were in sadness, while they held the Treaty of Waitangi as a basis on which the voice of the Maoris could be made known to you, O Queen.

But the people of New Zealand declared that the fighting and the confiscation of land which brought calamity, and made your Maori children orphans, were sanctioned by you, O Queen. We did not believe the utterances of the Europeans as to the wrongs we suffered, that they were brought upon us by your queenly authority; but our decision was that such acts were not sanctioned by you, O Queen, whose benevolence towards the Maori people is well known. The disorderly work referred to has been carried into practice, so that a path might be opened up to Europeans to seize Maori lands.

In the year 1881, a new plan was devised by the Government to enkindle strife in respect to the Maoris. Armies were sent to Parihaka to capture innocent men that they might be lodged in prison; to seize their property and their money, to destroy their growing crops, to break down their houses, and commit other deeds of injustice. We pored over the Treaty of Waitangi to find the grounds on which these evil proceedings of the Government of New Zealand rested, but we could find none. Some of the European inhabitants of this Island disapproved of these injurious doings to Maori men; and it was vaguely rumoured that Sir Arthur Gordon, the Governor, refused to approve of these acts. Many other evils have been discovered by our hearts, therefore have we considered right, O mother, the Queen, to pray that you will not permit increased evils to come upon your Maori children in New Zealand, but to graciously sanction the appointment of a Royal English Commission to abrogate the evil laws affecting the Maori people, and to establish a Maori Parliament, which shall hold in check the European authorities who are endeavouring to set aside the Treaty of Waitangi; to put a bridle also in the mouth of Ministers for Native Affairs who may act as Ministers have done at Parihaka, so that all may be brought back to obey your laws; and to prevent the continued wrongs of land matters which are troubling the Maori people through days and years; and to restore to the Maoris those lands which have been

wrongfully confiscated according to the provisions of the Treaty of Waitangi; and to draw forth from beneath the many unauthorized acts of the New Zealand Parliament the concealed treaty, that it may now assert its own dignity.

In this year, 1881, we, O the Queen, built a House of Assembly at the Bay of Islands, and the great symbol therein is a stone memorial, on which has been engraved the articles of the Treaty of Waitangi, so that eyes may look thereon from year to year. Two invitations were sent to the Governor, requesting him to unveil the Stone Treaty Memorial. He did not accede to the request. Perhaps his disinclination arose from the fact that the Europeans had disregarded the principles embodied in the treaty, because in you, O Queen, is vested the sole authority affecting the Waitangi Treaty. Should you authorize, O mother, the Queen, the appointment in England of a Royal English Commission, under your queenly seal, to investigate the wrong-doings of both races, then will you rightly be informed, O mother, as to what is just and what is false.

It is believed by us, O Queen, that you have no knowledge as to the deeds of wrong that gave us so much pain, and which create lamentation among the tribes; but if, in your graciousness, a Maori Parliament is set up, you will, O Queen, be enabled clearly to determine what is right and what is wrong, what is evil and what is good, in the administrations of the two races in these Islands.

O mother, the Queen, there are no expressions of disaffection towards you by the Maori tribes, including the tribes of the King; but they revere, only revere your Majesty; and the search after you, O Queen, has induced us to send this petition to England by the hands of the persons appointed by our Committee, who will see your very countenance and hear your words.

O mother, the Queen, do not suppose that the sufferings under which we labour are light. Many wrongs are felt by various tribes, but the following are some which have come under our own notice:—(1.) The fighting between the Maoris and the New Zealand Company in the year 1841–42, was brought about by land disputes, and Mr Wakefield fell in the strife. (2.) The war against Te Rangihaeata in the year 1842–43: a land dispute also was the origin; and some of Rangihaeata's people were wrongly executed, their deaths being opposed to the English law, and contrary to the principles of the Treaty of Waitangi. (3.) The war against Heke and Kawiti in 1844–45, caused by land sales and the withholding of the anchorage money at Bay of Islands,[2] was contrary to the second article of the Treaty of Waitangi. (4.) The fighting between the chiefs Te Hapuku and Te Moananui in 1848–49, brought about by land-purchasing on behalf of the Government. (5.) The war against Wiremu Kingi on account of the block of land named Waitara, at Taranaki. (6.) The war against the Waikatos in 1863, extending to the year 1870. (7.) The fight among the Ngatitautahi tribe in 1879, four Natives killed, the strife being occasioned by the land purchases of Government, a portion of £700,000 having been scattered over our lands by Government agents in 1875. (8.) The capture of two hundred innocent men of Te Whiti in 1879–81. (9.) The incarceration of Te Whiti and his people in 1881–82, who were guiltless of any crime.

The following, O Queen, are references to New Zealand Ordinances put forth and said to be against the principles contained in the Treaty of Waitangi:—(1.) The making of unauthorized laws relating to Maori lands—namely, the Land Acts of 1862, 1865, 1873, 1880—which Acts were not assented to by the Native Chiefs in all parts of the Island. Nor is there any basis in the Treaty of Waitangi for these laws, which continuously bring upon our lands and upon our persons great wrongs. (2.) The Immigration and Public Works Act, and the borrowing of £700,000, expended here and there to confuse the Maoris and their titles to land.

O mother, the Queen, these other things, and many of the laws that are being carried into effect, are, according to Maori ideas, very unjust, creating disorder amongst us, giving us heart-pangs and sadness of spirit to your Maori children, who are ever looking towards you, most gracious Queen; and it is averred by men of wisdom that these matters which weigh so heavily upon us are in opposition to the great and excellent principles of the Treaty of Waitangi.

May you be in health, O mother, the Queen! May the Almighty bring down upon you, upon your family, and upon the whole of your people, the exalted goodness of

Heaven, even up to the termination of your sojourn in this world, and in your inheritance in the home of sacred rest!

May you live, is the prayer of your children in the Island of New Zealand.

Parore te Awha.	Mangonui Rewa.
Hare Hongi Hika.	Hirini Taiwhanga.
Maihi Paraone Kawiti.	Wiremu Puhi te Hihi.
Kingi Hori Kira.	Hakena Parore.

For the Native people of New Zealand.

Notes

1. A translator's note explained: 'Tawhaki, the God-man, whose name frequently occurs in all the ancient mythology of the Maori race'.

2. A translator's note explained: 'Rain and wind – figurative expressions denoting wars and tumults'.

3. The official translation contained a note, apparently from a parliamentary official: 'The anchorage money referred to here was paid by Government officials to Hone Heke and party for two successive years, but when an application was made for payment by Heke the officials failed to recognize the Maoris, and stated that the moneys ever afterwards would be paid to the Custom-house authorities, although it had been arranged, it is averred, at the signing of the Treaty of Waitangi, that Heke's party should be the recipients of the money in question.'

APPENDIX II

MĀORI AND SETTLER POPULATIONS NORTH OF AUCKLAND, 1871–96

The table on the following pages shows the census results for counties or electoral districts (whichever are available) north of Auckland. The results encompass this inquiry district, as well as the Muriwhenua, Te Roroa, and Kaipara districts, and Auckland as far as the Waitematā and Manukau Harbours. North of Whāngārei, Māori continued to outnumber settlers until the 1890s – and for longer in Hokianga.

In 1871, the settler population north of Auckland was 8,529.[1] The census did not count Māori. In 1874, the settler population was 9,210 and the Māori population 5,427.[2] The settler population was concentrated between Auckland and Whāngārei. North of Whāngārei, Māori outnumbered settlers until at least the late 1880s.

Very broadly, Hobson county encompassed the area from southern Mangakāhia to the northern Kaipara Harbour. Hobson broadly encompassed the territories between the Kaipara Harbour and the east coast, and was split in 1886 into northern (Otamatea) and southern (Hobson) counties. Waitemata encompassed territories from the southern Kaipara Harbour to the northern shores of the Waitematā and Manukau Harbours.[3]

Notes

1. This comprised 2,331 in the Mangonui and Bay of Islands electoral district; 3,691 in Marsden; and 2,504 in Rodney.

2. The settler population comprised 2,515 in the Mangonui and Bay of Islands electoral district; 4,032 in Marsden; and 2663 in Rodney. The Māori population comprised 1,560 Te Rarawa, 3,235 Ngāpuhi (though this seems to be a significant underestimate), and 632 Ngāti Whātua.

3. Counties Act 1867, sch 1; Counties Act 1886, s 6.

County	1878	1881	1886	1891	1896	1901
Mongonui						
Māori	—	—	2,101	1,461	1,616	2,093
Settlers	1,204	1,471	1,833	1,389	1,889	2,274
Whangaroa						
Māori	—	—	—	656	656	743
Settlers	—	—	—	878	969	927
Bay of Islands						
Māori	—	—	1,766	2,205	2,507	2,235
Settlers	1,489	2,184	2,158	2,562	2,723	2,587
Hokianga						
Māori	—	—	2,364	2,355	1,839	2,330
Settlers	419	587	767	1,494	1,909	1,767
Hobson						
Māori	—	—	683	592	1,011	984
Settlers	2,171	4,602	3,542	3,298	3,750	4,813
Whangarei						
Māori	—	—	627	853	606	739
Settlers	2,906	6,198	4,724	6,120	6,847	6,380

Otamatea						
Māori	—	—	—	239	264	186
Settlers	—	—	—	2,054	2,483	2,721
Rodney						
Māori	—	—	320	129	193	173
Settlers	3,122	3,287	3,243	3,170	3,464	3,678
Waitemata						
Māori	—	—	203	246	260	171
Settlers	3,424	7,130	7,936	6,184	6,762	7,035
Te Rarawa	2,270	2,775	—	—	—	—
Ngāpuhi	5,667	5,564	—	—	—	—
Ngāti Whātua	753	487	—	—	—	—
Totals						
Māori	8,690	8,826	8,064	8,736	8,952	9,654
Settlers	14,735	25,469	24,203	27,149	30,796	32,182

Table 11.1: Māori and non-Māori populations north of Auckland, by county, 1878—1901.

Source: New Zealand Census.

APPENDIX III

MĀORI ELECTORATE ENTITLEMENTS BASED ON TOTAL POPULATION

The following tables show the Māori and non-Māori populations nationwide and their representation in the House of Representatives between 1867 and 1901 and the Māori and non-Māori populations north of Auckland only and their representation in the House of Representatives between 1874 and 1901.

	Establishment		Census year						
	1867 (lower estimate)	1867 (upper estimate)	1874	1878	1881	1886	1891	1896	1901
Māori									
Population	40,000	47,000	45,470	43,595	44,097	41,969	41,953	39,834	43,112
Representatives	4	4	4	4	4	4	4	4	4
Population per representative	10,000	11,750	11,368	10,899	11,024	10,492	10,488	9,959	10,778
Settlers									
Population	204,114	204,114	299,513	414,412	489,933	578,482	626,658	703,360	772,719
Representatives	70	70	74	84	91	91	70	70	76
Population per representative	2,916	2,916	4,047	4,933	5,384	6,357	8,952	10,048	10,167
Electorate entitlement (based on total population)									
Total population	244,114	251,114	344,983	458,007	534,030	620,451	668,611	743,194	815,831
Māori as a percentage of total population	16.39	18.71	13.18	9.52	8.26	6.76	6.27	5.30	5.28
Total seats	74	74	78	88	95	95	74	74	80
Māori entitlement	12	14	10	8	8	6	5	4	4

Table III.1: Māori and non-Māori representation in the House of Representatives, 1867–1901 (nationwide).

Sources: New Zealand Census for the Māori and non-Māori populations. For 1867 population estimates, see Donald McLean, NZPD, 1867, pp 457–458, and the 1867 result from NZPD, 1867, vol 2, p 705; see also Maurice Peter Keith Sorrenson, 'A History of Maori Representation in Parliament', *The Report of the Royal Commission on the Electoral System*, (Wellington: Ministry for Culture and Heritage, 1986), pp 865–866. Sorrenson used different population estimates from New Zealand yearbooks and reported results for election years. We have used census years to provide a more accurate reflection of the relative populations. However, the results broadly align. The results are for total populations, not restricted by voting age, gender, or property ownership.

Category	Census year					
	1878	1881	1886	1891	1896	1901
Māori						
Population	8,690	8,826	8,064	8,736	8,952	9,654
Representatives	1	1	1	1	1	1
Population per representative	8,690	8,826	8,064	8,736	8,952	9,654
Settlers						
Population	14,735	25,469	24,203	27,149	30,796	32,182
Representatives at most recent election	3	4	4	3	3	3
Population per representative	4,911	6,367	6,051	9,049	10,265	10,727

Table III.2: Māori and non-Māori representation in the House of Representatives, 1874–1901 (north of Auckland).

Sources: New Zealand Census for the Māori and non-Māori populations. At the 1866 general election, settlers north of Auckland had five representatives, one each for Mongonui, the Bay of Islands, and Marsden, and two for the Northern Division. Subsequently, the electorates were: 1871–79 – Mongonui–Bay of Islands, Marsden, Rodney; 1881–87 – Bay of Islands, Marsden, Rodney, Waitemata; 1890 – Bay of Islands, Marsden, Waitemata.

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