

THE NGATI AWA RAUPATU REPORT

THE
NGATI AWA RAUPATU
REPORT

WAI 46

WAITANGI TRIBUNAL REPORT 1999



The cover design by Cliff Whiting invokes the signing
of the Treaty of Waitangi and the consequent interwoven development
of Maori and Pakeha history in New Zealand as it continuously
unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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LIST OF ABBREVIATIONS

AC	<i>Appeal Cases</i>
AGG-A	agent of the general government, Auckland
AJHR	<i>Appendices to the Journals of the House of Representatives</i>
app	appendix
App Cas	<i>Law Reports, Appeal Cases</i> (England)
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon, Irish University Press, 1968–69)
CA	Court of Appeal
CBNS	<i>Common Bench Reports, New Series</i> (England)
ch	chapter
Co	company
comp	compiler
DNZB	<i>The Dictionary of New Zealand Biography</i> (4 vols, Wellington, Department of Internal Affairs, 1990–98)
doc	document
DOSLI	Department of Survey and Land Information
ed	editor
encl	enclosure
fig	figure
fn	footnote
fol	folio
HMS	Her Majesty's ship
IA	Internal Affairs file
LE	legislative series file
Ltd	limited
MA	Department of Maori Affairs file
MA-MLP	Department of Maori Affairs Maori land purchase file
MS	manuscript
NA	National Archives
no	number
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
p, pp	page, pages
para	paragraph
pl	plate
pt	part
R	Regina
RDB	<i>Raupatu Document Bank</i> (Waitangi Tribunal (comp), 139 vols, Wellington, Waitangi Tribunal, 1990)
ROD	record of documents
s, ss	section, sections (of an Act)
sec	section (of a book, report, etc)
sess	session
UK	United Kingdom
v	versus
vol	volume
Wai	Waitangi Tribunal claim



The Waitangi Tribunal
Wellington

The Honourable Tau Henare
Minister of Maori Affairs

and

The Honourable Sir Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings
Wellington

Nga rangatira a te Paremata, tena korua

This is an abbreviated report, without formal recommendations, to support a settlement of claims arising from the Ngati Awa raupatu in the Bay of Plenty. It urges a settlement of all historical matters with the Ngati Awa runanga and with the runanga for Tuwharetoa ki Kawerau. Though, as we see it, the latter could stand with Ngati Awa if they chose, they also have a separate identity. The report also proposes that some claims should be dealt with separately, since they are of more recent origin and affect not tribal interests but particular individuals. These concern the Tarawera Forest, lands taken for the Matahina Dam, and the Awakeri hot springs.

A problem in this claim was the perceived need to develop tribal boundaries for a society that was not organised by territorial exclusivity in the way of modern states. The report suggests that a settlement can be effected without imposing land boundaries and that there is a better alternative than that of requiring everyone's consent before any particular land can be returned.

The main opinion in this report is that, contrary to the Treaty of Waitangi, the Ngati Awa land was confiscated without just cause. To set the record right, it emphasises that the land was confiscated not for the murder of a Crown official, as is popularly thought, but for the rebellion arising from alleged resistance when an armed force attempted to effect arrests. The opinion in the report is that the resistance was intended not as rebellion, or as opposition to the Government, but to defend against that which appeared to be an invading force, bent on revenge.

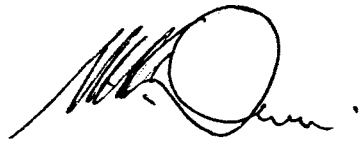
Other points are that the land taken was far more than the legislation allowed, that it was also taken from 'innocent' hapu with no involvement in the matters complained of, that a major relocation was involved to place all hapu within ready reach of a military establishment, that the hapu were left with insufficient for their needs, and that social structures were destabilised when all hapu land was locked into a fragmented, personal tenure.

In settling the claims, regard should be had to the immediate and long-term social impacts on the Ngati Awa people in taking away their proven developmental capacity. It is also pertinent to compare their lot with that of other major descent groups or iwi. In the twentieth century, tribes that retained land would have the benefit of concessionary land development funding. Many that lost large areas of land would have the benefit of preliminary compensation administered through tribal trust boards. Comparatively, assistance for Ngati Awa has been minimal. They had little land to develop and are amongst the few that received no prior compensation.

Our findings are in chapter 10.

We wish the Crown and claimants a successful resolution of this long outstanding problem and congratulate the parties for having earlier resolved the difficulty over the Mataatua wharenui.

Kia manawanui

A handwritten signature in black ink, appearing to read 'E T Durie', with a large, stylized circular flourish at the end.

E T Durie
Chairperson

CHAPTER 1

SCOPE

1.1 INTRODUCTION

This report concerns the hapu or tribes of the Rangitaiki district, the raupatu or confiscation of some 245,000 acres of their lands from the hills beyond the original course of the Tarawera River to Ohiwa Harbour, and consequential land reorganisation and relocations.

For the reasons that follow, the report is not a full report on all aspects of the claims that were filed. First, Crown and claimant counsel considered that the main claims – relating to the raupatu and contemporary land allocations – were capable of settlement. In order not to prolong the prospect of a settlement, the Crown did not conclude its evidence on those matters. None the less, the Tribunal was asked to complete a report on the main issues. Also, it was considered that certain claims relating to particular twentieth-century events, which we will enumerate, should be dealt with separately.

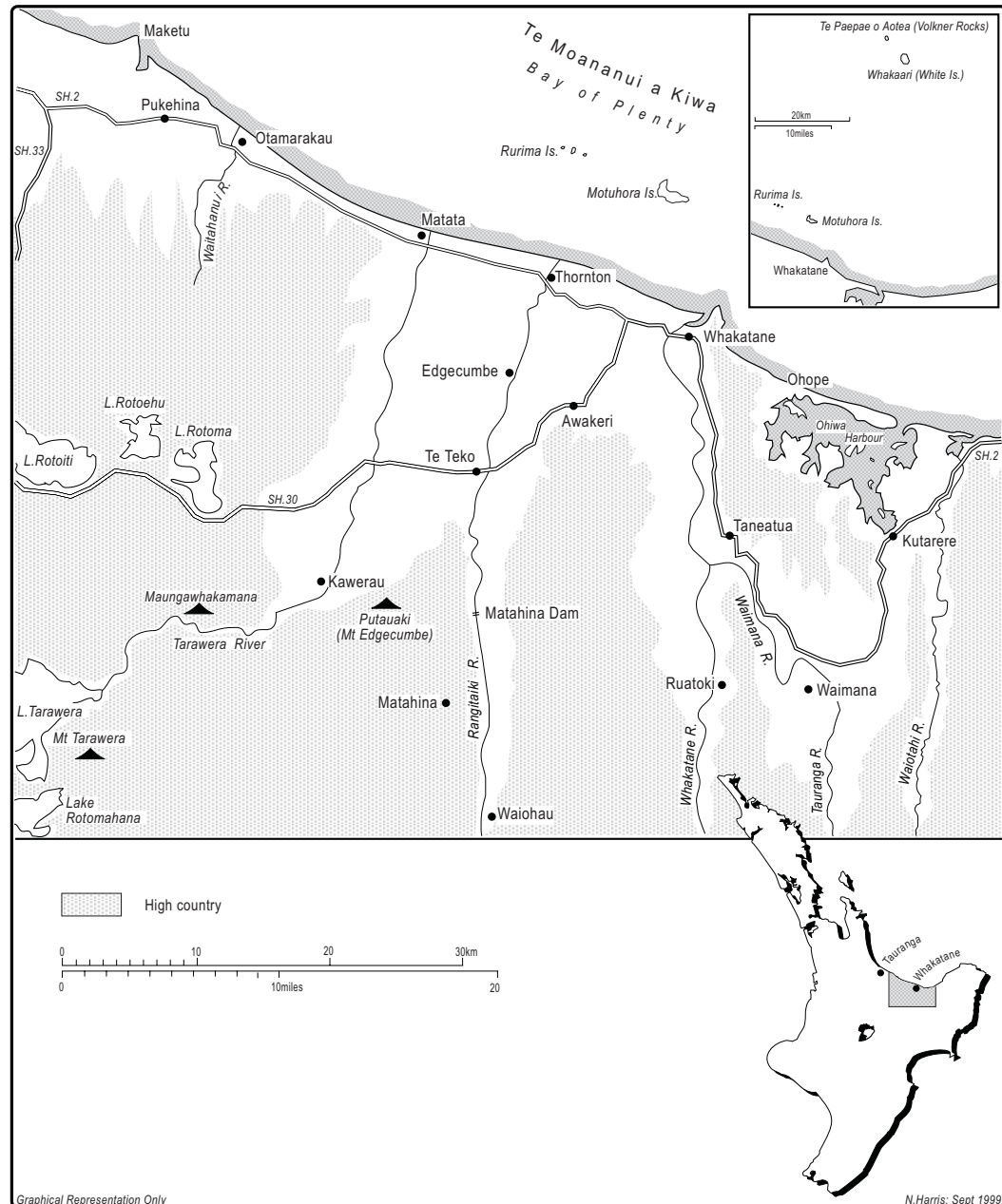
Secondly, the Tribunal was unable to investigate two matters arising out of the nineteenth century. These were claims relating to the Native Land Court's award of lands outside the confiscation boundary and the acquisition of some of those lands by the Crown. None the less, since an exact equivalence cannot be expected for historical losses beyond living memory, the Tribunal considers that these matters should be included in a lump-sum settlement of the raupatu.

For its part, the Tribunal had hoped that the claims would be settled with the Government without the need for a report at all. However, the claimants have asked that a report be issued before a final settlement is entered into.

The structure of this opening chapter is as follows. It begins by describing the two main claimant groups, the nature of their claims, and how each claim might be disposed of. It considers secondly the problem of overlapping tribal claims and how the question of tribal overlaps should be managed for settlement purposes. Our principal conclusions on the raupatu and the matters to be included in a settlement are then summarised. Next, the matters to be kept out of a settlement or separately dealt with are set out.

Each of the above subjects is explored in more detail in the subsequent chapters.

Finally, this chapter provides a record of the Tribunal's hearings.



Map 1: General location of the claims

1.2 THE RAUPATU CLAIMS

In terms of land area and the number of people involved, the largest claim by far is that of Dr Hirini Mead for 21 Ngati Awa hapu. Amongst other things, it is claimed that the Ngati Awa lands were wrongly confiscated. It is alleged that several hapu were required to relocate to blocks removed from their ancestral habitations where they could be kept under military surveillance. It is then contended that those charged in relation to murder did not receive a fair trial.

The claim contends also that Ngati Awa people, being branded as rebels, were wrongly excluded from the award of lands outside the confiscation boundary and that, contrary to their wishes, the lands left to Ngati Awa, inside and outside of the confiscation area, were converted from tribal to individual ownership. This is said to have resulted in land alienation and the destruction of traditional organisation.

It is then claimed that, in returning land, the Crown often purchased it at the same time. It is argued that at this time the people were powerless to do anything other than comply with any Crown proposals.

A claim is also made in respect of present-day scenic reserves. These include significant ancestral sites and wahi tapu. It is argued that there was no proper basis for confiscating these lands in the first instance, and it is asked that Ngati Awa be involved in their future administration.

There were similar contentions in a claim on behalf of Tuwharetoa ki Kawerau. As their name implies, these people are located in the Kawerau district. In their perspective, if it was proper that any land at all was confiscated, it should not have been confiscated from them, because they remained neutral in the events to which the confiscation referred. They are adamant that they were not involved in rebellion.

Ngati Awa claim that the Tuwharetoa hapu are part of Ngati Awa and that the Tuwharetoa hapu should be included in the Ngati Awa settlement. That issue is dealt with in chapters 2 and 11. We conclude that there should be a separate settlement with Tuwharetoa ki Kawerau on account of their distinctive lines. However, we consider that the point that Tuwharetoa was certainly not involved in rebellion has little bearing, since, in our opinion, it was not appropriate for anyone's land to have been taken on the ground of rebellion. We also consider that Tuwharetoa were impacted less by enforced relocations and the like. We would also estimate, on the basis of the number of functioning marae today, and attendance at the hearings, that Tuwharetoa ki Kawerau would be about one-tenth the size of the combined Ngati Awa hapu.

1.3 TRIBAL OVERLAPS

In chapter 11, the nature of tribal structures is considered. The essential point is that, at the time, the nearest equivalent to 'tribe' was 'hapu', and that these, and the wider descent groups to which they adhered from time to time, had no settled political boundaries of the kind associated with Western states. The hapu were more concerned with the maintenance of connections with other groups, mainly through whakapapa, or genealogy, than with establishing areas of exclusivity. They had also been mobile over the years. The result today is that many hapu may have customary interests in a particular area or, at least, have ancestral associations with it.

In this case, the Ngati Awa claimants made a claim for the Rotoehu Forest within and adjoining the western edge of the confiscation boundary. So also did the claimants for Tuwharetoa ki Kawerau. In addition, however, Ngati Pikiao and Ngati Makino of the Te Arawa confederation of hapu (as seen today) also claimed customary interests in the forest.

Having heard each group, the Tribunal is satisfied that all can properly claim customary interests in the forest. That puts each over the first hurdle. The second hurdle is whether each also has a valid Treaty claim; that is, a claim in respect of past Crown actions contrary to the Treaty of Waitangi for which compensation by an award of Rotoehu Forest land would be appropriate.

We are satisfied that Ngati Awa and Tuwharetoa have valid Treaty claims based upon the confiscation. We also heard Ngati Makino. We are satisfied that Ngati Makino have a *prima facie* claim based upon the record of Crown involvement in the management or alienation of Ngati Makino land. We can say no further about the Ngati Makino claim because the Crown has yet to respond.

We have not investigated the validity of the Ngati Pikiao Treaty claim since, at the time, Ngati Pikiao were not ready to proceed.

We consider that Ngati Awa and Tuwharetoa should be able to claim a share in the Rotoehu Forest for the purposes of negotiating a settlement, provided at least half the land is held back pending the outcome of the Ngati Makino and Ngati Pikiao claims.

There were also claims from Tuhoe and Whakatohea that they had interests in parts of the lands that Ngati Awa claimed as traditional Ngati Awa territory. For the reasons given above on the nature of tribal structures (more particularly considered in chapter 11), we have no doubt that Tuhoe and Whakatohea could establish close customary associations with parts of the land affected by the Ngati Awa claim. But we also consider that the great bulk of the confiscated area as far as Ohiwa Harbour was possessed at the time by hapu now aligning with Ngati Awa. Again, since no exact equivalence is appropriate on historical claims, we do not think it necessary or desirable to attempt to define boundary lines.

1.4 SUMMARY OF MAIN FINDINGS

Undoubtedly, Ngati Awa and Tuwharetoa have valid claims in respect of the confiscation of lands as far east as Ohiwa Harbour. Those claims are relatively unique in certain respects.

A unique feature of the events that led to land confiscation in this district is that, unlike the events in Taranaki, Waikato, and Tauranga, there was barely any war here. In terms, the land was confiscated on account of war and rebellion, but it is doubtful that there was a war or rebellion in fact.

More particularly, James Te Mautaranui Fulloon, an officer of the Crown, was murdered at Whakatane in July 1865. The murder was attributed to persons of distant hapu at the west of Ngati Awa territory, close to the old course of the Tarawera River. It was not attributed to persons around Whakatane. Amongst other things, Fulloon was half-Maori and was, on his Maori side, a close relative of the leading rangatira of that place, Wepiha Te Mautaranui Apanui.

For that act of murder, warrants issued against some 36 persons, all belonging to those distant hapu. A Government official leading a party of Te Arawa then arrested

them. Those arrested were tried, two were hanged for murder, and several others were sentenced to life or other terms of imprisonment for complicity.

However, contrary to popular beliefs, the land was not confiscated on account of that murder. Some contemporary politicians observed that the land was confiscated on that ground, but in fact it never was. The punishment for that murder was visited exclusively upon named individuals, who were apprehended, tried, and sentenced. The record is clear that, instead, the land was confiscated for rebellion, or organised resistance to the Government. The record is equally clear that the acts of alleged rebellion referred to the resistance given to those attempting to effect the arrests. In any event, the land was confiscated under the New Zealand Settlements Act 1863, where the necessary criterion was rebellion – not murder.

But was there a war and was there a rebellion? The plain fact is that, to effect the arrests, the Government deployed a force of several hundred of Te Arawa, known enemies of the Ngati Awa, from whom a terrible vengeance or retribution could be expected on account of the loss of lives in previous tribal battles. In response, the affected hapu of the western extremity of the Ngati Awa lands took defensive positions. The Ngati Awa hapu made no attacks but sought to resist that which they saw as an Arawa invasion.

We do not think it is at all established that there was a war in the usual sense. More particularly, we consider that there was no rebellion. The affected hapu took only those steps that were necessary to protect their own lives from those appearing as hostile invaders. In the circumstances (more particularly described in chapter 6), their anxieties were well founded and the action that they took was reasonable and could not amount to rebellion.

In terms, the confiscation was clearly contrary to the Treaty of Waitangi. Under the Treaty, no land could be taken without consent. However, there remains the question of whether the Treaty could have been suspended on account of war and rebellion. We are of the view that, even if it could have been, there was no sufficient war or rebellion to justify the suspension of the Treaty in this instance.

A further feature of the Ngati Awa case, in comparison with those of Taranaki, Waikato, and possibly Tauranga, is that the hapu involved in the acts that the Crown complained of were only two or three out of some 30, and that the Crown ought properly to have been aware of that. In other districts, war was waged for a considerable period, and there are consequential doubts as to who was or was not involved. However, in this case the relevant events occurred over a very short time-frame, and the ‘offending’ hapu could be readily identified.

Those known as Tuwharetoa, or more recently as Tuwharetoa ki Kawerau, claim to have been neutral. Apart from the fact that some joined the defenders when the Arawa forces came in, there is no compelling evidence that Tuwharetoa ki Kawerau were in opposition to the Crown. None the less, their land was taken too. Likewise, Rangitukehu was probably the most prominent rangatira for the hapu in the Te Teko area. He was known to officials as ‘loyal’. At least, he was regularly so described. Again, however, the lands of his hapu were also taken.

The Maori above referred to covered only part of the territory of the Ngati Awa hapu. Another part, which appears to have been the larger, was actually further east, beyond the Rangitaiki Swamp and extending to Ohiwa Harbour. For convenience, we will refer to the hapu there as the Whakatane hapu. The leading rangatira at the time was Wepiha Apanui, to whom we referred earlier.

It is quite apparent that the many Whakatane hapu were not involved in the murder or the arrests. Not only had these hapu a record of cooperation with the Government, but as we have said, Fulloon was part of Wepiha's family, and a high-born Maori in his own right. Wepiha also protested the murder. He welcomed moves to arrest those responsible and later gave evidence against each of them at their trials. Again, however, all this land was confiscated, even to Ohiwa Harbour.

The main trouble in this case was the blanket labelling of all Ngati Awa as rebels on account of the action of a few, and the failure to make any inquiry as to their complicity before actually taking the land. The result was the next outstanding feature of this case: the amount of land taken was out of all proportion to the level of 'offending' and out of all proportion to the numbers actually involved.

The Government reaction may be seen as understandable, given public reaction to the news of Fulloon's death at the hands of Pai Marire adherents, a faith that was abhorred in the Pakeha community. But none of that can excuse the punishment of the innocent. Nor can it be overlooked that Whakatane Maori also protested Fulloon's death.

We have then considered the justness of the confiscation in the context of the Governor's own law. In terms of the New Zealand Settlements Act 1863, land could be taken for the purpose of establishing military settlements to prevent future insurrection. The object was to keep the peace by having military settlers installed upon the land. However, in this case it was no longer necessary to take land to keep the peace at the time that the land was taken. Those accused of murder had been arrested and were on trial for their lives. All resistance was at an end, and the leading rangatira had been required to take, and had taken, oaths of allegiance.

The next point is that land could be taken only for the purpose of laying out military settlements. It had to be suitable for that purpose. In this case, the Governor simply prescribed a huge confiscation district (including, of course, the land of Whakatohea to the east) and then took everything in it. At the time, the vast majority of the land was clearly unsuitable for settlement, military or otherwise, being hill country, swampland, or covered in thick bush. The area taken was also of such large extent that it was impossible for more than a small fraction of the land to have been converted to military settlements in time to keep the peace.

In brief, far more land was taken than the Act allowed. The facts support that which some politicians of the day freely admitted – that, in reality, it was taken for the general purposes of European settlement over time. But, in terms of the confiscation legislation, that was not a purpose for which land could be taken. Much of the confiscated land has not been settled to this day. Further, before 1890, part of the land was given over as an endowment to Auckland University College. This, clearly, was not intended for military settlement.

Further, no proper inquiry was made, as the Act required, as to what land was suitable for military settlement. The confiscation boundary was simply a series of straight lines on a map, running mainly across mountainous terrain. Nor was there an inquiry as to which hapu were involved, when it ought to have been apparent that those involved were on one perimeter.

The result was a number of ironies, but the most unconscionable was that the main part of the land in fact used for a military settlement was at Whakatane, on the land of the most innocent. It was also on the land of the Whakatane hapu that the hapu of the west were relocated, where they could be kept under military supervision. Further, whole blocks were awarded to Te Arawa, and as sections were cut out in the proposed new towns, at Matata, Edgecumbe, and Whakatane, several of these were awarded to Te Arawa individuals as well.

The confiscation legislation established the Compensation Court to provide land for those whose lands were wrongly taken. In addition, arrangements were made to restore land to 'rebel' hapu, which would otherwise be landless. However, the arrangements were in fact effected by a Crown agent acting administratively and then rubber-stamped by the Compensation Court, which failed to act impartially. (The court was comprised of Government officials who had organised or led the campaign to effect arrests.) Moreover, in the process Crown officials purchased lands from some intended awardees to the effect that, as land was awarded to Maori, it often passed immediately or soon after to the Crown. Since Maori were dependent on the agent to get anything, they were in no position to protest.

Te Arawa and Europeans came to occupy many of the traditional plantations, eel weirs, other food gathering places, and sacred sites of the Ngati Awa people. They took possession of flour mills and cultivations by which the local hapu had sought to enter the developing colonial economy. For the greater part, the Ngati Awa hapu were forced to relocate away from their ancestral homes. They were aggregated on land liable to flooding, between the Rangitaiki Swamp and the Whakatane River. It was not their customary land, and soon there were disputes amongst them, and between them and the custom holders. These lands were insufficient for Ngati Awa to be involved in the developing farming economy that accompanied European settlement. Most of Ngati Awa would be obliged to join the labouring class once public works were also introduced to the area.

Some 77,870 acres of confiscated land were returned to Ngati Awa, but over time the larger portion of that land has been alienated to the Crown and private purchasers. Moreover, none of the confiscated land was returned in the condition in which it was taken. It was returned not in the tribal title that Maori preferred but in individual shareholdings.

The effect of individual shareholdings was to facilitate the alienation of the land by individual dealings without the benefit of tribal control. Such shareholdings also undermined traditional social structures. Statements from contemporary politicians show that these results were intended and foreseen. Not only was the title to land that was returned from confiscation altered, but the Native Land Court was used to likewise convert the title to the remaining land outside the confiscation boundary.

A special feature of this case was the removal of, and failure to return, the carved house known as Mataatua. To bring some unity to the hapu relocated along the Whakatane River, Wepiha Apanui engaged them in the construction of a magnificently carved house, symbolic of the unity of all the hapu from the Mataatua canoe. Indeed, carvers from throughout the Mataatua region were engaged. However, no sooner was the house completed than it too passed to the Government. It was to be used for display at colonial exhibitions in Australia and England.

There have been suggestions that Mataatua was gifted to the Government, but in reality the people were powerless to refuse any Government request. At the time, they were pleading with the Governor for the return of land and for the release of certain of their number still held in Mount Eden Prison.

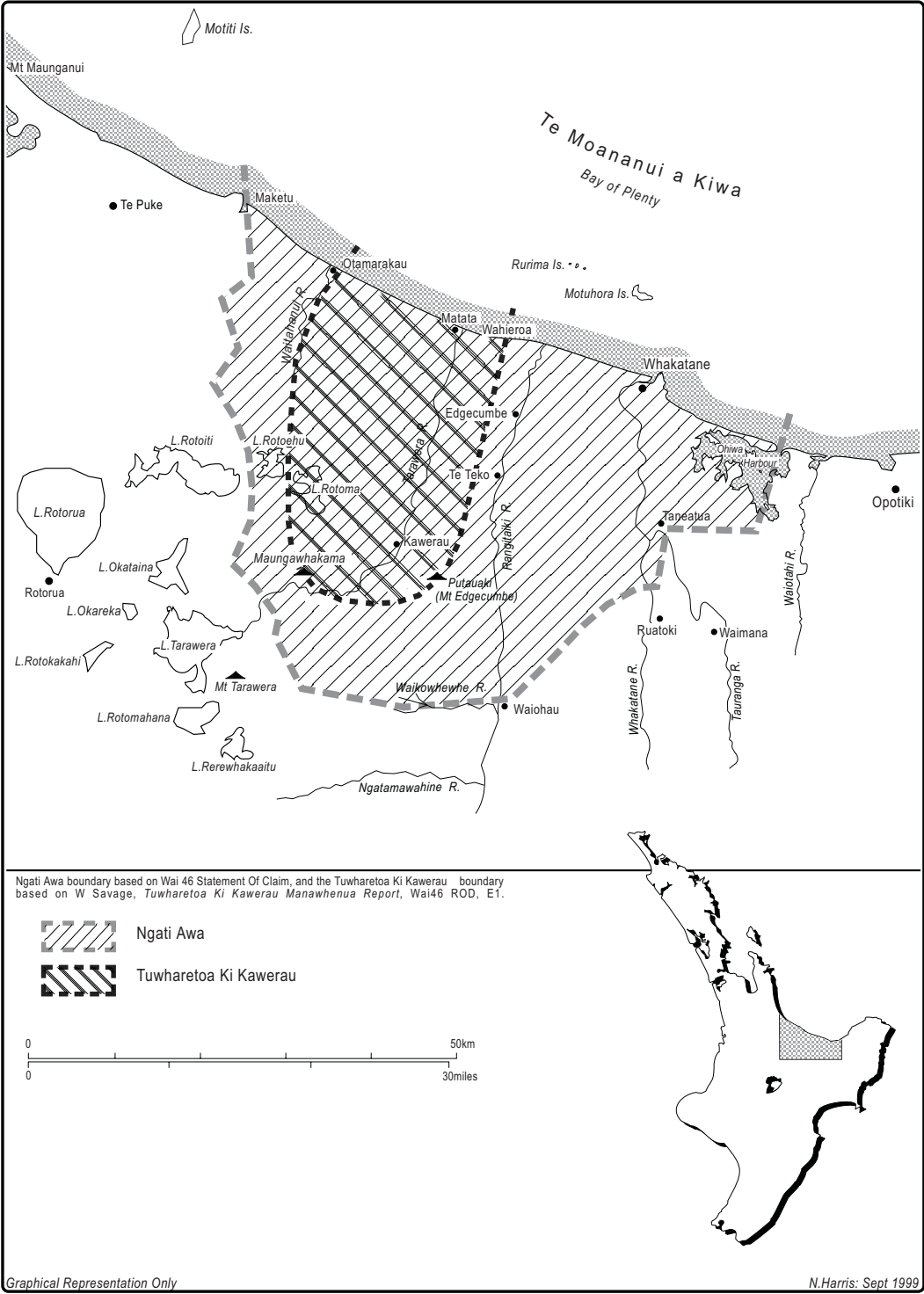
The prisoners were not released and neither was the house returned after it had gone to the exhibitions. Upon its recovery from overseas, it was placed in a New Zealand museum. However, we are now pleased to note that, since our hearings, and with the cooperation of the Otago Museum Trust Board, this matter has been resolved and the house has been returned to the Ngati Awa people.

A further feature of the Ngati Awa claim is that they have not previously had any recompense for the confiscations. Nor have they had much benefit from Government land development funding, provided for Maori throughout a large part of the twentieth century, since most of their developable land had been confiscated. Some relief was given to others similarly affected by large land losses. This took effect from the 1940s in the cases of Taranaki, Waikato, Whakatohea, and Ngai Tahu, and much later in the case of Tauranga. In those places, some generations of young Maori received educational grants and other assistance as a result. Ngati Awa had nothing and have some catching up to do.

Other aspects of the claims dealt with in this report relate to the arrests and trials of those implicated in the death of James Fulloon, the long-term impact of the confiscations and of the label that Ngati Awa have had to bear, as tangata hara or a people of sin. The drainage of the Rangitaiki Swamp is also considered.

We recommend that all these matters should be covered in a lump-sum settlement. We recommend that the settlement include as well the claims in respect of lands outside the confiscation boundary, even though these have not been fully investigated. These claims relate mainly to the districts of Rotoehu, Matahina, and the Tarawera valley. It is claimed that, on account of their perceived status as rebels, Ngati Awa were not given a proper share in these lands by the Native Land Court. It is also claimed that the court's awards were overly affected by the advice of Crown agents who were seeking to buy land at the same time and were favouring sellers. Some of the concerns are touched on in the context of the wide-ranging impact of the confiscations. However, a full examination of the extent to which the local hapu were disinherited would require an exhaustive analysis of Native Land Court records, which the Tribunal has been unable to make. We none the less consider that a settlement should be sought in respect of all historical matters, deferring only those specific claims, referred to below, arising from recent events.

A basis for settlement is considered in chapter 11.



Map 2: The claimants' views of their boundaries

1.5 CLAIMS NOT COVERED IN THIS REPORT

This report does not cover the claims of Tuhoe, Ngati Whare, or Te Ika Whenua with regard to the Matahina district, or of Ngati Makino and Ngati Pikiao with regard to the Rotoehu district and beyond. Although these were heard on the status of certain lands, it has been necessary to focus on the Ngati Awa and Tuwharetoa claims. We reserve the rights of those other groups. The finalisation of their claims, if proven, will be proposed in other inquiries still to be undertaken. A further claim for Te Upokorehe around Ohiwa Harbour was not pursued. We were advised that they were involved in direct negotiations with the Crown alongside other groups of Whakatohea. We have also not inquired into issues surrounding the pollution of the Whakatane, Rangitaiki, and Tarawera Rivers, or the pollution of Ohiwa Harbour.

However, some particular claims within Ngati Awa and Tuwharetoa territory, even if it is not their exclusive territory, should be reserved from any settlement with Ngati Awa or Tuwharetoa. If not independently settled with the Crown as a separate matter, they will be separately inquired into by the Tribunal. These include the incorporation of Maori lands in the Tarawera valley in a Crown forestry scheme in exchange for shares in Tarawera Forests Limited, for which legislation was passed in 1967. That claim has not been heard at this stage. Allied to the Tarawera Forest claim is a claim that Mount Putauaki, the most significant mountain for the hapu of the area and the site of a number of sacred burial caves, was wrongly included in the Tarawera Forest scheme.

The Ngati Awa claimants seek the excision of Putauaki from the Tarawera Forest scheme and its reservation for all Ngati Awa. They face the difficulty that the land is in the ownership of a private company. This Tribunal is unable to recommend the acquisition of private land. The Tuwharetoa claimants appeared comfortable with the present position. This may be because members of Tuwharetoa have been able to maintain some dominance of the board that holds the Maori shareholding in the forest. We expect this matter to resurface when the Tribunal hears the Tarawera Forest claim.

Other claims that should be reserved from any settlement, in our view, are those relating to the extraction of gravel for public works from the Waiohau c26 and Omataroa–Rangitaiki c60 blocks, and the acquisition of Pukaahu Domain (also known as the Awakeri hot springs). These are referred to in chapter 11. Like the Tarawera Forest claim, we see these claims as being of recent origin, and as being made on behalf of prescribed individuals for particular shares. It would be wrong to subsume them in a general tribal settlement.

1.6 HEARINGS

The Tribunal heard the Ngati Awa and other claims over almost a year and a half during the course of 1994 and 1995. The first three hearings were given over to the submissions of the Ngati Awa claimants. The first hearing was held at Wairaka Marae

in Whakatane from 4 to 8 July 1994; the second at Kokohinau Marae north of Te Teko from 12 to 16 September 1994; and the third again at Wairaka Marae from 21 to 25 November 1994. The third hearing also included submissions from the Otago Museum in relation to the Mataatua whareniui.

The fourth hearing, where submissions regarding the gravel extraction and from Te Ika Whenua concerning Matahina were presented, was held at the Ohope Beach Resort in Ohope from 13 to 15 February 1995; the fifth, hearing submissions from Tuwharetoa ki Kawerau, was at Hahuru Marae north of Kawerau from 27 to 31 March 1995; the sixth, dealing with the submissions of the Upokorehe hapu of Whakatohea, Whanau-a-Te-Ehutu with regard to Whakaari (White Island), and Tuhoe with regard to Matahina, was held at Waiaua Marae near Opotiki from 29 to 31 May 1995; the seventh, hearing submissions of Ngati Makino, was at Otamarakau Marae in Otamarakau from 19 to 22 June 1995; the eighth, hearing submissions of Ngati Pikiao and Tuhoe, took place at Tapuaeharuru Marae at Rotoiti from 18 to 20 September 1995; and the ninth, hearing further submissions from Tuwharetoa ki Kawerau, was held at Hahuru Marae from 16 to 19 October 1995.

The tenth hearing, held for the sole purpose of cross-examining a research witness for Ngati Awa, took place at the Waitangi Tribunal's offices in Wellington on 3 November 1995; the eleventh, to hear the closing submissions of Ngati Pikiao, Ngati Makino, and Tuwharetoa ki Kawerau, took place at the Rotorua District Council's chambers in Rotorua from 20 to 22 November 1995; and, finally, the twelfth, to hear the closing submissions of Ngati Awa, was held at Umutahi Marae in Matata on 27 and 28 November 1995 and at Wairaka Marae in Whakatane from 29 November to 1 December 1995.

Many sites of historical and spiritual significance were pointed out to us by kaumatua during site visits made in the course of the hearings. These began with a tour arranged by Ngati Awa claimants on 23 November 1994 and continued with tours organised by other claimant groups: Tuwharetoa ki Kawerau on 28 and 30 March 1995; Upokorehe in respect of Ohiwa Harbour on 30 June 1995; and Ngati Makino on 21 June 1995.

Though most of the sites visited are now in private ownership, their ancient history is still preserved in the memory of kaumatua, even though some of the sites are in a fragile condition and access to them is limited.

In addition to the hearings, in 1995 the Tribunal organised a mediation between Ngati Pikiao and Ngati Makino claimants concerning the Rotoehu Forest. This was facilitated by David Hurley and John Turei. The mediation attempted to bring the two claimant groups to an agreed position on how both had been affected by Crown actions, and how any relief might be adjusted between them. These attempts at mediation were largely unsuccessful.¹ The Tribunal also held a meeting in Auckland, which most of the claimants attended, and afterwards issued a statement as to the probable content of this report.²

1. Paper 2.156

2. Paper 2.111

CHAPTER 2

INTRODUCTION TO THE TRIBES

2.1 NGATI AWA AND TUWHARETOA

The people concerned in this report are the people of the hapu, or tribes, of Ngati Awa and Tuwharetoa. The report does not cover the hapu of Whakatohea, whose lands were taken in the same proclamation confiscating lands from and beyond Ohiwa Harbour. Because these belong to a separate descent group, the Government is treating separately with them. Also, the southern confiscation line was inexpertly drawn and cut through Tuhoe lands.¹ Their claim too must be separately considered.

The greater part of the confiscation block from the western boundary to Ohiwa Harbour was held by various hapu, referred to in official documents of the day as 'Ngati Awa'. We clarify our meaning of 'Ngati Awa' as applied at that time. Basically, it refers to a collection of independent and autonomous tribes or hapu that acknowledged their common origin from Awanui-a-rangi and where each had social obligations to the collective identity and to their relations in the other hapu. The 'tribe', or the unit exercising corporate functions on a daily basis, was the hapu. 'Ngati Awa' was the collective voice, which exercised influence as occasion required.²

However, as was not unusual in Maori society, the hapu of the Kawerau area identified under the name of their ancestor, Tuwharetoa. He is an ancestor of different background and lineage associated with the Arawa descent group. Through intermarriage, these people could identify with either Ngati Awa or Te Arawa, although the named ancestor is distinctly associated with the latter. It would not be unusual if they identified with either or both, according to the occasion.

We are satisfied that, for the purposes of the raupatu claims, the Kawerau hapu are able to stand separately as Tuwharetoa if they choose. Their whakapapa shows that they are part of Ngati Awa but that they also have a separate line that they are entitled to call. By calling that line today, they emphasise their separate claim and that they were not part of those Ngati Awa hapu that engaged in acts that the Government saw as rebellion. The name in fact associates them with Te Arawa hapu, which fought on the Government side. We have found no evidence that these particular hapu were involved in any acts of rebellion. The same can be said of other hapu of Ngati Awa as

1. This is also discussed in Anita Miles, *Te Urewera*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), March 1999, chs 1–3

2. For a similar view, see Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation, c1769 to c1945*, Wellington, Victoria University Press, 1998, pp 60, 66, 293–295, 299–300, 314; cf doc A18, pp 2–4

well, but in this case, the self-labelling of Tuwharetoa emphasises their independence from hapu more likely to have been implicated.

In examining the claims, it has not always been possible to determine the extent to which documents referring to Ngati Awa referred also to those who identified then or identify today as Tuwharetoa of Kawerau. The difficulty is simply that, at that time, 'Ngati Awa' was used to cover all or any of the particular hapu of the general district. Accordingly, in this report we will refer to 'Ngati Awa' as including Tuwharetoa, unless the distinction is apparent from the documents and needs to be made.

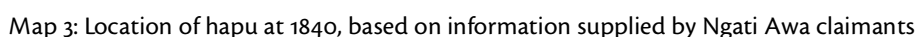
2.2 ORIGINS OF NGATI AWA

A popular view implying some right to conquer Maori and take their lands is that Maori did the same to the Moriori when the Maori arrived, in about 1350, in a great fleet of canoes. It is really a myth from the imaginings of early ethnologists, and the sooner it is disposed of the better. It is not supported by Maori traditions and genealogies and has long been discredited by academics. The more widely supported picture is of a series of migrations over a long period, the crews intermarrying with people here before them, though when the first people came is not known. In claims now heard from the far north to the central west and east coasts, oral traditions and genealogies have consistently described how people were here long before the last canoes arrived, and descent is traced with pride from both early inhabitants and later migrants.

Here, the case of Ngati Awa (or, literally, the descendants of Awa) has special interest. Awanui-a-rangi, the ancestor for whom the people are named, lived in Aotearoa well before the last migrating wave. He was the son of Toi-kai-rakau, who in turn descended from a very early inhabitant, Tiwakawaka. By the time the revered last canoe, Mataatua, arrived in this district, the people in this part of the Bay of Plenty were known as Te Tini-a-Toi – the many descendants of Toi – and were divided into at least 18 groups or hapu, of whom Ngati Awa was one.

The descendants of Toi, and also of a subsequent arrival, Whatonga, had spread throughout the country, even to the South Island, but the original nucleus still remained in the district that was the cradle for them all. The section known as Ngati Awa likewise spread to many parts, sometimes retaining the ancestral name of Awa, sometimes merging into existing hapu. In local tradition, Te Atiawa of Taranaki, and also now of Wellington and the northern South Island, are part of the same group, Te Atiawa being a variation of the same name.

The Mataatua canoe is especially esteemed today. The crew intermarried with Te Tini-a-Toi and Ngati Awa to form the numerous hapu of Ngati Awa, Tuhoe, and Whakatohea as known today. The canoe traveled also to Northland, where some of the crew settled, including Puhi (for whom Nga Puhi are known), and people there are thus connected to the Mataatua hapu of the Bay of Plenty. Toroa, the brother of Puhi, was the captain of the canoe, and he settled at Whakatane.



Not only Ngati Awa retained hapu names that predate the arrival of the Mataatua canoe. Of the various hapu of the Rangitaiki district today, the hapu of Te Tini-a-Awa at Whakatane and Nga Maihi of Te Teko bear ancestral names from pre-Mataatua days.

As one of the more densely populated parts of the country, the district is redolent with historic sites. Amongst the more significant is the home of Toi, Kapu Te Rangi Pa, on the headland above Whakatane. It was part of the confiscated land but has now

been reserved as a historic site. Ngati Awa were highly mobile. Owing to the exploits of their well-travelled forebears, Ngati Awa trace connections to significant sites throughout, and well beyond, the district.

2.3 NGATI AWA TODAY

The Ngati Awa tribe today is represented by Te Runanga o Ngati Awa, a body established under the Te Runanga o Ngati Awa Act 1988 as a Maori trust board under the terms of the Maori Trust Boards Act 1955. The runanga was established in anticipation of the 1990 return to the tribe of the Ngati Awa farm, which was seen as an asset requiring administration by a Maori trust board. At present, 22 hapu are represented on the runanga and have mandated it in its negotiations with the Crown for the settlement of the Ngati Awa claim.

The 22 hapu are Ngati Hokopu (at Wairaka), Ngati Hokopu (at Hokowhitu), Taiwhakaea, Patuwai, Ngati Pukeko, Ngati Rangataua, Ngai Tamapare, Ngai Te Rangihouhiri, Ngati Hikakino, Te Pahipoto, Nga Maihi, Ngai Tamaoki, Ngati Tamawera, Te Warahoe, Ngati Hamua, Te Tawera, Ngati Tuariki, Ngati Maumoana, Wharepaia, Te Kahupake, Ngati Awa-ki-Tamaki, and Ngati Awa-ki-Poneke.

These hapu represent a mixture of those that have existed from the time of the raupatu to today (16 in total, from an erstwhile number of 30); those that have been revived after having disappeared for some time (Te Warahoe, Ngati Maumoana, and Wharepaia); and those that are new (Te Kahupake, Tamaki, and Poneke, the latter two formed to represent those of Ngati Awa living in Auckland and Wellington respectively).³ Various hapu that no longer exist include Te Patutatahi, which has become Ngai Taiwhakaea; Ngati Ahi and Ngati Nuku of Te Pahipoto (Ngati Nuku having become Ngati Tamawera); Te Patutahora and Ngai Tonu of Ngati Pukeko; and Nga Potiki. Other Ngati Awa hapu, such as Ngati Makino, Ngati Whakahemo, and Ngati Whakahinga, preferred to align with their Te Arawa relations after the raupatu.⁴ However, they are never lost to the tribe and could come back into it.

Te Runanga o Ngati Awa was the successor to a non-statutory Ngati Awa runanga established in 1981 under the Charitable Trusts Act 1957. This runanga took a very similar form to the current body, and was set up after a hui at Puawairua Marae in November 1980 for all hapu of Ngati Awa. A Tuwharetoa ki Kawerau representative joined the runanga at that meeting but resigned in early 1981.⁵

The 1991 census revealed that 7065 people gave Ngati Awa as their primary tribal affiliation, while 9795 people in total acknowledged an affiliation to Ngati Awa. (Of that 9795, 4749 lived in the Bay of Plenty, 1866 in Auckland, and 861 in Wellington.⁶) This figure made Ngati Awa the second biggest tribe in the eastern Bay of Plenty

3. Document A17, pp 88–89

4. Ibid, p 88

5. Document K11, pp 7–8

6. Document A17, pp 90–91; Statistics New Zealand (comp), *1996 Census of Population and Dwellings*, Wellington, Statistics New Zealand, 1998, vol 1, p 18

district, behind Tuhoe with 24,522 and ahead of Te Whanau-a-Apanui with 7182 and Whakatohea with 5637. By the 1996 census, the total of those affiliated to Ngati Awa had risen to 11,304, compared to 25,917 people for Tuhoe, 7971 for Te Whanau-a-Apanui, and 7350 for Whakatohea.

The Ngati Awa runanga maintains its own list of beneficiaries. At the time of the hearings, we were told that the number of people registered was 6389, but that the list was in the process of being updated.⁷ The current figure, we understand, is some 9400.

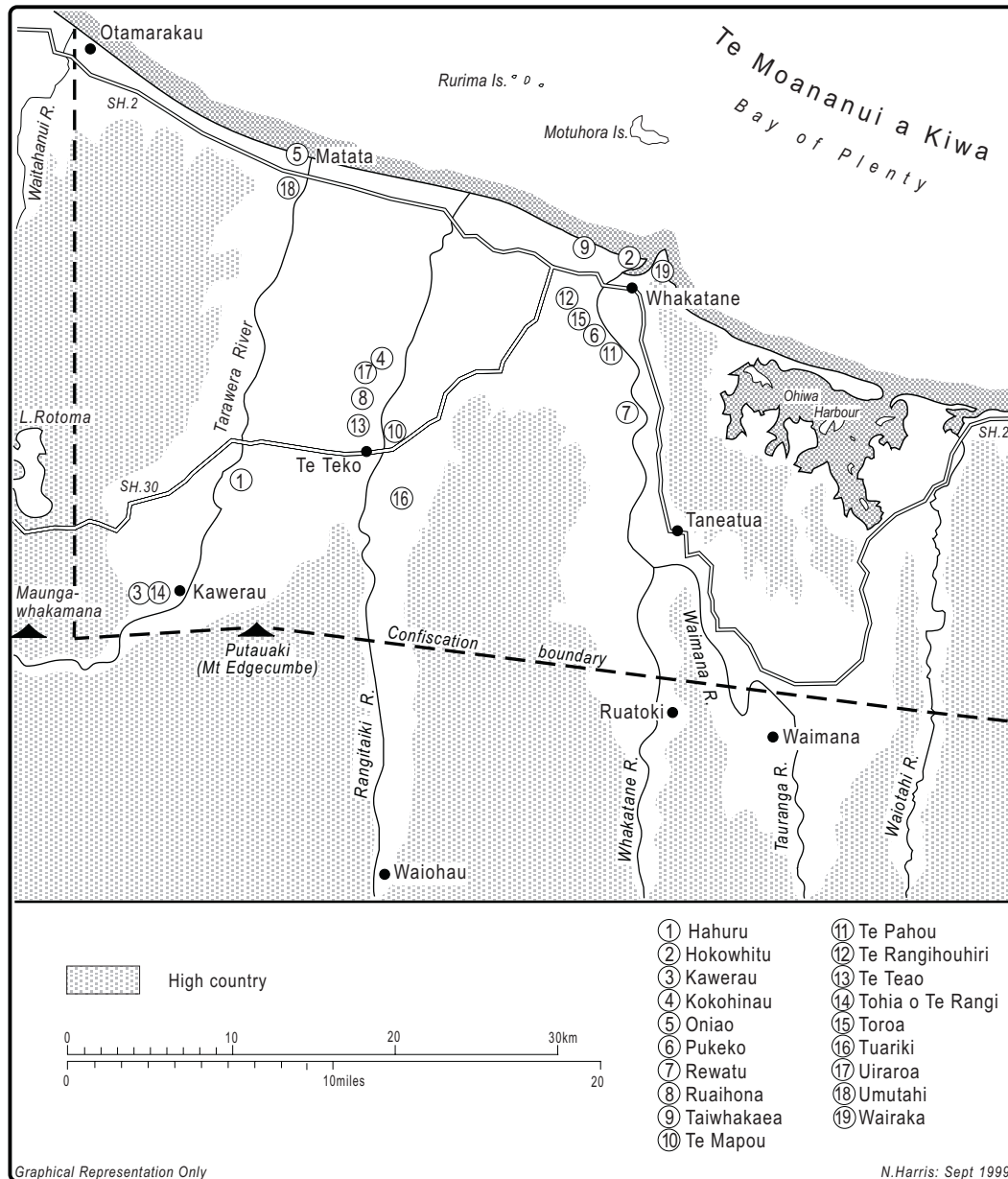
There are 19 Ngati Awa marae, as shown on the table below and map 4.

Marae	Approximate location	Hapu
Te Whare-o-Toroa (Wairaka)	Whakatane	Ngati Hokopu
Taiwhakaea	Whakatane	Ngai Taiwhakaea
Pukeko	Whakatane	Ngati Pukeko
Rewatu	Whakatane	Ngati Tamapare
Puawairua	Whakatane	Ngati Hikakino
Te Pahou	Whakatane	Ngati Rangataua
Te Rahui (Hokowhitu)	Whakatane	Ngati Hokopu
Toroa	Whakatane	Te Patuwai
Te Rangihouhiri	Whakatane	Ngai Te Rangihouhiri
Kokohinau	Te Teko	Te Pahipoto
Te Mapou	Te Teko	Ngati Hamua
Uiraroa	Te Teko	Ngati Tamawera
Tu Teao	Te Teko	Nga Maihi
Ruaihona	Te Teko	Ngai Tamaoki
Tuariki	South of Te Teko	Ngati Tuariki
Te Hinga-o-te-ra	Motiti Island	Ngati Maumoana
Tamatea-ki-te-huatahi	Motiti Island	Ngati Maumoana
Umutahi	Matata	Te Tawera-Umutahi
Mataatua	Mangere	Ngati Awa-ki-Tamaki Makaurau

What is apparent from the map is the way in which eight marae are clustered together to the west of the Whakatane River on land returned to 'rebels', with another group of five marae on land returned in the same fashion around Te Teko. Hapu that traditionally occupied lands to the west and south, therefore, must now sit cheek-by-jowl with those hapu traditionally of Whakatane. It is also little wonder that the Ngati Awa marae are grouped together in this fashion, given the predominantly steep and hilly nature of the rest of the land returned to them.

Ngati Awa-ki-Poneke do not yet have a marae of their own and tend to use Te Herenga Waka Marae at Victoria University of Wellington. They also meet at Awatope, an educational centre at Linden in the suburb of Tawa. The Wharepaia hapu

7. Document K13



Map 4: Current Ngati Awa and Tuwharetoa ki Kawerau marae

does not have its own marae and uses the Ngati Hoku pu marae Hokowhitu, while Warahoe and Te Kahupake are in the same situation and share Kokohinau Marae with Te Pahipoto (Warahoe being a 'revived' hapu of Pahipoto). The Tawera hapu currently does not use Umutahi Marae because of differences with the Tuwharetoa ki Kawerau hapu Te Tawera-Umutahi, with whom it has been shared. In other words, a division exists between the Tawera people choosing to align with Ngati Awa and those aligning with Tuwharetoa ki Kawerau (see sec 2.5). The former are looking at establishing a new marae at another site.

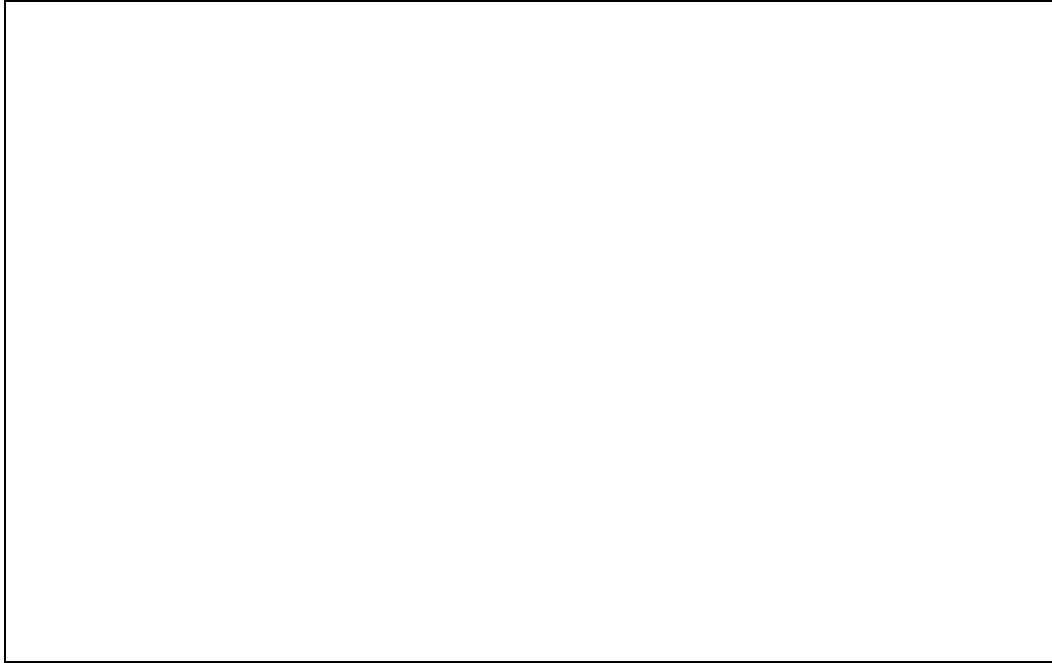


Photo 1: Wairaka Marae in 1900. At this time, the marae had direct river access.
Photo courtesy Whakatane District Museum and Gallery (D689).

2.4 ORIGINS OF TUWHARETOA

The people of Tuwharetoa ki Kawerau trace descent from Tuwharetoa-i-te-aupouri, the direct descendant of the high priest Ngatoroirangi, who came to Aotearoa on the Arawa canoe. He lived with his people in the Kawerau area in the sixteenth century where they intermarried with the earlier inhabitants, Te Tini-a-Kawerau. His mother came from the latter group and was also connected to Ngati Awa. His people spread from Otamarakau, where Tuwharetoa was born, along the coast to Matata and inland to Kawerau. In time, he concentrated his followers at Waitahanui, near to present-day Kawerau. It was there that he died and was buried. His bones were later transferred to the ancient burial cave Te Atua Reretahi in the hills at Te Ngako, subsequently renamed Te Anakari hou o Tuwharetoa.

Tuwharetoa had many children from three wives. Some of them led a migration to Taupo, and it is with this district that the people of Tuwharetoa are most associated today. Others remained, and according to local tradition, various parts of the district were named for them in recognition of their mana. The mountain Putauaki was associated with Te Aotahi, a son from Hinemotu, as recorded in the saying 'Ko Putauaki te maunga, ko te takanga o Apa te wai, ko Aotahi te tangata' (Putauaki is the mountain, Te Takanga o Apa the water, and Aotahi the ancestor).⁸ Another son, Poutomuri, was associated with Pokohu, while a third, Rongomai Te Ngangana, with the mountain Maungawhakamana, overlooking the Tarawera valley.

8. Document E1, pp 17, 24; John Te H Grace, *Tuwharetoa: The History of the Maori People of the Taupo District*, Wellington, Reed, 1959, pp 103–104

There were further marriages with both Te Arawa to the west and Ngati Awa to the east. A powerful symbol of the latter connection was the saying ‘Nga mate i Kohi tangihia mai i Kawerau – nga mate i Kawerau tangihia atu i Kohi’ (Let the deaths at Kohi be mourned at Kawerau – and those at Kawerau mourned from Kohi).⁹ The hapu now living at Kawerau retain the name of Tuwharetoa, but those down the Tarawera River to the coast are known as Ngati Umutahi (or Te Tawera), Ngati Rangihouhiri, and Ngati Hikakino. These have links to Tuwharetoa ki Kawerau, Te Arawa, and Ngati Awa and can align with any one of them or, as is acceptable amongst Maori, to all three at the same time.

In the Tarawera valley, leading down from Lake Tarawera along the Tarawera River, the peoples of Tuwharetoa and Ngati Awa merge with those of Tuhourangi and Ngati Rangitihi of Te Arawa.

2.5 TUWHARETOA TODAY

Tuwharetoa ki Kawerau representatives told us that nine Tuwharetoa hapu remain in the Kawerau–Matata area. These are Ngati Peehi, Umutahi, Te Tawera, Ngai Tamarangi, Ngati Hikakino, Ngai Te Rangihouhiri, Ngati Pou, Ngati Iramoko, and Ngati Manuwhare.

However, the Tuwharetoa claimants conceded that only four hapu names appear in their own tribal census returns: Ngati Umutahi, Te Tawera, Ngai Tamarangi, and Ngati Peehi.¹⁰

What is apparent, therefore, is that both Ngati Awa and Tuwharetoa jointly claim several hapu groups. Counsel for the Tuwharetoa claimants conceded that Ngati Hikakino and Ngai Te Rangihouhiri were also strongly connected to Ngati Awa. He explained that, in traditional terms, the business of those hapu on the coast east of Wahieroa (a point midway between the mouths of the Tarawera and Rangitaiki Rivers) was done on behalf of Ngati Awa, and to the west on behalf of Tuwharetoa.¹¹ We would observe that, despite the ambiguities in the customary allegiance, these hapu seem firmly aligned to Ngati Awa today.

Perhaps more complicated, as adverted to above, is the situation of the Tawera–Umutahi hapu. Tuwharetoa counsel submitted that this hapu had never been allied to Ngati Awa, and Umutahi Marae in Matata was identified by various Tuwharetoa ki Kawerau witnesses as a specifically Tuwharetoa marae.¹² As mentioned, the Ngati Awa affiliated section of this hapu no longer use the marae as a result of the recent debate. However, one Tawera–Umutahi witness, Pouroto Ngaporo, acknowledged affiliations both ways and stressed the hapu’s support for the Ngati Awa claim, rather than that of Tuwharetoa. He also explained that the Tawera hapu consists of two sub-groups,

9. Document E1, p 27; Grace, p 90

10. See doc K15, pp 2, 94

11. Document I8, p 2

12. Document E2, p 5

Umutahi and Tuariki, centred upon Umutahi and Tuariki Marae respectively.¹³ We think that those who choose to align with either claimant group do so correctly, and our suspicion arises more where the blood connections are denied. The Matata district, as John T H Grace wrote in his work *Tuwharetoa*, was an area of significant intermarriage between Tuwharetoa and Ngati Awa, and the customary interests there of both groups need to be acknowledged.¹⁴

The Tuwharetoa claimants told us of five marae that they use: Umutahi and Oniao at Matata, Hahuru at Onepu north of Kawerau, and Rautahi and Tohia-o-te-rangi at Kawerau. Rautahi is a pan-tribal marae, however, and we understand that Tohia-o-te-rangi is a whanau marae not exclusively linked to Tuwharetoa-ki-Kawerau. It is fair to say that Tuwharetoa's base is at Hahuru. The two marae at Matata also demonstrate the interconnectedness between Ngati Awa and Tuwharetoa. The left-hand amo of the wharenui Umutahi (named after a sixth generation descendant of Tuwharetoa) commemorates Tuwharetoa-i-te-aupouri, but the right-hand amo does likewise for Awanui-a-rangi, the eponymous ancestor of Ngati Awa. Likewise, at Oniao the left-hand amo of the wharenui Tuwharetoa-i-te-aupouri commemorates Hikakino, another sixth generation descendant of Tuwharetoa, and the right-hand amo depicts Rangihouhiri, Hikakino's son.¹⁵ These two ancestors are of course also eponymous ancestors of Ngati Awa hapu. We think it likely that most Ngati Awa could trace descent from Tuwharetoa, and that those of Tuwharetoa ki Kawerau could do likewise from Awanui-a-rangi.

The Tuwharetoa claim was originally brought on behalf of 'Tuwharetoa Te Atua Reretahi ki Kawerau', which is usually abbreviated to 'Tuwharetoa ki Kawerau'. The people are represented by Te Runanga o Ngati Tuwharetoa ki Kawerau, as well as by a claims negotiating committee. The runanga was established in 1986 under the Charitable Trusts Act 1957 and is currently chaired by Maungarangi Arapeta Te Rire, while the negotiating team is headed by John Vercoe.

Although it contradicts Maori custom – whereby connections to many tribal groups are acknowledged – we are obliged to make some comment on relative Tuwharetoa ki Kawerau and Ngati Awa numbers so that the respective settlements can be reached. However, Tuwharetoa ki Kawerau numbers remain obscure to us. The census returns available do not distinguish between Tuwharetoa of Kawerau and Tuwharetoa of Taupo. Claimant counsel conceded that some might suggest 'present Tuwharetoa are somewhat "thin on the ground"', but estimated that 'at least 10,000 direct descendants of Tuwharetoa would qualify as potential beneficiaries of any recommendation and ultimate settlement with the Crown'.¹⁶ However, this figure seems inflated to us. The descendants of Tuwharetoa would number far more even than this figure, and include many at Taupo and – as we have discussed – most members of Ngati Awa itself.

13. Document K9, pp 5–6

14. Grace, p 90

15. Document K15, pp 18–22

16. Document E2, pp 5–6

Contemporary Tuwharetoa ki Kawerau numbers must therefore remain uncertain. However, if one compares Tuwharetoa ki Kawerau and Ngati Awa numbers on the basis of functioning marae, it would appear that the former are approximately one-tenth the size of the latter. This approximation was reinforced by attendances at the claimants' respective hearings.

2.6 NGATI MAKINO

At this point, brief mention may be made of Ngati Makino, who were heard in association with this claim on account of a rival claim to the Rotoehu Forest. They occupy a part of the coast between Maketu and Matata and inland to Rotoiti. Through historical associations, Tuwharetoa, Ngati Awa, and Te Arawa all saw Ngati Makino as part of them. Clearly, there are whakapapa links to each, but in the course of the hearings it became clear that they saw their main link as being with Te Arawa. They place significance on a line of descent from Hei and his son Waitaha-a-Hei of the Arawa canoe.¹⁷

17. Document G1(a), p 5

CHAPTER 3

BACKGROUND

A knowledge of the early colonial history of the Rangitaiki district assists an understanding of the Ngati Awa reactions that led to the confiscation of their land. Unlike other hapu closer to European settlements, those of Ngati Awa had little experience of European expectations. In their area at the time of the wars, only Maori law applied. Their prior experience of European matters was somewhat limited to the power of guns and trade with Europeans.

3.1 MUSKET WARS

Muskets came to Ngati Awa territory with the Nga Puhi invasions of the 1820s and early 1830s under Hongi Hika, Korokoro, Pomare, and Panakareao. The Maori of the Bay of Plenty, Rotorua, and Urewera were unable to withstand the invaders, who had previously acquired muskets. The invaders drove deep into the hinterlands of the Bay of Plenty in annual expeditions, causing widespread destruction and devastation, and some of Ngati Awa were captured and taken as slaves to Northland. It was not until 1833 that the tide turned, when Ngati Awa obtained muskets and Panakareao was repulsed at Whakatane.¹

Paradoxically, the introduction of guns eventually led to peace and prosperity through the growth of trade with Europeans. The early trade in dressed flax in exchange for guns was to lead to much more. Initially, however, the possession of guns escalated local warfare. The battles between hapu of the different descent groups mainly concerned the control of Ohiwa Harbour. The fighting appears to have ended around 1836, following the defeat of Ngati Awa at the hands of Tuhoe in the battle at Te Kaunga, the reversal of that at a subsequent battle at Te Teko, and the negotiation of a peace at Ohui.²

A significant side-effect of the musket wars, from the first Nga Puhi invasions, was a greater degree of hapu collaboration for security. Ngati Awa and Ngati Pukeko, for example, had been substantially separate groups, but they fought together at this time and stand together today in the Ngati Awa runanga.

1. These expeditions are described in S Percy Smith, *Maori Wars of the Nineteenth Century*, Christchurch, Whitcombe and Tombs, 1910

2. See Elsdon Best, *Tuhoe: The Children of the Mist*, Auckland, AH and AW Reed, 1972, pp 355–389 (cited in doc A17, pp 55–57)

3.2 TRADERS

Unlike other districts in Northland, Auckland, Taranaki, Whanganui, and Wellington, there were no European settlements anywhere near the Ngati Awa homelands. There were also no more than a handful of traders, the first being Phillip Tapsell, who married into Te Arawa and established a trading station at Maketu around 1830.³ Those who based themselves at Whakatane, later moving inland and marrying local Maori, were Bennett White, George Simpkins, and James Melbourne.

The initial trade in flax and pigs soon expanded, and by 1840 large areas were reported to be planted in wheat, potatoes, European vegetables, and fruits. Though we have no particulars specific to Ngati Awa, it is indicative that at 1849 Maori between Whakatane and Maraenui (near the mouth of the Motu River east of Opotiki) owned 22 schooners shipping produce to Auckland. From there, it was taken as far afield as the Californian and Victorian goldfields. In the 1860s, which were war times, water-driven flour mills were constructed over a wide area at Poronui, Te Umuhika, and Otipa.⁴ Following the land confiscations, however, and the settlement of large numbers of European farmers near to the main towns, this golden period of Ngati Awa expansion came to an end.

A few traders were involved in pre-1840 land transactions that were later confirmed as conveyances by the old land claims commission. We doubt that Maori saw these as Europeans saw them: that is, as land sales involving the severance of all forms of Maori interest and authority. Maori had a very clear philosophy about land, which could not by nature depart from its ancestral associations. They also had a distinctive view about the incorporation of outsiders, especially valued outsiders like traders, whose residence amongst the hapu made them subject to Maori authority, and whose receipt of resource use rights carried with it obligations to the local rangatira. These matters were explored in the *Muriwhenua Land Report*, and appear to have application here.⁵

There were few such transactions, however, and no Crown purchases to introduce European concepts of land enclosures, absolute ownership, and land saleability to the region.

3.3 MISSIONARIES

The missionary influence was not nearly as strong here as elsewhere. Henry Williams, the head of the Church Missionary Society in New Zealand, visited Whakatane and Ohiwa Harbour in 1826 and 1828. Urgent requests were made of him for guns, but he declined them. No missionaries were appointed, and it was not until the 1840s that a

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3. Phillip is sometimes referred to as Hans, but his son was more commonly called this: D M Stafford, *Te Arawa: A History of the Arawa People*, Auckland, Reed, 1991, pp 192–196; see also W T Parham, 'Phillip Tapsell', DNZB, vol 1, pp 425–426, T11
 4. A Van der Wouden, 'Maori Shipowners and Pakeha Shipbuilders in the Bay of Plenty, 1840–1860', *Historical Review: Bay of Plenty Journal of History*, vol 33, no 2, pp 91–100
 5. Waitangi Tribunal, *Muriwhenua Land Report*, Wellington, GP Publications, 1997, chs 1 (esp pp 3–6), 2, 3

Roman Catholic priest was established at Whakatane. Even then, there were still too few missionaries to cover the area. The greater evangelising may have come from Ngati Awa returning from bondage in Northland, where they were instructed and later released by the many missionaries there. Nothing is known of their theology, however. Northland missionaries reported an extraordinary Maori interest in theological matters but noted that Maori tended to conceptualise biblical accounts in their own terms.⁶

3.4 THE SIGNING OF THE TREATY OF WAITANGI

It is important to recall, in reviewing the New Zealand wars and confiscations in proper context, that at all prior times Maori law and authority applied throughout this part of the Bay of Plenty. In the language of the day, it was said that the Queen's writ had still to run there. It is only on paper that the assertion of British sovereignty can be said to have introduced a different regime.

The Maori text of the Treaty of Waitangi was affirmed at Whakatane on 16 June 1840 by 12 persons associated with Ngati Pukeko, probably on behalf of themselves and others whom they may have represented. On paper, it was declared that the Governor was empowered to make laws as necessary for peace and good order. Loyalty to the English Crown was implied.

It is difficult to assess today the impact of the Treaty at the time of its signing. Much depends on the extent to which it was memorialised by some extravagant action, Maori tending to create some drama to ensure that significant occasions enter oral tradition through being oft spoken of later. No particular incident is recalled in respect of the Treaty's execution at Whakatane. In this case, the impression created may have been transient.

To the extent that the Treaty may have been recalled, its significance may not have been seen exactly in terms of its words. If the message was similar to that conveyed in Northland and elsewhere, as shown by the record of the debates, Maori would have been especially attracted to the Governor's undertaking to establish peace and good order. This was not only or even mainly because of problems between Maori and Pakeha, to which the Treaty itself refers, but because of the wars between Maori after the introduction of guns.

The missionaries reported, with regard to other places, that the prospect of peace between Maori weighed heavily with them when the Treaty was signed. The missionaries had already been successful, shortly before the signing, in reducing Maori warfare and sorcery and in virtually eliminating cannibalism, slavery, infanticide, and summary executions from Maori society. The same practices appear to have

6. L M Rogers, 'Henry Williams in the Bay of Plenty in 1826 and 1828', *Journal of the Whakatane Historical Society*, vol 15, no 1, pp 28–30; L G Keys, *The Life and Times of Bishop Pompallier*, Christchurch, Pegasus Press, 1957 (cited in doc A18, pp 13–18); James Belich, *Making Peoples: A History of New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, Auckland, Allen Lane and Penguin Press, 1996, p 168

abated in this district too, although the missionary presence was not great. Even so, the Governor's law for the maintenance of peace and good order was seen as a valuable reinforcement.

To the extent that loyalty to the Crown was required, it has to be borne in mind that the Maori text of the Treaty conveyed no notion of fealty, but those who drafted it were clearly conscious of the strong jealousy that Maori had for their autonomy and thus created more the image of a partnership or alliance. Maori acknowledged the status of the Queen to make laws, and the Queen acknowledged the rangatiratanga, or independent authority, of the hapu. Acting on historical evidence of the execution of the Treaty, the Court of Appeal found in the 1980s that the Treaty conveyed the notion of a partnership.⁷

Again, if the concerns and oral promises recorded elsewhere in the Treaty debate had any parallel in Whakatane, Maori would also have been anxious to maintain their own law, and the right to do so would have been acknowledged. As noted in earlier Tribunal reports, oral undertakings were expressly given that Maori law and custom would be respected.⁸ We do not know if that was discussed in this case. However, this is implicit in the Maori text from the acknowledgment of the Queen's sovereignty and Maori rangatiratanga. This implies that, to the extent practicable, the legal principles affecting both peoples would need to be respected.

In practice, however, the British policy was to introduce English law gradually, with the expectation that Maori law would eventually be replaced. In his instructions to Lieutenant-Governor Hobson, Lord Normanby advised him that, until Maori 'can be brought within the pale of civilised life, and trained in the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals'.⁹

3.5 LAW

In districts where Maori law predominated, Governor Gore-Browne and his successor Governor Grey sought to introduce English law and to provide some administration for local affairs through the adaptation of the traditional Maori runanga.¹⁰

7. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA)

8. See, for example, *Muriwhenua Land Report*, pp 112–114; see also Claudia Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin, 1987, p 53; David Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864–1909*, Wellington, Huia Publishers, 1999, pp 117–118; Alan Ward, *A Show Of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Canberra, Australian National University Press, 1974, p 45

9. Normanby to Hobson, 14 August 1839, *Speeches and Documents on New Zealand History*, W D McIntyre and W J Gardiner (eds), Oxford, Clarendon Press, 1971, p 15 (citing Colonial Office United Kingdom file 209/4, pp 251–281). In a circular letter to chiefs of 27 April 1840, Hobson wrote, 'The Governor will ever strive to assure unto you the customs and all the possessions belonging to the Maoris' (cited in Ward, p 45). In 1840, it was recognised that, 'without some positive declaratory Law authorising the Executive to tolerate such customs, the Law of England would prevail over them, and subject the Natives to much distress and many unprofitable hardships': Russell to Hobson, 9 December 1840, BPP, vol 3, pp 145–169. As to the statutory expression of policy, see the preamble to the Native Exemption Ordinance 1846, section 10 of the New Zealand Government Act 1846 (UK), and section 71 of the New Zealand Constitution Act 1852 (UK).

10. Ward, pp 104–105, 125–126, 132

The traditional runanga was a forum for settling tribal policy, managing resource allocation, or resolving disputes utilising traditional processes. Runanga met not at regular times and places but as occasion required or allowed, and they could take place at the level of the hapu, or several hapu together, or at the level of different descent groups, as with the planning of an expedition of some sort. Their formality was evident in settled understandings about appropriate conduct and the form and order of speaking.

Speaking of the country as a whole, we cannot be sure how extensively the scheme operated. The somewhat grandiose descriptions of new runanga structures in various divisions of a district appear to have existed only on paper in many cases. Nor is the record of large numbers of Maori assessors an indication that the scheme was in full operation. Several rangatira were appointed as assessors and received an assessor's salary, but the Governor also used the scheme to buy the loyalty of rangatira, revoking their positions and terminating their pay if they ceased to support him. The appointments are not evidence that the appointees actually performed an assessor's function.¹¹

Very little prospect existed of introducing English law in any substantive way at any time prior to the Ngati Awa confiscation. There was only one European to implement the scheme for the whole of the districts of Tauranga, Rotorua, and Whakatane when Resident Magistrate Thomas Henry Smith was appointed to Rotorua in 1852. He was withdrawn in 1856 and not replaced. Then Henry Tacy Clarke was appointed resident magistrate in Tauranga in 1859. Thereafter, civil commissioners were appointed over the resident magistrates with instructions to establish a system of local administration and justice based on Maori runanga. T H Smith held that office for the whole of the Bay of Plenty from March 1862, and was stationed in Maketu. This was well after the war had broken out in Taranaki.¹²

Grey proposed to introduce English law through runanga meeting on a more regular basis under European magistrates with leading local Maori as assessors, or with Maori assessors alone if no magistrate was available. In the latter case, it was expected that Maori law would apply at first but that, gradually, English law would be brought in.¹³

There was some attempt to get the system going amongst the Ngati Awa hapu. In May 1862, Smith passed through the district. He claimed to have had some support for the runanga system amongst Ngai Te Rangihouhiri, Ngati Hikakino, and Te Tawera at a meeting at Matata, but it was qualified support at best. Te Hura, the leading speaker for Ngai Te Rangihouhiri, is reported to have said that:

he was quite satisfied to accept the Governor's system; he saw nothing in it to excite suspicion, and should it hereafter appear that they had been deceived, he could easily renounce his connection with the Government as he now entered into it, and he would not scruple to do so. Meanwhile he was willing that the thing should be tried.¹⁴

11. Ibid, pp 142–144

12. Ibid, pp 80, 130

13. Ibid, pp 125–126

14. Smith to Mantell, Minister of Native Affairs, 28 May 1862, AJHR, 1862, E-9, p 20 (RDB, vol 15, p 5647)

Smith reported that there was support from Rangitukehu at Te Teko, but that generally there was also considerable suspicion of English law. He was unable to get approval for the system at Whakatane because the leaders were away, and neither did he gain support upriver at Kopeopeo.¹⁵

There is evidence that runanga were operating at various places soon afterwards, including Te Runanga o Te Horo at Whakatane, where Wepiha Apanui was a member, but these appear to have been traditional runanga and there is no evidence that they were established for the purpose of applying English law. They in fact reported to the civil commissioner but were also used for local administration. Funds were channelled through them to assist in agriculture or the development of flour mills and the like, and they appear to have cooperated with the civil commissioner for that purpose. No resident magistrate was appointed for the district, however.¹⁶

The position of Bay of Plenty Maori during the wars was summed up by retired chief justice Sir William Martin, who said that they had not ‘assented to our dominion’ and were therefore in the position that North American Indians were recognised as being in – ‘small communities entitled to the possession of their own soil, and the management of their own internal affairs’.¹⁷

It appears to us that, prior to the confiscations, the Ngati Awa hapu were on the outer edge of Pakeha commerce, Christianity, and colonisation. There were a few traders at the river mouths, there were no missionaries before 1840 (and only a few thereafter), and no Government officials closer than Maketu or Opotiki. Although in 1858, shortly before the outbreak of war, the number of European settlers in New Zealand had grown to outnumber Maori and some Maori near the main centres had accepted or been bound to accept English legal rules, in this far-flung corner of the British Empire there were very few Europeans and the law was distinctly Maori.

It was peaceful none the less. During the wars in Taranaki and Waikato, no Europeans felt the need to move. Loyalty to outsiders, including Europeans, depended not on any particular predisposition but upon a history of good relationships and working alliances. No doubt loyalty to the Queen was seen in the same way – a beneficial relationship needed to exist in practice, not just on paper.

3.6 PRINCIPLES OF THE TREATY OF WAITANGI

While the Treaty may have had little influence on Ngati Awa minds during the first 20 years after its execution, some of the Ngati Awa leaders were reminded of it when war with Europeans broke out in Taranaki in 1860. At that time, Maori throughout the country were marshalling under the banner of the Maori King. To isolate the King and gain Maori support for the Government, Governor Gore-Browne summoned a

15. Smith to Mantell, Minister of Native Affairs, 28 May 1862, AJHR, 1862, E-9, pp 20–22 (RDB, vol 15, pp 5647–5649)

16. Sewell to Smith, 14 December 1861, AJHR, 1862, E-9, pp 3–4; Sewell to Smith, 3 March 1862, AJHR, 1862, E-9, pp 17–18; Smith to Mantell, 28 May 1862, AJHR, 1862, E-9, pp 20–22 (RDB, vol 15, pp 5630–5631, 5644–5645, 5647–5648)

17. Martin to Native Minister, 23 December 1865, AJHR, 1866, A-1, p 70

‘Maori Parliament’ at Kohimarama near Auckland, where the first item on the agenda was to reaffirm the Treaty of Waitangi and loyalty to the Queen.

Leading Maori from throughout the country attended, including five representatives of Ngati Awa.¹⁸ The Treaty and loyalty to the Queen were affirmed without dissent. The general Maori position was that they had not departed from the terms of the Treaty. Greater significance may have lain in the fact that the Governor had chosen to resurrect the Treaty and thus had implicitly reaffirmed it himself.

It is also clear, however, that Maori understood the Treaty in terms of a partnership between Maori and the Queen, where the Queen’s sovereignty and Maori autonomy had both to be respected. To an extent, the Governor himself gave credence to this view by summoning that which he called a Maori parliament, as though Maori too would have a say, at a national level, on that part of the governance of the country that particularly affected them.

It followed as a result that, while the Governor gained support for the Treaty, he did not gain support for his action in starting the war in Taranaki or for his opposition to the Maori King. Most Maori thought that the Governor was in the wrong and was acting contrary to the Treaty.¹⁹ Amongst those who took this view were those who spoke for Ngati Awa.²⁰

As will shortly be seen, the war begun in Taranaki soon spilt over into Ngati Awa territory and resulted in the assertion of Maori law and the slaughter of a Crown official by a section of Ngati Awa. In time, this would lead to the confiscation of land from all the Ngati Awa hapu. There are major questions in terms of the Treaty of Waitangi. Could land be taken by force in a wartime situation? Given the state of affairs in Ngati Awa territory at the time, to what extent were Maori obliged to respect the Governor’s law and to what extent was the Governor obliged to respect the law of Maori? Were there in fact areas of cooperation that ought to have been acknowledged and developed?

The Treaty guaranteed:

to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession.

In addition, it was stated during the execution of the Treaty that Maori law would also be respected. As discussed in the *Muriwhenua Land Report*, the issue was distinctly raised and an unequivocal assurance given.²¹

Also, as found in earlier reports, a tribe’s right to hold possession of its traditional resources carried with it the right to possess in terms of its own laws and preferences according to how they existed then or might develop over time.²² We emphasise the

18. *Te Karere*, 1860 (cited in doc A18, p 39)

19. Ward, pp 115–118, 272

20. *Te Karere*, 1860 (cited in doc A18, p 39)

21. *Muriwhenua Land Report*, pp 112–114

22. See, for example, Waitangi Tribunal, *The Whanganui River Report*, Wellington, GP Publications, 1999, pp 25–26

developmental aspect. There is a European tendency to see Maori law as custom, and custom as static. We think it right, however, to emphasise instead that Maori law was in a continual state of development and that it is the right of all peoples not only to have their own laws but to develop them over time. Maori law is no different from European law in that it simply reflects the values of a community, and values change.

We have already noted major changes made to accommodate missionary views even before the Treaty was signed. New attitudes developed to sorcery, slavery, cannibalism, and infanticide, for example. More significantly, the missionaries introduced a new god and the New Testament value system. Yet, despite the scale of these changes, the Maori value system was not impaired. On close analysis, the missionaries' effect was to augment Maori law rather than replace it. Many Maori values were in sympathy with Christian ethics in any event, though, as with Christian ethics, they were not always perfectly practised. The Maori philosophy on appropriate relationships between people and between people and environmental gods survived substantially intact.²³

In Treaty terms, the Maori right to possess according to laws of their own was conditioned only by the Crown's need for laws 'to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order'.

The Maori text of the Treaty put beyond doubt the right of Maori to their own law, save for cases where the Governor was obliged to intervene to ensure the maintenance of universal standards. The Maori text assured Maori full authority, or rangatiratanga, over their lands, their homes, and all their taonga or treasures, the word 'taonga' being by no means confined to objects. Authority necessarily includes law. The usual Maori word for this authority was 'mana', but the Treaty coined a new word, 'rangatiratanga', in view of the equal association of mana with personal qualities.

In the light of subsequent history, as reviewed in earlier Tribunal reports, Maori saw the retention of their rangatiratanga as the Treaty's pivotal point. In their traditional thinking, the respect paid to the independent mana or rangatiratanga of all groups was the key to keeping the peace.²⁴

Maori saw rangatiratanga as applying to all people located on their customary lands, irrespective of the English invention of sales and land titles. As was discussed in the *Muriwhenua Land Report*, land rights were given with the customary expectation that newcomers would respect the tribe's continuing interest in the administration of land resources.²⁵

If the Treaty's terms are analysed from an English point of view, it is arguable that rangatiratanga applies only in respect of Maori-owned land, and so did not apply once land was sold. If examined from a Maori point of view, that is not sustainable. Maori did not read the text in that prescriptive way; no doubt because their customs had no place for the English title and land transfer system. Their rights applied to

23. See *Muriwhenua Land Report*, pp 50–52

24. See, for example, *Muriwhenua Land Report*, pp 110–115

25. *Ibid*, pp 21–29



Photo 2: Maize harvesters at work, Whakatane district.
Photo courtesy Whakatane District Museum and Gallery (D965-1).

ancestral land and that which was ancestral land must always be ancestral land, for ancestral association is an unalterable, historical fact.

The following Treaty principles and terms appear to us to be relevant to this case:

- the Governor could make laws for peace and good order in the country;
- Maori law was to be respected;
- the loyalty owed by Maori to the Crown was no more nor less than the duty owed by the Crown to respect the rangatiratanga of Maori; and
- the Treaty guaranteed to Maori the possession of their land for so long as they wished to retain the same.

A question in this case is whether, having regard to the circumstances, the guarantee in respect of land could be set aside by the Crown and Maori land confiscated. We address this question later.

A second question concerns the extent to which Maori or English law should be acknowledged in any situation. The claimants stressed that the small extent of European influence before the wars, as discussed in this chapter, was relevant to the later killing of a Crown official. That killing led to the assertion of English law, with the arrest of the alleged offenders and their trial for murder. The argument from the claimants was that Ngati Awa were acting by their own law, as they were entitled to do, that the killings were justified by Maori standards, and that the English criteria were not known to them.

The first question is whether the Governor knew or ought to have known of the Maori law prohibiting entry to the territory and whether the Crown official deliberately ignored it. The second is whether those implicated in the killings ought reasonably to have expected retribution in this instance. A further question is whether there was too much emphasis on war, and a blanket labelling of all of Ngati Awa as warmongers, and insufficient emphasis on legitimate spheres of autonomy and significant areas of cooperation.

We are satisfied that Ngati Awa were no different from Maori throughout the country in expecting that their own traditional authority would continue to prevail. In this district, nothing had happened to compromise that authority prior to the war.

It does not follow, however, that there was an unwillingness to work with Europeans. On the contrary, it appears that many were eager to do so. When war came, there were divisions on this point, and from that stage onward there is an increasing danger in talking of the Ngati Awa hapu as though all were of one mind.

The impression to be gained from the evidence as a whole is that there were leaders like Rangitukehu at Te Teko and Wepiha Apanui at Whakatane, and whole hapu like Ngati Pukeko at Whakatane, who were consistent in advancing a working relationship with European settlers and Government officials, even in times of crisis. It does not follow that this compromised their independence. The more likely thought was that this would advance it.

This is stressed because later lands of all the Ngati Awa hapu would be confiscated and Ngati Awa would be spoken of as though all were in opposition to the Government. That was clearly not the case. In fact, on looking at the names of those later charged and the principal persons involved, we think no more than three of the 30 Ngati Awa hapu were involved.²⁶

26. The claimants refer to there having been 30 hapu: doc A17, p 89. They also write that in 1865 the Ngati Awa–Ngati Pukeko alliance had 34 hapu (p 68). As to the number of hapu involved, T H Smith wrote in July 1865 that ‘The tribes concerned in this murder were Te Rangihouhiri, Hikakino, and Te Patutetahi’: Smith to Mair, 30 July 1865, MS papers 3330, T H Smith papers, ATL (cited in doc 11, p 44). In 1928, Sim noted that ‘a few only of the twenty hapus of the Ngatiawa Tribe took part in the rebellion’: see AJHR, 1928, G-7, p 21.

CHAPTER 4

THE CENTRAL NORTH ISLAND WARS

4.1 THE RELEVANCE OF THE WARS TO NGATI AWA

The discussion in the previous chapter informs our assessment of Ngati Awa reaction to the war. The events that led to the New Zealand wars of the 1860s were all outside Ngati Awa territory but demonstrated to them that, just as the authority of other tribes had come under attack, so equally could their own. None the less, their participation in the war was marginal.

With the influx of large numbers of settlers and with successive governors acting as though they were the supreme authorities, Maori leaders were gathering from as early as 1854, when a hui was held at Manawapou in Taranaki, to consider how their traditional law and autonomy might be upheld.¹ As we have said, their mana or authority was their single, most important concern. Several historians have long recognised this and that it was the main reason that Maori had for fighting in the wars.² This is not to diminish the significance of land to Maori, but it follows that, if their authority was maintained, their land rights would be kept as well.

As if to assert their Treaty-guaranteed autonomy, in 1858 Maori leaders from throughout the country elected as king Te Wherowhero, one of several ariki of proven leadership and impeccable pedigree. The election was a drawn-out process. Although Ngati Awa themselves did not have a candidate, their representatives participated in Kingitanga hui, and Tupaea, whose people of Ngaiterangi had connections with Ngati Awa, was proposed.³ Also proposed was Amohau of Te Arawa, a former enemy of Ngati Awa.⁴

This course of action was understandable. Pakeha authority was neatly identifiable under the name of the Queen or the Government, while Maori authority was diffuse and not so readily apparent. Inherently suspicious of centralism and jealous of the independent autonomy of each hapu, Maori could still accept as king a person whose power at a national level would depend on continued support from the people. He would thus be symbolic of Maori authority.

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1. See Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 61
 2. See *The Taranaki Report*, pp 81–82; James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Auckland University Press, 1986, ch 4; Alan Ward, 'The Origins of the Anglo-Maori Wars: A Reconsideration', *New Zealand Journal of History*, vol 1, no 1, 1967, pp 148–170
 3. Document A18, pp 51–52; Malcolm McKinnon (ed), *New Zealand Historical Atlas*, Auckland, Department of Internal Affairs and David Bateman Ltd, 1997, pl 36
 4. See *The Taranaki Report*, pp 63–64; James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1983, vol 1, pp 150–151, 445–446

The Governor saw the King as a threat to his own authority, but for Maori there was a place for both. As expressed in typical Maori idiom, the kingmakers envisaged the English Queen on one side, the Maori King on the other, God over both, and love binding them together.⁵ The symbols were not removed from the relationship that Maori saw in the Treaty of Waitangi and to which those who drafted the Maori text had given expression. It was also consistent with the customary position, where there was no single superior authority and peace depended on acknowledging the mana of all parties. Given the English tradition, which depended on a single and absolute authority, be it the authority of the monarch in person or the monarch in Parliament, it is not surprising that the Governor saw the proposal as a challenge.⁶

Accordingly, in the build-up to the war, the Governor came to think of Maori according to their position over the Maori King. The Kingites were categorised as rebels and the Queenites as loyal. Maori were in fact divided, though how divided is a matter for speculation. We think that the concept of retaining Maori authority was understood by Maori throughout the country. The main difficulty for Maori was possibly that, customarily, their primary loyalty had been to their own hapu.

None the less, it is clear that there was widespread support for the Kingitanga. It may have been more widespread than the records show, in view of the Governor's opposition and continual talk of crushing the King's supporters and the primary concern that Maori have first to look after the interests of their own hapu. Support may not always have been expressed openly.

According to the claimants, the hapu of this district were not unanimous. Some said they supported the King, some said they did not, and others said nothing.⁷ We have no doubt, however, that all were apprehensive about the growing power of the Governor and the growing numbers of Europeans in other districts. It was an apprehension expressed by Kawakura, a rangatira of Ngati Awa, as follows:

Why does the Governor send to me? Is it because I am a bad man, or that he has heard that I am an ally of the Maori King? I have not joined the King, but have steadfastly refused to do so in spite of repeated solicitations. I stand between the King and the Queen, quietly watching both. I do not understand the Pakeha; first he brought us Christianity, then guns to destroy each other with; then came the Government and the law and the Magistrates; then Runangas. Now it is a new thing, and bye and bye it will be some other new thing. We are bewildered with all these things, and think we had better be left alone. We know that Christianity has done us good, and we are content with that. Does the Governor think to occupy our attention with these new things, while he is contriving plans to get hold of our land?⁸

These were legitimate fears and Kawakura's position is understandable given the remoteness of Ngati Awa from the main areas of encroachment. It may also be seen as a typical Ngati Awa position of the time. None the less, Ngati Awa became involved in the wars that followed. It was impossible not to be. There was not a tribe in the North

5. 'Curiosus' in the *New Zealander*, 3 July 1858 (cited in *The Taranaki Report*, p 64)

6. For a discussion of the Kingitanga, see *The Taranaki Report*, pp 63–64

7. Document A18, pp 51–53

8. Smith to Mantell, 28 May 1862, AJHR, 1862, E-9, sec 4, p 21 (RDB, vol 15, p 5648)

Island that was entirely unaffected, and the passage of events was outside the power of Ngati Awa to control.

The war commenced not with an attack on the Maori King but in Taranaki, on 17 March 1860, with a dispute that on its face was about the sale of land but really concerned the recognition due to the traditional authority of Wiremu Kingi. Te Atiawa of Taranaki were attacked, but all Maori had cause to feel threatened. Ngati Awa may have observed that those attacked were their relations. Whether one was Ati Awa (literally, the descendants of Awa) or Ngati Awa (which means the same), the difference was only dialectal, for both came from the one eponymous ancestor.⁹

When Grey replaced Gore-Browne as Governor for a second term in office, lines were drawn, in more senses than one. The Governor decided to move promptly against the Maori King, whom he saw as the real source of the trouble. In 1861, he secured a peace in Taranaki, as a way of holding the fort. At the same time, he developed a military road – the Great South Road – from Auckland through the Hunua Range to the Waikato River at Mangatawhiri. The road was directed towards the Maori King, and the King in turn drew an aukati across that path at the Mangatawhiri River.

Here, we digress on account of the significance of an aukati in Maori law and its later relevance to the Ngati Awa claim. An aukati is a line that no one may cross with any intention that may be judged as hostile to those on the other side. It was a most common custom in Maori law, even better known to Pakeha than the *rahui* imposed after a drowning is today. Pakeha called it a ‘cut’ or ‘cutty’, which is how it sounded to their ears, especially because it was sometimes abbreviated in the Maori vernacular to ‘kati’.¹⁰

It was not a declaration of war, as Pakeha often saw it to be. Quite to the contrary, it was usually a declaration in a time of crisis that war was not sought. It was a device used when a collection of hapu felt that they were under threat but did not seek war, but wished to say that, by the same token, they would fight if need be if the line were crossed by anyone with arms or a hostile purpose. It was like saying ‘we accept that there is trouble about us, but until we can settle the problem and to stave off war in the meantime, we will keep to our side of the line if you will keep to yours’.

Nor is an aukati the delineation of a tribal boundary. The site chosen may have symbolic significance, well within the tribal territory, it may represent a usual point of entry, or it may simply be close to a defensible position. Most especially, however, it means that the lives of any who cross it may be summarily forfeited unless their good intentions are manifest, any other Maori law about respecting the lives of others notwithstanding.¹¹

9. Moreover, the Ngati Awa claimant researchers state that some Ngati Awa men went to assist their Te Atiawa kin: ‘A group of Ngati Awa men were captured in Taranaki and held as prisoners in Wellington before being repatriated after the war’: doc A18, p 38. However, no original source is provided for this.

10. See also Wallace to Clarke, 21 February 1865, AJHR, 1865, E-5, no 1, encl 1, p 3, warning that a Pai Marire party had arrived at Whakatane and imposed a ‘cut’ on the port. ‘Cut’ is explained in the margin as a ‘kati’.

11. For examples of aukati, see Matewha to Grey, 5 November 1862, AJHR, 1863, E-12, p 20; translation of Petara and others to Smith, 17 August 1863, LE1/1864/105, NA Wellington (doc 15(a), pp 136–139); Shortland to Smith, 17 September 1863, LE1/164/105 (doc 15(a), p 145)

On 12 July 1863, General Cameron and a large armed force crossed the aukati at the Mangatawhiri River, fully conscious of what they were doing, and the war in Waikato began. It was only natural that many other hapu were anxious to support the King and hastened to his aid. The breach of the King's aukati even more than the events in Taranaki made the war a national Maori cause. Moreover, Waikato was merely the first tribal area south of Auckland. Behind were many others, like a line of dominos. Any Maori apprised of the situation could conclude only that the Governor was in the wrong. He would not respect the law as Maori saw it and had crossed the aukati. If he would not respect the law in the case of Waikato, would he respect it anywhere else?

Maori were not all of one mind on that question. Some hapu sought to protect themselves by supporting the King, others by fighting on the side of the Governor, others again by remaining neutral. Some used the war to settle outstanding legacies of historical intertribal warfare. There were divisions even within hapu. Some runanga decided to remain neutral but could not stop some of the younger bloods, who hastened to Waikato for the sport.

On the evidence, amongst the hapu of Ngati Awa there were those who would support the King and those who would remain neutral.¹² There was no common position.

The policy adopted by certain Te Arawa hapu was to prove significant. Some joined Waikato and some stayed out of the matter, but a large section was eventually to fight on the Government's side. They were thus regarded as loyal to the Queen. There is insufficient evidence as to the basis for their decisions. Their primary loyalty may have been not to the Governor but to themselves after a pragmatic consideration of who had the greatest fire power. Equally, the governing factor may have lain in their objection to other tribes using their land as a pathway to the Waikato war, which could have embroiled the Arawa hapu in the fighting. After Waikato, Te Arawa was next in line. Their lands stood between Waikato and many tribal groups to the east, and if it appeared that Te Arawa had allowed passage to those people, the Governor might next point his guns at them.

There were also some unsettled feuds between those Te Arawa hapu at the eastern edge of their territory and nearby hapu of other descent groups, including Ngati Awa and Tuhoe. There had been a recent history of battles and no love lost between them.¹³ It may be no accident that some of those Te Arawa hapu most prominent on the King's side were those closest to the King's territory, while some of those Te Arawa hapu most opposed to eastern tribes crossing their land to reach the Waikato war had lands at the eastern extremity.

Various small groups of the hapu beyond the Arawa territory had gone to the war, but matters came to a head in February 1864, when a contingent of some 400 to 600

12. While Ngati Awa claimant researchers state that it was important to Ngati Awa to provide active support to the Kingitanga and that individuals went off to Orakau on their own accord, they also point out that there were differences in the level of support and some hapu chose to remain neutral: doc A18, pp 52–53. Certainly, only a few of Ngati Awa were involved in actively fighting for the Kingitanga before events took the war into their own territory – Cowan does not even list Ngati Awa in his account of those present at the siege of Orakau, while Belich says that Ngati Awa 'probably also sent men to Waikato': Cowan, vol 1, pp 365–407; Belich, p 128.

13. See D M Stafford, *Te Arawa: A History of the Arawa People*, Wellington, Reed, 1967, pp 171–172

persons from the East Coast moved westwards to support the Waikato people. The originating group were from Ngati Porou, but recruits were gathered on the way from Whanau-a-Apanui and Whakatohea. Some of Ngati Awa were also recruited. These were persons from the western extremity of the Ngati Awa lands, where the East Coast contingent had camped.¹⁴

Te Arawa declared their neutrality, at least from their point of view, by drawing an aukati across the inland route over their land to Waikato. However, not all of Te Arawa supported this, and about 100 Ngati Pikiao joined the East Coast force.¹⁵ And just as the East Coast contingent had the right to support the King in Waikato, so was the Arawa action of repulsing the force justifiable. Under the extremely broad terms of the New Zealand Settlements Act 1863, Te Arawa land could also be confiscated if they allowed others bearing arms to cross it.

The consequential battle, at Rotoiti in early March 1864, resulted in the retreat of the insurgents to Matata, though it appears that some got through.¹⁶ Waikato fell in the final battle of Orakau on 2 April 1864, without the support of the large East Coast contingent.

As Te Arawa may have predicted, the Governor next took aim at those other tribes most prominent in supporting Waikato in the war – the hapu of Tauranga. The East Coast contingent regrouped, gained more recruits, including some from Ngati Makino, and began moving along the coast to support the Tauranga hapu. Once more, they had to cross land that was then in the possession of Te Arawa.¹⁷

Amongst the hapu leaders opposed in principle to participating in the war was Rangitukehu. In his view, some Ngati Awa had little option but to join the travelling party because they were intimidated by the large contingent that had occupied their lands.¹⁸ There is some limited evidence that ‘individuals’ and groups from hapu of Ngati Awa further east were involved as well.¹⁹ But there is also evidence that strongly suggests that other hapu were not involved. We include here the hapu of the local Tuwharetoa. There is one independent European account that makes clear reference to the people of Tuwharetoa of Kawerau, or more particularly of Te Ahiinanga, where it was said that they were determined to ‘sit still, unless the Pakeha came and molested them’.²⁰

On this occasion, Te Arawa had the support of British troops garrisoned at Maketu and two British naval vessels lying a short distance offshore. They were also assisted by Tuwharetoa of Taupo.²¹

14. See Cowan, vol 1, ch 41; doc A18, p 54; Stafford, p 369

15. See Stafford, p 370

16. Nesbitt to Smith, 14 March 1864, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 60 (typescript) AIM (cited in doc 15, p 13; doc 15(a), p 66)

17. See document A18, pp 54–55, especially page 55, where it states that ‘More men from Tuhoe, Ngati Tama, Ngati Makino and Ngati Porou joined the force at Matata’.

18. Smith to Colonial Secretary, 31 May 1864, BPP, vol 14, p 65 (cited in doc 15, p 20)

19. Cowan lists ‘Ngatiawa’ as part of the Tairawhiti contingent but does not specify which Ngati Awa: Cowan, vol 1, p 415.

20. MS583 Grace, ‘Journal of Grace’s Flight from Pukawa’, box 2, pt 3, AIM (cited in doc 15, p 11)

21. AJHR, 1864, E-3, pp 68–69; Cowan, vol 1, pp 415–416, 418; see also doc 15, p 16

No aukati was drawn on this occasion. It would have been too much of a formality since there was already an existing state of war. A defensible cliff-top position was simply taken, and the battle was fought on the coast between Maketu and Pukehina. This time, the insurgents were routed in fighting between 26 and 29 April 1864, culminating in the battle of Kaokaoroa near Matata. The East Coast contingent suffered heavy losses. Many died during the retreat, when the contingent was bombarded by the navy as they moved back along the coast, to which they were pinned by inland Te Arawa forces.²²

The Tauranga hapu that had fought with Waikato were, in the meantime, challenged on their home territory. They were initially successful at the battle of Gate Pa on 29 April, but Tauranga fell with the defeat of the defenders at Te Ranga on 21 June 1864. Once again, only a handful of the eastern contingents were there to support them.²³

In the meantime, the war in Taranaki resumed in May 1863, when contrary to the terms of the truce, the Imperial troops reoccupied land at Tataraimaka. Later in 1863, legislation was passed enabling the Governor to confiscate the lands of tribes in rebellion. The first confiscations would be proclaimed in 1865.²⁴

The Governor's breach of the truce and his threats of confiscation were indicative of his resolve to continue the war and crush all Maori resistance to the paramountcy of the Queen. In Taranaki, the war reached new levels of desperation, and things were done by Maori that were out of character with the sort of chivalry with which they had been credited in the wars to that date.²⁵

The Pai Marire religion emerged during this time, with doctrines based mainly on the Old Testament. Although to Maori the name 'Pai Marire' indicated a search for peace, amongst Europeans the religion was viewed with horror. The adherents killed and decapitated a British army captain and preserved his head on a pole. Biblical precedent was relied on, David having done the same to the apparently invincible Goliath, but while that was seen to justify matters to the Pai Marire adherents, it led to outrage amongst Europeans. Pai Marire followers became known amongst Pakeha as 'Hauhau', after their form of chanting. Their beliefs and rituals, said to cause a hypnotic state, led to their being labelled fanatics.²⁶

In about 1865, the Pai Marire adherents dispatched emissaries to proselytise amongst the tribes that had been turned back by Te Arawa and gain their support. Missionaries from the Church Missionary Society had long observed the keen Maori interest in religious philosophy. This interest assisted the missionaries' entry into Maori villages, but they found to their concern that Maori entertained a variety of religious opinions and faiths. The Pai Marire emissaries were no different from the missionaries in proposing a new religion, and like the missionaries, they were received and given a hearing.

22. AJHR, 1864, E-3, pp 68–69; see also Cowan, vol 1, pp 417–419; doc 15, pp 14–17

23. For a description of the battles at Tauranga, see Belich, ch 10, esp pp 178, 189, 194; Cowan, vol 1, pp 421–440.

24. See *The Taranaki Report*, ch 5; see also Belich, p 119

25. Cowan, vol 2, pp 16–20 (cited in *The Taranaki Report*, pp 93–94)

26. For a full account of the Pai Marire religion, see Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity*, Auckland, Oxford University Press, 1975; also Belich, pp 204–205; Cowan, vol 2, ch 1; doc 15, p 24

Pai Marire emissaries, with a contingent of uncertain size but estimated to have been about 40, entered amongst Ngati Awa under the leadership of Patara Rakautari of Taranaki and Kereopa Te Rau of Ngati Rangiwewehi. Ngati Rangiwewehi was a Te Arawa hapu that had fought in Waikato on behalf of the Maori King. Kereopa was embittered over the slaying of his wife and daughter by soldiers and had subsequently joined Taranaki Maori in further fighting. At Whakatane, he and Patara demanded that Father Grange, a Catholic missionary, be handed over, but the local people refused. It appears, however, that they gained some converts to their religion. Following a usual Pai Marire pattern, they purported to impose an aukati over Whakatane Harbour against the entry of all Government personnel.²⁷

Te Arawa were hostile to the Pai Marire presence on their eastern boundaries because it was thought that the emissaries might goad the local tribes into seeking revenge for those killed in the recent battles.²⁸ The renowned Whakatohea chief Te Aporotanga was amongst those slain while held by Te Arawa as a prisoner of war, and that incident alone gave grounds for a reprisal.²⁹ Further, Kereopa was of Te Arawa, and it may have been thought that that in itself could expose Te Arawa to the Governor's retribution.

Kereopa's mission would lead in time to the slaying of the Reverend Carl Sylvius Völkner, a missionary from the Church Missionary Society, and that in turn would set in train a new direction in the war, to which we will refer later.

4.2 CONCLUSION

Up until the Pai Marire group came to the Bay of Plenty, the Ngati Awa involvement in the wars had been insubstantial. Ngati Awa were not the key players that other tribes whose lands were confiscated for war had been, so their confiscations must stand in quite a different category. The involvement of Ngati Awa had amounted to little more than that some of them had joined the eastern contingent while it was camped in force on their land and had, with the contingent, endeavoured to pass through Te Arawa territory.³⁰ There had been no general tribal policy to support that position, but still that was the position that some, an unknown number, had in fact taken.

Though the claimants submitted that persons of Ngati Awa in fact reached their destination, there are no reliable records available that prove that Ngati Awa had been at any of the relevant engagements. In any event, in our view such action as Ngati Awa

27. See AJHR, 1865, E-5, pp 3-4 (cited in doc 15, p 24); Cowan, vol 2, p 72; doc A18, p 63

28. See AJHR, 1865, E-4, pp 13-19 (cited in doc 15, p 24)

29. Cowan, vol 1, p 419; see also Stafford, p 378 (cited in doc A18, p 56)

30. Although Cowan does not list any Ngati Awa at the battle of Orakau, the claimant researchers themselves state that it was important to Ngati Awa to provide active support to the Kingitanga and that 'sections of Ngati Awa reacted by taking up arms to support the King Movement', though they provide no specific reference for this: doc A18, pp 51, 53. They further state that individuals of Maatatua 'went off on their own accord to Orakau': p 52.

took in attempting to render assistance was justified, because the King's lands were wrongly invaded.

Likewise, they were justified in seeking to support Tauranga Maori when the Governor then shifted his guns there. If the Governor was not stopped at Tauranga, who would have been the next to be invaded and have their lands taken?

CHAPTER 5

THE VÖLKNER AND FULLOON SLAYINGS

Accordingly, to this point there were no grounds for Crown action against Ngati Awa persons. The position changed after the missionary C S Völkner and the Government agent James Fulloon and three others were killed in Opotiki and Whakatoheia respectively.

5.1 THE KILLING OF VÖLKNER

As mentioned, Pai Marire prophets had been proselytising in the Ngati Awa area. In March 1865, a Ngati Awa contingent of about 150, including Wepiha Apanui, a young rangatira of senior Ngati Awa and Whanau-a-Apanui lineage, accompanied Kereopa and about 40 Pai Marire to Opotiki, where Kereopa was to address the Whakatoheia people. En route, they collected about 10 of Whakatoheia at Ohiwa Harbour.¹

On 2 March 1865, during the course of this gathering, the life of Völkner was taken. According to accounts that may not be reliable as to all particulars, Kereopa sentenced Völkner to death in his church. He was escorted outside by a party of about 30, taken to a tree, where he was hanged, and in one account his body was then shot. Afterwards, the body was decapitated and various people drank his blood from a church chalice. Taking the head inside the church, Kereopa gouged out the eyes. Naming one for the Parliament of England and the other for the Queen and English law, he then swallowed them.²

All accounts have treated the matter as a Whakatoheia affair. The fact, however, is that a Ngati Awa contingent was present under Wepiha. The essential points are as follows.

Völkner's murder appears to have been instigated by the Pai Marire emissary and apostle Kereopa.³ Kereopa then took shelter in the Opotiki district and, later, in Urewera. It was not until 1871 that he was captured, tried, and hanged.⁴

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1. Evidence of Wepiha Te Pono Apanui and Joseph Jahus, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington
 2. Document 15, pp 23–24; doc c9, pp 25–49
 3. There was confusion from the trial witness evidence as to who instigated the murder and who actually carried it out. The best account of this evidence is provided by Bryan Gilling, who notes that it was Wepiha Te Pono Apanui – himself a suspect – who squarely accused Kereopa: doc c9, pp 54–55. Steven Oliver suggests that it is unclear who instigated the killing: Oliver, 'Kereopa Te Rau', DNZB, vol 1, pp 503–504, 772.
 4. Oliver, pp 503–504

We have found no conclusive evidence that persons of the Ngati Awa contingent were directly involved in the killing. Although the evidence is that a number of persons were in the party that led Völkner to his death, only five were later apprehended and charged, and one of those was acquitted. It appears that all of these five, with the exception of one, were of Whakatohea. There are reports that after Völkner's death a number of persons 'went bush' beyond Opotiki, and from this it appears that others were either not identified or not found.⁵

Those who were arrested and convicted were Hakaraia of Ngati Ira, Whakatohea; Heremita Kahupaea of Upokorehe, Whakatohea; Mokomoko of Upokorehe, Whakatohea; and Penetito Hawea of Ngati Awa. Acquitted was Paora Taia of Whakatohea. The death sentence of Penetito, who was 19, was commuted to life imprisonment, and the others were hanged.⁶

Tiwai was an important leader of Whakatohea and gave character evidence at the trials.⁷ Though it would not have suited his position to have said so, he acknowledged that each of those on trial for the life of Völkner was of Whakatohea, although there are also frequent references to Penetito being from Ngati Awa.⁸ Much later, Mehaka Watene of Whakatohea said the same. In evidence to a judicial inquiry into the Whakatohea confiscations in 1920, he also gave those persons as being of Whakatohea, in some cases adding their particular hapu.⁹

At the time, the general opinion of Maori and Government officials was that Kereopa instigated the Völkner killing and that members of Whakatohea committed the deed.¹⁰ There is, however, some evidence that Wepiha Apanui was involved and had taken a prominent role, repeating Kereopa's commands to his own people. The evidence for this is mainly from the mouths of those charged.

There was no dispute that Wepiha was present. He gave crucial evidence for the Crown against those who were eventually hanged. The accused gave no evidence at all during the trial, but each spoke at his sentencing. It was then that Mokomoko, Heremita, and Hakaraia maintained that it was in fact Wepiha who, along with Kereopa, had given the commands for Völkner's death. There is also the hearsay evidence of a European, Dr Aggassiz, that Wepiha admitted an involvement to Captain Freemantle on the *Eclipse*.¹¹

5. 'Statement made by "Natana", Owner of the Schooner *Janet*', 7 March 1865, AJHR, 1865, E-5, no 3, encl 1, p 6 (cited in doc c9, p 43)

6. Document A18, pp 97-99

7. Character evidence of Tiwai, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington (cited in doc c9, pp 46, 52)

8. Document A18, pp 97-99; cf character evidence of Tiwai, a chief of Whakatohea, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington (doc c10(2))

9. Evidence of Mehaka Watene to the 1920 commission of inquiry into the Whakatohea confiscation, MA83 pt 1, pp 288-290, NA Wellington; Watene's petitions 630/1914, 235/1915, 336/1917, MA83, NA Wellington; AJHR, 1921-22, G-5, pp 24-27; Buddy Mikaere, 'Exploratory Report to the Waitangi Tribunal, Being an Historical Account of the Confiscation of Land in the Opotiki District', report commissioned by the Waitangi Tribunal, September 1991, pp 41-48

10. See doc c9, pp 54-55, 59

11. Statements of Mokomoko, Heremita, and Hakaria, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington (doc c10(2)); 'Memorandum of a Statement Made by Mr A Agassiz, of Opotiki, Respecting Kereopa's Proceedings, and the Murder of Mr James Fulloon, etc', AJHR, 1865, E-5, no 7, encl 2, pp 18-19 (this lurid hearsay account should be treated with caution)

This evidence is not compelling. The statements of the accused were given not during the trial but at the sentencings and they were not cross-examined. They may well have acted in retaliation, since their convictions had depended on Wepiha's evidence, and similarities in the respective statements suggest a common design. During the trial, Wiremu Paki of Whakatohea stated that Wepiha had ordered people to carry out Kereopa's commands, but he also said that he had not witnessed the killing and had left the area even before the meeting in the church.¹² Dr Aggassiz's statement, made after the trial, was at best third hand. He was not present when Wepiha spoke with Captain Freemantle, and in the captain's report of the journey to his superiors there is no mention of such an admission.¹³

Nor did Jahus implicate Wepiha, though Wepiha was known to him as the person in command of the Ngati Awa party. It should be noted that Jahus was married to a Ngati Awa woman, and his evidence was attacked by others, who disputed that he could have seen what he claimed.¹⁴ Further, had Wepiha in fact given orders, then his orders would have been to his own followers, and there were no suggestions that the large Ngati Awa contingent participated in the killing.

In addition, the evidence is that, after the event, those involved hid. Wepiha did not do so. On the contrary, he continued to remain in the open, keeping in contact with European sea captains, visiting European officials, and, through the runanga, engaging in correspondence with the civil commissioner.

We note a suggestion in one report that Wepiha was a convert to Pai Marire.¹⁵ We can find no affirmative evidence to that effect. It is obvious that he received the Pai Marire emissaries and accompanied them to Opotiki, but we can find no evidence that he accepted either the Pai Marire faith or its policies. On the contrary, as we have said, he continued to work as he had previously operated – through the runanga, which was associated with the civil commissioner. Pai Marire adherents in fact eschewed all contact with Government officials except to warn them off.

Whakatohea leaders were adamant that responsibility rested with Kereopa, the Pai Marire group, and some of their own people, whom Kereopa had inflamed. Some claimed to have taken their people away when matters started getting out of hand. They referred to their adherence to the Anglican or Catholic faith and to their horror at what had happened.¹⁶

Ngati Awa leaders did the same, writing on 6 March to Government officials to express their dismay. In doing so, they assumed or implied that the deed was the primary responsibility of Kereopa and the Whakatohea people.¹⁷

12. Evidence of Wiremu Te Paki, minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington (doc C10(2))

13. Letter of proceedings, 18 March 1865, *New Zealand Gazette*, 1865, no 13, pp 120–121

14. Document C9, pp 27 (fn 89), 53, 58

15. Mokomoko made the suggestion in his statement: see doc C9, pp 57–58. For his statement, see minutes of proceedings and trial of *R v Mokomoko and Others*, JC22-3B AG66/789, NA Wellington (doc C10(2))

16. 'Statement of Joseph Jeans (?) Jennings, Portuguese, Resident at Opotiki', AJHR, 1865, E-5, no 7, encl 1, pp 16–18 (cited in Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity*, Auckland, Oxford University Press, 1975, pp 34–35)

17. 'Translation of Letter from Assessor Hohaia Mata Te Hokia, of Whakatane', 6 March 1865, AJHR, 1865, E-5, no 4, encl 1, p 7; for an overview, see doc C9, pp 42–44

The killing of Völkner was selective. It was contended that Völkner had been relaying information to the Governor on the disposition of the local Maori military – information that would assist an invasion of the Opotiki district. Historical records suggest that these rumours were not without foundation. On the occasion of the last of his various trips to Auckland, Völkner had been cautioned by local Maori not to return, but it is not known whether the letter conveying this advice reached him before he left Auckland. His return, with the Reverend Thomas Grace, coincided with the Opotiki gathering, and he was immediately taken prisoner. Grace's life was spared, and second- or third-hand accounts of a general fanatical euphoria amongst all present appear to have been exaggerated.¹⁸

It was also rumoured that Völkner had fomented trouble between Maori Anglicans and Catholics and was responsible for the recall of the Catholic missionary to England. There was even a rumour that the Catholic missionary had been put to death in England.¹⁹

The killing of Völkner was expressed to be, in major part, an outcome of the war in Waikato, which was still ongoing in Taranaki. On 6 March, an unsigned written statement issued from 'The Committee of Ngati Awa, Whakatohea, Urewera and Taranaki' at 'Opotiki, Place of Canaan' to 'The Office of the Government, Auckland' advising that Völkner 'has been crucified according to the laws of the New Canaan in the same manner as it has been ordained by the Parliament of England, that the guilty man be crucified'. According to a translation of the document, which is all that survives, three 'sins' were then named: the first, 'the deception practised upon our Island by the Church'; the second, 'the sin of the Governor at Rangiriri – his cruelty – the women are dead'; and the third, 'Rangiaohia, the women were shot – that is a sacred law of the Governor's'. It was added, 'You crucify the Maories, and I also crucify the Pakehas'.²⁰

The letter, though purporting to come from an intertribal committee, has the hallmarks of other Pai Marire literature and is markedly different from those that issued from the Ngati Awa runanga. The reference to the killing of women and children may have been a matter close to Kereopa, his wife and daughter being amongst those killed at the last engagement referred to.²¹

5.2 THE KILLING OF FULLOON

When Völkner was killed, it ought to have been apparent to Maori that the Governor would seek retribution, as would be normal in Maori law, or the apprehension of the offenders, in terms of English law. From whichever perspective, it could not have been expected that the Governor would sit idly by. Moreover, as a matter of practice, the

18. See Clark, pp 31–38

19. Ibid, pp 33–35

20. Committee of Ngati Awa, Whakatohea, Urewera, and Taranaki to office of Government, Auckland, 6 March 1865, AJHR, 1865, E-5, no 5, encl 2, pp 9–10

21. Clark, pp 35–36

Governor had intervened in the past to arrest and put to trial Maori suspected of murdering Pakeha. He had not intervened, however, where Maori had killed Maori (it may not have been practical to have done so), and he had not acted in certain cases where, in other than the heat of battle, Pakeha had killed Maori.²² The news of these events is likely to have spread widely, and we think it probable that Ngati Awa would have known of them.

It further appears that certain of Te Arawa were keen to see some retribution against their former enemies – far keener than was reasonable for the purposes of maintaining law and order. There was a real prospect that Te Arawa would use the occasion as an excuse for an invasion.²³

In apparent response to this, the Ngati Awa runanga immediately expressed strong regret at, and disapproval of, the murder of Völkner. Then, after a series of runanga, a meeting with some 300 present resolved to place an aukati about their territory. The purpose, as apparent from associated correspondence, was to prevent the war from spreading to Ngati Awa and to keep Te Arawa out.²⁴ The manner in which this news was conveyed to the civil commissioner suggests that the aukati was not of major moment for Ngati Awa at the time. The letter mentioned it somewhat casually after a prior reference to a decision to complete ‘Mr Wallace’s Mill’. The letter was forwarded by Hohaia Mata Te Hokia in his capacity as native assessor.²⁵ The news was expressed in clipped local dialect in the letter of 17 March to the civil commissioner: ‘Kua kati Awa ki tona rohe ake’ (Ngati Awa is restricted within his own boundaries). Wepiha, Te Kepa, and Apanui (presumably, Wepiha’s father) sent the letter on behalf of the runanga. Typically of the aukati law, the declaration was passive.²⁶

In submissions, the claimants presented the aukati as an example of the application of Maori law and as an endeavour to keep peace in the territory.²⁷ In the light of Maori custom, the general opinion that the killing of Völkner was a Whakatohea affair, and

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22. Hobson, Shortland, and Fitzroy took the position that it was better not to get involved in intra-Maori affairs, and this attitude only really began to change with Grey’s runanga system: see Richard Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767–1867*, 2 vols, Wellington, Government Printer, 1986, vol 1, pt 1, pp 216–217, and Alan Ward, *A Show Of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand*, Canberra, Australian National University Press, 1974, chs 4, 5. However, there were exceptions, such an example from 1854 being noted by Ward (p 95). There were certainly instances where Pakeha killed Maori and were not prosecuted (see Hill, vol 1, pt 1, p 169), but again there were exceptions (see Ward, pp 95–96; and sec 3.6 of this report). By contrast, the governors acted fairly swiftly where Maori killed Pakeha within Pakeha settlements: see Hill, vol 1, pt 1, pp 214, 266, and Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Department of Internal Affairs, 1968, pp 249, 253, 286. Notable exceptions to this were the 1843 Wairau affray, where no Maori was prosecuted, and incidents within the Rohe Potae (King Country) between 1864 and 1883: see Ward, pp 74–75, 125–146, and for an account of the Wairau affray, see A D McIntosh, *Marlborough: A Provincial History*, Christchurch, Capper Press, 1977, pp 76–83.
 23. Clarke to Smith, 5 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 1, p 111 (typescript), AIM (cited in doc 15, pp 35–36; doc 15(a), p 43)
 24. ‘Translation of Letter from Assessor Hohaia Mata Te Hokia, of Whakatane’, 6 March 1865, AJHR, 1865, E-5, no 4, encl 1, p 7; for an overview, see doc c9, pp 42–44
 25. ‘Letter from Assessor Hohaia Mata Te Hokia, of Whakatane, Reporting Result of a Meeting of Ngatiawa’, 18 March 1865, AJHR, 1865, E-5, no 6, encl 6, p 14
 26. ‘Letter from Certain Ngatiawa Chiefs Relating to the Opotiki Murder’, 17 March 1865, AJHR, 1865, E-5, no 6, encl 8, pp 15–16 (cited in doc 15, p 25)
 27. Document A18, pp 6–7

our conclusion that, on the limited evidence and except for Penetito, Ngati Awa persons were probably not directly involved in inciting or participating in the murder, we agree that the aukati was likely for that purpose and not for the purpose of hindering the Government or harbouring fugitives.

It was stated, amongst other things, that Government and Te Arawa forces seeking to arrest the killers of Völkner should proceed by sea direct to Opotiki and not pass through Ngati Awa territory. There was a call that this law be respected by the Government and Te Arawa. Since a major point of entry to Ngati Awa was also via Ohiwa and Whakatane Harbours, they were also placed out of bounds.²⁸

In assessing the aukati, we add that there is nothing to suggest that the Ngati Awa runanga was an irresponsible body. While it appears to have maintained a sympathy for Maori law and authority throughout the district, as it was entitled to do, it was also clearly concerned with promoting the economic development of the Ngati Awa people by working with the civil commissioner. Moreover, the runanga did not in fact object to Government ships landing at Whakatane for the peaceful purpose of seeking information on the killers of Völkner. The HMS *Eclipse* landed with the Government agent James Te Mautaranui Fulloon. He endeavoured to raise a Ngati Awa force to travel to Opotiki to make arrests, but unsurprisingly, he learnt that Ngati Awa did not wish to be involved. Fulloon and others of the crew were not molested.²⁹

It may well be that Fulloon was aware of some Ngati Awa involvement in the Völkner killing. Fulloon was half-Maori with a distinguished Ngati Awa line, being of the same family as Wepiha Apanui, who was equally well known as Wepiha Te Mautaranui. Fulloon was a fluent Maori speaker and had been brought up locally, although he had been schooled at the Anglican church's Te Ngae Mission Station on the shores of Lake Rotorua. He had chosen to work with the Government and was an interpreter for the military. Fulloon may well have seen the need for Ngati Awa to cooperate more extensively with the Government if they were to be spared a Te Arawa invasion.³⁰

There were good grounds to fear this. In March 1865, soon after Völkner's death, certain leaders of Te Arawa advised officials that they were willing to lead a charge into Ngati Awa territory, which, they said, had been infected by Pai Marire fanaticism.³¹ This view was conveyed several times, and Ngati Awa appear to have been aware of it. In April 1865, the Governor issued a proclamation allowing settlers and 'friendly' Maori to take action against those said to be involved in the movement or holding 'fanatical doctrine'.³² As is noted below, there is no indication that the proclamation was acted upon, but it sowed the seeds for the subsequent Te Arawa invasion of Ngati Awa. H T Clarke, for example, wrote that:

28. 'Letter from Assessor Hohaia Mata Te Hokia, Reporting Result of a Meeting of Ngati Awa', AJHR, 1865, E-5, no 6, encl 6, p 14

29. Freemantle to Grey, 26 May 1865, BPP, vol 14, pp 426-427 (cited in doc 15, p 28)

30. W T Parham, 'James Francis Fulloon', DNZB, vol 1, pp 139-140, F18

31. 'He Tauira enei ki nga roto katoa o te Arawa ka Tukua i te 8 Mehe, 1865', 'Copy of a Letter Sent to the Arawa Living Inland, 8 March 1865', AJHR, 1865, E-5, no 6, encl 3, pp 12-13

32. Proclamation, *New Zealand Gazette*, 1865, no 14, p 129



Photo 3: James Fulloon.
 Photograph courtesy
 Alexander Turnbull Library
 (½-025260).

The Arawa now have an authority (I will not give an authority as to the legality of the proclamation) for pitching into their troublesome neighbours provided that they can satisfy themselves as to their holding 'fanatical doctrine'.³³

He may not have been referring to their whole territory, however. It is clear that not all followed Pai Marire policy, and amongst those who stood apart was the Ngati Awa runanga operating around Whakatane.³⁴

The trouble began when a second aukati was imposed, and later enforced against Fulloon, by Pai Marire adherents around Matata. The Pai Marire movement had a far more dogmatic approach to such matters and would eschew all contact with the Government except as might be necessary to make clear that the Government and its forces, and also orthodox missionaries, should stay out of Maori territory for all purposes.³⁵

33. Clarke to Smith, 12 May 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 107 (typescript), AIM (doc 15(a), p 40)

34. AJHR, 1865, E-5, no 6, encl 6, p 14

35. T H Smith, 'Memorandum of a Statement Made to Me by Te Puhi and Wi Maruki, on the 30th July, 1865', AJHR, 1866, A-1, pp 37–38 (cited in doc 15, pp 30–34)

Horomona was a Pai Marire emissary of Taranaki preaching doctrine in Ngati Awa territory. He secured this second aukati at Matata in July 1865. It was somewhat fantastic, running from Cape Runaway at the extreme east of the Bay of Plenty all the way to Taranaki, taking in Ngati Awa territory on the way.³⁶ No one tribe could impose an aukati along a line encompassing several distinct groups, and it ought to have been treated with disdain. It could not substitute for that which the Ngati Awa runanga at Whakatane had previously imposed, but it may have provided a further basis for Te Arawa to act, for Horomona could be said to hold fanatical doctrine.

Horomona's following appears to have mainly been in the Matata region. It included the prominent rangatira Te Hura Te Taiwhakaripi of Ngai Te Rangihouhiri and persons of Ngati Hikakino and Te Tawera. However, Te Rangitukehu of Te Pahipoto would have no part of it.³⁷

Shortly afterwards, on 19 July, the Arawa-owned schooner the *Mariner* (also known as the *Maruiwi*), broke the Pai Marire aukati by entering Whakatane Harbour. The local people allowed the boat to enter, and it had been there several days when a party of about 60 arrived from Matata under Horomona and Te Hura. The crew and passengers were taken prisoner and the boat and cargo destroyed. The prisoners passed to the local Maori of Ngati Pukeko, who later allowed them to escape.³⁸ No doubt the destruction of the cargo and boat added to the Arawa list of items to be avenged.

A few days later, on 22 July, the *Kate*, with Fulloon on board, entered the harbour. The *Kate* was owned by a local trader, Bennett White, who was also on board. The passengers and crew were accosted by a party led by Te Hura and the Pai Marire priests Horomona and Paraharaha. Fulloon was killed, along with three of the crew.³⁹

At the time, Fulloon had recently been commissioned as a captain in the militia and his object was to recruit a company of Ngati Awa to counter Pai Marire influence in the Bay of Plenty. Although he was only 25, he had wide experience in assisting the Government on matters relating to land purchases, Maori administration, and the progress of the war in many parts of the North Island. He had worked directly with the Governor and also with officials such as Donald McLean and appears to have been popular and regarded highly by them. His wife was Teni Rangihapainga of Ngati Maniapoto, with whom he had one daughter, Maraea.⁴⁰ For his work and his assistance to the Government during the war, he was known to Pai Marire as 'The Parliament of England'.⁴¹

The evidence as given at a later trial is that between 10 and 15 of those in the shore party boarded the *Kate* and confronted the passengers and crew about the breach of the aukati. Fulloon was reported to have been wearing his army uniform. It was

36. Evidence of Te Rirituku, Judge Arney's notes of proceedings and evidence of *R v Te Hura Te Tai and Others*, JC22-3B AG66/968, NA Wellington (doc 15(c)), pp 416–419, 471–477)

37. Ibid

38. Document 15, p 31

39. Ibid, p 31

40. Parham, pp 139–140, F18; W T Parham, *James Francis Fulloon: A Man of Two Cultures*, Whakatane and District Historical Society Monograph Series, no 14, 1985, p 30

41. *Daily Southern Cross*, 12 December 1865

known that Fulloon was concerned with locating Völkner's killers. He is said to have responded by slapping his buttocks, a deadly insult amongst Maori, to show his contempt of the Pai Marire movement. This did not provoke an immediate reaction. The boarding party returned to the shore to discuss matters with Te Hura and the remainder of the party. Amongst them were two Maori from the *Kate*, Matimati and Tira, whose lives were spared.

Onshore, Horomona and Te Hura said that Fulloon must die. Given that it had been declared that anyone who broke the aukati would be killed, it seems reasonable to assume that Fulloon, at least in part, was slain because he came to Whakatane.⁴² A party of 20 was selected for the purpose and met to perform Pai Marire rites and to raise the riki, a Pai Marire flag to indicate that death for a breach of the aukati was proposed. The riki was visible from the *Kate*. One view is that the ship was thus given the opportunity to leave; another is that no wind was blowing to fill the sails.⁴³

As the group of 20 was about to leave from the shore, Horomona gave the final command. He said that all Europeans on board should die except for Bennett White's half-Maori son. This was the lad who had joined the ship only that morning and could not have been there when the aukati was breached. There was an altercation when the *Kate* was boarded, and three of the crew were killed: Captain Pringle, seaman Ned, and first mate Robinson. White, his son, and Alexander Campbell, the Maori cook, were allowed to go free, although White was spared only after a gun belonging to one of the boarding party failed to fire.⁴⁴ The group were rowed to the shore. Later, some of the accused claimed that they joined the group in order to release 'our Pakeha' (White) and that they were responsible for the release of the three.⁴⁵

Then, Fulloon was killed and the *Kate* burned. As with Völkner, the killing of Fulloon was not done in a moment of frenzied, religious fervour but was selective. And despite the alleged order from Horomona, White and his son, along with the cook, were allowed to go free.

Wepiha Apanui heard the news and arrived at the scene a short time after the event (precisely how long after is not known). He arranged for the burial of the remains of his close relative Fulloon, to avoid their desecration and to ensure that he would lie with his ancestors.⁴⁶ Wepiha was informed, he said later in evidence, that Ngai Te Rangihouhiri was responsible.⁴⁷

T H Smith wrote that Wepiha was in fact keen for Te Arawa to attack Te Hura. Fulloon was both his relative and his friend, and Wepiha appears to have been eager that justice should be done.⁴⁸ Later, he gave evidence for the Crown against those accused of the murders of both Völkner and Fulloon.

42. Report of evidence of Tira and Wetini Tainui at depositions, *New Zealand Herald*, 8 February 1866, p 5; 13 February 1866, p 5

43. Document 11, pp 31–40

44. Report of evidence of Wetini Tainui and Hoani Poururu at depositions, *Daily Southern Cross*, 13 February 1866, p 5

45. *R v Kirimangu and Others*, pp 23–24 (cited in doc 11, pp 36–37)

46. Report of evidence of Wepiha Apanui at trials, *New Zealand Herald*, 16 March 1866, p 5

47. Evidence of Wepiha Apanui, Judge Arney's notes of proceedings and evidence of *R v Kirimangu and Others*, JC22-3B AG66/968, pp 35–37, NA Wellington (doc 15(c), pp 404–406)

48. Smith to Mair, 30 July 1865, MS3330, T H Smith papers, ATL (cited in doc 11, p 44)

5.3 CONCLUSIONS

The foregoing accounts appear to us to illustrate aspects of Pai Marire policy. There was no opposition to Europeans as such, but in the Pai Marire view, the Government, the military, and those involved with the Government were to be kept out of areas that the movement claimed to have taken over. For this purpose, aukati were created around supposed Pai Marire territories. Rightly or wrongly, Völkner was seen as a Government spy, and Fulloon was seen as attempting to associate Ngati Awa with the Government and as likely to embroil Ngati Awa in action against Whakatohea. In both cases, Völkner and Fulloon were liable to die in terms of Maori law. In both cases also, the lives of ‘innocent’ Europeans were spared, despite the reports of a murderous and fanatical euphoria.

While there was no war in the district at the time, the Pai Marire prophets had all been involved in the war in Taranaki, which was still ongoing. There was a climate of war in Whakatane and Opotiki in the sense that the Pai Marire emissaries would not have been there but for the earlier war that the Governor had started. One of those later convicted of the murder of Fulloon said at his sentencing that he saw the killing not as murder but as an act of war.⁴⁹

The Pai Marire reputation for fanaticism appears to stem mainly from accounts of the gruesome treatment of the bodies of victims, though the only instances known to us for which there is reliable evidence relate to the decapitation of Captain Lloyd in Taranaki and the mutilation of Völkner in Opotiki. In each case, recourse was had to the Bible for precedent. Other factors relied on concern inflamed speeches (but the evidence for that relates only to Kereopa); the raising of a hand in certain battles in Taranaki, with the alleged belief that this gave protection from bullets; and mystical chanting around poles, especially the masts captured from European vessels. Similar beliefs are not unknown amongst other religions.⁵⁰

In the Ngati Awa case, the implied assertion that the district had gone over to the Pai Marire religion was an exaggerated presumption. The 60 or so persons who were involved when decisions were made as to the fate of those on the *Mariner* or the *Kate* do not compare with the 300 or so who attended at the runanga meeting where the ‘official’ aukati was declared. The runanga operated in close association with the civil commissioner, to whom resolutions were regularly conveyed. The runanga aukati was for the simpler purpose of saying that Ngati Awa wished to keep out of the trouble associated with Völkner’s killing and did not seek to become involved.

The situation, however, was not unlike that when the East Coast contingent camped on Ngati Awa land en route to the west and some of Ngati Awa were brought into the subsequent affray. Once more, individuals of Ngati Awa were involved at the instigation of outside forces. In some respects, their lands were at the crossroads

49. See statement of Kirimangu, *Daily Southern Cross*, 5 April 1866 (cited in doc 11, p 39)

50. See James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1983, vol 2, pp 1–20, and Michael Adas, *Prophets of Rebellion: Millenarian Protest Movements Against the European Colonial Order*, Chapel Hill, University of North Carolina Press, 1979. Adas’s study includes Mataram of Java, the Pai Marire religion in New Zealand, the Mundas in central India, the Maji Maji in Tanzania, and the Saya San rebellion in Burma.

between the east and the west. By the time of the murders, the Governor had either conquered or gained the support of tribes right to the Ngati Awa borders. They were the next domino in line, and the Pai Marire emissaries provided the excuse for the Governor to enter. This may have been the situation that the young Fulloon had sought to avoid for his own people of Ngati Awa, in seeking to have them involved in effecting arrests at Opotiki.

CHAPTER 6

THE NGATI AWA RAUPATU

6.1 INTRODUCTION

This chapter concludes that the Ngati Awa land was confiscated on the ground of a rebellion that is alleged to have occurred after steps were taken to arrest the murderers of Fulloon and others of the *Kate*. That the confiscation related to an assumed rebellion at the time is clear from official documents, which this chapter will describe. Conversely, it is plain that the land was not confiscated on account of the murders themselves or on account of any prior fighting, such as the fighting that occurred when certain tribes attempted to reach the war in Waikato or Tauranga. In a proclamation of peace, all such prior acts were expressly forgiven.

It is therefore necessary that this chapter should dwell on the crucial events relating to the arrests of the alleged murderers. The point is that the only acts that might amount to rebellion for the purposes of the confiscation of the land are those associated with the resistance given to the troops sent in to effect the arrests.

The question of whether there was in fact a rebellion is therefore considered first. The essential documents on the land confiscation are then reviewed, though our conclusions on the land confiscation itself are deferred to later. This is in order to maintain an overview of the confiscation, the land returns and purchases, the murder trials, and the impact of the confiscation as a whole. Those matters are also reviewed in subsequent chapters.

6.2 THE ISSUE OF REBELLION

The question is whether it was reasonable that the affected hapu of Ngati Awa resisted arrests to the extent that they did. Our finding is that such resistance as was given was reasonable, and was therefore not rebellion. To all appearances, those effecting the arrests were an invading army and constituted such a threat to the lives and property of the home people that they were justified in taking such action as was necessary to defend themselves and their property. This is to say not that the Crown had much other choice if the arrests were to be made but that the confiscation of the Ngati Awa land could not be justified on the basis of rebellion.

We will shortly set out the facts. In doing so, it is necessary to provide some detail, but that should not obscure the essential elements, which are as follows:

- (a) To effect the arrests, the Crown relied upon the military forces of certain hapu of Te Arawa.
- (b) As a result of prior warfare, there was enmity between Te Arawa and Ngati Awa hapu. This had resulted in deaths, for which the Ngati Awa hapu could reliably expect utu to be sought in the customary Maori manner.
- (c) The consequential eagerness of Te Arawa hapu to conquer Ngati Awa territory was well known to the Crown. As earlier discussed, the Crown also knew that the Ngati Awa hapu were equally eager to keep Te Arawa from entering their lands.
- (d) Since the Crown had also fought alongside Te Arawa in the earlier engagements, Ngati Awa could not expect neutrality from Crown officers. (Their lack of neutrality in fact is also evident in private communications between those officers.)
- (e) The Arawa forces that entered the Ngati Awa land under the command of officers of the Crown had in fact the appearance of an invading force.
- (f) While for a time it was proposed that the land be taken for any resistance to arrests, the land was in fact taken on the basis of rebellion.

Those are the essential elements as we see them. We now refer to the record in more detail.

6.3 THE RECORD OF EVENTS

On 9 March 1865, shortly after the death of Völkner but prior to the murder of Fulloon, the civil commissioner at Maketu, Thomas Henry Smith, reported to the Native Minister that the news of Völkner's murder had 'produced a deep sensation' amongst Te Arawa, and that they 'would readily assist' against the Hauhau movement.¹ The proposition had clear reference not only to Whakatohea but also to the Ngati Awa on their borders. Te Arawa had reacted with anger to the Ngati Awa aukati, with the Maketu chiefs writing that 'The sword will not spare Ngatiawa, not at all'.²

On 29 April 1865, as earlier discussed, the Governor issued a proclamation that allowed settlers and 'friendly' Maori to take action against neighbours said to be involved in the Hauhau movement and holding 'fanatical doctrine'.³ We have found no enactment that gave legal authority for this far-reaching proposal and none providing subsequent validation, but it appears not to have been acted on. As earlier noted, there is no record of any intervention in terms of that proclamation prior to the murder of Fulloon on 22 July 1865.

Smith first heard of the murders of Fulloon and the crew on 29 July, a week after the event. He was informed by two Te Arawa members of the *Mariner*, who had on that day managed to leave Whakatane. Before obtaining the sanction of his superiors, he

1. T H Smith to Native Minister, 9 March 1865, AJHR, 1865, E-5, no 4, p 7

2. 'He Tauira enei ki nga roto katoa o te Arawa ka Tukua i te 8 Mehe, 1865', 'Copy of a Letter Sent to the Arawa Living Inland, 8 March 1865', AJHR, 1865, E-5, no 6, encl 3, pp 12-13

3. Proclamation, 29 April 1865, *New Zealand Gazette*, 1865, no 14, p 129

decided to deploy an Arawa force at once to capture the accused. He wrote to William Gilbert Mair in Rotorua and advised him to abandon his proposed expedition to Te Whaiti, where it was believed the Pai Marire force was camped. This group had just beaten a Te Arawa force at Te Tapiri on the western edge of the Urewera Ranges.⁴ Smith instead advised Mair to proceed, 'the sooner the better', to Te Awa o te Atua (adjacent to Matata), and he told Mair that the Arawa at Maketu were there for an 'immediate attack' on Ngati Awa.

Smith then dispatched some Te Arawa to Tauranga to obtain arms. On 2 August 1865, he prepared a warrant to arrest Te Hura and 34 other named persons alleged to have taken part in the murder of Fulloon and three crew of the *Kate*.⁵ The warrant was issued to the police constable at Maketu, Retireti Tapsell, 'and all peace officers in the said colony'.⁶

The basis upon which Smith drew up the warrant is unclear, but it may well have been the information supplied by Te Puhi and Wi Maruki, the two Arawa sailors from the *Mariner*. Alternatively, it may have been simply a list of all the leading men of the three hapu said to have been principally involved: Ngai Te Rangihouhiri, Ngati Hikakino, and Patutatahi.⁷

Civil Commissioner Clarke told Smith from Tauranga on 5 August that 'Our Arawa friends have arrived safely' and would be supplied with arms. He also urged Smith 'Pray don't hold the Arawas back now . . . That some fearful scenes will be enacted we must expect'.⁸ It is clear that some sections of Te Arawa were itching for a fight. Mair, who was now raising an inland Te Arawa force, commented that his difficulty with Ngati Rangitihī (part of the Arawa force beaten at Te Tapiri) 'has been to keep them back'.⁹

Again, it is necessary to note the enmity between hapu of the Ngati Awa and Te Arawa descent groups. They had only recently fought several significant battles at Rotoiti, Maketu, and Kaokaoroa, as earlier discussed. Although Te Arawa had prevailed in these fights, they had none the less suffered losses, and the events had further soured relations. Te Arawa also blamed Te Hura for the recent capture and impounding of their trading vessel, the *Mariner*, for breaching the Pai Marire aukati at Whakatane.¹⁰ Further, Te Arawa had been defeated themselves in the aforementioned fight with Pai Marire forces – which included some Ngati Awa – at Te

4. Document 15, pp 29–30; see also D M Stafford, *Te Arawa: A History of the Arawa People*, Auckland, Reed, 1991, pp 394–396; J C Andersen and G C Peterson, *The Mair Family*, Wellington, Reed, 1956, pp 130–133; James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1983, vol 2, pp 84–95

5. Smith to Mair, 30 July 1865, MS3330, T H Smith papers, ATL; Andersen and Peterson, pp 133–134 (cited in doc 15, p 30)

6. Document A18, p 82

7. T H Smith, 'Memorandum of a Statement Made to Me by Te Puhi and Wi Maruki, on the 30th July 1865', AJHR, 1866, A-1, p 37 (cited in doc 15, p 33)

8. Clarke to Smith, 5 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (doc 15(a), p 43)

9. Mair to Smith, 9 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (doc 15(a), p 55). However, Mair does continue that he wishes he could say the same about the rest.

10. Document A18, p 81; see also Stafford, p 400

Tapiri in June and July 1865. They were also undoubtedly interested in taking their neighbours' lands.

Government officials were well aware of the Arawa disposition, the Crown having fought with or having assisted Te Arawa in the engagements referred to. In May 1864, after the battle at Kaokaoroa, Smith had written that 'The Arawa, as may be supposed, are very whakahihi [arrogant] just now – and are going to swallow all the other tribes to the East in a twinkling – & of course *take their land*' (emphasis in original).¹¹ As noted, Smith reported to the Native Minister on 9 March 1865 that Te Arawa would readily assist the Government against the killers of Völkner, and he reiterated this in a further letter on 1 April.¹² And, as mentioned earlier, the Maketu chiefs rejected Ngati Awa's aukati, citing the 'hara nui ano mua' – a reference to the battles of 1864.¹³

In any event, on 5 August, with arms secured from Tauranga, a party of 70 Te Arawa proceeded from Maketu to Te Awa o te Atua. At this point, there appears to have been no particular authority from the Crown for them to have done so. There was at best a tacit approval. Clarke wrote again to Smith on 10 August saying:

I am glad to hear the Arawas have started. I hope the Arawas will take the matter up warmly when once they begin – I have not the least doubt but that they will be supported by Government. I feel particularly sanguinary against the Ngatiawa just now and . . . it would have a wonderful effect if a dozen or so were hung up in a very 'tall tree'.

I shall be anxious to hear how our friends get on – If the Ngatiawa get a *thundering* good thrashing it will have a good effect upon these fellows. [Emphasis in original.]¹⁴

One of the few Government officials in the Bay of Plenty, therefore, did not expect or even desire the orderly execution of warrants issued under civil authority. Rather, he expected 'fearful scenes' and hoped that Ngati Awa were to receive a sound 'thrashing'. Indeed, on 18 August Clarke went on to write to Smith that 'I hope the Arawa will not trifle. I want to hear that they the Ngatiawa get a thorough good hammering.'¹⁵

In addition, on 9 August Mair reported that he was about to leave his inland base and head for Te Awa o te Atua. A schedule prepared by Mair the following year indicates that he had with him some 83 men of Ngati Rangitihi, Ngati Manawa, Ngati Hinehua, and Tuhourangi.¹⁶ The principal leader of these men was Arama Karaka of Ngati Rangitihi, who had been at Te Tapiri.¹⁷ Mair's attitude to Ngati Awa and the execution of the warrant at this point is revealed in a letter to Smith:

11. Smith to McLean, 28 May 1864, ms McLean micro 0535 091, ATL (doc 15(b), p 257); see also doc 15, p 22

12. Smith to Native Minister, 1 April 1865, AJHR, 1865, E-5, no 6, p 10

13. 'He Taurira enei ki nga roto katoa o te Arawa ka Tukua i te 8 Mehe, 1865', 'Copy of a Letter Sent to the Arawa Living Inland, 8 March 1865', AJHR, 1865, E-5, no 6, encl 3, pp 12–13

14. Clarke to Smith, 10 August 1865, ms283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 112 (typescript), AIM (cited in doc 15, p 34; doc 15(a), p 44)

15. Smith to Clarke, 18 August 1865, ms283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 1, p 113 (typescript), AIM (doc 15(a), p 46)

16. Mair to Smith, 9 August 1865, ms283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 38 (typescript), AIM (cited in doc 15, p 36; doc 15(a) p 55); 'Return Showing Number of Arawa Employed at Te Awa-o-te-Atua', LE1/1866/100 WARC (doc 15(b) p 306)

17. Document 15, p 36; Stafford, pp 394, 429

Arama is keen for Matapihi & Te Hura, but I am of opinion that it will be necessary to clear out Te Teko as it is not advisable to leave an enemy in your rear . . .

Te Taniti says that the Teko people were all at the Tapahore affair, and though we do not know whether they were concerned in the Whakatane murders I question whether they deserve the benefit of the doubt! In any case they are Ngatiawa, however I will not advise, nor – if I can help it – permit anything unwarrantable. The natives are a good deal perplexed about the ‘wanati’ [warrant] it does not exactly square with their ideas. I expect there is but one way of serving them, ie wrapped round a bullet, and entre nous it will be the best way, for a bullet in Te Hura’s stomach will be confirmation stronger that he is wanted, than would be a slip of paper in his fist.¹⁸

The leader of the Government force charged with executing the warrant was therefore determined to work on the basis that anyone of Ngati Awa was to be considered guilty, notwithstanding that there may have been no evidence of this, and he was prepared to use excessive force to make his arrests. Similarly, Rotorua resident magistrate W K Nesbitt later remarked, with respect, it seems, to Ngati Awa generally, that ‘the entire of those people ought to be *crushed*. I believe they were more or less implicat[ed] in both the murders’ (emphasis in original).¹⁹

The Arawa force from Maketu arrived in the district of Te Awa o te Atua before Mair and his inland contingent. They shot and seriously wounded two Ngati Awa persons before he arrived. It was reported on 14 August that some Te Arawa had followed six women, four elderly men, and a boy who were on a corn-planting expedition at Rangitapu near the mouth of the Tarawera River. The group was surprised and captured, but two of the men, Hoera and Te Kahawai, were shot trying to escape. It seems that Hoera may have been the ‘Te Hora’ named in Smith’s warrant (not to be confused with Te Hura). In any event, the press announced that he was ‘the actual murderer of Captain Pringle’ (and commented further that the Arawa had erred in releasing the women, they being ‘the wives of the murderers’).²⁰ The two other men were taken prisoner and detained for a month without charge by Major Kirby, the commander of the Colville Redoubt in Maketu. Apparently, they were quite open about Te Hura’s people having murdered Fulloon, and they were released on 7 September.²¹ The *New Zealand Herald* commented that their release had ‘given rise to much unpleasantness amongst the friendlies, and I am very much afraid that there

18. Mair to Smith, 9 August 1865, ms283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, p 38 (typescript), AIM (doc 15(a), p 55). The comment about ‘the Tapahore affair’ is presumably a reference to the rumour reported by Smith on 11 July that a party of Ngati Awa were gathering for the purpose of attacking Arama Karaka’s Tapahoro Pa at Lake Tarawera: Smith to his brother, 11 July 1865, ms283, T H Smith papers, ‘Letters to Members of his Family, 1856–1877’, folders 4–5 (typescript), AIM (doc 15(a), p 12).

19. Nesbitt to Smith, 22 August 1865, ms283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 77).

20. *New Zealand Herald*, 21, 31 August 1865 (doc 15(b), pp 236–238, 242–245). The correspondent referred to the pa as ‘Rangatapu’, but we have used the spelling supplied by the claimants: doc A18, p 84. See also doc 15, p 35; doc 11(a), pp 46–47.

21. Nesbitt to Smith, 3 September 1865, ms283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, pp 71–72 (typescript), AIM (cited in doc 15, p 35; doc 15(a), pp 78–79); *New Zealand Herald*, 31 August 1865 (doc 15(b), pp 242–245).

will be no more “live” prisoners brought by them again to Maketu, to receive the hospitality of Major Kirby, commanding’.²²

We cannot see how the Rangitapu incident could have demonstrated to Ngati Awa a fair and even treatment from Te Arawa in the execution of warrants, even if it was then made known to Ngati Awa that the execution of the warrant was the Arawa troops’ purpose. Nor was the second contingent under Mair, moving across land to the same destination, likely to have given a better impression. As they passed Parawai Pa en route, they were, perhaps unsurprisingly, shot at. Mair informed Smith that he had in turn spent a day firing at the occupants and had taken ‘possession of everything outside the pa in the shape of food &c’.²³ Shortly after Parawai, Mair passed another pa, Te Umuhika, where he was followed by the occupants and again fired upon. However, his Tuhourangi contingent drove the Ngati Awa back, killing one of their number.²⁴ Here, Mair’s force ‘remained a few days, the men killing cattle and pigs, and the women under a covering party foraging the Maori plantations’.²⁵

Mair arrived at Te Awa o te Atua on 18 August and was followed by his inland Arawa the next day. With women and children, the Arawa present now numbered over 500.²⁶

At this point, we refer to one incident whereby it might be said that those named in the warrant should have been given up, but in the circumstances we discount it. On 18 August, the Arawa chief Henare Te Pukuatua visited Te Hura at Te Matapihi to explain to him the purpose of the Arawa expedition. Te Hura is reputed to have said that it was Hoera who had killed Fulloon but that ‘Kua hara katoa matou’, meaning they were all implicated. Henare asked him to separate out the murderers but Te Hura declined.²⁷

We do not have reliable details of what was said, but we think it unlikely that Te Hura or anyone else could have been expected to surrender to their enemy given the circumstances described or, in light of those same circumstances, that they could have been assured of a fair trial or fair treatment. At the very least, Te Hura would have had to have been assured of safe conduct by an independent person, that the Arawa would then leave, and that the balance of the people would not be further harmed or have their property taken.

Thereafter, according to the *New Zealand Herald* of 30 August, another fight took place at Matata on 25 August between the Arawa and the ‘rebels’, with the former suffering no losses but four men and three children of the latter being killed. Also on

22. 7 September 1865 report from correspondent at Camp Te Papa, *New Zealand Herald*, 12 September 1865, (doc 11(a)(10)); see also *New Zealand Herald*, 29 September 1865 (doc 15(b), pp 249, 251)

23. Mair to Smith, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 57). Mair had told Smith several days earlier that his men had ‘had the pleasure of eating a good many tons of their grub’: Mair to Smith, 19 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 56); see also Cowan, *The New Zealand Wars*, vol 2, p 97, and Stafford, p 402 (cited in doc 11, pp 45–47).

24. This man named Hoete, or Hoeti, was apparently a son-in-law of Te Hura: *New Zealand Herald*, 30 August 1865 (doc 15(b), p 240); Mair to Smith, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 57); see also Stafford, p 403.

25. *New Zealand Herald*, 30 August 1865 (doc 15(b), p 240)

26. Mair to Smith, 19, 23 August 1865, MS283, T H Smith papers, ‘Official Letters to T H Smith, 1861–1868’, folders 9–11, vol 2, pp 39–40 (typescript), AIM (cited in doc 15, p 37; doc 15(a), pp 56–57)

27. Ibid; doc A18, pp 83–85

30 August, the *Herald* reported that there were then 800 Arawa assembled. In keeping with a theme of looting common to the campaign, it was said that they had captured 54 horses 'and a quantity of other plunder'. It was added, ominously, that they were 'determined on revenge'.²⁸ Rotorua Resident Magistrate Nesbitt told Smith that he had '*not discouraged* them from obtaining food in the enemy's territories as my private opinion is that they have every right to do so' (emphasis in original).²⁹

Te Hura and his people then fortified themselves in strong positions on three islands in the swamps: Te Matapihi, Oheu, and Omarupotiki. However, they were garrisoned by no more than 50 or 60 men in total (with perhaps another 40 at Parawai up the Tarawera River).³⁰ Nesbitt understood that concealed in these three pa were '*all the Murderers*' (emphasis in original). However, the pa were surrounded by water, and because it was seen as impossible to take them without artillery or canoes, the Arawa had to content themselves with firing shots from several hundred yards. Nesbitt also ran out of Government stores and the Arawa became disgruntled and threatened to return to their own cultivations.³¹

September seems largely to have been marked by inactivity. The Arawa force remained stuck in Te Awa o te Atua subsisting on a biscuit and flour diet, while for Mair, the sight of three flags flying at Parawai showed at least that the occupants were 'still alive'.³² A bigger problem for Mair seems to have been the preoccupation of his Arawa force with stealing local stock. He wrote to Smith on 4 October that 'the horses are too great a temptation – I have tried in vain to stop horse looting but it is out of the question, nearly every man has got one, two, or more'.³³ He also wrote that the Ngati Raukawa amongst his force had brought in a lot of cattle and refused to accede to his demand that they be made available 'for the use of the Ope [troops]'. He told Smith he understood that the Raukawa planned to sell them in Maketu.³⁴

Meanwhile, on 5 September 1865, the Governor issued a proclamation of peace to end the wars throughout the country.³⁵ This pardoned all those who had previously taken up arms against the Queen since 1863 (with the exception of those guilty of certain murders, including those of Völkner and Fulloon) and declared that no more land would be confiscated 'on account of the present war'. Although we consider, for reasons earlier given, that Ngati Awa had not previously taken up arms against the Queen, this proclamation clarifies that Ngati Awa land was confiscated only for alleged acts of rebellion after 5 September 1865.

28. *New Zealand Herald* 30 August 1865 (doc 11(a)(10)); see also doc 15(b), pp 239–241

29. Nesbitt to Smith, 22 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 77)

30. Private letter of 23 August 1865, reproduced in *New Zealand Herald*, 21 September 1865 (doc 11(a)(10))

31. Nesbitt to Smith, 22 August 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 71 (typescript), AIM (cited in doc 15, p 38; doc 15(a), p 77)

32. Mair to Smith, 30 September 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2 (typescript), AIM (doc 15(a), p 58)

33. Mair to Smith, 4 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 40; doc 15(a), p 60); doc A18, p 85

34. Mair to Smith, 4 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 40; doc 15(a), p 61)

35. Proclamation of peace, 5 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

The proclamation advised further on that which was already a fact, that an expedition would be sent to arrest the killers of Völkner and Fulloon and that, if they were not given up to justice:

the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.³⁶

Also on 5 September 1865, a further proclamation established martial law over the Opotiki and Whakatane districts to enable the killers of Völkner and Fulloon to be tried by courts-martial. The proclamation noted that ‘Military force has been employed to capture the Murderers’ and explained that ‘it is expedient that summary authority should be exercised by the Commander of the Military Forces’.³⁷ Here, two things may be noted. Though the proclamation suggests that the Arawa troops were no longer bound by civilian law and could act as a military force, in fact there is no evidence that the troops were recommissioned. Their authority in the area was still to effect arrests in terms of civil law warrants. They had not been recruited as an army for the purposes of war. Secondly, as shall be seen, Te Arawa had in fact been operating as a military force for two weeks previously.

On 9 October 1865, the Outlying Districts Police Act was enacted to give effect to the proclamation of 5 September 1865. This provided for the confiscation of land to meet the cost of policing the district if local Maori failed to bring the fugitives to justice. However, the Government did not utilise this provision. Later, the land was in fact taken under the New Zealand Settlements Act 1863, where the grounds for taking depended solely upon a finding that Maori were in rebellion.

In the meantime, it should be noted that a force of over 500 men under Major Willoughby Brassey had commenced landing in Opotiki on 8 September to arrest Völkner’s murderers. This was essentially a sister campaign to that of Te Arawa in Ngati Awa territory. The force was made up of volunteer irregular units comprised of military settlers and some Whanganui Maori under Major Kemp. No attempt had been made to communicate the purpose of the expedition to Whakatohea before landing, and the force was aggressive from the outset, bombarding the village and shooting at Maori indiscriminately, with no attempt made to ascertain who was involved in the missionary’s murder and who was not. At this time, Whakatohea could not have been aware of the recent publication of the proclamation of peace, with its indication of intent to use force against Völkner’s killers.³⁸

Once the landing had been safely completed, and Whakatohea had been driven from Opotiki, the soldiers proceeded to loot their crops and stock. It was not until nine days after the commencement of this invasion that an attempt was made to contact the tribe and request the surrender of those guilty of the murder.

36. Proclamation of peace, 5 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

37. Proclamation proclaiming martial law throughout the districts of Opotiki and Whakatane, 5 September 1865, *New Zealand Gazette*, 1865, no 35, pp 267–268

38. This and the following paragraphs on the campaign in Opotiki come from document c9, pp 64–86, 179–180. See also doc A18, p 88.

The major engagements of the campaign took place from early October, with the soldiers surrounding pa where a group of Whakatohea had taken refuge. In all, it is thought that 50 members of the tribe were killed in the campaign. At no stage did Whakatohea mount offensive operations against the soldiers. Rather, they continued to fall back on positions further inland and offered weak resistance, to the extent that there were virtually no casualties suffered by Brassey's force. The immediate results of the invasion were that Whakatohea villages, crops, vessels, and livestock were destroyed or looted; many lives were lost; and four individuals thought responsible for Völkner's death were taken prisoner.

Back at Te Awa o te Atua, the end of September brought an increase in military activity. On the night of 29 September, a group of Taupo Maori in Mair's force went down the beach to the east and had a fight with some Ngati Awa at Matata, apparently killing two of them.³⁹ On the same night, Mair reported that the Ngati Pikiao contingent had taken Otamauru Pa, capturing three men, one of whom 'was so reduced by illness that they left him alone'. After that, the Ngati Pikiao continued on to Whakatane 'but found no one there, the people being up the river & at Opotiki'.⁴⁰ The party apparently returned loaded down with looted maize, kumara, and other produce taken from the deserted villages and cultivations.⁴¹ Mair was thankful to one Maori named Mikaera for bringing in the Otamauru prisoners, 'who would have escaped I believe but for him' because the others 'were all after horses'.⁴²

Only one of the two prisoners taken at Otamauru, Tawhaki, was named in Smith's warrant, and his capture seems to have to been coincidental rather than planned.⁴³ By this time, however, Te Arawa had acquired canoes and were advancing on the rear of Omarupotiki Pa.⁴⁴ Te Matata Pa, also under pressure from Te Arawa, was evacuated by its occupants. On the night of 10 October, Te Hura and his people left all their remaining positions at Te Awa o te Atua and retreated inland to Te Teko. There, they fortified two positions in a large pa on the banks of the Rangitaiki River called Te Kupenga and a small pa on the opposite bank called Te Paharakeke. They were joined there shortly afterwards by the occupants of Parawai Pa.⁴⁵

The Arawa force learnt of Te Hura's whereabouts on 15 October, and a group of Tuhourangi set off immediately. At the village of Pokopoko, they captured two men named in Smith's warrant, Eria Te Hokono and Petera Moki.⁴⁶ Mair followed the day

39. Mair to Smith, 30 September 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 58); see also Stafford, p 405

40. Mair to Smith, 2 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 59)

41. Stafford, p 405

42. Mair to Smith, 2 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2 (typescript), AIM (doc 15(a), p 59)

43. Document A18, p 89; doc 15, p 41; doc 15(a), p 59

44. Mair to Smith, 4 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2, p 44 (typescript), AIM (cited in doc 15, p 41; doc 15(a), p 60)

45. Document 15, p 41; doc 15(b), p 271; Nesbitt to Smith, 16 October 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861-1868', folders 9-11, vol 2, p 73 (typescript), AIM (cited in doc 15, p 41)

46. See Mair's 22 October 1865 report of events at Te Kupenga to Civil Commissioner Clarke at Tauranga, reproduced in Andersen and Petersen, *The Mair Family*, p 137 (cited in doc 15, p 41). Note that Andersen and Petersen's account has 'Eria Te Hakoro', rather than 'Hakono'.

after, with the entire force arriving at Te Kupenga on 17 October. The pa appeared impregnable, and five lines of sap were begun.⁴⁷ Mair quickly gained the surrender of the six defenders of Te Paharakeke, which protected Te Kupenga's rear, and on the morning of 18 October a truce was arranged, during which a small Tuhoe group and a larger party of 33 men and eight women of Ngati Tuwharetoa 'came over'. According to Mair, these people claimed that 'they had been misled by Te Hura and the Prophet, but were ready to take the oath of allegiance and fight on the side of the Arawa. On these conditions I permitted them to retain their arms.'⁴⁸ We presume, though it was not stated, that these people were local Tuwharetoa, of the Tawera hapu, and not Ngati Tuwharetoa from Taupo.⁴⁹

Te Hura, too, sought to make an agreement with Mair as the saps got nearer and his water supply was cut off, but the major would accept nothing less than unconditional surrender. The fighting continued on 19 October, and at 5 am the following day Te Hura once again attempted to negotiate a surrender, but Mair would not talk to him. An hour later, 86 men and their families filed out of Te Kupenga and laid down their arms. Thirty named in Smith's warrant were separated out and handed to the custody of Constable Tapsell, while the rest were given over to the Arawa force.⁵⁰ During the siege, the defenders had lost several men.⁵¹ Mair wrote in triumph that 'The Ngatiawa are fairly crushed and will never give any more trouble'.⁵² Smith, too, was jubilant, writing that 'The Arawa enterprise has thus proved a complete success' and, a few days later, that 'Natives are continually coming in to give themselves up & take the oath of allegiance'.⁵³

For Te Arawa, the matter was not quite at rest. Mair wrote on 22 October that 'The Teko was partially destroyed, some of the houses being spared at the request of Tikitu to afford shelter to the unfortunate women and children of whom there are a great number'.⁵⁴ The Arawa force then moved down the Whakatane River valley, according to Stafford, 'doing what damage it could; destroying cultivations, taking food and

47. Cowan, vol 2, p 100; Stafford, p 406; Andersen and Petersen, p 138

48. Andersen and Petersen, p 138; Stafford, p 407; doc 15, pp 41–42; see also doc A18, p 89

49. Document A17, p 87, states that those who gave themselves up at Te Kupenga were Te Tawera and Te Umutahi – hapu of Ngati Awa and Tuwharetoa:

it is well to focus upon the fact that the hapu described as being Tuwharetoa, namely Te Tawera and Te Umutahi, became separated from Ngati Awa at the battle of Te Kupenga in 1865. Tuwharetoa were asked to leave the scene of the battle and give themselves up. They did so and immediately swore allegiance to the British Queen. Ever since that time there has been a split in the hapu of Ngati Awa. Some Tuwharetoa related hapu and families want to exploit the split and remain outside the alliance of Ngati Awa and Ngati Pukeko. . . . The hapu are Ngati Awa by genealogy and by long association.

Mair, however, seems to have labelled this group 'Ngatituwharetoa (Taupo)': Anderson and Peterson, p 138 (cited in doc 15, p 42).

50. Andersen and Petersen, p 139; Stafford, p 407; Cowan, vol 2, p 103; doc 15, p 42

51. Cowan, vol 2, p 103

52. Anderson and Peterson, p 139; doc 15, p 42

53. Smith to his wife, 26 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856–1877', folders 4–5, p 149 (typescript), AIM (cited in doc 15, p 42; doc 15(a), p 15); Smith to his brother, 31 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856–1877', folders 4–5 (typescript), AIM (doc 15(a), p 16)

54. Anderson and Peterson, p 139; Stafford, p 408

capturing a good number of horses'.⁵⁵ Smith wrote on 29 October that Te Arawa were still 'scattered about the country, foraging'.⁵⁶ Some of the looted cattle were later sold, a matter that caused Resident Magistrate Nesbitt no apparent concern.⁵⁷ The prisoners were picked up by steamer from Te Awa o te Atua on 31 October, to Smith's relief, because he had been concerned that the Arawa were 'somewhat jealous' and might be unwilling to hand them over.⁵⁸

6.4 CONCLUSIONS ON REBELLION

The essential aspect of the Ngati Awa confiscations is that, unlike the events in Taranaki, Waikato, and Tauranga, there was no real war in the district, and no rebellion, though it was on the basis of rebellion that the Ngati Awa lands were confiscated.

As to the first point, that there was no real war in the district, we refer to the fact that there was resistance to arrests, and that certain of the Ngati Awa hapu took defensive positions in fortified pa, but there is no record of more than that. There is no record of a counterattack and no record that the Arawa forces suffered loss of life.

Moreover, there was not a war from the Crown's point of view. The forces entered Ngati Awa territory for the civil law purpose of effecting arrests. This is clear from the warrant. It was also affirmed by subsequent proclamations declaring that the war was at an end and that there would be no more than an expedition to arrest those to be charged with murder.

The second point is that there was no rebellion. At most, there was an endeavour to resist arrests, but that is quite a separate matter from organised resistance to overthrow a government. But, given that recourse to arms to resist arrest could be considered rebellion in certain circumstances, we now review the circumstances in this case.

As indicated at the commencement of this chapter, we consider that it was reasonable that the affected hapu of Ngati Awa resisted arrests to the extent that they did. Here, it is relevant to consider the events from the point of view of those named in the warrant. Kirimangu, before being sentenced at the subsequent trials, said 'then the armed party of the Arawas came. Even then, no warrant came for us, but they made war against us.'⁵⁹

This point of view seems reasonable, given the deployment of the Arawa troops to effect arrests and the past history of fighting. To all appearances, the war begun in

55. Stafford, p 409, who in fact says 'up the valley' not 'down'; see also Andersen and Petersen, p 140; Cowan, vol 2, p 104; doc 15, p 42

56. Smith to his brother, 29 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856–1877', folders 4–5 (typescript), AIM (doc 15(a), p 16)

57. Nesbitt to Smith, 9 November 1865, MS283, T H Smith papers, 'Official Letters to T H Smith, 1861–1868', folders 9–11, vol 2, p 74 (typescript), AIM (cited in doc 15, p 42)

58. Smith to his brother, 29, 31 October 1865, MS283, T H Smith papers, 'Letters to Members of his Family, 1856–1877', folders 4–5 (typescript), AIM (doc 15(a), p 16)

59. Statement of Mikaere Kirimangu, Judge Arney's notes of proceedings and evidence of *R v Kirimangu and Others*, JC22-3B AG66/968, NA Wellington (doc C10(2))

Taranaki and continued at Rotoiti, Maketu, Kaokaoroa, and Te Tapiri was carrying on, no matter how much the Governor might declare that the war was at an end. Even the Governor's declaration was made after the Arawa troops had entered Ngati Awa territory.

Moreover, the 'invading force' came as a war party. Some were fresh from the fighting at Te Tapiri, and their initial action was not to declare their purpose but to return the fire from those in defensive positions at Parawai and Te Umuhika Pa and to take possession of crops and stock in the area. There was also the incident at Rangitapu and the convergence of 800 Arawa at Te Awa o te Atua, with the subsequent looting and theft of horses, before the purpose of the expedition was made known. Even then, the message was conveyed by those to whom the hapu could not realistically surrender.

In all the circumstances, those purporting to have no purpose other than that of effecting arrests according to the civil law constituted a de facto threat to the lives and property of the Ngati Awa people. That threat was real to the extent that Ngati Awa hapu involved were justified in taking such action as was necessary to defend themselves and their property. While the position may very well be that the Crown had no other choice but to deploy Te Arawa troops if the arrests were to be made and that the Arawa force had no option but to engage in some foraging for its own sustenance, it cannot alter the fact that Ngati Awa were justified in perceiving a real threat to their lives and property.

Opinions expressed by Clarke, Smith, Mair, and Nesbitt reinforce the accuracy of the Ngati Awa perception that they could not readily surrender to the contingent. Subsequent conduct of the Arawa forces in continuing their raids after the arrests had been made is further and more compelling evidence to the same effect, especially since the raids extended well beyond the areas where those arrested resided. They extended into the territory of those who clearly had no part in the murders and who in fact had a record of working with the Governor and his officials.

Finally, those who were involved in the murder of Fulloon and were eventually attacked by the arresting expedition belonged mainly to two hapu. It could not be said that the others were involved in any rebellion. It could especially not be said of those in the distant area from Whakatane to Ohiwa Harbour. None the less, their lands were also confiscated. It therefore becomes obvious that, for the Governor, the existence of any rebellion was secondary to the confiscation of land.

6.5 THE CONFISCATION

On 17 January 1866, the Governor confiscated most of the land of all the Ngati Awa hapu. With the surrender of Te Hura and others at Te Kupenga, all resistance was at an end, but the land was confiscated none the less. The date, said Dr Hirini Mead, 'should be etched into the memory of every Ngati Awa person'.⁶⁰

60. Document A24(a), p 16

The legislative authority for the confiscations was canvassed at some length in the Tribunal's *Taranaki Report: Kaupapa Tuatahi*.⁶¹ We adopt the overview given there. We see no need to repeat it at any length but provide a summary of the features that are salient to this case.

As already noted, the Governor purported to take the land under the provisions of the New Zealand Settlements Act 1863. Section 2 of that Act authorised the Governor to take land where he was 'satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty's authority'. However, that is to be read with the peace proclamation of 5 September 1865, which pardoned all prior acts of rebellion not already punished and advised that, in respect thereof, no more land would be taken. In the Ngati Awa case, as already noted, any acts of rebellion would need to relate to the period after then or, more particularly, to any acts that constituted rebellion during the process of effecting the arrests.

In the proclamation taking the Ngati Awa land, the particular acts of rebellion relied upon were not specified. The proclamation merely recited the terms of the Act – that the Governor was satisfied that there had been rebellion in the area.⁶²

The Act gave as its purpose the placement of a sufficient number of settlers on the land in order to maintain peace. To us, this means that the only land to be taken was that which was necessary to keep the peace by placing military settlers thereon.

Further, as was explained in the *Taranaki Report*, to achieve that purpose the Act set down a four-stage process. First, the Governor was to declare the district in which the land of those in rebellion was to be taken. This was not a taking but a notice of that intent and of the district in which lands were liable to be affected. Secondly, sites eligible for settlement were to be prescribed and set apart within those districts, with town and farm allotments laid out. Thirdly, the land so proposed for occupation or settlement was to be taken or reserved. Fourthly, those who had been loyal but whose land was taken nevertheless were to be compensated according to decisions to be made by a compensation court. Compensation was not to be given to those who had taken up arms against the Crown; those who had assisted, comforted, or counselled those in arms; or those who had declined to deliver up arms or submit to trial when required so to do.

It has first to be noted that, in the eastern Bay of Plenty, the Governor did not take those steps. A confiscation district was simply proclaimed, and in the same step the whole of the land in that district was taken, whether suitable for military settlement or not, and without plans for military settlements being prescribed. It is now clear that the greater part of the land was either unsuitable for settlement, being hill country or swampland, or was more than could have been settled by military personnel at the time. Large areas have not been settled to this day. A significant portion was given 20 years later for the purposes of a university endowment.

None the less, the confiscation proclamation announced that the land had been taken 'for the purposes of settlement'.

61. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 118–121

62. Order in Council, 18 January 1866, *New Zealand Gazette*, 1866, no 3, p 17

Indeed, the proclamation was poorly conceived in other respects as well. There appears to have been no inquiry made as to the suitability of the land for the purposes of the Act. The area proclaimed simply encompassed a huge district predominantly prescribed by straight lines on a map, with vast areas of rugged bush and swamps. The confiscation line even bisected the mountain of Putauaki. Moreover, the land boundaries as described made no sense. They depended on the confluence of certain rivers that did not in fact join.

Because of this error, the boundaries were redefined on 1 September 1866. This proclamation also went further, slightly extending the boundaries. The final boundaries were:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecombe) Putanaki [sic], thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ohiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara River, and thence following the coast line to the point of commencement at Waitahanui.⁶³

There was also no inquiry made into the approximate location of the ‘offending’ tribes. Land Te Arawa had interests in was included, even though Te Arawa had fought with the Crown. The lands of several Ngati Awa hapu were also included, though they had clearly not participated. That is particularly significant in this case, and later we will refer to it again.

Because the confiscated area included lands associated with hapu aligned to the major descent groups of Ngati Awa, Whakatohea, and Tuhoe, and because the descent groups had no settled or agreed political boundaries, it is not possible to accurately determine how much Ngati Awa land was affected. In broad terms, however, we assess the amount of Ngati Awa land confiscated as approximately 245,000 acres. Adding to this the Whakatohea and Tuhoe lands taken in the same proclamation, the total was some 448,000 acres, or just over 181,000 hectares.⁶⁴

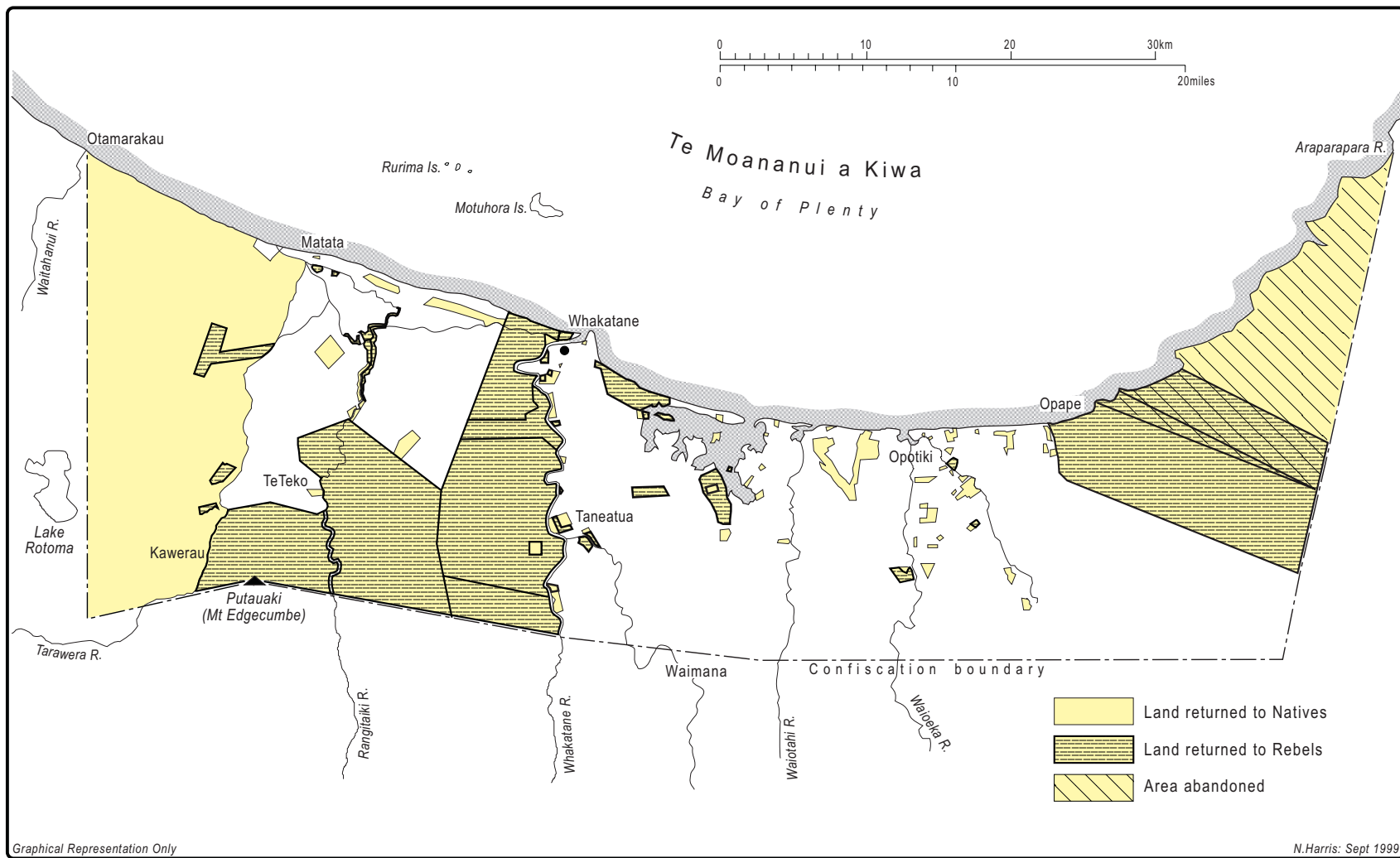
6.6 THE POLITICS OF CONFISCATION

The principles and politics of confiscation and the parliamentary debate that surrounded the passing of the New Zealand Settlements Act 1863 were canvassed at length in the *Taranaki Report*.⁶⁵ Again, we see no need to repeat the discussion in that report or to depart from the findings there made, but some comments are given in summary. On its face, the New Zealand Settlements Act was for the maintenance of law, order, and peace. It even avoided mention of the word ‘confiscation’ and focused instead on the provision of military settlements in troubled areas in order to enforce

63. Order in Council, 11 September 1866, *New Zealand Gazette*, 1866, no 51, p 347

64. See AJHR, 1928, G-7, p 21

65. *The Taranaki Report*, pp 108–118



Map 5: The eastern Bay of Plenty confiscation

the peace. In reality, however, the parliamentary debate suggests that Ministers saw the main purpose as the acceleration and financing of colonisation.⁶⁶

The Colonial Office took a different position on the Bill when it was forwarded to England for approval. The Secretary of State for the Colonies noted several objections, including that the Act allowed for unlimited confiscation; that decisions could be made in secret and with no right of appeal; that those who had never been in rebellion could be dispossessed of their land; that, although the provision for punishment was ‘flexible and unlimited’, the provision for compensation was ‘rigidly confined’; and that the powers would be ‘a standing qualification to the Treaty of Waitangi’. With a few proposed amendments, however, the secretary agreed to the necessity of confiscation, being persuaded of the exigencies in accompanying communications from New Zealand. He none the less cautioned that the Governor should take land only when he was satisfied that it was ‘just and moderate’.⁶⁷

6.7 THE MAIN POINTS

Set out below are the main points on the ‘rebellion’ and confiscation as we see them.

- In terms of the proclamation, the land was taken for rebellion. Conversely, the land was not confiscated for the murder of Fulloon. Murder is not rebellion but a public offence. Fulloon was killed not by Ngati Awa but by particular persons, and that is how it was seen at the time. The persons concerned were punished under the ordinary criminal law. There was no mention of murder in the confiscation proclamation.

This needs emphasis. In 1868, the Premier, E W Stafford, informed the General Assembly of his view that the confiscation was justified on account of the murders of Fulloon and Völkner.⁶⁸ The opinion that the land was taken for that reason then appears in several histories, and the same was assumed in some submissions before us.⁶⁹ However, that was not the case and in terms of the New Zealand Settlements Act 1863 it could not have been. The most that can be said is that the murder gave rise to other events that led to the confiscation.

Similarly, the land was not taken for resisting arrests or for harbouring fugitives from justice. Again, these were ordinary offences at criminal law, and the offenders could have been charged. It is only in respect of war or rebellion that a general class of persons might be punished on the basis of some corporate responsibility. It had in fact been contemplated that land might be taken for

66. Ibid, p 130

67. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, no 2, pp 20–22

68. NZPD, 1868, vol 2, p 521 (cited in the report of the native land claims commission, AJHR, 1921–22, G-5, p 27)

69. For example, one petition considered by the 1928 royal commission to inquire into confiscations of native lands and other grievances (the ‘Sim commission’) was that of Pouawha Meihana and 23 others praying ‘that the lands confiscated from them at Whakatane owing to the murder of James Fulloon be returned to them’: see petition 169/22, AJHR, 1928, G-7, p 3. For claimant perceptions, see document A42, p 3, and Judith Binney, *Redemption Songs*, Auckland, Auckland University Press, 1995, p 154.

resisting arrests and the Outlying Districts Police Act 1865 had been passed for that purpose, but in the end, that legislation was not used.

- The land could not have been taken for any alleged acts of rebellion prior to 5 September 1865. The proclamation of peace of that date pardoned all prior acts of rebellion not already punished. It did not excuse the murder of Fulloon, but as we have said, murder is not rebellion.

Even were that not the case, the only possible acts of rebellion before then related to the attempt to cross Te Arawa land to join the war to the west and, possibly, the imposition of the Pai Marire aukati. The aukati of the Ngati Awa runanga was to keep the peace. As to the attempt to cross the land of Te Arawa, only some of Ngati Awa at the western extremity were involved and the immediate action was only against Te Arawa, who were not acting for the Crown at that time. As for the Pai Marire aukati, it might best be described as hostile to the Government, being intended to keep out a Government that for all practical purposes had still to enter, but not directed to the overthrow of the Government itself.

- In terms of the authorising legislation, the New Zealand Settlements Act 1863, the land was confiscated for the purpose of installing military settlers in order to keep the peace. In reality, only a comparatively small part of the land taken was used for that purpose.

This also needs emphasis. There were a number of statements made in the General Assembly at the time suggesting that the Government's goals were to punish the Maori and to acquire land, but those purposes are not apparent from the Act.

Indeed, were punishment the purpose, there were a number of options to punish the particular persons involved in the acts complained of. These included charges of harbouring fugitives and of treason under the Treason Act 1351, which was then in force. The possibility that defendants might plead that they were not under a duty of allegiance to the Queen had been taken care of by the Native Rights Act 1865. This clarified that Maori could be charged, the Act deeming them to be natural-born subjects of the Crown.

- We have left for last the fourth point, though it is a major concern in this case. In reviewing the history, it has been apparent to us that, if any hapu were involved in the acts complained of, they were certain hapu at the western edge. These appear to have been caught up in the thrust of the East Coast tribes to reach the Waikato and Tauranga wars. They were most implicated in the Pai Marire aukati and the murder of Fulloon. They were directly affected by the attempts to effect arrests, and the arrests were effected in their area.

By way of contrast, the hapu around Whakatane, and from there to Ohiwa, had a record of cooperation with the Governor and his officials, limited only by the fact that official activity was restrained in this part of the Bay of Plenty. The runanga there operated in liason with civil commissioners. The leaders there protested the murder of Fulloon, and Fulloon himself was a close relative of the leading rangatira, Wepiha. Wepiha in turn welcomed the Governor's move to

arrest Te Hura. It was Wepiha who recovered Fulloon's body that it might be buried with his ancestors and, as we shall see, it was Wepiha who gave evidence against each of the accused.

The wrong of the Ngati Awa confiscation is particularly highlighted by the fact that the lands of these hapu were confiscated as well. It is highlighted even further by the fact that military settlers were placed not on the lands of Te Hura and others most involved in the acts complained of but at Whakatane, on the lands of the most innocent. Further, the hapu most involved were to be relocated on the lands of the Whakatane people.

The impact of the confiscation is considered in subsequent chapters. For the moment, we review the outcome for those charged with murder, and the claims made to us in respect of the trials.

CHAPTER 7

THE TRIALS

7.1 THE FACTS

In March and early April 1866, 36 prisoners were charged in the Supreme Court in Auckland with various offences relating to the killings of Völkner and Fulloon. The main charges had already been the subject of courts-martial in Opotiki from 6 to 27 November 1865 on the basis that the arrests had been effected during the proclamation of martial law.

The courts-martial comprised Major George, who presided, and seven other commissioned officers (one of whom was designated judge advocate). Appointed to represent the defendants was none other than Smith, the civil commissioner responsible for ensuring their arrest and obtaining evidence against them. The court interpreter was Major Mair, who had conducted the campaign at the head of the Arawa troops. The trials found 28 men guilty, and all were sentenced to death.

The Attorney-General of the time, James Prendergast, brought into question the legality of these trials. He considered that martial law was not recognised by the law, except to the extent provided under the Mutiny Act 1865, which applied only to 'Officers in the Army, Soldiers and persons employed in Military affairs'. He advised that a general proclamation of martial law was contrary to an express prohibition in the English Act known as the Petition of Right 1627. He added that the trial of ordinary subjects by court-martial was inconsistent with stipulations of the Great Charter (Magna Carta), as affirmed by the Act of Parliament 1297, that 'no man ought to be adjudged to death but by the lawes established'. Both these statutes applied in New Zealand in 1865.

Having determined that the courts-martial were legal nullities, Prendergast saw that the defendants could not raise the legal principle against 'double jeopardy', which states that no one may be tried for the same offence before two court jurisdictions. In his view, the trials under martial law were a simple nullity and would not be recognised in the Supreme Court. As a consequence, the defendants were put on trial for their lives before two jurisdictions but were unable to invoke the 'double jeopardy' defence.

Prendergast also saw a number of deficiencies in the evidence presented at the courts-martial. He pointed out that 'no evidence has yet been obtained proving that any individual person was seen to strike any particular fatal blow, or to fire any

particular shot causing death' and that it had not been 'very clearly proved that the men alleged to have been murdered were dead and were buried'.¹

The Government nullified the proceedings and ordered that the defendants be subjected to a further trial. This involved a depositions hearing before a resident magistrate and thereafter a criminal trial in the Supreme Court.

In the Supreme Court, five were charged with the murder of Völkner. One, Paora Taia, was acquitted. The remainder were sentenced to death, but with a recommendation to the Governor for clemency in respect of Penitito, who was 19 years old. Three – Hakaraia, Mekomoko, and Heremita Kahupaea – were hanged, and the penalty for Penitito was commuted to one year's penal servitude.²

Sixteen were charged with the murders of Fulloon and seaman Ned (and also with piracy).³ All were found guilty of murder and sentenced to death. The judge recommended clemency in all but one case. In the final result, one – Kirimangu, the apparent instigator and leader of the party that reboarded the *Kate* – was hanged, seven were to serve life imprisonment, five were given 14 years' penal servitude, and three received penal servitude for four years.⁴

Ten who remained on the shore were charged as accessories before the fact. Whether one of them was in fact present was unclear, and he was acquitted on this charge but convicted of receiving stolen goods, as referred to below. The remaining nine were sentenced to death, but with recommendations for clemency in all but one case (which concerned the prophet Horomona, who was hanged). The sentences were commuted to life imprisonment in the case of Te Hura and three others, and to seven years' penal servitude in respect of four.

Six were charged with receiving goods stolen from the *Kate*, all were found guilty, and all were sentenced to three years' hard labour.

Accordingly, five in all were hanged, three for Völkner and two for Fulloon (in 1872, after his later capture, Kereopa Te Rau was also executed for Völkner's murder). One was acquitted. Eleven received life imprisonment and 19 were imprisoned for terms of between one and 14 years.⁵

It was reported that imprisonment was seriously affecting the 30 left serving terms, three dying within the first year and one in the second. Then, in late 1867 and early 1868, pardons were issued to the five serving three years (the sixth had died), the three serving four years, four of the nine serving terms of seven or 14 years, and one of the 11 imprisoned for life. The remaining 13, including 10 sentenced to life, served out their terms (that being, in the case of those serving life sentences, until the Governor released them at his discretion, after not less than 14 years).⁶

1. Prendergast to Stafford, 23 December 1865, JC22-3A AG65/1992, NA Wellington (doc C10(2)); for an overview, see doc C9, pp 49–61; doc 15, pp 44–53

2. Document A18, pp 93–94, 98–99

3. Once the accused had been found guilty of the murder of Fulloon, it was decided that the trial for the murder of seaman Ned would proceed but that the indictments for the murders of Captain Pringle and first mate Robinson would be withdrawn: see *Daily Southern Cross*, 17 March 1866, p 4; 6 April 1866, p 5.

4. Wetini Tainui described Kirimangu as the instigator: report of evidence of Wetini Tainui, *New Zealand Herald*, 16 March 1866, p 5. He was the only eyewitness to the murders on deck not accused of any crime.

5. For an account of the charges and trials and a list of the men accused, see document A18, pp 92–99.

6. *Daily Southern Cross*, 5 April 1866, p 5; 6 April 1866, p 5; doc A18, pp 98–99

7.2 CONCLUSIONS

The record of the trials consists of the judge's notes and accounts in two newspapers, all three of which are consistent.⁷ Using that record and a report by the judge, the claimants contended that the trials were unfair. It was argued that the majority found guilty were not in fact involved, that the penalties were excessive, and that political motives intervened. It was alleged that this was evident in the judge's report to the Governor, which stressed the importance of demonstrating British justice to Maori.⁸

On our reading of the evidence, we are unconvinced that the majority found guilty were not in fact involved. At most, something might be said for those who claimed that they intervened to save 'our pakeha', Bennett White, whose life was eventually spared, despite the orders said to have been given by Horomona.

However, for reasons of public policy, we decline to review formally the evidence and the strength of the Crown's case at the trials and confine our observations to some general matters. While the public has the licence to review murder trials, it would compromise the integrity of the legal system for an official body, not specifically charged with that function, to do the same.

There is not sufficient evidence that the sentences were manifestly excessive according to the standards of the day. Nor is there sufficient on which to say that the trials were show trials. Newspapers record the considerable public interest in the trials, with expressions of outrage and the need to deal harshly with 'Hauhau fanatics', demands for expeditious hangings, and suggestions that the trials were superfluous in view of the war. However, the judge's report to the Governor does not indicate that show trials had taken place. That which the judge hoped to impress on Maori minds was in fact no more than that British justice was tempered with mercy. He wrote to recommend that the Governor commute the mandatory death penalty in some cases. Although he did not say so, the judge may have had in mind that the Maori law of *utu* was more harsh.

The claimants argued that the trials were inadequate because the defendants were not separately represented, the defence counsel did not raise cultural defences open to the accused, and the judge and jury were insufficiently familiar with Maori law to assess evidence on the *aukati* and Maori intentions. Amongst other things, it was claimed that a comment made by the judge during sentencing that the *aukati* was 'unlawful and highly criminal' showed that he was unaware of the cultural and factual circumstances. It was pointed out that the Government was fully aware of the Maori law on *aukati*, and far from treating it as criminal, the Government had specifically supported Te Arawa in placing an *aukati* against the East Coast contingent.⁹

No doubt a better cultural awareness, especially by counsel, would have assisted matters, but it does not follow that the trial was unfair, and we are unconvinced that the cultural defences would have made a difference. The fundamental question was

7. Judge Arney's notes of proceedings and evidence of *R v Kirimangu and Others* and *R v Te Hura Te Tai and Others*, JC22-3B AG66/968, NA Wellington (doc 15(c)); *Daily Southern Cross*, 13 March–6 April 1866; *New Zealand Herald*, 13 March–6 April 1866

8. Arney to Grey, 10 April 1866, JC22-3A AG66/968, NA Wellington (doc c10(2))

9. Document c18, pp 38–41

whether, irrespective of Maori law, the accused knew that their acts were contrary to the ‘Governor’s law’ and would invite the Governor’s retribution. For the reasons below, we think it likely that they knew.

It was further claimed that the accused should have been tried by a jury of their peers.¹⁰ Technically, that is right in terms of British law, but it assumes that an accused’s peers, the ordinary representatives of an accused’s community, generally subscribe to the law to be enforced, in principle, even if they are unaware of the legal detail. That was not the case here. It was unrealistic to have expected a jury from amongst the people of Matata or Whakatane.

The more compelling arguments in terms of our jurisdiction were that the arrests and trials were misconceived on two grounds. The first is that English law had no practical application in the district at the time and should not have been retrospectively enforced.¹¹ The second is that the killings were acts of war. For example, Mikaere Kirimangu said before his sentencing that ‘you pakehas think it murder; we think it only an act of war’.¹² The claimants therefore contended that the punishments were excessively severe.¹³

Even applying Maori law, the accused are not spared. The argument is that Völkner compromised the security of local hapu and Fulloon breached the aukati and that, in this time of war, both ought to have appreciated the likely consequences. Looking at the case of Fulloon, we consider that the Pai Marire aukati, which was the aukati enforced, had no validity at Maori law, as we have discussed.

Further, it was inconsistent with the aukati of the Ngati Awa runanga, which was more benign and more clearly for the traditional purpose of keeping the peace. There, the restriction was on those entering with hostile intent, and Fulloon had earlier been admitted when seeking information on Völkner’s killers. This aukati had been proposed at Whakatane with the involvement of the local people and before a much larger crowd than that at Matata and had been communicated to Te Arawa and the Government immediately after it had been made.

The Pai Marire aukati was made only at Matata and was simply unreal, covering an area from Cape Runaway to Taranaki. It was proposed by Horomona, who was from outside the district. It may well be that the Matata people could impose a separate aukati of their own, but not in respect of Whakatane Harbour without the approval of the Whakatane people. This was not forthcoming. The record is that the Whakatane hapu were not persuaded by Pai Marire policy – they had admitted Fulloon before and had released those captured on the *Mariner*, for example. Further, Fulloon was a close relative of the local people and of Wepiha Apanui in particular.

It was said at the trial that, in proposing the second aukati, Horomona purported to be merely confirming the aukati of the runanga.¹⁴ In fact, he was changing it and presuming to take control.

10. Document A18, p 97

11. Ibid, pp 41–42; doc 11, pp 1–29

12. *Daily Southern Cross*, 5 April 1866 (cited in doc 11, p 39)

13. Document A18, p 97

14. Report of defence submission at trial, *New Zealand Herald*, 16 March 1866; report of judge’s summing-up, *New Zealand Herald*, 5 April 1866

We are also not convinced that English law was seen as irrelevant. The question of whether the offenders knew that the killing was against the 'Governor's law' and was likely to result in the Governor's 'retribution' must be answered in the affirmative. Earlier in this report, it was considered that Maori law was the only law that in practice applied in this territory at the relevant time (see sec 3.5). English law had still to gain acceptance in this remote place, there were few Europeans in the area, the missionary influence had not been large, and Maori remained convinced that their own law should apply. Nevertheless, it appears to us that certain basic missionary principles had spread even to remote places, and in varying degrees Maori law had undergone some changes to suit. Throughout the country, there had been major changes with regard to infanticide, cannibalism, death by sorcery, and summary killings for offences.¹⁵

Moreover, as we have said, we think that the news would have spread, even to remote places, that the Governor would not tolerate the cold-blooded murder of Europeans. This had been known from the beginning of government in New Zealand, even if, on occasion, as in the killings at Wairau in the South Island, it was not practical to effect arrests (see also sec 5.2).¹⁶ The Pai Marire adherents in particular must have known this. The Governor was seeking to arrest those who had committed alleged atrocities in Taranaki even before Völkner's death.¹⁷

The question, then, is whether, as a matter of politics, the Governor should have brought into account that this was an act of war. While we accept that an atmosphere of war prevailed and that the killings would not have taken place but for the war that the Governor began in Taranaki, the fact remains that the killings were not perpetrated in the heat of battle.

Accordingly, we consider that the Governor's action in effecting arrests ought to have been expected. It makes no difference that the Governor was wrong in starting the war and had often failed to charge Europeans who had killed Maori in other than the heat of battle. While it appears that the Governor had a selective and unbalanced approach to the enforcement of the law, and no matter how wrong or unfair he may have been on other occasions, the wrong then could not make right the murders in the Bay of Plenty.

The same principle applies to the fact that, immediately prior to the arrests in this case, Ngati Awa men and women, sometimes defenceless, were attacked by Te Arawa

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15. The status of English law among Maori at a distance from colonial law officers was discussed in an 1842 letter from Acting Governor Shortland to the Colonial Secretary, Lord Stanley, in which Shortland referred to an opinion by the New Zealand Attorney-General, W Swainson, that it was necessary to gain 'the intelligent consent of the natives' and then only from those 'who had acknowledged the Queen's authority' before they were governed by English law: Shortland to Stanley, 31 December 1842, BPP, vol 2, pp 456–457. For Swainson's opinion, see BPP, vol 2, pp 470–471. The issue and Swainson's opinion were discussed at the Executive Council: BPP, vol 2, pp 457–461. In a dispatch dated 21 June 1843, Lord Stanley strongly disagreed with Swainson's opinion, but allowed that in certain circumstances, which he discussed, Maori should be permitted to live among themselves according to their natural laws or usages: see BPP, vol 2, p 475.
 16. We might note in this case, however, that Governor FitzRoy found that the Europeans who died had been in the wrong: A D McIntosh, *Marlborough: A Provincial History*, Christchurch, Capper Press, 1977, p 81.
 17. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 105

forces in Government employ. The troops were not charged with offences, but again, that wrong cannot validate the murders.

Looking at the matter in Treaty terms, the Treaty of Waitangi obliged the Governor to make laws for peace and good order between the races. While as a matter of broad principle the Governor was bound to respect Maori law, he was also justified in imposing other laws to maintain the necessary standards for all. He had somehow to establish and maintain laws that would in time be accepted by both cultures. To that end, he was obliged to take strong measures to enforce the law to protect lives. In this respect, he was applying a law of universal acceptance. No law is an absolute truth, and the laws of all cultures, English law included, must bend to the dictates of universal standards.

Having regard to the standards of the day and to local exigencies, we are also of the view that the Governor was not unreasonable in failing to commute all the death penalties and in not making pardons earlier than he did. It is a legitimate purpose in sentencing to provide a deterrent to others. Later, it would not have been practicable to release those prisoners at a time when Te Kooti was being pursued for alleged murders both in Poverty Bay and at Whakatane. While Ngati Awa were engaged with Government forces thereafter in the pursuit of Te Kooti, it had still to be made clear that those responsible for murder could expect harsh treatment.

There is one matter, however, that ought not to have been allowed in the light of Maori custom. Custom requires that the dead should be mourned over and interred with their ancestors, no matter their status or what they had done in life. It was contrary to the principles of the Treaty of Waitangi, and the respect due thereunder to Maori custom, that the English practice was not modified in this case and, more particularly, that those who were hanged or who died in prison were interred without ceremony within the prison walls. We see no reason why this extra penalty, effectively imposed on the soul of the prisoner and the heart of every Ngati Awa at home, should have been carried out. The result was to convey a deep bitterness and disrespect for English law for generations. Throughout those generations, there were regular requests for the bones. They were not released for reinterment with their families until 1988. (It is true that Maori took and then reviled the bones of their enemies, but this custom was for the particular purpose of beginning or maintaining a war.)

CHAPTER 8

LAND RETURNS AND LAND PURCHASES

8.1 OVERVIEW

During the early months of 1866, while the Ngati Awa prisoners stood trial in Auckland, the Government began the process of providing for the return of land to those Maori with interests in the confiscated land who had not been implicated in the 'rebellion'. Imperial authorities had been concerned from the outset at the sweeping powers afforded by the confiscation legislation and the comparatively limited provision it made to ensure that the rights and interests of the 'loyal' were protected. The abuse of such powers could place the 'rebellious' at the 'mercy of their conquerors', and result in the 'innocent' being made to suffer along with the 'guilty'. Warfare and dissent would in turn be prolonged, thereby defeating the very object of the Act.

In approving the legislation, the Imperial Government demanded not only that the confiscation of land be limited to the purposes defined in the Act but that an impartial and independent investigation be undertaken so as to ensure that the rights of the 'innocent' were sufficiently protected. It further demanded that compensation be made with speed, honesty, and surety, and that 'rebels' be treated with clemency once the war was over.¹ The New Zealand Settlements Act 1863 accordingly provided for the establishment of a compensation court to be empowered to investigate and award compensation to any Maori with an interest in confiscated land who had not been in rebellion.

Had the Government allowed this intended protection of Maori interests to take place, the damaging effects of the confiscation undertaken in the Bay of Plenty would, we believe, have been greatly ameliorated. But it did not. By the time confiscation was effected in the Bay of Plenty, a new policy had been developed that was at direct variance with the stated intentions of the 1863 Act and the Government's obligations at law and under the Treaty. The military campaign was over, but the intended subjugation of Maori to British law and authority was only just beginning. The compensation scheme was to play a critical role in this process.

Through successive Government interventions in the scheme and a flagrant misuse of the 1863 Act, Ngati Awa were effectively deprived of the impartial and judicial investigation intended. They were given neither a fair hearing nor, in turn, an appropriate or just award of land. Worse still, the compensation scheme was used to destroy customary ownership and destabilise traditional structures in order to break

1. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, no 2, pp 20–22 (RDB, vol 17, pp 6684–6685)

tribal power and facilitate the subsequent alienation of what land remained. It largely succeeded.

What was intended as a judicial process to protect the rights of the ‘innocent’ accordingly became little more than a political tool to further the interests of the Government. The compensation scheme continued the campaign against Ngati Awa, albeit under a different guise.

8.2 CHANGING GOVERNMENT POLICY

The stated purpose of the New Zealand Settlements Act 1863 was to ‘preserve the peace of the Country’ through the establishment of military settlements on confiscated land. By 1865, however, the Government had come to view confiscation as a quite different means of achieving peace. Confiscation – and the granting of land back to Maori – was to be the means of enforcing that which was elsewhere being achieved under the auspices of the Native Land Court: namely, the individualisation of Maori title.

The Government’s objectives were clear. As elsewhere, the individualisation of title was intended to advance the settlement of a district by finalising the issue of Maori ownership and creating an individual – and more readily alienated – title to land. In the words of Henry Sewell (the Attorney-General in 1865 and Minister of Justice by 1870), individualisation could also facilitate the destruction of:

the principle of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Maori race into our social and political system.²

Put another way, the individualisation of title could destroy the very cohesion and independence of Maori society and, in turn, the source of any future threat or resistance to British authority. It could thereby provide a means of achieving what military campaigns, the imprisonment of ‘rebels’, and other such punitive actions could never have: the final defeat of Maori through the acquisition of their land and the destruction of their customary tenure and society. As Native Minister Fitzgerald put it, confiscation, and the return of individualised land, could facilitate ‘a final settlement of the country . . . in such a permanent manner as alone can be consistent with a lasting peace’.³

In that sense, it was somewhat irrelevant to the Government whether Ngati Awa had been ‘loyal’ or ‘rebellious’. Maori society as a whole was now the object of the Government’s campaign, and individualisation was the means of finally enforcing Maori submission.

To achieve these objectives, the Government had to assume a level of control over the process of returning land that was never intended or permitted under the terms of

2. Henry Sewell, 29 August 1870, NZPD, 1870, vol 9, p 361

3. Fitzgerald to Pollen, 8 September 1865, AGG-A 1/1, NA Wellington (doc A2(1)(3), p 3)

the 1863 Act. The Government's intention to assume that control was made clear in Grey's peace proclamation of 5 September 1865, in which he announced the war to be 'at an end' and promised that the Government would at once restore 'considerable quantities of land' to loyal and surrendered rebels alike. The only requirements were that all Maori 'come in at once to claim the benefit of this arrangement' and that they agree to accept Crown grants for their land and to recognise and live peaceably under the 'laws of the Queen'.⁴

The Government's first step was to effect a blanket confiscation of the district; that is, to declare the entire eastern Bay of Plenty district required for the purposes of military settlement. While there was no proper and lawful basis upon which the Governor could confiscate all the land within the district, it was a necessary step to achieving the Government's objectives. In the first instance, it would ensure that any land returned by the Government would be in freehold as opposed to customary native title. Secondly, it would ensure effective Government control over the compensation process as a whole. This was because the return of any land taken for the purposes of military settlement required Government consent under the terms of the 1863 Act and its amendments. The intended investigation by the Compensation Court could thereby be circumvented, and the return of land made a matter of private negotiation with the Government as opposed to a court process.

The next step involved the appointment of a special commissioner for the district to undertake such negotiations on behalf of the Government. The special commissioner's role was outlined in instructions from Native Minister Fitzgerald. The commissioner was to restore to both 'rebel' and 'friendly' Maori alike areas they 'consent to occupy', 'only insisting that they shall take Crown grants for the land . . . and shall clearly understand that they are living under the laws of the Queen'. He was also to ensure that such awards were not:

more than is necessary for their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more valuable, and the settlement and occupation of the country will be effected.⁵

But as Fitzgerald repeatedly emphasised:

the Government feel that the matter of first importance in the permanent pacification of the country is to induce the Natives to finally accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant. To attain this end the Government would sanction a far more liberal disposition of land to the Natives than would on other considerations be desirable. The one great thing which they desire to see done is to induce the Natives to accept their position as final and irrecoverable, and if by liberal concessions to them of blocks of land under Crown Grant you can bring about this result, the main object of the confiscations will have been attained.⁶

4. Proclamation of peace, 5 September 1865, *New Zealand Gazette*, 1865, no 35, p 267

5. Fitzgerald to Pollen, 3 September 1865, AGG-A 1/1, NA Wellington (doc A2(1)(3), p 1)

6. *Ibid* (pp 1-2)

Earlier assurances to the Imperial Government that the innocent would not suffer with the guilty were forgotten: in neither Grey's peace proclamation nor Fitzgerald's instructions were distinctions drawn between the two. Nor were Ngati Awa to be afforded the benefit of an independent and judicial inquiry. The return of any land depended instead on their willingness finally to accept British law and authority, which included an individualised system of ownership.

The only task remaining for the Government was to pass additional validating legislation to ensure that everything done could be put beyond judicial scrutiny. The New Zealand Settlements Amendment and Continuance Act 1865 accordingly provided for the return of land in lieu of money in compensation (a reflection mainly of the fact that monetary compensation, especially in Waikato, was costing too much). Section 6 of the New Zealand Settlements Acts Amendment Act 1866 declared all proceedings of the Governor and Compensation Court 'to be absolutely valid', irrespective of any 'omission or defect'. The Confiscated Lands Act 1867 further provided for the making of awards to 'surrendered rebels' and any others omitted from compensation under the terms of the 1863 Act. Further validating legislation was to be passed as difficulties arising from the implementation of the Government's policy were presented.⁷

8.3 THE PROCESS IN THE BAY OF PLENTY

8.3.1 Wilson's arrangements

Five months before the first sitting of the Compensation Court, the special commissioner appointed for the Bay of Plenty, John Wilson, began making arrangements to ensure that the settlement of the district proceeded in accordance with the Government's objectives.

Securing the Government's interests was Wilson's first priority. Arrangements to set aside sufficient confiscated land for military settlements began during the early months of 1866, at which time Wilson arranged for the survey of the Opotiki township and laid out military settlements at Opotiki, Ohiwa, and Waimana. He later laid out a settlement at Whakatane. By January 1867, Wilson had also reserved some 87,000 acres of land for Te Arawa in payment for their involvement in the campaign to arrest the killers of Fulloon. It was an easy solution for an already indebted Government, though it flew in the face of Grey's assurance that 'loyal' Maori would not be adversely affected. Making the award also inflicted on Ngati Awa what was an even greater punishment than the loss of land to military settlers: the loss of land to their traditional enemy. With negotiations with Ngati Awa about to begin, the message was clear: authority over the land now rested with the Government, as did the power to retain, return, or otherwise dispose of the land. Any claims for compensation were to depend not on the rule of law but on Government discretion

7. This included the Richmond Land Sales Act 1870 and the Whakatane Grants Validation Act 1878.

and expediency. Having made these arrangements, Wilson turned his attention to the provision of land for Ngati Awa.

From the outset, Ngati Awa were at an enormous disadvantage. Deprived of the independent and judicial process originally intended, they were forced into a situation of having to bargain with the Government for whatever land they could get; and few were in a position to bargain at all. It must be recalled that these events occurred during a period of profound economic and social dislocation for Ngati Awa. Many were at the time still experiencing the hardship caused by the previous warfare, as well as seeking to cope with the imprisonment of a number of their leaders and the removal of many others to safer areas of residence. There was also the fear and uncertainty created by the Government's activities in the district and the continued presence of a Te Arawa force. In short, at no time were Ngati Awa more in need of the promised rights and protection afforded under the Treaty.

They were denied both. There was no independent authority or advocate to assist Ngati Awa, and no laws or regulations to protect their rights or the rights of those then absent from the district. They were wholly at the mercy of Wilson. The vagaries of Wilson's determinations were revealed by his refusal to entertain any claims to land that he had already set aside for military settlement or Te Arawa. Similarly, Wilson told the wives of rebels that they were not entitled to receive compensation, whether or not they themselves had taken part in the rebellion. In the wake of a later Compensation Court finding in favour of just such a claimant, Wilson stated that there were over 200 married women who, 'under the impression they are implicated in their husbands rebellion have withdrawn or forborne to make claims which they would have been entitled to urge with a prospect of success'.⁸

The arbitrary power that Wilson possessed enabled him to reward or punish as he personally saw fit, and few questions were raised as to the veracity of his determinations. He was given a free hand and the power necessary to effect what retribution or reward he believed could best serve the Government's interests. The varying treatment afforded different hapu is testimony to the arbitrary nature of his determinations.

Wilson's first arrangements were with Ngati Awa in the Whakatane district. Having decided to put military settlers on the east side of the Whakatane River, Ngati Awa were simply turned off their land at Whakatane, and a string of reserves was arranged for them and Ngati Pukeko and Patuwai on the west bank. There was clearly little assessment made as to the extent of Ngati Awa's involvement in the 'rebellion'. In this instance, the 'sin' of a few was to be borne by Ngati Awa as a whole. There was equally little consideration given to their wishes or to the comparative extent of their customary interests, with Ngati Pukeko receiving a far more liberal reserve than the Ngati Awa hapu. The fact that Ngati Pukeko were at the time assisting the Government against Te Kooti was clearly of significance in this. As Hori Kawakura of Ngati Awa later observed, 'When Mr Wilson came, he always went to Ngatipukeko, never to us.

8. Wilson to Pollen, 26 October 1867, 1A1 1867/3589, NA Wellington (RDB, vol 123, pp 47475-47478)

Therefore his coming always made trouble.⁹ Meihana Koata of Ngati Pukeko was personally also given land on the east bank of the Whakatane River for the assistance he rendered Wilson at this time.¹⁰

Wilson then went across to the pa of the loyalist Ngati Awa chief Rangitukehu on the Rangitaiki River. The objective was to secure for the Government the plain near Te Teko, which Wilson believed to be 'the natural site for a town that must some day command the traffic of the interior'. Irrespective of the fact that many hapu had interests in the area, Wilson secured an agreement from Rangitukehu alone to give up the desired 10,000 acres of land between the Rangitaiki and Tarawera Rivers. That cooperation was rewarded with two reserves, at Putauaki and Kokohinau, for Rangitukehu and his hapu, Te Pahipoto, and the neighbouring Nga Maihi. Rangitukehu was also allocated a reserve at Omataroa to the east of the Rangitaiki River, which was to be shared with Ngai Tamaoki, Nga Maihi, and other Ngati Awa hapu.¹¹

Wilson also made arrangements at this time for the Tawera people. He described them as 'extensive land owners' prior to 1865, but most of their land now formed part of the area given to Te Arawa. Despite the fact that they were 'surrendered rebels', Wilson arranged for a reserve of 1890 acres to be laid off for them between Te Arawa's military lots.¹²

Ngai Te Rangihouhiri and Ngati Hikakino were to be less fortunate. The two hapu most implicated in the Fulloon murder and the subsequent harbouring of suspects were most harshly dealt with. Wilson arranged for virtually all their land to be taken and awarded to Te Arawa, excepting the island pa of Omarupotiki and Te Matata. The area returned to them was a mere 278 acres, most of which was either coastal sandhills or swampy lowlands. Wilson did, however, allocate to these hapu highly prized eel weirs, which he had been able to prevent Te Arawa taking over. He later admitted that the lands were 'liable to an occasional flood; but that the Government cannot help; nor is it any gainer, the whole of the dry lands of these tribes having been given to the hapus of the Arawa, in reward for military service rendered in 1865'.¹³

In those cases in which Wilson could not come to some agreement with the claimants or where he considered that the claim was weak or the demands excessive, he was prepared to let the claimants 'take their chance' in court rather than give them the land that they asked for.¹⁴ Wilson then organised witnesses to contest the claims that he did not support. It was an easy task. In the scramble for land created by Wilson's private negotiations, Maori became pitted against Maori as they sought both to distance themselves from any association with the 'rebellious' and, at the

9. 'Minutes of Proceedings of a Meeting Held at Whakatane', 9 November 1874, IA1 1867/3589, NA Wellington; see also evidence of Hori Kawakura, 9 November 1874, Whakatane, 1874-1894, MA13/100A, NA Wellington (RDB, pp 30,991-30,992); doc 11, p 133

10. Document 11, p 132

11. Document 15, pp 81-83; doc 11, pp 78-79

12. Document 15, pp 83-84

13. 'Report on Settlement of Confiscated Lands', 29 March 1872, AJHR, 1872, C-4A, p 6 (cited in doc 11, p 126); see also RDB, vol 25, pp 9989-10,001

14. Wilson to Whitaker, 14 November 1866, IA1 1866/3654, NA Wellington (cited in doc 15, p 87)

same time, to obtain the best possible outcome for their community. In some cases, it is clear that witnesses agreed to contest claims solely to secure their own interests.¹⁵

Having made his arrangements, Wilson then took them to the Compensation Court for approval.

8.3.2 The first Compensation Court sitting

The Compensation Court's first sitting was at Opotiki from 7 March to 8 April 1867. It dealt mainly with claims to the eastern portion of the confiscated district. In order to claim compensation, written application had to have been made to the Colonial Secretary, who then forwarded the claims to the court. We have no way of knowing exactly how many of those entitled to receive compensation did not file claims. Nor is it clear how many claims were dismissed because the claimant failed to appear in person before the court. It must be remembered, however, that the court sittings took place during a period of extreme dislocation resulting from the confiscation and war with Te Kooti. The court's first sittings at Opotiki and Maketu had to be adjourned in the absence of many claimants, who were either away fighting for the Government or busy harvesting crops. Many others were also at the time resident in different parts of the country. The short notice given of court sittings clearly also created difficulties, as did the hearing of claims in areas that, in some cases, were 'two days ride away from the land claimed'.¹⁶ Irrespective of the environment within which the sittings occurred, those who did not file claims, or who failed to attend the court, were from the outset excluded.

According to Wilson, of the 235 cases brought forward at the court's first sitting, 133 were disposed of, with the remainder being postponed to the next sitting.¹⁷ In achieving as much, Wilson was greatly assisted by the fact that he was not only the special commissioner for the district but also the Crown agent appointed to the court. This enabled him to exert a degree of control over the process that directly prejudiced both the claimants and the nature of the inquiry itself. Wilson was also much aided by the willingness of the court to rely on his testimony; a circumstance that had a great deal to do with the personnel appointed to the court. The two judges who heard most of the cases in the Bay of Plenty were none other than Major William Mair, who had led the Arawa expedition to arrest those implicated in Fulloon's murder, and T H Smith, the civil commissioner who had organised the expedition. Both held very firm ideas on how to handle Maori, particularly those branded as 'rebels'. Neither could be said to be impartial.

Many cases at the court's first sitting were simply dismissed when the Crown agent said that they had been settled out of court. In those cases in which no prior agreement had been reached, the very considerable weight given by the court to the

15. Document 11, pp 80–81

16. Wilson to Pollen, 23 July 1867, IA1 1867/2659, NA Wellington (cited in doc 15, p 87); awards of the Compensation Court, Maketu sitting, DOSLI Hamilton file 3/2

17. Wilson to Pollen, 15 April 1867, IA1 1867/1321, NA Wellington (cited in doc 11, p 97)

evidence brought by Wilson rendered the claimant's 'chance' of success very slim.¹⁸ Even when claimants were fortunate enough to have their claims upheld, the court's awards were often pitifully inadequate.¹⁹ In most cases, the court simply accepted Wilson's word as to who were 'rebels' and who were not and validated the arrangements he had made. There was no independent inquiry or judicial testing as to the fairness of his arrangements. Nor did the court issue judgments on each case or even explain the basis upon which the judgments were made. Most were concluded with a cursory 'case dismissed' or 'land to be decided'. It should also be noted that, though some claims were brought by individuals, many others were brought on behalf of groups. In neither case was any distinction drawn by the court, with award certificates simply listing the names of the individuals given in evidence. In short, the court singularly failed to undertake the investigation required of it.²⁰

The results of the court's first sitting were impressive for the Government. Wilson informed it that he had arranged for 87,000 acres to be awarded to Te Arawa; 151,558 acres to be retained by the Government; and 96,000 acres to be given back to Maori. Some 38,000 acres remained unassigned. Of the 134,000 acres that were to be given back or that remained unassigned, 18,000 acres were agricultural land, 54,000 acres swampland, and 62,000 acres 'mountainous country half of it very barren'.²¹ That is, out of the entire confiscation area, Wilson had arranged for the return of a mere 18,000 acres of agricultural land. There can be little question that it was wholly inadequate to provide for the present or future support of eastern Bay of Plenty Maori. Nor did the simplicity of Wilson's mathematical equations in any way attest to the degree of disruption his arrangements had caused. Customary rights of use and occupation had been completely distorted. Worse still, his arrangements had engendered a level of divisiveness and competition between groups that was to split Maori communities as effectively as the process of individualisation itself.

But the Government was not to have it all its own way. While the court had accepted a number of the arrangements Wilson had made, the illegality of the Government's blanket confiscation and subsequent actions had not gone unnoticed. Shortly before the close of the court's first sitting, the judges were forced to confront the Government on the matter. In the debate that followed, the primacy of securing the Government's objectives was made very clear, as was the Government's intention to use the court as little more than a rubber stamp.

8.3.3 Executive intervention in the court process

On 30 April 1867, Wilson informed the Government that 'the Judges of the Compensation Court are of opinion that the Bay of Plenty district has not been legally occupied by the Government, for the purpose of Military Settlement'.²² The issue had

18. Wilson to Pollen, 23 July 1867, IA1 1867/2659, NA Wellington (cited in doc 15, p 87)

19. See, for examples, doc 15, pp 90–91

20. See doc 11, pp 82–95

21. Wilson to Pollen, 12 June 1867, DOSLI Hamilton file 2/3, Opotiki confiscation (cited in doc 11, pp 98–99)

22. Wilson to Pollen, 30 April 1867, IA1 1867/2659, NA Wellington (cited in doc 11, p 106)

initially arisen in consequence of claims being brought before the court for land that Wilson had already allotted to military settlers. As Judge Smith commented:

The point was raised as to whether the fact of certain portions of the confiscated block having been surveyed & marked off for military settlers & other purposes would preclude any award by the Court of such land to claimants entitled to compensation in those cases . . .²³

Wilson had assumed that his arrangements fell outside the jurisdiction of the court. In Smith's view, however, the Government could only exercise such discretion if it could be shown that the land had in fact been appropriated for the purpose of military settlement. In his opinion, it was patently clear that the whole of the Bay of Plenty district could not be required for such a purpose.²⁴

Chief Judge Fenton agreed. Yet, while aware of the illegality of the Government's confiscation, Fenton appeared unwilling to confront it on the issue. He had instead merely impressed on Wilson the 'necessity' of ensuring that claimants were reserved 'their own lands'. Wilson's reply was to state that 'such is by no means the Government's view of the subject'.²⁵

To bring the matter to issue, Wilson asked for 'the rule of the Court on this question'. Though Smith appeared equally as unwilling to embarrass the Government by making such a ruling – informing Wilson that 'It is a point the Government ought not to raise for its own sake' – he was forced to do so at Wilson's insistence. He declared that Wilson's arrangements to date were illegal and would not be regarded by the court. He recommended that Wilson consult with claimants regarding the locality of land they wished to occupy, and further threatened to overturn Wilson's arrangements if no agreement could be reached within six months.²⁶

The Government's response was swift and emphatic. It called for the opinion of the Attorney-General, who stated:

I cannot imagine what the objection is to the sufficiencies of the Order in Council. The Order declares that the land is required for the purposes of the Act and are [sic] subject to the provisions thereof. The Act provides that upon such an Order being made the land is to be deemed Crown Land.²⁷

William Rolleston, the under-secretary of the Native Department, supported the Attorney-General's opinion. He declared that all the land had been taken for settlement 'as a matter of fact'. He further declared that, unless the Crown consented to such an award, the court had no jurisdiction to award land as compensation in areas that had been 'absolutely taken' for the purposes of settlement.²⁸ Since all the

23. Judge Smith, 29 June 1867, IA1 1867/2771, NA Wellington (cited in doc 11, p 109)

24. Ibid

25. Wilson to Pollen, 25 July 1867, IA1 1867/2771, NA Wellington (cited in doc 11, pp 107–108)

26. Ibid

27. Prendergast, 7 June 1867, IA1 1867/2771, NA Wellington (cited in doc 15, p 69)

28. Memorandum by Rolleston, 6 July 1867, IA1 1867/2771, NA Wellington (cited in doc 15, p 69)

land within the eastern Bay of Plenty had been ‘absolutely taken’, this in effect meant that the court could do little more than rubber-stamp the arrangements made by Wilson.

The Compensation Court judges accepted the Government’s interpretation. They further denied that they had meant that the confiscation was illegal. What they had required, it was argued, was proof that the confiscation was legal, such as a certified copy of the confiscation proclamation.²⁹ Thereafter, the court adhered to the Government’s decision. In the following hearing held at Maketu, Wilson was able to report that Judge Mackay had ruled that ‘lands allotted to Military Settlers could not be restored by the Court to the Claimants’.³⁰

It is difficult to imagine Government Ministers today being allowed to determine a court’s jurisdiction, let alone quash a court ruling. Such blatant interference in judicial matters was completely contrary to the rule of law and to the rights and protection afforded all citizens under the Treaty. That the judges accepted the Government’s decision is of equal note, though perhaps unsurprising given their evident unwillingness to raise the matter in the first place. It highlights the fact that the court was neither regarded as nor seen to be independent from the Executive. Indeed, it was quite clearly assumed that the Compensation Court – like its Native Land Court counterpart – was there simply to fulfil the interests and objectives of the Government. This was the very situation that the Imperial authorities had sought to protect against. Judicial process had become subservient to Executive whim, and Maori had in effect been left to the ‘mercy of their conquerors’.

8.3.4 Further court sittings

The court’s next sitting was at Maketu from 8 to 12 July, and most of the hearing was concerned with claims in the west of the confiscated block between Matata and Waitahanui. With many witnesses absent as a consequence of the unsettled state of the region, the court was adjourned before this inquiry was completed. The inquiry, along with claims to land at Rangitaiki and Whakatane, continued at Whakatane from 9 September to 1 October.

At the final sitting at Te Awa o te Atua in December 1867, the court was largely concerned with Ngati Pikiao and Ngati Awa claims to the Waitahanui block at the western edge of the confiscation district. No less than 12 witnesses took the stand to repudiate Ngati Pikiao’s claim. They included men from Ngai Te Rangihouhiri, Ngati Hikakino, and Ngati Irawharo, as well as prominent ‘loyal’ chiefs such as Rangitukehu of Pahipoto and Hori Kawakura of Ngati Awa. All were adamant that the land belonged to Ngai Te Rangihouhiri and Ngati Hikakino.

Judge Mair found in favour of Ngati Pikiao: ‘Judgment for all the land West from a Puhuhukawa [sic] tree at the entrance of the Whakarewa River direct to Otitapu’.³¹ By

29. Judge Smith, 29 June 1867, IA1 1867/2772, NA Wellington (cited in doc 11, p 109)

30. Document 15, p 71

31. Minutes of Compensation Court, Te Awa o Te Atua sitting, 3–19 December 1867, DOSLI Hamilton file 1/6 (cited in doc 11, p 119)

that simple sentence, an area encompassing 36,320 acres was awarded to Ngati Pikiao without the slightest attempt to assess the copious evidence submitted by both sides. No reasons were given for the court's decision. The judgment comes as little surprise, however, when one considers that any other finding would have upset the existing arrangement to award the land to Te Arawa. That the presiding judge in the case was the same man who had led the Arawa force against Ngai Te Rangihouhiri and Ngati Hikakino was clearly also significant. There can be little doubt that Judge Mair had a personal interest in ensuring that Ngati Awa were punished and Te Arawa rewarded.

In the same way, the court simply rubber-stamped Wilson's arrangements for Ngati Tuwharetoa. Tuwharetoa were awarded what amounted to just under 20,000 acres of land. That they were entitled to receive the award is not questioned. What is at issue is the arbitrary nature of Wilson's determinations and the blatant inequality in treatment that resulted.

Tuwharetoa's award stood in marked contrast to the treatment afforded other claimants in the western part of the confiscation district. While Ngati Awa claims to land set aside for Te Arawa had been consistently denied, Tuwharetoa were awarded what amounted to a large area of their previous domain that fell within the area originally set aside for Te Arawa. This was unsurprising as, unlike Ngai Te Rangihouhiri, Tuwharetoa were not heavily implicated in the resistance and 'rebellion'. Their treatment was similar to that afforded Rangitukehu.

Included within the Tuwharetoa award were also 50-acre reserves for a number of individuals, all of whom were designated 'rebels' (and were perhaps those Tuwharetoa who changed sides at Te Kupenga the day before Te Hura's surrender). Those individual awards exceeded the amount given to many claimants who had taken no part in the warfare, while on the same day, the claim of another individual was dismissed on the ground that he might have given aid to the very same 'rebels'.³² The vagaries of Wilson's determinations were very apparent. What was also clear was the subservient role played by the court. The concluding sentence of the court's judgment made it clear that it was merely a procedural matter to give effect to the arrangement already made by Wilson: 'All Tuwharetoa land on the east side of the Tarawera river within the confiscated block is the property of the Govt by virtue of agreement made between the Crown Agent and the Tuwharetoa natives.'³³

Through a direct encroachment on the court's jurisdiction and a direct intervention in the court's process, the Government had effectively secured its objectives. It did so at the cost of denying Ngati Awa the rights and protection afforded to them under the Treaty. Ngati Awa were deprived of the impartial and judicial investigation intended. They were given neither a fair hearing nor an appropriate or just award of land. Further still, they were not afforded any power of petition or redress. Despite the failure of the Government and court to comply with their obligations at law, under section 6 of the New Zealand Settlements Acts Amendment Act 1866 all proceedings of the Governor and court were deemed valid and beyond further judicial scrutiny.

32. Document 15, pp 95-98

33. Judgment in Rokokoro Tani Rau's claims for Hohepa Rokokoro and company claimants, 19 December 1867, minutes of Compensation Court, Te Awa o te Atua sitting, DOSLI Hamilton file 1/6 (cited in doc 11, p 121)

8.3.5 Finalising the court awards

The process of finalising the awards was to prove equally detrimental to the interests of Ngati Awa. The Imperial Government had demanded that compensation be made with speed, honesty, and surety. No part of the awards process fulfilled these requirements. By the end of 1867, it had been agreed that around 130,000 acres of land would be returned to eastern Bay of Plenty Maori. It was not until 1874, however, that some of the awards were finalised through the issue of a Crown grant. In many cases, it took up to 10 years before a Crown grant was issued. In the interim, the Maori owners were in effect left as squatters on Crown land, with little but promissory notes of entitlement to secure their ownership and occupation.

To be fair, some of the delay was caused by military disturbances, most notably Te Kooti's raids in the district in 1869, and the difficulty of completing surveys of the awards in those conditions. But there was more to the delays in issuing title than just the inability to complete surveys.

By the time Wilson was instructed to go back to the district and complete the awards, the entire process – both on the ground and in the Government – was in complete disarray. While some certificates of award had been prepared, no acreages had been stipulated. Nor had reserves been apportioned between groups or their owners listed. The position of 'surrendered rebels' at Whakatane and in the Rangitaiki region was particularly chaotic and had, according to Wilson, already caused 'a good deal of trouble'. Wilson noted that, for 'economical reasons', allocations in the area had remained 'unsurveyed and undivided and the complications that had arisen therefrom had become numerous, and were not to be easily settled'. To make matters worse, schedules of awards 'containing many hundred Native names' had been mislaid, though Wilson hoped he could recompile them from personal notes. In addition, since making the original arrangements, the Maori population in the district had increased, while some 150 rebels had since surrendered and needed to be provided for.³⁴

By the 1870s, therefore, an added problem had also arisen in that the original lists of owners compiled by Wilson had rapidly become obsolete. Nor was there any provision available to enable succession, the Native Land Court being unable to adjudicate on land awarded under the New Zealand Settlements Amendment and Continuance Act 1865. The confused situation was compounded by increasing disputes between Maori as they struggled to contend with the disruption and uncertainty caused by the awards process and the competition that it created over the remaining resources. The situation was such that Wilson decided to cancel all but the Arawa military awards and begin afresh.

Wilson arrived back in the district in December 1871. He reported back at the end of March 1872, claiming to have 'settled all the numerous matters having reference to the confiscated lands' except for a dispute over the location of reserves at Whakatane.

34. 'Report on Settlement of Confiscated Lands', 29 March 1872, AJHR, 1872, C-4A, pp 4-7 (cited in doc 11, pp 124-126); doc 15, p 105



Photo 4: The redoubt at Whakatane. From here, the relocated Ngati Awa hapu were within easy reach across the river. Photo courtesy Alexander Turnbull Library (F4128½)

Wilson also referred to having made various additional awards, all of which were made without any inquiry by or sanction from the court.³⁵

In November 1874, Wilson's revised schedules were finally published in the *New Zealand Gazette*. All that remained was to settle a dispute over reserves at Whakatane and issue Crown grants for all the awards. Neither task was to be completed with ease or alacrity. In no case were titles promptly issued, and the matter of outstanding grants was to remain a problem for both Maori and the Government well into the 1880s, and beyond. Conflict and continuing confusion over the Government's allocations was likewise to persist, necessitating further Government intervention and revision.³⁶ The cost of this administrative ineptitude was wholly borne by Ngati Awa.

8.4 RESULTS

In view of the confusion surrounding the finalising of the awards, it is difficult to work out how much land was awarded or retained by the Government. But, as we understand it, the final figures approximated to the following: of the 448,000 acres confiscated, 124,060 acres were retained by the Government; 87,000 acres were awarded to Te Arawa; 118,300 acres were restored to 'loyal' Maori; and 112,300 acres were restored to 'rebel' Maori.³⁷ Out of an original holding that has been estimated at

35. Ibid

36. Document 11, pp 130–159

37. The 6340-acre difference represents land sold privately before the confiscation. The figures given here are based upon those provided in the Sim commission's inquiry: AJHR, 1928, G-7, p 21.

194,000 acres, Ngati Awa received back 77,870 acres.³⁸ It may be noted that most of the Government land was described in 1873 as being ‘unfit for settlement at present’, and that, of the 24,000 acres specifically taken for military settlers, ‘fully 15,000 lie idle’.³⁹ There can be little doubt that the Government had completely lost sight of the original intention behind the confiscation policy.

However, such figures give little indication of the damaging results of the compensation process on Maori. They do not, for instance, in any way attest to the trauma caused by the dislocation of communities, or the uncertainty and divisiveness engendered by the Crown’s actions. Nor do they give any indication as to the actual capacity of the land to maintain either the people or their polity.

In the first instance, and as the claimants have pointed out, much of the land returned was either swampland or rugged hill country, and little was suitable for cultivation. The land awarded to Ngai Te Rangihouhiri and Ngati Hikakino was the most extreme example of this. As noted, the area returned to them was approximately 278 acres. Most was either coastal sandhills or swamps, and though Wilson secured them valuable eel weirs, the total area of land was probably inadequate for the immediate support of these groups, let alone their future prosperity. It clearly fell considerably short of the Government’s promise to ensure that Maori were left with the land ‘necessary for their wants’. Not surprisingly, when Wilson returned to the district in 1872 he found the people dispersed, living either with relations in the district or further afield at Tauranga and Hauraki.⁴⁰

Secondly, hapu often did not get back the land that they had traditionally occupied and cultivated, instead receiving land that belonged to other hapu. This applied particularly to the Whakatane reserves granted to Ngati Pukeko, Ngati Awa, and Patuwai. By their own laws, Maori would have known that the land was not their own to hold and use. Irrespective of the Government’s determinations, in those circumstances there were a number of constraints on using the land.

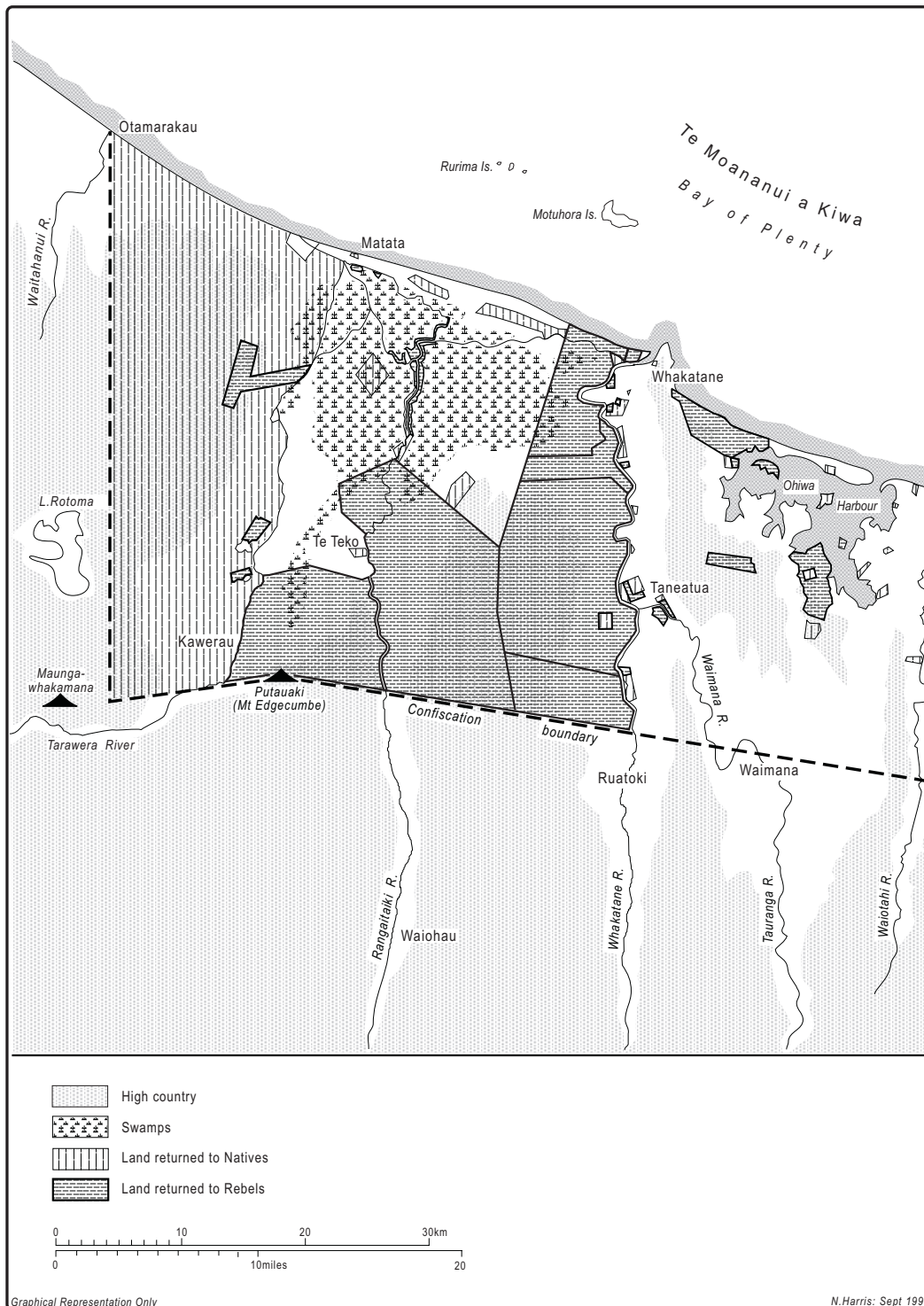
Thirdly, no land was returned in the condition in which it was taken. The compensation scheme instead facilitated the transformation from a communal to individual form of ownership in which the entitlement of many was reduced to the rights of a few. Though a number of the larger awards were returned to individuals as ‘trustees’, it was never more than a temporary arrangement until the land could be divided into shares.⁴¹ In many cases, the individuals listed in the awards also had the power to alienate the land without recourse to the wider community. Only in some cases were restrictions on alienation applied or enforced. Even when such restrictions were enforced (as in the case of the Whakatane awards), they merely served to delay – as opposed to prevent – the eventual alienation of the land, with all restrictions on

38. It may be noted that the Sim commission estimated Ngati Awa’s original holding to be 107,120 acres, but this figure took no account of the fact that Ngati Awa had considerable if not exclusive rights to the 87,000 acres awarded to Te Arawa.

39. J H H St John to Native Minister, 12 August 1873, AJHR, 1873, C-4B, pp 5–6 (cited in doc 11, p 127)

40. ‘Report on Settlement of Confiscated Lands’, 29 March 1872, AJHR, 1872, C-4A, p 4 (cited in doc 11, p 126)

41. In the case of those awards made under the Confiscated Lands Act 1867, the Governor could refer the subdivision of such land directly to the Native Land Court, whether or not a Crown grant had been issued: doc A2, p 42.



Map 6: Land returned to Maori

alienation being removed under section 207 of the Native Land Act 1909, subject to the provisions of that Act. In no case were the rights and protections afforded by a communal title adequately compensated for or replaced.

The combined effect of the awards process was to create a situation in which the subsequent alienation of the land was not only possible but likely. That many of the awards were of poor quality was itself an incentive to alienate, as was the fact that many did not coincide with traditionally occupied lands. The degree of uncertainty created by the delays in issuing title also lent itself to the sale of Maori interests, with many of the awards being sold or leased before title had been issued.⁴²

Of greater importance still was the dislocation caused to communities by the individualisation of customary tenure. Not only did it destabilise ownership and make land susceptible to alienation, but it destroyed the communal base of interests upon which the community depended for its unity, productivity, and very identity. The individualisation of land led to the separation and individualisation of the community itself.

In short, the Government's actions completely undermined Ngati Awa's status and future as a tribal people. It also created a situation that made the subsequent alienation of land almost inevitable. It is to the Government's role in facilitating land alienation that we now turn.

8.5 LAND PURCHASES

Few actions could so impugn the integrity of the compensation scheme than the purchase of the compensatory lands. Even before the compensation awards had been finalised and Crown grants issued, Government agents had been sent to the region charged with the task of acquiring as much land as possible. Henry Mitchell and Charles Davis commenced operations in the Taupo–Bay of Plenty area on behalf of the Government in June 1873. What followed was a sustained period of negotiations that effectively laid the basis for the subsequent partitioning and alienation of much of the compensatory land.

It seems that these tactics applied particularly to the Crown's purchase of Te Arawa and Tuwharetoa blocks such as Tawhitinui and Otuhounga (lots 31 and 39, parish of Matata). By contrast, Ngati Awa (specifically Rangitukehu) retained Kokohinau (2527 acres) and Putauaki (12,710 acres) until well into this century, and they still retain much of that land, as well as most of Otamaroa (20,400 acres). Essentially, the Crown did not purchase much land east of the Rangitaiki River.

However, it should be said that the comparatively poor quality of much of the Ngati Awa reserves was probably a key reason for the Government's lack of interest at this time, as was, perhaps, the complicated issue of ownership. As we have said, the

42. This included most of Te Arawa's military awards (see doc 15, p 112; doc A34); much of the land awarded to Ngati Makino (see doc 64, pp 32–57); and Tuwharetoa's awards at Tawhitinui and Otuhounga (see doc 15, pp 118–132).

original lists of owners had rapidly become out of date and the Native Land Court could not declare successions to the land (a problem not overcome until the 1890s). These factors were probably more important than the restrictions on alienation applied to the awards (and enforced on the Whakatane awards up until the turn of the century, for example), such restrictions having failed to stop the Government elsewhere. That the land was not sold at this time may therefore have been more by default than design.

The full details of the alienations have been provided in claimant evidence and there is little need to reproduce all the particulars here.⁴³ Nor is a detailed review necessary, given that the process as a whole departed so markedly from the standards of good faith and honesty expected under the Treaty. Here, it is sufficient to confine our comments to some of the key issues and examples that have emerged from those analyses.

The acquisition of compensatory lands was in large part accomplished by exploiting the circumstances within which Maori had been placed as a result of the awards process. The land purchase officers worked directly off the poverty of many owners and the divisions that had been created between hapu (and individuals) to secure an initial foothold on the land. A policy was adopted of targeting and advancing money to select individuals once an agreement had been obtained to lease or purchase a block. As land purchase under-secretary Richard Gill later commented, 'frequent payments [had been] made as advances on the purchase of lands in the Taupo and Bay of Plenty districts, before the blocks have been before the Native Land Court, and in many cases before the lands are even surveyed'.⁴⁴ Added pressure was thereby placed on dissenting owners likewise to accept subsequent payments, with the result that little regard was paid to the entitlement of the recipients to the land under negotiation. As one objector later stated, the 'purchases were made, not openly, but by separate dealings with the individual grantees: of which the remainder knew nothing. It was not till all the money so received had been spent that this came out.'⁴⁵ That several deeds were often required to conclude the agreements is evidence enough of the fact that the process had little to do with collective decision-making.

Included in the agreements were also inalienation clauses prohibiting the Maori owners from selling or otherwise dealing with private purchasers. The practice effectively protected the Government from further competition, while at the same time enabling it to complete the purchase as the opportunity and appropriate terms arose.

In most instances, securing a lease was the first step towards the eventual acquisition of the land. As Mitchell and Davis commented when they began their purchase operations in Taupo in 1873:

43. With regard to the alienation of Ngati Tuwharetoa's awards, see document 15, pp 118–132. The alienation of Ngati Awa's awards is dealt with in the following reports: for Kokohinau, lot 72, see document M18, pp 187–196; for Patauki, lot 59, see document A18, pp 130–133; for Omataroa, lot 60, see documents 11, pp 150–159, and M18, pp 172–181; for the Whakatane River reserves, see document M18; and for Ohope, see documents G7(j), p 3, and G7(f), pp 10–24.

44. Gill to Native Minister, 11 November 1879, MA-MLP1 79/525, NA Wellington (cited in doc M18, p 15)

45. Raimona Te Petera, Maketu minute book 5, fols 371–375 (cited in doc 15, p 128)

the lease of these lands to the Government will we consider render purchase hereafter if desirable comparatively easy, inasmuch as time and opportunity will thereby be afforded for the final adjustment of tribal and hapu claims which at present in the majority of cases, present an almost insuperable barrier in the way of extinguishing the Native title, while the inalienation clauses inserted in all the leases, together with the political and commercial relations arising out of these transactions, will, it seems to us, place the Government in a position to accomplish with comparative ease, whatever ends of public moment it may have in view relative to these waste lands.⁴⁶

The Native Land Court was used to overcome the problem of completing purchases in which there were numerous grantees. Under new legislation introduced in 1877, application could be made to the court to have the Crown's interest in any block declared and an order made directly vesting the extent of that interest in the Crown. The procedure, provided for in section 6 of the Native Land Act Amendment Act 1877, was particularly well suited to the Government's practice of advancing money to individuals. The Crown was thereby able to acquire land without having to gain all the signatures and consent of the owners, while the partitions that resulted only further destabilised ownership. The alienations and partitions that occurred at this time in turn laid the basis for the future acquisition of remaining lands.

The alienation of the aforementioned Otuhounga block was typical of the process and its efficacy in ensuring eventual alienation. The block had originally been awarded by the Compensation Court to Ngati Tuwharetoa in part confirmation of Wilson's out-of-court settlement. In November 1873, Mitchell and Davis negotiated a lease on the block for 25 years, with a clause included preventing the lessors from selling the land privately. By 1879, the Government was moving to convert the lease into a purchase and had ceased paying rent on the block. Repeated offers to purchase were consistently refused, however, at least until 1882. By October of that year, four grantees had finally agreed to sell in return for an advance payment. Two months later, an appeal was made by other of the grantees to the Minister of Native Affairs asking that the block be left 'hei oranga mo matou, mo matou wahine, me a matou tamariki' (as sustenance for us, for our women, and for our children). They complained that the interests in the land had been sold stealthily and offered to pay back the money that had already been advanced. The offer was ignored and an application instead made to the Native Land Court to have the Crown's interest in the block declared. The Crown claimed that it had paid over £1419 on the block, that five of the 10 grantees had signed a deed of sale, and that it should accordingly be awarded the southern half of the block – some 6839 acres. As it transpired, £259 of that sum had in fact been a rental payment. The court accepted the Government's application and awarded the Crown half of the Otuhounga block. Ngati Tuwharetoa now asked that the remainder of the block, known as 39A, be registered in the name of the tribe and made inalienable. That request was also ignored, and despite the fact that this was virtually the only land left in Tuwharetoa's possession, the Crown (along with private

46. Davis and Mitchell to Ormond, 13 August 1873, MA-MLP1/1 1873/159, NA Wellington (cited in doc 15, pp 132–133)

buyers) went on buying individual interests in the land, which in later years were also subdivided out.

The situation was made worse by the Government's simultaneous acquisition of land outside the confiscation boundary. While claims in respect of such land fall outside the scope of this report, claimant evidence indicates that a similar process of alienation was occurring outside the boundary. The mechanism this time was the Native Land Court, though the similarities between the Native Land Court and its Compensation Court counterpart are striking. Indeed, in operation and effect they were fundamentally the same institution. Both were presided over by Chief Judge Fenton. Both facilitated the alienation of land through the individualisation of title, and both depended on a degree of collusion with Government agents that was wholly improper. Both showed an equal disregard for the present or future interests of Maori.⁴⁷

In all this, it is difficult to detect any recognition by the Government of its responsibility to protect Maori interests. On the contrary, the interests of Maori were apparently to be looked after by the very people that the Crown sent out to purchase as much land as possible, and by Maori themselves. In the circumstances, it was remarkable that Rangitukehu and his hapu kept most of the land awarded to them. When questioned as to the justice and, indeed, appropriateness of Mitchell's and Davis's purchases, one Government official responded:

I presume Messrs Davis & Mitchell are the best judges of what & how much land it is proper & prudent for them to buy, and that the native owners are sufficiently alive to their own interests not to sell more than they can safely spare.⁴⁸

Such an attitude openly disclaimed any responsibility on the part of the Government to provide the protection required of it under the Treaty. It also ignored the fact that, once the process of alienation and partition had got under way, it was virtually impossible to stop.

The Crown's role in the acquisition of land by private purchasers was neither as aggressive nor as explicit. In general, it acted more as a facilitator than an agent, using legislation to free up land as required and then standing by while Pakeha settlers privately purchased it.

The fate of the Whakatane reserves provides a case in point. A considerable area of the reserves had been leased by the end of the nineteenth century, and pressure soon arose from the lessees for an extension or renewal of the lease or the right to purchase

47. Claimant evidence regarding the award and alienation of interests in areas outside the confiscation boundary can be found in the following reports: for the Waitahanui block, see documents G4, pp 71–82, 101–159, 227–229; I1, pp 189–206; and M1, pp 9–10; for Tahunaroa, see documents M1, pp 6–12; G4, pp 3, 71–90; and I1, p 211; for the Putauaki block, see documents B14(a), pp 4–8, and M18, pp 20–31; for Matahina, see documents B14(a), p 12; C22, pp 34–35; and M18, p 42; for Pokohu, see documents I1, p 236; M18, pp 61–66; and B14(a), pp 16–17; for Tuararangaia, see documents B14(a), p 18; I1, p 239; and M18, pp 67–68; for Kaingaroa 1, see document I1, p 219; for Te Haehaenga, see document I1, pp 219–222; for Waiohau, see document I1, pp 222–223; for Rotoma, see document I1, pp 239–242; and for Te Riu o te Papa see document I1, p 242.

48. Enclosed in Huta Tangihia to McLean, 2 October 1873, MA-MLP1/2 1874/31, WARC (cited in doc 15, p 140)

the freehold. A direct impediment to this was the problematic nature of the titles, given that, as mentioned previously, the original lists of trustees and beneficial owners devised by Wilson had rapidly become out of date and the Native Land Court was unable to partition and declare successions in the awards. The problem was effectively overcome by the passing of the Native Land Claims and Boundaries Adjustment and Titles Empowering Act 1894, whereby the Native Land Court was able to declare successions and carry out partitions – as it began to do in 1894 and rapidly thereafter.

Some blocks were partitioned just about every year for some years as the ownership was gradually broken down from hapu to whanau to individuals. Lot 28 – a Ngati Awa coastal reserve – was originally partitioned in 1909. Having cut off the coastal portion (comprising sandhills), the rest of the reserve, known as 28B, was divided into 23 lots, varying in size from 11 to 697 acres, with the number of owners varying from one to 228. Over the next 10 years, the 23 lots were divided into 52, varying in size from two acres to just over 209 acres. By 1919, 15 of the lots had single owners. Partitions continued at a similar pace over subsequent years, with the lots forever diminishing in size, until by the 1940s a substantial number of the blocks were owned by individual owners, whose holdings amounted to little more than an acre at most – enough only for a house and garden.⁴⁹ At the same time as this process was occurring, the Government removed the restrictions on alienation originally placed on all the Whakatane reserves. A steady stream of purchases followed, often by former lessees, which resulted in much of the fertile land in the Whakatane valley being finally snapped up by Pakeha settlers.⁵⁰

While no exact figures have been provided in claimant evidence regarding the total amount of land alienated, as we understand the situation, much of the land awarded in compensation to Te Arawa, Ngati Pikiao, and Ngati Tuwharetoa was sold during the 1870s and throughout the remainder of the nineteenth century.⁵¹ What land they retained has been gradually whittled away during the course of this century. Te Arawa now possess little more than a few of the smaller blocks in and around Matata, and Ngati Pikiao retain a mere 50 acres from the 36,260 acres originally awarded to them, while Ngati Tuwharetoa's rights have been reduced to a handful of interests in one block. Though Ngati Awa managed to hold on to most of the land awarded to them during the later decades of the nineteenth century, the process of individualising and partitioning interests accelerated from the turn of the century and likewise had its effect. In a number of cases, blocks were partitioned and fragmented to the point that they were no longer economically viable, and by 1970 around 20,000 acres of land had accordingly been sold. Most were small blocks, 30 percent of which were owned by individual owners. Just under 60 percent were owned by five or fewer owners. What land remains continues to be afflicted by the consequences of the individualisation of

49. See doc M18, pp 76–87

50. See doc M18

51. Claimant evidence regarding the sale of this land may be found in documents 15, pp 112–115; A34, pp 54–89 (Te Arawa's awards); G4; M1, pp 3–5, apps 1, 2 (Ngati Pikiao's award); and 15, pp 118–132 (Tuwharetoa's awards).

title, and by the difficulties that it presents in seeking to resume or maintain a workable system of communal ownership.

In this way, land purchases, and the individualisation of remaining interests, served to finish the process started by confiscation and continued through the compensation scheme. The Government's objective had been to destroy customary ownership and destabilise traditional structures in order to break Ngati Awa's tribal power and facilitate the subsequent alienation of remaining land. It in large measure succeeded. As we find below, the loss of land and the customary system of tenure in turn laid the basis for the economic and cultural impoverishment of Ngati Awa. Any collective or sustained form of resistance to British law and authority was at an end. The Government had won the campaign against Ngati Awa, but only by denying them their future as a tribal people.

8.6 CONCLUSIONS

The operation of the compensation process as a whole was entirely inconsistent with the principles of the Treaty of Waitangi. Ngati Awa could have expected no less from the Treaty than the benefits of a regime competent to ensure justice and maintain principle. There was no part of the compensation scheme that delivered that expectation. Ngati Awa could also have expected no less than that they would at least retain their own polity and sufficient land for their future survival as a people. Through tenurial reform, their structures and organisation were instead destroyed and made susceptible to alienation. There is nothing in the record to satisfy us of the Government's compliance with even minimal protective standards or the performance of fiduciary obligations.

CHAPTER 9

IMPACT

9.1 THE IMMEDIATE EFFECT: DISUNITY AND THE BUILDING OF MATAATUA

The immediate effect of the confiscation was that many of Ngati Awa were surrounded by their former enemies and were forced to reside on other than their customary lands under military supervision. Te Arawa individuals were given land within the western extremity of the confiscation district, as well as at Matata, Edgecumbe, Whakatane, and other places. In addition, military settlers were introduced, principally at Whakatane. These were placed on lands customarily belonging to those who were clearly innocent of anything for which the land might have been taken.

Most Ngati Awa hapu were forced to relocate on blocks set aside for them on the opposite bank of the river from the military settlement at Whakatane, where they could be kept under supervision. The blocks were laid out in a corridor from the coast to the hill country, with the Whakatane River basically forming the eastern boundary.

Other land had also been returned, but this either was insufficient to sustain hapu or was hill country that was, at that time, unusable. Accordingly, life focused on the blocks laid out by the Crown in the corridor described. These blocks were apportioned to the individuals of the various hapu.

That land, however, was prone to flooding. It was also land that customarily belonged to one or two hapu only, so that all others felt like intruders. Further, the land was removed from the traditional resource sites of most inhabitants – their eel weirs, birding and fishing spots, and cultivations. Once relocated, they risked starvation.

The blocks were further apportioned in individual shareholdings. On a brief analysis, it is obvious that few owners had a sufficient share to provide anything near the amount of land necessary for an economic farm, according to the size of rural allotments then considered necessary for European settlement. As people passed on and their shares devolved to their children, the further fragmentation of shares was inevitable. In addition, shareholders could alienate their interests without reference to the hapu so that, in a short time, as settlers acquired various shares, parts of the Maori land were partitioned for Europeans.

To the struggle to obtain food for survival was added a struggle to maintain social order. Maori law could not work in this uncustomary situation. Maori were living on the traditional lands of others. People needed to access resource sites that had been the customary preserve of particular families. Individuals could thwart tribal cohesion through share alienations. Inevitably, people blamed each other for the

confiscation. There was dissension and a breakdown of the traditional respect for law and order.

It was against this background that Wepiha Apanui, his father (Apanui Te Hamaiwaho), and the Ngati Pukeko chief Hohaia Mata Te Hokia settled upon a plan to pull the people together in the construction of a carved house, utilising that which could not be confiscated – the people’s renowned artistry. The house was named Mataatua. Wepiha also arranged a marriage to a leading rangatira of Hauraki, one of the wealthier of districts for Maori at the time, owing to gold discoveries. A house named Hotunui was carved for the Hauraki people as a marriage gift, and in return, the Hauraki people sent flour and cash for the Ngati Awa workers.

The Mataatua house was symbolic of the need for unity, not only from within Ngati Awa but throughout all who traced descent from the Mataatua waka. The carvers were called in from throughout the Mataatua region, and included persons from Ngai Te Rangi, Tuhoe, Te Whanau-a-Apanui, and Whakatohea. As Dr Hirini Mead and others put it, ‘there was a strong need to bring the groups together again and there was no better way to express this ideal than to build a beautiful carved house and call it Mataatua’.¹

Once this large and beautifully carved house was completed, its fame spread rapidly – not least to the Government, which at that time was seeking some local work of art to display at an exhibition in Sydney of life throughout the British Empire. The Government sought the house from Ngati Awa. Opinions vary on what happened. Some say the house was gifted, others that the house was lent for the purpose of the exhibition. Either way, Ngati Awa were in no position to refuse whatever the Government wanted. At the time the house was removed, in 1879, the people were pleading for the return of more land. They were also pleading for the release of those still held in custody on sentences of life imprisonment for murder.

In any event, the house was taken and not returned. It was displayed in Australia, then later in England, and eventually came back to New Zealand for a special exhibition in the South Island, whereafter it was transferred to a museum in Dunedin. The equally magnificent Hotunui ended up in the Auckland Museum.

It was part of the claim that the Mataatua house be returned to the Ngati Awa people. We commend the claimants, the Government, and the Otago Museum Trust Board for reaching a settlement in that matter during the course of the hearings. The house is now back in Ngati Awa possession. We therefore mention the house only in the context of the people’s own efforts to overcome the adversity that followed the confiscation, and to show how that one moment of great pride in achievement was short-lived.

9.2 LONG-TERM EFFECTS

There is little to rely upon in the way of census data and other statistics to establish a clear picture of the economic and social effect of the raupatu. Censuses provided

1. Document A21, p 14. For a further account of the erection of the house, see document A15.

demographic material on a tribal, and at times even hapu, basis from 1874 to 1901, but not subsequently until 1991. In any event, even where it is evident that large numbers of tribal members left their home area for opportunities elsewhere, it is not always certain that this was a consequence of raupatu or other losses of resources. Maori and Pakeha alike in the middle part of this century left rural areas of New Zealand for the better employment, education, and entertainment prospects that the towns and cities offered. In addition, especially after 1953, when the Town and Country Planning Act was passed, Maori were disadvantaged by not being allowed to partition house sites on the multiply owned land that remained.

Nevertheless, we can point to some incontrovertible facts surrounding the loss suffered by Ngati Awa. Their land was confiscated, and that left to them offered few prospects for sharing in the growing colonial agricultural expansion. Ngati Awa also lacked the capital to develop the lands that they did retain, and they were forced into the position of needing to sell or lease some lands to develop others. They lost more land when some was taken for swamp drainage under the Public Works Act 1908, and the loss of the swamps themselves as a source of food – particularly eels – should not be underestimated.

By the twentieth century, Ngati Awa were in a parlous condition, with few prospects other than to work as labourers. There were other tribal groups, like those of Te Arawa, with large areas of undeveloped land that received the benefit of Government capital injections for land development on concessionary or favourable terms. In comparison, Government money for the development of Ngati Awa land was negligible because they had very little land to develop.

The Government recognised the inequality for those who had suffered land confiscation, and in the 1940s it was settled that sums would be paid annually to trust boards established for Taranaki, Waikato, and Whakatohea. The Whakatohea Maori Trust Board capitalised the annuities to acquire a tribal land base. Ngati Awa, however, received nothing.

A point that requires particular and further emphasis is the individualisation of title of the lands retained. That the actual loss of some 116,000 acres of land through confiscation greatly impacted on the people is unquestionable. There can be little doubt as to its flow-on effects in terms of limiting the community's economic production (and options) and directly inhibiting its growth, development, and general health.

What are not so obvious or measurable are the consequences of the individualisation of the remaining land. The effects of the individualisation of title and growing fragmentation of interests are fairly well documented, and there can be little doubt that, as elsewhere, it would have destabilised the cohesion upon which Ngati Awa communities depended for their economic productivity, and completely undermined the traditional systems of organisation. Aside from the loss of land, this in itself would only have added to the economic pressures placed on the people.

On a deeper and less transparent level are the consequences in terms of the community as such. The partitioning of interests combined with the inequality in landholdings that resulted from the compensation process clearly engendered a level

of divisiveness and competition between groups and individuals that worked directly against the community (and a community spirit). Undermining the communal base of interests also destroyed that which had previously maintained their community structures and organisation (including the existing systems of authority and control) and their very tribal identity. Indeed, it led to the isolation and increasing individualisation of the community itself. The difficulties inherent in seeking to resume or maintain that community interest and structure today are manifest, and probably constitute one of the greatest challenges facing Ngati Awa. It is perhaps notable in this respect that those moves that the Government has made in recent years to compensate Ngati Awa have involved the return of land for Ngati Awa as a tribal people as opposed to individuals. That in itself constitutes some recognition of where the primary damage inflicted by the Government's policies last century actually lies. Put another way, it is the loss of a tribal culture and identity that went with the loss of tribal land that is perhaps one of the most significant points to emphasise, albeit one of the most intangible to measure.

We expand on some of these issues below.

9.3 AGRICULTURE

Ngati Awa's formerly prosperous agricultural trade lay in tatters after the raupatu: the majority of the tribe's best cultivable land had been taken, its trading vessels lost, and its mill destroyed (the latter courtesy of Te Kooti). In 1870, W G Mair referred to 'the destitution of the Whakatane people, in consequence of their late troubles [caused by Te Kooti] and the disastrous floods of January last'. Native Minister Donald McLean visited them and promised them potatoes and flour.² Ngati Awa were reduced to subsistence agriculture. We can gain a further picture of their plight from the reports of the resident magistrates at Maketu and Opotiki.³ By 1876, Ngati Awa were growing significant amounts of maize but had been hampered by severe flooding and the commitment of resources to the building of Mataatua. By 1881, however, the rebuilt mill at Whakatane was producing large amounts of grain. 'Rangitaiki' Maori, it was reported, had bought 400 sheep in 1878, and by 1879 the flock was 1000 strong. In 1885, Resident Magistrate Bush reported that there were several flocks throughout the district. But, as we have noted, Ngati Awa struggled to expand their farming

2. Mair to under-secretary, Native Department, 27 May 1870, AJHR, 1870, A-16, p 8

3. See, for example, Brabant to under-secretary, Native Department, 25 May 1874, AJHR, 1874, G-2, no 8, p 8; Brabant to Native Minister, 1 June 1875, AJHR, 1875, G-1A, no 3, p 4; Brabant to Native Minister, 20 May 1876, AJHR, 1876, G-1, no 33, p 28; Brabant to under-secretary, Native Department, 31 May 1879, AJHR, 1879, G-1, no 15, p 18 (RDB, vol 27, pp 10,550, 10,608; vol 28, p 10,747; vol 29, p 11,467); Preece to under-secretary, Native Department, 6 June 1878, AJHR, 1878, G-1, no 12, p 11; Preece to under-secretary, Native Department, 9 June 1879, AJHR, 1879, G-1, no 6, p 4 (RDB, vol 29, pp 11,274, 11,453); Bush to under-secretary, Native Department, 30 May 1881, AJHR, 1881, G-8, no 10, pp 12-13 (RDB, vol 31, pp 11,946-11,947); R S Bush to under-secretary, Native Department, 1 May 1885, AJHR, 1885, G-2, p 10 (RDB, vol 32, p 12,415)

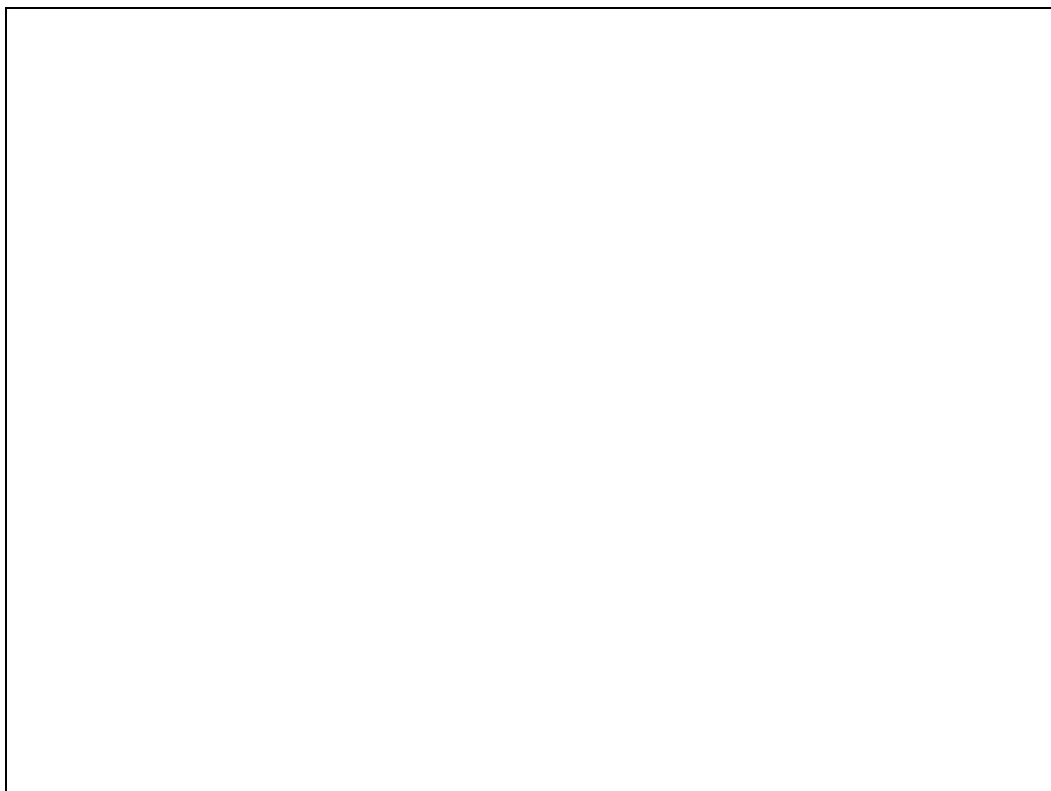


Photo 5: Canoes taking raw flax to the mill.
Photo courtesy Whakatane District Museum and Gallery (A840-2).

operations owing to their lack of capital. And the only way that they could raise more capital was by selling or leasing land, which then further reduced the area available to them to farm.

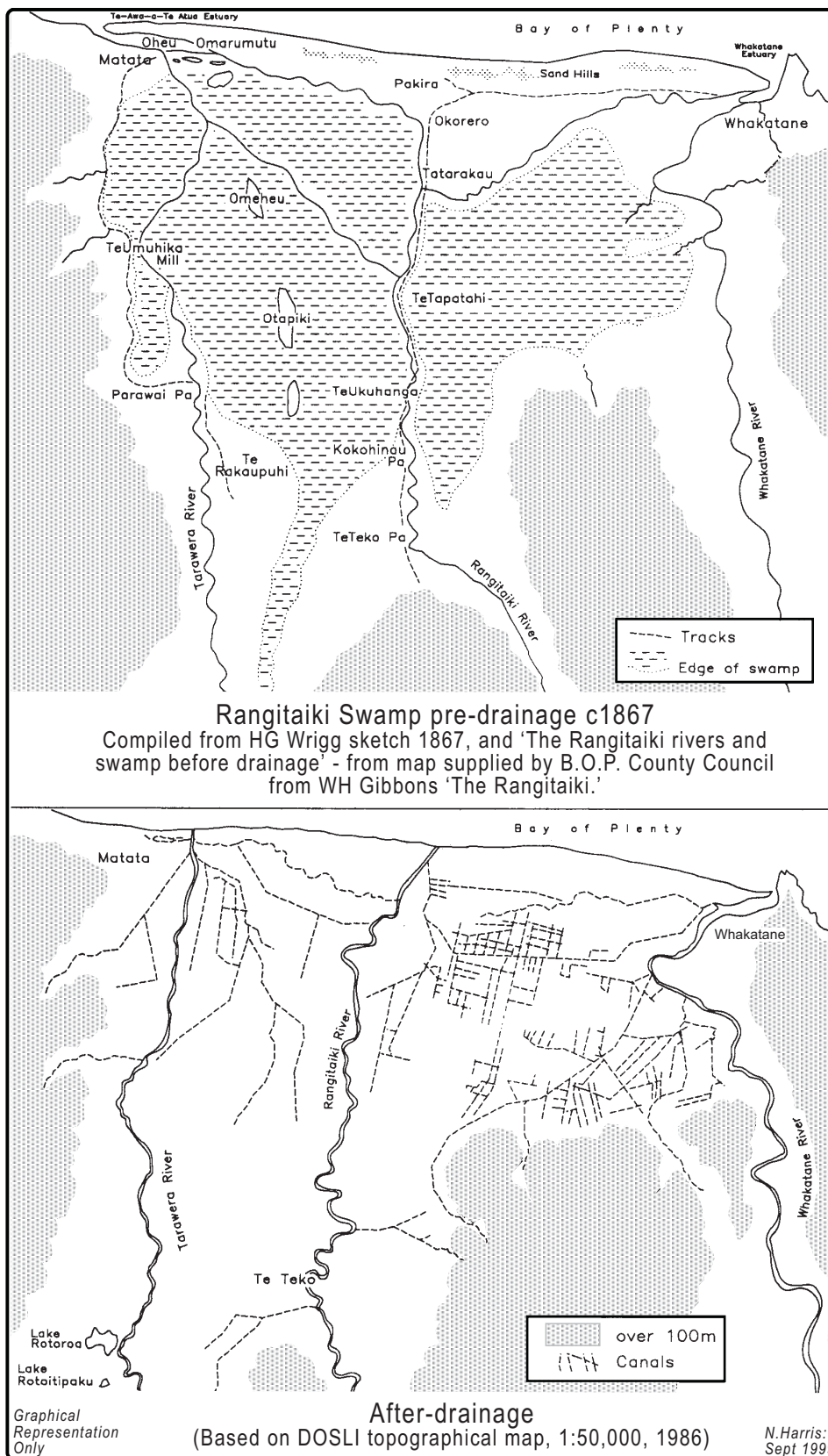
9.4 THE DRAINAGE OF THE RANGITAIKI SWAMP

The drainage of the Rangitaiki Swamp resulted in the loss of a valuable food resource. The claimants also argued that the heavy rating required to pay for the drainage accelerated the alienation of the land.⁴

The Rangitaiki Swamp was basically the area bounded by the Tarawera River to the west and the Whakatane River to the east. Running through the middle was the Rangitaiki River, which had a tortuous access to the coast, and so spread across the land as it slowly seeped its way to the ocean. All three rivers, but especially the Rangitaiki, were prone to flooding, and the area had a number of lagoons, some very deep. The swamp was divided amongst the various Ngati Awa hapu.⁵

4. Claim 1.1(c)

5. Document A63, p9



Map 7: The Rangitaiki Swamp before and after being drained

Although the raupatu of 1866 included all of the Rangitaiki Swamp, about half the land covered by the swamp was returned. Some of these blocks, which ranged between 10 and 50 acres in size, were along the banks of the Rangitaiki River, and there were also some larger blocks along the banks of the Whakatane River. Maori continued to live in the area, including at Umuhika, near the flour mill; at Owahataitai, alongside the Whakatane River; at Matata (with cultivations at Awakaponga); and at Te Teko.⁶

Before the swamp was drained, the vegetation there was mainly raupo, flax, and rushes, with ti-tree and cabbage trees on the higher ridges. The swamp provided Maori with food; in particular, eels, fish, and birds. (The drainage of the swamp uncovered the remains of many eel weirs in the old watercourses.⁷) The swamp also provided Maori with flax and raupo, allowed easy movement within the Ngati Awa territory, and offered a place of refuge.⁸ The higher land in the swamp and the land along the river banks also provided places for the cultivation of kumera, potatoes, maize, wheat, and melons, and a flour mill operated at Matata before 1900.⁹

However, the flooding of the swamp caused many problems for the local Maori. In 1870, Donald McLean was told of the problems that recent floods caused the 'Whakatane people'.¹⁰ In 1891, Maori living next to the Rangitaiki and Whakatane Rivers and at Matata lost their potato crops, and the flood rose to two and a half feet in their maize fields.¹¹

Undrained, the swamp was completely unsuitable for farmland, because much of it was constantly wet and the rest was often flooded. At the time, there were very few Pakeha living in the area. However, in 1890 a scheme was devised to drain the land and transform it into farmland.¹² The swamp was surveyed and divided into sections, mostly of 500 acres. The blocks still in Maori hands at this point were excluded from the divisions. In 1891, settlers, mainly from Canterbury, came to take up their sections; the land was leased to them by the Crown either on a 999-year perpetual lease or with a tenure of occupation with right to purchase.¹³ The Rangitaiki River land drainage district was gazetted in 1894. It comprised roughly the area between the Tarawera and Whakatane Rivers and extended from a mile north of Te Teko to the sea.¹⁴ Of the 87,100 acres in the district, 31,500 acres were Maori land.

6. In 1886, at the time of the Tarawera eruptions, there were around 500 living at Umuhika, near the flour mill: T Thorne Seccombe, 'Additional Information Concerning Umuhika Mill', *Historical Review*, vol 7, no 2, June 1959, p 46. When Bill Moore came to survey part of the swamp in 1907, he found many Maori living at Owahataitai, where they grew maize and rock and water melons, as noted in Kathleen Law, *Ruled by the Rivers: Tales of the Pioneer Days of Thornton and Rangitaiki District*, Thornton, Thornton School 50th Jubilee Committee, 1962, p 20. See also George J Murray, *The Story of the Rangitaiki*, Christchurch, Presbyterian Bookroom, 1968, p 9, and Judith Binney, *Redemption Songs*, Auckland, Auckland University Press, 1995 (who discusses the Maori living at Matata and Te Teko).

7. Murray, pp 8–9

8. Document A63, pp 8–9

9. Murray, pp 8–9, 11, 16; Law, p 20

10. Mair to under-secretary, Native Department, 27 May 1870, AJHR, 1870, A-16, p 8

11. *Bay of Plenty Times*, 13 March 1891

12. We have seen no evidence of consultation with Maori.

13. Murray, p 13

14. AJHR, 1911, C-11, p 1

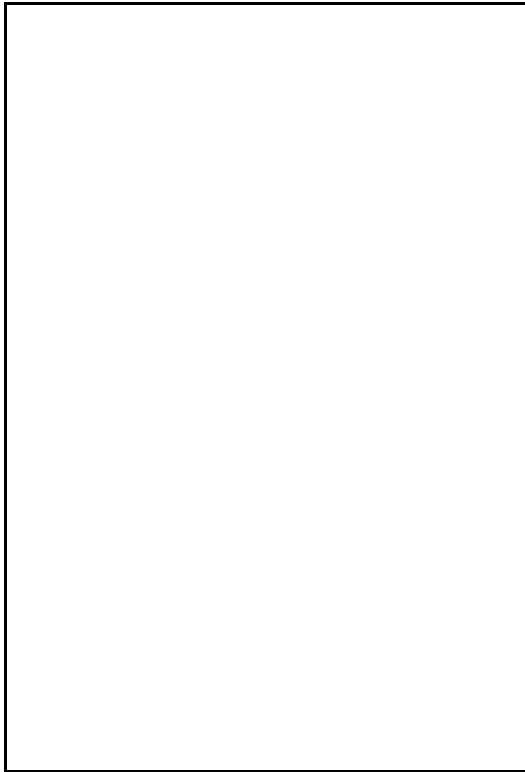


Photo 6 (left): Maori workers on the Rangitaiki Swamp drainage scheme. Photo courtesy Whakatane District Museum and Gallery (968-1).

Photo 7 (below): The drainage of the Rangitaiki Swamp, circa 1911. Photo courtesy Alexander Turnbull Library (16470¼).



Between 1894 and 1910, the settlers attempted to drain the land.¹⁵ There is also some evidence that Maori attempted to drain their land and create roads during this period, and by the early twentieth century some had extensive cultivations.¹⁶ However, the attempts were not successful, and in 1910 the Government took over the drainage scheme and passed the Rangitaiki Land Drainage Act. The project became a major public work, and many drains were cut through the land to allow the water to flow quickly to the sea, including, in 1914, a channel to provide the Rangitaiki with a direct outlet. In 1915, J B Thompson, the chief drainage engineer, estimated that 75 percent of the area was permanently free from flooding and workable in all seasons, although the drains needed to be made deeper before the land could be considered permanently drained.¹⁷ The work nevertheless continued for many years, and 40 years later the scheme was still struggling with the flooding of the rivers. Although the quality of the land did not live up to initial expectations, the area is now excellent dairy farmland. However, the drainage meant the destruction of the lagoons and the wetlands and, with them, the food that they provided.

The claimants have also argued that the change to the way in which the Rangitaiki River drained caused the silting of the Whakatane Harbour.¹⁸ A settler's suggestion that a channel be cut to allow water to drain into the Onepu hot water springs was abandoned following protests from the Maori landowners and the Government (which thought that they may become a tourist attraction). However, the claimants have provided information that the Tarawera River was later altered to make it flow through the springs.¹⁹

The claimants have argued that the drainage scheme also caused the acceleration of the alienation of the land, through public works and the heavy rating needed to sustain the scheme.²⁰ Under the Rangitaiki Land Drainage Act 1910, a rate could be levied on the settlers to defray the Government's expenses. It was based on the unimproved value of the land and came on top of the county rates, with an exception for Maori land under 50 acres that was used for Maori settlements. In 1925, the commission appointed to investigate the drainage scheme commented briefly that it believed that there were certain Maori lands that should be excluded from being levied the rate, although it did not make clear what lands it meant. In 1943, the report of the chief drainage engineer noted that there were 400 Maori properties in the district, but up until 1939 virtually none of the rates had been collected, and the amount owed was over £14,000. He also noted that the rates arrears were often more than the value of the land. The chief engineer believed that forcing the Maori to lease their properties would only worsen the problem. A compromise was reached: for

15. Murray, p 13. Of the 57 ratepayers listed in 1902, four have identifiably Maori names. The blocks concerned were not ones that had been returned after the confiscations, so this is perhaps an indication that Maori were buying land to work on during this period: see Walter Gibbons, *The Rangitaiki, 1890–1990: Settlement and Drainage on the Rangitaiki*, Whakatane, Whakatane and District Historical Society, 1990, p 24.

16. See, for example, doc M18, pp 89, 100

17. AJHR, 1915, C-11, p 2

18. Document A41, p 4

19. Ibid, p 3

20. It is noteworthy that, in the early years, the European settlers could not pay their drainage rates, and this caused land sales: see Gibbons, p 103.



Photo 8: A drainage canal in the Rangitaiki Swamp with Putauaki in the background, circa 1911.

Photo courtesy Alexander Turnbull Library (16448¼).

every year's worth of rates that were paid, another year's would be written off.²¹ From that year onwards, a special section entitled 'Maori rating' appeared in the annual report and outlined the amount that had been collected.

Section 8(1) of the Rangitaiki Land Drainage Act 1910 stated that any land used exclusively for the purposes of native settlement would not be taken under public works legislation, 'unless its acquisition is of paramount importance to the drainage operations'. However, of the 278 acres on the western bank of the Rangitaiki River awarded to Ngai Te Rangihouhiri and Ngati Hikakino in 1867, 187 acres were taken for the drainage scheme under the Public Works Act 1908. Although they petitioned the Government, their claim has never been resolved, despite a finding in 1928 by the royal commission to inquire into confiscations of native lands and other grievances (the 'Sim commission') that they had 'not sufficient reserves for their ordinary maintenance' and a recommendation that they be compensated with land around Matata.²²

There were, however, some advantages for local Maori in the drainage scheme. First, it was an important form of employment for them: both the settlers' and the Government's schemes employed local Maori. In 1914, a daily average of 110 men

21. AJHR, 1943, C-11

22. See AJHR, G-7, 1928, p 22

worked on the drainage scheme, almost all of them Maori.²³ Secondly, the land that remained in Maori hands after this process was finished became much more commercially valuable.

9.5 EMPLOYMENT

Many Ngati Awa moved away from the tribal territory. For example, half of Patutatahi went to live on Motiti Island. For those staying, there remained scant employment opportunities in the latter part of the nineteenth century, with few Pakeha farmers settling the confiscated lands, although some work was available in road construction and flax and timber milling.

In the twentieth century, more opportunities arose – in swamp drainage, railroad construction, and the planting of the Kaingaroa Forest. From mid-century, new employment avenues opened with the establishment of pulp and paper mills and hydroelectric works. More and more Ngati Awa moved to Whakatane and other towns. In the course of a century or more, Ngati Awa were converted from a rural peasantry, with a relatively comfortable subsistence, to a rural and increasingly urban-based proletariat, largely dependent on wage-earning – or the dole.

9.6 EDUCATION AND HEALTH

The first local school opened in Whakatane in 1873 and by 1884 was followed by two others nearby. In that the Ngati Awa people had to contribute a substantial proportion of the costs themselves, it was obvious that they invested a considerable effort in their children's education.²⁴ The people's health was affected by various epidemics, though resident magistrates such as Herbert Brabant tried to vaccinate them where possible.

In 1881, despite an absence of epidemics at the time, deaths were still occurring, with the resident magistrate reporting the death of Wepiha Apanui and six members of his family in the previous 12 months.²⁵ By and large, however, the resident magistrates were optimistic about the welfare of the Ngati Awa people: for example, in 1885, R S Bush claimed that their overall health was improving and that drunkenness was on the decline.²⁶

In common with other Maori, and despite a lack of statistics on a tribal basis between 1901 and 1991, the Ngati Awa population has increased markedly this century.

23. Murray, pp 17, 35. For the 1914 figure, see AJHR, 1914, C-11, p 4: 'These Natives make excellent drainers, and are very much at home in the work, but they are very much averse to constant employment . . . it is fortunate indeed for us that this district carries such a large Native population.'

24. See H W Brabant to under-secretary, Native Department, 23 May 1873, AJHR, 1873, G-1, pp 10–11, 13; doc B16, pp 14, 16; R S Bush to under-secretary, Native Department, 8 May 1884, AJHR, 1884, sess 2, G-1, p 16

25. R S Bush to under-secretary, Native Department, 30 May 1881, AJHR, 1881, G-8, p 12

26. R S Bush to under-secretary, Native Department, 1 May 1885, AJHR, 1885, G-2, p 10

9.7 GOVERNMENT-ASSISTED LAND DEVELOPMENT

As noted in our final chapter, some attempts have been made to establish Ngati Awa in farming. In the early 1930s, the Native Minister, Apirana Ngata, helped establish a development scheme by purchasing 4600 acres of private land at Ohiwa Harbour and combining it with the remaining 725 acres in the Ohope reserve allotted to Ngati Hokopu and Ngati Wharepaia. In 1931, he already had over 60 young Ngati Awa (principally of Ngati Hokopu) working on the scheme clearing land, and he envisaged a day when individual farms and homesteads would be placed upon the land supporting ‘fifty young families’.²⁷ Indeed, by 1956 about half the scheme was sufficiently developed to be available for lease to individual Ngati Hokopu farmers.

However, at this stage a dispute arose about the title to the lands that Ngata had acquired for the scheme. His idea, and that apparently of Ngati Hokopu, had been that the land would pass to the tribe once the purchase and development costs had been repaid. However, in 1955 the Supreme Court held that the title remained with the Crown, and this judgment was upheld by the Court of Appeal. The Crown kept much of the land under development but also created several scenic reserves, while Ngati Hokopu cut out its own reserve area and partitioned it amongst various owners. A 2600-acre block backing on Ohiwa Harbour was eventually passed to Ngati Awa in 1990 as the Ngati Awa station (valued then at \$1.5 million).²⁸

9.8 ‘TANGATA HARA’

For Ngati Awa, the effects of the raupatu lingered psychologically as well as physically. Not only were they stripped of much of their lands and their leaders imprisoned, but they were forced to live with the stigma of being seen as ‘tangata hara’, or sinners. Both the Crown and other Maori, they felt, referred to them as such. Ngati Awa have been, they said, ‘perceived to be the “baddies” in a Western movie produced by the military settlers of the 19th century’.²⁹ Ngati Hikakino and Ngai Te Rangihouhiri were viewed as the most ‘obnoxious’ and ‘lost hundreds of their members who for various reasons went to other places to live or who joined other hapu’. In order to survive, the two hapu had more or less had to amalgamate with Ngai Taiwhakaea. We heard that Ngati Hikakino today has a functioning marae at Whakatane but that ‘it has struggled to maintain the viability of the hapu’, while Ngai Te Rangihouhiri has only a ‘forlorn meeting house in a sad state of repair’ in a paddock.³⁰

Ngati Awa also lived with the insult of much of their lands being handed by the Crown to their traditional tribal rivals, and with the pain of some hapu leaving the Ngati Awa–Ngati Pukeko confederation and realigning themselves with the Arawa canoe to escape the ignominy attached to being Ngati Awa. Furthermore, when some

27. Ngata to Buck, 15 May 1931, 27 July 1931, *Na To Hoa Aroha*, vol 2, pp 146, 192

28. Document G7(j)

29. Document A18, p 159

30. Ibid, pp 156–157

land was returned to Ngati Awa by the Compensation Court and the beneficiaries to each block had to be listed, there ensued:

a scramble for shares and through the generosity of some tribes people with no right to be listed as an owner became owners overnight. The trouble with all this, however, is that the scrambles led to inter-iwi and inter-hapu friction that affected the unity of the tribe for decades. Even today questions are asked about how certain families became beneficiaries in land blocks.³¹

9.9 CULTURAL WEAKNESS AND DESPAIR

Culturally, the tribe has struggled to maintain its identity and strength, particularly amongst its youth. Kairau Ngahau of Taiwhakaea, Ngati Hikakino, Ngai Te Rangihouhiri, and Te Patuwai told us that:

I have seen many of our people today fail to observe even the most simple protocols and customs. I have seen some of our people [trample] over the tikanga that is special to us and has been laid down by our ancestors before us. I have seen our people on some occasions deny that they are Ngati Awa.³²

The relative 'cultural weakness' of Ngati Awa today was touched on by other witnesses. We heard from Dr Hirini Mead and Jeremy Gardiner that 'Today Ngati Awa is unable to field a haka team whereas before the raupatu it could put up a team of at least 200 men and perform with the best of the Maori world'. Now, they added, 'Ngati Awa does not have a reputation for being strong in kawa'.³³ It was an admission that obviously troubled them.

Rererangi Rangihika of Ngati Pukeko referred to many of his people having 'languished in a sea of hopelessness for the last 125 years'.³⁴ This condition has led to a concomitant frustration at an inability to rectify the situation. Patrick Hudson told us that he could:

vividly recall how my mother was always telling me how my grandfather, Merito Hetaraka, felt the shame and worthlessness, as he could not fulfil his duties as a Ngati Hokopu leader to ensure the future wellbeing of his Hapu and Iwi, as a result of the loss of the 'control' of our confiscated lands.³⁵

However, in important ways, it seems that the Treaty claim process is revitalising the tribe. Referring to census returns, where Maori record their primary tribal affiliations, the claimants asserted that:

31. Document A21, p 13

32. Document A33, p 2

33. Document A18, pp 158–159

34. Document B19, p 4

35. Document A29, p 3

the choice of a first affiliation is a matter of perceived mana. Once Ngati Awa is able to rebuild its mana through resolution of its raupatu case the number of persons claiming Ngati Awa affiliation could well increase. Furthermore allegiances are likely to change. For example, more persons are now claiming whakapapa connections to Ngai Te Rangihouhiri than say, three years ago.³⁶

9.10 WAHI TAPU AND RESERVES

To move beyond a sense of grievance, the claimants seek to recover their historical and sacred sites. Not unnaturally for an area that was once densely populated by Maori, the confiscation district is redolent with sites having intense spiritual associations for the members of the local hapu. As a result of the confiscation, most of these sites are now outside Maori ownership and are at risk. Some have been destroyed. There is some hope that those still identifiable but in private ownership may be capable of protection under the historic places legislation. In respect of those in public ownership, the hapu now seek joint management regimes.

9.10.1 Tuwharetoa sites

Members of Tuwharetoa took us to a number of sacred sites near to Kawerau, many of which are now at risk (some from waste disposal from the local pulp and paper mill). The sites visited ranged from Waitahanui, where Tuwharetoa grew up and was first buried, to Te Atua Reretahi, where he was subsequently reinterred. We also visited the urupa and the early habitation areas of Otukoiro, Te Kopua, and Puketapu on one side of Kawerau and, on the other, Te Hoehoe and Maruka. The latter, named for the grandson of Tuwharetoa, has been shown by archaeological excavations to have been a major occupation and gardening site. At Matata is Otaramuturangi (now threatened by erosion following a road cutting), and we were referred to a number of other sites from there to Otamarakau, where Tuwharetoa was born. There, the remains can still be found of his birthplace, the pa of his grandmother, Hine te Ariki. In the inland hill country, we were shown Whakahoro, Pukemaire, and the cave at Otari. We passed also Matatu, Huratoki, Whakaparau (on Maungawhakamana), Otuhoepu, Nokonoho, and Te Takangaoapa in the Tarawera valley and surrounding hills.

Shortly after his birth, Tuwharetoa was left in the care of his grandparents at the kainga besides Rotoiti-paku, a lake near Kawerau. This area is rich in Maori history and has special significance as the ancestral home of the Tuwharetoa people. Rotoiti-paku is fed by a warm spring that was used to calm the infant Tuwharetoa when he was crying for his mother's milk. It thus became known as Te Wai U o Tuwharetoa (the mother's milk of Tuwharetoa).

Rotoiti-paku enjoyed abundant fowl and fish life and provided the main source of food for the local people. Last century, the Tarawera River altered its course to run closer to this area. It too was a major source of food.

36. Document A17, p 90

Today, Rotoiti-paku sits near to the Tasman Pulp and Paper mill. By the authority of the Tasman Pulp and Paper Enabling Act 1952, the mill discharged waste into the Tarawera River, killing all fish life downstream. In 1966, the Government required the mill to filter and monitor its waste-water. To this end, it built sludge ponds, which affected the lake and adjacent Maori land. The Maori evidence is that the lake and part of the land were reluctantly sold in the belief that this would enable the Tarawera River to recover. In 1971, the company built an embankment to prevent Te Wai U o Tuwharetoa from draining into the lake, which had been converted to sludge ponds. The resulting pool built up, and water leached through the embankment to adjacent Maori land, threatening the urupa.³⁷

We were taken to the area. It is no longer habitable and the Maori land there is no longer an asset. We were advised that the Tarawera River remains polluted. It is, however, clear that the company has gone to considerable lengths to contain the problem.

9.10.2 Offshore islands

The islands off the coast of the eastern Bay of Plenty are significant for the wide range of hapu that once used them, including hapu outside those considered in this report. Three main groups of offshore islands dominated submissions: Whakaari (White Island), Motuhora (Whale Island), and the adjacent Nga Moutere o Rurima (the Rurima Islands).³⁸

Whakaari is an active volcano of 23 hectares some 48 kilometres north of Whakatane, and was traditionally used seasonally for birding and fishing. It was awarded by the Native Land Court to Retireti Tapsell, the son of the early Danish trader Hans Tapsell, to whom it had been gifted in the 1840s by Apanui and Te Kepa Taihau of Ngati Awa. It is doubtful that Apanui and Te Kepa had sole title in view of the number of hapu of different descent groups that used the island, and it is probable that they intended to give no more than that which they had – a right of user – in accordance with Maori custom. The land was subsequently onsold, though Maori continued to use it. Local hapu contend that no gift was intended in European terms. Other tribes beyond the Ngati Awa group have also claimed an interest, including Te Whanau-a-Te-Ehutu, from around Te Kaha, which petitioned Parliament on the matter in 1884.³⁹ The land remains in private ownership, though it is managed by the Department of Conservation. It was mined for sulphur deposits until 1933.

Motuhora is a volcanic island of 153 hectares rising to 353 metres, five kilometres offshore from Whakatane. It is part of the thermal line of activity that runs from Tongariro through Rotorua and Kawerau, and was used by Maori for the collection of titi (muttonbirds) until as late as 1962. Gilbert Mair senior unsuccessfully attempted to establish a whaling station on the island in 1840. Hans Tapsell apparently

37. See doc F1

38. The main sources of our information concerning Whakaari and Motuhora are documents A4, B3, M8, and M15. Much of the information contained in document A4 is also contained in document A28.

39. Document F6

‘purchased’ the land from Mair, and on this basis the Native Land Court awarded title to Retireti Tapsell. It has since been sold again. Once more, Maori contest the validity of the original transaction, while Crown researchers contend that there is no evidence that it was less than a sale.⁴⁰ It was purchased by the Crown in 1984 and is currently managed by the Department of Conservation.

Nga Moutere o Rurima consist of four rocky outcrops some 19 kilometres north-west of Whakatane Harbour and 6.5 kilometres offshore.⁴¹ They cover over 11 hectares, and while they are unsuitable for human habitation, they are an important home for tuatara and blue penguins and the surrounding waters are rich in fish. The Maori Land Court vested the islands in 488 Maori owners in 1920. Today, the islands are managed by Ngati Awa and the wildlife by the Department of Conservation. Tuwharetoa ki Kawerau also claim customary interests in these islands.⁴²

Of special sacred significance are the rocks Te Paepae o Aotea, near Whakaari, from where the Ngati Awa dead make their farewells. The rocks were used as targets for navy and airforce pilots until 1997, when they were declared Maori land by the Maori Land Court.⁴³

9.10.3 Sacred sites – Whakatane

Kakahoroa (the Whakatane township) is important in Mataatua tradition as the landing place of the Mataatua canoe.⁴⁴ In fact, the town is named for Wairaka, the daughter of the captain Toroa, in memory of her famous effort in saving the waka from being washed out in the tide, and derives from her plea ‘Kia whakatane ake au i ahau’ (Let me act the part of a man). She is commemorated in a monument on the rock Turuturu-Roimata, near the landing place, and at Wairaka Marae.

Toroa constructed a whare wananga, apparently on the site of the present Wairaka Marae. A kumera garden was planted, and soil from Hawaiki was scattered over it to give it mana. The cave in the cliff overlooking the town is known as Te Ana-o-Muriwai, after Toroa’s sister. A sacred altar was erected and named Te Manuka-Tutahi. However, several rocks in or on the edge of the Whakatane River, once associated with Mataatua tupuna, have been blasted away for harbour works or left stranded within reclamations.

Following the confiscation of 1866, Whakatane was subdivided into a township, mainly for the military settlers of the First Waikato Militia. In addition, the Ngati Pikiao chiefs Te Pokiha Taranui and Rewiri Parira were awarded several lots as a reward for their military services. James Fulloon’s widow was awarded an allotment, and another was set aside for Fulloon’s grave. The Ngati Awa chief Hurinui Apanui and others received an allotment of 1½ acres, which included the Wairere Falls, but

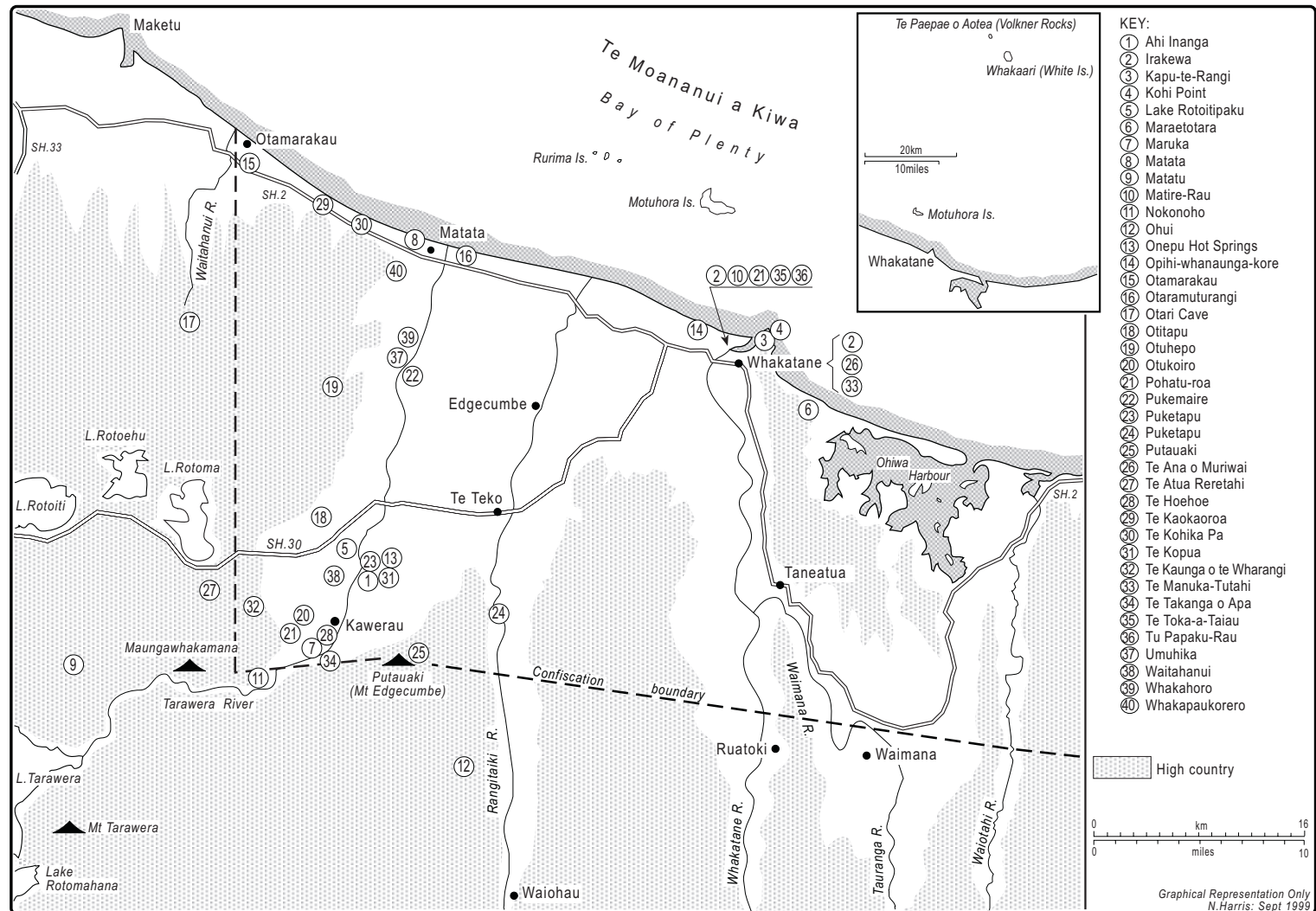
40. Document M8, p 2

41. See docs A3, M12

42. Document I9, p 2

43. See Whakatane Maori Land Court minute book 90, 1 December 1997, fols 211–213

44. Unless otherwise indicated, this section is based on document A20.



Map 8: Ngati Awa and Tuwharetoa ki Kawerau wahi tapu

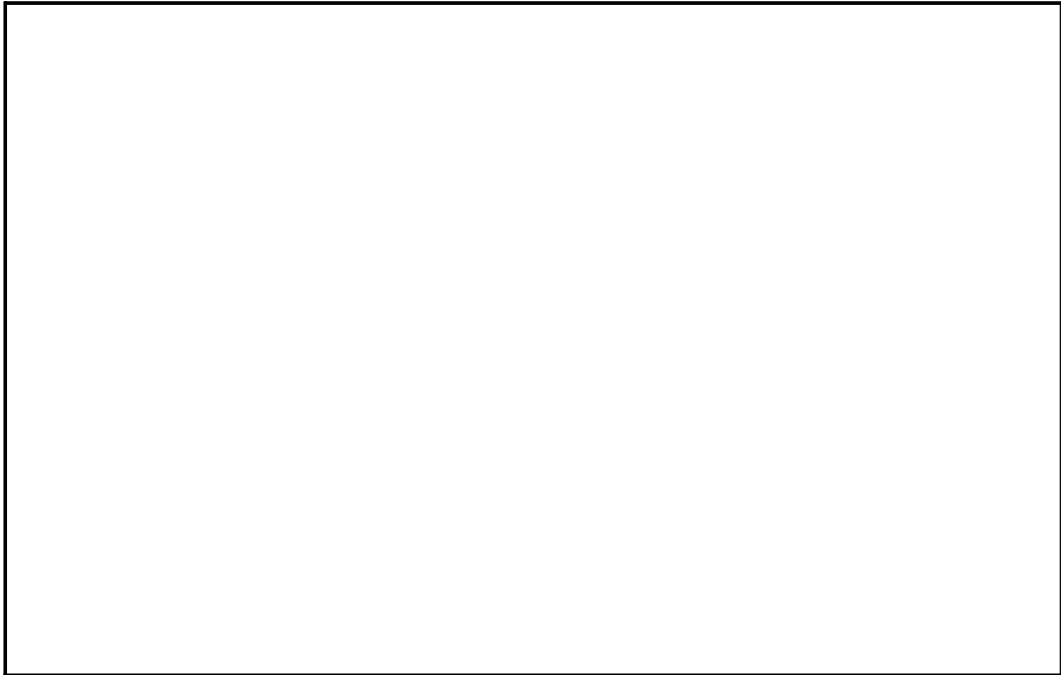


Photo 9: The Irakewa Rock before it was blasted. Little of the rock now remains.
Photo courtesy Whakatane District Museum and Gallery (A595-2).

this land was sold in 1918. Some was later purchased by the Whakatane District Council for reserve purposes in 1969, while other parts are now in Crown ownership.

In addition, several reserves between the township and the heads were awarded to Maori. A quarter-acre fishing reserve was awarded to the Pahipoto chief Rangitukehu; the Muriwai block of some 15 acres was awarded to Ngati Pukeko; and 17 acres at Te Whare-o-Toroa were awarded to Apanui and others. These areas included the site of the current Wairaka Marae and also gave them riparian rights to the river.

A harbour board was established at Whakatane in 1913. In 1918, the board began a programme of reclamation that infringed on access to Te Whare-o-Toroa. Hurunui Apanui and 56 others petitioned Parliament in 1921 but without success. Thereafter, work continued intermittently. River access was diminished, and sacred spots such as Irakewa Rock were removed by blasting. In 1958, the harbour board, having been granted foreshore rights gradually between 1916 and 1933, began reclaiming land. This denied river access to the people of Wairaka Marae. Some of this reclaimed area is now Mataatua Park, which was given to the Whakatane Borough Council in 1972.

9.10.4 Ohope

Complaint was made also of an alleged failure to protect the native reserve of Ohope, despite the vulnerability of the people, who were reduced to states of poverty following the confiscation. Over 20 years after the confiscation, Ngati Hokopu and

Ngati Wharepaia were finally awarded 1575 acres along the Ohope beach to the western end of Ohiwa Harbour. The inalienable grant was entrusted to Apanui Hamaiwaho and seven others for 84 beneficial owners. Despite the restriction on alienation and the element of trust, about half the land was sold. Smaller amounts were taken under public works legislation. The remaining 725 acres of mainly hill country were taken into the Ngati Awa land development scheme in the 1930s and finally returned to Ngati Awa administration in 1990. We have been unable to investigate the circumstances in which the alienations were made.⁴⁵

9.10.5 Whakatane–Ohope headlands

On the headlands known as Kohi, above Kakahoroa, there are many historical pa sites included in what are now scenic and conservation reserves. The Ka-pu-te-rangi historical reserve and Kohi Point scenic reserve, which adjoin, contain about 154 and five hectares respectively. Artefacts from these sites have been radiocarbon dated from about AD810, well before the arrival of the Mataatua canoe.⁴⁶ Ka-pu-te-rangi is associated in oral tradition with Toi-te-Huatahi, who is reputed to have occupied and named it.

There are many associated tapu sites that collectively represent the first phase of Mataatua's colonisation of the area. Puhī also resided there after quarrelling with Toroa before he ultimately left to found Nga Puhī in Northland. Others spread inland from Kohi to beyond Kawerau, thus giving rise to the saying 'Nga mate i Kohi me tangi mai i Kawerau, nga mate o Kawerau me tangi atu i Kohi' (The deaths at Kohi will be wept over at Kawerau and the deaths at Kawerau will be wept over at Kohi).

Despite the enormous significance of this area to Maori, and though the land was not required for military settlement, it was confiscated. As has been seen, the flat land on the east bank of the river was subdivided for the Whakatane township and that further up the river for military settlers. However, 10,000 acres of hill country running eastwards to Ohope, including the Kohi Point ridge, were not used for the purpose for which the land was or could have been confiscated in terms of the confiscation legislation. Instead, in 1886, it was handed over as an endowment to Auckland University College.

The university sold parcels of the land. Part was subsequently acquired from private owners by the Native Minister, Sir Apirana Ngata, in the early 1930s, and was combined with what remained of the Ohope native reserve to establish the Ngati Awa land development scheme. Eventually, in 1990 part of this was returned to the tribe as the Ngati Awa farm. The remainder of Kohi Point had already been gazetted in March 1969 as the Ka-pu-te-rangi historical reserve and the Kohi Point scenic reserve. Both are now administered by the Whakatane District Council.

45. For the claimants' account, see document G7(f).

46. Document A7, pp 8–9. Document A7 is the main source of our comments on these reserves, but see also document M5.

In addition, the Ohope scenic reserve of some 489 hectares was created in 1975, after originally having been designated a recreation reserve in 1971. It is bounded by the Whakatane to Ohope highway and the Ngati Awa farm block.⁴⁷ It derives partly from land taken from the Ngati Awa land development block, and partly from land acquired by the Crown from private owners whose antecedents had purchased from out of the Ngati Hokopu and Ngati Wharepaia reserve.

Further, the Mokorua Bush scenic reserve of some 237 hectares was established adjacent to the eastern aspects of the Whakatane township and is bounded on one side by the Whakatane to Opotiki highway. It was gazetted as a scenic reserve and vested in the Whakatane Borough Council in 1971.⁴⁸ Then, in 1979, the Ohineteraraku scenic reserve was established on some 12 hectares five kilometres south of Whakatane. Included in the reserve is a historic pa, Te Pare Kawakawa, which was gifted for the reserve by a local farmer in 1980. This reserve is managed by the Department of Conservation.⁴⁹

Ngati Awa are seeking the return of these reserves as Maori reservations under the Te Ture Whenua Maori Act 1993, with title vested in Te Runanga o Ngati Awa, but they seek a partnership with the Department of Conservation in the control and management of the reserves and the protection of wildlife. They claim rights to mineral resources and a right to give approval for archaeological excavation, provided that any taonga found remain the property of the runanga. All reserves derive from land confiscated for military settlements but not used for that purpose. Under the confiscation legislation, land could be taken only for military settlement purposes.

9.10.6 Te Putere

A failure to protect native reserves was also claimed in respect of the Te Putere reserve, which was located eight kilometres east of Matata near the coast.⁵⁰ It had some higher ground adjoining the Rangitaiki River and was a valuable landing area for fishers and traders. Following the confiscation and apparently on Native Minister Donald McLean's instruction, 275 acres were set apart as the reserve for two Tuhoe hapu, Ngati Whare and Patuheuheu, which had surrendered after originally supporting Te Kooti. No title appears to have been issued, and it further appears that the land was occupied not by them but, informally, by the local Pahipoto people.

The Ngati Awa claimants maintain that this land was wrongly taken from Maori ownership. They contend that an Order in Council of 14 December 1909 declared that the land was subject to part II of the Native Land Settlement Act 1907 (which provided for land to be occupied by Maori). They claim that, subsequently, the Departments of Lands and Survey and Native Affairs colluded to make the land available for Europeans as part of the Rangitaiki Swamp drainage scheme. In December 1915, the Valuer-General provided the Native Department with a valuation of several blocks,

47. Documents A9, M10

48. See doc M7

49. See doc M9

50. This section is based on document A6.

including the Te Putere reserve. The Under-Secretary for Native Affairs then authorised his counterpart in the Department of Lands and Survey to use a native land purchase officer to purchase individual interests in the blocks. The claimants argue that there is no evidence that the reserve was purchased. They claim that it was treated as unencumbered Crown land and was leased to European settlers, who were eventually able to freehold the land, and parts were acquired by the Whakatane District Council. We have been unable to investigate the matter at this stage.

9.10.7 The Rotoma and Mangaone scenic reserves

Ngati Awa also claim rights to the joint management of the Rotoma and Mangaone scenic reserves adjacent to Lake Rotoma and near the Rotorua to Whakatane highway. The basis for that claim would appear to be not only that the reserves include historical sites and ancient pa of the Ngati Awa people but that they derive largely from land originally confiscated for military settlement in terms of the confiscation legislation but clearly unsuited for that purpose. The difficulty here is that Te Arawa and Tuwharetoa hapu also have customary interests in this area. The reserves are managed by the Department of Conservation.⁵¹

9.10.8 Putauaki

We have already referred to Putauaki, the sacred mountain of Ngati Awa and Tuwharetoa ki Kawerau.⁵² Other descent groups also claim customary associations with this mountain. In 1879, a Ngati Awa committee identified five burial caves there. Te Niho-o-te-kioire (the Rat's Tooth), near the base of the mountain, is the burial place of Rangitukehu's daughter, who died some years before the raupatu.⁵³ Some of these wahi tapu are now covered in exotic pines. In recent years, Tuwharetoa ki Kawerau have regathered skeletal remains and sealed off some urupa.⁵⁴

Putauaki was bisected by the confiscation line. Under sections 3, 4, and 6 of the Confiscated Lands Act 1867, part of the confiscated northern half was returned under trust for 86 grantees of Te Pahipoto and Nga Maihi. Most of this land was still held by Maori when, in the mid-1960s, it was incorporated into the Tarawera Forest scheme. The same happened to the area that was not confiscated. It was awarded by the Native Land Court in three divisions – one of which was acquired by the Crown – but all the blocks passed into the forest scheme.

The Tarawera Forest scheme was an arrangement whereby the Tasman Pulp and Paper Company Limited, the Crown, and Maori owners joined their lands in a plan to develop a 60,000-acre pine forest. The lands of each passed to Tarawera Forests Limited, and each received shares in proportion to their contributions in land or cash.

51. See docs A10, M6, M11

52. Ngati Awa say that Putauaki is the symbol of their tribe alone: see doc B7, p 3. However, Tuwharetoa ki Kawerau, though not claiming exclusivity, say that it is 'recognised as a symbol of identity for the iwi': see doc 17, p 9.

53. Document B8, pp 27–28

54. Document 17, pp 23–25

In the result, Putauaki passed into the ownership of a private company in which Maori now have shares. The Maori claimants dispute the validity of the original transaction. Ngati Awa claimants also dispute that they agreed to the inclusion of the mountain in the scheme. They seek Government assistance in recovering the mountain as a Maori reserve.⁵⁵ This matter will resurface when the Tribunal hears the Tarawera Forest claim.

55. See doc B25

CHAPTER 10

FINDINGS

10.1 THE CONFISCATIONS

10.1.1 The Crown's position

In the hearing of the current claims, the Crown acknowledged that the Ngati Awa confiscation constituted 'an injustice' and was therefore in breach of the principles of the Treaty of Waitangi.¹ That admission was appropriate in helping to requite a long outstanding grievance. To the best of our knowledge, this was the first time that such an acknowledgement has been made in a legal forum during the 130 years since the land was taken. None the less, the claimants sought the Tribunal's own determinations. In this jurisdiction, which is to inquire into claims and to report thereon to Ministers and to claimants, they are entitled to such findings.

10.1.2 Whether contrary to the Treaty of Waitangi

In terms, the confiscation of the Ngati Awa land must be contrary to the Treaty of Waitangi. Confiscation was simply contrary to the Treaty guarantee that Maori would retain the possession of their lands for so long as they wished to keep them. However, in this case it is pertinent to ask whether the Treaty could be suspended on account of the general state of war at the time and, if so, whether the denial of Treaty rights to Ngati Awa was justified in their case. By a 'general state of war', we refer to the war begun in Taranaki and continued in Waikato and Tauranga, which spilt over into the eastern Bay of Plenty in the form of attempts to join those wars, some proselytising from Taranaki, murder, and a campaign to effect arrests.

In this case, we need not ask whether the Treaty could have been suspended on account of the war, for we consider that, even if it could have been, it was not justly suspended to deny the Treaty rights of Ngati Awa. We refer first to the war generally and, secondly, to the presumption that there had been a war, or rebellion, in this district.

The Treaty was effectively suspended by the New Zealand Settlements Act 1863 on account of the war that began in Taranaki and that was continued soon after in Waikato. It has been seen, however, that both these wars were of the Governor's own making. We refer to the finding to that effect in the *Taranaki Report* and the opinion

1. Document K17, para 74

earlier in this report on the Waikato invasion.² In both cases, the Governor was the invader, and an invader without just cause. Standing back and taking an even broader view of matters, the wars arose from the Governor's failure to respect the autonomy of the tribes within their own spheres, an autonomy that the Crown had previously recognised in the Treaty of Waitangi.

Nor could events in this district be seen as a separate war, assuming that there was a war in this district at all. The plain fact is that Völkner and Fulloon would not have been killed and there would thus have been no action to arrest individuals of Whakatohea and Ngati Awa, for the resistance to which the land was taken, but for the war that the Governor started in Taranaki. The events in the causative chain flowed naturally from one to the other.

The next question is whether there had in fact been a rebellion in this district to justify the Ngati Awa land confiscation in terms of the New Zealand Settlements Act 1863. Taking a dictionary definition of 'rebellion', since it is not defined in the Act, it refers to organised opposition to the Government. There is a necessary element of corporate intent to have the Government defeated or overthrown. It is usually associated with a recourse to arms. However, to define it as any recourse to arms against official forces would cast the net too wide. That would bring in individual action normally dealt with under the ordinary criminal law; for example, action to avoid arrest.

As referred to in chapter 6, 'rebellion' in Ngati Awa territory could not relate to other than resistance to arrests following the murder of Fulloon. First, it could not relate to any involvement in the campaign of certain East Coast tribes to reach Waikato or Tauranga. The action there was not against the Crown but against Te Arawa, and concerned the right of access over lands that Te Arawa claimed. Nor could it relate to the imposition of aukati. The runanga aukati was clearly intended to keep the peace and was not in itself antagonistic to the Crown. The Pai Marire aukati was made in opposition to the further encroachment of the Crown but was not in itself an attempt to overthrow the Government. At any rate, all this had occurred prior to 5 September 1865, and the proclamation of peace had pardoned all acts of rebellion prior to then.

For the further reasons given in chapter 6, we are of the opinion that there was no rebellion when certain of Ngati Awa subsequently resisted the arrest of those charged with the murders of Fulloon and some crew of the *Kate*. Those who joined together to resist the Arawa force were organised not against the Government but for their self-defence, and such action was reasonable in the circumstances.

2. See Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 78–81, where it states:

The causes of war are many. In this case, however, they point generally to the conclusion that the Governor started it. Most especially, he disregarded Maori law and authority . . . Maori law and authority with regard to the ownership and possession of land were Treaty guaranteed, and thus the Governor's actions, which caused the war, were contrary to the Treaty.

See also chapter 4 of this report.

In any event, there was no emergency to justify the suspension of the Treaty or the confiscation of the land at the time that the land was taken. When the land was taken, in 1866, any organised resistance to the Government had been put down. There was no one in arms. Those wanted for murder had been arrested and were about to go on trial for their lives. Those not on trial had been required to take an oath of allegiance, and the tribal leaders had done so.

For all those reasons, we find that the confiscation was contrary to the principles of the Treaty, in that the Treaty did not allow of it and the circumstances did not justify the suspension of the Treaty rights amongst the Ngati Awa people. That is our principal finding.

10.1.3 Comparison with the Sim commission

We distinguish the finding of the Sim commission, which was appointed to investigate numerous Maori petitions, including those relating to the confiscations, in 1928. That commission was charged with determining whether the confiscations ‘exceeded in quantity what was fair and just’.³ It was not permitted to inquire into the legality or justness of the confiscations or empowered to consider the Treaty of Waitangi.

The commission was also under considerable pressure. In eight months, it was required to report on all the confiscations, including those in Waikato, Taranaki, Tauranga, and the eastern Bay of Plenty, as well as respond to 56 petitions from places ranging from Hawke’s Bay to Northland. The hearings to consider the confiscation of the entire eastern Bay of Plenty district were undertaken in approximately five hearing days between Wednesday 23 and Tuesday 29 March 1927.⁴

The commission found that, ‘except in the case of the Whakatohea Tribe, the confiscations in the Bay of Plenty did not exceed what was fair and just’.⁵

10.1.4 Ancilliary findings

In addition, we find that:

- The Ngati Awa confiscation appears to have been beyond the authority of the New Zealand Settlements Act 1863, resulting in far more land being taken than lawfully could have been. We follow in that respect the opinion in the *Taranaki Report*.⁶ The Governor was obliged to prescribe districts where there had been rebellion, to define the areas suitable and necessary for military settlements, and then to confiscate only those areas. There was no proper and lawful basis on which the Governor could declare a district and then confiscate everything within it, without any attempt at selection, as he did in this instance.

3. AJHR, 1928, G-7, p 2

4. The Sim commission’s report on the eastern Bay of Plenty confiscation can be found at AJHR, 1928, G-7, pp 20–22. The minutes of the hearings in Opotiki and Whakatane have been lost, but see RDB, vol 50, pp 19,272–19,295. For an overview of the inadequacies of the Sim commission, see *The Taranaki Report*, pp 293–296.

5. AJHR, 1928, G-7, p 22

6. *The Taranaki Report*, pp 126–134, 309

In terms of the Treaty of Waitangi, Maori were obliged to accept the Governor's law, but the Governor himself was equally obliged to follow it. The failure to comply strictly with the punitive provisions of the New Zealand Settlements Act was also contrary to the Treaty principle that the Treaty partners should act towards each other with the utmost good faith. Our historical overview is that the Governor and his advisers were more intent on simply gaining the land that Maori were refusing to sell.

In illustration, it was impossible to have lawfully confiscated the rugged hill country that could not have been settled at the time. In addition, it was not possible to have confiscated that part of Mount Putauaki that lay within the confiscation boundary, the whole of the Rangitaiki Swamp (now the greater part of the Rangitaiki Plains), and the sacred sites of Ngati Awa. These were clearly unsuited to military settlements at the time.

It matters not that events were put beyond judicial intervention by subsequent validating legislation.⁷ This declared that everything done had been done legally, but in Treaty terms that merely compounded the wrong.

- More land was taken than was necessary for the purpose of installing military settlers. Military settlers were not in fact installed over most of the confiscated area. They probably took less than one percent of it. Part of the land was in fact eventually given over for a university endowment.
- Assuming that the Treaty could be set aside for extraordinary circumstances, it could be set aside only to the minimum degree necessary, but in this case land was so taken as to include even the land of those hapu that had not been involved in the acts complained of. There was simply no proper inquiry.

It was also unnecessary to take that much land. The purpose of the Act was to prevent future insurrection by establishing military settlements on confiscated land. If there had been hapu in rebellion, it would not have been necessary to confiscate from other than those in rebellion in order to establish military settlements.

In illustration, it appears that some Te Arawa land was taken, even though Te Arawa had assisted the Crown's military action. Amongst the Ngati Awa, the lands of hapu from Whakatane to Ohiwa were included in the confiscation, yet these had a record of cooperation with the Government, limited only by the fact that the Government had not been very active in this area. These hapu were not involved in the killing of Fulloon. In fact, they objected, Fulloon being closely related to a principal rangatira of the area, Wepiha Apanui. Wepiha supported the arrest of Te Hura and others who were involved. He also testified against each of those charged. His lands were none the less taken.

For the Whakatane hapu, there was a particular irony. The military were in fact settled not on the lands of those most involved in the acts complained of but on the Whakatane land. Another large part of the land of the Whakatane hapu

7. *The Taranaki Report*, pp 118–120. The New Zealand Settlements Act 1863 was amended every year from 1863 to 1867 and seeded new legislation, such as the Confiscated Lands Act 1867, the Richmond Land Sales Act 1870, and the Whakatane Grants Validation Act 1878.

was then used to relocate ‘offenders’. Sections of land at Whakatane were allocated to persons of Te Arawa. In this case, the ‘innocent’ were penalised nearly as harshly as those deemed to be rebels.

It was claimed at the time that the confiscation of everyone’s land was necessary to secure the best military posts and because it was not possible to determine the extent of hapu culpability.⁸ We think the opinion self-serving and implausible. It ought to have been known at the time, or to have been discoverable on but a small inquiry, that the hapu around and south of Whakatane were not implicated and had a record of cooperation with Government officials. The confiscation was an overly blunt response and had at the very least to be more selective.

The action of taking the land of the hapu that had not been involved was also probably unlawful. In terms of the New Zealand Settlements Act 1863, the land of a tribe could be confiscated if the tribe or any section of it was in rebellion. ‘Tribe’ in our view must refer to hapu. This was a punitive Act, and as such it had to be read restrictively. If ‘tribe’ was meant to refer to the whole of Ngati Awa, it would have been necessary to refer to a tribal collective or federation. Whether or not it was unlawful, the confiscation of the land of non-participating tribes was contrary to the Treaty.

There was precedent for the taking of property on account of a crime, just as today land and other property may be taken under the Proceeds of Crime Act 1991, section 84 of the Criminal Justice Act 1985, section 107B of the Fisheries Act 1983, and section 32 of the Misuse of Drugs Act 1975. However, there was no precedent for taking the land of a general class of persons irrespective of culpability, save only for the confiscations in Ireland and Scotland.⁹

Against the contention that the ‘innocent’ suffered with the ‘guilty’ was the provision in the New Zealand Settlements Act for compensation to be paid to those who established that they were either loyal to the Crown or neutral. This provision was totally inadequate as a protection for the innocent. Apart from the shift of the onus of proof to the innocent, these people were often also required to leave their ancestral lands. Such customary land as was left or returned to them was then subject to a foreign land tenure system that compromised their tribal rights and customary authority and exposed their lands to alienation. Moreover, the Compensation Court did not in fact inquire as to compensation entitlements. Matters were handled administratively and there was no proper adjudication.

- Similarly, there was no adequate endeavour to determine tribal territories. The confiscation boundaries were simply defined by straight lines to encompass a huge district. We accept that, in this case, any closer definition of tribal boundaries would have presented difficulties. None the less, we cannot see how

8. Confidential instructions from Native Minister Fitzgerald to Pollen, 3 September 1865, AGG-A1/1, NA Wellington (cited in doc A2, p 30; doc A2(1)(3))

9. See the discussion on confiscations in Scotland, Ireland, and elsewhere in *The Taranaki Report*, p 133.

those difficulties could have justified the taking of any land in the area from the western edge of the Rangitaiki Swamp through Whakatane, and on to Ohiwa.

- It was contrary to the principles of the Treaty that the confiscation was effectively posited as an unreviewable act of State. There was no right of hearing on the Governor's finding on rebellion and no appeal. There is no evidence that the Governor sought an impartial inquiry on what had actually happened; no reasons were given to justify the finding of rebellion; and there was no inquiry into whether the confiscation was actually necessary at the time in order to keep the peace. On the evidence now available, it was not necessary. The war was over and oaths of allegiance had been given.
- It was contrary to the principles of the Treaty that the Governor did not abandon the confiscation once it was obvious that further military settlement was no longer necessary in order to keep the peace and that he made no inquiry on that matter.

Abandonment as to whole or part was provided for in section 6 of the New Zealand Settlements Amendment and Continuance Act 1865. While a sizeable area of the confiscation district east of Opotiki in the territory of Te Whanau-a-Apanui was abandoned, this did not occur in Ngati Awa's territory. Nevertheless, it must have been increasingly obvious that there was no further likelihood of trouble. Te Kooti effected raids into the area, and in retaliation, Ngati Awa in fact assisted the Crown in Te Kooti's pursuit.

- There is compelling evidence that the lands taken were taken for political expediency. Contemporary observations by Ministers and officials support the view that the real purpose was simply land acquisition. There was no reference to the land needed to keep the peace. The true motives appear to have been to acquire land, to break the tribal power and authority of the Ngati Awa hapu, and to effect a punishment for the Völkner and Fulloon murders. None of those motives was provided for in the New Zealand Settlements Act 1863, under which the land was taken. Murder was a criminal offence for which individuals were bound to pay, and for which those responsible did in fact pay in this instance. It was not rebellion for which a whole hapu could be liable. It is very clear that the Ngati Awa land was taken for rebellion, and equally that it was not taken for the murder. It was expressly taken under the New Zealand Settlements Act, where only rebellion applied.

There were many statements made by politicians that illustrate the true reasons for taking the land. We mention only that in 1864 William Fox, the Colonial Secretary, considered that it was 'most prejudicial to the native race' that 'the natives themselves, rebel or others' should be permitted 'to retain possession of immense tracts of land, which they neither use, nor allow others to use, and which maintains them in a state of isolation from the European race and its progressive civilization'.¹⁰ That is typical of prominent office-bearers during that time of war.

10. AJHR, 1864, E-2, app, p 18

Likewise, the statement of Premier Stafford discussed in chapter 6 discloses his view that the land was taken as punishment for the murders, when as a matter of law, it could not be taken for that purpose.

However, while it may be thought that the confiscation was normal according to the thinking of the day, it is useful to be reminded that not all Europeans agreed. Some outstanding colonists were vehemently opposed, among them Sir William Martin, the country's first chief justice, then retired.

There were also strong reservations within the Colonial Office in England, which had still to approve such legislation at the time. Somewhat misinformed of the situation by Governor Grey, in our view, the Colonial Office reluctantly agreed. In agreeing, however, conditions were imposed that were not observed.

In paraphrase, the first condition was that land should not be taken unless no agreement could be reached with conquered tribes on that which was to be ceded. No attempt was made to seek an agreement, but as a coincidence, in this case the 'loyal' Te Rangitukehu offered 10,000 acres 'for the sin of some people'.¹¹ We think that this was more than sufficient for the stated purposes of the Act.

Secondly, the Act was to apply for only two years. In fact, it did not and was 'made perpetual' in 1865.

Thirdly, a commission was to be established to determine what land might be forfeited. It was not.

Fourthly, the land of those who were not rebels was not to be touched. It was.

Though these royal instructions were 'directory' only and had no binding legal effect, the response to them is indicative of the contemporary mood in New Zealand.¹²

10.2 ARRESTS AND TRIALS

In terms of the Treaty, the Governor was entitled to make laws for peace and order for the country as a whole. While these laws applied throughout the country in a theoretical sense, in practice in Maori districts the Governor sought to introduce English law gradually. Very little had been introduced in this district. None the less, in our view it was necessary that there should be a law against murder. It was also necessary that it should apply to all Maori, even in remote places. It was also generally known that the Governor would take action against the murderers of Europeans no matter where they might be. We consider that the Governor was justified, in Treaty terms, in bringing to trial the murderers of Völkner and Fulloon, and we consider that that result ought reasonably to have been anticipated by the perpetrators.

In our view, he was also justified in taking action to arrest those suspected of murder whether or not an aukati was in force in accordance with local law.

11. Agreement between Rangitukehu and Wilson, 11 March 1867, AD1/1867/3881, NA Wellington (cited in doc 15, p 82)

12. *The Taranaki Report*, pp 115–117

Our only reservation concerns the manner in which the warrants for arrest were enforced. The usual standard – that those named in the warrants should surrender to an official force that is demonstrably fair and impartial and that will use no more force than is necessary – was not maintained in this instance. An enemy engaged by the Crown for the purpose delivered the warrants. By reputation, that enemy was likely to go on a rampage once inside Ngati Awa territory. So it did in fact, even after those sought had surrendered.

In addition, we do not accept that the ‘sin’ inherent in the murder of Fulloon, to use the language of Maori at the time, should have been visited on Ngati Awa as a whole. The crime can be attributed only to those convicted of it. Those convicted, and even others who may have been implicated in the Pai Marire aukati that led to the event, represented only a small minority of the Ngati Awa people.

10.3 LAND RETURNS AND PURCHASES

As mentioned earlier, the New Zealand Settlements Act 1863 was approved in England on the basis that certain precautions would be taken to safeguard the innocent and to protect others from unduly harsh treatment. In the light of that, there were provisions to compensate the ‘loyal’ through the mechanism of a court and, under an amendment to the Act, to return such land to surrendered rebels as might be necessary for their survival. As considered in chapter 8, in practice this was largely window-dressing. Instead, procedures were put in place to bring all Maori land within Government control in order to overcome tribal authority and to facilitate land alienation. We recapitulate the main points.

- (a) The Compensation Court for this district was in fact comprised of Government officials who had organised or led the campaign to effect arrests for the murder of Fulloon. These could not maintain the appearance of impartiality and could justifiably be seen as having an interest in maintaining Ngati Awa in a state of subjugation.
- (b) Compensation in the form of land returns was in fact effected administratively with minimal judicial oversight. This was done through a Crown agent and Maori were not in a bargaining position to take other than that offered. In the result, those who had not participated in the events complained of were treated little better than those who had. There was also no inquiry into that which was necessary for the survival of the ‘rebel’ hapu, and they received far less than was reasonably required.
- (c) No land was returned in the condition in which it was taken. It was returned not in customary title for the hapu as a group but in individual shareholdings. The effect, and the apparent purpose, was to break the power of the tribes to resist land sales. The land was thus exposed to alienation.
- (d) As land was allocated, it was often purchased for the Government at the same time. There is a likelihood that much land was allocated only to those willing to sell it.

- (e) Despite the limited return of land, restrictions on alienation were not maintained.
- (f) The Native Land Court awarded land outside the confiscation boundary, mainly hinterland hill country, to Maori. This, too, was awarded in individual shareholdings.

The Native Land Court was strikingly similar in its operation and effect to the Compensation Court. Both were presided over by Chief Judge Fenton and both facilitated the alienation of land through the individualisation of title. Again, the Government agent responsible for returning confiscated land was heavily involved in settling the ownership of the land that had not been confiscated and in effecting purchases. We have been unable to investigate the further claim of Ngati Awa that, on account of their rebel status, they were not awarded interests in land to which they were justly entitled. They claim that the court favoured Te Arawa.

It was contrary to the principles of the Treaty of Waitangi that land returns and allocations were not effected by a fair and open process. It was also contrary to the principles of the Treaty that tribal land was converted to individual shareholding when the policy for change had not been approved by the affected people and was contrary to their customary preference. It is further contrary to the principles of the Treaty that tribal authority was therefore effectively ended and that the land was thereby exposed to alienation. There is nothing in the record to satisfy us that the Government complied with even minimal protective standards to maintain its fiduciary obligations to the Maori people. On the contrary, the record points to a Government plan to reduce the effectiveness of tribal operations and to acquire land for European settlement.

10.4 IMPACT

The impact of confiscation was considered in the preceding chapter. The immediate effect was that the majority of most hapu were relocated on several allotments on one side of the Whakatane River in the view or within easy reach of the military settlement at Whakatane on the opposite bank. There, they were left to survive on lands that were not their customary lands and where they would feel that the land was not really theirs to belong to. It was natural that arguments about customary entitlements would follow. They were also without access to the resource spots that they had traditionally used for food gathering, and there were enmities the moment attempts were made to use food-gathering places that habitually belonged to others. The pattern of use rights known to Maori people was thus threatened. Respect for customary rights underpinned respect for Maori law, thus important tenets in Maori social organisation, and traditional respect for law or customary rights, were threatened as well.

There were attempts to rebuild the social order through the construction of a carved house, symbolic of Ngati Awa unity. However, the house was acquired by the Government for display in an overseas exhibition and was not returned until very

recently. With Ngati Awa involved in pleas for the return of land, or the release of prisoners jailed for life or with suspended death sentences, the people were powerless to protest.

Subsequently, through the loss of land and traditional social structures, Ngati Awa as a people were unable to compete in economic development. They had not quite the same benefit of substantial advances made to other Maori for land development since they lacked the land to develop, apart from those areas returned and developed by Ngata. They fell behind in terms of health and educational progress. In terms of their own culture, their standing amongst the tribes of New Zealand was considerably diminished. They were a people without means. They were the tangata hara.

In considering the concessionary advances made to other Maori for land development, and provisions made from the 1940s for other descent groups whose lands were confiscated, we think it plain that the Government has continued to view Ngati Awa with disfavour. Much of this may stem from the 1928 Sim commission report's light dismissal of Ngati Awa's grievance. We consider that it is contrary to the principles of the Treaty of Waitangi that the Government has not dealt equally between the tribes.

CHAPTER 11

CLAIM SETTLEMENT

To effect a settlement, we refer the Government to the following.

11.1 WITH WHOM TO SETTLE

Throughout the hearings at Wairaka and other marae, there was unanimous support for the prosecution and settlement of the claim through Te Runanga o Ngati Awa, save only to the extent that some chose to identify with the separate claim for Tuwharetoa ki Kawerau. By the time of the hearings, it was settled that Tuwharetoa ki Kawerau were represented through Te Runanga o Tuwharetoa ki Kawerau.

We are satisfied that the Government should endeavour to settle the claims through these two bodies and apportion relief. In our view, the supporters of the Tuwharetoa ki Kawerau claim are entitled to stand alone in any settlement. This is because Tuwharetoa have a distinct lineage and their claim is based upon their different role in the relevant events. Any necessary approval of settlement terms for Ngati Awa should be in accordance with the decision-making structure that the Ngati Awa runanga provides. We have not been shown and have not vetted the constitution of the Tuwharetoa runanga.

11.2 BOUNDARIES AND RELATIONSHIPS BETWEEN HAPU AND WITH OTHER MAJOR GROUPS

In our view, the complex pattern of overlapping claims and boundaries need not inhibit a settlement. The problem arises because of the perceived need to fit Maori life into a Western, or non-tribal, mould. It is a problem that can and should be circumvented. However, it is important that the issue be understood so that settlement requirements or terms do not expose traditional values to further risk than necessary by unwittingly imposing European norms. In brief, overlaps are a problem only when we insist that Maori fit the European conception of political boundaries. While cultivation and similar boundaries were important, political boundaries like those of Western states were not material to hapu operations, and their imposition tends to negative Maori values on connections and relationships.

We are reminded of Lord Haldane's 1921 warning in the Privy Council that:

in interpreting native title to land, not only in Southern Nigeria, but other parts of the British Empire, much caution is essential. There is a tendency, operating at times increasingly, to render that title conceptually in terms which are appropriate only to systems which have grown up under English law. But this tendency has to be held in check closely.¹

We begin with the meaning of ‘tribe’, using a term of common parlance. The ‘tribe’, or the body that exercised daily corporate functions, was in our view the hapu, which was comprised of a single kainga or several kainga in relative proximity. Each hapu was autonomous. Though generally associated with a particular land area, they were in fact mobile, and some significantly changed location over time. For these and other reasons, hapu may maintain ancestral associations with distant places.

The point is that hapu were defined not by land boundaries but by whakapapa and allegiance. Though sometimes depicted as permanent, they in fact changed shape over time through amalgamation, incorporation, migration, or lateral division. They could also include persons of separate descent groups.

Further, the land itself was not seen to be dissected by lines on plans. It was viewed not as a combination of enclosed allotments but in terms of resource sites that the hapu, or particular families of the hapu, habitually used. The question was not where the boundary lay between hapu but which hapu could access a particular resource at what time and for what purpose. Resources could thus be shared and persons from distant hapu could have use rights in a particular resource, like a mussel-bearing rock in a harbour. Access was based simply upon respect for immemorial user and historical relationships with the users.

To complicate matters, individual Maori travelled and used resources for as far as their whakapapa lines would take them and were acknowledged by local people. Then, because of earlier migrations and wars, there were also sites of particular ancestral significance for some hapu in lands that stood clearly within the areas occupied by other hapu.

It is then apparent that the strength of a hapu rested not on the maintenance of exclusive boundaries but on the extent of their connections. For security, each hapu depended upon good neighbourly relations. These were maintained through whakapapa ties, arranged marriages, gift exchange, and punctilious protocols, which give rise to the essential characteristic of Maori people, at least in times of peace – the showing of respect for the mana of other groups. A modern indicator of this is the form of greetings at hui.

Through whakapapa, hapu generally aggregated according to bloodlines. In this case, the common aggregation was under the calling of Ngati Awa, the name of an ancient forebear symbolic of the common origin of all. There is no doubting from the historical record that, at all material times during the events that led to the raupatu, the generic name for the hapu of this district was Ngati Awa.

However, the acknowledgement of a bond to one descent group, Ngati Awa in this instance, was not a denial of valued connections to other descent groups in the

1. *Amodu Tijani v The Secretary of State for Southern Nigeria* [1921] 2 AC 399, 402

vicinity. Hapu of Ngati Awa also had connections with Te Arawa, for example, and could, for any particular purpose, associate with them if required. Similarly, hapu associated with Te Arawa today could also call themselves Ngati Awa if they chose. Other hapu of Ngati Awa could equally call themselves Tuhoe and often do to this day. It is customary to recognise and acknowledge a variety of ancestral connections.

Further, it is not unusual that persons of a distinct lineage could exist amongst the more numerous members of another descent group and, through intermarriage, could identify with that other group, or a further group, or could stand separately. This appears to be the case with Tuwharetoa, who may align with Ngati Awa or Te Arawa, or stand independently.

The historical record also shows that, from at least some 150 years ago, the hapu of the district associating with Ngati Awa operated collectively through runanga, a runanga being a meeting of the elders and rangatira of one or more hapu in the district. Just how many hapu could have participated, or chose to participate, in any large Ngati Awa meeting could vary, however. Moreover, as we see it, the essential power base remained with the autonomous hapu. Accordingly, the collective may be seen as a federation of independent bodies, even though some rangatira had close connections with several hapu and an influence over many others again.

The considerable authority of the rangatira, however, arose from their personal magnetism or mana. It did not arise from a settled constitutional structure. Accordingly, unity was expressed metaphorically by reference to one river, one mountain, and one person, but in reality a hapu could follow an independent course if the people of that hapu felt strong enough to do so.

The collective in turn depended upon maintaining good relationships with other major descent groups to the extent practicable. Relationships were assisted in this case by the fact that Tuhoe, a major group surrounding Ngati Awa, and Whakatohea, to the east, all traced descent from the crew of the Mataatua canoe.

Accordingly, the essence of Maori existence was founded not upon political boundaries, which serve to divide, but upon whakapapa or genealogical ties, which serve to unite or bind. The principle was not that of exclusivity but that of associations. Indeed, the formulation of dividing lines was usually a matter of last resort. Such lines were predominantly laid down, as aukati, when there was trouble in the area that could lead to war. Peaceful relationships depended significantly on creating and acknowledging ties, and most especially through acknowledging the independent mana of other groups, be they large descent groups like Tuhoe or Whakatohea or individual hapu within the Ngati Awa group.

It appears to us that the latter-day depiction of boundaries, and the modern adaptation of 'rohe' for that purpose, arises from colonial influence, especially as represented in the Native Land Court. The boundaries cut out by the latter were mainly based on actual occupancies of the day, which were often only snapshots in time. We are aware of the numerous ways in which boundaries were laid out for particular purposes, such as rahui, aukati, resource use areas, and the like. We are aware, too, of the recitation of ancestral associations with historical sites and resource use areas. However, in our view these do not describe political boundaries of the sort

carved out in Europe from the seventeenth century. The tendency to see them that way has merely given rise to exaggerated depictions with enormous overlaps and has led to large disputes.

No doubt it assists administration to see tribes as European states, but the concepts are not in fact the same. It may be necessary to create administrative boundaries today, but it is important to be conscious of the fact that this is done purely for the particular purpose required. The practice has already distorted important cultural values, in our view, and has undermined Maori skills in managing intertribal relations. It may also be helpful to remember that bodies established today to represent a tribe are not the tribe. They are only bodies to represent it. Constitutional structures need not impair traditional tribal dynamics, or the principle that tribes are defined not by boundaries and written constitutions but by descent, participation, and adherence to Maori norms.

11.3 THE OVERLAPS IN THIS CASE

We consider, then, the particular problems in this case. Taking a European view of matters, it is considered that the boundaries between Ngati Awa, Whakatohea, Tuhoe, and Te Arawa are indistinct. To insist that the groups should define the boundary lines between them is to ask them to do that which is culturally impossible, or that which is an affront to cultural values. The relationships between the groups have been such that each can point to sites of ancestral significance to it well within the territories of the others, and each can whakapapa to persons who lived in the kainga of another group.

Taking a broad view, however, it may be seen that, to the east of the Ngati Awa heartlands, Ngati Awa merged with Whakatohea and Tuhoe at Ohiwa Harbour, and that the harbour itself was shared by all three. It may also have been shared with other groups as well, Te Whanau-a-Apanui being mentioned in that context. Similarly, on a broad view, while the lands between the coast and the southern confiscation line were predominantly held by hapu of Ngati Awa, Tuhoe had substantial interests in places on either side of the border, just as Ngati Awa had interests beyond the border. This is not to deny that, in addition, Tuhoe can claim historical associations with sites much closer to the coast.

Were the Government to pay compensation for every acre lost, based on the value at the time of taking with compound interest to the date of settlement, we could understand the need to mediate for some more specific agreement as to how lines might be drawn for that particular purpose. However, there are too many variables to treat historical claims in the same way as current disputes in civil litigation, and we support the Government's approach to treat more globally for a lump-sum figure.

That being so, we see no reason to insist upon a precise boundary definition for the purpose of determining comparative quanta. It seems enough to conclude, as we do, that Ngati Awa had by far the predominant interest in the confiscated lands as far as Ohiwa Harbour. It is sufficient to note that the Government is treating separately with

Ngati Awa and Whakatohea in respect of their areas, and will need to do the same for Tuhoë in due course.

Much the same applies to the relationship between Ngati Awa and Te Arawa. The Ngati Awa land interests clearly extended beyond the western confiscation boundary, but just how far is incapable of precise definition. In the usual Maori way, hapu in this area have connections to both Te Arawa and Ngati Awa and, for certain purposes, could associate with either. Utilising whakapapa and history, it is possible for Ngati Awa to claim even to Maketu and, equally, for Te Arawa to claim to Matata.

What is clear, however, is that Ngati Awa had interests in the lands beyond the western confiscation line, that the Native Land Court awarded those lands to persons of Te Arawa to the exclusion of Ngati Awa, and that the exclusion of Ngati Awa was an additional retribution for their perceived rebellion. But it is not necessary to define the exact extent of their interest. It is sufficient that, in settling upon a lump-sum figure, the loss of lands beyond the confiscation boundary is a further item to consider.

The relationship between Tuwharetoa and Ngati Awa has also to be considered. Here again, the depiction of boundaries is unhelpful. It is inevitable that Tuwharetoa will have ancestral associations throughout a wide area where others also have interests, and may even predominate, but linking these places by lines from one place to the next does not establish a legitimate boundary and provides for enormous overlaps. In this case, the better course is to consider the comparative number of associated hapu and currently functioning marae. Using that as a test, and bearing in mind that Tuwharetoa suffered proportionately less from confiscation and enforced relocations but relatively more from subsequent alienations, their claim is approximately one-tenth the size of Ngati Awa's.

Were compensation to be settled in cash, there might be no further problem. The difficulty arises when groups seek particular lands on account of their share. Whose land is it? Invariably, more than one group can claim a legitimate interest in the same area and it will become necessary to consider a range of factors. Does one group already have a reasonable land base? Has any particular site more significance for one group than another? Are there other lands from which one group can be compensated? Is joint ownership feasible?

Rotoehu Forest is a case in point. We are satisfied that Ngati Awa, Tuwharetoa, Ngati Makino, and other hapu of Ngati Pikiao of Te Arawa can all claim legitimate customary interests in the forest by reference to ancestral associations. We are also satisfied that Ngati Awa, Tuwharetoa, and Ngati Makino each have *prima facie* valid claims for recompense that may well be satisfied, at least as to part, from out of the forest. The same is also likely to apply to Ngati Pikiao, but in this case their claims have not been fully heard.

In managing these arguments, we think it necessary that each group acknowledge the customary associations of the others. We would be suspicious of claims that any particular area was held exclusively by one group throughout the whole of history. It may be appropriate that whoever takes a particular asset that is the subject of conflicting ancestral claims should do so on a clear understanding that the ancestral

associations of others will be also be acknowledged and respected. We require no less of Europeans in resource use planning. The owner of land that has passed from Maori hands may still be required to consider Maori ancestral associations in proposing developments. In the same way, the privilege of title may need to carry the burden that the holder will acknowledge cultural obligations to others.

For example, were Mount Putauaki available for return, it would be wrong in our view if it went to Ngati Awa or Tuwharetoa without an acknowledgement that both have customary interests, and that the mountain has particular significance for all the marae in proximity to its feet. That is a case where title might well be taken in the name of an ancestor and administering trustees be chosen by the marae of the vicinity. It seems to us singularly unfortunate that control of the mountain has come to depend on the accident of European titles and comparative shareholdings in the Tarawera Forest. No matter that today some marae may adhere to the calling of Tuwharetoa and others to Ngati Awa, since it cannot be denied that all have significant customary associations with Putauaki.

In Rotoehu, the most important criterion may be the extent to which it can in practice be divided. Again, however, those taking a share may need to acknowledge that others have customary interests in any part taken by them. They may need to reserve particular sacred sites for separate administration.

In seeking solutions, it is important to bear in mind that Maori society is fundamentally about relationships. It is not enough to resolve the immediate problem. The people must continue to live together, and the more important task is to rebuild relationships based upon whakapapa and respect for the mana of each group. To that end, mediation is helpful, but it would be wrong in our view if the return of particular lands had to depend upon the agreement of all contenders. Ever since the confiscation, the land returns, and the introduction of individual ownership through the Native Land Court, people have become so divided that agreements are probably not presently possible. The effect of requiring full agreements will only exacerbate the divisions caused by the wrongs already done. We propose that, where particular lands are sought and there is no agreement, the matter should be referred back to the Tribunal for a recommendation, after such further hearing of those interested as may be necessary.

11.4 PRIOR COMPENSATION

Ngati Awa is one of the few tribal collectives to have suffered the confiscation of the greater part of its land without some compensatory adjustment for that confiscation. They have some catching up to do. Compensation was paid in the 1940s in respect of Taranaki, Waikato, and Whakatohea, and in 1981 in respect of Tauranga. Compensation was also paid in the 1940s for land losses affecting Ngai Tahu. In each case, trust boards were established to administer the funds, and income has been applied for a variety of marae and land development purposes and generally for the social and economic advancement of the general class of beneficiaries. Most especially, each of

those boards has provided money for education, especially at a tertiary level, and generations of youngsters in those places have received some benefit.

The provision of a tribal structure for Ngati Awa did not happen until the Runanga o Ngati Awa was established by statute in 1988 to receive lands in settlement of legal proceedings and political claims relating to the Ngati Awa land development scheme. That land was not returned until 1990, and the settlement had nothing to do with the confiscations.

Accordingly, Ngati Awa were without the benefit of the infrastructure provided for others similarly affected. Their comparative poverty has been apparent when iwi, or the hapu of major descent groups, have contributed moneys or federated for Maori purposes. The youth of Ngati Awa have not had the same educational opportunities. For many years, the tribe has been without a collective resource base. This should be brought into account, in our view, and provided for in any future settlement.

11.5 PUTAUAKI

The disposal of Putauaki, or Mount Edgecumbe, should be reserved from the settlement. Its ancestral significance and physical prominence as a reminder of confiscation wrongs are such that the grievance may not be quieted for so long as a better arrangement for its management is outstanding. Our preliminary view is that the mountain should be held for an ancestor common to the hapu and administered for all with customary interests by guardians chosen from nearby marae. But, in view of the current proprietorship of Tarawera Forests Limited, nothing is likely to be achieved now without Government assistance.

11.6 NGAI TE RANGIHOUIHRI AND NGATI HIKAKINO

Ngai Te Rangihouhiri and Ngati Hikakino suffered more than other hapu from the confiscation. This may be seen as just, in view of the more prominent role of some from these hapu in the killing of Fulloon. But here two points must be borne in mind.

First, those responsible for Fulloon's death paid with their lives or their freedom. There is no basis on which the crime could be visited on other than those convicted of it.

Secondly, the land was confiscated for a subsequent rebellion, but on the facts, the hapu were not in rebellion; they were reacting to an invasion by their former enemies. There was no basis for confiscating the land of any of the hapu, so imagined degrees of culpability are irrelevant.

Then, during the drainage of the Rangitaiki Swamp, a further 187 of the mere 278 acres returned to them was taken under the Public Works Act 1908. While the Sim commission thought that Ngai Te Rangihouhiri and Ngati Hikakino were deserving of some further compensation, that recommendation was not implemented.

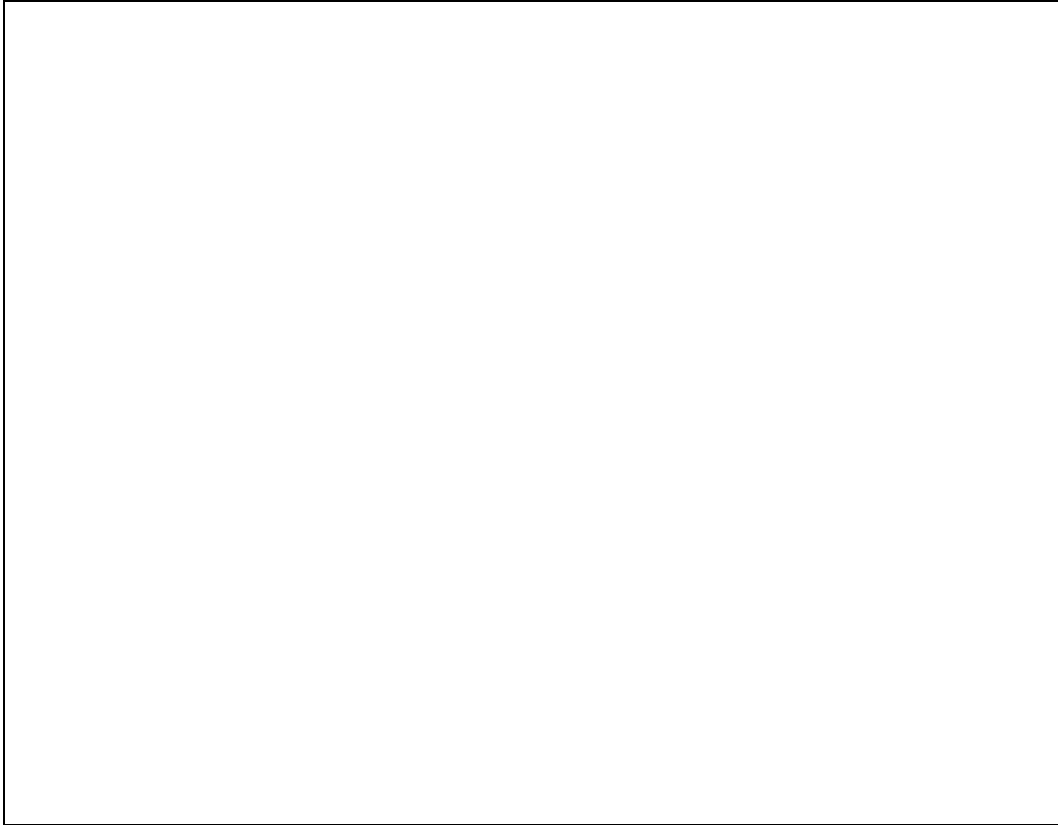


Photo 10: The Mataatua wharenui. Photo courtesy Otago Museum.

More than any other section of Ngati Awa, the people of these hapu were deprived of their sacred sites and that necessary for their future wellbeing. The settlement must be such as will guarantee to them a land base for their future identity and economic development.

11.7 SCENIC RESERVES

Most of the scenic reserves described in section 9.9 incorporate various wahi tapu. Most are also on lands unlawfully confiscated. In terms of the New Zealand Settlements Act 1863, by which they were confiscated, land that was not reasonably required for military settlements could not have been taken. In these cases, the land could not have been intended for military settlements at the time, and most has never been used for that purpose since.

The claimants ask that these be settled as Maori reservations and be administered under joint arrangements between Maori and the Crown (or the relevant local authority). The claimants are entitled to ask for the return of the land without restrictions. Given that circumstance, their claim to joint administration is more than reasonable.

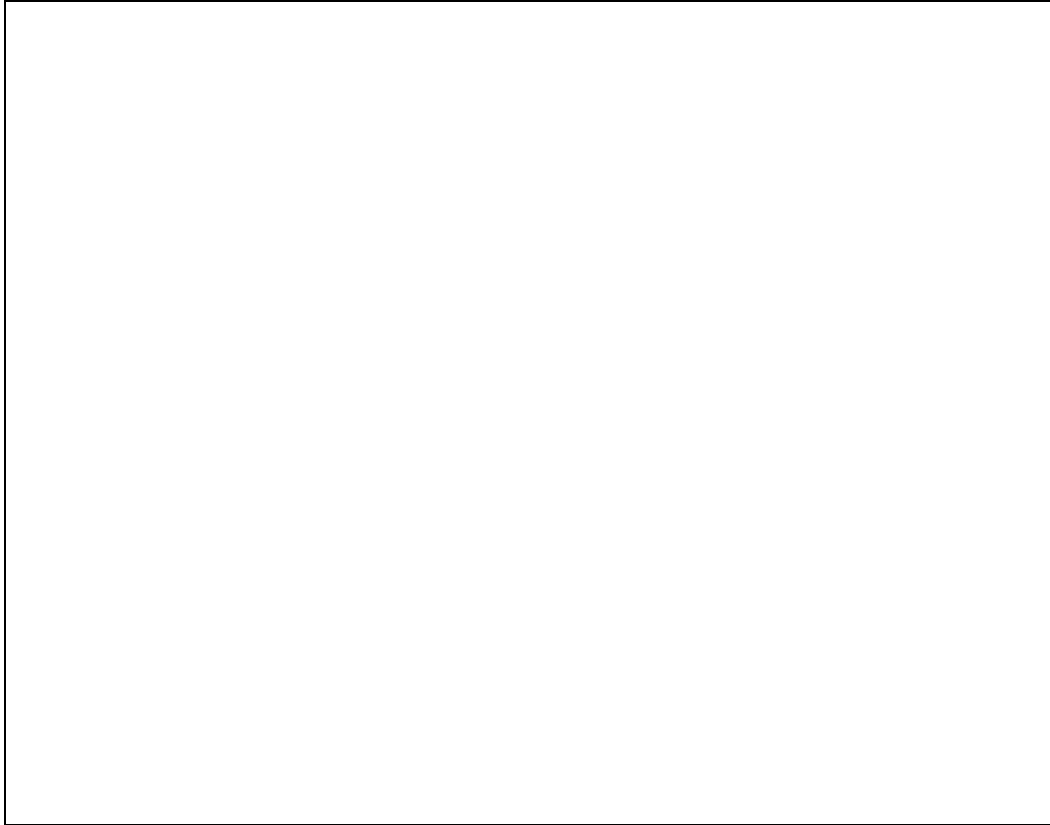


Photo 11: The interior of the Mataatua whareniui. Photo courtesy Otago Museum.

11.8 THE SETTLEMENT AND RESERVATION OF CLAIMS

A global settlement should be sought, in our view, in respect of all matters arising from other than, say, the last 75 years. This should include all matters relating to the confiscation, land returns, and Native Land Court awards within and outside the confiscation boundary, even though we have not fully investigated the Native Land Court awards outside the confiscation line.

In our view, some claims should not form part of a lump-sum settlement and should instead be separately provided for. We would distinguish historical claims and those within living memory or within, say, the 75 years prior to the claim being filed. While major compromises have been obvious in the settlement of historical claims by tribes, we think it would be contrary to sound principle and patently unjust, both for the Ngati Awa hapu and for the particular persons concerned, if the same were expected of individuals unjustly deprived of specific blocks through more recent Crown actions, or if they were made as competitors with the tribe as a whole for a share of compensation proceeds.

These cases must be dealt with on their own, independent of the tribal claim. We refer to four.

- *Tarawera Forest*: The Tarawera Forest claim relates to the incorporation of Maori lands in the Tarawera valley into a joint Crown–Tasman–Maori forestry scheme

in the late 1960s. Subject to the inclusion in the proposed global settlement of certain claims from the 1860s that lands in the Tarawera valley were wrongly awarded in the first instance, the Tarawera Forest claim affects prescribed individuals and not a general tribal class. We doubt that the claim could be settled without a prior hearing and report; it needs to be dealt with separately. No part of the claim has been heard so far, though some submissions have been filed.

The remaining three cases, now to be referred to, have been partly heard. We consider that each is capable of independent settlement without further hearings. To assist that, we express some preliminary views, although these views are tentative, the Crown having yet to respond to the claimants' submissions.

- *Waiohau c26*: Waiohau c26 was Maori freehold land compulsorily acquired in 1961 under the Public Works Act 1928 as a source of aggregate for the construction of the Matahina Dam.² In fact, it appears obvious that the freehold was not required, just the aggregate, but the whole of the land was taken and compensation of £460 was paid. The land, less the aggregate, was offered back to the owners for \$20,000 in 1984. This being Maori land in multiple ownership, it is unlikely that the former owners could gather the descendants to contribute according to their shares. The Tribunal heard some of the family, but the Crown has yet to reply. Mediation was suggested but has not happened.

We thought that this matter should be capable of prompt settlement. Under its terms, the Treaty does not permit of the compulsory acquisition of Maori land. Possibly, the strict terms of the Treaty could be set aside for some pressing national purpose. But here there is no need to argue the point, except to say that which is perfectly obvious: that, if the Treaty is to be departed from, it should be departed from only to the minimum extent required. If only the aggregate was needed, there was no need to take anything more.

Unless the Crown has some compelling argument for doing otherwise, this is a case where compensation should be paid for the aggregate actually taken (no doubt many times more than the amount that was paid for the land), with compensation for loss of use and, of course, the return of the land, back-filled so as to be suitable for continuing agriculture. No less would have been required had the Crown been a private person, and having regard to the Treaty of Waitangi and the principle that the Crown should act honourably in treating with Maori land, no less can be required of the Crown. The claimants contended that the Crown did in fact do just that for the owners of lands with aggregate in the South Island, where dams were being constructed at about the same time.

It remains to add that, on the evidence, this block, had it not been taken, would have formed part of the adjoining Maori afforestation scheme and been a key block in providing access and roading material. The owners have lost the benefit of joining their relatives in that scheme.

2. For some background on this matter, see document c2

- *Omataroa–Rangitaiki c60*: Omataroa–Rangitaiki c60 refers to a further block of some 5000 acres with over 2000 owners.³ Here, part of the land was taken for aggregate for the Matahina Dam and part for the construction village. Other parts were flooded or taken for roads, but on that no claim is made.

With regard to the land taken for aggregate, the same principles as in the previous case apply, save for the fact that the land has been returned, though it has yet to be restored to how it should have been. The construction village site is no longer needed, the houses have been removed, and the Crown proposes to return this site for \$40,000. Again, the principle is that no more should have been taken than was absolutely necessary, and in this case it was not necessary to take anything more than a compulsory lease for the life of the works. Without having heard the Crown, we can make no specific finding, but at this stage we do not see why any payment should be required when there should never have been a compulsory acquisition of the freehold in the first instance. At the very least, the capital gain should not have been with the Crown. Allowance should also be made for the fact that the acquisition and return of lands has involved owners in costs to which they should not have been exposed for resurveys and title amalgamations.

- *Rangitaiki 12*: Rangitaiki 12 refers to 300 acres awarded to two ‘loyal’ Ngati Awa persons by the Compensation Court in 1879.⁴ Included on the land were certain geothermal springs, now known as the Awakeri hot springs or Pukaahu Domain. These were used by Ngati Awa hapu both before and after the individual awards, presumably with the consent of the owners or their descendants. In 1914, one acre was taken under public works legislation for the purposes of a quarry. It is still owned by the Whakatane District Council but is no longer used as a quarry, the claimants adding, if indeed it ever was. Some eight acres were also taken for roads at different times after 1917, but the main concerns are the quarry and the eventual taking of the springs. In 1918, a 10-acre block containing the springs was taken for public use under the Public Works Act 1908 and the Scenery Preservation Amendment Act 1910. In 1939 and 1940, a further 27 acres were taken and added to the springs area as recreation ground. Then, in 1978, about 100 acres were proposed for a rubbish dump, but after objections by the owners, an 80-year lease was agreed to. The owners object to this relentless acquisition of their land after so little had been left to the Ngati Awa people following the confiscations.

The springs today are managed by a commercial enterprise under lease from the Whakatane District Council. The balance of the land is in multiple Maori ownership. The matter is known to have been the subject of a long outstanding complaint. Most recently, representations were made to the Government by the late Stanley Newton, the distinguished former chairman of the Te Arawa Maori Trust Board, who brought the claim in 1988 but died before our hearings commenced.

3. For some background on this matter, see document c1

4. For an account of the Crown’s actions concerning this land, see document H7.

The Crown has not been heard on this claim. We understand that it was obtaining research, but this has not been presented.

This is a private matter affecting first and foremost the private owners of Maori freehold land. It would be wrong in our view if the claim were subsumed by the general tribal claim of Ngati Awa. We urge that a negotiated settlement be sought, but we give leave to those who have taken over the claim for the owners of the balance land to reinstate the matter for a separate hearing if need be. Any negotiations would need to involve private interests, but it is obvious that the land was taken initially as a result of the Crown's legislation, and the Crown may need to consider the steps it ought now to take for recovery.

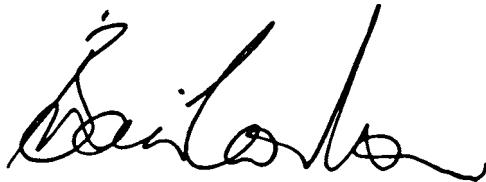
On the face of the claim, it would appear that the takings, except perhaps those for the roads, were not the sort of necessary works for pressing national purposes that could justify a departure from the Treaty, even assuming that any departure at all could be contemplated.

As to these matters generally, we can find no proper basis for incorporating the claims of particular persons into general tribal settlements. One should not be compromised by the other. The broad principle of law must apply: where plaintiffs are not the same and the causes of action and the subject-matters are distinct or severable, the cases must be handled separately. We reserve leave for the claimants and the Crown to seek further hearings or particular recommendations on any matter.

Dated at Wellington this 8th day of *October* 1999



E T Durie, presiding officer



B P N Corban, member



G S Orr, member



M P K Sorrenson, member



K W Walker, member



APPENDIX I

STATEMENTS OF CLAIM

BEFORE THE WAITANGI TRIBUNAL

WAI 46

CONCERNING The Treaty of Waitangi Act 1975

AND A Claim by HIRINI MOKO MEAD and
 others for Ngati Awa relating to Ngati Awa

STATEMENT OF CLAIM

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BEFORE THE WAITANGI TRIBUNAL

WAI 46

CONCERNING

The Treaty of Waitangi Act 1975

AND

A Claim by HIRINI MOKO MEAD and
others for Ngati Awa relating to Ngati Awa

A. BACKGROUND FACTS

1. The Claimants

1.1 THE claimant HIRINI MOKO MEAD is of Ngati Pahipoto and Ngai Te Rangihouhiri, both being hapu of Ngati Awa and is the Chairman of Te Runanga O Ngati Awa.

1.2 TE RUNANGA O NGATI AWA is a Maori Trust Board within the meaning and for the purposes of the Maori Trust Boards Act 1955 and is a Body Corporate constituted by the Te Runanga O Ngati Awa Act 1988 ('the Act').

1.3 PURSUANT to Section 4(2) of the Act the beneficiaries of Te Runanga O Ngati Awa are the descendants of the hapu of Ngati Awa.

1.4 PURSUANT to Section 11 of the Act it is declared that after the passing of the Act (ie 21 December 1988):

'The character, mana, and the reputation of the persons of Ngati Awa descent who were arrested, tried, and labelled as rebels in or about 1865 is restored to them and their whanau and to the Iwi of Ngati Awa as a whole and a full pardon is hereby granted to them in respect of all matters arising out of the land wars in 1865.'

1.5 THE claimant brings this claim on behalf of Ngati Awa as defined in paragraph 1.6 below.

1.6 NGATI AWA is a member of the Mataatua group of tribes and consists of the following Iwi and hapu (presently totalling approximately 10,000 people):

Ngati Hokopu (Wairaka)
Ngati Hokopu (Te Hokowhitu)
Te Wharepaia

Ngai Taiwhakaea
Te Patuwai
Ngati Pukeko
Ngati Rangataua
Ngati Tamapare
Ngai Te Rangihouhiri
Ngati Hikakino
Ngati Tuariki
Te Pahipoto
Warahoe
Te Kahupake
Nga Maihi
Ngati Tamawera
Ngai Tamaoki
Ngati Hamua
Te Tawera-Umutahi
Ngati Maumoana
Ngati Awa-Ki-Tamaki-Makaurau
Ngati Awa-Ki-Poneke

1.7 NGATI AWA is and at all material times was based in the eastern Bay of Plenty centred in and around the communities known as Ohiwa, Ohope, Whakatane, Poroporo, Paroa, Edgecumbe, Te Teko, Kawerau, Te-Awa-a-te Atua (Matata), Otamarakau, Waihi Estuary and Pukehina.

2. Ngati Awa and the Treaty of Waitangi

2.1 IN 1840 Ngati Awa was an independent Iwi recognised by other tribal groups and by the Crown. A number of Ngati Awa Chiefs signed the Treaty of Waitangi at Whakatane on 16 June 1840 on behalf of Ngati Awa. These Chiefs were: Tautari, Mokai, Mato, Tarawate, Tunui, Taupiri, Haukakawa, Piariari, Matatehokia, Rewa, Tupara and Mokai (son of Mokai).

2.2 UNDER Article 2 of the Treaty Ngati Awa was guaranteed 'Te tino rangatiratanga o o ratou kainga me o ratou taonga katoa' described in the English version as 'The full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties . . .'

2.3 BY Article 3 of the Treaty Ngati Awa were given the Rights and Privileges of British subjects.

2.4 IT is implied by the provisions of the Treaty that:

- (a) The parties to the Treaty, namely the Crown and Maori, have a duty to act reasonably and in good faith towards each other.
- (b) The Crown has a duty and responsibility to ensure that any Maori people selling land in fact wish to sell and to ensure that such Maori people are left with sufficient land for their maintenance and support or livelihood.
- (c) The Crown has a duty not to divest itself of its Treaty obligations by conferring an inconsistent jurisdiction on the Native Land Court or other judicial or non-judicial bodies.
- (d) A breach of the Treaty by one party gives a right to redress from the other.

3. The Position of Ngati Awa prior to the Raupatu

3.1 IN 1865 Ngati Awa held Te Tino Rangatiratanga over its Rohe as follows:

- (a) The islands of Motiti, the Rurima group, Moutohora (Whale Island), Volkner Rocks, Whakaari (White Island), Ohakana and Uretara (both the latter two islands being situated in Ohiwa Harbour) and the seas from Waihi Estuary (near Maketu) to Ohiwa Harbour.
- (b) The land, forests, lakes, rivers and swamps bounded to the north by the coastline from Waihi Estuary to Ohiwa, to the west from the Waihi Estuary along the Pongakawa River to Lake Rotoehu (including the lake itself and the Rotoehu Forest), from Lake Rotoehu to the Te Haehaenga, Pokohu and Matahina Blocks (including Lake Rotoma), to the south along the Waikowhewhe River towards Rangitaiki, across the Rangitaiki River to include the Tuararangaia Block

and on the east along the Whakatane River to Taneatua across to the Nukuhou River and from there along the Nukuhou River to Ohiwa Harbour.

- (c) Within the Rohe the following features and resources were of special significance to Ngati Awa:

- (i) The mountains called Putauaki (Mt Edgecumbe), Whakapo Korero (near Matata), and Maunga Whakamana, the hill called Te Tiringa (at Awakeri) and the headland called Koohi Point (at Whakatane).

- (ii) The rivers called Whakatane, Orini, Rangitaiki, Tarawera, and Waitahanui.

- (iii) The Rangitaiki Swamp and Wetlands.

- (iv) The forests at Rotoehu, Matahina, Kiwinui, Tarawera, and Manawahe.

- (v) The lakes called Rotoehu, Rotoma, Kawerau, Te Tahuna, Roto-Onerahi, Roto-iti-Paku, Onepu and Rotoroa.

- (vi) The thermal areas at Kawerau, Awakeri, Moutohora and Whakaari.

- (vii) The harbour at Ohiwa.

- (viii) The estuaries at Waihi, Te-Awa-a-Te Atua (at Matata), and Whakatane.

- (ix) The islands referred to above and the resources of the sea along the coastline and around those islands.

- (x) Red Ochre mining sites at various places near Matahina and Otamarakau.

- (xi) The mutton-bird grounds at Moutohora and in the hills at Ohope and Matata.

- (xii) Sacred sites of special cultural significance ie

- Kapu-te-rangi (Toi's Pa on Koohi Point above Whakatane)

- Marae-totara (Toi's burial place at Ohope)

- Whakatane (landing place of the Mataatua Waka)

- Matire-rau (garden at Wairaka Marae, Whakatane)

- Tupapaku-rau (site of an ancient house of learning at Whakatane)

- Te Toka-a-Taiau (rock at the mouth of Te Wairere Stream at Whakatane)

- Irakewa (sacred rock in Whakatane River)

- Pohatu-roa (sacred rock at Whakatane near which Treaty of Waitangi was signed)

- Rotoiti-paku (small lake at Kawerau where the Taniwha of Irakewa lived)
- Ohui (hill inland from Putauaki which symbolised peace between Tuhoe and Ngati Awa)
- Putauaki Maunga (symbolic mountain of Ngati Awa traditionally used as a burial site)
- Otitapu (important staging and look-out points of Ngai Te Rangihouhiri)
- Te Kohika Pa (old Pa and burial site)
- Matata township (originally named Te Awa-a-Te-Atua)
- Te Marae o Whakatane (site of sacred Pouahu or altar near Matata)
- Opihi-whanaunga-kore (ancient burial site on the coast at Whakatane)
- Te Kaokaoroa (famous battle site along the coast from Matata towards the Waitahanui River)
- Whakapaukorero (hill behind the township of Matata)
- Otamarakau (traditional name of the Pa of Ngati Irawharo).

3.2 A map showing the Rohe of Ngati Awa and its significant features is annexed hereto and marked 'A'.

3.3 FURTHER, in 1865, Ngati Awa was self-governing, economically self-sufficient and prosperous and was actively engaged in trade and commerce. Commodities produced by Ngati Awa for sale on a commercial basis included pigs, flax, vegetables, wheat, timber and potatoes and commercial activities included flour milling, and merchant shipping. Commodities used for customary exchange transactions with other Iwi included the resources of the sea, red ochre and mutton-birds.

4. Events Leading to the Raupatu

4.1 IN 1863 the Crown passed the New Zealand Settlements Act 1863 which purported to allow the confiscation of Maori Land in certain circumstances, namely whenever the Governor in Council was satisfied that any Native Tribe, or any considerable number of Natives, had been engaged in rebellion against the Queen's authority.

4.2 IN 1863 and 1864 some members of Ngati Awa joined a force of Tairawhiti Chiefs and Warriors which intended to journey to Waikato for the purpose of assisting Waikato tribes in resisting the illegal invasion of their lands by Crown forces and European settlers. The Tairawhiti force was prevented from going to the Waikato by a combined force of Te Arawa Warriors and Crown soldiers and eventually turned back at the battle of Te Kaokaoroa.

4.3 IN late 1864 two prophets of the cult known as Paimarire (known to Europeans as Hauhau) arrived in the Bay of Plenty area and were able to convert some local Maori including members of Ngati Awa. Although the Paimarire movement was pacifist in origin and intent it was regarded as a barbaric and savage religion by the Crown and by European settlers.

4.4 IN March 1865 the Reverend Carl Volkner, a Missionary living in a nearby town of Opotiki was killed by local Maori under the influence of the Paimarire prophets. A few members of Ngati Awa were present in Opotiki at the time of the killing. Ngati Awa Chiefs, however, expressed strong regret and disapproval of the killing.

4.5 IN early July 1865 the Paimarire prophets in conjunction with some Ngati Awa Chiefs declared an aukati along the Bay of Plenty coast from Rurima Island along the coast to Tikirau (Cape Runaway) and inland from Rurima Island to Ruawahia and beyond. An aukati was a traditional method by which Maori asserted boundaries to their lands and had been used a few months earlier by Te Arawa. The primary reason for the aukati was to discourage Te Arawa from returning to Ngati Awa territory following the battle of Te Kaokaoroa.

4.6 ON 19 or 20 July 1865 the *Mariner*, a trading vessel belonging to Te Arawa, arrived at Whakatane. This event was regarded as a breach of the aukati by Paimarire and by some Ngati Awa and the vessel was confiscated.

4.7 ON 22 July 1865 the vessel *Kate* carrying a number of persons, including one James Fulloon, arrived at Whakatane. This event was regarded by Paimarire and some Ngati Awa as a second breach of the aukati.

4.8 ON 22 July 1865 Fulloon and three Europeans were killed on board the *Kate* by a group of Ngati Awa led by a Paimarire prophet.

4.9 ON 2 August 1865 the resident magistrate at Maketu issued a warrant for the arrests of those persons alleged to have been responsible for killing Fulloon and others.

4.10 BETWEEN August and October 1865, a Crown force numbering some 500 men consisting mainly of Te Arawa, with some Tuwharetoa, Raukawa and Ngati Manawa Chiefs and Warriors all under the command of a European Officer, purporting to act in pursuance of the warrant of arrest of 2 August 1865, unlawfully and without cause invaded the Rohe of Ngati Awa and destroyed Ngati Awa villages, meeting houses, store houses and canoes, seized cattle and horses, and after a siege at Te Teko, took as prisoners 35 Ngati Awa Chiefs and Warriors.

4.11 ON 2 September 1865 the Crown issued a 'Proclamation of Peace' the full text of which reads as follows:

'PROCLAMATION OF PEACE

By His Excellency Sir George Grey, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand, and Vice-Admiral of the same, &c, &c, &c.

THE Governor announces to the Natives of New Zealand that the War which commenced at Oakura is at an end.

The Governor took up arms to protect the European settlements from destruction, and to punish those who refused to settle by peaceful means the difficulties which had arisen, but resorted to violence and plunged the country into war.

Upon those Tribes sufficient punishment has been inflicted. Their war parties have been beaten; their strongholds captured; and so much of their lands confiscated as was thought necessary to deter them from again appealing to arms.

The Governor has therefore shown that he will not permit the peace of the Colony to be disturbed without inflicting severe chastisement on those who resist his authority.

The Governor hopes that the Natives will now have seen that resistance to the law is hopeless; he proclaims on behalf of the Queen, that all who up to the present time have been in arms against Her Majesty's authority will never be prosecuted for past offenses, excepting only

those who have been concerned in the murders of the following persons because those persons were barbarously and treacherously murdered:

The children Parker and Pote, killed at Omata, on the 27th March 1860;

The boy Joseph Sarten, killed at Henui, on the 4th December 1860;

The Native Ngakoti, who was killed, and his wife and her daughter killed at Kaipikari, in December 1861;

Mrs Margaret Fahey, killed at Rama Rama on the 16th October 1863;

The boys Richard Trust and Nicholas Trust, killed at Kennedy's Farm, on the 24th October 1863;

The Rev Mr Volkner, killed at Opotiki, on the 2nd March 1865;

Mr James Fulloon, and his companions, killed at Whakatane, on the 27th (sic) July 1865;

The Chief Rio Haeaterangi, killed near Wanganui, in January 1865.

The murderers of those persons will be brought to trial as soon as they are arrested.

The Governor also excepts from this pardon the Chief Te Pehi, because having taken the Oath of Allegiance to Her Majesty, he violated his oath, and treacherously attacked the Queen's troops at Pipiriki; when taken he will be brought to trial for his crime.

All others are forgiven.

Out of the lands which have been confiscated in the Waikato, and at Taranaki and Ngati-ruanui, the Governor will at once restore considerable quantities to those of the Natives who wish to settle down upon their lands, to hold them under Crown grants, and to live under the protection of the law. For this purpose Commissioners will be sent forthwith into the Waikato, and the country about Taranaki, and between that place and Whanganui, who will put the Natives who may desire it upon lands at once, and will mark out the boundaries of the blocks which they are to occupy. Those who do not come in at once to claim the benefit of this arrangement must expect to be excluded.

The Governor will take no more lands on account of the present War.

As regards the prisoners now in custody, the Governor will hold them until it shall be seen whether those who have been in arms return to peace. If they do so the prisoners will be set at liberty.

The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr Volkner and Mr Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.

The Governor now calls upon all the Chiefs and Tribes to assist him in putting a stop to all such acts of violence for the future; for all, whether Europeans or Natives, have a common interest in putting an end to such crimes, and in preserving the peace of the Colony.

The Governor is about to call a meeting of all the great Chiefs to consult with his Government as to the best means whereby the Maori people may be represented in the General Assembly, so that they may henceforth help to make the laws which they are called on to obey. At that meeting all matters can be discussed, with a view of establishing a general and lasting peace throughout New Zealand.

Her Majesty the Queen desires that equal laws and equal rights and liberties may be enjoyed by all her subjects in this Island, and to that end the Governor in the name of the Queen publishes this Proclamation.

Given under my hand, at the Government House, at Wellington, and issued under the Public Seal of the Colony of New Zealand, this second day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G GREY

By His Excellency's command,

FRED A WELD

GOD SAVE THE QUEEN!

4.12 ON 4 September 1865 the Crown issued a Proclamation of Martial law in the districts of Opotiki and Whakatane. The text of that proclamation is as follows:

'PROCLAMATION

Proclaiming Martial Law throughout the Districts of Opotiki and Whakatane

By His Excellency Sir GEORGE GREY, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same, &c, &c, &c.

WHEREAS instructions have been issued and Military force has been employed to capture the Murderers of the Rev Mr Volkner, Mr James Fulloon and his companions, at Opotiki, and Whakatane:

And whereas it is expedient that summary authority should be exercised by the Commander of the Military Forces so employed, and that persons suspected of the said Murders, or of aiding and abetting therein, should be tried by Courts-Martial:

Now I, the Governor, do hereby proclaim that Martial Law will be exercised throughout the districts of Opotiki and Whakatane, from the date hereof until this Proclamation shall be duly revoked.

Given under my hand at the Government House, at Wellington, this 4th day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G GREY

By His Excellency's command,

J C RICHMOND'

4.13 ON 26 September 1865 the Crown passed the Native Rights Act 1865 which had the effect, inter alia, of deeming all Maori born in New Zealand as natural born subjects of the Queen and purporting to give the Supreme Court and 'all other Courts of law within the Colony' jurisdiction over the persons and property of Maori people.

4.14 ON 9 October 1865 the Crown passed the Outlying Districts Police Act 1865 purporting to make it lawful, inter alia, for the Crown to take lands off persons who concealed, harboured or protected any persons who were suspected of committing certain crimes (including murder).

4.15 IN December 1865 Crown officials in conjunction with government military officers purported to conduct a Court Martial of the Ngati Awa prisoners and to condemn most of them to death.

4.16 IN May 1866, after the Court Martial had been declared illegal, the Ngati Awa prisoners were sent to Auckland and tried by the Crown in the Supreme Court for murder. After a trial which was conducted in an unjust and defective manner, five prisoners were found guilty and executed while the others were found guilty and sentenced to various terms of imprisonment. Four of the prisoners died in prison during 1866. The following matters are relied upon in support of the allegation that the trial was conducted in an unjust and defective manner:

- (a) The charges brought by the Crown were misconceived and without foundation in that English law was not in force in the Bay of Plenty in July 1865 and the death of Fulloon and the three Europeans had occurred in accordance with Tikanga Maori.
- (b) In any event the majority of the Chiefs and Warriors of Ngati Awa who were found to be guilty in respect of the charges brought as a result of the death of Fulloon and the others were not in fact or in law involved in their deaths.

- (c) The Chiefs and Warriors of Ngati Awa charged with the murder were not separately represented by legal counsel and no attempt was made by counsel appointed to represent them to distinguish between the defendants or to mount defences to the charges which may have been open to some or all of the defendants such as:
 - Whether English law applied to the defendants as at July 1865
 - Whether the death of Fulloon and the others was justified by Tikanga Maori and whether, in that event, the defendants had a lawful excuse for any part they may have played in their deaths
 - Lack of identification
 - Lack of legal or actual responsibility for the deaths.
- (d) The Chiefs and Warriors charged were not tried by a jury of their peers (no Maori were eligible for the jury).
- (e) The Chiefs and Warriors who were charged and convicted received unlawful excessive and unjust punishment in that they were not only hung or imprisoned but they and their relatives had already suffered additional punishment by loss of their lands as a result of the confiscation.

5. The Raupatu

5.1 ON 17 January 1866 by Order in Council the Crown issued a proclamation pursuant to the New Zealand Settlements Act 1863 confiscating some 440,000 acres of land in the Bay of Plenty. The proclamation reads as follows:

‘G Grey, Governor
ORDER IN COUNCIL
*At the Government House, at Wellington,
the Seventeenth day of January, 1866*

Present:
HIS EXCELLENCY
THE GOVERNOR IN COUNCIL

WHEREAS by “the New Zealand Settlements Act 1863”, it is enacted, amongst other things, that whenever the Governor in Council shall be satisfied that any Native Tribe or section of a Tribe, or any considerable number thereof, has, since the First day of January 1863 been engaged in rebellion against Her Majesty’s authority, it shall be lawful for the Governor in Council to declare that the district within which any land, being the property or in the possession of such Tribe, or section or considerable number

thereof, shall be situate, shall be a district within the provisions of the said Act, and the boundaries of such district in like manner to define and vary as he shall think fit:

AND WHEREAS the Governor in Council is satisfied that certain Native Tribes and sections of Native Tribes having respectively as their property or in their possession land situate within the district described in the Schedule hereunder written have, since the First day of January 1863, been engaged in rebellion against Her Majesty’s authority:

NOW THEREFORE his Excellency the Governor, in exercise of the power vested in him by the said recited Act, doth hereby, with the advice and consent of the Executive Council of the Colony of New Zealand, declare that, from the date hereof, the district the boundaries whereof are defined and described in the Schedule to this Order, shall be a district within the provisions of “the New Zealand Settlements Act 1863”, and shall be designated by the name of the Bay of Plenty district, and doth hereby reserve and take the lands within the said district for the purposes of settlement; and doth hereby declare that all such lands are required for the purposes of the said Act, and are subject to the provisions thereof from the day of the date of this order.

SCHEDULE

Bay of Plenty District

All that land bounded by a line commencing at the mouth of Waitahanui River, Bay of Plenty, and running due south to the Tarawera River; thence by a straight line to the summit of Putanaki (sic) (Mt Edgecomb) (sic); then by a straight line in an easterly direction to the confluence of the rivers Tauwhare and Ohiwa; thence by a line running due east for 25 miles; thence by a line to the mouth of the Aparapara River in the Bay of Plenty.’

5.2 BY Order in Council made on 1 September 1866 the description of the land confiscated was altered to read as follows:

‘All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of 20 miles; then to the summit of (Mt Edgecomb) (sic) Putanaki (sic); thence by a straight line in an easterly direction to a point 11 miles due south from the entrance to the Ohiwa Harbour; thence by a line running due east for 25 miles; thence by a line to the mouth of the Aparapara River and thence following the coastline to the point of commencement at Waitahanui.’

5.3 A map showing the land confiscated in comparison with the Rohe of Ngati Awa (as described in paragraph 3.1 above) is annexed

hereto and marked 'B'. The boundaries established by the Crown of the land confiscated were arbitrary and never in fact coincided with the true boundaries of the Ngati Awa Rohe.

5.4 THE total amount of land confiscated by the Crown under the said Orders in Council was approximately 440,000 acres of which approximately 245,000 acres were within the Rohe of Ngati Awa.

5.5 THE confiscation of Ngati Awa land was allegedly justified by Ngati Awa having been engaged in rebellion since 1 January 1863 but this was and is untrue and in fact the dominant motive for the confiscation by the Crown was to obtain control over Ngati Awa land and its disposition to and settlement by European Militia and settlers or to 'loyal Natives'. The claimants rely upon the following facts and matters to justify these allegations:

(a) By about 1860 the Crown was under pressure to make land available for settlers from Britain and the Crown also perceived land sales as a means of obtaining revenue. Efforts by the Crown to purchase Maori land for these purposes, particularly in Taranaki and Waikato, had been met by reluctance on the part of Maori to sell and by difficulties in identifying those Maori who had authority to sell particular areas of land. In response to these and other pressures (see subparagraphs (b), (c) and (d) below) the Crown became involved in armed conflict with Maori in Taranaki and Waikato. Further, in 1862 the Crown passed the Native Lands Act 1862 which, inter alia:

(i) Waived the Crown's right of pre-emption of purchase of Maori land.

(ii) Established a Native Land Court for the purpose of determining Maori ownership of Maori lands and the issue of Certificates of Title to those owners.

In 1865 the 1862 Act was replaced by the Native Lands Act 1865 which was similar to the 1862 Act but went further by, inter alia:

(i) Stating its objective as being 'to encourage the extinction of (native) property customs'.

(ii) Prohibiting the sale or leasing of Maori land unless the title had been investigated and a Certificate of Title issued.

(b) Furthermore, prior to 1865 the Crown had promised troops who had been engaged by the Crown to fight against Maori, land for settlement and accordingly needed land to satisfy those promises. The promises are evidenced by a notice which appeared in the *New Zealand Gazette* of 12 September 1863, the material terms of which made provision for soldiers to be rewarded with land according to his rank as follows:

Field Officer	400 acres
Captain	300 acres
Surgeon	250 acres
Subaltern	200 acres
Sergeant	80 acres
Corporal	60 acres
Private	50 acres

(c) Further, the Crown needed land to sell for the raising of revenue for the Auckland Provincial Government.

(d) Up until January 1866 Ngati Awa control over its land and commercial activity was strong and some persons holding power in the provincial governments were seeking to destroy that control and commercial activity for their own advantage and for the purpose of deterring other Maori from resisting European authority.

(e) Despite the pressure on the Crown to obtain land from Maori, the Crown made no effort prior to the confiscation to purchase land from Ngati Awa peaceably.

(f) The Crown force which invaded the Rohe of Ngati Awa in August 1865 was ostensibly sent to execute a warrant for the arrest of persons alleged to have killed Fulloon but the force was excessive in size for that purpose and was provocatively composed predominantly of Te Arawa Warriors who were traditional enemies of Ngati Awa.

(g) Most of the persons named in the warrant of arrest were Paimarire followers and the enforcement of the aukati by the killing of Fulloon had been carried out at the urging of a Paimarire prophet.

(h) Further, the enforcement of the aukati was consistent with Tikanga Maori, and was not governed by European law as the enforcement occurred prior to the passing of the Native Rights Act 1865 and in an area where Maori were self-governing and independent.

- (i) Despite the provocation of the Crown invasion force as referred to in (f) above, Ngati Awa did not resist that force apart from some intermittent and minor skirmishing between the invasion force and a few villages of Ngati Awa. Other hapu of Ngati Awa remained neutral and did not seek to interfere with the invasion force. Following a negotiation with Paimarire followers the Crown force succeeded in negotiating the surrender of persons named in the warrant for the purpose of arrest.
- (j) Accordingly:
 - (i) None of the activities of Ngati Awa in 1863 and 1864 constituted a rebellion or alternatively if there was such a rebellion it was forgiven by the Proclamation of Peace issued on 2 September 1865 as confirmed by the provisions of the Te Runanga O Ngati Awa Act of 1988.
 - (ii) Further, the events of August to October 1865 did not and could not constitute a rebellion.
- (k) The Proclamation of 17 January 1866 also failed to comply with the provisions of the New Zealand Settlements Act 1863 and the conditions under which that Act was approved by the Colonial Office (UK) in accordance with Section 58 of the New Zealand Constitution Act 1852 (UK) in all or any of the following respects:
 - (i) There was a failure to set up a Commission for the purpose of enquiring into what lands were to be confiscated as required by Condition 4 of the Colonial Office's consent.
 - (ii) Land was confiscated from both loyal and allegedly rebellious natives merely because they were in the same district contrary to Condition 6 of the Colonial Office's consent.
 - (iii) The Crown failed to make any attempt to distinguish between natives of 'lesser guilt' and the 'more guilty' contrary to Condition 7 of the Colonial Office's consent.
 - (iv) The whole of the land declared to be a District by the Proclamation pursuant to Section 2 of the Act was taken for the purpose of settlements when in fact only a very small portion of the land was required for settlements and accordingly the Crown

acted in contravention of Section 4 of the Act.

- (l) Accordingly the Proclamation of 17 January 1866 was *ultra vires* the New Zealand Settlements Act of 1863 and was issued in order to take advantage of the circumstances then prevailing and by inference for the aims and purposes identified in subparagraphs (a) to (d) above.

6. Events following the Raupatu

Wilson's Arrangements

6.1 IN February 1866 one John A Wilson was appointed by the Crown as a Special Commissioner responsible for making arrangements with Maori in relation to the land confiscated by the Crown in the Bay of Plenty district. The arrangements were to involve the 'ceding' of land by local Maori to the Government, the giving of land back to local Maori where appropriate, or the taking of land for survey. Crown policy at the time was that the land was to be distributed to military settlers first, 'friendly natives' second, and 'surrendered Natives' last. Pursuant to that policy Wilson imposed arrangements on local Maori in the Bay of Plenty district during 1866 and 1867.

6.2 THE result of the arrangements made by Wilson was that only 77,870 acres of the 245,000 acres confiscated were returned to Ngati Awa. Of the land not returned, 87,000 acres were given to various iwi, mainly to Te Arawa, on the basis of those iwi being 'loyal Natives' and by way of reward for military service rendered by Te Arawa against Ngati Awa in 1865. The balance of approximately 80,000 acres was retained by the Crown.

6.3 THE arrangements made by Wilson had no validity under the New Zealand Settlements Act 1863 because all claims regarding land taken under that Act were required to be determined by a Compensation Court. In fact only a very small proportion of the land confiscated from Ngati Awa was dealt with by the Compensation Court. In order to validate Wilson's arrangements the Crown was obliged to pass a number of further Acts including the Confiscated Lands Act 1867, the Richmond Land Sales Act 1870, the Whakatane Grants Validation Act 1878, and the Native

Land Claims & Boundaries Adjustments & Titles Empowering Act 1894.

6.4 THE bulk of the land returned to Ngati Awa was included in six Reserves namely:

- (a) A reserve situated on the Western side of the Whakatane River (the Whakatane Reserve) consisting of approximately 37,261 acres.
- (b) A reserve situated at Omataroa consisting of approximately 20,400 acres.
- (c) A reserve on and around Putauaki consisting of approximately 12,710 acres.
- (d) A reserve situated at Kokohinau consisting of approximately 2,527 acres.
- (e) A reserve situated at Pokerekere consisting of approximately 1,875 acres.
- (f) A reserve situated at Ohope consisting of approximately 1,575 acres.

6.5 THE balance of the land returned to Ngati Awa was included in approximately nine other reserves of between four acres and two hundred acres.

6.6 THE following effects resulted from the arrangements made by Wilson:

- (a) The reserves were located mostly on flood-prone swamp land or land in the hills while the best flat and fertile land was taken for the Crown or for settlers.
- (b) The boundaries of the reserves generally bore little or no relationship to the traditional boundaries of the hapu who were required to live in the reserves.
- (c) The land in the reserves was returned to Ngati Awa by way of Crown grant and individualised title and by this method most Iwi and hapu members were disinherited from the lands that were returned.
- (d) Many of the arrangements were made with Maori who did not truly represent the hapu of the land involved and this resulted in boundary disputes that continued for many years.
- (e) Wilson treated all Ngati Awa the same regardless of the involvement or otherwise of hapu in the events of 1865 by settling all Ngati Awa on the reserves.
- (f) Wilson confiscated some eel weirs and other property including flour mills and gave them to 'friendly natives'.

(g) Military settlements were established at Te Teko and Ohiwa giving rise to a feeling on the part of Ngati Awa of being under military rule and observation.

(h) Iwi from outside the Rohe of Ngati Awa were given lands within the Rohe therefore promoting the disintegration of Ngati Awa, eg, land at Whakatane was given to Ngati Pikiaro and Patuheuheu, and land near Matata was given to Ngati Raukawa and Ngati Manawa.

The Compensation Court

6.7 DURING 1867 a Compensation Court sat in Maketu, Whakatane and other places, ostensibly for the purpose of assessing and awarding compensation to all those who had any title, interest or claim to the confiscated land in accordance with the provisions of the New Zealand Settlements Act 1863. However, apart from a few minor claims, the Court failed or refused to entertain any claims from Ngati Awa and conducted its hearings upon the unjust and wrongful basis that Ngati Awa members had no right to a claim for compensation under the terms of the New Zealand Settlements Act 1863.

Loss of Land Returned to Ngati Awa

6.8 ALTHOUGH land was returned by the Crown to Ngati Awa (as referred to in paragraph 6.2 above) approximately 50,000 acres (or approximately 65% of the land returned) subsequently passed out of Ngati Awa possession and control or was alienated. Significant causes of this further loss of land by Ngati Awa were:

- (a) The destruction of customary title and traditional methods of Maori ownership or control by transfer of lands into titles owned by individuals. This was accomplished by:
 - (i) The passing of legislation designed to achieve ownership of Maori land by individuals, eg, the Native Lands Act 1862 (and the subsequent Native Land Acts of 1865, 1867, 1873, 1894 and 1909 etc), the New Zealand Settlements Act 1863 and its amendments, the Confiscated Lands Act 1867, the Native Trust & Claims Definition & Registration Act 1893, the Native Land Claims & Boundaries Adjustment & Titles Empowering Act 1894.

- (ii) Orders of the Compensation Courts and the Native Land Courts under those Acts awarding Maori land to individual owners.
- (b) The alienation of Maori land by transfer or by vote under the Native Land Act 1909.
- (c) The taking of land under the Public Works Act 1908 (and subsequent Public Works Acts).
- (d) The taking of land to meet survey costs.
- (e) The purchase of undefined share interests of individual Maori owners.
- (f) The taking of land in lieu for default in payment of mortgages, rates, non-use of land, noxious weeds, and statutory land charges.

Loss of Lands Outside the Confiscation Boundary

6.9 IN addition to the land of Ngati Awa situated within the confiscation boundary which was lost by Ngati Awa either by reason of the confiscation or by reason of the matters set out in paragraph 6.8 above, Ngati Awa also lost, as a result of the confiscation and events consequent upon the confiscation, lands outside the confiscation boundary, notably the Rotoehu Forest and the land around that forest (insofar as the forest and the land lies outside the confiscation boundary), the Matahina Forest and the land surrounding that forest including the Te Haehaenga Block, the Pokohu Block, the Putauaki Block, and the Tuararangaia Block. The causes of that loss are as follows:

Rotoehu Forest

- (a) The portion of the Rotoehu Forest lying outside the confiscation boundary falls within the blocks of land lying to the south of Otamarakau known as Waitahanui and Tahunaroa.
- (b) Ownership of those blocks was determined by sittings of the Native Land Court in 1870–71 and 1878 with a final decision being given on 19 June 1878. By that decision the Court decided that Waitaha, a hapu of Te Arawa, was entitled to ownership of the Waitahanui and Tahunaroa blocks.
- (c) The decision of the Court was erroneous and contrary to the evidence for the following reasons:
 - (i) Although the blocks of land had in ancient times been occupied by Waitaha, Ngati Awa, mainly through Ngai Te

Rangihouhiri and Ngati Hikakino, had established mana whenua over the land by Ringakaha (or conquest) and occupation for over two hundred years.

(ii) The Court proceeded upon the assumption that customary title to the Waitahanui and Tahunaroa blocks should be determined by ascertaining the Iwi or hapu that had control over the land around the Pa at Otamarakau. In so doing the Court erroneously ignored or failed to take into account evidence of longstanding Ngati Awa control of the inland areas of these blocks by the establishment of Pa at Otitapu, Manawahe and on the shores of Lake Rotoehu.

(iii) The Court found that following the Battle of Te Tumu in 1836, only Waitaha had returned to the Otamarakau District. This was untrue, as various hapu of Ngati Awa, eg, Ngai te Rangihouhiri, Ngati Hikakino, Ngati Pukeko, Ngati Patuwai and Ngati Whakahemo also occupied the area.

(iv) The Court erroneously believed that the Battle of Te Tumu represented a victory of Te Arawa over Ngai Te Rangihouhiri of Ngati Awa when in fact the defeated party was Ngai Te Rangi of Tauranga.

(v) The Court's finding in favour of Waitaha/Te Arawa is contradicted by the later findings of the Court in 1878 and 1888 that a Ngati Awa hapu, Ngati Whakahemo, was the occupier and owner of Pukehina Block, being a block lying to the west of the Waitahanui and Tahunaroa blocks.

- (d) The Court's findings in relation to the Waitahanui and Tahunaroa blocks, were influenced by a general reluctance to find that Ngati Awa had a claim to any lands outside the confiscation boundary, by a preference for claims by Te Arawa as loyal natives, and by the fact that since the confiscation and the arrangements made by Wilson, hapu of Te Arawa had been encouraged to move into the Otamarakau area in preference to the dispossessed Ngati Awa.

The Southern Blocks (the Matahina Forest and the lands surrounding the forest including the Pokohu, Matahina, Putauaki, Tuararangaia, and Te Haehaenga Blocks)

- (a) Although the abovenamed Southern Blocks were part of the Rohe of Ngati Awa,

significant portions of those Blocks were awarded to other Iwi by the Native Land Court, eg,

—Half of the Pokohu Block (approximately 38,120 acres) was awarded to hapu of Te Arawa while the balance was split between Ngati Awa and Ngati Pou (a Ngati Awa hapu).

—The Tuararangaia Block (approximately 13,800 acres) was awarded to Tuhoe.

—The Te Haehaenga Block (approximately 30,000 acres) was awarded to Te Arawa.

- (b) The lands awarded to Ngati Awa were in the form of a Certificate of Title in favour of certain Ngati Awa owners who almost immediately after the grant were induced to sell significant portions of that land to the Crown. Subsequently the Crown has contributed much of the land purchased from Ngati Awa to the joint venture between the Crown, Tasman Pulp & Paper Limited and Maori for the establishment of the Tarawera Forest Joint Venture (see paragraph 6.27 and 6.28 below).

Te Putere Reserve

6.10 IN 1872 Sir Donald McLean, then Minister of Native Affairs, promised Ngati Awa that a reserve of approximately 500–600 acres would be set aside for the use of certain Ngati Awa hapu at Te Putere. Further and in partial performance of this promise, by Order-in-Council dated 14 December 1909 Lot 37 Awa-o-te-Aua (sic) Survey District (275 acres) at Te Putere was created a reserve for the use and occupation of Maori under the provisions of the Native Land Settlement Act 1907. However in 1917 the Crown, through the Lands Department incorporated Lot 37 with neighbouring Crown blocks and following incorporation the block of land thereby created was subdivided and sold resulting in the loss of the Maori Reserve at Te Putere.

Mataatua Meeting House

6.11 BETWEEN about 1872 and 1875 Ngati Awa built the whare named Mataatua at Whakatane. Mataatua was described in 1875 as ‘a grand carved house, said to be one of the finest in New Zealand’. The Whare was built to replace a previous one which had been destroyed but because of its name Mataatua was given a special spiritual and political significance as a symbol of the recovery of Ngati Awa following the

confiscation of 1866 and the invasion of Ngati Awa’s lands by Te Kooti in 1869 and as a symbol of reconciliation between Ngati Awa and other Iwi of the region, particularly Tuhoe, and also between those Iwi and the Crown.

6.12 IN 1879 Mataatua was sent by the Crown, with the consent and agreement of Ngati Awa, to the Intercolonial Exhibition in Sydney. Without any further consultation with Ngati Awa the Crown then arranged for Mataatua to be displayed at the International Exhibition in Melbourne of 1881 and subsequently at the South Kensington Museum in London, England. In 1924 Mataatua was displayed at the British Empire Exhibition at Wembley Park in London and was subsequently shipped back to New Zealand for the South Seas Exhibition at Dunedin in 1925.

6.13 SINCE 1925 Mataatua has remained in the Otago Museum. Despite numerous requests by Ngati Awa neither the Crown nor the Otago Museum has returned Mataatua to Ngati Awa.

The Rangitaiki Swamp

6.14 DESPITE the confiscation, some Ngati Awa land retained by the Crown, notably the Rangitaiki swamp area, continued to be used by Ngati Awa for traditional purposes, in particular as a source of food and building materials.

6.15 HOWEVER in 1890, after pressure from European settlers the Crown arranged for the surveying and leasing of the Rangitaiki swamp area to European settlers. Further, in 1894 the Rangitaiki swamp area was constituted a drainage district by Order in Council under the Land Drainage Act 1893 and as a consequence the swamp was then administered by a Drainage Board.

6.16 IN September 1910 the Crown passed the Rangitaiki Land Drainage Act 1910 which, inter alia:

- (a) Authorised the Minister of Lands to carry out any actions he saw fit for the drainage, reclamation and roading of the swamp area.
- (b) Imposed a benefit-based levy on the land.
- (c) Allowed the Government to take any part of the land under the Public Works Act 1908

or to purchase land under the Native Land Act 1909.

6.17 THE consequences of the matters referred to in paragraphs 6.15 and 6.16 above were that:

- (a) Between 1893 and 1910 the Drainage Board carried out drainage works in relation to the swamp area and such works continued under the auspices of the Minister of Lands from 1910 onwards.
- (b) Significant areas of the drained swamp land were acquired from Ngati Awa by the Government for compensation which was minimal and inadequate.
- (c) Ngati Awa were unable to develop their remaining swamp lands as a result of lack of access to development finance and capital.

Awakeri Hot Springs

6.18 IN 1879 (by Crown grant issued pursuant to an award of the Compensation Court), title to the Awakeri Hot Springs, which was a resource of special significance to Ngati Awa, and land surrounding the Springs, was vested in two members of Ngati Awa.

6.19 BY a proclamation issued in 1918 pursuant to the Public Works Act 1908 and the Scenic Preservation Amendment Act 1910 and by a further Proclamation in 1940 issued pursuant to the Public Works Act 1928 the Springs and the lands surrounding the Springs were taken by the Crown from the Ngati Awa owners.

Loss of Riparian Rights at Wairaka Marae

6.20 UP until about 1920 the Wairaka Marae at Whakatane bordered the Whakatane river and the inhabitants of the Marae enjoyed direct access to the river for fishing and for transport to cultivation plantations up-stream.

6.21 IN about 1920 the Whakatane Harbour Board constructed a stone wall in the Whakatane River with a view to diverting the course of the river to a deeper channel further out from shore. As a result of that construction silting occurred between the stone wall and the shore which in turn resulted in the shore line moving away from the Wairaka Marae to the extent that the inhabitants of the Marae no longer enjoyed direct access to the river. That situation has remained to this day.

Matahina Dam

6.22 IN 1968 the Crown took 974 acres of land at Matahina from Ngati Awa owners under the provisions of the Public Works Act 1928 for the purpose of constructing a dam on the Rangitaiki River together with an associated village.

6.23 IN the course of constructing the dam and the village the Crown:

- (a) Caused the loss in that area of the Rangitaiki River as a fishing resource.
- (b) Destroyed or caused the removal of sacred Ngati Awa burial grounds in the area.

6.24 ALTHOUGH the Rangitaiki River, a traditional resource of Ngati Awa, was an essential element of the Matahina Dam project, Ngati Awa were not invited by the Crown to participate in the financial rewards generated by the Dam project.

Putauaki

6.25 BY a decision of the Native Land Court given on 11 October 1881, the southern side of Putauaki was declared to be Ngati Awa land and vested in a limited number of Ngati Awa owners. The northern side was a Ngati Awa reserve pursuant to the arrangements made by Wilson as confirmed by grants made under the Confiscated Lands Act 1867.

6.26 WITHIN ten days of the Native Land Court decision of October 1881 the Crown induced the legal owners of the Ngati Awa land situated on the southern side of Putauaki to sell the bulk of those lands to the Crown. This was done without the consent of the beneficial owners.

6.27 IN 1967, following negotiations between Ngati Awa, the Crown and Tasman Pulp & Paper Company Limited ('Tasman'), Putauaki was transferred to Tarawera Forest Limited, being a company established as a joint venture between the Crown, various Iwi, and Tasman for the commercial development of the Tarawera forest.

6.28 MUCH of the land contributed by the Crown to the joint venture (which was the basis for the Crown subsequently acquiring a significant shareholding in Tarawera Forest Limited) was land which had been purchased from Ngati Awa as referred to in paragraph 6.9 ('The Southern Blocks') and 6.26 above.

6.29 NGATI AWA agreed to the transfer of Putauaki into the joint venture company upon the condition that Putauaki would be created as a Maori reservation and/or that the whole of Putauaki would be recognised by the joint venture as a sacred place where no planting of forest would be undertaken.

6.30 HOWEVER, following the transfer of Putauaki to Tarawera Forest Limited, and contrary to the agreement made with Ngati Awa, no Maori reservation was ever created and Tarawera Forest Limited carried out forest planting on Putauaki to a point approximately halfway up its slopes.

6.31 NGATI AWA was advised in relation to the establishment of Tarawera Forest Limited by the Maori Trustee and/or the Department of Maori Affairs who acted on behalf of the various Maori interests involved in the joint venture. The Maori Trustee and/or the Department of Maori Affairs failed to advise Ngati Awa adequately at all in respect of the following matters:

- (a) That it was not necessary to transfer the Ngati Awa land into the ownership of Tarawera Forest Limited in order to establish the joint venture as ownership of the lands involved in the joint venture could have been retained by the various joint venture partners.
- (b) That the arrangements and agreements made between the joint venture partners did not ensure that Putauaki would be preserved as a Maori reservation.
- (c) That Ngati Awa should insist upon a seat on the Board of Tarawera Forest Limited in return for the transfer of its lands into the joint venture.

6.32 FURTHERMORE, the Maori Trustee and/or the Department of Maori Affairs has failed to take appropriate action since the commencement of the joint venture to:

- (a) Protect Ngati Awa's wish that Putauaki be preserved as a Waahi Tapu and as a Maori Reservation; and
- (b) Ensure that Ngati Awa had a proper say in the affairs of Tarawera Forest Limited.

Pollution

6.33 SINCE the Raupatu, the Crown has allowed the Whakatane, Rangitaiki and Tarawera Rivers,

and associated canal systems, and the Ohiwa Harbour, to become polluted as a result of industrial and agricultural uses being permitted to discharge wastes into those resources.

6.34 FURTHERMORE, the Crown has allowed the pollution of the air over Ngati Awa lands, particularly in the areas of Whakatane and Kawerau, as a result of permitting the discharge of smoke and pollutants into the air by Tasman Pulp & Paper Limited and by Whakatane Board Mills Limited.

Petitions and Negotiations to Redress Grievances

6.35 BETWEEN 1873 and 1952 members of Ngati Awa petitioned Parliament on numerous occasions for redress of grievances resulting from the facts outlined in paragraphs 3.1 to 6.21. Some of the petitions were considered, others were not. Some petitions were referred to the Native Land Court or to a Commission of Inquiry but favourable recommendations from the Court or from the Commissions were not acted upon. In the case of one Commission of Inquiry, namely the Commission headed by Sir William Sim ('the Sim Commission') appointed in 1926, the Commission was expressly by its terms of reference restrained from inquiring whether the 1866 confiscation of Ngati Awa land was a breach of the Treaty of Waitangi. In any event the Crown failed to redress Ngati Awa grievances.

6.36 FURTHER, Ngati Awa undertook direct negotiations with the Crown at various times between 1920 and 1993 to seek redress for Ngati Awa grievances but to date the Government has failed to provide any or any proper compensation for those grievances.

B. BREACHES OF TREATY OF WAITANGI

1. IN all or any of the following respects the Crown has breached Article 2 of the Treaty of Waitangi:

- (a) By failing, prior to the confiscation, to make any attempt to purchase land from Ngati Awa peaceably.
- (b) By passing the New Zealand Settlements Act 1863 and thereby purporting to legitimise the confiscation of Maori Land.

- (c) By passing the Outlying Districts Police Act 1865 and thereby purporting to legitimise the confiscation of Maori Land.
 - (d) By invading Ngati Awa Lands between August and October 1865 and forcibly destroying and seizing Ngati Awa property and taking Ngati Awa chiefs and warriors prisoner.
 - (e) By confiscating Ngati Awa lands, forests, rivers, swamps and lakes pursuant to the proclamation of 17 January 1866.
 - (f) By unlawfully and for improper purposes, making use of the New Zealand Settlements Act 1863 to confiscate Ngati Awa land.
 - (g) By forcing Ngati Awa to move to, and live on, reserves.
 - (h) By passing the Confiscated Lands Act 1867 the Whakatane Grants Validation Act 1878, and the Richmond Land Sales Act 1870 in an effort to legitimise the (invalid) arrangements made by Wilson relating to the lands confiscated from Ngati Awa.
 - (i) By allowing the disinheritance of Ngati Awa hapu and Iwi members through the process of transferring Ngati Awa lands to individual titles and thereafter promoting the alienation by the individual owners pursuant to:
 - The (invalid) arrangements made by Wilson referred to in paragraphs 6.1 to 6.6 hereof.
 - The rulings of the Compensation Court referred to in paragraph 6.7 hereof.
 - The passing of the legislation referred to in paragraph 6.8(a)(i) hereof.
 - The orders and decisions of the Compensation Courts and the Native Land Courts referred to in paragraph 6.8(a)(ii) hereof.
 - The alienation or taking of land as referred to in paragraph 6.8(b) to (f) hereof.
 - The inducing of Ngati Awa owners to sell their land to the Crown as referred to, for example, in subparagraph (b) of paragraph 6.9 hereof (under the heading ‘The Southern Blocks’) and in paragraph 6.26 hereof.
 - (j) By allowing the Native Land Court to disinherit Ngati Awa from lands outside the confiscation boundary such as the Rotoehu Forest and the Pokohu, Tuararangaia, and Te Haehaenga Blocks as referred to in paragraph 6.9 above.
 - (k) By taking Ngati Awa lands at Matahina, by damming the Rangitaiki River at Matahina and thereby depriving Ngati Awa of a valuable resource, and by destroying sacred burial grounds at Matahina.
 - (l) By taking the Awakeri Hot Springs and the land surrounding those Springs.
 - (m) By passing the Rangitaiki Land Drainage Act 1910 and subsequently taking land in the Rangitaiki swamp from Ngati Awa under that Act in conjunction with the Public Works Act 1908 and the Native Land Act 1909.
 - (n) By allowing the pollution of the air and waters of Ngati Awa.
2. In all or any of the following respects the Crown has breached Article 3 of the Treaty:
- (a) By conducting an illegal military Court martial of Ngati Awa chiefs and warriors in December 1865.
 - (b) By conducting an unfair and unjust trial of Ngati Awa chiefs and warriors in the Auckland Supreme Court in May 1866 and thereafter executing or imprisoning these chiefs and warriors.
 - (c) By confiscating Ngati Awa Lands.
 - (d) By confiscating Ngati Awa Lands:
 - (i) Without lawful excuse.
 - (ii) By way of unlawful and additional punishment for crimes allegedly committed by Ngati Awa warriors and chiefs (in respect of which crimes Ngati Awa chiefs and warriors were executed and imprisoned).
 - (iii) Without regard to the extent to which or whether in fact the various hapu of Ngati Awa had been involved in the alleged crimes.
 - (iv) For improper and illegal motives.
 - (e) By failing for over 100 years to recognise the grievances of Ngati Awa or to arrange redress or appropriate compensation for those grievances.
3. In all or any of the following respects the Crown breached its implied duties in relation to the Treaty of Waitangi:
- (a) By ignoring, whenever it suited, the Proclamation of Peace of 2 September 1865.

- (b) By issuing the Proclamation of Martial law on 4 September 1865 in a belated attempt to justify the invasion of Ngati Awa land by Crown forces.
- (c) By passing the Native Rights Act 1865 in a belated attempt to:
 - (i) Justify the imposition of English law on those persons allegedly responsible for the killing of James Fulloon and others.
 - (ii) Justify the taking of Ngati Awa lands.
- (d) By embarking on a course of action designed to destroy the prosperity and wealth of Ngati Awa.
- (e) By illegally seizing the lands of Ngati Awa on the pretext that Ngati Awa had been in rebellion since 1 January 1863 when this was not true.
- (f) By promoting and/or allowing the confiscation of Ngati Awa land and the transfer of Ngati Awa land to individual Maori so as to defeat the legitimate interests of hapu and Iwi members.
- (g) By imposing European land tenure concepts on Ngati Awa lands in preference to Maori concepts of possession or ownership.
- (h) By failing to ensure that Ngati Awa were left with lands sufficient to maintain their mana, self esteem and way of life.
- (i) By failing to honour (or continue to honour) the promise of Sir Donald McLean for a Maori Reserve at Te Putere of approximately 500–600 acres.
- (j) By failing or refusing to return the whare whakairo Mataatua to Ngati Awa.
- (k) By allowing the loss of the riparian rights of the Wairaka Marae.
- (l) By failing to allow Ngati Awa any participation in the financial rewards of the Matahina dam project.
- (m) By failing to create a Maori Reservation upon the whole of Putauaki and/or allowing the planting of forests upon the sacred places of Putauaki.
- (n) By failing to provide proper advice and protection to Ngati Awa in relation to Ngati Awa's contribution to the Tarawera Forest project and in particular failing to ensure that Ngati Awa retained control of its lands and had a fair say in the administration and conduct of the business of Tarawera Forest Limited.
- (o) By failing to redress Ngati Awa grievances.

- (p) By refusing to comply with Crown obligations under the Treaty of Waitangi.

C. PREJUDICIAL EFFECT OF BREACHES OF TREATY

By reason of the facts and matters outlined in paragraphs A4.1 to 6.36 hereof and the breaches of the Treaty of Waitangi appearing in paragraphs B1 to B3 hereof Ngati Awa have been prejudicially affected in all or any of the following respects:

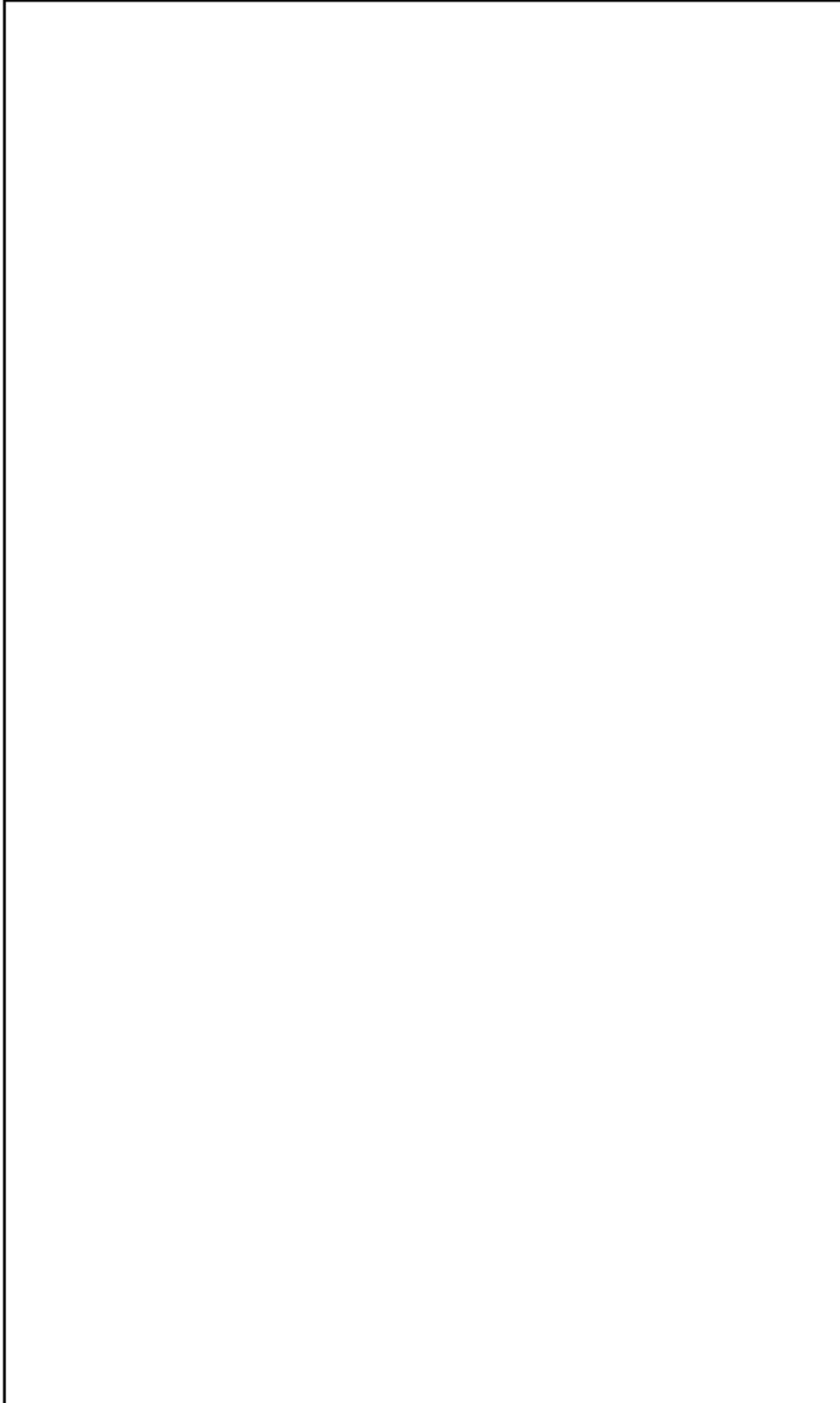
- (a) Loss of their lands, mountains, forests, rivers, swamps and lakes.
- (b) Loss of Te Tino Rangatiratanga.
- (c) Loss of the mana of hapu and Iwi.
- (d) Loss of leaders.
- (e) Loss of sources of food and building materials (such as the Rotoehu Forest and the Rangitaiki swamp area).
- (f) Loss of economic independence and prosperity.
- (g) Loss of water rights, mineral rights and geothermal rights.
- (h) Damage and destruction of the social structure and organisation of whanau, hapu and Iwi.
- (i) Destruction of the traditional system of ownership (customary title) and possession of land and resources.
- (j) The forced dislocation of hapu and the scattering of Ngati Awa people.
- (k) The classification of Ngati Awa from 1866 until the passing of the Te Runanga O Ngati Awa Act 1988 as rebels or tangata hara and, as a consequence, adverse presumptions of guilt against Ngati Awa by relevant Crown officials, Courts and agents and by other Iwi.
- (l) Loss of the mana of Ngati Awa leaders through their loss of control of Ngati Awa land, loss of authority and denial of Te Tino Rangatiratanga and as a consequence the breakdown of the Ngati Awa leadership system.
- (m) Loss of political influence.
- (n) A feeling of shame and spiritual deprivation.
- (o) The arousal of division, dissension and conflict between hapu leading to a breakdown of the alliance within the hapu of the Ngati Awa Iwi.

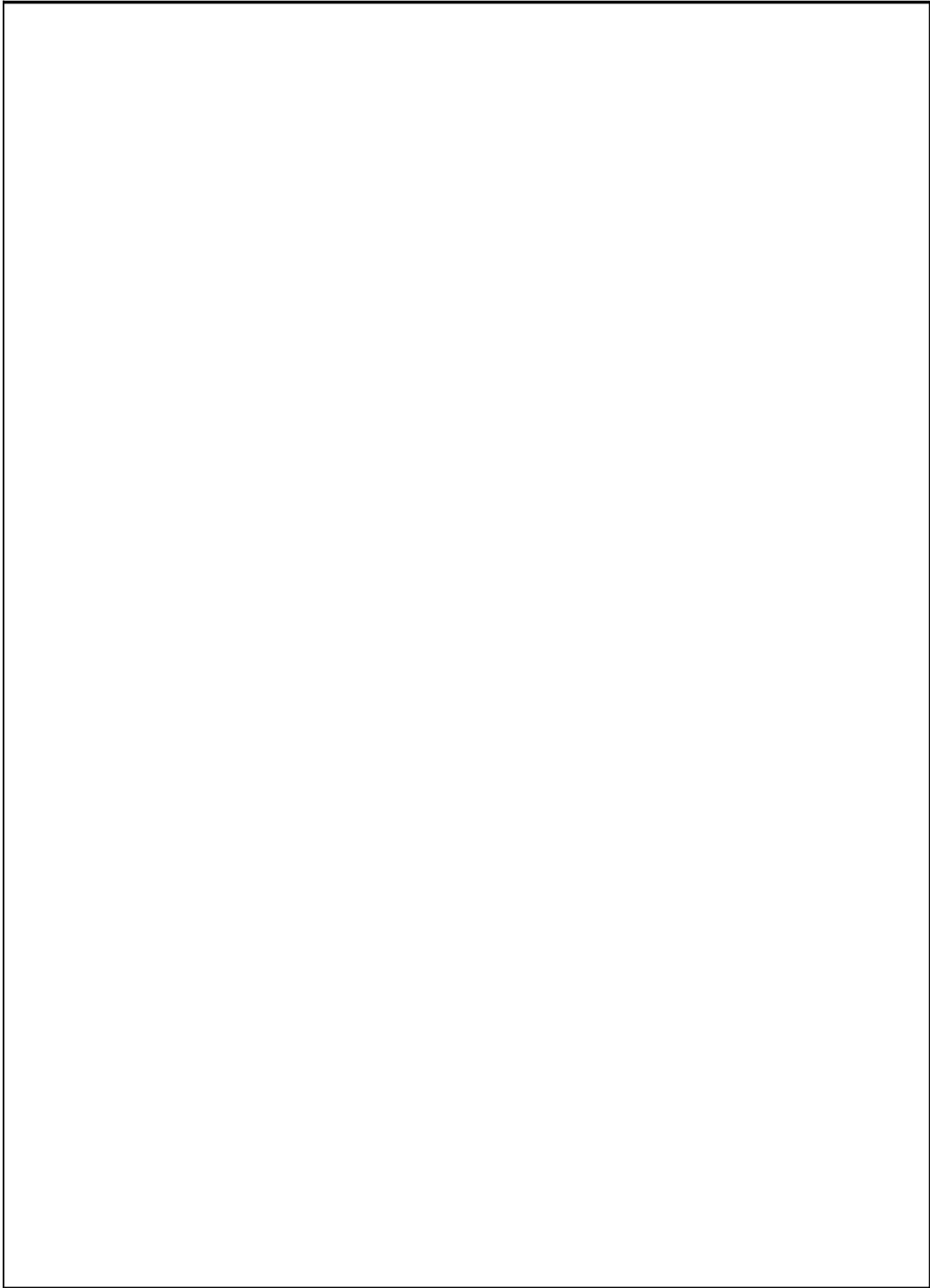
- (p) As a result of all the above matters the imposing of stress, anxiety and trouble upon the whanau of Ngati Awa.
- (q) A reduction in the population of the hapu and Iwi of Ngati Awa.
- (r) Loss of riparian rights; in particular of the Wairaka Marae.
- (s) Loss of the Whare Mataatua.
- (t) Loss of significant sacred and cultural sites and features such as Putauaki, Awakeri Hot Springs, and the burial sites at Matahina.
- (u) Loss of access to and the use of the Rangitaiki River at Matahina.
- (v) Lack of appropriate participation in major projects concerning Ngati Awa lands such as the Rotoehu and Tarawera Forest and the Matahina Dam.
- (w) Pollution of the air and waters of Ngati Awa and consequent loss or deterioration of those resources.
- (d) The restoration of the economic base of Ngati Awa with a view to restoring Ngati Awa to economic independence and prosperity.
- (e) The return of such of the lands and estates, forests, fisheries and other properties including all Crown reserves in the rohe of Ngati Awa as are now in Crown ownership or are otherwise available.
- (f) The transfer of appropriate lands to Ngati Awa of equivalent area and value to those confiscated.
- (g) Appropriate cash compensation for the breaches of the Treaty referred to above.
- (h) The return of the Rotoehu Forest to Ngati Awa.
- (i) The return of Putauaki to Ngati Awa.
- (j) The return of the Mataatua Meeting House to Ngati Awa.
- (k) The return of Awakeri Hot Springs to Ngati Awa.

D. COMPENSATION SOUGHT

THE Claimants seek all or any of the following relief:

- (a) An acknowledgment and apology from the Crown for the breaches of the Treaty of Waitangi outlined above.
- (b) The restoration of the Mana and Mauri of the whanau, hapu and Iwi of Ngati Awa.
- (c) The restoration of Te Tino Rangatiratanga of Ngati Awa.
- (l) Transfer of the Crown shares in Tarawera Forest Limited to Ngati Awa and representation of Ngati Awa on the Board of Tarawera Forest Limited.
- (m) Financial compensation to Ngati Awa for the use of the Rangitaiki River in the Matahina Dam project.
- (n) The taking of such steps as are necessary and appropriate to remove (and maintain the removal of) pollution from the air and waters of Ngati Awa.





BEFORE THE WAITANGI TRIBUNAL

IN THE MATTER

of The Treaty of Waitangi Act 1975

AND

IN THE MATTER

of a claim by ISOBEL FOX, WILLIAM SHUKI SAVAGE, TEMAUNGARANGI TE RIRE, TAI TUKIWAHO TE RIINI, ANTHONY STEVEN OLSEN, ROBERT DAVID SHUSTER and POPATA OSWALD RENATA on behalf of themselves and of the members of the iwi Tuwharetoa Te Atua Reretahi ki Kawerau

SECOND AMENDED STATEMENT OF CLAIM

WE, ISOBEL FOX of Kawerau, WILLIAM SHUKI SAVAGE of Kawerau, TEMAUNGARANGI TE RIRE of Whakatane, TAI TUKIWAHO TE RIINI of Kawerau, ANTHONY STEVEN OLSEN of Cambridge, ROBERT DAVID SHUSTER of Rotorua and POPATA OSWALD RENATA of Matata, for ourselves and on behalf of the iwi and hapu now comprising the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau

CLAIM to be prejudicially affected or likely to be prejudicially affected by:

1. The Order-in-Council/Proclamation of 17 January 1866 (as subsequently amended by Order-in-Council/Proclamation of 1 September 1866) purporting to confiscate certain lands, estates, forests, fisheries and other properties of the Ngati Tuwharetoa in the Bay of Plenty more particularly described in Schedule A hereto ('the confiscated lands and other properties').
2. The enactment and subsequent implementation in relation to the confiscated lands and other properties of the New Zealand Settlements Act 1863 (as from time to time amended), pursuant to which legislation the aforesaid Orders-in-Council/Proclamations were purportedly made.
3. The passing and implementation of legislation for the purpose of ratifying and/or excluding from challenge in the Courts of law the pur-

ported confiscation of the confiscated lands and other properties and the subsequent dealings without lawful authority in respect thereof by the Compensation Courts and other agents of the Crown, namely the Friendly Natives Contracts Confirmation Act 1866, the New Zealand Settlements Amendment Act 1866 (s 6), the Confiscated Lands Act 1867 and the Richmond Land Sales Act 1870.

4. The Order-in-Council/Proclamation of 12 November 1874 which purported to transfer certain of the confiscated lands and other properties to members of other tribes.
5. The enactment and subsequent implementation of the Confiscated Lands Act 1867, pursuant to which the said Order-in-Council/Proclamation of 12 November 1874 was made.
6. The acts done by the Crown in confiscating the confiscated lands and other properties on or about the 17th January 1866 as aforesaid and in dealing with and disposing of them thereafter contrary to the interests of Ngati Tuwharetoa as the rightful owners of, or possessors of Manawhenua over, the confiscated lands and other properties.
7. The enactment and subsequent implementation of the Native Land Acts of 1862, 1865 and 1877 and the Government Land Purchase Amendment Act 1878, whereby the alienation of

Ngati Tuwharetoa land was enabled or facilitated.

8. The acts done by the Crown subsequent to 17 January 1866 in dealing with and disposing of the confiscated lands and other properties contrary to the interests of Ngati Tuwharetoa as the rightful owners of, or possessors of Manawhenua over, the confiscated lands and other properties, in particular (but without limitation):

8.1 Causing or permitting the alienation from tribal ownership of substantial portions of the confiscated lands later returned under crown grant to individual members of Ngati Tuwharetoa which lands were or ought to have been returned to tribal ownership to be held pursuant to native title or alternatively at the very least held and retained in trust for the iwi or hapu, in particular the Blocks known as Matata Lots 31 to 42 inclusive or substantial portions thereof.

8.2 The confiscation and/or the subsequent alienation of that part of the area of land now known as and comprising the Rotoehu Forest failing within the confiscation boundary declared in the Orders-in-Council/Proclamations of 17 January and 1 September 1866;

8.3 The taking of land and other properties of which Ngati Tuwharetoa were then the rightful owners or held Manawhenua over in the area known as the Rangitaiki Swamp by means of the passing and subsequent implementation of the Public Works Act 1908, the Native Lands Act 1909 and the Rangitaiki Land Drainage Act 1910.

AND CLAIM that the foregoing Acts or Ordinances, Orders-in-Council, Proclamations, policies and practices and acts and omissions were or are inconsistent with the principles of the Treaty of Waitangi.

Further particulars of claim

9. The Order-in-Council/Proclamation of 17 January 1866 recited in part:

‘Whereas the Governor in Council is satisfied that certain Native Tribes and sections of Native Tribes, having respectively as their property or in their possession, lands situate within the district described in the Schedule hereunder written, have, since the first day of January, 1863, been engaged in rebellion against Her Majesty’s authority’.

10. The allegation that the Ngati Tuwharetoa (being one of the ‘certain Naive Tribes and sections of Native Tribes’ whose lands were confiscated) had been engaged in rebellion against Her Majesty’s authority was false and without foundation.

11. The purported confiscation of the confiscated lands and other properties was contrary to the guarantees of the Treaty of Waitangi and was carried out in excess of the authority of, and/or for improper purposes not authorised by, the New Zealand Settlements Act 1863; in breach of the provisions of the New Zealand Settlements Act 1863; in breach of the proper principles of fair dealing as between the Crown and the Maori people; and without affording Ngati Tuwharetoa a hearing or other due process of law.

12. Thereafter the Crown has ignored and failed to act on the rightful claims of Ngati Tuwharetoa to the confiscated lands and other properties and, by means of the legislation, Orders-in-Council, Proclamations, policies, practices and acts and omissions referred to in paragraphs 1–8 inclusive hereof, has wrongfully appropriated and as the case may be wrongfully retained the lands and other properties, or wrongfully alienated them to other persons.

13. The foregoing Acts of Parliament, Orders-in-Council/Proclamations and acts and omissions of the Crown have caused loss and damage to Ngati Tuwharetoa, and have offended and continue to offend against the rights, title, mana and mauri of Ngati Tuwharetoa in respect of the confiscated lands and other properties.

THE TRIBUNAL is asked to recommend (pursuant to Sections 5, 8HB(1)(b) and 8HC of the Treaty of Waitangi Act 1975 and Sections 36 and 40 of the Crown Forest Assets Act 1989 as appropriate) as follows:

- (a) That the Orders-in-Council/Proclamations referred to in paragraphs 1 and 4 hereof be rescinded;
- (b) That the Crown acknowledge that the confiscation of Maori land in the Bay of Plenty by means of the Orders-in-Council/Proclamations referred to in paragraph 1 hereof and in particular the confiscation of the lands and other properties of Ngati Tuwharetoa was wrongful, without proper

- legal or factual foundation, and contrary to the Treaty of Waitangi;
- (c) That the rightful ownership by Ngati Tuwharetoa of the confiscated lands and other properties together with all other rights and interests recognized by the Treaty of Waitangi in respect of the confiscated lands and other properties be recognised and confirmed, and be restored to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau by appropriate amendments to existing legislation and to other public documents and practices;
- (d) That the lands now known as and comprising the Rotoehu Forest (being the lands more particularly described in Schedule B hereto) be returned and/or transferred in whole or alternatively in part to the ownership of Ngati Tuwharetoa on such terms and conditions as the Tribunal considers appropriate;
- (e) That in respect of the lands known as the Rotoehu Forest, compensation be awarded to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau in accordance with the First Schedule to the Crown Forest Assets Act 1989;
- (f) That the Crown provide to the Maori people of Tuwharetoa Te Atua Reretahi ki Kawerau appropriate compensation, financial and otherwise, for the wrongful confiscation of the confiscated lands and other properties and/or the subsequent wrongful dealings by the Crown in respect thereof, and for the consequent injury and offence to the rights title mana and mauri of Ngati Tuwharetoa and the present-day Maori of Tuwharetoa Te Atua Reretahi ki Kawerau; for the disruption of Ngati Tuwharetoa and their iwi and hapu; for the social dislocation which has occurred as a consequence of the wrongful confiscation of and subsequent dealings with the confiscated lands and other properties; for the taking of measures dealing with the social issues of unemployment and loss of mana; and for the education and training of tribal members;
- (g) That the appropriate method or methods of providing such compensation be as determined in detail by the Tribunal;
- (h) That the claimants receive compensation for the costs of preparing, submitting and presenting the present claims;

- (i) Such other relief as the Tribunal considers appropriate.

PERSONS affected by this claim and who should have notice of it are:

The Attorney-General
 The Minister of Maori Affairs
 Forestry Corporation of New Zealand Limited
 Landcorp
 The Department of Conservation
 The Whakatane District Council
 The Kawerau Borough Council
 The claimants in WAI 46
 The claimants in WAI 275

THIS CLAIM amends and replaces the claim as made herein by ISOBEL FOX and WILLIAM SHUKI SAVAGE herein dated 27 July 1987. The claimants reserve the right further to amend this claim.

NOTICES to the claimants should be sent to the address for service set out below.

DATED this 16th day of October 1995

SIGNED

Counsel for Isobel Fox

Counsel for William Shuki Savage

Temaungarangi Te Rire

Anthony Steven Olsen

Robert David Shuster/
 Counsel for Robert David Shuster

Popata Oswald Renata

Tai Tukiwaho Te Riini

SCHEDULE A

THE CONFISCATED LANDS

All those lands of the Ngati Tuwharetoa purportedly confiscated by means of the Order-in-Council/Proclamation of 17 January 1866 being all (or in the alternative, part) of the area of land from Wahieroa near Okorero, the outlet of the Rangitaiki River; south west to the eastern peak of Putauaki Te Matapihi Orehua across to the peak on the western side Te Tauru Oterangi; west to Maungawhakanana; then north through the Rotoma Lake to the outlet of the Waitahanui Stream at Otamarakau.

being Lot 2 DPS 35012, Lots 3 and 4 DPS 35013, Lots 5 and 6 DPS 35014, Lot 1 DPS 57549 and Lots 1 and 2 DPS 57553

Rotoehu West Block

7023.9571 hectares more or less situated in the Land District of South Auckland being Lot 7 DPS 35014, Lot 1 DPS 45081, Lot 1 DPS 53628, Lot 1 DPS 53629, Lot 1 DPS 53631, Lots 1, 2 and 3 DPS 53632, Lot 1 DPS 57544, Lots 1, 2 and 3 DPS 57545, Lot 1 DPS 57546, Lot 1 DPS 57547, Lot 1 DPS 57548, Lot 1 DPS 57550, Lot 1 DPS 57551, Lot 1 DPS 57552, Lot 1 DPS 57554, Lot 1 DPS 57555, Lots 1 and 2 DPS 57645, Lot 1 DPS 64877 and Lot 1 DPS 65735

SCHEDULE B

THE ROTOEHU FOREST

Rotoehu East Block

1495.0960 hectares more or less situated in the Land Registration District of South Auckland

Together with the land described as Section 21 so Plan 36090 and part Section 22 so Plan 36090.

APPENDIX II

RECORD OF INQUIRY

RECORD OF HEARINGS

TRIBUNAL MEMBERS

The Tribunal constituted for the aggregated claims in the eastern Bay of Plenty comprised Chief Judge Eddie T Durie (presiding), Brian Corban, Sir Hugh Kawharu, Professor Gordon Orr, Professor Keith Sorrenson, and Keita Walker. Sir Hugh Kawharu resigned from the Tribunal in 1995 before the completion of the hearings. John Turei subsequently attended hearings as Tribunal kaumatua.

COUNSEL

Counsel appearing were Stephen Bryers with Andrew MacDonald and Tom Woods for the Wai 46 claimants; Dr Rodney Harrison QC for the Wai 62 claimants; David Ambler for the Wai 386 claimants; David Rangitauira with Neville Nepia for the Wai 275 and Wai 334 claimants; Carrie Wainwright with Rachel Steel for the Wai 550 claimants; Kathy Ertel for the Wai 212 claimants; Stephen Clark with Craig Cox for the Wai 339 claimants; Dr John Robertson for the Wai 247 claimants; Anthony Tweed for the Wai 248 claimants; Helen Aikman, Peter Andrew, and Andra Mobberley for the Crown; Gerard Curry, Russell Karu, Matthew Kersey, and Paul Sandford for the Forestry Corporation Ltd; Caren Campbell with Brendon Neutze for the Tasman Pulp and Paper Co Ltd; and Royden Somerville for the Otago Museum Trust Board.

FIRST HEARING

The first hearing was held at Wairaka Marae, Muriwai Drive, Whakatane, from 4 to 8 July

1994. It concerned Ngati Awa and the interests of overlapping claimants.

Submissions were received from Willie Coates, Jeremy Gardiner, Layne Harvey, Joe Mason, Dr Hirini Mead, Te Hau Tutua (4 July); Materoa Dodd, Jeremy Gardiner, Hemi Hireme, Henry Hudson, James Hudson, Patrick Hudson, Ihaka Jaram, Joe Mason, Dr Hirini Mead, K Merito, Paerama Ranapia, Tu Waaka (5 July); Te Rau o Te Huia Cameron, William Hall, Layne Harvey, Tuterangi Hohapata, Dick Hunia, John Hunia, Georgina Maxwell, Dr Hirini Mead, Eric Moses, Kairau Ngahau, Maanu Paul, Whainoa Simpson, Wiremu Tapsell, Manu Tarau, Tame Tarau, Wi Parata Tawa, Te Hau Tutua, Charlie Vercoe, John Vercoe (6 July); Jeremy Gardiner, Dr Hirini Mead, Jimmy Pei, Anaru Rangihueua (7 July); Herewini Araroa, Leon Chase, Katene Iriaka, Tepene Mamaku, Dr Hirini Mead, Rangitekehu Paul, Te Orohi Paul, Ngamaru Raerino, T Rangitauira, Della Tuiatua, Charlie Vercoe, and Petina Winiata (8 July).

SECOND HEARING

The second hearing was held at Kokohinau Marae, Te Teko, Whakatane, from 12 to 16 September 1994 and concerned Ngati Awa.

Submissions were received from Layne Harvey, Dr Hirini Mead, Maanu Paul, Ngahuia Rowson (12 September); Jeremy Gardiner, Paul Quinn (13 September); Maanu Paul, Graham Smith, Rererangi Rangihika, Tania Rei, Linda Smith, Carin Wilson (14 September); Edward Douglas, Layne Harvey, Enid Leighton, Tikitu Tutua-Nathan (15 September); and Dr Hirini Mead (16 September).

THIRD HEARING

The third hearing was held at Wairaka Marae, Muriwai Drive, Whakatane, from 21 to 25 November 1994 and concerned Ngati Awa.

Submissions were received from Dimitri Anson, Henry Skinner (21 November); Dimitri Anson, Richard Cassels, Layne Harvey (22 November); and Layne Harvey (24 November).

There was a site visit on 23 November to Kakaharoa, Puketapu Pa, the Wairere Falls, Turuturu Roimata, Toko Tapu Rock, Ngati Pukeko land, Mataatua Park, Tokoaoataeo Rock, Itchykoo Park, Te Paepae Aotea (Völkner Island), and Omokoroa (Kohi Point).

FOURTH HEARING

The fourth hearing was held at the Ohope Beach Resort, Westend Road, Ohope, from 13 to 15 February 1995 and concerned Wai 212, Wai 247, Wai 248, Wai 275, and Wai 386.

Submissions were received from Barry Burcher, Isaac Rua, Billy Waaka (13 February); Dick Hunia, Charlies Vercoe, Tamaoho Vercoe (14 February); and Maanu Paul (15 February).

FIFTH HEARING

The fifth hearing was held at Hahuru Marae, Onepu Springs Road, Kawerau, 27 to 31 March 1995 and concerned Tuwharetoa.

Submissions were received from Michael Barns (27 March); Veronica Haylings (28 March); Tony Olsen, William Savage, Tai Te Riini, (29 March); Michael Barns, Bunty Te Riini, Harata Te Riini, and John Vercoe (31 March).

There was a site visit on 28 March to Waitahanui, Maruka, Tarawera, the Tuhourangi memorial, the Tarawera Falls, and Mount Putauaki. Michael Barns, Tai Te Riini, and William Savage spoke at Waitahanui; William Savage spoke at Maruka; Boyce Te Riini, Tai Te Riini, and William Savage spoke at Tarawera; and Bunty Te Riini, Tai Te Riini, and William Savage spoke at the Tuhourangi memorial.

There was a second site visit on 30 March to Oniao Marae (Omataroa), the Tuwharetoa ki Kawerau urupa at Mimiha Road, Otamarakau (the wahi tapu by the beach and Tama-a-whiu),

Kaokoaroa Street (Mihi Marino), the Burt Road urupa, Umutahi Marae (Whakapaukorero and Mokaimarama), the Awakaponga urupa, Braemar Springs, and Opeke-Okake (Taitaupounamu, Pikiao, Wahoteparata, and Tihetihe). Popata Renata, Bunty Te Riini, John Turei, and Mereana Wilkinson spoke at Oniao Marae; Bunty Te Riini, William Savage, and Gypsy Tioke spoke at Mimiha Road; Harata Te Riini and William Savage spoke at Mimiha Road; Bunty Te Riini and Hapimana Whakaruru spoke at Otamarakau; Tony Olsen and Bunty Te Riini spoke at Kaokoaroa Street; Tony Olsen spoke at Burt Road; Tony Olsen, Bunty Te Riini, William Savage, and Bob Schuster spoke at Umutahi Marae; Tony Olsen, Bunty Te Riini, and William Savage spoke at the Awakaponga urupa; William Savage spoke at Braemar Springs; and Bunty Riini and William Savage spoke at Opeke-Okake.

SIXTH HEARING

The sixth hearing was held at Waiana Marae, Old Motu Road, Opotiki, from 29 to 31 May 1995 and concerned Wai 225, Wai 339, and Wai 386.

Submissions were received from Charlie Aramoana, Tuiringa Mekomoko, William Rewiri, Albert Taitapanui (29 May); and Lawrence Tukaki-Millanta (30 May).

There was a site visit on 30 May to the Hiwarau block.

SEVENTH HEARING

The seventh hearing was held at Otamarakau Marae, Otamarakau, from 19 to 22 June 1995 and concerned Wai 275 and Wai 334.

Submissions were received from Kawana Te Kirikau (19 June); Don Stafford, Kawana Te Kirikau, Peretini Te Whata (20 June); David Alexander, and David Armstrong (22 June).

There was a site visit on 21 June to Otamarakau, Whakarewa, Manawahe, Matahi Lagoon, Kohatu, Hinehopu, Huitangiora, Waitangi, Otari, Pariwhaiti, and Te Pare Te Pounamu. Alan Mortendon spoke at Otamarakau; Ming Burt spoke at Whakarewa; and Nu Callahan and Doug McNash spoke at Otari Pa and Pariwhaiti.

EIGHTH HEARING

The eighth hearing was held at Tapuaeharuru Marae, Rotoiti, from 18 to 20 September 1995 and concerned Tuwharetoa, Wai 386, and Wai 550.

Submissions were received from Joe Malcolm (18 September); Ben Hohepa, Kawana Te Kirikau Nepia (19 September); Joe Mason, and Dr Hirini Mead (20 September).

NINTH HEARING

The ninth hearing was held at Hahuru Marae, Kawerau, from 16 to 19 October 1995 and concerned Tuwharetoa.

Submissions were received from Tom Bennion (16 October); Jane Luiten, Clem Park, Christine Peters, Popata Renata (17 October); Michael Barns, Huia Pacey, Kahu Te Rire, John Vercoe (18 October); Michael Barns, and Huia Pacey (19 October).

There was a helicopter flight on 19 October to places of importance in the Rotoehu Forest and surrounding area.

TENTH HEARING

The tenth hearing was held at the Waitangi Tribunal's offices, Featherston Street, Wellington, on 3 November 1995 for the purpose of cross-examining Tom Bennion.

ELEVENTH HEARING

The eleventh hearing was held at the Rotorua District Council's chambers, Rotorua, from 20 to 22 November 1995 and concerned Ngati Awa, Ngati Makino, Ngati Pikiao, Tuwharetoa, and the Crown.

Submissions were received from Dave Field, William Shaw (20 November); and Kim Tatton (21 November).

TWELFTH HEARING

The twelfth hearing was held at Umutahi Marae, Matata, on 27 and 28 November 1995 and at

Wairaka Marae, Whakatane, from 29 November to 1 December 1995 and concerned Ngati Awa.

Submissions were received from John Hunia, Dr Hirini Mead, Pouroto Ngaropo (27 November); William Hall, Layne Harvey, Te Hau Tutua, John Wilson (28 November); Brian Easton, John Hunia, Katene Iriaka, Orehaui Phillis, Whaiora Puutu-Brown, Donovan Raimona, Monty Ramanui, Quentin Ranapia, Charlie Vercoe (29 November); Sharon Heta, James Hudson, Lorraine Jaram, Joe Mason, Dr Hirini Mead, Jim Peri, Eddie Pryor, Ngahua Rowson, Onehaui Thrupp, and John Wilson (30 November).

PAPERS IN PROCEEDINGS

- * Document confidential and available to the public only with a Tribunal order
- † Document held in the Waitangi Tribunal library, Waitangi Tribunal offices, third floor, 110 Featherston Street, Wellington

1. CLAIMS**1.1 Wai 23**

A claim by Eruera Manuera concerning Putauaki, 31 July 1985

1.2 Wai 62

A claim by Rae Beverley, John Fox, and William Savage on behalf of Ngati Tuwharetoa ki Kawerau concerning confiscation of Ngati Tuwharetoa lands, February 1988

- (a) Amendment to claim 1.2, 19 October 1990
- (b) Amendment to claim 1.2, 10 April 1991
- (c) Second amended statement of claim, 16 October 1995
- (d) Letter from claimant counsel to registrar concerning second amended statement of claim, 12 February 1997

1.3 Wai 46

A claim by Dr Hirini Mead and Maanu Paul on behalf of Te Runanga o Ngati Awa concerning confiscation of Ngati Awa lands, 11 March 1988

- (a) Addition to claim 1.3, 18 July 1989
- (b) Addition to claim 1.3, 8 November 1990
- (c) Addition to claim 1.3, 16 December 1990
- (d) Consolidated statement of claim, undated

1.4 Wai 79

A claim by Stanley Newton on behalf of the trustees of Rangitaiki lot 12A (Pukaahu Domain) concerning that land, 12 February 1988

1.5 Wai 339

A claim by Tuiringa Mokomoko on behalf of the trustees of Hiwarau c concerning that land, 17 December 1992

(a) Addition to claim 1.5, 2 June 1993

1.6 Wai 411

A claim by Gavin Park and William Savage on behalf of the owners of Tarawera 1 concerning that land and actions of the Crown and Tasman Pulp and Paper Co Ltd, 14 May 1993

1.7 Wai 225

A claim by Tiopira Phares on behalf of Te Whanau-a-Te-Ehutu iwi of Te Kaha concerning Whakaari, 12 July 1991

1.8 Wai 275

A claim by Kawana Te Kirikau on behalf of Ngati Makino concerning the Tahunaroa and Waitahanui blocks, 13 February 1992

1.9 Wai 21

A claim by John Fox on behalf of the Tuwharetoa Te Atua Reretahi Trust Board concerning actions of the Tasman Pulp and Paper mill affecting Te Wai U o Tuwharetoa, undated

(a) Amendment to claim 1.9, 23 April 1985

1.10 Wai 334

A claim by Peretini Tawa on behalf of Ngati Makino concerning railways land at Otamarakau, 23 February 1993

1.11 Wai 248

A claim by the trustees of Omataroa–Rangitaiki 2 concerning gravel extraction, 23 February 1988

1.12 Wai 247

A claim by Kaari Waaka concerning Waiohau c26, 10 August 1987

1.13 Wai 386

A claim by Te Kotahitanga Tait on behalf of the Tuhoe–Waikaremoana Maori Trust Board concerning Matahina c and c1 (now Matahina F), 25 August 1993

1.14 Part Wai 212

A claim by Hohepa Waiti on behalf of Te Runanganui o Te Ika Whenua concerning Matahina c and c1, 1 February 1995

1.15 Wai 501

A claim by Wahiao Gray on behalf of Tuhourangi concerning Tarawera Forest lands, 20 November 1994

1.16 Wai 206

A claim by Dr Hirini Mead and Maanu Paul on behalf of the Ngati Awa Trust Board concerning Whakaari and Motuhora, 11 June 1991

1.17 Wai 550

A claim by Joe Malcolm and Ben Hohepa on behalf of Ngati Pikiao concerning Rotoehu Forest and surrounding lands, 11 October 1995

2. PAPERS IN PROCEEDINGS

2.1 Notice of claim 1.2, 10 February 1988

2.2 Direction of chairperson registering claim 1.3 as Wai 46 and merging it with Wai 23, 18 November 1988

2.3 Direction of deputy chairperson registering claim 1.4 as Wai 79, 29 May 1989

2.4 Direction of deputy chairperson registering claim 1.2 as Wai 62, 29 May 1989

2.5 Directions of chairperson amending Wai 46 and registering claims, 20 September 1989

- 2.6** Notice of amendment to Wai 46, 25 September 1989
List of parties sent notice of amendment to Wai 46, undated
- 2.7** Notice of Wai 79, 26 September 1989
List of parties sent notice of Wai 79, undated
- 2.8** Directions of chairperson commissioning Cathy Marr to prepare a report on land confiscations concerning Tuwharetoa ki Kawerau and authorising claimants to commission William Savage to prepare a report on Tuwharetoa ki Kawerau covering rohe boundaries, mana-whenua, customary use of land and resources, raupatu, land use maps, and tenure, 20 December 1990
- 2.9** Direction of chairperson amending Wai 46, 25 January 1991
- 2.10** Memorandum from Wai 46 claimant counsel to Tribunal seeking directions concerning overlapping claims affecting Rotoehu Forest, undated
- 2.11** Memorandum from chairperson directing registrar to produce a list of overlapping claims affecting Rotoehu Forest, specifying Tribunal requirements for notifying, servicing, and funding overlapping claimants, and specifying its priority for hearing Wai 46, 21 February 1991
- 2.12** Direction of chairperson appointing Tom Woods Wai 46 claimant counsel, 12 May 1991
- 2.13** Direction of chairperson amending Wai 62, 20 June 1991
(a) Direction of chairperson registering claim 1.7 as Wai 225, 1 August 1991
(b) Notice of Wai 225, 19 August 1991
List of parties sent notice of Wai 225, 15 August 1991
- 2.14** Direction of chairperson releasing document A2, 10 September 1991
(a) Direction of chairperson registering claim 1.11 as Wai 248, 11 November 1991
(b) Direction of chairperson registering claim 1.12 as Wai 247, 11 November 1991
(i) Notice of Wai 247, 8 July 1992
List of parties sent notice of Wai 247, 14 November 1991
- 2.15** Direction of chairperson extending appointment of Tom Woods as Wai 46 claimant counsel, 19 December 1991
(a) Direction of chairperson registering claim 1.8 as Wai 275, 13 March 1992
- 2.16** Direction of chairperson authorising payment for final production costs of document E1, 16 June 1992
(a) Direction of chairperson registering amendment to Wai 21 and requesting preparation of research report, 6 October 1992
- 2.17** Direction of chairperson releasing document A11, 16 December 1992
- 2.18** Direction of chairperson releasing document A12, 16 December 1992
(a) Direction of chairperson registering claim 1.10 as Wai 334, 1 March 1993
- 2.19** Direction of chairperson registering claim 1.5 as Wai 339, 25 March 1993
- 2.20** Notice of Wai 339, 29 March 1993
List of parties sent notice of Wai 339, 26 March 1993
- 2.21** Direction of chairperson registering amendment to Wai 339, 9 June 1993
- 2.22** Letter from Wai 79 claimants to registrar detailing composition of claimant representative committee and conveying decision of that committee that Wai 79 be included in Wai 46, undated
- 2.23** Direction of chairperson including Wai 79 in Wai 46, 23 August 1993
- 2.24** Direction of chairperson releasing document A15, 3 September 1993
(a) Letter from Otamarakau Marae trustees to chairperson seeking Tribunal recommendation concerning granting of mining licences for area under claim, 28 September 1993
(b) Memorandum from chairperson concerning research for Wai 334 and responding to paper 2.24(a), 19 November 1993
(c) Direction of chairperson registering claim 1.13 as Wai 386, 22 September 1993

- 2.25** Memorandum from Wai 46 claimants to chairperson concerning possible referral to Maori Appellate Court of question on tribal boundaries, undated
- 2.26** Memorandum from chairperson in response to paper 2.25, 17 December 1993
- 2.27** Direction of chairperson registering claim 1.6 as Wai 411, 19 January 1994
Notice of Wai 411, 7 February 1994
List of parties sent notice of Wai 411, 7 February 1994
- 2.28** Notice of Wai 411, 7 February 1994
- 2.29** Memorandum from chairperson concerning hearing of Wai 46 and other claims and constituting Tribunal to hear those claims (Chief Judge Eddie Durie, Professor Sir Hugh Kawharu, Professor Gordon Orr, Professor Keith Sorrenson, Keita Walker), 31 May 1994
- 2.30** Notice of first hearing, 13 June 1994
List of parties sent notice of first hearing, undated
Declaration that notice of first hearing given, 14 June 1994
- 2.31** Declaration that notice of first hearing given, 14 June 1994
Notice of first hearing, 13 June 1994
List of parties sent notice of first hearing, undated
- 2.32** Letter from Tuwharetoa te Atua Reretahi Trust Board to Tribunal concerning Runanga o Tuwharetoa ki Kawerau, lack of funding, and presentation of evidence in camera, 9 June 1994
(a) Direction of Tribunal concerning Tuwharetoa representation, 14 June 1994
- 2.33** Direction of Tribunal scheduling claimant meeting to discuss overlapping interests, 20 June 1994
- 2.34** Direction of Tribunal appointing Brian Corban to Wai 46 Tribunal, 28 June 1994
- 2.35** Notice of application by Ngati Awa for Tribunal recommendations in respect of Rotoehu Forest, 28 June 1994
- 2.36** Notice of application by Ngati Awa for Tribunal recommendations in respect of Te Mahoe village, 28 June 1994
- 2.37** Notice of application by Ngati Awa for Tribunal recommendations in respect of Mataatua wharenui, 28 June 1994
- 2.38** Notice of application by Ngati Awa for Tribunal recommendations that Crown identify and disclose Crown and State-owned enterprise assets, 28 June 1994
- 2.39** Memorandum from counsel for Otago Museum Trust Board to Tribunal registering interest with respect to Mataatua wharenui, 28 June 1994
- 2.40** Letter from Bay of Plenty Conservation Board to registrar expressing desire to attend hearing and reiterating request to address Tribunal, 1 July 1994
- 2.41** Letter from counsel for Wai 79 claimants to registrar expressing desire not to participate in Wai 46 hearing and instead to enter into direct negotiations with Crown, 27 June 1994
- 2.42** Letter from Tuiringa Mokomoko to registrar objecting to boundary between Ngati Awa and Whakatohea given in paper 1.3(d), 28 June 1994
(a) Letter from Tuiringa Mokomoko to Tribunal asking to be heard by Tribunal, 7 July 1994
- 2.43** Letter from Whakatohea Maori Trust Board to registrar detailing membership of Whakatohea delegation attending hearing and giving notice of intention to oppose aspects of Wai 46, 29 June 1994
- 2.44** Letter from counsel for Tuhoe-Waikaremoana Maori Trust Board to Tribunal giving notice of conflicts between its position and Ngati Awa statement of claim, 1 July 1994
- 2.45** Memorandum from counsel for Tarawera Forests Ltd to Tribunal giving notice of opposition to aspects of Wai 46, 4 July 1994
Memorandum from counsel for Tarawera Forests Ltd to Tribunal giving notice of its opposition to aspects of Wai 411, 4 July 1994

2.46 Letter from R Perenara to registrar seeking approval to make written submissions on behalf of Ngati Rangitahi and Ngati Mahi, 5 July 1994

2.47 Memorandum from counsel for Tasman Pulp and Paper Co Ltd to Tribunal giving notice of its opposition to aspects of Wai 46, 6 July 1994

(a) Memorandum from counsel for Otago Museum Trust Board to Tribunal giving notice of its interest in Wai 46, 8 July 1994

(b) Memorandum from Wai 225 claimants to Tribunal concerning Whakaari, undated

Supplementary memorandum from Wai 225 claimants to Tribunal concerning Whakaari, 8 July 1994

(c) Memorandum from counsel for Tuhoe-Waikaremoana Maori Trust Board to Tribunal concerning its interest in Wai 46, 1994

(d) Memorandum from Te Arawa Maori Trust Board to Tribunal concerning its interest in Wai 46, 8 July 1994

Amended statement of claim of Te Arawa Maori Trust Board concerning Rotorua lakes (Wai 240), undated

Letter from Minister of Justice to Te Arawa Maori Trust Board concerning progress in negotiated settlement of Wai 240, 15 April 1994

(e) Fax from counsel for Peretini Tawa to David Rangitauira concerning representation, 1 July 1994

Memorandum from counsel for Ngati Makino to Tribunal concerning Wai 46, undated

Memorandum from counsel for Ngati Makino to Tribunal concerning Wai 275 and Wai 46, undated

Memorandum from Wai 275 and Wai 334 claimant counsel to Tribunal concerning Wai 46, Wai 275, and Wai 334, undated

(f) Memorandum from counsel for Otago Museum Trust Board to Tribunal seeking leave to call evidence and make submissions, 9 August 1994

2.48 Memorandum from Tribunal detailing proposed directions concerning parties, 18 July 1994

(a) Direction of Tribunal commissioning Harris Martin to prepare report concerning Matahina F, 18 July 1994

2.49 Memorandum from Wai 275 claimant counsel to Tribunal concerning presentation of submissions, 29 July 1994

2.50 Memorandum from Wai 62 and Wai 411 claimant counsel to Tribunal concerning Tribunal proceedings, 1 August 1994

2.51 Memorandum from Crown counsel to Tribunal concerning disclosure of Crown and State-owned enterprise assets, 2 August 1994

2.52 Memorandum from counsel for Ngati Awa concerning issues to be dealt with at hearing, 18 August 1994

2.53 Letter from Crown Law Office to Electricity Corporation of New Zealand concerning suspension of tenders for corporation properties in Te Mahoe village, 29 August 1994

2.54 Letter from Tuiringa Mokomoko to Tribunal requesting hearing concerning Hiwarau C and Ohiwa Harbour boundary, 30 August 1994
Letter from Tribunal to Tuiringa Mokomoko acknowledging receipt of above letter, 31 August 1994

(a) Notice of second hearing, 30 August 1994

2.55 Memorandum from counsel for Te Runanganui o Te Ika Whenua to Tribunal concerning Tarawera Forests Ltd, 9 September 1994

2.56 Submission of Crown counsel concerning Te Mahoe and Rotoehu Forest and position on Wai 46, 29 September 1994

2.57 Notice of third hearing, 9 November 1994

2.58 Direction of Tribunal releasing document B4, 8 November 1994

2.59 Directions of Tribunal concerning procedure, evidence, issues, and review of Wai 46, 11 November 1994

2.60 Direction of Tribunal releasing document C3, 14 November 1994

2.61 Direction of Tribunal releasing document C4, 14 November 1994

2.62 Memorandum from Crown counsel to Tribunal concerning paper 2.59, 18 November 1994

- 2.63** Memorandum from Wai 212 (Te Ika Whenua) Tribunal to Tribunal concerning Kaingaroa Forest and Wai 46, 23 November 1994
- 2.64** Vacant
- 2.65** Memorandum from counsel for Ngati Awa to Tribunal in response to paper 2.63, 20 December 1994
- 2.66** Memorandum from Crown counsel to Tribunal concerning research on Pukaahu Domain, 22 December 1994
- 2.67** Memorandum from Crown counsel to Tribunal concerning prima facie findings, 21 December 1994
- 2.68** Memorandum from Tribunal following third hearing, 1 February 1995
- 2.69** Notice of fourth hearing, 3 February 1995
- 2.70** Direction of Tribunal registering claim 1.14 as Part Wai 212, 10 February 1995
- 2.71** Memorandum from Tribunal following fourth hearing, 17 February 1995
- 2.72** Memorandum from Crown counsel to Tribunal concerning paper 2.59, 2 March 1995
- 2.73** Memorandum from counsel for Tuwharetoa to Tribunal concerning paper 2.72, 15 March 1995
- 2.74** Notice of fifth hearing, 20 March 1995
- 2.75** Vacant
- 2.76** Vacant
- 2.77** Notice of application by Ngati Awa for recommendation that Crown land not be sold pending settlement of claim, 21 March 1995
(a) Memorandum from counsel for Ngati Awa to Tribunal in support of paper 2.77, 21 March 1995
- 2.78** Memorandum from Crown counsel to Tribunal in response to paper 2.77, 29 March 1995
- 2.79** Memorandum from counsel for Tuwharetoa concerning Crown's position in relation to rebellion and legality of confiscation, 30 March 1995
- 2.80** Memorandum from counsel for Tuhoë-Waikaremoana Maori Trust Board to Tribunal in response to paper 2.71, 26 March 1995
- 2.81** Memorandum from Crown counsel to Tribunal in response to paper 2.71, 7 April 1995
- 2.82** Memorandum from counsel for Ngati Awa to Tribunal in response to paper 2.71, 11 April 1995
- 2.83** Direction of Tribunal registering claim 1.15 as Wai 501, 1 May 1995
- 2.84** Direction of Tribunal concerning Matahina c and c1, 1 May 1995
- 2.85** Direction of Tribunal concerning Waiohau c26 and Omataroa-Rangitaiki c60, 1 May 1995
- 2.86** Memorandum from Tribunal following fifth hearing, 1 May 1995
- 2.87** Memorandum from for Wai 247 and Wai 248 claimant counsel to Tribunal concerning paper 2.81, 27 April 1995
- 2.88** Memorandum from Tribunal concerning eastern Bay of Plenty land bank, 5 May 1995
Memorandum from Wai 247 claimant counsel to Tribunal concerning paper 2.81, 2 May 1995
- 2.89** Memorandum from Crown counsel to Tribunal opposing position of Tuwharetoa, 10 May 1995
- 2.90** Notice of sixth hearing, 12 May 1995
List of parties sent notice of sixth hearing, undated
Declaration that notice of sixth hearing given, 12 May 1995
- 2.91** Memorandum from counsel for Te Runanganui o Te Ika Whenua to Tribunal concerning Matahina c and c1, 23 May 1995

- 2.92** Memorandum from counsel for Te Runanganui o Te Ika Whenua to Tribunal concerning paper 2.80, 23 May 1995
- 2.93*** Memorandum from counsel for Ngati Awa to Tribunal seeking directions on Mataatua wharenui, 26 May 1995
- 2.94** Memorandum from counsel for Tuhoe–Waikaremoana Maori Trust Board to Tribunal concerning Wai 386, 31 May 1995
- 2.95** Press release from office of Minister in Charge of Treaty of Waitangi Negotiations concerning stopping of sales of surplus Crown properties within raupatu boundaries, 31 May 1995
- 2.96** Notice of seventh hearing, 1 June 1995
List of parties sent notice of seventh hearing, undated
Declaration that notice of seventh hearing given, 1 June 1995
- 2.97** Memorandum from Crown counsel to Tribunal concerning timing of Crown response to Wai 386, 5 June 1995
- 2.98** Memorandum from counsel for Te Runanganui o Te Ika Whenua to Tribunal responding to opening submissions of counsel for Tuhoe–Waikaremoana Maori Trust Board, 6 June 1995
- 2.99** Direction of Tribunal concerning Mataatua wharenui, 6 June 1995
- 2.100** Memorandum from Tribunal following sixth hearing, 8 June 1995
- 2.101** Memorandum counsel for Tuhoe–Waikaremoana Maori Trust Board to Tribunal seeking leave to respond to paper 2.98, 9 June 1995
- 2.102** Memorandum from Crown counsel to Tribunal concerning cross-examination of Wai 275 and Wai 334 claimants, 14 June 1995
- 2.103** Memorandum from counsel for Tuwharetoa to Tribunal concerning representation at seventh hearing, 16 June 1995
- 2.104** Memorandum from Tribunal following seventh hearing, 26 June 1995
- 2.105** Memorandum from Tribunal concerning ‘trial’ documents, 6 July 1995
- 2.106** Memorandum from counsel for Ngati Pikiao to Tribunal registering interest in eastern Bay of Plenty claims, 7 July 1995
- 2.107** Memorandum from counsel for Ngati Makino to Tribunal in response to paper 2.106, 7 July 1995
- 2.108** Memorandum from Crown counsel to Tribunal concerning Mataatua wharenui, 7 July 1995
- 2.109** Memorandum from Crown counsel to Tribunal concerning interim report, 12 July 1995
- 2.110** Memorandum from counsel for Tuwharetoa to Tribunal concerning position of Wai 62 and Wai 411 claimants, 10 July 1995
- 2.111** Memorandum from Tribunal following 10 July 1995 conference concerning interim report, timetabling, and representation, 11 July 1995
- 2.112** Memorandum from counsel for Ngati Awa to Tribunal concerning negotiations, 12 July 1995
- 2.113** Memorandum from counsel for Ngati Awa to Tribunal concerning interim report, 12 July 1995
- 2.114** Memorandum from counsel for Ngati Awa to Tribunal concerning Mataatua wharenui, 12 July 1995
- 2.115** Memorandum from Tribunal concerning Wai 212, Wai 247, Wai 248, and Wai 386, 26 July 1995
- 2.116** Memorandum from Crown counsel to Tribunal concerning raupatu and interim report, 28 July 1995
- 2.117** Memorandum from counsel for Tuwharetoa to Tribunal in response to paper 2.116, 3 August 1995

- 2.118** Memorandum from Crown counsel to Tribunal in response to paper 2.115, 4 August 1995
- 2.119** Memorandum from counsel for Tuhoe-Waikaremoana Maori Trust Board to Tribunal concerning Ngati Awa response to Tuhoe tribal boundary, 10 August 1995
- 2.120** Memorandum from counsel for Ngati Awa to Tribunal in response to paper 2.116, 11 August 1995
- 2.121** Memorandum from Crown counsel to Tribunal in response to paper 2.117, 14 August 1995
- 2.122** Memorandum from counsel for Ngati Awa to Tribunal concerning document H1, 14 August 1995
- 2.123** Memorandum from counsel for Ngati Makino to Tribunal concerning timetable, 16 August 1995
- 2.124** Memorandum from Tribunal concerning papers 2.111, 2.117, 22 August 1995
- 2.125** Memorandum from counsel for Tuwharetoa to Tribunal in response to paper 2.121, 17 August 1995
- 2.126** Notice of eighth hearing, 4 September 1995
List of parties sent notice of eighth hearing, undated
Declaration that notice of eighth hearing given, 4 September 1995
- 2.127** Memorandum from counsel for Forestry Corporation Ltd to Tribunal in response to paper 2.122, 31 August 1995
- 2.128** Memorandum from counsel for Ngati Pikiao to Tribunal concerning eighth hearing, 25 September 1995
- 2.129** Memorandum from Tribunal following eighth hearing, 27 September 1995
- 2.130** Memorandum from counsel for Tuhoe-Waikaremoana Maori Trust Board to Tribunal concerning questions to counsel for Ngati Awa, 25 September 1995
- 2.131** Memorandum from counsel for Ngati Makino to Tribunal concerning paper 2.128, 2 October 1995
- 2.132** Notice of ninth hearing, 3 October 1995
List of parties sent notice of ninth hearing, undated
Declaration that notice of ninth hearing given, 3 October 1995
- 2.133** Direction of Tribunal releasing document H, 9 October 1995
- 2.134** Directions of Tribunal registering claim 1.16 as Wai 206 and aggregating it with Wai 46, 10 October 1995
- 2.135** Notice of Wai 206, 11 October 1995
- 2.136** Memorandum from counsel for Ngati Awa to Tribunal in response to paper 2.128, 9 October 1995
- 2.137** Memorandum from counsel for Ngati Awa to Tribunal concerning overlapping claims, 10 October 1999
- 2.138** Memorandum from counsel for Ngati Pikiao to Tribunal concerning minute book references, 12 October 1995
- 2.139** Memorandum from Tribunal following ninth hearing, 24 October 1995
- 2.140** Direction of Tribunal registering claim 1.17 as Wai 550, 31 October 1995
- 2.141** Direction of Tribunal concerning Wai 62 second amended statement of claim, 31 October 1995
- 2.142** Memorandum from Crown counsel to Tribunal concerning cross-examination of Tom Bennion, 1 November 1995
- 2.143** Memorandum from counsel for Tuwharetoa to Tribunal in response to paper 2.142, 2 November 1995

- 2.144** Memorandum from Crown counsel to Tribunal in response to paper 2.143, 2 November 1995
- 2.145** Direction of Tribunal releasing document K2, 2 November 1995
- 2.146** Direction of Tribunal releasing document K3, 1 November 1995
- 2.147** Notice of eleventh and twelfth hearings, 6 November 1995
List of parties sent notice of eleventh and twelfth hearings, undated
Declaration that notice of eleventh and twelfth hearings given, 6 November 1995
(a) Amendment to notice of twelfth hearing, 10 November 1995
- 2.148** Memorandum from Tribunal concerning cross-examination of Tom Bennion, 8 November 1995
- 2.149** Memorandum from counsel for Ngati Pikiao to Tribunal concerning evidence, mediation, and closing submissions, 7 November 1995
- 2.150** Memorandum from Crown counsel to Tribunal concerning legality of raupatu, 8 November 1995
- 2.151** Memorandum from Tribunal concerning papers 2.149, 2.150, 13 November 1995
- 2.152** Memorandum from counsel for Ngati Makino to Tribunal concerning paper 2.149, 13 November 1995
- 2.153** Memorandum from counsel for Tuwharetoa to Tribunal concerning paper 2.151, 13 November 1995
- 2.154** Memorandum from counsel for Ngati Awa to Tribunal concerning paper 2.150, 10 November 1995
- 2.155** Memorandum from counsel for Ngati Makino to Tribunal in response to paper 2.149, 17 November 1995
- 2.156** Direction of Tribunal appointing mediator for Wai 275 and Wai 550, 24 November 1995
- 2.157** Memorandum from Crown counsel to Tribunal concerning eastern Bay of Plenty claims, 24 November 1995
- 2.158** Memorandum from counsel for Tuhoe-Waikaremoana Maori Trust Board to Tribunal concerning interim report, 24 November 1995
- 2.159** Memorandum from Crown counsel to Tribunal concerning matters arising from eleventh hearing, 13 December 1995
- 2.160** Memorandum from Wai 247 and Wai 248 claimant counsel to Tribunal seeking declaration of Crown position and cross-examination of Crown witnesses, 8 December 1995
- 2.161** Memorandum from Tribunal following eleventh and twelfth hearings, 13 December 1995
- 2.162** Memorandum from Wai 247 claimant counsel to Tribunal seeking directions, 8 December 1995
- 2.163** Vacant
- 2.164** Memorandum from counsel for Ngati Makino to Tribunal concerning amendment to and supplementary submissions for Wai 275, 18 December 1995
- 2.165** Memorandum from counsel for Ngati Awa to Tribunal concerning confiscation boundaries, 20 December 1995
- 2.166** Memorandum from Crown counsel to Tribunal concerning further evidence, title history of specific sites, and further hearing, 21 December 1995
(a) Direction of Tribunal distributing copy of 7 January 1996 mediation agreement, 17 January 1996
- 2.167** Memorandum from counsel for Tuwharetoa to Tribunal in response to research commission 3.19 and document M4, 5 February 1996
- 2.168** Memorandum from counsel for Ngati Makino to Tribunal concerning document K16(b), 16 February 1996

- 2.169** Memorandum from Crown counsel to Tribunal concerning Department of Conservation evidence, 29 February 1996
- 2.170** Memorandum from Crown counsel to Tribunal concerning Department of Conservation evidence, 4 March 1996
- 2.171** Memorandum from counsel for Tarawera Forests Ltd to Tribunal in response to paper 2.161, 2 April 1996
- 2.172** Memorandum from Crown counsel to Tribunal concerning legality of confiscation, 9 April 1996
- 2.173** Memorandum from counsel for Tasman Pulp and Paper Co Ltd to Tribunal in response to paper 2.161, 2 April 1996
- 2.174** Memorandum from Crown counsel to Tribunal concerning Nga Moutere o Rurima, 7 May 1996
- 2.175** Memorandum from counsel for Ngati Awa to Tribunal concerning paper 2.173, 11 June 1996
- 2.176** Memorandum from Crown counsel to Tribunal concerning Mataatua wharenui, 3 July 1996
- 2.177** Joint memorandum from counsel for Crown and Ngati Awa to Tribunal concerning Mataatua wharenui deed of settlement, 12 September 1996
- 2.178** Memorandum from Tribunal concerning Mataatua wharenui deed of settlement, 2 October 1996
- 2.179** Direction of Tribunal releasing document M18, 20 November 1996
- 2.180** Direction of Tribunal concerning amendment to Wai 62, 2 April 1997
- 2.181** Notice of amendment to Wai 62, 4 April 1997
List of parties sent notice of amendment to Wai 62, 4 April 1997
Declaration that notice of amendment to Wai 62 given, 4 April 1997
- 2.182** Memorandum from counsel for Ngati Awa to Tribunal concerning interim report, 14 July 1997
- 2.183** Memorandum from Crown counsel to Tribunal concerning paper 2.182, 17 July 1997
- 2.184** Memorandum from counsel for Tuwharetoa to Tribunal concerning paper 2.182, 4 August 1997
- 2.185** Memorandum from counsel for Ngati Awa to Tribunal concerning paper 2.184, 28 August 1997
- 2.186** Memorandum from counsel for Ngati Awa to Tribunal registering interest in Wai 726, 14 July 1998
- 2.187** Memorandum from counsel for Ngati Awa to Tribunal advising of change of counsel, 18 March 1999
- 3. RESEARCH COMMISSIONS**
- 3.1** Research contract between Waitangi Tribunal Division and Dr Hirini Mead, 1 December 1988
- 3.2** Directions of chairperson commissioning Cathy Marr to prepare a report on land confiscations concerning Tuwharetoa ki Kawerau and authorising claimants to commission William Savage to prepare a report on Tuwharetoa ki Kawerau covering rohe boundaries, mana-whenua, customary use of land and resources, raupatu, land use maps, and tenure, 20 December 1990
- 3.3** Direction of chairperson authorising payment for final production costs of document E1, 16 June 1992
- 3.4** Direction of chairperson commissioning Jonathan Mane-Wheoki to prepare report on history of Mataatua wharenui, 10 September 1992
- 3.5** Direction of chairperson extending term of research commission 3.4, 18 May 1993

3.6 Progress report from John Third concerning document C4, undated

3.7 Direction of Tribunal commissioning Harris Martin to prepare report on Matahina F, 18 July 1994

3.8 Direction of Tribunal extending term of research commission for document B4, 29 July 1994

3.9 Direction of Tribunal commissioning Sharyn Green to prepare exploratory report for Wai 248, 12 July 1993

3.10 Direction of Tribunal commissioning Tom Bennion to prepare report on Maori–Pakeha interaction prior to 1860, fighting between Te Arawa and groups intending to join Waikato war, deaths of Völkner and Fulloon, confiscation legislation, and alienation of land in Ngati Awa rohe and Te Mahoe village, 18 November 1994

3.11 Direction of Tribunal commissioning Michael Stevens to prepare report on Te Putere native reserve, 18 November 1994

3.12 Direction of Tribunal commissioning Harris Martin to prepare report on Native Land Court awards, 5 December 1994

3.13 Direction of Tribunal commissioning Lawrence Tukaki–Millanta to prepare report on traditional associations with Whakaari and ownership, use, and alienation of island, 5 December 1994

3.14 Direction of Tribunal extending term of research commission 3.13, 14 March 1995

3.15 Direction of Tribunal commissioning Sharyn Green to prepare exploratory report for Wai 21 and releasing document F1, 20 March 1995

3.16 Direction of Tribunal extending term of research commission 3.10, 18 April 1995
Direction of Tribunal extending term of research commission 3.10, 18 August 1995

3.17 Direction of Tribunal commissioning Paul Jarrett to prepare report on Te Wai U o Tuwharetoa, 10 May 1995

3.18 Direction of Tribunal extending term of research commission 3.12, 7 June 1995

3.19 Direction of Tribunal commissioning Tony Walzl to prepare report on lands returned to Ngati Awa, 14 December 1995

3.20 Direction of Tribunal commissioning Tony Walzl to prepare report on specified reserves and land blocks, 1 May 1996

3.21 Direction of Tribunal extending term of research commission 3.20, 28 August 1996

4. SUMMATIONS OF PROCEEDINGS

There are no summations of proceedings

5. TRANSCRIPTS AND TRANSLATIONS

5.1 Translation of document A39 by Ngamaru Raerino, undated

5.2 Crown Law Office transcripts of September 1994 evidence of Ngahuia Rowson, Maanu Paul, Layne Harvey, and Te Hau Tutua, September 1994

5.3 Verbatim Reporting Services Ltd transcript of Crown and Tribunal cross-examination of Tom Bennion, 3 November 1995

RECORD OF DOCUMENTS

- * Document confidential and available to the public only with a Tribunal order
- † Document held in the Waitangi Tribunal library, Waitangi Tribunal offices, third floor, 110 Featherston Street, Wellington

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A2 Cathy Marr, 'Background to the Tuwaretoa ki Kawerau Raupatu Claim', report commissioned by the Waitangi Tribunal, 30 June 1991
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(a) Cathy Marr, 'Suggestions for Further Research and Possible Issues Subsequent to the Confiscations and Compensation Awards', report commissioned by the Waitangi Tribunal, 25 February 1992

A3 Te Roopu Whakaemi Korero o Ngati Awa, *Nga Moutere o Rurima*, Te Runanga o Ngati Awa Report on Reserves 1, 25 July 1992

A4 Te Roopu Whakaemi Korero o Ngati Awa, *Motuhora: Whale Island*, Te Runanga o Ngati Awa Report on Reserves 2, 25 July 1992

A5 Te Roopu Whakaemi Korero o Ngati Awa, *Te Uretara Islands*, Te Runanga o Ngati Awa Report on Reserves 3, 13 August 1992

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A8 Te Roopu Whakaemi Korero o Ngati Awa, *Ohineteraraku Scenic Reserve and Mokorua Bush Scenic Reserve*, Te Runanga o Ngati Awa Report on Reserves 6, 31 August 1992

A9 Te Roopu Whakaemi Korero o Ngati Awa, *Ohope Scenic Reserve*, Te Runanga o Ngati Awa Report on Reserves 7, 31 September 1992
Map showing Ngati Awa farms and reserves

A10 Te Roopu Whakaemi Korero o Ngati Awa, *Mangaone and Rotoma Scenic Reserves*, Te Runanga o Ngati Awa Report on Reserves 8, 1 October 1992

A11 Te Roopu Whakaemi Korero o Ngati Awa, *Pukehina: A Review of the Evidence and*

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A12 Te Roopu Whakaemi Korero o Ngati Awa, *An Investigation into the Lands at Otamarakau*, Te Runanga o Ngati Awa Research Briefing Paper 5, 30 October 1992

A13 Ngati Awa Research Unit, 'Apanui Education Centre and Other Education Sites within the Rohe of Ngati Awa', 10 February 1993

A14 Te Roopu Whakaemi Korero o Ngati Awa, *An Investigation into the Alienation of Lot 63, Parish of Matata (Waitahanui/Whakarewa)*, revised ed, Te Runanga o Ngati Awa Research Briefing Paper 1, 31 March 1993

A15 J N Mane-Wheoki, 'Mataatua, no Wai tenei Whare Tipuna?', report commissioned by the Waitangi Tribunal, March 1993
(a) Supporting documents to document A15

A16 B Patrick, 'Rangitaiki Lot 12 Blocks VII and VIII Rangitaiki Upper Survey District', unpublished report, undated

A17 Te Roopu Whakaemi Korero o Ngati Awa, *Ngati Awa me ona Karangarangatanga: Ngati Awa and its Confederation of Tribes*, Te Runanga o Ngati Awa Research Report 3, 31 March 1994

A18 Te Roopu Whakaemi Korero o Ngati Awa, *Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngati Awa Experience of Raupatu*, Te Runanga o Ngati Awa Research Report 4, April 1994

A19 Te Roopu Whakaemi Korero o Ngati Awa, *The Case for the Return of the Rotoehu Forest*, Te Runanga o Ngati Awa Research Report 5, 22 April 1994

A20 Te Roopu Whakaemi Korero o Ngati Awa, *Kakahoroa: Whakatane Township*, Te Runanga o Ngati Awa Research Report 6, 30 May 1994

A21 Te Roopu Whakaemi Korero o Ngati Awa, *Nga Karoretanga o Mataatua Whare: The Wanderings of the Carved House, Mataatua*, Te Runanga o Ngati Awa Research Report 2, 1990

A22 Department of Maori Affairs, *Tē Ripoata a te Tari Maori e pa ana ki te Tono a Ngati Awa mo Tōna Whare mo Mataatua: The Report of the Department of Maori Affairs on the Claim of Ngati Awa for the Return of Mataatua House*, Te Runanga o Ngati Awa Information Booklet 1, September 1989

A23 Opening submissions by counsel for Ngati Awa, 4 July 1994

(a) Summary of document A23, 4 July 1994

A24 Outline of evidence of Dr Hirini Mead, 4 July 1994

(a) Supporting documents to document A24

(b) Supporting documents to document A24

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(d) Supporting documents to document A24

(e) Supporting documents to document A24

(f) Supporting documents to document A24

(g) Supporting documents to document A24

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A28 Brief of evidence of Henry Hudson for Ngati Hokopu concerning Motuhora, 5 July 1994

A29 Brief of evidence of Patrick Hudson for Ngati Hokopu concerning the confiscation of land at Te Whare o Toroa, 5 July 1994

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A30 Brief of evidence of Materoa Dodd, 'The Social Impact of Confiscations on Ngati Awa', on behalf of Ngati Hokopu, 5 July 1994

A31 Brief of evidence of James Hudson for Ngati Hokopu and Te Wharepaia concerning Uretara Island, June 1994

A32 Brief of evidence of Joe Mason for Ngati Pukeko concerning hapu origins and history, 5 July 1994

(a) Map of the kainga of Ngati Pukeko

A33 Otamauru Trust, Whakatane, 'The Grievances: Briefs of Evidence Prepared by the Three Hapu of Otamauru, Ngai Taiwhakaea, Ngati Hikakino, and Ngai Te Rangihouhiri', concerning the origins, history of the hapu, customary ownership and current ownership (evidence provided by Dr Hirini Mead, William Hall, Layne Harvey, W Maunsell, Tame Tarau, Tuterangi Hohapata, Wi Parata Tawa, Kairau Ngahau, Georgina Maxwell, Manu Tarau, and Whainoa Simpson), 1994

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A35 Brief of evidence of Dr Hirini Mead for Te Pahipoto concerning hapu origins and possible remedy proposals, 6 July 1994

A36 Brief of evidence of C Paul for Ngati Hokopu concerning the Ohope Reserve, 6 July 1994

A37 Brief of evidence of John Hunia for Te Pahipoto concerning issues pertinent to Ngati Pahipoto, 6 July 1994

A38 Brief of evidence of Charlie Vercoe for Ngati Kahupake introducing Kahupake speakers, 6 July 1994

A39 Brief of evidence of Te Rau o te Huia Cameron concerning Putauaki, 6 July 1994

- A40** Orehau Phillis report on the Warahoe hapu, 1 April 1989
(a) Supporting documents to document A40
- A41** Brief of evidence of Jeremy Gardiner for Te Pahipoto concerning the Rangitaiki wetlands, 7 July 1994
- A42** Brief of evidence of P Ranapia concerning Ngati Pukeko and Patuwai assistance to the Crown, 8 July 1994
- A43** Brief of evidence of A Rangiheuea concerning Te Arawa support for the return of Putauaki, 7 July 1994
- A44** Submissions from Ngati Awa in support of an application for recommendations in respect of Mataatua wharenui, 7 July 1994
- A45** Submissions from Ngati Awa supporting application for recommendations in respect of Rotoehu Forest, 7 July 1994
- A46** Submissions from Ngati Awa supporting application for recommendations in respect of Te Mahoe village, 7 July 1994
- A47** Te Roopu Whakaemi Korero o Ngati Awa, *Te Mahoe Village and Te Matahina Dam*, Te Runanga o Ngati Awa Research Report 8, 7 July 1994
(a) Supporting documents to document A47
- A48** Brief of evidence of J Peri for Ngati Tuariki concerning marae and hapu formation, and Tasman Pulp and Paper Co pollution, 7 July 1994
- A49** Te Tawera-Umutahi, 'An Investigation of Raupatu Claims relating to Te Tawera-Umutahi (Wai 46)', unpublished report, 7 July 1994
- A50** Brief of evidence of K Iriaka for Ngati Hamua concerning the effects of raupatu on Ngati Hamua, 8 July 1994
- A51** H Araroa summary of the Te Mahoe Dam and the effects, 8 July 1994
- A52** Brief of evidence of Tepene Mamaku for Ngai Tamaoki concerning the origins of Tamaoki and support for Ngati Awa, 8 July 1994
- A53** Brief of evidence of R Paora, 'The Future: A Presentation to the Waitangi Tribunal on Behalf of Ngai Tamaoki/Ngati Tarawhai Hapu in Support of the Ngati Awa claim', 1994
- A54** Document A54 refiled as paper 2.47(a)
- A55** Map showing Tuwharetoa boundaries, undated
- A56** Document A56 refiled as paper 2.47(b)
- A57** Document A57 refiled as paper 2.47(c)
- A58** Document A58 refiled as paper 2.47(d)
- A59** Document A59 refiled as paper 2.47(e)
- A60** Brief of evidence of Te o Paul for Ngati Awa-Ki-Tamaki-Makarau concerning health issues of Te Mapou and Uirarao Marae, 8 July 1994
- A61** Brief of evidence of Dr Hirini Mead for Ngati Awa-Ki-Poneke concerning the funding of claim research, 8 July 1994
- A62** Personal testimony of P Winiata for Ngati Awa-Ki-Poneke concerning her experience with the Ngati Awa Research Unit, 8 July 1994
- A63** Te Roopu Whakaemi Korero o Ngati Awa, *The Rangitaiki (Plains) Wetlands: A Ngati Awa Perspective*, Te Runanga o Ngati Awa Research Briefing Paper 13, 22 December 1994
- A64** Brief of evidence of John Vercoe concerning the Tarawera River, raupatu, and loss of resources, undated
- A65**[†] Waitangi Tribunal, *Raupatu Document Bank*, 139 volumes, Wellington, Waitangi Tribunal, 1990
- B. TO END OF SECOND HEARING**
- B1** Document B1 refiled as paper 2.47(f)
- B2** Submission of Bay of Plenty Conservation Board on claims by Ngati Awa for the return of lands held under the conservation estate, 10 August 1994

B3 Richard Boast, 'Whakaari (White Island) and Motuhora (Whale Island)', report commissioned by the Waitangi Tribunal, November 1993

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- (1) Supporting documents to document B4
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B5 Brief of evidence of Dr Hirini Mead for Ngati Awa concerning the label of 'tangata hara', 12 September 1994

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- (a) Supporting documents to document B12
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- (a) Supporting documents to document B15
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B16 Brief of evidence of Linda Smith for the hapu of Ngati Awa concerning the effect of education upon Ngati Awa, 14 September 1994

B17 Brief of evidence of T Rei for Ngati Awa concerning the women of Ngati Awa from 1860–1900, 14 September 1994

B18 Brief of evidence of C Wilson for Ngati Awa concerning the health and social wellbeing of Ngati Awa as a result of raupatu, 14 September 1994

B19 Brief of evidence of Rererangi Rangihika for Ngati Awa concerning the economic impact of raupatu, 14 September 1994

B20 Brief of evidence of Maanu Paul for the hapu of Ngati Awa concerning the impact of raupatu on tikanga Maori, 14 September 1994
(a) Supporting documents to document B20

B21 Memorandum from Pukaahu Domain Committee on Wai 79 submissions, 15 September 1994
(a) Brief of evidence of Enid Leighton outlining the background to the Wai 79 claim, 15 September 1994

B22 Te Roopu Whakaemi Korero o Ngati Awa, *Social Impact of Confiscation and Associated Crown Action*, Te Runanga o Ngati Awa Research Report 12, 12 September 1994
(a) Supporting documents to document B22

B23 Brief of evidence of Tikitu Tutua–Nathan concerning effect of Resource Management Act 1991 on Ngati Awa with particular reference to water control and Whakatane River, 15 September 1994

B24 Te Roopu Whakaemi Korero o Ngati Awa, *Ngati Awa Lands Set Apart as Public Reserves*, Te Runanga o Ngati Awa Research Briefing Paper 14, 12 September 1994

B25 Submission of Ngati Awa concerning Tarawera forestry project, undated
Supporting documents to document B25

B26 Submission of counsel for Ngati Awa at close of second week of hearing, 16 September 1994

C. TO END OF THIRD HEARING

C1 Sharyn Green, 'Omataroa Rangitaiki, Metal Extraction', report commissioned by the Waitangi Tribunal, 1993
(a) Supporting documents to document C1

C2 Sharyn Green, 'Waiohau C26', report commissioned by the Waitangi Tribunal, 1993
(a) Supporting documents to document C2

C3 Harris Martin, 'Report on Matahina F', report commissioned by the Waitangi Tribunal, 22 August 1994

C4 John Third, 'Tarawera Forests', report commissioned by the Waitangi Tribunal, 15 September 1994
Supporting documents to document C4

C5 Summary of oral submissions of N Raerino for hapu of Nga Maihi concerning support for Ngati Awa claim and providing historical background of Nga Maihi, 9 November 1994

C6 Synopsis of submission of Otago Museum Trust Board concerning Mataatua whareniui, 21 November 1994:
(a) Supporting documents to document C6

C7 Te Roopu Whakaemi Korero o Ngati Awa, *Whenua Tautohetohe*, Te Runanga o Ngati Awa Research Report 13, 21 December 1994

C8 Ngati Awa Research Unit, 'Evidence and Submissions on 87,000 Acres between Western Confiscation Boundary and Tarawera River', 21 November 1994 (with 43 appendices)

C9 Bryan Gilling, 'Te Raupatu o Te Whakatohea: The Confiscation of Whakatohea Land, 1865–1866', report commissioned by the Treaty of Waitangi Policy Unit, 1994

C10 Ngati Awa Research Unit, 'The Trials', 21 November 1994
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C11 Te Roopu Whakaemi Korero o Ngati Awa, *Cultural History of the Western Lands*, Te Runanga o Ngati Awa Research Report 14, 21 November 1994 (with appendices A1–A5, B1–B7)

C12 Submissions of Otago Museum concerning Mataatua whareniui, undated
(a) Supporting documents to document C12
(b) Supporting documents to document C12

C13 Montage showing Mataatua whareniui, undated

C14 W Phillips and J Wadmore, *The Great Carved House Mataatua of Whakatane*, Petone, Valley Printing Co Ltd, undated

C15 Te Roopu Whakaemi Korero o Ngati Awa, *Te Murunga Hara 'The Pardon'*, revised ed, Te Runanga o Ngati Awa Research Report 1, 1989

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C17 The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, June 1993

C18 Ngati Awa, 'Submissions Concerning the Trial of Certain Ngati Awa Chiefs and Warriors at the Supreme Court, Auckland, in March and April 1886', 21 November 1994

C19 Ngati Awa Research Unit, 'Day Tour Throughout the Rohe of Ngati Awa', site visit itinerary and commentary on certain sites throughout the rohe of Ngati Awa, 23 November 1994

C20 Forestry Corporation, 'Waitangi Tribunal, Rotoehu Forest Tour', 23 November 1994

C21 Submissions by counsel for Ngati Awa at close of third week of hearing, 23 November 1994

C22 Brief of evidence of David Alexander concerning Native Land Court orders and Crown purchases, undated

- (a) Supporting documents to document c22
- (b) Supporting documents to document c22
- (c) Supporting documents to document c22
- (d) Maps and accompanying notes of original Maori blocks in the Rangitaiki River catchment area above Matahina Dam

D. TO END OF FOURTH HEARING

D1 Brief of evidence of Billy Waaka concerning the Ruatoki development scheme with reference to Waiohau C26, 13 February 1995

(a) Memorandum from Billy Waaka confirming right to represent Hiki Whanau, 13 February 1995

D2 Brief of evidence of B Butcher concerning Matahina Dam with reference to Waiohau c26, 13 February 1995

D3 Wai 248 statement of claim, briefs of evidence, and submissions, 13 February 1995

(a) Supporting documents to document D3

(b) Supporting documents to document D3

D4 Te Runanganui o Te Ika Whenua, 'Matahina c and c1, and Patuheuheu and Ngati Haka', unpublished report, 1994

(a) Supporting documents to document D4

(b) Supporting documents to document D4

(c) Supporting documents to document D4

D5 Te Runanganui o Te Ika Whenua, 'Traditional History Relating to Matahina c and c1 and Patuheuheu and Ngati Haka', unpublished report, 1995

D6 Opening submissions of Wai 247 claimant counsel, 11 February 1995

(a) Supporting documents to document D6

(b) Supporting documents to document D6

(c) Supporting documents to document D6

(d) Supporting documents to document D6

(e) Closing submissions of Wai 247 claimant counsel, 11 February 1995

D7 Cathy Marr, 'Public Works Takings of Maori Land, 1841-1981', report commissioned by the Treaty of Waitangi Policy Unit, December 1994

D8 G M Evans Ltd, 'Matua Valuation', unpublished report, 8 February 1995

D9 Opening submissions of counsel for Te Ika Whenua, February 1995

D10[†] Maps of Matahina c and c1

Map of Omataroa-Rangitaiki

(a)[†] Overlays to document D10 showing Matahina c and c1

D11 Brief of evidence of R Brown, 4 February 1995

Brief of evidence of S Cauley, 4 February 1995

Brief of evidence of R Clark, 4 February 1995

Brief of evidence of M Moses, 4 February 1995
 Brief of evidence of T Rikiriki, 4 February 1995
 Brief of evidence of T Ripaki, 4 February 1995
 Brief of evidence of the Reverend H Tupe, 4 February 1995
 Brief of evidence of K Pouwhare, 5 February 1995
 Brief of evidence of M Pouwhare, 5 February 1995
 Brief of evidence of R Pouwhare, 5 February 1995
 Brief of evidence of I Rua, 5 February 1995

D12 Memorandum from Te Ika Whenua forwarding copy of 1905 Supreme Court judgment *Beale v Tihema* in the case of Waiohau B9, 6 March 1995

D13 Memorandum from Te Ika Whenua forwarding plan of lots 1 and 2, being part Matahina C1A and C North blocks (reference LTS45829), 14 March 1995

D14[†] Laminated photographs concerning Waiohau C26

E. TO END OF FIFTH HEARING

E1 William Savage, 'Manawhenua Report', report commissioned by Tuwharetoa ki Kawerau, September 1992

E2 Opening submissions of counsel for Tuwharetoa, 24 March 1995

E3 Waitangi Tribunal, *Raupatu Document Bank*, 139 volumes, Wellington, Waitangi Tribunal, 1990, vol 10, pp 3290–3293, pp 3294–3298, pp 3323–3326, pp 3343–3444, pp 3355–3356, pp 3386–3388, pp 3447–3451; vol 11, pp 4040–4041; vol 12, p 4068, pp 4117–4118
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E4 Waitangi Tribunal, *Maori Development Corporation Report*, Wellington, Brooker's Ltd, 1993, pp 31–33, 114–117
 S A De Smith, *Judicial Review of Administrative Action*, 4th ed, 1980, pp 156–163

E5[†] Maps of Kawerau showing pa and kainga ; mahinga kai, pa tuna, taiapare; urupa; and battle sites

E6 Explanation of sites visited at Waitahanui and Maruka, 28 March 1995

E7 Submission of Veronica Haylings in support of Wai 62, 28 March 1995

E8 Map entitled 'Location of Maruka Investigations' showing location of Maruka and Waitahanui Pa
 Map showing Ballantrae, Long Valley, and Marshall Valley areas
 Map entitled 'Kawerau 1981 Stage IV Maruka Investigations'

E9 Map of sites visited on 28 March 1995

E10 Submission of William Savage concerning Putauaki, 29 March 1995

E11 Submission of Tai Te Riini concerning significance of various landmarks, 29 March 1995

E12 Summary by A Olsen of oral evidence describing food gathering activities, cultivations, Maori medicine, urupa, tomo, and pa sites, 29 March 1995

E13 Itinerary of site visit, 30 March 1995

E14 Submission of John Vercoe describing food gathering activities and swamp lands within raupatu area, 31 March 1995

E15 Submission of H Te Riini showing whakapapa of some of the descendants of Tuwharetoa, 31 March 1995

E16 Brief of evidence of Michael Barnes concerning role of Tuwharetoa as kaitiaki, 31 March 1995

E17 List of sites visited 30 March 1995 (doc E13)

E18 Supporting documents to document E1

E19 J Grace, *Tuwharetoa: The History of the Maori People of the Taupo District*, Wellington,

Reed, 1959, pp 17–21, 90–91, 102–109, 114–115, 118–119, 124–133, 140–141, 144–145, 290–291

E20 Submission of Te M Te Riire concerning Tuwharetoaanga and raupatu, 31 March 1995

F. TO END OF SIXTH HEARING

F1 Sharyn Green, 'Kawerau A8 and Other Blocks', report commissioned by the Waitangi Tribunal, 19 April 1995

(a) Supporting documents to document F1

F2 Tama Nikora, 'Matahina c and c1 Blocks', unpublished report, 17 May 1995

(a) Supporting documents to document F2

(b) Supporting documents to document F2

F3 Opening submissions of counsel for Upokorehe and accompanying documentation concerning Wai 339, 29 May 1995

(a) Supporting documents to document F3

(b) Supporting documents to document F3

(c) Supporting documents to document F3

F4 Itinerary of site visit for Upokorehe, 30 May 1995

F5 Place names for site visit by M Taitapanui (doc F4)

F6 Lawrence Tukaki–Millanta, 'A Report to the Waitangi Tribunal on Behalf of Te Whanau-a-Te-Ehutu on the Whakaari Claim', report commissioned by the Waitangi Tribunal, May 1995

F7 Opening submissions of counsel for Tuhoe concerning Wai 386, 31 May 1995

G. TO END OF SEVENTH HEARING

G1* Brief of evidence of Kawana Te Kirikau providing historical account of Ngati Makino and areas of significance to them, 19 June 1995

(a) Supporting documents to document G1

(b) ML plan 2031 showing Otitapu

G2* Brief of evidence of P Te Whata concerning pa of Ngati Whakahemo and Ngati Makino, 19 June 1995

(a) Supporting documents to document G2

G3* Brief of evidence of Don Stafford concerning Ngati Makino and the lake settlements of Rotoehu and Rotoma, 19 June 1995

(a) Supporting documents to document G3

G4 Brief of evidence of David Alexander concerning nineteenth-century Crown purchases of Ngati Makino lands, 22 June 1995

(a) Supporting documents to document G4

(b) Supporting documents to document G4

(c) Supporting documents to document G4

(d) Supporting documents to document G4

G5 Map booklet, 'The Ngati Makino Claim Area', undated

G6 Brief of evidence of David Armstrong concerning Ngati Makino and the Crown, 1880–1960, 22 June 1995

(a) Supporting documents to document G6

(b) Supporting documents to document G6

(c) Supporting documents to document G6

(d) Supporting documents to document G6

(e) Supporting documents to document G6

(f) Supporting documents to document G6

G7 Memorandum from Ngati Awa on further evidence for Wai 46, 9 June 1995

(a) Supporting documents to document G7

(b) Supporting documents to document G7

(c) Supporting documents to document G7

(d) Supporting documents to document G7

(e) Supporting documents to document G7

(f) Supporting documents to document G7

(g) Supporting documents to document G7(f)

(h) Supporting documents to document G7

(i) Supporting documents to document G7

(j) Supporting documents to document G7

(k) Supporting documents to document G7

(l) Supporting documents to document G7

(m) Supporting documents to document G7

(n) Supporting documents to document G7

G8 Sim commission of inquiry for Whakatohea confiscated lands, Opotiki, 12 July 1920

G9 Submissions of counsel for Tuhoe following sixth hearing, 13 June 1995

G10 Supplementary brief of evidence of Tama Nikora concerning Wai 386, 13 June 1995

G11 Opening submissions of counsel for Ngati Makino concerning Wai 275 and Wai 334, 19 June 1995

- (a) Supporting documents to document G11
- (b) Supporting documents to document G11
- (c) Supporting documents to document G11

G12* Brief of evidence of Ngati Makino Supporting documents to document G12

H. TO END OF EIGHTH HEARING

H1 Submission of counsel for Forestry Corporation Ltd concerning Tribunal recommendation for return of part Rotoehu Forest, 7 July 1995

H2 J Milroy, S Melbourne, and Tama Nikora, 'The Bay of Plenty Confiscation and the Tuhoe Tribal Boundary', unpublished report, 11 August 1995

H3 Memorandum from Ngati Makino conveying support (and signatures) of Ngati Pikiao kaumatua for Wai 275, 1 August 1995

H4 Te Runanganui o Te Ika Whenua, 'Te Houhi and Waiohau 1B', unpublished report, 1995

- (a) Supporting documents to document H4
- (b) Supporting documents to document H4
- (c) Supporting documents to document H4
- (d) Supporting documents to document H4
- (e) Supporting documents to document H4
- (f) Supporting documents to document H4
- (g) Supporting documents to document H4
- (h) Supporting documents to document H4
- (i) Supporting documents to document H4

H5 Brief of evidence of David Alexander concerning Matahina project (including Te Mahoe village and Rangitaiki 60c core material quarry), undated

- (a) Supporting documents to document H5
- (b) Supporting documents to document H5

H6 Brief of evidence of A Gould concerning Waiohau c26 and part c25, for Wai 247, undated

- (a) Supporting documents to document H6
- (b) Supporting documents to document H6

H7 Brief of evidence of David Alexander concerning the Crown involvement in Rangitaiki 12A, for Wai 79, undated

- (a) Supporting documents to document H7

H8 Brief of evidence of J Malcolm concerning relationship between Ngati Makino and Ngati Tamateatutahi and other Ngati Pikiao hapu, 18 September 1995

- (a) Supporting documents to document H8

H9 Brief of evidence of J Battersby concerning issues relating to the survey of Matahina c and c1, undated

- (a) Supporting documents to document H9

H10 Memorandum from Crown on jurisdiction of Tribunal to determine legality of Crown actions, 18 September 1995

- (a) Supporting documents to document H10

H11 Outline of submissions of counsel for Tuwharetoa concerning jurisdiction of Tribunal to determine legality of Crown actions, 18 September 1995

H12 Submissions of counsel for Ngati Awa concerning jurisdiction of Tribunal, 18 September 1995

H13 Brief of evidence of A Hohepa, 19 September 1995

H14 Submissions of Ngati Pikiao concerning relationship between Ngati Pikiao and Ngati Makino, 19 September 1995

H15 Submissions of Tuhoe concerning Tuhoe tribal boundary, 20 September 1995

H16 Memorandum from Ngati Awa in reply to document H2, 20 September 1995

- (a) Supporting documents to document H16
- (b) Supporting documents to document H16
- (c) Supporting documents to document H16

H17 Te Roopu Whakaemi Korero o Ngati Awa, 'The Tuhoe Tribal Boundary: An Interim Ngati Awa Response', unpublished report, 20 September 1995

- (a) Supporting documents to document H17

I. TO END OF NINTH HEARING

11 Tom Bennion and Anita Miles, 'Ngati Awa and other Claims (Wai 46 and Others)', report commissioned by the Waitangi Tribunal, September 1995

(a) Supporting documents to document 11

(b) Supporting documents to document 11

(c) Supporting documents to document 11

12 Harris Martin, 'Report', report commissioned by the Waitangi Tribunal, undated

13 Memorandum from Tuhoe concerning questions for Tom Woods, 29 September 1995

14 Memorandum from Tuhoe concerning questions for S Mead, C Tuatua, and J Mason, 29 September 1995

15 J Luiten, 'Historical Research Report', report commissioned by Te Runanga o Tuwharetoa ki Kawerau, 7 August 1995

(a) Supporting documents to document 15

(b) Supporting documents to document 15

(c) Supporting documents to document 15

(d) Supporting documents to document 15

(e) Summary of document 15, 17 October 1995

16 Submission of Huia Pacey concerning Crown acquisition of lot 31 and part of lot 39 parish of Matata, 6 October 1995

17 Christine Peters, 'Putauaki', Tuwharetoa ki Kawerau submission to the Waitangi Tribunal, 14 October 1995

(a) Supporting documents to document 17

18 Outline of submissions of counsel for Tuwharetoa concerning representation, 16 October 1995

19 Brief of evidence by C Park on Rurima Islands, 17 October 1995

110 Popata Renata, 'Te Awa o te Atua ki Otamarakau', unpublished report, 12 October 1995

(a) Supporting documents to document 110

111 Huia Pacey, 'How Ngati Tuwharetoa Were Dispossessed of Te Kohika Wetlands and their Resources', unpublished report, 17 October 1995

(a) Supporting documents to document 111

112 Newspaper articles concerning Kohika archaeological site at Matata, 1913-91

113 Kahu Te Rire, 'The Rotoehu Forest: Traditional Evidence', unpublished report, 18 October 1995

Aerial photographs of Rotoehu Forest area

114 Submission of John Vercoe concerning traditional evidence of Ngati Makino, 18 October 1995

115 Brief of evidence of Michael Barns concerning impact of raupatu on Tuwharetoa, 18 October 1995

116 Itinerary of 19 October 1995 helicopter flight

117 Michael Barns, 'Outline for Settlement Considerations', unpublished report, 18 October 1995

118 Michael Barns and Associates, 'Tuwharetoa ki Kawerau Strategic Plan', 1991

J. TO END OF TENTH HEARING

J1 Submission of Ngati Awa concerning overlapping claims, 10 October 1995

J2 Excerpts from document 11(a)(18)

J3 Crown documents

K. TO END OF ELEVENTH HEARING

K1 Verbatim Reporting Services Ltd transcript of Crown and Tribunal cross-examination of Tom Bennion, 3 November 1995

K2 Paul Jarrett, 'Waitangi Tribunal Research Commission: Wai 21', report commissioned by the Waitangi Tribunal, September 1995

K3 Michael Stevens, 'Research Report to the Waitangi Tribunal on the Te Putere Native Reserve', report commissioned by the Waitangi Tribunal, 24 October 1995

K4 Supplementary brief of evidence of David Armstrong, undated

(a) Supporting documents to document K4

- K5** Submission of Ngati Makino concerning Ngati Pikiao history, Whakarewa, Uruika, and Tuwharetoa, May 1995
- K6** D Pool submission providing a socio-demographic analysis for Ngati Makino, 10 November 1995
- K7** Brief of evidence of Te H Tutua concerning links of Te Puehu and Ngati Makino with Ngati Awa, 13 November 1995
- K8** Brief of evidence of Te H Tutua concerning whakapapa link of Ngati Awa with ancestor Tuwharetoa, 13 November 1995
- K9** Brief of evidence of P Ngaropo in response to evidence presented by Tuwharetoa ki Kawerau, 10 November 1995
- K10** Brief of evidence of J Hunia concerning Tarawera Forest project and efforts to have Putauaki returned, 10 November 1995
(a) Supporting documents to document K10
(b) Supporting documents to document K10
- K11** Brief of evidence of Dr Hirini Mead in response to Tuwharetoa ki Kawerau, undated
- K12** Brief of evidence of Jeremy Gardiner concerning grantees of lots 31 and 39, parish of Matata, 10 November 1995
- K13** Brief of evidence of Joe Mason concerning number of claimants represented by Te Runanga o Ngati Awa, 10 November 1995
- K14** Jane Luiten and Huia Pacey, 'Ancestral Rights to Rotoehu, Otamarakau and te Awa o te Atua', unpublished report, 10 November 1995
- K15** Popata Renata and K Te Riini, 'Representation', unpublished report, undated
- K16** Brief of evidence of K Tatton concerning Otitapu Pa site in Bay of Plenty, 21 November 1995
(a) Supporting documents to document K16
(b) Supporting documents to document K16
- K17** Memorandum from Crown concerning interim report, 20 November 1995
- K18** Brief of evidence of Dave Field concerning land administered by Department of Conservation, 17 November 1995
(a) Supporting documents to document K18
- K19** Brief of evidence of William Shaw concerning status and management of Department of Conservation land, 17 November 1995
- K20** Memorandum from Ngati Pikiao concerning interim report, 21 November 1995
- K21** Submission of Ngati Makino concerning interim report, 21 November 1995
- K22** David Alexander, interim report concerning Ngati Makino lands during the twentieth century, undated
- K23** Outline of closing submissions of counsel for Tuwharetoa, 20 November 1995
(a) Supporting documents to document K23
(b) Supporting documents to document K23
(c) Supporting documents to document K23
- K24** Affidavit of Z Graham (née Henderson) concerning memoirs of Valentine Savage (Taina), 27 November 1995
- K25** Memorandum from D Pool in response to question raised by Tuwharetoa, 21 November 1995
- L. TO END OF TWELFTH HEARING**
- L1** Brief of evidence of Brian Easton concerning economic and social impact of raupatu over Ngati Awa, 20 November 1995
- L2** Memorandum from Ngati Pikiao concerning Ngati Pikiao hapu membership, 16 November 1995
- L3** Documents relating to document K11, 25 November 1995
- L4** Supporting documents to report by F Kanara
- L5** Closing submission of counsel for Ngati Awa concerning overlapping claims, 27 November 1995

L6 Closing submissions of counsel for Ngati Awa, 27 November – 1 December 1995, vol 1

L7 Memorandum from Crown concerning document L1, 29 November 1995

L8 Memorandum from Tasman Pulp and Paper Co Ltd and Tarawera Forests Ltd concerning closing submissions of counsel for Ngati Awa and Tuwharetoa, 30 November 1995

L9 Closing submissions of counsel for Ngati Awa, 1 December 1995, vol 2

L10 Te Roopu Whakaemi Korero o Ngati Awa, 'Ohiwa', 25 November 1995

L11 Te Roopu Whakaemi Korero o Ngati Awa, 'The Matahina Block and the Kaingaroa Forest', 29 November 1995

L12 Submission of Te Runanga o Ngati Awa, 'Places of Cultural Significance to the Hapu of Ngati Awa', 27 November 1995

M. RECEIVED SUBSEQUENT TO CLOSURE

M1 Brief of evidence of David Alexander concerning Ngati Makino lands during the twentieth century, November 1995

(a) Supporting documents to document M1

(b) Supporting documents to document M1

M2 Supplementary submissions of Tuwharetoa concerning recording of oral submissions and submissions and additional material presented by Ngati Awa during twelfth hearing, 15 December 1995

M3 Amended brief of evidence of Brian Easton, 18 December 1995

(a) Supporting documents to document M3

(b) Supporting documents to document M3

M4 E Brookfield, 'Interim Opinion of Raupatu with Reference to Ngati Awa and Tuwharetoa Submissions and the Taranaki Raupatu', unpublished report, 3 January 1996

(a) Supporting documents to document M4

M5 David Armstrong and Brent Parker, 'Kapu Te Rangi and Kohi Point', report commissioned by the Crown, March 1996

M6 David Armstrong and Brent Parker, 'The Mangaone Scenic Reserve', report commissioned by the Crown, March 1996

M7 David Armstrong and Brent Parker, 'The Mokorua Scenic Reserve', report commissioned by the Crown, March 1996

M8 David Armstrong and Brent Parker, 'Moutohora (Whale Island)', 2 vols, report commissioned by the Crown, March 1996, vol 1
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M9 David Armstrong and Brent Parker, 'Ohineteraraku Scenic Reserve', report commissioned by the Crown, March 1996

M10 David Armstrong and Brent Parker, 'Ohope Scenic Reserve', report commissioned by the Crown, March 1996

M11 David Armstrong and Brent Parker, 'Rotoma Scenic Reserve', 2 vols, report commissioned by the Crown, March 1996, vol 1
(a) David Armstrong and Brent Parker, 'Rotoma Scenic Reserve', 2 vols, report commissioned by the Crown, March 1996, vol 2

M12 David Armstrong and Brent Parker, 'Rurima Islands', report commissioned by the Crown, March 1996

M13 David Armstrong and Brent Parker, 'Te Putere Reserve', 2 vols, report commissioned by the Crown, March 1996, vol 1

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M14 David Armstrong and Brent Parker, 'Te Uretara Island', report commissioned by the Crown, March 1996

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- M16** Tom Bennion, 'Relations between Ngati Makino and Other Hapu of Ngati Pikiao in the Nineteenth Century', unpublished report, April 1996
(a) Supporting documents to document M16
- M17** Groome Poyry Ltd, 'Maori Investments Limited: Waitangi Tribunal Claim Report', unpublished report, August 1995
- M18** Tony Walzl, 'Ngati Awa Land, 1870–1970', report commissioned by the Waitangi Tribunal, September 1996
(a) Supporting documents to document M18
- M19** Document withdrawn
- M20**[†] 'Summary Details of Crown Acquisition of Central North Island Forest Lands, report commissioned by the Crown, 1998
- M21** Donald Loveridge, 'The Most Valuable of the Rotorua Lands: Alienation and Development in the Ngati Pikiao Block, 1881–1960', report commissioned by the Crown Forestry Rental Trust, August 1998
(a) Supporting documents to document M21
(b) Supporting documents to document M21
(c) Supporting documents to document M21
- M22** Peter McBurney and Donald Loveridge, 'Ngati Pikiao Lands 1881–1960: Block Histories', report commissioned by the Crown Forestry Rental Trust, August 1998
(a) Supporting documents to document M22
(b) Supporting documents to document M22
(c) Supporting documents to document M22
(d) Supporting documents to document M22
(e) Supporting documents to document M22
(f) Supporting documents to document M22
(g) Supporting documents to document M22
(h) Supporting documents to document M22
(i) Supporting documents to document M22
- M23** Letter from Minister in Charge of Treaty Negotiations to Te Runanga o Ngati Awa concerning heads of agreement, 21 December 1998
Heads of agreement between the Crown and Te Runanga o Ngati Awa, 21 December 1998)

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