RANGAHAUA WHANUI DISTRICT 1

AUCKLAND

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JULY 1996

WORKING PAPER : FIRST RELEASE

WAITANGI TRIBUNAL

RANGAHAUA WHANUI SERIES

FOREWORD

The research report that follows is one of a series of historical surveys commissioned by the Waitangi Tribunal as part of its Rangahaua Whanui programme. In its present form, it has the status of a working paper: first release. It is published now so that claimants and other interested parties can be aware of its contents and, should they so wish, comment on them and add further information and insights. The publication of the report is also an invitation to claimants and historians to enter into dialogue with the author. The Tribunal knows from experience that such a dialogue will enhance the value of the report when it is published in its final form. The views contained in the report are those of the author and are not those of the Waitangi Tribunal, which will receive the final version as evidence in its hearings of claims.

Other district reports have been, or will be, published in this series, which, when complete, will provide a national theme of loss of land and other resources by Maori since 1840. Each survey has been written in the light of the objectives of the Rangahaua Whanui project, as set out in a practice note by Chief Judge E T J Durie in September 1993. The text of that practice note is included as an appendix (app I) to this report.

I must emphasise that Rangahaua Whanui district surveys are intended to be one contribution only to the local and national issues, which are invariably complex and capable of being interpreted from more than one point of view. They have been written largely from published and printed sources and from archival materials, which were predominantly written in English by Pakeha. They make no claim to reflect Maori interpretations: that is the prerogative of kaumatua and claimant historians. This survey is to be seen as a first attempt to provide a context within which particular claims may be located and developed.

The Tribunal would welcome responses to this report, and comments should be addressed to:

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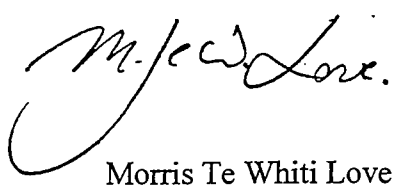

Morris Te Whiti Love
Director
Waitangi Tribunal

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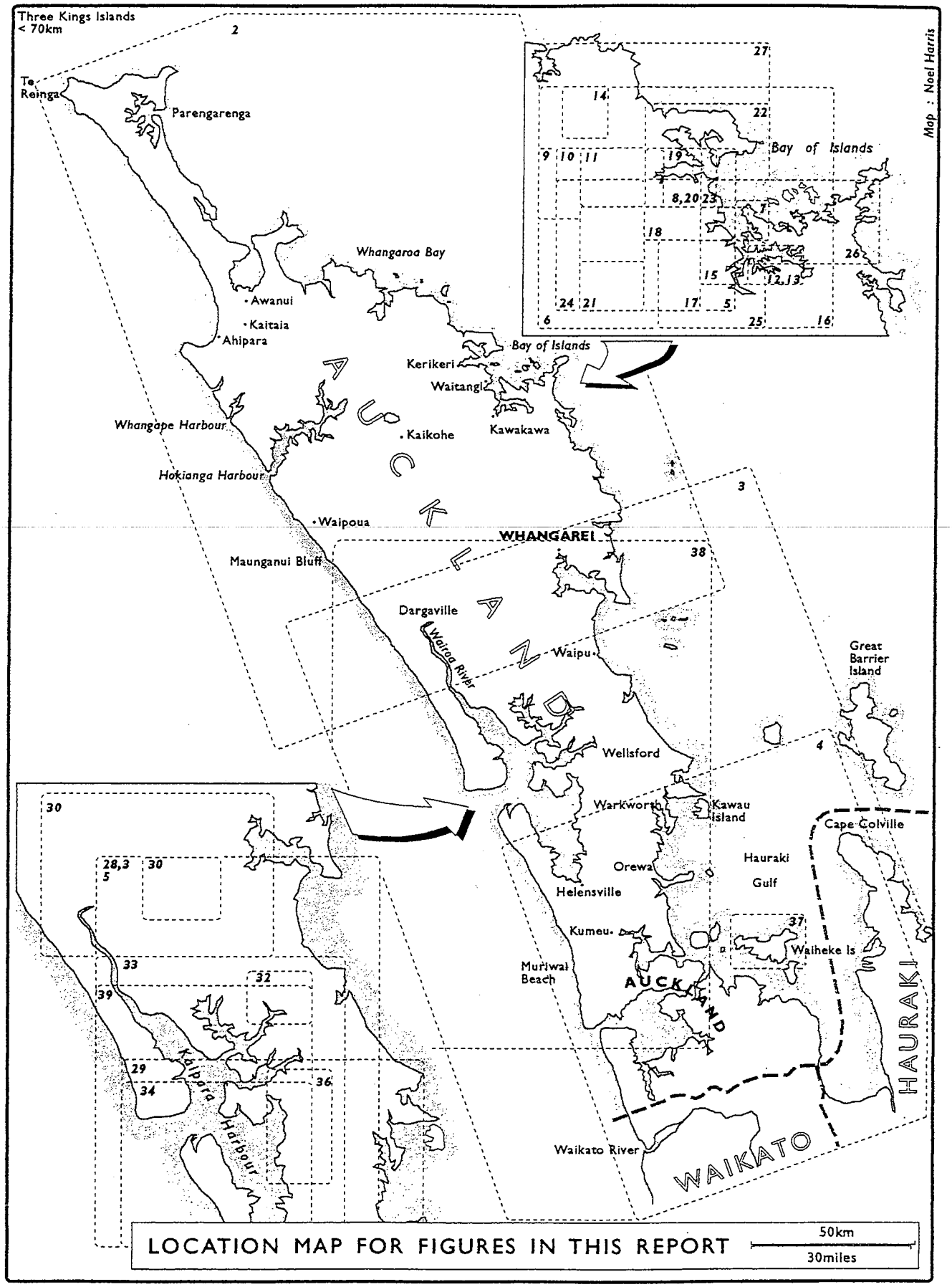
Note: Chapter 2 was written by Rose Daamen and chapter 7 by Paul Hamer. The remaining chapters are by Barry Rigby.

LIST OF ILLUSTRATIONS

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
AJLC	*Appendices to the Journals of the Legislative Council*
ATL	Alexander Turnbull Library
ch	chapter
CMS	Church Missionary Society
CT	certificate of title
DNZB	*Dictionary of New Zealand Biography*
doc	document
DOSLI	Department of Survey and Land Information
fn	footnote
GBPP	*Great Britain Parliamentary Papers*
MB	minute book
NA	National Archives
NLC	Native Land Court
NLP	native land purchase
NZJH	*New Zealand Journal of History*
NZPD	*New Zealand Parliamentary Debates*
OLC	old land claims
p	page
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
SLC	Surplus Lands Commission
TCD	*Maori Deeds of Land Purchases in the North Island* (H H Turton (comp), Wellington, 1877)
TPD	*Maori Deeds of Old Private Land Purchases* (H H Turton (comp), Wellington, 1882)


Three Kings Islands
< 70km
Map : Noel Harris
Te Reinga
Parengarenga
Whangaroa Bay
Awanui
Kaitaia
Ahipara
Bay of Islands
Kerikeri
Waitangi
Kawakawa
Kaikohe
Whangape Harbour
Hokianga Harbour
Waipoua
Maunganui Bluff
WHANGAREI
Dargaville
Waipu
Great Barrier Island
Wellsford
Warkworth
Kawau Island
Cape Colville
Hauraki Gulf
Orewa
Helensville
Kumeu
Waiheke Is
Muriwai Beach
AUCKLAND
HAURAKI
Waikato River
WAIKATO
Kaipara Harbour
LOCATION MAP FOR FIGURES IN THIS REPORT
50km
30miles

PREFACE

The history of land alienation in Wairarapa is not punctuated by any spectacular focal point for grievance like those areas in which large tracts of land were confiscated. All of the land was paid for in some way. Yet, the end result for Maori by the end of the nineteenth century was landlessness and social and economic marginalisation on a scale comparable to, if not more severe than, some of those areas affected by confiscation. Aside from an area in the north of the region, the Seventy Mile Bush, most of the land was alienated through Crown purchases during the 1850s. The bulk of the Seventy Mile Bush was purchased in the early 1870s. By the 1880s, Maori of the area were left with an ever-diminishing rump.

For the purposes of this study, 'Wairarapa' refers to the area of land on the east coast of the North Island of New Zealand south of the Hawke's Bay province and lying east of the Rimutaka and Tararua Ranges. Its southern limit is Te Matakitaki a Kupe (Cape Palliser). Its northern limit is a line leading inland from the coast at the mouth of the Waimata River, just south of Te Poroporo (Cape Turnagain), extending to the Manawatu River at its southern reach before entering the gorge. This is an area of about two million acres.[1] It is unlikely that the described region formed a distinct unit in Maori times. The mountains in the east and coast in the south are clear-cut, but the exact northern line was merely the result of colonial administration boundary drawing. There was also considerable movement through the Manawatu gorge, which lay at the extreme north-west corner of the district.

Only an estimate can be made of the Maori population in the area at the time of the first purchases.[2] Figures were given by various contemporary Europeans, but the area included was never constant, while Maori were fairly migratory and they were not always willing to have their numbers ascertained by colonial officials.[3] F D Bell attempted an estimate of the population of the valley (excluding the East Coast and north) in 1847. Captain Smith, a squatter, told him that it did not exceed 300, 'the

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1. The total area of Wairarapa has been reported at various sizes. A digitised computer estimate of the area gives 2,072,400 acres. The main area of uncertainty in that figure is where the line is drawn along the Rimutaka and Tararua Ranges. That uncertainty introduces a possible error rate of plus or minus 5 percent. Joy Hippolite ('Wairoa ki Wairarapa: An Overview Commissioned by the Waitangi Tribunal', report commissioned by the Waitangi Tribunal, 1991, p 2), and the Crown Congress Joint Working Party ('Historical Report on the Ngati Kahungunu Rohe', 1993, p 149), have taken McLean's 1852 estimate of approximately three million acres (AJHR, 1862, C-1/11). Yet, there McLean was referring to the area 'south of Hawke's Bay', an area which he estimated had a population of 3000. That population figure is far more than the amount regarded at the time as accurate for Wairarapa – about 780. W Searancke ('Report on the Wairarapa Lands', AJHR, 1860, C-3, p 4) considered the Wairarapa to contain 1,200,000 acres. He, however, curiously only extended as far north as the Castlepoint block, therefore his estimate is too low.
2. See Paul Husbands, 'Maori Population in the Hawke's Bay and Wairarapa, 1820–1991', report commissioned by the Waitangi Tribunal, 1992
3. H T Kemp noted in 1850 when he attempted to take a census of the area that in the remote and areas not purchased (ie, Wairarapa) a strong disinclination to his taking numbers prevailed: Kemp's 'Return', GBPP, vol 7, sess 1420, p 240.

chiefs' claimed that there were 800 men alone, while Bell's estimate was 400 for men, women, and children.[4] Later estimates range from 780 in January 1849 by H T Kemp,[5] about 728 by William Colenso in 1850,[6] and approximately 740 in the census of 1858.[7] Given that these estimates did not cover the entire area of our region, and accounting for Maori non-cooperation with census, we could say that about 1850 the population of the district would lie between 750 and 900.

This draft report will begin with a survey of the traditional history of Wairarapa, drawn from a wider traditional history of Wairarapa ki Wairoa, by Helen Walter. The Rangahaua Whanui report for each area has only been intended to provide a brief summary of the relevant traditional Maori history, being based on secondary sources. The rationale for this is that Maori from the area themselves are better qualified to provide this aspect of history. The following four chapters will deal chronologically with the process of land alienation in Wairarapa during the nineteenth century.

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4. F D Bell to Wakefield, 23 March 1847, GBPP, vol 8, sess 570, p 56
5. H T Kemp's 'Return of Population with the Block of Land Proposed to be Sold in the Wairarapa', GBPP, vol 6, sess 1136, p 87. This area included the valley and the coast, but only as far north as Whareama. Kemp made another estimate of 563 in April 1850: Kemp's 'Return', GBPP, vol 7, sess 1420, pp 231ff. This estimate, however, included none of the coastal villages.
6. P Goldsmith, 'Aspects of the Life of William Colenso', MA thesis, University of Auckland, 1995, p 50. Colenso's figure refers simply to 'the Wairarapa'. (Colenso also compiled a census of his parish for Bishop Selwyn during 1846: see Colenso, *Journal*, 18 April 1846, 18 November 1846, but this researcher has not found his results.)
7. Husbands, table 2.2 (citing N G Pearce, 'The Size and Location of the Maori Population, 1857–96: A Statistical Study', MA thesis, Victoria University of Wellington, 1952)

CHAPTER 1

INTRODUCTION

1.1 PURPOSES

The Waitangi Tribunal commissioned this Auckland district report as part of its Rangahaua Whanui programme launched in mid-1993. The Tribunal stated the four main purposes of this programme were:

(a) to identify issues common to a variety of different claims before the Tribunal;
(b) to provide the Tribunal with the means to compare the Treaty history of different districts;
(c) to place particular grievances in a broader historical and spatial context than is possible with claim by claim investigation; and
(d) to avoid, if possible, unnecessary duplication of research conducted by Tribunal staff, Crown, and claimants in preparation for hearings, mediation, or negotiation.[1]

The Tribunal indicated that district reports such as this one should provide 'basic data . . . on comparative iwi resource losses, the impact of loss and alleged causes within an historical context.'[2]

1.2 AUDIENCES

The purposes stated above indicate two primary audiences for Rangahaua Whanui reports. The Tribunal, of course, requires a preliminary assessment of historical evidence in order to plan hearings, and to consider possible ways of grouping claims for this purpose. Secondly, parties before the Tribunal, such as the Crown and claimants, need the same information in order to determine their own research priorities.

The Tribunal commissioned this and other district reports in an attempt to stimulate Crown and claimant researchers. It assumed that researchers for parties would wish to conduct more in-depth, localised investigations than those undertaken by Tribunal staff. The Tribunal indicated that, on the basis of wide-ranging research, its staff would be able to identify Treaty issues. Issue-specific Rangahaua reports

1. Waitangi Tribunal practice note on Rangahaua Whanui, 23 September 1993, p 1
2. Ibid, p 2

would then 'enable claimant, Crown and other parties to advise [the Tribunal] on the areas [or issues] they seek to oppose, support or augment.'[3]

1.3 LIMITS

In recognition of the above, the authors of this report have had to limit their investigation in at least five ways. Limits apply to approach, the role of the authors, the range of sources consulted, the historical time covered and the geographic area investigated.

The approach of a broad survey is necessarily general rather than specific. Furthermore, the purpose of preparing material useful to Crown and claimant researchers, as well as time constraints, dictates that this report is preliminary in nature. It is designed to begin, not to end, investigations into claims before the Tribunal. In fact, it reaches its initial audiences as a 'first working release', rather than as a final polished product with any definitive conclusions. Later revisions of this report may incorporate the results of responses to it by parties.

As Tribunal staff members, the role of the authors of this report is strictly limited. The authors are research officers appointed to service the needs of the Tribunal. They are not members of the Waitangi Tribunal, and their views expressed in this report do not represent the views of the Tribunal. The Tribunal will consider this report together with Crown and claimant reports and submissions, before deciding upon its own findings. The views expressed in this report may be challenged by Tribunal members, as well as by Crown and claimant representatives, in open hearings.

Time and resource constraints have limited the range of sources consulted. Generally the authors have conducted a broad survey of published primary and secondary sources. Unpublished primary sources, largely those held at the National Archives and Alexander Turnbull Library, have been consulted for subjects such as old land claims and the Native Land Court, in which the published material is clearly inadequate.

Time and resource constraints have also limited the historical time covered. The authors originally planned to cover topics in both the nineteenth and the twentieth centuries. This may still be possible, but the authors felt that the length of the study up until 1873 justified its early release. Readers may wish to suggest topics that we could cover in a subsequent volume, since there are obviously topics for which further investigation is required.

The Tribunal set the geographic limits of this study when it adopted the boundaries of the Northland and Auckland local government regions for this district. In very general terms, the Auckland district extends from Manawatawhi (Three Kings Islands) in the north, to the Bombay Hills in the south. It includes the main islands of the Hauraki Gulf and Great Barrier Island.

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3. Ibid

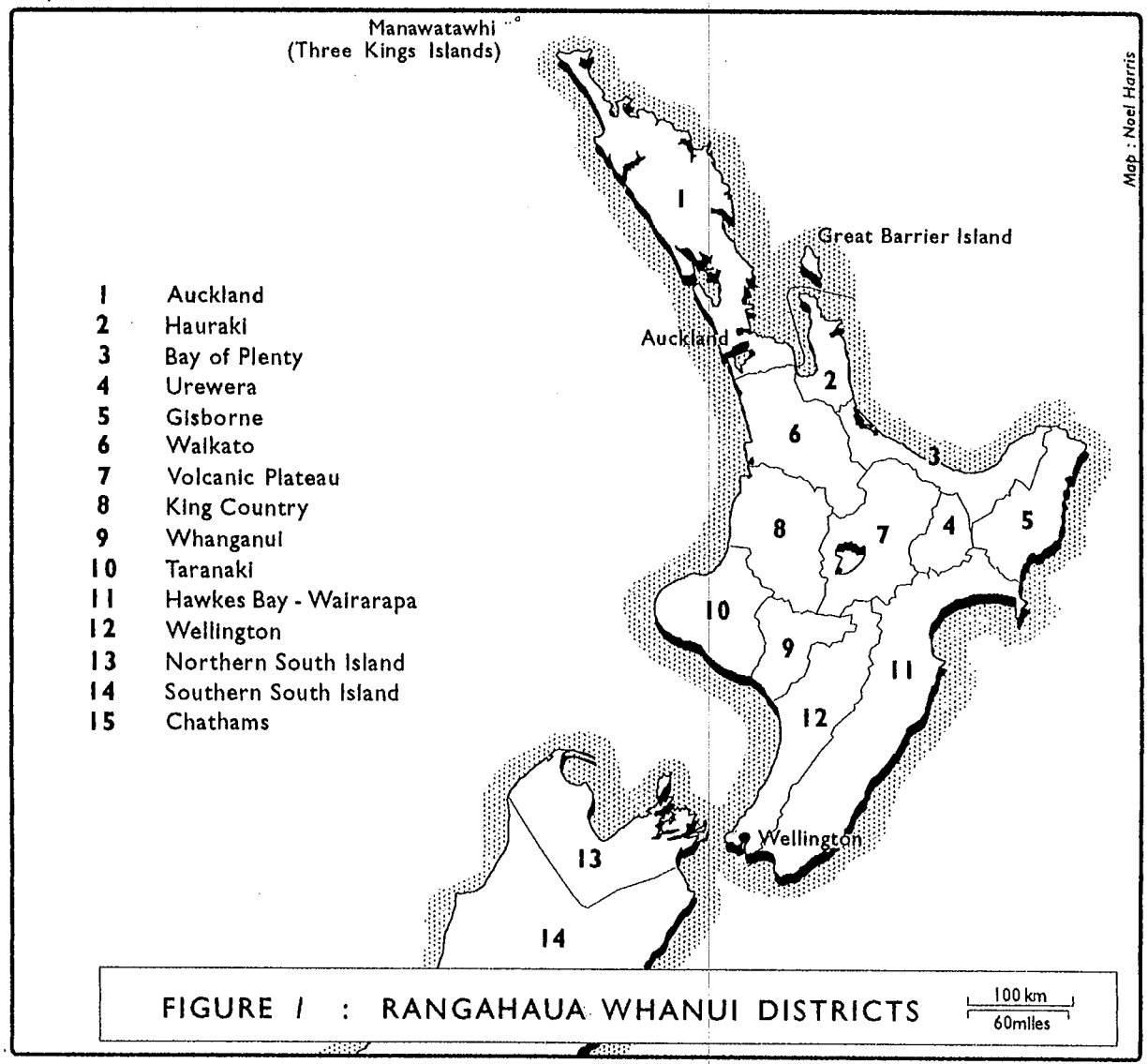

FIGURE 1 : RANGAHAUA WHANUI DISTRICTS

A major episode missing in this report is a study of the land purchased in the Northland–Auckland area under the pre-emption waivers introduced by Governor FitzRoy in 1844–46. Under these waivers, around 250 parcels of land ranging from a few perches to a few thousand acres changed hands, almost all of which were in the Auckland region. This story, however, is an important part of the wider story of Crown pre-emption, a central and not well-documented part of early colonial land and race relations policy, which produced often strong responses from northern Maori and settlers. The analysis of the causes, enactment, and effect of the waivers will instead need to be covered as a key part of a separate, national study being completed on the history of Crown pre-emption.

1.4 SAMPLING

This range of available sources and the time available to consult them determined the need for a careful selection of evidence with regard to old land claims and pre-1865 Crown purchases. Almost all previous work on these topics relied on published reports. Commissioner Bell's 1862–63 reports on old land claims, and McLean's 1861 'Extinguishment of Native Title' correspondence, presented what could be described as the 'official view.' In both cases, these sources present little direct evidence of Maori views. Consequently, a selective sampling of primary sources was necessary to counteract the one-sided nature of this evidence.

With old land claims the sheer volume of material in the original files held at the National Archives made selection both necessary and difficult. Since the Bay of Islands was the first and most intensively transacted area (ie, in numbers of claims per area), it appeared to be a logical case study. Rather than examining the 250 or so claims, 50 claims for which there were legible typescript precis files were the first port of call. This then led to more detailed research into approximately 25 original files for claims relevant to selected issues.

The sampling of pre-1865 Crown purchases followed a similar scheme, albeit with some modifications. Since the most intensively transacted Crown purchase area, south Auckland, had already been the subject of a report commissioned by the Tribunal, the areas considered for sampling were Whangarei and Kaipara.[4] Since Rogan, the Kaipara Crown purchase agent after 1856, conducted a voluminous and revealing private correspondence with his superior, Donald McLean (who was really the architect of national purchase policy), Kaipara got the nod ahead of Whangarei. On the other hand, the crucial Te Wairoa/Mangakahia dispute, which dominated the history of both areas during 1862–63, also requires a section of this chapter.

A comparative chapter following those on old land claims and pre-1865 Crown purchases is designed to establish how typical or atypical the Bay of Islands and Kaipara samples appear in the district as a whole. This chapter compares the two sample areas with two others (Muriwhenua and south Auckland), and with the statistical data for the entire district.

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4. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9

The limited number of 1866–73 Crown purchases obviated the necessity for sampling a particular area within the district. Instead, that post-1865 chapter examines two or three purchases for each of the four main categories of Crown purchases.

1.5 ISSUES

In addition to the sampling techniques described above, each old land claim and Crown purchase chapter selects information on the basis of explicitly identified Treaty issues. Since the Waitangi Tribunal has to measure the Crown's performance by what the Tribunal decides are Treaty obligations, such issues should guide the research of Tribunal staff. This should not unnecessarily constrain a broader enquiry into matters such as what other historians have written about areas under investigation. None the less, the areas under investigation in reports commissioned by the Waitangi Tribunal have to be those relevant to Treaty issues.

In the old land claim and pre-1865 Crown purchase chapters, the Treaty issues which guide the selection of information are:

(a) Were Crown policies used to identify the owners or those holding rights in Maori land (and other resources) adequate? Did they give adequate consent to the transfer of their land/resource rights to the Crown or to Crown grantees?
(b) What was the extent of the land/resources transferred? Were the boundaries clear and understood?
(c) Was an adequate equivalent exchanged? Did it include no more than immediate payment in cash or goods, or did it entail ongoing obligations?
(d) At the end of the pre-emption era (ie, 1865), were Maori left with sufficient resources and authority to provide for current and future generations?

In the comparative chapter, the fourth issue (what was left for Maori) dominates the analysis. It does so simply because it is the only issue that allows for reasonably reliable quantitative comparison. Finally, the issues raised by 1865–73 Crown purchases are somewhat peculiar to that period. They are:

(a) lack of satisfactory documentation;
(b) negotiation anomalies;
(c) adequacy of reserves; and
(d) Crown protective responsibilities.

These chapters, therefore, do not attempt to reconstruct all that happened. They attempt to reconstruct only that which the author maintains is germane to the Crown's Treaty obligations.

CHAPTER 2

TAI TOKERAU AND TAMAKI-MAKAU-RAU IWI: AN INITIAL OUTLINE

2.1 INTRODUCTION

The following is an outline history of the iwi of Tai Tokerau and Tamaki-makau-rau.[1] The purpose of this chapter is to orient the reader to the district and its people by introducing the iwi identified in secondary source material, providing an indication of the relationship between those iwi, and attempting to identify where those tribal groups were situated around 1840. It is meant not to be definitive but to encourage further discussion of the information set out in it. The relationships between iwi and hapu were (and are) complex, and their relationships with the land equally so.

As this study has been limited to researching others' compilations and findings regarding the iwi of the north, I have attempted, in presenting this information, to clearly identify the orator and/or writer of the account to emphasise that these accounts and conclusions are not mine but theirs. Presented in this way, they may be compared with each other as well as with information and knowledge on these subjects yet to be obtained.

Much more information will be found in primary source material. Unpublished primary sources such as key Native Land Court minutes, as well as old land claim records and other manuscript and archival collections held at the Alexander Turnbull Library, the Auckland Public Library, and the Auckland Institute and Museum Library are yet to be consulted. Oral histories and other important material will also be held by the iwi themselves. Responses from the tangata whenua are warmly invited to elaborate upon, modify, refute, or agree with the accounts summarised in this outline. There may well be different perspectives from several groups and these

1. Tamaki-makau-rau means Tamaki of 100 lovers. A number of explanations for this name are given. Graham suggests its name was derived from its history of being a highly sought-after area, the subject of many wars over the centuries (J Barr and G Graham, *The City of Auckland, New Zealand, 1840–1920*, Christchurch, Capper Press, 1985, p 20). E T Jackson noted a number of origins for the name. She said the narrow neck of land between the Waitemata and Manukau Harbours was at first called Tamaki after the father of the women who married Toi Te Huatahi, who settled there 'during the 12th century'; or that the name was given by the Tainui immigrants 'of 1350 AD'; or that it was named after the warrior Maki, who conquered it 'in about 1600'. Others, she said claim it was named after a chieftainess, Tamaki Makau-rau, the daughter of Te Huia, a Waikato 'princess' and Te Rangikiamata, a chief of the Ngati-teata hapu of Waiohua, who lived on Maungakiekie (One Tree Hill) (E T Jackson, *Delving into the Past of Auckland's Eastern Suburbs*, Auckland, E T Jackson, 1976, p 1).

may require ultimately to be resolved through more detailed submissions, research, or negotiation.

As this report is greatly dependent upon early Pakeha recorders of oral tradition, a note of caution is needed. Sorrenson warned that most such observers were:

> not content to record what they heard and saw; they had to interpret their information and above all to answer intriguing questions . . . their preconceptions grossly distorted their conceptions'.[2]

Stephenson Percy Smith's *The Peopling of the North* and Chief Judge Fenton's Orakei judgment, two sources used extensively in this report, focusing on lands (Kaipara and Tamaki-makau-rau) associated with Ngati Whatua; Smith's subsequent major publication, *Maori Wars of the Nineteenth Century*; and George Graham's history of the Kawerau of the Waitakere ranges and Mahurangi published in the *Journal of the Polynesian Society*, are no exception to this criticism. However, there is no doubt that the accounts recorded by them remain key sources. The Orakei judgment, for example, contains oral traditions of various tribal groups such as Ngati Paoa, Ngatiteata, Ngatitamaoho, and the Waikato tribes to the south, east and south-west of 'Ngati Whatua' lands; while Smith's narrative contains traditional historical accounts of Ngati Whatua contacts with the various tribes of the north and north-west, such as Ngapuhi, Parawhau, Ngai Tahuhu, and the Kawerau. Yet it should be noted that Maori too had their own purposes to serve in reciting and recording oral traditions, including establishing the title to land, and the mana of one tribe against another.[3] Oral traditions are often not only complex but contradictory, depending on whom the speaker was and where she or he was when reciting the account.

Smith, Fenton and Graham name specific people upon whom they relied in their accounts. Smith noted in *The Peopling of the North* that he depended upon John White for tribal histories outside Ngati Whatua; Hone Mohi Tawhai for Ngapuhi history; and John Webster, C F Maxwell, and Reverend Hauraki Paori and others for Ngati-Whatua. He also consulted sections of the Orakei judgment, he was himself an avid collector of oral traditions during his years as a surveyor, and he collected accounts obtained by others mentioned in the text. Simmons commented that most of *The Peopling of the North* and much of *Maori Wars of the Nineteenth Century* was actually derived from Maori manuscripts contained in John White's manuscript volumes nine and ten.[4] Fenton's Orakei judgment summarised key submissions given in hearing, including that given by the claimant Apihai Te Kawau and those of Te Taou, Ngaoho, and Te Uringutu; cross-claimant Heteraka Takapuna and Ngati Paoa, Ngati Maru, Ngatiwhanaunga, and Ngatitamatera; and co-claimants Hori Tauroa and Ngatiteata, Paora Te Iwi and Ngatitamaoho, Wiremu Te Wheoro and Ngatinaho and Hawira Maki and Ngatipou. George Graham noted in his article on the Kawerau that his information was obtained from 'several old men, relics of this once numerous people; the late Matekino of Opahi (Mahurangi) and Tutawhana (of

2. M P K Sorrenson, *Maori Origins and Migrations: The Genesis of Some Pakeha Myths and Legends*, Auckland, Auckland University Press, 1979, p 82
3. Ibid, pp 84–85
4. D R Simmons, *The Great New Zealand Myth*, Wellington, AH and AW Reed, 1976, p 218

Awataha, Shoal Bay, Auckland) and others now passed away'.[5] Simmons mentioned Graham's reliance on Wiripo Potene of Awataha.[6]

A number of other published sources have been used in this report. Those relating to Tamaki-makau-rau and surrounds include Kelly's *Tainui*, Diamond's discussion of the history of the Kawerau of the Waitakere ranges and Mahurangi in a *Journal of the Polynesian Society* article, Barr and Graham's *The City of Auckland* and Simmons and Graham's *Maori Auckland.*[7] I have consulted Jack Lee's *Hokianga* and *I Have Named It the Bay of Islands*, Nancy Preece Pickmere's *Whangarei*, and Jeff Sissons, Pat Hohepa, and Wiremu Wihongi's *The Puriri Trees are Laughing* for a Ngapuhi focus. A list of Ngapuhi hapu can be found in Lee's *I Have Named It the Bay of Islands*.

The Tribunal has produced a number of reports relating to areas in the north.[8] Traditional accounts in these have also played a prominent role in this paper. Sections of this report concerning the Muriwhenua people and land in particular rely upon the traditional history provided to the Tribunal by kaumatua of Ngati Kuri, Te Aupouri, Te Rarawa, Ngai Takoto, and Ngati Kahu, detailed in the *Muriwhenua Fishing* report.

I begin this chapter by introducing the waka whose crew are said to have contributed to the ancestry of the people of the north, then note Ngati Whatua's movement south from Kaitaia to Kaipara, and at that point in time look at the whereabouts of Tai Tokerau iwi.

I then move on to look at Ngati Whatua's subsequent migration south to Tamaki-makau-rau and the battles fought between tribes of the east coast from the Bay of Islands to Hauraki in the late eighteenth century and those fought in the nineteenth century in and around Tamaki-makau-rau, most notably those fought by Hongi Hika of Ngapuhi (Ngati Rahiri). The focus on battles as an indicator of tribal relations and geographical borderlands reflects the limitations of the secondary source material. Although whakapapa is obviously the key to tribal relations, it is not abundant in the secondary source material. Battles are obviously not the only means of defining relationships between iwi, but they were emphasised by nineteenth and twentieth century writers. Subsequent research should elaborate further on the genealogical bases for defining relationships between iwi and hapu.

Finally, I end with a section compiling information on the whereabouts of iwi in and around Tamaki-makau-rau around 1840, briefly noting the territories of Tai Tokerau iwi as outlined more fully above.

Dates given in the text are those estimated by the sources cited. They are unlikely to be correct, but give a sense of chronology and have been included for this purpose. The maps provided with this chapter are intended to illustrate the text

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5. G Graham, 'History of the Kawerau Tribe of Waitakere', *Journal of the Polynesian Society*, vol 34, no 133, 1925, p 23
6. Simmons, p 232
7. I have also found Morris's *Early Days in Franklin*, Jackson's *Delving into the Past of Auckland's Eastern Suburbs*, Holloway's *Maungarei*, and Simmons in Key's *Mahurangi* helpful, although not always well referenced.
8. The *Muriwhenua Fishing*, *Manukau*, *Orakei*, *Waiheke Island*, *Mangonui Sewerage*, *Te Roroa*, and *Ngawha Geothermal Resource* reports have been consulted here.

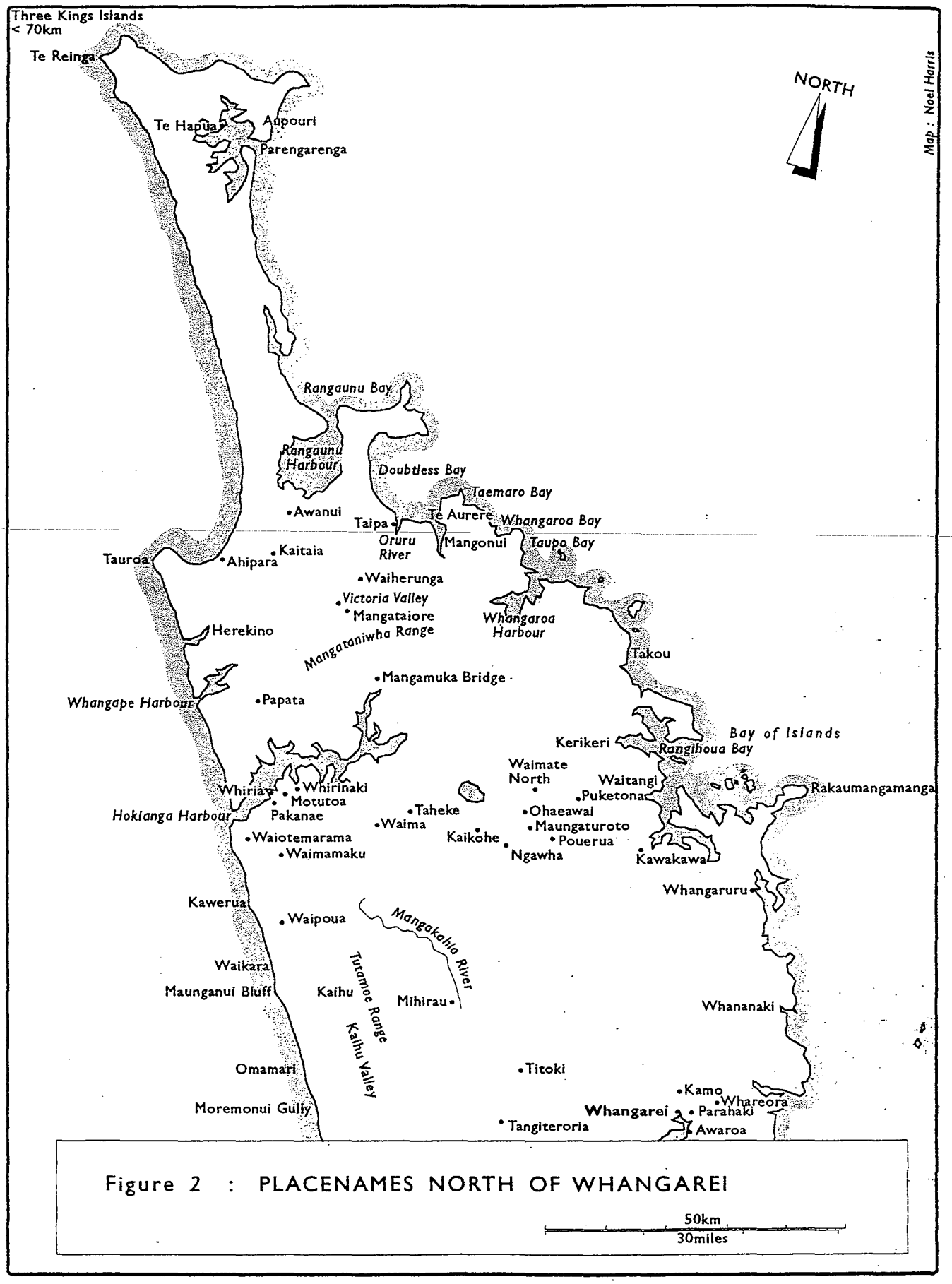

Figure 2 : PLACENAMES NORTH OF WHANGAREI

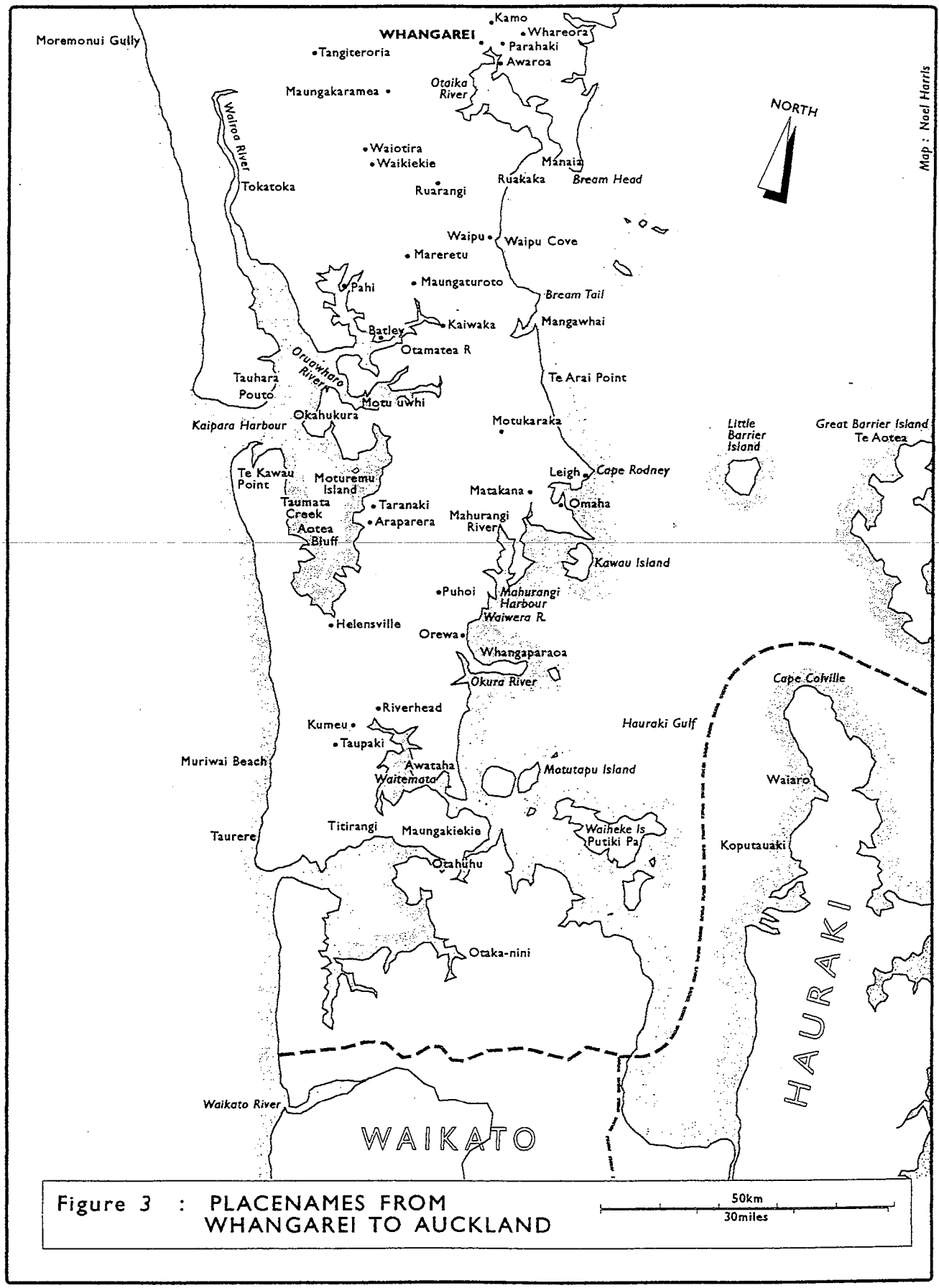

Figure 3 : PLACENAMES FROM WHANGAREI TO AUCKLAND

50km
30miles

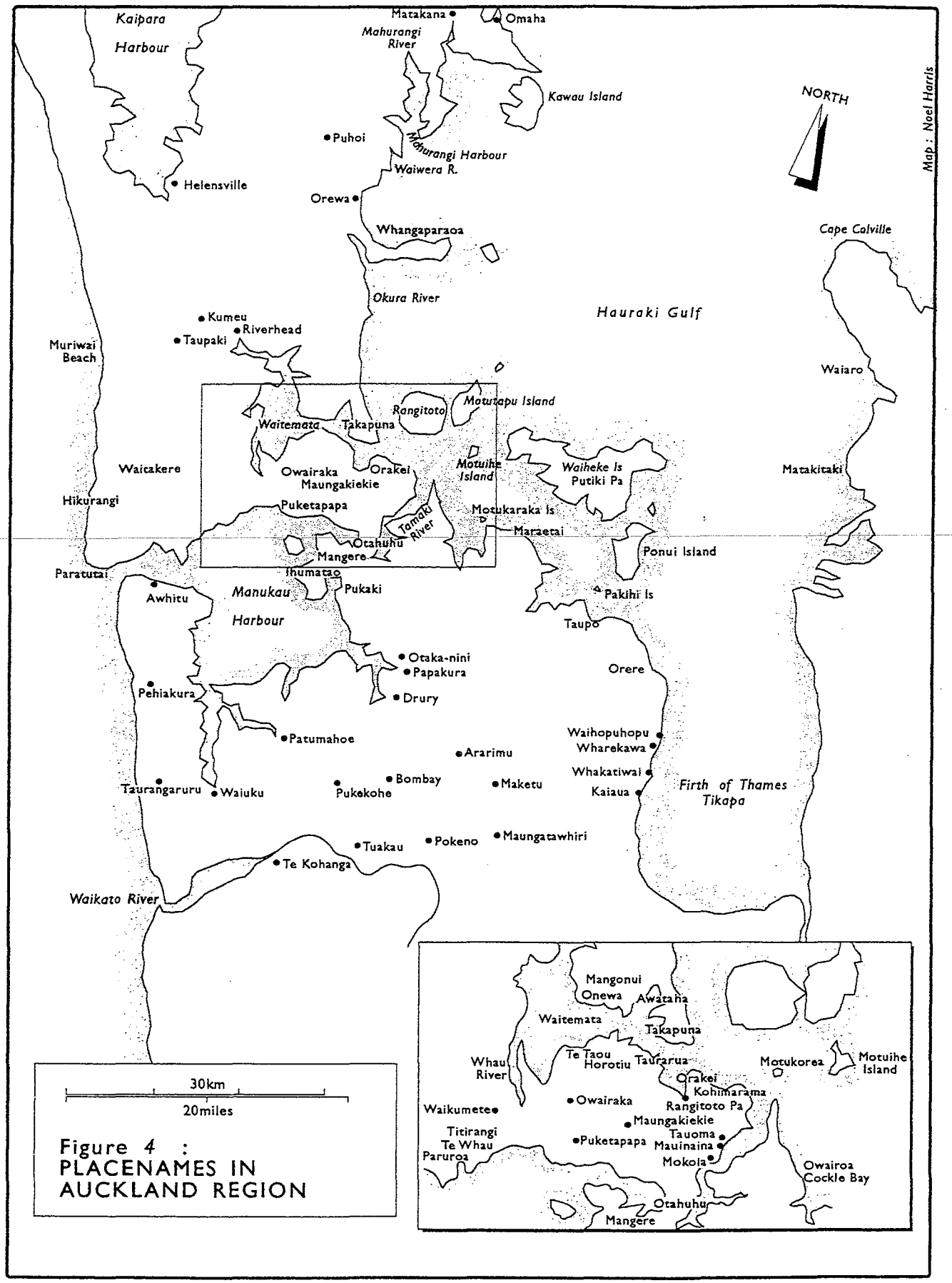

Figure 4 : PLACENAMES IN AUCKLAND REGION

merely as an aid to the reader. The scale used does not allow them to be anything other than generally indicative of where places are located. Again, these are largely derived from secondary source material, and will be subject to amendment by further research.

2.2 THE CANOES

While most tribes acknowledge the existence of tangata whenua[9] living in the north before their 'waka' ancestors arrived, any discussion of relationships between the peoples of the north must look at the accounts describing the migratory waka-travelling ancestors' first settlement and their interaction with each other. Most, if not all tribes, claim descent from the crew of more than one canoe, although some relate more strongly to one canoe crew than others. The following accounts clearly establish the depth of relationship existing between northern tribes and beyond them to such tribes as Te Arawa, Ngati Awa, Ngati Porou, Ngai Tahu and others.

2.2.1 Mahuhu or Mahuhukiterangi

The Mahuhu is often referred to as the ancestral canoe of Ngati Whatua. Smith recorded that Rongomai arrived in the Mahuhu, landing at Whangaroa, voyaging down the coast to Waiapu (near the East Cape), then returning north and rounding the North Cape, where some of the crew settled while others went on to finally remain at Kaipara.[10] Graham also noted that Rongomai was the captain of the Mahuhu.[11]

Te Roroa, in their claim to the Tribunal, stated that the Mahuhukiterangi was captained by Whakatau and that it brought their ancestors to Kawerua, south of the Hokianga, from the far north. Rongomai is identified as Whakatau's son, who married Takarita, a tangata whenua woman.[12] Te Aupouri too held Whakatau to be the captain of the Mahuhukiterangi, which they describe as a principal canoe from whose crew they descended:

> Ko Mahuhukiterangi te waka
> Ko Whakatau te tangata
> Nana ko Hau, ko Kae
> Ta Kae ko nga tupuna o Ruanui
> Te Ruanui ko Ruatapu
> Ka puta ko Te Aupouri[13]

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9. The names for these people have not been mentioned in this report unless part of a 'waka' tradition.
10. S P Smith, *The Peopling of the North: Notes on the Ancient Maori History of the Northern Peninsula and Sketches of the History of Ngati-Whatua Tribe of the Kaipara, New Zealand,* New Plymouth, Polynesian Society, 1897, p 2
11. G Graham, 'Mahuhu the Ancestral Canoe of Ngati Whatua (Kaipara)', *Journal of the Polynesian Society,* vol 48, no 192, 1939, p 186
12. Waitangi Tribunal, *The Te Roroa Report 1992,* Wellington, Brooker and Friend Ltd, 1992, pp 4, 8, 10
13. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim,* Wellington, Department of Justice: Waitangi Tribunal Division, 1988, p 257

Smith stated that Rongomai was an ancestor common to Ngapuhi, Te Rarawa, and Ngati Whatua. He also provided a 'Maori account' of the descendants of those who arrived in the Mahuhu, which emphasised the interwoven relationship between Ngapuhi, Te Rarawa, Ngati-Whatua, Ngati Porou, Ngati Kahungungu, and Tainui: all descendants of Po. Po was Rongomai's son.[14] The following is an extract from the 'Maori account', Smith recorded:

> The people who dwelt at Au-pouri (the North Cape) and the descendants of those who migrated (subsequently) to Waiapu descend from Whatu-tahae, the daughter of Po, who came here in the Mahuhu canoe, which first landed at Whangaroa. Mawete remained at Te Reinga and married Whatu-tahae, to whom was born Whatu-kai-marie. The younger sisters of this first born (*tuakana wahine ariki*) were Poroa and Taiko. Ngapuhi are descended from Taiko, and Ngati-whatua from Whatu-kai-marie. Poroa migrated to Waiapu, and from her are descended Ngati-Porou and Ngati-Kahu-ngunu, because Kahu-ngunu descended from those ancestors; he was born at Kaitaia. From that Ngapuhi ancestor (Taiko?) are descended also Te Rarawa tribe, besides some from the Tainui people, from Rei-tu and Rei-pae, and some of the ancient people of Kaipara who dwell at Maunganui (Bluff), and also at Tokatoka (on the Wairoa River, Kaipara) that is Taoho and others (of the Roroa *hapu* of Ngati-whatua).[15] [The question mark appears in Smith's text.]

Graham mentioned Taiko as the ancestress also of Te Aupouri.[16] However, Smith noted that:

> some of the ancestors mentioned above are disputed, in so far as they were the progenitors of the Ngapuhi tribe, descendants of those who came in Mahuhu. Taiko is said to have belonged to the Ngati-Awa of Whakatane and migrated north, long after the Mahuhu arrived . . .[17]

Another account of the history of the Aupouri, collected by John White from 'Hehi', claimed:

> On their arrival, his (Hehi's) ancestors found the original people of this country living at Wai–apu (near the East Cape). The people of the canoes did not at first settle down (*u tuturu*) at Muriwhenua (the Land's end, the North Cape); they continued on, to this place and that, searching out the best parts of the land. It was the 'descendants of Toi' who lived inland or ashore at that time, and they were seen by his (Hehi's) ancestors at Ohiwa. After a lengthened stay at that place they returned to Parengarenga (near the North Cape). There they settled down permanently. The original people of the land about Kaitaia at that time were the 'people of Kui,' who were afterwards expelled by

14. Graham, 'Mahuhu', p 190; Waitangi Tribunal, *Te Roroa*, p 10
15. Smith, *The Peopling of the North*, pp 2–3. The story of Reitu and Reipae mentioned in this quote is told in many accounts. In one, it is said that the manu of Ueoneone, of Ngapuhi, flew to the Waikato to deliver two young Mataatua ariki women, Reipae and Reitu, as wives. Reipae tarried too long at Onerahirahi and married into Ngati Whatua, but her sister Reitu married Ueoneone (Waitangi Tribunal, *Muriwhenua Fishing*, pp 4–5, 259). Note in the above quote it is said that Whatutahae was Po's child.
16. Graham, 'Mahuhu', p 190
17. Smith, *The Peopling of the North*, p 3

the Ngati-whatua tribe, and settled down at Kopu-tauaki, and beyond, at Tauranga. And so the ancestors of Hehi dwelt in the breadth of the land at Kaitaia.

The migration landed at Wai-apu in New Zealand, and three descendants (of the elder brother?) were born there – Po being the third. When Po was nearly grown up the people migrated to Kaitaia and settled down there, until the time when the child Puhi was born, from whom are descended the Ngapuhi tribe. Then the people spread over the land, and after a time the Ngati-Awa tribe were expelled by Ngapuhi from Kaitaia and Hokianga, and they migrated to Kaipara, and even as far as Taranaki. Some of the Ngati-Awa migrated from Mangonui and, under their chief Kauri, settled down near Tauranga.[18] [The question mark again appears in Smith's text.]

Smith commented that:

> The proof that the account just given refers to the Mahuhu canoe is based on the statement that Po – or probably his parents – came in that canoe. This is not entirely satisfactory, but until further information is to hand it may be accepted, especially as it states that Po's son Mawete married Whatu-tahae, whose daughter Whatu-kai-marie was the ancestor of Ngati-whatua, the tribe of all others that claims Mahuhu as their particular canoe.[19]

He also referred to the similar tradition, recorded by Dr Edward Shortland, but said by Shortland's Rarawa informant to have been in relation to the Kurahaupo canoe (which Smith thought was 'wrong'). The tradition was that:

> Po, Tiki, Ruaewa, and Mawete were some of those who discovered this island . . . They came in the Kurahaupo . . . The ancestors of the tribes who dwell in the south (at East Cape) were Whatu-tahae, a daughter of Po. She married Mawete and from these are descended Ngati-Porou and Ngati-Kahungunu. Some of the children of Po came to this part of the island – Kaitaia – their names were Whatu-kai-marie (another daughter of Po's), Poroa, and Taiko, who were the ancestors of Ngapuhi and Te Rarawa.[20]

Te Roroa said Po was Rongomai and Takarita's son, who is said to have captained the Kurahaupo. Whatukaimarie is said by them to be Po's granddaughter.[21]

2.2.2 Tumoana's migration: the Tinana and the Mamaru

According to Smith, Tumoana and his people settled around Hokianga heads and along the coast northwards. The tradition he noted as being recorded from Te Rarawa, was that Tumoana's hapu 'was conquered by Ngati-whatua and Ngati-Awa' and that:

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18. Ibid, p 7
19. Ibid, p 9. Here it appears that Mawete, not Whatutahae, was Po's child.
20. Ibid, p 10. Here Whatutahae, not Mawete, is Po's child and Whatukaimarie, Poroa, and Taiko are daughters of Po, not his granddaughters. Also, here, Ngati Porou and Ngati Kahungungu descend from Mawete and Whatutahae, and Whatukaimarie, Poroa, and Taiko are ancestors of Ngapuhi and Te Rarawa, with no mention of Ngati Whatua or Tainui.
21. Waitangi Tribunal, *Te Roroa,* p 10

such of Ngati-Tu-moana as were not killed became incorporated in those two tribes, and amongst the descendants of Puhi-moana-ariki (the ancestor from whom Ngapuhi take their name).[22]

In the *Muriwhenua Fishing* claim hearings, Te Rarawa told the Tribunal that the Tinana landed at Tauroa near Ahipara and that Tumoana laid claim to the land between Hokianga and Ahipara as far inland as Mangamuka and Maungataniwha. Tumoana returned to Hawaiiki, but his daughter Kahutianui, and son Tamahotu, remained at Tauroa. The Tinana was adzed a second time and returned to Aotearoa as the Mamaru, with Tumoana's nephew Parata on board.[23]

In the *Muriwhenua Fishing* and *Mangonui Sewerage* hearings, Ngati Kahu claimed descent from the crew of the Mamaru and noted the marriage of Kahutianui, who had awaited the arrival of the Mamaru, and Parata. Ngati Kahu's ancestors settled around Doubtless Bay and Rangaunu Harbour:

Ko Mamaru te waka
Ko Parata te tangata
Ko Kahutianui te wahine
Ko Ngati Kahu te iwi[24]

2.2.3 Moekakara and Te-waka-tu-whenua

Smith recorded that the Moekakara landed between Te Kawau Island and Whangarei. From her crew, he noted, sprang the Kawerau and Ngati Rongo tribes (the latter being a branch of Ngati Whatua). According to Smith, the people of Hauraki and Ngati Whatua conquered the descendants of the Moekakara, who were also said to have been killed by '*tu-whenua* or leprosy'.[25]

Te-waka-tu-whenua is noted by Smith to have landed at a bay just north of Cape Rodney and *her* crew is said to have introduced tu-whenua. The Kawerau 'of Omaha and Mahurangi' are said to have descended from them but, Smith thought, had nearly all died out. White recorded that Te-waka-tu-whenua (which he saw as another name for Moekakara) landed on the south side of Te Arai, where the Ngai-Tahuhu tribe, whose hapu were carried off by tu-whenua, lived, and that Kawerau and the Wai-o-hua descended from the crew of this canoe.

Graham, however, claimed the Kawerau to have been the original people of the Waitakere Ranges, whose occupation pre-dated the arrival of Toi.[26]

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22. Smith, *The Peopling of the North*, pp 10–11
23. Waitangi Tribunal, *Muriwhenua Fishing*, p 259
24. Waitangi Tribunal, *Muriwhenua Fishing*, p 260; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, Wellington, Department of Justice: Waitangi Tribunal Division, 1988, pp 13–14
25. Smith, *The Peopling of the North*, p 12
26. Graham, 'Kawerau', p 19

2.2.4 Matahourua or Matawhaorua and Ngatokimatawhaorua, Kowhaomatarua, or Ngamatawhaorua

Smith noted that Ngapuhi claim descent from Kupe and cited the name Hokianga as a commemoration of Kupe having left that place to return to Hawaiiki, the full name being Te Hokianga-o-Kupe (the returning of Kupe).[27] He observed that:

> In an account of the Rarawa ancestors, in Mr. G. H. Davis' possession, the Mata-hourua canoe is claimed as being one in which some of their ancestors came to New Zealand, but they call it Kowhao-mata-rua, and say that Nuku-tawhiti came in her. This is, however, a mistake, as will be seen later on. Hone Mohi Tawhai told me that Kowhao-mata-rua or Nga-mata-whaorua is the name generally given in the north to Kupe's canoe (which is Mata-hourua in the south), and that he was not aware who were Kupe's descendants living at Hokianga when the Mamari canoe arrived, but one of those, named Te Tahau, married Ihenga-para-awa, a descendant of Nuku-tawhiti's . . .[28]

In the Muriwhenua fishing claim, Te Rarawa stated that after Kupe returned to Hawaiiki, his descendant Nukutawhiti returned in his canoe, readzed and now called Ngatokimatawhaorua, and that his progeny included Ruanui (the second) and Wheeru.[29] The Ngapuhi hapu which brought the Ngawha claim held that Kupeariki captained the Matahourua, and Nukutawhiti, Ngatokimatawhaorua, both canoes giving birth to Ngapuhi.[30] Te Roroa, who have both Ngapuhi and Ngati Whatua connections, also claimed descent from Matahourua and Ngatokimatahourua.[31]

2.2.5 Kurahaupo or Kurahoupo

Smith recorded that some northern tribes, 'especially Te Rarawa, who live along the coast northward from Hokianga Heads – at Ahipara, Kaitaia, and other places', claimed the Kurahoupo canoe brought some of their ancestors here. He stated that very little was known of this canoe and:

> if the Taranaki people are to be believed . . . she never came to New Zealand at all, but was wrecked . . . her crew coming across in the Mata-atua canoe.[32]

He concluded that:

> All the authority we have for supposing that some of the crew of Kura-houpo settled in the north is that already quoted under the head of 'Mahuhu,' wherein it is stated that Po, one of the ancestors of Te Aupouri people, came in Kura-houpo, and the following

27. Smith, *The Peopling of the North*, p 14
28. Ibid, p 15
29. Waitangi Tribunal, *Muriwhenua Fishing*, pp 258–259. Wheeru is a key figure in the ancestry of a number of tribal groups and links into the genealogies of the descendants of the crew of many waka – see M Kereama, *The Tail of the Fish: Maori Memories of the Far North*, Auckland, Oswald-Sealy, 1968.
30. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993*, Wellington, Brooker and Friend Ltd, 1993, pp 13–14
31. Waitangi Tribunal, *Te Roroa*, p 5
32. Smith, *The Peopling of the North*, p 15

brief statement from Te Rarawa tribe: '*Ko Kura-houpo te waka, te tangata o runga ko Po*' – 'Kura-houpo was the canoe, the man on board was Po.'[33]

However, that is not the view of the northern tribes today. The Kurahaupo is generally acknowledged as an ancient and sacred canoe. Some hold that the Kurahaupo was wrecked on a rock, Wakura, and that the crew struggled ashore; others say that Po, the captain, brought the canoe in safely and tied it to Wakura, but it became waterlogged and was dragged ashore by them and Te Ngaki, the tangata whenua. Still others believe the Kurahaupo to have been repaired and later travelled south. This would explain the many tribal connections claimed to the Kurahaupo, including those in the Taranaki district and Ngati Mamoe and others of Murihiku.[34] In the Muriwhenua fishing report it was noted that:

> Po-hurihanga of Kurahaupo married Maieke, a chiefly woman of Te Ngaki, and their daughter was named Muriwhenua. In due time the tribe resulting were known as Ngati Kuri, although that name was adopted much later. Another elder speaking at the Te Hapua hearing claimed Po-hurihanga, Pipi and Muri-te-whenua were the three principal men on Kurahaupo and that from their descendants there emerged the four other Muriwhenua tribes Ngati Kahu, Te Rarawa, Te Aupouri and Ngai Takoto.[35]

Ngai Takoto claimed descent from Tuwhakatere. He married Tuterangiatohia, the daughter of Hikiraaiti, who was the great grandson of Uenuku, the son of Whata-kaimarie, or grandson of Pohurihanga.[36]

2.2.6 Mataatua

Smith noted that the Rarawa papers in G H Davis' collection said that Miru-pokai came in the Mataatua canoe and that he settled at Herekino and Whangape, and became the progenitor of Ngati Kuri. Miru-pokai's offspring – Po, Nuku-tawhiti (said here to be of the Mamari canoe), and Rua-nui (said to be of the same canoe) married with the 'original people' of the land.[37] In another account, by Takaanui Tarakawa, produced and translated by Smith in a separate article,[38] it was said that:

> after landing part of her crew at Whakatane, in the Bay of Plenty, the rest of them took the canoe and sailed north, finally settling down at or near Whananake, some miles south of the Bay of Islands.[39]

The hapu of Ngapuhi bringing the Ngawha claim said that Toroa was the captain of the Mataatua, from whom Ngati Awa descended, but also that Puhi was a later captain of the Mataatua and that Ngapuhi descended from this later crew. Puhi was

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33. Ibid, pp 15–16
34. Waitangi Tribunal, *Muriwhenua Fishing*, pp 255–256
35. Ibid, p 256
36. Ibid, p 258
37. Smith, *The Peopling of the North*, p 16
38. Takaanui Tarakawa, 'The Coming of Mata-atua, Kurahaupo, and Other Canoes from Hawaiki to New Zealand', *Journal of the Polynesian Society*, vol 3, 1894, pp 65–71
39. Smith, *The Peopling of the North*, p 17

Toroa's younger brother, who brought the Mataatua to Northland after an argument with Toroa in the Bay of Plenty. Some say it was this Puhi who was the grandfather of Rahiri, often referred to as the foremost progenitor of Ngapuhi.[40]

In later years, a second Ngati Awa migration is said to have made its way north. Smith stressed that while some of the Mataatua crew had settled at Whananaki *and* Herekino, the 'subsequent sojourn' of other branches of the Ngati Awa tribe under Tihore was 'quite independent' from the heke version. In an account of this subsequent sojourn given by Hone Mohi Tawhai, Ngati Awa arrived at Hokianga and went by land, conquering the north. Their boundaries were described by him as commencing on the west coast, north of Whangape, east to Kaitaia, Maungataniwha and the mouth of the Wangaroa Harbour, then south down the east coast to beyond Whangarei and across to Muriwai on the west coast.[41] These areas were, Smith thought, not all occupied by Ngati Awa at the same time. But he noted Ngati Awa's 'headquarters' during their occupation of the north were at Kaitaia and the Victoria valley and recorded that they were 'frequently at war' with Ngati Whatua, who had also occupied Kaitaia at the time, and Ngapuhi. White claimed Ngati Awa:

> drove the other tribes out of each district they visited; they overran all the Ngapuhi land in the North, and were the cause of that portion of the Ngati-whatua tribe who were located at the North Cape coming south and joining the main body at Kaipara.[42]

But others suggested the movement of that iwi was not forced (see below).

A number of different reasons are given for Ngati Awa's subsequent departure from the north, including the constant warfare and a shortage of food. Smith noted Ngati Awa Pa and burial grounds in existence at the entrance to Whangape Harbour, Te Kopuru on the Wairoa river, Aotea Bluff in southern Kaipara and the Auckland isthmus, and concluded at one stage that Ngati Awa must have stayed in at least the Kaipara district for some time 'on their return from the north'.[43] He thought their departure must have been voluntary and noted Te Uri-o-Hau, Ngai Tahu and Ngati Kahu as Ngati Awa descendants (see below, under 'Mamari').[44]

Others record Ngati Awa as having sent a war party north to take possession of Tamaki, following which they are said to have established themselves at Owairaka (Mt Albert, named after Wairaka, Toroa's daughter) and Maungakiekie, over which Titahi, a Ngati Awa chief, then held sway, along with other hilltop pa.[45] Simmons stated that Muriwai was named after Wairaka's sister, Muriwai, and that:

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40. Waitangi Tribunal, *Ngawha Geothermal Resource*, p 14; Waitangi Tribunal, *Muriwhenua Fishing*, p 262
41. Smith, *The Peopling of the North*, pp 39–40. D R Simmons, 'Mahurangi – Fact and Legend', in *Mahurangi River, Its Story*, HJ Keys (ed), Warkworth, The Friends of Mahurangi, 1983, p 3, extends the southern boundary of Ngati Awa's territory at this time to Takapuna (North Head) and the Manukau Heads.
42. Smith, *The Peopling of the North*, p 40
43. Ibid, pp 41–42
44. Ibid, pp 44–46, 59
45. K M Holloway, *Maungarei. An Outline History of the Mt Wellington, Panmure and Tamaki Districts*, Auckland, Mount Wellington Borough Council, 1962, p 24. This was supposedly at the same time as Te Arawa's early migration to Tamaki (see below, under 'Te Arawa').

> Wairaka eventually joined her people at Whakatane, leaving some of her tribe, the Ngati Wai, to occupy Owairaka and Puketapapa, the flat top hill of Mt Roskill.[46]

Smith considered that if it were true that some of the Auckland pa were built by Ngati Awa 'the tribe must have been living on terms of amity with Wai-o-hua tribe, which occupied that country long before and long after the passage of Ngati-Awa'.[47]

References to a Ngati Awa migration to Tamaki-makau-rau between the fourteenth and sixteenth centuries appear to be separate from this.[48]

2.2.7 Mamari

Smith stated that both Nukutawhiti and his brother-in-law Ruanui came in the Mamari, settled at Hokianga heads and became the principal progenitors of the Ngapuhi tribe.[49] The Mamari was subsequently taken on towards the south and was wrecked at Omamari, about ten miles south of Maunganui Bluff. Hone Mohi Tawhai told Smith that it was from Nukutawhiti that Ngapuhi chiefs of the Hokianga were 'most anxious to trace their descent'.[50] The tribe was however 'much mixed' with the descendants of those who came in other canoes and the tangata whenua. Ruanui became one of the progenitors of Te Rarawa and Au-pouri tribes.[51]

The Ngapuhi hapu represented in the Ngawha claim held that Ruanui came in the Mamari or Ngatokimatawhaorua and from there Ngapuhi descended. It was said that Nukutawhiti and Ruanui were in-laws and that the two canoes arrived one after the other in close succession. The Tribunal commented:

> When the descendants of Ruanui became more numerous and they separated from the descendants of Nukutawhiti, they took the name Ngati te Aewa, then Ngati Ruanui, and much later, Te Rarawa. Because of the wars between other descendants of Nukutawhiti and Ruanui, Te Aupouri also came into being. In the light of such ties it is not possible to separate Te Rarawa and Te Aupouri completely from Ngapuhi.[52]

In the Muriwhenua fishing hearings Te Aupouri, also formerly known as Ngati Ruanui, claimed:

> Ko Ruanui te tangata
> Ko Mamari te waka
> i uu mai ki Ripino[53]

It is often stated that Rahiri is the founding ancestor of Ngapuhi. Sissons, Wihongi and Hohepa noted it was widely agreed in Ngapuhi genealogy and tradition that

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46. D R Simmons and G Graham, *Maori Auckland*, Auckland, Bush Press, 1987, p 28
47. Smith, *The Peopling of the North*, p 42
48. Simmons 'Mahurangi', p 3
49. Note that in other accounts Nukutawhiti and Ruanui came in Ngatokimatawhaorua, or Nukutawhiti came in Ngatokimatawhaorua and Ruanui in the Mamari.
50. Smith, *The Peopling of the North*, pp 20–21
51. Ibid, p 21
52. Waitangi Tribunal, *Ngawha Geothermal Resource*, p 13
53. Waitangi Tribunal, *Muriwhenua Fishing*, p 257

Rahiri was the son of Tauramoko and his wife Hauangiangi, and that Tauramoko was a descendant of Nukutawhiti. They also noted that Ngapuhi tatai generally agreed that Rahiri's mother, Hauangiangi, was a daughter of Puhimoanaariki, the eponymous ancestor of Ngapuhi.[54] They highlighted the relationship between Ngapuhi, Ngati Awa and Ngai Tahuhu. Sissons, Wihongi and Hohepa stated that:

> Puhi-moana-ariki, also known as Puhi-kai-ariki and Puhi-taniwha-rau, was in turn a descendent of Awa and his son Awanui, the founding ancestor of Ngati Awa, an early Northland tribe.[55]

Wiremu Wi Hongi notes that in Rahiri's time, prior to the rise of Nga Puhi as a tribe, Ngati Awa built and occupied many pa within their territory, which extended east from Hokianga to Te Waimate, and north to Whangaroa. They were defeated, he adds, by the early Te Waimate tribes, Ngati Miru and Te Wahineiti, and by the Taiamai and Whangaroa people, Ngati Pou. A C Yarborough wrote, in 1906, that Rahiri's people and Ngati Pou forced Ngati Awa to retreat northwards, abandoning Whiria and other Hokianga pa.[56]

They later noted that the genealogies also indicated that Rahiri's father, Tauramoko, 'a descendent of the Mamari immigrants', married into Ngati Awa.[57]

Around the time of Ngati Awa's occupation, Sissons, Wihongi and Hohepa held, Ngai Tahuhu lived on lands to the south, around Pouerua pa. In fact, Rahiri first married Ahuaiti of Ngai Tahuhu and their son, Uenuku, married Kareariki of Ngai Tahuhu at Pouerua. Rahiri left Ahuaiti before Uenuku's birth and returned to Pakanae, Hokianga, where he married Whakaruru, of Ngati Awa, by whom he had a second son, Kaharau, of Pakanae, Hokianga.[58] It was from these two 'sides', they stated, both genealogical and geographical, that Ngapuhi grew. The descendants of Kaharau grew in the Hokianga district, and the descendants of Uenuku grew in the inland Bay of Islands around Pouerua. These two 'sides' were later re-connected through the marriage of Kaharau's son, Taurapoho, to Uenuku's daughter, Ruakiwhiria.[59]

2.2.8 Te Arawa

The Arawa canoe landed at Maketu with Tamatekapua at the helm. Smith noted that it is from Tamatekapua's grandson, Ihenga, that Ngati Whatua trace descent, although his other grandsons, Tara-mai-nuku and Warenga lived in the north. Smith related the Arawa account told to Shortland. Tara-mai-nuku migrated to Kaipara and settled on the north head, at Poutu, at this time occupied by 'the people of Ripiro', the descendants of those who came in the Mahuhu canoe. Ihenga and his uncle Kahu

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54. J Sissons, W Wihongi, and P W Hohepa, *The Puriri Trees are Laughing: A Political History of the Nga Puhi in the Inland Bay of Islands*, Auckland, Polynesian Society, 1987, pp 51–54
55. Table 24; Tawhai, letters to S P Smith, Waima, 1892; Stowell, Maori notes 5; Clendon, genealogies
56. Ibid, p 54; A C Yarborough, 'Ngati-Awa in the North', *Journal of the Polynesian Society*, vol 15, no 60, 1906, p 222
57. Ibid, p 56
58. Ibid, pp 57, 62–65, 76
59. Ibid, p 76

travelled from Whaingaroa, Waikato, and Manukau, to the southern Kaipara to visit Tara-mai-nuku. They there met some of Tara-mai-nuku's people, who took their party down the harbour to Poutu. Kahu stayed there a while, then returned to his home in Rotorua via Waitemata and Cape Colville, where he visited his relatives Huarere (another grandson of Tamatekapua and Ihenga's brother). He took Tara-mai-nuku's daughter, Hine-tu-te-rau-niau, back with him as a wife for his son Uenuku.

Ihenga stayed with this brother Tara-mai-nuku at Kaipara and then went on to Kawakawa, Bay of Islands, to visit his elder brother, Warenga, with whom he stayed a while. Next, he travelled with Warenga's son, Maiao, to Whangarei, where they are said to have found Tahu-whakatiki, the eldest son of Hei, who had settled there 'on the first coming of Te Arawa canoe'. With Tahu's two sons, Te Whara and Hiku-rangi, he turned toward home in a canoe provided to him by Tahu's whanau. They travelled across the Hauraki Gulf to Cape Colville to visit Huarere, and after staying there a while returned to Maketu. Smith noted that Maiao 'was the father of Te Kapotai, who was an ancestor of Tamati Waka Nene of Ngapuhi'.[60] He stated that White had obtained a confirmation of this occupation of Kaipara by the descendants of Tamatekapua from the Ngati-kahu-koka tribe, which 'formerly lived on Manukau South Head':

> Speaking of the descendants of those who came in the Mahuhu canoe and who settled at Kaipara Heads as has been shown, the story says, 'Some of them were killed, and others driven away from the district by the descendants of Tama-te-kapua, who had come from Cape Colville, and some became amalgamated with Te Arawa descendants of Tama-te-kapua who at that time became their masters.[61]

Holloway recorded an account differing from the above. She noted that after landing at Whangaparaoa the Arawa people travelled north-west to the Waitemata where Tamatekapua's grandson Ihenga conquered Motuihe and named it Motu-a-Ihenga, then went back to Maketu. She stated that Tama-te-Kapua's son Kahumatamomoe:

> settled at Orakei, giving his name to Okahu Bay and Pa. Kahu also took possession of Waiheke, which he re-named Motu-nui-o-Kahu (the large island of Kahu); Putiki Bay was then Whanganui-o-Kahu and the pa above it was Te-putiki-o-Kahu (the top-knot of Kahu) . . .[62]

Graham claimed Ngati Huarere occupied pa at 'Orakei, Fort Britomart, Queen Street, Three Kings and other places, until the final conquest of the Tamaki Isthmus'.[63]

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60. Smith, *The Peopling of the North*, pp 30–31
61. Ibid, p 32
62. Holloway, p 19
63. Barr and Graham, pp 8–9

2.2.9 Takitimu

The Takitimu has also been claimed as a canoe of Ngapuhi. Under the command of Tamatea-mai-tawhiti, it is said to have landed at Awanui, near Kaitaia, and later sailed down the east coast before finally returning to the north. The Tribunal noted in the *Ngawha Geothermal* report that from the union of Tamatea-mai-tawhiti and Te Kura came Takitimu links to all the tribes of Taitokerau.[64] In the *Roroa* report the Tribunal recorded:

> the Mahuhu line of descent was linked to the Takitimu canoe when Te Kura married its captain (or his grandson) Tamatea-pokai-whenua, circumnavigator of land and sea. The name Ngai Tamatea comes from him and applies to many bands of his descendants.[65]

Elsdon Best too recorded a tradition, told to him by Matiu Kapa of Te Aupouri, in which the Takitimu was said to have first landed in Muriwhenua. In this account the landing was at Rangaunu and Ngai Tamatea lived there and at Kaitaia before heading south via Te Aurere (near Mangonui).[66]

2.2.10 Tainui

Leslie Kelly noted that the Tainui arrived captained by Hoturoa at Whangaparaoa and from there it went north, at length entering the Hauraki Gulf. He continued:

> here considerable confusion exists in the accounts of her movements from that point. Some traditions state that she first sailed north to Muriwhenua, the North Cape region, and later returned to Tamaki; other accounts by Rore Eruera and Te Tahuna say she first visited Tamaki and then proceeded to the west coast by way of the North Cape. Most accounts, however, assert that Tainui was dragged across the Tamaki isthmus to the Manukau from which place she proceeded to Kawhia.[67]

The Tribunal were told by Manukau iwi that the Tainui canoe came into the Waitemata and was then hauled across Tamaki isthmus to the Manukau, where it stayed for a while before moving south. Some of the crew married the 'original inhabitants' and their descendants are included in the Waikato-Tainui hapu which occupy the Manukau today.[68]

Ngati Tamaoho claimed descent from Papaka, who was put off the Tainui in the middle of the Manukau Harbour and is said to have swum to the sand bar in the interior of the waters where he survived on the kaimoana of the harbour.[69]

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64. Waitangi Tribunal, *Ngawha Geothermal Resource*, p 14
65. Waitangi Tribunal, *Te Roroa*, p 10
66. E Best, *Tuhoe: The Children of the Mist*, New Plymouth, The Board of Maori Ethnological Research on behalf of the Polynesian Society, 1925, pp 688–689. Dr Barry Rigby (pers comm) adds that Maori Marsden believed that Panakareao's interests at Ororu/Mangonui were based on his Ngai Tamatea descent.
67. L G Kelly, *Tainui: The Story of Hoturoa and His Descendants*, Wellington, The Polynesian Society, 1949, pp 50–51. See also G Graham, 'Tainui', *Journal of the Polynesian Society*, vol 60, no 1, 1951, pp 80–92. Kelly's account came from the accumulated notes of Pei Te Hurinui Jones. See Michael King, *Te Puea. A Biography*, Auckland, Hodder and Staughton, 1977, p 237.
68. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wellington, Department of Justice: Waitangi Tribunal Division, 1985, p 10
69. Ibid

Graham noted that the chief Te Kete-ana-taua came north in the Tainui but remained with the local people and 'became the ancestor of Ngai-tai of those parts'. He stated Ngai Tai were the 'owners' of the Takapuna district as far north as Mahurangi, including Kawau, Great Barrier, and other islands. He noted that once they crossed into the Manukau the Tainui crew voyaged southwards to Mokau, eventually settling at Kawhia, spreading inland from there to Waikato, Hauraki and 'eventually to Tamaki'.[70]

Holloway also recorded that Te Kete-ana-taua settled amongst the tangata whenua at Taurere, but added that he was accompanied by his son, Taihaua, and that Taihaua was the ancestor of 'Ngaitai of Howick'. She noted other Tainui crew members settling at Tamaki, including Riukiuta, of Three Kings, or Te Tatua o Riukiuta. Holloway later noted that Ngaitai had its chief pa at Owairoa (Cockle Bay), and extended from Maraetai to the eastern shore of the Tamaki, although at the time of their ascendancy, Ngati Paoa took possession of the westward shore of the Tamaki and of Motukorea and 'the Arawa-held island of Motuihe'.[71]

2.2.11 Other canoes

Other canoes cited by the sources include the Aotea,[72] Ruakaramea (with Mirupokai at the helm),[73] and (perhaps) the Tokomaru[74] and others.[75]

2.3 NGATI WHATUA'S MIGRATION SOUTH

Of Ngati Whatua, Smith wrote:

> We have already seen that as the Mahuhu canoe passed round the North Cape, some of her crew settled down there, and increased and multiplied, gradually extending their borders, until, in the time of the Ngati-Awa invasion we find them under the name of Ngati-Whatua in the Kaitaia district and the Victoria valley.[76]

There, they were constantly at war with Ngai Tamatea and Ngati Awa and, according to Smith, played an 'important part' in the final departure of Ngati Awa.[77]

Smith's narrative suggests that it was utu which led Ngati Whatua to move south to expel Ngati Awa living there. He noted that although Ngati Awa 'as a tribe' left Kaitaia, one or more of their hapu remained behind; amongst them Ngati Kahu. According to Paora Tuhaere, Smith noted, this tribe killed Taureka, of Ngati

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70. Barr and Graham, p 7
71. Holloway, pp 21–24. Smith notes that Te Kete-ana-taua was a 'Ngati Tai' ancestor who came in the Tainui and settled at Taurere on the Tamaki River, not far from Tamaki Heads on the west side (*The Peopling of the North*, p 34).
72. Simmons and Graham, pp 24–26; Jackson, pp 7, 9; Holloway, pp 17, 24
73. Kereama, p xiii
74. Holloway, pp 17, 24
75. See Smith, *The Peopling of the North*, pp 12–13
76. Smith, *The Peopling of the North*, pp 47–48
77. Note, however, that under 'Mataatua' above, White appears to imply that Ngati Awa routed Ngapuhi and Ngati Whatua, and that Ngati Whatua's migration south to Kaipara was forced by Ngati Awa.

Whatua. Smith described this as the 'immediate cause' of Ngati Whatua's migration to Kaipara where 'Taureka's death is referred to as a *kohuru*'. The 'offender' belonged to Ngati Kahu of Hokianga and 'on that people fell the wrath of Ngati-Whatua'.[78] Smith concluded:

> In seeking *utu* for the *kohuru* of Taureka, Ngati-Whatua, as Paora Tu-haere says, conquered Hokianga. This means, I take it, the north shore of Hokianga and the Heads, and from there as far as Maunga-nui Bluff, twenty-five miles south of there; for the Mahurehure people of inland Hokianga have never, it is said, been conquered.[79]

According to Smith, Ngati Whatua soon crossed over the Bluff and occupied the Kaihu valley, further driving away Ngati Awa. However, as noted above, Smith thought that Ngati Awa's migration was voluntary, because many of the Uri-o-Hau hapu of Ngati Whatua claimed descent from Ngati Awa hapu, as did Ngai Tahu and Ngati Kahu.[80]

Most attribute Ngati Awa's move from the north as Ngapuhi's doing. Yarborough noted that '[t]en generations ago Ngati-Awa were masters of all Hokianga and the north, and yet by the efforts of one man, Rahiri, they would seem to have become fugitives, from Maunga-nui Bluff to Taheke on the upper Hokianga'.[81] Smith refers to this as well, noting that the war with Ngati Awa commenced in Te Hau's time, continued during the time of Rahiri, during which time the main exodus occurred peacefully, and ended with the last departures taking place in Kaharau's time. With Ngati Awa, as one of their principal leaders, went Titahi, son of Rahiri and brother of Kaharau. It was these people who were said to have lived at Kaipara for many years.[82]

In the early seventeenth century, according to Smith, Ngati Whatua had advanced down to Kaipara heads and occupied the lands around Tauhara and Poutu.[83]

2.4 BORDERLANDS TO THE NORTH OF TAMAKI-MAKAU-RAU

The present Muriwhenua claim boundaries are from Whangape Harbour on the west coast to Mangonui on the east, including the outlying islands.[84] Ngati Kuri, Te Aupouri, Te Rarawa, Ngai Takoto and Ngati Kahu lands are within its boundaries.

The Tribunal has already acknowledged that Ngati Kahu were caught between Te Rarawa on the west and Ngapuhi to the immediate south-east. It stated that:

> Both became major contenders for the Ngati Kahu lands. Taipa-Oruru lay midway between the rivals' home bases, and inland valley routes put Oruru within easy reach.

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78. Smith, *The Peopling of the North*, pp 47–48, 57
79. Ibid, p 58
80. Ibid, p 59
81. A C Yarborough, 'Ngati-Awa in the North', pp 221–223
82. Smith, *The Peopling of the North*, pp 46–47
83. Ibid, p 65
84. Waitangi Tribunal, *Muriwhenua Fishing*, p 3

It assisted Ngati Kahu a little that Te Rarawa and Ngapuhi were both their blood relations. They were conquered but not driven from their lands. The main question was whether they should acknowledge Te Rarawa or Ngapuhi as holding an authority in the Bay, or whether they could maintain an independence of their own.

From at least the 1810s, members of both Te Rarawa and Ngapuhi occupied different parts of the Ngati Kahu lands. In the crucial Taipa-Oruru area, Ngati Kahu were joined by Te Rarawa towards the coast and by Ngapuhi further inland. The position was uncertain when the European settlers came, and as shall be seen, the control of the Taipa-Oruru area, the choicest part of Ngati Kahu lands, was to be crucial in the subsequent contentions.[85]

To the south-east, as noted above, lived Ngapuhi. Jack Lee described the 'boundaries of the territory occupied by Ngapuhi' by reference to what he described as 'chants'. He believed the 'first chant' to relate to the mid-eighteenth century, before Ngapuhi expanded to the east coast 'from their home territory inland and at Hokianga'. It proclaimed:

Titiro e Whiria ki Pa-nguru
Maunga-kenana, ki Maunga-taniwha
Ki Whakarongo-rua, ki Ngaia-tonga
Ki Te Ranga, ki Pare-mata, kapo ai
Titiro Hiku-rangi, ki Tutamoe
Whakatere, Puke-huia, Rama-roa

Ko nga maunga enei o Nga-Puhi, e
E nga kawe korero, a nga tupuna, e
Ka tau ratou o haki [e te] iwi
Whakapono, tumanako, aroha
(From Graham Rankin, Kaikohe)

Translated:

Look from Whiria to Pa-nguru
Maunga-kenana to Maunga-taniwha
To Whakarongo-rua, to Ngaia-tonga
To Te Ranga, to Pare-mata, reach out
Look to Hiku-rangi, to Tutamoe, Whakatere, Puke-huia, Rama-roa

These are the Mountains of Nga-Puhi
The story brought to us by our ancestors
Our challenge of the pride of our people
Truth, longing, love[86]

Lee noted the inclusion in this first chant of a Ngapuhi occupation at the south of the Mangonui Harbour and suggested it was:

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85. Waitangi Tribunal, *Mangonui Sewerage*, p 16
86. J R P Lee, *I Have Named It the Bay of Islands*, Auckland, Hodder and Stoughton, 1983, p 290

perhaps the land taken there by Te Hotete before his initial attack on Te Rawhiti . . . later involved in the Government's notorious Mango-nui purchase, when its ownership was in dispute between Nga-puhi and Rarawa.[87]

Lee thought the 'second chant' reflected the great change in Ngapuhi fortunes about the end of the eighteenth century-early part of the nineteenth 'by which time the whole of the Bay coast between Takou and Rakau-mangamanaga (Cape Brett) was under the tribe's domination'. However, he thought the inclusion of the 'Ngati-Wai and Ngai-Tahuhu lands to the south' appeared 'a little ambitious'.[88] The second chant stated:

Te Whare o Nga-Puhi

He mea hanga
Ko papa-tuanuku te papa-rahi
Ko nga maunga nga poupou
Ko te rangi e titiro iho neu te tuanui

Puhanga-tohora titiro ki Te Rama-roa
Te Rama-roa titiro ki Whiria
Ki te paiaka o to riri, ki te kawa o Rahiri
Whiria titiro ki Pa-ngu-ru, ki Papata
Ki te rakau tu papata i tu ki te Tai-ha-uru

Pa-nguru Papata titiro ki Maunga-taniwha
Maunga-taniwha titiro ki Tokerau
Tokerau titiro ki Rakau-mangamanga
Rakau-mangamanga titiro ki Manaia
Manaia titiro ki Tua-moe
Tutamoe titiro ki Manga-nui
Manga-nui titiro ki Puhanga-tohora
Ko te whare ia tenei o Nga-Puhi
(From Eru Opu, Kaikohe)

Translated:

The House of Nga-Puhi

This is how it is made
The earth is the floor, the mountains the supports, the sky we see above is the roof
From Puhanga-tohora look toward Te Rama-roa
Te Ramaroa toward Whiria – the seat of our war-like prowess, the ancestral line of Rahiri
From Whiria look toward Pa-nguru – to Papata, to the thickly growing trees which extend to the western sea
From Pa-nguru and Papata toward Maunga-taniwha

87. Ibid. Dr Barry Rigby (pers comm) suggests that Lee's reference to Kenana as an early boundary point begs the question: how early? Dr Rigby suggests that since Kenana is a transliteration of the biblical Canaan it could not have been earlier than 1820.
88. Ibid, pp 289–290

> From Maunga-taniwha look toward the Bay of Islands
> From the Bay to Cape Brett and from there to Whanga-rei Heads (Manaia)
> From Manaia to Tuta-moe: from Tuta-moe to Manga-nui Bluff: and from the Bluff look toward Puhanga-tohora
> This is the house of Nga-Puhi[89]

This latter chant is similar to Ngapuhi boundaries described by the Ngapuhi hapu which brought the Ngawha claim. They held Ngapuhi's boundaries to constitute: Puhanga Tohora – Te Ramaroa – Whiria – Panguru – Papata – Maungataniwha – Tokerau – Rakaumangamanga – Manaia – Tutamoe – Puhanga Tohora.[90] The areas of the two 'chants' referred to above are mapped in Jack Lee's *I Have Named It the Bay of Islands*.

However, Shaw thought that, at the end of the eighteenth century, Waitangi 'could not have been in Ngapuhi hands' and in fact 'did not become so until well into the new century'. He noted that it was from Ngati Pou that in May 1815 missionaries William Hall and Thomas Kendall purchased 50 acres at Waitangi (from Waraki, the Ngati Pou chief) for the sum of five axes.[91] He thought that Ngapuhi pressure made Waraki's hold on Waitangi 'extremely tenuous' but that a Ngapuhi 'takeover' was not achieved until the marriage of Ruatara (of Ngati Rahiri, Ngapuhi) to Waraki's daughter. But even this did not bring 'immediate peace and security'.[92] Sissons, Wihongi and Hohepa's conclusions appear to support and develop this view. They stated that prior to the time of Taurapoho and Ruakiwhiria's[93] great-great-grandson's, Auha and Whakaaria (which they suggested was probably prior to 1770):

> the area from Taiamai to Te Waimate and Kerikeri and south-east to Te Rawhiti and the islands off the coast, was not occupied by Nga Puhi.
>
> The traditions to be presented in this part of the report tell us that in Auha and Whakaaria's time, Ngati Miru and Te Wahineiti, two closely related *hapu* not descended from Rahiri, lived in the Te Waimate-Kerikeri district. A third *hapu*, Ngati Pou, lived south of Te Waimate near Ohaeawai, and north of Te Waimate at Whangaroa. Ngati Pou were descendants of Kaharau's son, Tupoto, but did not belong to either the northern or southern alliance and are not normally regarded as a Nga Puhi *hapu*. A confederation of non-Nga Puhi *hapu* known as Ngare Raumati occupied the Te Rawhiti district and the islands of the eastern Bay of Islands.
>
> Nga Puhi traditions which follow tell us that over the period from about 1770 to 1826, the northern alliance extended its territory from Kaikohe to Te Rawhiti in three phases. Firstly, probably sometime in the 1770s, Ngati Miru and Te Wahineiti were defeated at Te Waimate and Kerikeri. Next, around 1800 or a little after, Ngare Raumati were attacked at Te Rawhiti by Auha's son, Te Hotete. This gave the northern alliance

89. Ibid, pp 290–291
90. Waitangi Tribunal, *Ngawha Geothermal Resource*, p 11
91. This transaction does not appear to have resulted in an old land claim. Busby claimed Waitangi on the basis of 1834–35 transactions.
92. P Shaw and P Hallett, *Waitangi*, Napier, Cosmos, 1992, p 11. Note there were both Ngapuhi and Ngati Pou settlements around the Bay of Islands at this time. This appears also to have been true of settlements around Whangaroa.
93. Taurapoho and Ruakiwhiria were Kaharau's son and Uenuku's daughter.

only partial victory however, and it was not until muskets had been acquired, in part through trading advantges promoted by the establishment of mission stations at Rangihoua, Kerikeri and Paihia, that they were able to finally defeat Ngare Raumati in 1826.

Ngati Pou were defeated at Taiamai by Ngati Rangi and other *hapu* of the southern alliance in the 1790s.[94]

Sissons, Wihongi and Hohepa subsequently commented that probably the major hapu at Rangihoua was Te Hikutu, which was also, 'but perhaps not originally', a Hokianga hapu closely related to Ngati Korokoro and Ngati Pou of Whirinaki-Waimamaku. After their defeat at Taiamai, during 1815–19, Ngati Pou became divided, with settlements at Hokianga and Whangaroa. Te Hikutu had similarly become divided, but between Hokianga and Rangihoua.[95]

To the south were the borderlands between Ngapuhi and Ngati Whatua. In the south-west these borderlands were occupied by Te Roroa, whom Smith noted to be 'nearly as much Nga-Puhi as Ngati-Whatua'.[96] Te Roroa traditions refer to a boundary marked by a shining yellow rock, Motuhuru, between Ngati Kahu of Waimamaku and the earlier tangata whenua of Waipoua and Maunganui, Ngai Tuputupuwhenua.[97] Smith described Te Roroa territory as being along the coast from Kaihu (modern Dargaville) to near the Hokianga.[98] Ned Nathan of Te Roroa was recorded to have said that the rohe potae over which Te Roroa held mana whenua extended from Waimamaku to as far as Ruawai and Pouto.[99]

Hone Mohi Tawhai told Smith that 'Ngati-Whatua' occupied Wairau, Kawerua, Waipoua, and Waikara between Hokianga heads and Maunga-nui Bluff. Smith wrote:

> The Roroa branch of Ngati-Whatua live on that coast at the present day . . . Maunga-nui is a natural division in that great long stretch of sandy beach which extends from Kaipara to Hokianga Heads, and as such has entered into the 'tribal wisdom' of Ngati-Whatua, who say: '*Ka titiro a Maunga-nui, ka titiro ki Kaipara; ka titiro a Kaipara, ka titiro ki Maunga-nui*' – 'Maunga-nui looks towards Kaipara, and Kaipara looks towards Maunga-nui,' the meaning of which is, that any evil befalling the Roroa *hapu* living to the north of the Bluff, will be known by the smoke signal on Maunga-nui, and *vice versa*, and assistance would be sent.[100]

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94. Sissons, Wihongi, and Hohepa, p 81. But, they note, during the early years of this decade Ngati Rangi were themselves defeated by a Ngati Maru war party from Thames.
95. Ibid, p 34. They note J Binney, *The Legacy of Guilt: A Life of Thomas Kendall*, Auckland, University of Auckland and Oxford Press, 1968, p 94, n 43, has an interesting discussion of this split. Settlements of different but related hapu appear to have existed side by side in many areas. While it may be used here to indicate Ngapuhi's increasing prominence in the Bay, the existence of these 'satellite' settlements emphasises the inappropriateness of defining boundary lines. Identifying human relationships across time and space, rather than defining fixed geographical boundaries, may lead instead to the recognition of tribal borderlands.
96. S P Smith, *Maori Wars of the Nineteenth Century: The Struggle in the Northern Against the Southern Maori Tribes Prior to the Colonisation of New Zealand in 1840*, Wellington, Whitcombe and Tombs, 1910, p 19
97. Waitangi Tribunal, *Te Roroa*, p 9
98. Smith, *Maori Wars of the Nineteenth Century*, pp 20–22
99. Waitangi Tribunal, *Te Roroa*, p 16
100. Smith, *The Peopling of the North*, p 58

As noted above, according to Smith, Ngati Whatua occupied the lands around Tauhara and Poutu by the early seventeenth century.[101]

To the east of Te Roroa lands, perhaps more associated with Ngapuhi than Ngati Whatua, Smith noted, was:

> the home of some tribes known as Ngai-Tahuhu and Parawhau. The former occupy the upper Wairoa and Manga-kahia valleys and the adjacent country, whilst the Parawhau live at Whangarei and the country around that part. There are many minor divisions of these tribes, all of which are connected more or less with Ngapuhi on the north and the Ngati-whatua tribes on the south, but more particularly perhaps with the former. Of the origins of the Parawhau I am unable to speak, but as they occupy the country where some of the crew of Te Arawa canoe are said to have settled under Tahu-whakatiki, and join on their northern border, those of the Mata-atua canoe who settled at Whana-naki soon after the arrival of that canoe, they presumably trace their descent in part from them . . . Whatever their origin, they are closely allied and mixed up with the Ngai-Tahuhu tribe.[102]

O'Shea shed some light on their relationship. He noted that following the death of Te Tirarau of Ngai Tahuhu at the hands of Ngati Wai, his people were called Te Parawhau. He also claimed that Ngai Tahuhu had been driven from the area to the south of that mentioned above, that is 'from Whangarei to Waipu, Waihonga and Tangihua', by Ngapuhi, during the '1700s', and that they also attacked the remaining Ngai Tahuhu living at Tangihua, some of whom escaped to the Kaipara. O'Shea thought that it was possibly because of the 'terrible battles staged there, Maungakaramea was not occupied again by the Maori'.[103]

To the south-west of Ngai Tahuhu and Parawhau were Te Uri-o-Hau. Te Uri-o-Hau were closely related to Ngati Whatua. Smith thought their ancestors came in the Moekakara canoe, but that they took the name Te Uri-o-Hau during the time of Hau-mai-wharangi 'who lived eight generations ago, and who was a pure Ngati-Whatua'. Smith claimed to have found a 'fully-recognised tribal boundary which existed in the time of the Wai-o-Hua occupation of eastern Kaipara, and was the limit of the latter's territory towards the north'. He believed that tribal boundary to be in existence at the time of his writing in 1897, exhibited by parish boundaries. He 'explained' this by noting Te Uri-o-Hau had sold lands to the Government:

> up to their tribal boundaries on the one side, and the Ngati-Rongo and others – who are inheritors by conquest of the Wai-o-Hua lands – did the same on the other side. The boundary runs from opposite Kaipara Heads through Okahu-kura, and thence follows the south boundaries of the parishes of Orua-wharo and Te Arai to Te Arai Point on the East Coast.[104]

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101. Ibid, p 65
102. Ibid, p 36. Smith suggests the Ngai-Tahuhu sprung from the crew of the Moe-kakara canoe. Parore Te Awha, a key figure in the sale of Te Roroa land, was the grandson of Tara-mai-nuku of Ngai Tahuhu (p 38).
103. B O'Shea, *Maungakaramea Past and Present*, Maungakaramea, Maungakaramea Reserve Board, 1985, pp 6–7
104. Smith, *The Peopling of the North*, p 63. Smith refers to accounts which claim the origin of Ngaoho and Ngaiwi to be the Tainui canoe (pp 33–34).

To the south of this 'boundary' lived the Waiohua and subsequently Ngati Rongo. The Waiohua, Smith noted:

> were in the occupation of all south-eastern Kaipara in Hau-mai-wharangi's time, and the whole of the Auckland Isthmus, whilst Kawerau held the south head of Kaipara, and the country between there and Manukau Heads, besides territories on the East Coast at Mahurangi, Cape Rodney, &c.[105]

The Kawerau, according to Diamond, had lived in the Waitakere ranges, the lower Kaipara, across the upper reaches of the Waitemata Harbour, and up the east coast to Te Arai near Mangawai, from the arrival of 'the Fleet' to the time 'when Ngati Whatua began to expand southwards'.[106] Graham, who believed Kawerau to have been an ancient tribe, claimed the Kawerau territory to extend from:

> Manukau North Head (Paratutai) to the Kaipara South Head (Waionui). Inland they extended their *mana* across country along the upper reaches of the Waitemata to the East Coast where their territory extended from the Okura River to as far north as Te Arai (South of Whangarei) thence inland to the Kaipara shores.[107]

Simmons believed the Kawerau to be a new tribe formed out of those Ngati Awa remaining following the Ngati Awa migration to Tamaki-makau-rau between the fourteenth and sixteenth centuries. He believed the Kawerau territory stretched from Cape Rodney to the Waitemata and also included the offshore islands of the Hauraki Gulf and Waimokoia (Tamaki).[108] He noted:

> From the 16th century onwards the Kawerau came under pressure both from the Ngati Whatua who had moved from the north into the Kaipara area and then from the Ngati Paoa (Thames) tribe who took the Tamaki Estuary and the offshore islands and started attacking the Kawerau on the mainland. Led my Maki, an Ati Awa from Taranaki, the Kawerau defeated the Ngati Paoa and peace was made.
>
> A legend associated with this time and with these wars concerns Te Ngare, the daughter of Kahikatearoa, chief of the Mahurangi, who was given to the Ngati Paoa chief to seal the peace. In return the Ngati Paoa gave the Kawerau a mere called Hinenuiotepaua (Great Hine of the Paua). The peace-making took place at Mihirau (Many Greetings), the bluff between the Puhoi and Waiwera Rivers, now a burial ground. An easterly gale sprang up and the Ngati Paoa were forced to stay overnight with the Kawerau at the Mahurangi pa. During the night Te Ngare heard the Ngati Paoa making derisive remarks about her people. She decided to leave but before doing so she placed the greenstone mere Hinenuiotepaua between her sleeping husband's legs. This was a grave insult. The Ngati Paoa did nothing about it, but returned to Waiheke and Maraetai (Howick).
>
> The mere comes into prominence again in the early past of the 19th century when there was a peace ceremony between the Ngati Paoa and the Ngapuhi at Mauinaina (Panmure). One of the gifts given to the Ngapuhi was the mere. Using the legend as a

105. Ibid, p 64
106. J T Diamond, 'The Maori in the Waitakere Ranges', *Journal of the Polynesian Society*, vol 64, no 3, 1955, p 304
107. Graham, 'Kawerau', p 20
108. Simmons, 'Mahurangi', pp 3–4

> pretext the Ngapuhi attacked the Kawerau for having insulted *their* mere centuries earlier. The Kawerau withdrew to the Ararimu hills, leaving the Ngati Paoa to take over the whole of the coast from Bream Tail to Takapuna (North Head). When the Europeans came it was the Ngati Paoa who sold the land to them.[109]

One further borderland should, perhaps, be noted. Smith referred to the Akitai[110] and Ngati Kahu (a tribe which he believed to be almost 'extinct') as occupying the borderland between the Waiohua and Ngati Paoa tribes of Tamaki-Hauraki. He thought some may still live 'at Kaipara, and in the north amongst Te Rarawa tribes'. He noted that Ngati Kahu was said to have been a branch of the Waiohua, as well as a branch of Ngati-Awa.[111]

2.5 NGAOHO, NGAIWI, AND TE WAIOHUA

The area from Cape Rodney to the West Coast and from Waikato to Tauranga is said to have originally been in the possession of one tribe, Ngaoho.[112] Nona Morris noted that:

> At the Compensation Court hearings after the Waikato War, the Franklin Maoris traced their ancestry back to the Nga Oho tribe and it appears, therefore, that although they derived their chieftainship, their honour and their prestige from their ancestors who came in the 14th century migration, their right to the land went back to the earlier arrivals.[113]

In his Orakei judgment, Chief Judge Fenton stated that Ngaoho gradually divided into three sections: Ngaoho settling to the north of Waitemata in the direction of Kaipara, Ngaiwi living between the waters of the Waitemata and Papakura and Ngariki inhabiting the land about and to the south of Papakura.

According to Fenton, Ngaiwi later divided into Ngaiwi and the Waiohua (after Hua, who lived at Maungakiekie and Mangere), and a 'half-recognised boundary' existed between them at 'the canoe portage of Otahuhu, half of the peninsula of Mangere and Ihumatao being attached to the northerly subdivision'.

Fenton understood that these original Ngaoho tribes had also become 'mixed up' with tribes expanding into the area . The Ngaoho were 'amalgamating' at Kaipara with a conquering tribe from the north called Ngaririki, subsequently called Te Taou.[114] Marriages of Waikato tribes with the southern portion of the original

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109. Ibid
110. The Akitai have variously been described as Ngai Tai and Ngatitamaoho in the sources I have consulted.
111. Smith, *The Peopling of the North*, p 35
112. F D Fenton, *Important Judgments Delivered in the Compensation Court and Native Land Court*, Auckland, Native Land Court, 1879, p 58. See also Smith, *The Peopling of the North*, p 33.
113. N Morris, *Early Days in Franklin*, Auckland, Franklin County Council and Pukekohe, Tuakau and Waiuku Borough Councils, 1965, p 18
114. Paora Tuhaere noted that Nga Ririki was: Ngati Whatua, Te Taou and Uri-o-Hau (P Tuhaere, 'An Historical Narrative Concerning the Conquest of Kaipara and Tamaki by Ngatiwhatua', *Journal of the Polynesian Society*, vol 32, no 128, 1923, pp 230, 233).

Ngaoho produced the Ngatiteata and Ngatitamaoho, Ngatinaho and Ngatipou inhabitants of the southern or western side of Manukau.[115]

Smith noted that 'two centuries ago' the Waiohua 'occupied all the isthmus, and as far as Kaipara'. Ngati Tai of the Tainui canoe also dwelt at Tamaki (see sec 2.2.10) and they had Waiohua connections. The Waiohua were also related to Ngati Wai and Te Uri-o-Hau (both described as Ngapuhi). Smith referred to them all as the Waiohua.[116]

2.6 NGATI WHATUA MOVE TO THE SOUTH TO KAIPARA

About 1680 Kawharu, 'the Kaipara giant', whom Smith believed may have been Hau-mai-wharangi's son, but Kelly claimed to have had Tainui-Kurahaupo origins, led the first Te Taou expedition against the Waiohua.[117] Starting from the pa on the island, Moturemu, on the eastern side of Kaipara, Kawharu is recorded by Smith to have conquered pa as far south as Motukaraka Island 'just across the bay from Howick', before returning to Kaipara.[118] The next attack followed an incident with the Kawerau. Smith recounted that after some time of peace, following Kawharu's return to Kaipara, around 100 of his people visited Hikurangi in the Waitakere district, where the Kawerau were living. The Kawerau 'turned upon them and killed the most of them'. The rest escaped and returned to Kaipara.[119]

To avenge the death of his people, Kawharu then commenced a war against the Kawerau living on the west coast through to the Manukau, after which he again returned to the Wairoa. Smith's narrative continued:

> At this time there lived at Wai-he-runga, a *pa* situated a little to the north of the Taumata Creek and about five miles south of Te Kawau Point on the west shores of Kaipara, a man named Te Huhunu. This man had apparently married into the Kawerau tribe, for he was born at Whaingaroa (Raglan), and belonged to the Ngati-Tahinga tribe. His son was Whai-whata, who married Koieie, a daughter of Pokopoko, whom we shall have to speak of later on. It is perhaps rather strange to find a Waikato man domiciled amongst the Kawerau people, and becoming an ancestor of some of the Ngati-Whatua now living, but Kawerau were intimately mixed with Wai-o-Hua, and again with Waikato. The fact however remains, and he was the cause of Kawharu's death, as related by Paora Kawharu now living at Rewiti station, who communicated the facts to Mr C E Nelson, when he was so kindly obtaining information for me for this history.[120]

Te Huhunu (or, according to Graham, Pokopoko)[121] is said to have insulted Kawharu and as a result Kawharu attacked the pa at Waiherunga. Kawharu was killed in the attack. According to Smith, Kawharu's death continued the warring,

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115. Fenton, pp 58–59
116. Smith, *The Peopling of the North*, p 34
117. Ibid, p 66; Kelly, pp 217, 446, 448, 449, 464, 465, 470, 475
118. Smith, *The Peopling of the North*, p 67
119. Ibid, pp 67–68; see also Graham, 'Kawerau', p 21
120. Smith, *The Peopling of the North*, p 68
121. Graham, 'Kawerau', p 22

and the later deaths of Hau-mai-wharangi and his daughter (estimated by Smith to have occurred around 1690–1700) 'settled the fate of the Wai-o-Hua and Kawerau people as a tribe'.[122] Around 1730–40, according to Smith, Hau-mai-wharangi's great-grandsons led an expedition up the Kaipara to the mouth of the river; Ate-a-kura taking the west side of the harbour, whilst Tutu-pakihi and others proceeded up the Otaka-nini Creek and successfully attacked the Otaka-nini Pa.[123] Smith wrote:

> After the fall of Otaka-nini, the Ngati-Whatua took all the *pas* in that neighbourhood, following up their victory . . . as far as Muri-wai on the West Coast, near Waitakere, whence they returned to the waters of Kaipara.
>
> The other party, under Haki-riri, Tuku-punga, and others, proceeded up the Kaipara river, where they took in succession the *pas* at Whakatiwai and Kaikai, near the mouth of the Kaukapakapa, then Otamatea-nui (a little north of Helensville), and also Mata-wherohia, and others of which I have nothing to record. These exploits were performed by the Taou branch of Ngati-Whatua . . .[124]

By 1740, Smith estimated, Ngati-Whatua were living at the headwaters of the Kaipara, around Helensville.[125] Wai-o-Hua and Kawerau women still living, married Ngati Whatua men. Smith noted that:

> it is very evident from the genealogies that this amalgamation with that tribe, with Kawerau, and other local divisions, had been going on for many years previously; no doubt the 150 years or so that Ngati-Whatua had been their near neighbours was not spent in constant warfare.[126]

Graham's account does not have the Kawerau in such a subject state. He recorded that when Ate-a-kawa and others decided to conquer the Kawerau and their Waiohua relatives of the South Kaipara, the Waiohua were driven southwards to Tamaki and the Kawerau to the Waitakere and other forested ranges and that the boundary between Ngati Whatua and Kawerau seemed to have again been established at 'Tau-poki', where peace was again made.[127]

2.7 NGATI WHATUA MOVE FURTHER SOUTH TO TAMAKI

To the south-east of the country occupied by Ngati-Whatua, their old enemies were still in great force, and held all the Auckland isthmus from the Tamaki to the head of the Wai-te-mata. No doubt many of those who escaped . . . the conquest of Kaipara fled to their kinsmen on the isthmus.[128]

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122. Smith, *The Peopling of the North*, pp 69–72
123. Ibid, pp 74–75
124. Ibid, pp 75–76
125. Ibid, p 76
126. Ibid
127. Graham, 'Kawerau', p 22
128. Smith, *The Peopling of the North*, p 77

Fenton recorded that at the time of the taking of Kaipara, Kiwi Tamaki was the principal chief of the Wai-o-Hua.[129] Kiwi's principal pa was Maungakiekie. Fenton held that Kiwi had 'undisputed possession of the whole country from the Tamaki river to Te Whau, and stretching from the Manukau to the Waitemata'.[130]

According to Smith, Kiwi was invited by Te Raraku[131] to assist in utu for Ngati Whatua having seized Waiohua possessions in the lower Kaipara. When Tumupakihi, one of the principal chiefs engaged in the Kaipara campaign, died at Kaipara, Kiwi accepted an invitation to the tangi and proceeded to Wai-tuoro, Kaipara,[132] accompanied by a number of his people,[133] all armed to attack the mourners. Many attending the tangi were killed in the attack, but others escaped to their pa, including Tupe-riri and Te Waha-akiaki.

Fenton, Smith and Graham each provide an account varying in detail concerning what occurred next. All say that Kiwi then went to Mimihanui in Kaipara, where Tahatahi or Tahataha (Tuperiri's sister[134]), was killed. Fenton believed these events occurred around 1740; Smith estimated about 1750. Ngati Whatua responded by attacking Waiohua around Titirangi, Auckland and Tamaki (taking Taurere pa) but on their return to Kaipara they were ambushed and their chiefs Te Huru, Taura or Te Kaura, and Pane of Ngati Whatua of Kaipara, were killed.[135]

According to Fenton, the Taou retaliation occurred 'about 1741' taking the Waiohua pa, Tarataua, to the south of Awhitu, then Pukehorokatoa, to the north of Awhitu, where they were confronted and re-crossed Manukau heads.[136] Smith noted that although they failed to take Pukehorokatoa, they continued on until they got to Papakura and Ruarangi (south-east Manukau) then set down at Paruroa or Little Muddy Creek. At Paruroa Ngati Whatua fought the Waiohua. Waiohua were defeated and Kiwi was killed.[137] Graham wrote that '[a]ll the important Tamaki chieftains fell that day, hence the name of this Maori Bannockburn, 'Te Rangi-hinganga-tahi' (The day when all fell together)'.[138]

Ngati Whatua continued on to take Maungakiekie itself, the fugitives fleeing to south Manukau and Waikato.[139] According to Smith, some returned to pa at Mangere but Ngati Whatua (principally Te Taou), hearing this, attacked them then returned again to Kaipara. A little later Waiohua fugitives re-occupied Kohimarama, Orakei and Taurarua (Judges Bay) Point.[140] Ngati Whatua, feeling conquest was not complete, and to obtain additional utu for Te Huru and Te Kaura, took Kohimarama,

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129. Holloway (p 35) notes that Kiwi claimed descent from Arawa, Tainui and Mataatua as well as the 'Tini-o-Toi and the Tangata Whenua'.
130. Fenton, p 62
131. Te Raraku's father was Ngapuhi, and his mother Ngati Rongo of Ngati Whatua. However, Ngati Rongo were also very 'mixed up' with Kawerau and Wai-o-Hua (Smith, *The Peopling of the North*, p 83).
132. Near present-day Helensville (Jackson, p 14).
133. Fenton noted that one of these people involved in the 'attack on Te Taou' was Te Rangikaketu, the great-grandfather of the key Ngati Paoa claimant to Orakei lands at the time, Heteraka Takapuna.
134. Tuperiri was the grandfather of Apihai Te Kawau (of Te Taou, Ngaoho, and Te Uringutu).
135. Fenton, p 63; Smith, *The Peopling of the North*, pp 85–86; Barr and Graham, p 21
136. Both Smith (*The Peopling of the North*, p 86) and Barr and Graham (p 21) add Awhitu Pa here.
137. Smith, *The Peopling of the North*, pp 86–87
138. Barr and Graham, pp 21–22
139. Smith, *The Peopling of the North*, p 88
140. Smith thought they had probably taken refuge with Ngati Paoa.

the pa east of Orakei, Taurarua Pa, and Rangitoto Pa (up Orakei Creek),[141] and then returned to Kaipara 'leaving the fruits of their victory' to Te Taou. Fenton stated the Waiohua existed there only 'in a subject state, or as wives amongst the conquering tribe'.[142] About this time, around 1740 according to Fenton or 1750 according to Smith, Tuperiri built his pa at One Tree Hill. For the next 31–40 years (Fenton believed 50) there was an uneasy peace. Fenton noted that when Te Taou chiefs married the remaining Waiohua women, their offspring revived the old name Ngaoho, now a 'double-mixed race'.[143] He continued, in ingenuous terms:

> Others of the remnants of the nearly exterminated people of Tamaki gradually returned from their concealment, or the abodes of the Waikato tribes, whither they had fled for protection at the time of the conquest, were received into the conquerors' tribes now resident, and this 'collection of remnants,' as one of the witnesses called them, received the name of Te Uringutu.[144]

Te Taou, Ngaoho 2, and Te Uringutu, Fenton held:

> lived together in different places in or near the isthmus, in undisturbed possession. They appear to have abandoned some of the pas that they captured from Te Waiohua, but maintained One-tree Hill as their principal pa, and had outlying pas at Onewa (Kauri Point), occupied by Tarahawaiki (Apihai's father), and Te Whakaakiaki, the commmander at Paruroa; Te Taou (Freeman's Bay), under Waitaheke; Mangonui (inside Kauri Point), under Reretuarau; and Tauhinu, further up the river. 'These,' Waka Tuaea says, 'were all the pas that kept possession of this sea (Waitemata) after the original people were destroyed.' Besides these pas, they maintained others at Mangere and Ihumatao, under Te Horeta and Awarua, with whom and whose people the Waikato tribes had begun to mix by marriage, for the protection of that portion of the tribe living on the Manukau side.[145]

Despite these alliances, Graham described Ngati Whatua's existence in Tamaki as unsafe, stating that the Waikato and Marutuahu tribes were a continual threat.[146]

Fenton's view (and Graham's following) of Ngati Whatua dominance in the Tamaki-makau-rau isthmus itself is contested by the groups Ngati Whatua defeated.

The Kawerau maintained hold of some of their lands. Smith stated that '[o]ne branch of the Kawerau, soon after the conquest, were still occupying their ancestral lands about Manukau Heads, Wai-takere, and Muriwai'. He referred to an incident occurring:

> soon after the conquest, say a little prior to 1740, that Pou-tapu-aka, one of the conquering Ngati-Whatua, started from Otaka-nini on a journey to the south to *takahi kainga*, or take possession of the country. At a place named Tau-paki, he met Te-Au-o-te-whenua, a chief of the Kawerau, and an ancestor of Whatarauhi who lived at Muriwai

141. Smith, *The Peopling of the North*, pp 88–90
142. Fenton, p 63
143. Ibid, pp 58–59
144. Ibid, p 59
145. Ibid, pp 65–66
146. Barr and Graham, p 23

> in 1860. The two chiefs had a long discussion as to what should be their boundary; Pou-tapu-aka wishing to go as far as Hikurangi (in the Wai-takere district), the other insisting that he should return. To settle the dispute, Pou-tapu-aka dug a trench with his *hoeroa*, or whalebone baton, and sticking it upright therein, declared that should be the boundary between the two tribes. This appears to have been agreed to, for it is stated by Mr. White that this boundary existed down to the time of the Government purchase of Wai-takere and adjacent blocks, and it is shown on the maps to this day as the southern boundary of the Tau-paki block. Mr. White adds that the name Tau-paki was then given to this boundary on account of the peaceful manner in which it was arranged. This shows that for a time at least there was peace between Ngati-Whatua and Kawerau.[147]

Graham, who seems to have adopted Fenton's terminology, also noted that the Ngati Whatua:

> do not appear to have claimed to have conquered the Kawerau *mana* to Waitakere. Hence we find remnants of that people, still recognised as the *iwi-whenua* (land tribe) of those parts, when all the other aboriginal tribes of their stock – the Waiohua, Maruiwi, etc – have become extinct or obliterated by absorption by the dominant Ngati Whatua.
>
> In this warfare the Ngati-Whatua seemed to have contented themselves by sending punitive expeditions into the forest territories of the Kawerau. But by this time they had much inter-married with them. In fact the Kawerau were in the latter stages of the warfare against the Waiohua of Tamaki, allied with the Ngati-Whatua.[148]

However, in another account, Graham noted that in the closing years of the eighteenth century Ngati Whatua possessed the west coast from Maunganui Bluff to Manukau heads, east to the Tamaki river, along the east coast and the northern peninsula (which was also occupied by 'their cognate tribes'), from Tamaki to near Whangarei and from there across the upper waters of the Wairoa river to Maunganui Bluff.[149]

Ngati Paoa had lived on the east coast prior to Ngati Whatua's migration. The Tribunal recorded Ngati Paoa descent from the marriage of Paoa, of Tainui, and Tukutuku, of Hauraki, in the 1600s. At first living on the western shores of the Hauraki gulf, Ngati Paoa later moved northwards until 'by the 1700s, they held to a corridor from the Waitemata Harbour south along the western shores of the Gulf to the Hauraki Plains'.[150] A section of the tribe occupied Waiheke Island. The Tribunal noted in its *Waiheke Island* report, that:

> In about 1740 Ngati Paoa lost ground. Their northern extension was checked by the movement south of Ngati Whatua. Battles were fought on Tamaki isthmus and Ngati

147. Smith, *The Peopling of the North*, pp 76–77
148. Graham, 'Kawerau', pp 22–23
149. Smith, *Maori Wars of the Nineteenth Century*, p 19
150. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, p 3

Paoa was obliged to shift over, to the eastern side of Tamaki and to the islands of the Hauraki Gulf.[151]

2.8 BATTLES ALONG THE EAST COAST (INVOLVING NGATI PAOA, NGATI RONGO, KAWERAU, TE TAOU, AND NGAPUHI)

In the late eighteenth century, Smith noted, Ngati Whatua had Waikato to the south and Marutuahu to the east (Hauraki Gulf); 'the nearest', however, were Ngati Paoa. He noted Fenton's account:

> About 1780 an event, fruitful in disturbance, took place. Te Tahuri, the daughter of Te Horeta, who by descent was half Nga-oho and half Waikato, had a younger female relation, who married Te Putu, a Ngati-Paoa man . . . Te Tahuri defined a large tract, probably then unoccupied, near Panmure, and presented it to Te Putu, his wife, and friends, who appear to have taken immediate possession. This place was celebrated for its growth of *tupakihi*, the plant which produces the poisonous *tutu*, from which a drink was formerly made, much esteemed by connoisseurs. The sages of Waikato when they heard of this arrangement predicted future quarrels and misfortunes as likely to result from the intrusion of a strange people into the hitherto compact territory, peopled alone by cognate tribes. 'Soon these two old women will be drunk with the juice of the *tutu*' was the prophecy.
>
> It was not long before this prediction was fulfilled.[152]

The early 1790s brought a number of altercations between Te Taou and Ngati Paoa.[153] Both Smith and Fenton record a conflict which erupted between Te Taou 'or Nga-oho' and Ngati Paoa off Mahurangi. According to Smith, the 'next event' was an advance made by Ngati Paoa and Ngati Whanaunga into the Taou territory at Rangiatarau (or, according to Fenton, Rangimatariki)[154] near Puringa, on the Manuaku. Ngati Paoa were met by a force of Ngati Whatua, Ngati Rongo and Ngati Tai and were beaten. Fenton put this at around 1792. A party of Ngati Paoa were attacked by Ngati Whatua at Kauri Point, those not killed were taken to 'Niho-kiore; or the Boat rock, not far from Kauri point' and left there to drown. Smith pointed out that Ngati Paoa formerly claimed the rock as a tribal boundary.[155]

The last altercation recorded by Smith and Fenton involved Waikato tribes, inhabiting the south shores of Manukau, assisting Te Taou, with whom they were now closely related by marriage with Apihai's people. These tribes went to Waiheke

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151. Ibid
152. Smith, *The Peopling of the North*, pp 91–92. Fenton noted that Heteraka referred to Kehu as Te Tahuri's teina, however, other witnesses said that Kehu was a Waikato woman and the land belonged to her. They denied that a gift had been made and spoke of it as originally Ngati Paoa land (Fenton, p 66).
153. Smith, *The Peopling of the North*, pp 92–93; Fenton, pp 67–68. See also G Graham, 'Kahu-mau-roa and Te Kotuiti: Two Famous War Canoes of Ngati Paoa and Their History', *Journal of the Polynesian Society*, vol 33, no 130, 1924, p 130
154. Graham (Barr and Graham, p 24) said they were at Puponga and the Manukau and Rangimatarua (Point Chevalier).
155. Smith, *The Peopling of the North*, pp 92–93

but did not meet Ngati Paoa. They came back but were followed and attacked at Orohe, on the west shore of Tamaki river. Ngati Paoa were victorious.[156] Tahuri and her husband Tomoaure were killed. Smith put this after Rangiatarau but described it as being utu for Mahurangi.[157] Fenton set this at 1793 and noted that from then until the end of the century the 'history' of the isthmus is blank. Fenton, however, held that:

> those contests between Ngatipaoa and Te Taou and Ngaoho were fights for revenge simply and purely, and were never contemplated to affect in any way the possession of title to the estate under investigation. At the time of this last fight, part of the Ngaoho and Te Taou were living at Hikurangi, beyond the Manukau ranges. Tuperiri, with a party, was still at One-tree Hill, and Tauoma was uninhabited.[158]

Tauoma was the name of the land given to Te Tahuri's teina, Kehu, and her husband Te Putu, at Panmure. Smith too noted that Ngati Paoa had abandoned Tauoma and did not return for many years. He concluded that:

> [p]ractically, it would seem that the wars between the Taou section of Ngati-Whatua and Ngati-Paoa had rendered the isthmus a dangerous residence for either party.[159]

Around this time Smith noted 'troubles' between northern tribes and the Hauraki tribes. He recorded that many altercations took place in the last quarter of the eighteenth century and noted 'the victory on the whole generally remaining with the southern people'.[160] The Tribunal recorded that 'Ngati Paoa held firm'.[161]

While there were a series of incursions by Ngapuhi into Hauraki, those which are perhaps most recorded are the responses of the Marutuahu tribes (Ngati Maru, Ngati Paoa, Ngati Tamatera and Ngati Whanaunga) in Ngapuhi country. One was the battle of Wiwi and another the battle of Waiwhariki, which is said to have occurred in mid-1793. Hoani Nahi told Smith that Waiwhariki occurred some time after Wiwi, when Marutuahu returned to attack Ngapuhi to further avenge the deaths of their chiefs. They attacked a pa situated between Waitangi and Waimate, called Puketona, and defeated Ngapuhi. It is said that this defeat was one of the reasons why Hongi Hika visited England in 1820 to obtain arms (along with the battle at Moremonui, see below).[162] Smith later referred to this battle as being won by Ngati Maru, as does Shaw.[163]

There had also been confrontation between Ngati Paoa and Ngati Rongo (whom Smith noted to be closely connected to Ngati Whatua on one side and to Kawerau,

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156. Fenton, p 67. Note that although Smith (*The Peopling of the North*, p 93) also claimed Ngati Paoa were the victors, Graham (Barr and Graham, p 24) claimed they were defeated.
157. Smith, *The Peopling of the North*, p 93
158. Fenton, p 67
159. Smith, *The Peopling of the North*, p 94
160. Ibid, p 101
161. Waitangi Tribunal, *Waiheke Island*, p 3
162. Smith, *The Peopling of the North*, pp 101–107
163. Smith, *Maori Wars of the Nineteenth Century*, pp 182–183; Shaw and Hallett, p 11. O'Shea (p 6) referred to an attack made by Ngati Maru on Motukiwi (Tapu point) Pa in a battle called Otaika-timu.

Waiohua and Ngaiwi on the other) in alliance with Kawerau along the Mahurangi peninsula.[164]

Smith followed the fortunes of Whetu, of Ngati Rongo, a contemporary of Tuperiri, Ateakura and Te Wahaakiaki. Whetu was besieged around two miles north of Aotea Bluff on the west side of the Kaipara by Ngati Whatua and sought refuge with Te Uri-o-Hua on the northern Wairoa. He assisted Te Uriohau when they were attacked by Ngapuhi in the mid-eighteenth century and then returned with his tribe to the eastern Kaipara. Whetu subsequently assisted Kawerau, living at Mahurangi and the adjacent country (some even lived with the Parawhau at Whangarei), in their wars with Ngati Paoa around this time.[165]

Around 1775, according to Smith, Ngati Paoa descended on the territories of Kawerau at Waiwera and Mahurangi (or Waihe), killing many Kawerau. Kawerau from Whangarei and Ngati Rongo from Makara and the east coasts of Kaipara waters banded together to form a war party and attacked Motukaraka, Ngati Paoa's stronghold, in response. They moved on to attack Taupo, a Ngati Paoa settlement just opposite Pakihi island and Hauraki Gulf and then returned to Mahurangi where, Smith stated, Ngati Rongo were rewarded by Kawerau with lands around Puhoi where some of their descendants are said to have lived to at least the late nineteenth century.[166]

Ngati Paoa sent taua after taua in utu to Mahurangi coasts. About 1800, Smith estimated, Ngati Paoa and Ngati Maru attacked through Kawerau and Ngati Rongo territories to Kaipara[167] where they took a Ngati Rongo pa situated on Taranaki 'a hill of about 1000 feet high near Ara-parera', then attacked Motu-uwhi, at the mouth of the Orua-wharo river.

Eventually Potiki, a Ngati Paoa chief, offered terms of peace to Ngati Rongo and Kawerau, which were accepted, Smith says, by the people living at Mahurangi. Ngati Paoa then proceeded south but came back and attacked Mangatawhiri, near Kawau Island, in utu. According to Smith, Ngati Paoa subsequently lay claim to the country from Auckland Harbour to Mahurangi by right of conquest which he noted was recognised by Governor Hobson in 1841 'when he purchased their claims'. Later, at Te Hemara Tawhia's request, Hobson returned Puhoi to Ngati Rongo because it contained Murupaenga's burial place.[168]

Smith noted the Mahurangi purchase was signed by Ngati Whanaunga chiefs for 'land given to us by Ngati-Paoa'; he believed this was 'no doubt part of the

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164. When Kawharu conquered these people they were called Waiohua. Smith believed those occupying the area from Waitemata to Cape Rodney and across to Kaipara were originallly Kawerau, descendants of the Moekakara crew, and that Waiohua (or Ngaiwi or Ngariki from whom they descended) intruded into this country around 1600–40. In Haumaiwharangi's time, Maki, a Waiohua chief, 'owned' the east side of the Kaipara. They spread to the east coast and became known as Ngati Manuhiri after Maki's son. It was with these people that Ngati Whatua intermarried after they arrived in Kaipara (around 1640) and their offspring were known as Ngati Rongo after Rongo, a Ngati Whatua chief, also a contemporary of Haumaiwharangi (Smith, *The Peopling of the North*, p 94).
165. Ibid, pp 95–96
166. Ibid, pp 97–98. Whetu later drove Ponui and the Kawerau to the northern side of Waihe and Te Kapa, but Smith stressed that this expulsion was 'not final, for in 1861 I found Makoare, a descendant of Ponui . . . occupying . . . Otarawao', on south side of Waihe, then the acknowledged owners of the land.
167. Ngati Rongo and Kawerau were assisted by Te Uri-o-Hau.
168. Smith, *The Peopling of the North*, pp 98–99

conquered territory, and in recompense for their services'.[169] There are other views.[170]

2.9 WAR BETWEEN NGAPUHI AND NGATI WHATUA CONTINUES

In 1807, Smith recorded, a Ngapuhi war party led by Hongi Hika, intent on attacking Ngati Whatua, travelled through Te Roroa territory to Waikara and on to Moremonui. Ngati Whatua, Te Roroa and Te Uri-o-Hau, aware of their opponents' movements, attacked Ngapuhi when they set down at Moremonui and the battle called Te Kai-a-te-karoro ensued. Hongi Hika escaped, and it is said that this defeat was the principal reason for his visit to England in 1820 to avenge the deaths of his tribespeople.[171] A series of other battles involving Ngapuhi and Ngati Whatua over the subsequent four years around Wai-o-te-marama and the Waima valley, brought further Ngapuhi defeats.[172] It was not until Te Ika-a-ranganui in 1825 that Ngapuhi took full revenge.[173]

2.10 TAMAKI-MAKAU-RAU IN THE EARLY TO MID-NINETEENTH CENTURY

By 1815, Fenton held, Ngati Paoa appeared to be settled at Mokoia, on Tauoma. They also claimed to be living and cultivating at Okahu. 'Apihai's people' appeared to be living principally at Ihumatao and Mangere and claimed also to be cultivating at Okahu and on the shores of the Waitemata. Fenton believed both parties came over to Waitemata waters to fish, and planted food at Okahu; the former in a very small way, and the latter more extensively.[174]

By 1820, Fenton noted, a large party of Ngati Paoa were living at Mauinaina Pa, which they had built near Mokoia; Te Taou were at Oneonenui (Kaipara) and Onehunga; and Ngaoho were at Mangere and Okahu, the former being their pa. Fenton believed Ngati Paoa still held rights to use Okahu for cultivation.[175] Around 1820, Ngati Paoa took Marsden by canoe to Riverhead, where he met Ngati Whatua chief Kawau, who escorted him to Kaipara. Returning to Tamaki with Kawau, he visited the Ngati Paoa villages at Tamaki and met Te Hinaki where he 'arranged a peace'.[176] Cruise visited the Waitemata 10 days after Marsden's departure. He was

169. Ibid, p 100
170. See reports on Mahurangi in H H Turton, *Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, New Zealand Government, 1877–83.
171. Smith, *Maori Wars of the Nineteenth Century*, pp 31, 42, 46–49
172. Ibid, pp 50–52
173. Ibid, p 49
174. Fenton, p 68. Graham put this five years earlier, in 1810, and includes the Ngati Paoa settlement at Mauinaina not mentioned by Fenton to be in existence until 1818 (Barr and Graham, pp 26–27).
175. Fenton, *Important Judgments*, pp 68–69
176. Barr and Graham, pp 26–27

invited to the Tamaki settlements, where he too met Te Hinaki. Mauinaina was then a flourishing settlement.[177]

In the early 1820s this changed. In mid-1821, Fenton recorded, a taua of Ngapuhi led by Koperu attacked Mauinaina. They were repulsed by Ngati Paoa, assisted by Apihai and Ngaoho and Koperu was killed. Apihai and his party returned to Mangere.[178] In November of the same year Hongi Hika successfully attacked Mauinaina. Te Hinaki was killed. Those of Ngati Paoa who escaped fled up the Waikato, others went to Maungatautari.[179] It is not clear whether Hongi returned directly to the Bay of Islands or went on to attack Ngati Maru at Thames. Smith noted Hoani Nahe's statement that after taking Mauininaina, Hongi Hika went at once to Thames and attacked Te Totara, Ngati Maru's stronghold, in December, in payment for Waiwhariki.[180]

In August or September 1821 Ngati Whatua or 'Kaipara' under Apihai Te Kawau of the Taou, along with Te Uri-o-Hau, had travelled from Oneonenui, in southern Kaipara, up the Waikato.[181] There they had united with several of the Waikato tribes and started on a war expedition through Rotorua to Hawke's Bay and on to Wellington, returning through Taranaki to Waikato and home. They were away when Hongi first attacked Mauinaina and had not returned when Hongi Hika took another taua south.[182]

In February 1822, Hongi Hika led an expedition against Waikato and attacked Ngati Paoa, Ngati Maru and Ngati Whatua at Matakitaki, a pa at the junction of the Mangapiko Stream and the Waipa River at that time occupied by the above and Waikato tribes. Ngapuhi continued on, but after further attacks were finally stopped by Te Wherowhero and others of Waikato.[183] Hongi and others returned to the Bay of Islands in late July 1822. However, Smith recorded:

> After the Nga-Puhi had retired to their homes the Waikato tribe and their allies scattered to the fastnessess of the forests, most of them going to the Upper Mokau, where they lived for many years, owing to their fear of Nga-Puhi.[184]

When Apihai and his tribe returned they found Mauinaina desolated and vacant; Ngapuhi had not taken up residence. Ngati Paoa fugitives had stayed at Horotiu, in Waikato, or had been killed at Matakitaki.[185] Some of Apihai's people had fled to the 'Manukau Ranges'. He and his people moved to Hikurangi then Oneonenui, and from there they went to Waikumete (a small stream flowing into the Manukau), and 'finally settled down along with Ruka Taurua and some Ngatitahinga (Waikato)

177. Ibid, p 27
178. Smith (*Maori Wars of the Nineteenth Century*, pp 177–178) recorded this Mauinaina attack (which in one account was an attack on Mokoia) to have been made by Te Morenga to avenge the death of Koperu (his brother). Graham (Barr and Graham, pp 26–27) also stated that Te Koperu came to attack Ngati Paoa and was killed, and his brother Te Morenga came to exact revenge.
179. Fenton, p 69. Smith (*Maori Wars of the Nineteenth Century*, p 190) notes this as Waikato and Patetere.
180. Smith, *Maori Wars of the Nineteenth Century*, pp 181, 189–191
181. Ibid, pp 209–210
182. Fenton, p 69
183. Smith, *Maori Wars of the Nineteenth Century*, pp 225–233
184. Ibid, p 233
185. Fenton, p 69

people at Te Rehu' (a small stream flowing into the Waitemata). They stayed there around two years, occasionally visiting Pahurihuri, in Kaipara, and their small cultivations at Okahu 'and at the place where Auckland now stands'.[186]

In 1823 Ngapuhi attacked Mokoia, Rotorua, along with Ngati Tahinga of Waikato and Ngati Rongo.[187] Meanwhile Waikato and Ngati Paoa had attacked Parawhau at Whangarei and Whangaruru.[188]

In August–September 1823 Rewa of Ngapuhi returned to the Bay of Islands from Waikato, where he had been to make peace, with a party of Waikato chiefs, headed by Te Kati (brother of Te Wherowhero), in turn visiting Ngapuhi to secure the peace.[189] Rewa's daughter and niece of Hongi Hika, Matire Toha, was betrothed to Te Kati. Early in 1824 they returned home. Fenton stated:

> The Waikato party, accompanied by the bride and sixty Ngapuhi chiefs under Rewa and others, started away from the Bay by the direction of Hongi to return the visit of the Waikato chiefs and to complete the peace by formally reinstating the tribes of Waikato in their usual residences. When the party arrived at Takapuna they were met by Apihai at the head of all Te Taou, Ngaoho, and Te Uringutu, who treated them courteously and supplied them with food from Okahu, where at that time they were sojourning. The Taou took the Ngapuhi party up the river to Ongarahu, where they entertained them for three days.[190]

The Ngapuhi chiefs then went into the Waikato, passing through Waikato and Ngati Paoa pa, and lived two years there. Fenton concluded that at the end of 1824 'Te Taou and Ngaoho were living at Te Rehu, at Horotiu (Queen-street), and some at Okahu'. He noted that most of this information was taken from statements made by Ruka Turua, 'of a Waikato tribe', and Matire Toha of Ngapuhi, 'independent witnesses who have no claim to the estate under investigation and no interest in the matter'.[191]

Fenton recorded that during 1825 (Smith believed 1824) there were altercations between Ngati Whatua and Ngapuhi.[192] Following an attack by Ngapuhi on Te Uringutu at Motutapu, Ngaoho, Te Taou, and Te Uringutu retreated to Kumeu, on the upper Waitemata. A revenge party composed of Te Taou, Ngaoho and Ngati Tahinga then successfully attacked Parawhau at Whangarei. However, Smith noted that '[t]he Maori account' he had obtained differed from this. He recorded that after Ngati Whatua returned from their 1822 southern expedition, some went to live at Mahurangi and were attacked by Te Tirarau of Parawhau, driven to Motutapu, and attacked there by Ngapuhi. A taua of Te Taou returned north to Mahurangi where they attacked Parawhau. Bream Bay (Whangarei) Parawhau are then said to have

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186. Ibid, p 70
187. Smith, *Maori Wars of the Nineteenth Century*, pp 241–244. Smith noted Paora Kawharu's explanation for Ngati Whatua's presence. Both Murupaenga (Ngati Rongo) and Pomare (of Ngapuhi) were descended from Rongo. Thus Ngati Rongo and Ngati Manu (Pomare's hapu) are connected.
188. Ibid, p 261
189. Smith, *Maori Wars of the Nineteenth Century*, pp 261–262
190. Fenton, p 70
191. Ibid, p 71
192. Ibid; Smith, *Maori Wars of the Nineteenth Century*, p 311

moved to the Bay of Islands in fear of Thames Maori.[193] A short time later, in 1824 according to Smith, Te Taou, Ngaoho, and Te Uringutu, around 200 people, moved to Okahu. However, Smith noted:

> They had been living there about a year when Te Ikaaranganui took place (Feb., 1825). From the time of the battle of Mau-inaina (in November, 1821,) the Tamaki district had been entirely abandoned (as a permanent place of residence).[194]

The Tribunal recorded in the *Manukau* report that the devastation had been so complete that Ngati Paoa regarded the area as tapu and subsequently would not re-occupy it.[195]

In 1825, Hongi Hika attacked Kaipara in the battle of Ikaaranginui, around Kaiwaka, a mile from the junction of the Waimako Stream and Kaiwaka River. Smith claimed '[a]ll the *hapus* of Ngati Whatua' were involved.[196] (He mentions Uri-o-Hau, Ngati Rongo, Ngati Whatua, and Te Roroa in this account, but later states that news of the Ngapuhi raid of north-west Kaipara reached Te Taou and Ngaoho of Okahu too late to assist.[197]) Ngapuhi were the victors.[198] Smith noted that 'the subsequent skirmishes lasted until June, when Nga-Puhi returned to the north, having succeed[ed] in devastating the whole of the Ngati-Whatua territories'.[199] Following Te Ikaaranganui:

> The Ngati-Whatua tribe scattered in small parties, Ngati-Whatua proper to the ranges near Waitakere, and eventually to Waikato; Te Uri-o-Hau, to the fastnesses of the Tangihua mountains; Ngati-Rongo, to their relatives at Whangarei, and to the wilds of the forests. The feat of Nga-Puhi prevented them from occupying their old homes for many years afterwards, indeed not until Auckland was founded did they feel safe. It is a well-known fact that those who went to Waikato were nearly all exterminated at the taking of Nohoawatea in 1825 or 1826. The old men have often described to me that state of fear and alarm they lived in during their wild life in the mountains of Tangihua, Mareretu, and the forests of Waikiekie . . .[200]

Apihai started out to assist but returned with the survivors (noted by Smith to include Te Uri-o-Hau and Ngati Whatua proper) to Waikato heads. From there Ngati Whatua headed back for revenge, attacking Te Parawhau at Otamatea, then went to Ngati Paoa's settlement at Mangapiko (Waikato) called Nohoawatea. Late in 1825 Hongi Hika left to find the fugitives in Waikato.[201] Fenton commented:

> And then now came one of those strange combinations and commingling and separating of parties which are so constantly occurring in this history, and which are so

193. Smith, *Maori Wars of the Nineteenth Century*, pp 234, 241–245, 261, 312–313
194. Ibid, p 313
195. Waitangi Tribunal, *Manukau*, p 11
196. Smith, *Maori Wars of the Nineteenth Century*, p 344
197. Ibid, p 349
198. Ibid, pp 333–344
199. Ibid, p 344
200. Ibid, p 345
201. Ibid, pp 345, 349–350, 369

> utterly unintelligible. Ngapuhi were joined by the Ngati haua (Waikato), and the allies desired the Ngatipaoa to leave the pa in order that they might attack Ngatiwhatua. Te Rauroha and his people complied with this request, and the allies immediately stormed the pa, and killed many of the Ngatiwhatua. After this adventure, peace was made between Ngatipaoa and Ngapuhi, and many of the Thames tribes returned from their refuges and took up their abodes at Waiheke, Taupo, and elsewhere . . . but they do not appear to have been perfectly assured of their safety in these open places, for there is evidence of their constantly moving backwards and forwards during the whole of these unsettled times.[202]

Smith provided another account in which the pa was Whareroa and some Ngati Paoa were claimed to have assisted Ngati Whatua in defence. A further account claimed that Hongi returned towards home and met Pomare's taua on the way to Hauraki and Waikato. He advised them to turn back because peace was concluded with Ngati Paoa but Pomare persisted.[203]

The peace between Ngati Paoa and Ngapuhi was referred to in the Tribunal's *Waiheke Island* report. The Tribunal noted that Ngapuhi 'sought revenge and glory rather than land' and that Ngati Paoa lands were left vacant:

> With the aid of a peace pact between Ngapuhi and Te Rauroha of Ngati Paoa, some of Ngati Paoa returned to their villages skirting the gulf. They did so cautiously at first holding to the southern villages around Kaiaua not too distant from Waikato and often returning only to cultivate land or to fish. But several settled permanently and Captain D'Urville, on his second visit to New Zealand in 1827, records a great village in the area with many inhabitants and a great quantity of drying fish. The return to Waiheke came later when the Ngapuhi chief, Patuone, married the Ngati Paoa chieftainess Riria in a peace arrangement, and settled on Waiheke at Putiki Pa.[204]

Fenton noted that Apihai's people, following Te Ikaranginui:

> seem to have known that it would have been unsafe for them to await the arrival of Hongi – whether on account of their near relationship to Ngatiwhatua, or on account of their doings with the Parawhau, we are not told. At any rate, they . . . assembled at Waikumete . . . and fled up the Waikato to Pukewhau, on the Waipa, and, after sojourning there a short time, escaped to Mahurangi, where a party of Ngapuhi lived, who were friendly to Apihai . . .
>
> The close of this year found the whole of their isthmus without an inhabitant. Ngatipaoa had been driven from Mauinaina, and were living on the banks of the Mangapiko and Horotiu . . . Ngatiwhatua were thoroughly broken, attacked first by Ngapuhi, and then by Waikato, for which purpose their friends the Ngatipaoa politely stood on one side . . . The Taou and Ngaoho were in refuge near Mahurangi, subject to constant attacks and dangers. Ngaiteata, Ngatitamaoho, and all the Manukau tribes were in pas and strong places near the head water of the Waikato river, or on the banks of the Waipa; and Te Uringutu were sojourning for some untold reason with a party of Ngatipaoa, who seem to have been living at Whakatiwai and Ponui. No tribe was in its

202. Fenton, p 72. For another account see Smith, *Maori Wars of the Nineteenth Century*, pp 372–374.
203. Smith, *Maori Wars of the Nineteenth Century*, pp 370–371
204. Waitangi Tribunal, *Waiheke Island*, p 6. Smith (*Maori Wars of the Nineteenth Century*, p 376) suggests the peace was made in 1822 after Matakitaki.

> own place. For many years there is, in truth, a blank in the history of Tamaki. About 1832, Mr. Cowell, sailing from Waihopuhopu, at the head of the Hauraki Gulf, opposite Shortland, to Mahurangi, did not see a single inhabitant nor observe a single fire. From Whakatiwai to Mahurangi the country was quite empty.[205]

In 1826 Pomare and Ngapuhi attacked Ngati Paoa and Waikato. Te Hikutu of Whirinaki (Hokianga) Ngapuhi attacked Ngati Rongo at Mahurangi.[206] In 1827 Te Parawhau, under Tirarau, attacked Apihai and party at Waiaro near Mahurangi. Te Taou and Ngaoho fled to the mountains, then to Orewa, past Takapuna to Te Whau and to Woods' Island (Pahi) and then to Kopapaka (Henderson's Mill) where they settled. At that time Te Uringutu were living with Ngati Paoa at Wharekawa. Te Taou and Ngaoho were then taken by Te Uringutu in Ngati Paoa canoes on to Haowhenua near Maungatautari, where they stayed until Ngati Paoa were expelled in 1831. Graham noted that Ngapuhi also attacked Te Aotea, Great Barrier Island, that year and killed Ngati Maru chief Te Maunu and his son Ngahua.[207] Dumont D'Urville visiting in 1827 found Waitemata uninhabited and met Ngati Paoa at Tamaki.[208]

A number of Waikato/Ngati Whatua attacks on Ngapuhi followed. In 1827 Ngati Tipa (of Waikato Heads), Ngati Paoa, and Ngati Whatua defeated Ngapuhi at the mouth of Tamaki and, strengthened by their success, Ngati Whatua and Ngati Tipa attacked Parawhau above Te Kawau Island (on Tawatawhiti peninsula).[209]

Fighting continued between the tribes further north. Hongi Hika died in 1828 from wounds received in a fight between Ngati Pou of Whangaroa and Te Roroa and 'Hongi's partisans'. Hongi drove Ngati Pou, who fled to Waimamaku, from Whangaroa. Not long after this, Te Whareumu was killed at Waima.[210]

There were further Ngapuhi attacks on Ngati Maru and Ngati Haua around 1831–32. Smith recorded that Waikato attacked Ngati Paoa around this time and Ngati Paoa joined Ngapuhi to attack Waikato.[211] Fenton concluded that the 'fortune of war' gradually but constantly turned against Ngapuhi and that Waikato, rapidly rising into prominence, 'had successfully repelled all the late Ngapuhi invasions; and had even inflicted some defeats upon that tribe in the North'. They had also driven Ngati Paoa out of 'their possessions in Upper Waikato, and had made peace with Ngapuhi'.[212]

In 1835, Te Wherowhero conducted the Manukau tribes, including Te Taou, Ngaoho, and Ngati Whatua, to their old places. Fenton held that:

> Finally Te Wherowhero settled with his own people at Awhitu, as a guarantee of the protection of the Waikato to the rest. Ngatiteata took possession of their own lands at

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205. Fenton, pp 72–73
206. Smith, *Maori Wars of the Nineteenth Century*, pp 380–381
207. G Graham, 'Te Aotea (Great Barrier Island)', *Journal of the Polynesian Society*, vol 54, no 3, 1945, p 192. See also Smith, *Maori Wars of the Nineteenth Century*, p 394.
208. Smith, *Maori Wars of the Nineteenth Century*, pp 383–387
209. Ibid, pp 390–393. See also Fenton, p 74.
210. Smith, *Maori Wars of the Nineteenth Century*, pp 398–399
211. Ibid, p 444
212. Fenton, pp 74–75

> Awhitu. Ngatitamaoho returned to their places at Pehiakura, Te Akitai to Pukaki, and the other Manakau tribes to their former residences. Apihai and his people took possession of Puponga, where they built a pa called Karangahape.[213]

In its *Manukau* report the Tribunal mentioned being 'told of an agreement in 1834 whereby the people returned to their homes after the invasions under the protection of the Waikato confederation, Te Taou of Ngati Whatua giving lands at Awhitu and Mangere to Ngati Mahuta of central Waikato to secure their presence and protection'.[214] Graham noted that Ngati Whatua returned to the isthmus, settling at Okahu (Orakei Bay) and at Mangere, where Kati and Matere Toha lived, and other villages on the shores of the Waitemata and Manukau.[215]

Fenton recorded that around 1835 Apihai and others sold 'a vast tract of country, extending from Manukau Heads to Tamaki, and thence along the Waitemata to Brigham's mill on the West Coast'.[216] The following year Apihai and his people were living at Karangahape, and they had commenced cultivating at Mangere. Later on in the year they built a pa at Mangere and another at Ihumatao. Te Taou came to the shores of the Waitemata, and began to cultivate the land about Horotiu (Queen Street). Mauinaina was still unoccupied. Fenton noted that Captain Wing's chart of Manukau Harbour, produced in court, showed Potatau's people had commenced planting at Onehunga, and Te Tinana, of Te Taou, had cleared land for cultivation at Rangitoto, near Orakei.[217]

The 1835 agreement, and an attack made by Te Aua, Ngatitamaoho, and other Waikato-Manukau tribes assisted by Apihai and some Ngaoho upon Ngati Paoa at Whakatiwai, were still causing enough friction to involve local missionaries in peacemaking between these tribes. Fenton thought the attack was 'to balance an 'utu' account and in no way concerned the land'. He referred to a subsequent peacemaking visit by Te Taou for the Whakatiwai killings, to Kahukoti, a chief of Ngati Paoa, at Orere, near Taupo. He recorded:

> At the great meeting at Tamaki, when peace was made between Waikato and Ngatipaoa, it was stated that Uruamo [Te Taou] requested Kahukoti, to allow Te Taou to occupy Okahu, to which he replied, 'Presently;' and the conversation was renewed at this Orere visit. This is what passed according to the evidence of Timothy Tapaura, a Whakatohea slave who was present. Uruamo said to Kahukoti, 'I want you to agree that Okahu shall be lived upon by us;' to which Kahukoti replied, 'Yes, light a fire there for both of us.' This account is directly denied by all the claimants' witnesses. None of them, however, were present except Warena Hengia. He says there was a conversation, and his account of it is this: Uruamo said to Kahukoti[:] 'My friend, my fire will now burn at my place.' Kahukoti replied, 'My father, to whom does your kainga belong?'[218]

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213. Ibid, p 75
214. Waitangi Tribunal, *Manukau*, p 11
215. Barr and Graham, pp 31–32
216. Fenton, p 76
217. Ibid
218. Ibid, p 77

Ngati Paoa alleged in the court sitting that this 'permission' given by Kahukoti was the only ground for the undisturbed possession held by Apihai of this land for more than 30 years. But Fenton thought that Te Taou and Ngaoho were aware of the danger of utu and would not want to settle, open to attack and surprises from Ngati Paoa, and that therefore, after peace was formally concluded, Uruamo sought an assurance of peace. Kahukoti's expression was to Fenton merely that assurance, and an indication that they would be constant and friendly visitors.

In 1837, Fenton recorded, Te Taou built a pa at Okahu, said to be in defence against Ngapuhi, in particular Te Parawhau. By 1838 Apihai's principal residence was at Mangere, but Te Taou also had permanent residences at Onehunga, 'Auckland' and Okahu. Te Wherowhero took up residence at Onehunga. In 1839, Fenton held, Okahu tribes cultivated Official Bay (Waiariaki) and:

> Ngatipaoa appear again in this district . . . Te Hemara saw two hundred of them at Maraetai, when he came up with Captain Clendon in the 'Columbine.' He also saw Apihai, Te Tinana, Te Reweti, Paerimu, Uruamo, and Watarangi, and all the chiefs of Te Taou, Ngaoho, and Uringutu completely settled there. 'The food of that place,' he says, 'had been cultivated long before; the fences were made and the houses built.' He then describes going in a boat with Taipau, a relation of Heteraka's, to mark out the boundaries of land proposed to be purchased by Captain Clendon from Heteraka's tribes, Ngatikahu and Ngatipoataniwha. The boundary commenced at Takapuna and went on by the Wade to Whangaparoa.[219]

2.11 THE SITUATION AROUND 1840: A SUMMARY

We have seen that Fenton regarded Te Taou, Ngaoho, and Te Uringutu alone as owners of Orakei lands, however, a number of subsequent events illustrate a far more complex arrangement. In 1842, Ngatihura, a hapu of Ngati Paoa, went to live at Okahu. In March of that year 'Mr Clarke, Native Protector, Patene Puhata and William Hoete, and eight others of Ngati Paoa' went to Kohimarama in an attempt to 'run a line' around, that is survey, part of Orakei, but were opposed by Apihai's people. Ngati Paoa desisted and went away. In 1843, Ngatiteata commenced cultivating at Okahu. A second pa was built at Okahu by Apihai. Later that year Remuera was gifted to Wetere Te Kauae, of Ngatitamaoho. Ngatipare, a hapu of Ngati Paoa, came to Okahu and settled there.[220] In 1844, Ngatiteata and Ngatitamaoho came to live at Orakei and Remuera. FitzRoy's penny an acre proclamation was made and Wetere Te Kauae and Apihai sold parts of their lands.[221] Fenton noted that the evidence differed as to whether Ngatiteata or Ngatitamaoho were living on this land before the time of Governor Hobson. He thought it most likely Ngatiteata and Ngatitamaoho were living there, that is residing, fishing and assisting in cultivations, then returning to their own 'kaingas', before Governor

219. Ibid, p 79. This proposed purchase also did not result in an old land claim.
220. Ibid, p 80
221. Ibid, p 81. OLC file 1056 refers to an 1844 agreement and survey dividing land around Remuera-One Tree Hill between Ngati Whatua, Ngati Maho, and Ngati Mahuta.

Hobson's time, and that during the interval between 1840 and 1850 they came several times in parties, and on the occasion of the battles of Taurangaruru and Ihumatao the whole of the tribes settled at Okahu for a short time. He notes, however, that '[t]he Court places no value on these acts of occupation'.[222] Based on a summary of the main sources, Professor Sir Hugh Kawharu has concluded of the Ngati Whatua that '[t]heir grip was to slacken before 1840, but never to be surrendered'.[223]

The Tribunal recognised in its *Waiheke Island* report that Ngati Paoa held rights to Waiheke. They had heard in evidence that Hori Matua Evans's great great grandmother, Hariata Whakatangai, of Ngati Maru and Ngati Paoa, was born on Waiheke in the early 1800s. Her daughter, also Hariata, was born there in 1824. The younger Hariata had told him that she, her parents, and grandparents had lived at Waiheke and were there when the Treaty was signed, but were later routed by the constabulary and settled in the Thames-Coromandel area. The Tribunal thought this may have happened around 1851. When the older Hariata died, she was returned to Waiheke and was buried there at Putiki. The Tribunal concluded:

> We have accepted that Waiheke is the ancestral home of Ngati Paoa because that is what the Maori Land Court came later to determine and because subsequently, and at our hearings, no demurrer was made to that claim. It is not that we consider that Ngati Maru had no right but rather that we were not called upon to determine the point. The position of Ngati Maru may deserve further study however. It is clear that Ngati Paoa and Ngati Maru are most closely related tribes, enjoying a common ancestor in Marutuahu, and that for a time they lived together on Waiheke. Fighting broke out between them when Rongomarikura of Ngati Paoa was drowned at Tikapa (Firth of Thames) and Ngati Paoa blamed Ngati Maru. The former maintained that before 1840 the latter were expelled to join their kin on the Coromandel peninsula. That may be so but the latter had a different opinion and clearly the position at 1840 was not certain.[224]

In the *Manukau* report, the Tribunal noted that:

> The claim that the Manukau (and lower Waikato) are part of the tribal demesne of the Waikato-Tainui confederation was not disputed.
>
> We have seen that various subtribes of Waikato occupied the Manukau shores along with the related Kawerau, Waiohua and Ngati Whatua tribes. The inland Waikato tribes also enjoyed the resources of the Manukau and reciprocal rights and obligations have been established between the closely related groups. We have also seen that Nga Puhi invasion that followed the introduction of the musket was a temporary aberration in tribal affairs and was not perfected by the long term occupation necessary to constitute a permanent change in tribal suzerainty in accordance with customary law. The invasion did have one long term effect however. It brought the Manukau tribes closer together to reaffirm by marriage and treaty the overall suzerainty of the Tainui-Waikato confederation.[225]

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222. Ibid, pp 81–82
223. I H Kawharu, *Orakei: A Ngati Whatua Community*, Wellington, New Zealand Council for Educational Research, 1975, p 5
224. Waitangi Tribunal, *Waiheke Island*, p 8
225. Waitangi Tribunal, *Manukau*, p 11

The Tribunal noted that there was no dispute when Henare Tuwhangai recited 'the tribal saying' encapsulating the Tainui tribal boundaries: "'The stern' he said 'is at Manukau where Potatau presided, the prow at Mokau where Wetini sat, and in the middle is Maungatoatao where Rewi Maniapoto stood'". Nor were other such references to tribal sayings defining Tainui territory disputed. The Tribunal was 'satisfied that as at 1840 the protective influence of the pan-tribal Tainui confederation was important for the Manukau tribes'.[226] It concluded:

> For our part we need only note the actual occupancy of the Manukau by the Waikato, Kawerau, Waiohua and Ngati Whatua tribes at 1840, the relationship that each of those tribes had to central Tainui, and the continuation of that relationship after 1840. We note also that representatives for each of those tribes, and for Ngati Paoa of the Tainui-Hauraki sector, acknowledged that the Manukau is to be regarded as part of the Waikato-Tainui territory.[227]

Morris's comments add to this. She noted that just as Te Taou invaded from the north so too did Waikato (Tainui) tribes:

> amalgamate with the inhabitants of the western and southern sides of the Manukau. From this union arose the tribes of Ngatiteata, Ngatitamaoho and Ngatipou and it was these tribes that were dominant in the Franklin area at the time when the Treaty of Waitangi was signed in 1840.
>
> No definite lines appear to have marked the boundaries of these tribes. Land was often claimed by more than one tribe, as in the case of the Pukekohe Block, which was first sold to the British Crown by the Ngatiteata tribe, and then by the Akitai (or Ngatitamaoho) tribe. Similarly, the Waiuku Block, purchased in 1854, had the consent of no fewer than ten tribes, while in 1862 a further payment was made to the Ngatitipa tribe who had in fact signed the first Deed.

Roughly speaking, the territory claimed by the Ngatiteata was situated in the Waiuku area, the Ngatitamaoho claimed the Patumahoe-Drury area, while both tribes occupied pa sites on the Waiuku Peninsula. The Ngatitipa inhabited the south bank of the Waikato River at Te Kohanga (but also claimed land on the northern side) and Ngati pou were living at Tuakau, Pokeno and Maketu (Peach Hill). Over on the Thames Coast was the Ngati Paoa tribe, which, probably because of its geographical position, seems to have had little contact with the other tribes in the Franklin area.[228]

As noted above, Smith thought that around 1740 the Kawerau were 'still occupying their ancestral lands about Manukau Heads, Wai-takere, and Muriwai' and that following 1740 a division was subsequently agreed upon between Ngati Whatua and Kawerau at Taupaki. He concluded that this boundary:

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226. Ibid, pp 11–12
227. Ibid, p 12
228. Morris, p 19

> existed down to the time of the Government purchase of Wai-takere and adjacent blocks, and it is shown on the maps to this day as the southern boundary of the Tau-paki block.[229]

Diamond extended Kawerau's territory in the mid-nineteenth century further east. He described the Ngati Whatua encroachment on the Waitakere ranges as largely punitive:

> so that even after the other aboriginal tribes around the Auckland isthmus had been overwhelmed and their land settled by the Ngati Whatua, the Kawerau as late as 1840 still held small areas of their old tribal lands at Mahurangi, Omaha and in the Ranges themselves.[230]

Graham commented in 1925 that:

> the Kawerau still exist as a recognised tribe. Their numbers now reduced to some fifty or sixty people, they are resident at Mahurangi, Omaha and various other localities within their ancient tribal domain.
>
> These *pa* in the Waitakere ranges appear to have been more in the nature of places of refuge in time of stress, but probably always had a number of people in occupation.[231]

In an earlier article he referred to a Kawerau kuia called Mereri living at Awataha (Shoal Bay) Waitemata Harbour where 'a remnant of these ancient tribes linger'.[232]

Te Uri-o-Hau were claimed by Smith to have been in occupation of the land north of a boundary which ran 'from opposite Kaipara Heads through Okahu-kura, and thence follows the south boundaries of the parishes of Orua-wharo and Te Arai to Te Arai Point on the East Coast' from the beginning of the seventeenth century to 1897.[233] Ngati Rongo were said in 1897 to have existed south of that boundary having 'inherited' the land from Waiohua by conquest. The Kaipara was considered the domain of Ngati Whatua 'proper' while Te Roroa occupied the area between Kaihu and Waimamaku. In 1910 Smith noted that:

> Towards the early part of 1840, Ngati Whatua and the Taou had returned to their *kaingas* on the Wai-te-mata from Waikato: Ngati Rongo had returned from Whangarei and other places to their home at Mahurangi, and the Uri-o-Hau were beginning to occupy their old home of Otamatea and the adjacent rivers.[234]

Of the Whangarei region, Preece Pickmere noted:

> By 1840, though some villages had palisades, they no longer had a need to be fortified. Kauika, near where Kauika Road is today, was the village of the chief

229. Smith, *The Peopling of the North*, pp 76–77. Although Dick Scott (*Fire on the Clay: The Pakeha Comes to West Auckland*, Auckland, Southern Cross Books, 1979, p 9) indicated that Ngati Whatua sold this land, not the Kawerau.
230. Diamond, 'Waitakere', pp 304–305
231. Graham, 'Kawerau', p 23
232. G Graham, 'A Legend of Old Mahurangi', *Journal of the Polynesian Society*, vol 27, no 106, 1918, p 86
233. Smith, *The Peopling of the North*, p 63
234. Smith, *Maori Wars of the Nineteenth Century*, p 478

> Kahunui. Further to the west was Paritai where lived Iwitahi whose wife was a sister of Te Tirarau. Going south where much of the present commercial area is today, was Ratu, the village of Karekare who was a *tohunga*. At Wai-iti, inland of Toetoe, lived the chief Toka-tutahi, whose wife was Te Tirarau's sister; and further round near the mouth of the Otaika river, lived Te Akiriri, Te Tirarau's half-brother. Further round the shore was Mahakitahi, the village of Kawanui . . . These people were all closely related, all of Te Parawhau tribe.[235]

The Patuharakeke people lived on the south side of the harbour and:

> From the Town Basin area and inland to Kamo, Ketenikau and Parahaki, was the territory of the Ngati-Kahu people. Tipene had his village, Pihoi, on the high land above the present Town basin and, going along the north side of the harbour, the next village was Waimahunga, on the banks of the Awaroa river where the chiefs, Te Puia and his son, Hirawacni, lived. At Paki-kai-kutu, lived a small tribe called Tawera who had come originally from Bay of Plenty. Their chief was Te Amoteriri. At Tamaterau lived Wiremu Pohe with his people. And at Parua Bay was another *hapu*, Ngati-Tu, who lived under their chief, Kaikou, who had been baptised Solomon (Horomona) and who lived at what is today known as Solomon's Point. Further down lived a chief, Te Haro. A number of chiefs had fishing villages in this area including the chief, Tauwhitu. The chief Parihoro had a village at Whareora. At Ketenikau, near Kamo, lived Tauru and Puriri of Ngati-Kahu *hapu*.[236]

In 1839 Captain Gilbert Mair purchased the large area at Whangarei heads from:

> Te Tao (of a *hapu* related to the coastal people, Ngati-Wai) the whole of the Whangarei Heads peninsula from a line running from McLeods Bay to the outer coast (supposedly about 10,000 acres).

Te Tirarau also made a claim to it on the grounds that an ancestor of his had blood spilt on the land. Busby purchased land at Ruakaka/Waipu from Patuharakeke in 1839. Ngati Paoa sold land inland around Matakana but Ngati Manu and Parawhau disputed their right to do this.[237]

The Waikiekie area, according to Stephen, 'was known as Parawhau country' and 'land to the east of Waiotira creek was worked by the Ngatiwai or subtribe of these people' while '[s]outh of the Maunganui River was Ngati Whatua country'. He concluded that after Te Ikaaranganui:

> it would appear that the Parawhau as owners had disappeared, and the selling of Waikiekie to the [C]rown was done by Chiefs of the reformed Ngatiwhatua and the Uriohau tribe.[238]

He understood that:

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235. N Preece Pickmere, *Whangarei: The Founding Years 1820–1880*, Whangarei, N Pickmere, 1986, pp 17–18
236. Ibid, p 18
237. Ibid, pp 26, 27, 38
238. J T Stephen, *Early Northland Waikiekie Pioneers 1860–1900 and Their Descendants*, Whangarei, Small Cords Press, 1989, p 16

> this part of the country belonged to the Parawhau or the Ngatiwai but seems to have been sandwiched in between the Ngatiwhatua on the south towards Maungaturoto, Batley and Kaiwaka, and the Uriohau on the Tangiteroria and Titoki side.
>
> From all accounts, Waikiekie, Ruarangi and Mareretu country seemed to have been a sort of 'No Man's Land', only inhabited by tribes or portions of tribes defeated in wars, and using these areas of the Tangihua and Mareretu Mountains and the forests of Waikiekie as a hiding place away from their foes.[239]

Ngai Tahuhu, closely related to Te Parawhau, were claimed by Smith to have occupied the Upper Wairoa and Mangakahia valleys and adjacent country.[240]

General Ngapuhi boundaries in the late eighteenth and early nineteenth centuries have been described in chants as running from Puhanga-tohora to Te Ramaroa to Whiria to Panguru to Papata, to Maunga-taniwha to the Bay of Islands to Cape Brett to Whangarei Heads (Manaia) to Tutamoe to Manganui Bluff and back to Puhanga-tohora.[241]

Muriwhenua, home to Ngati Kuri, Te Aupouri, Te Rarawa, Ngai Takoto and Ngati Kahu, has been identified for the purposes of the Muriwhenua Fishing claim as an area north of a line running from Whangape Harbour to Mangonui, including the outlying islands.[242] However, the Muriwhenua land investigation has extended beyond that line, especially in the area east of Mangonui Harbour. This aptly illustrates the on-going nature of research into tribal affiliations and locations in the north, which this chapter, with the limitations discussed in its introduction, has aimed to encourage.

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239. Ibid, p 18. Bioletti, *Rodney Coast to Coast*, Rodney District Council, 1992, made reference to Ngati Wai having once owned 'all Cape Rodney' and (at present) 'Ngati Wai takes in Takatu, Great Barrier Island and up the coast to Ngunguru'.
240. Smith, *The Peopling of the North*, p 36
241. Lee, pp 289–291
242. Waitangi Tribunal, *Muriwhenua Fishing*, p 3

CHAPTER 3

OLD LAND CLAIMS

3.1 INTRODUCTION

3.1.1 Methodology

This survey of pre-1865 transactions, both old land claims and Crown purchases, will focus on four issues:

(a) In the circumstances prevailing, were Crown policies used to identify the owners or those holding rights in Maori land (and other resources) adequate? Did they give adequate consent to the transfer of their land/resource rights to the Crown or to Crown grantees?

(b) What was the extent of the land/resources transferred? Were the boundaries clear and understood?

(c) Was an adequate equivalent exchanged? Did it include no more than immediate payment in cash or goods, or did it entail ongoing obligations?

(d) At the end of the pre-emption era (ie, 1865), were Maori left with sufficient resources and authority to provide for current and future generations?

3.1.2 Treaty basis of issues

Each of these issues, I contend, are Treaty issues. When article 2 guaranteed the Crown's protection of rangatiratanga and those resources which Maori wished to retain, did it not obligate the Crown to discover the nature of Maori land and resource rights? Furthermore, did not article 2 obligate the Crown to identify Maori with rights in particular areas before ensuring that these people consented to transfer such rights to the Crown? For Maori consent to be properly informed, the people transferring resource rights to the Crown (or through the Crown as in the case of old land claims) had to know the boundaries of the areas or the nature of the rights transferred. While the adequacy of the equivalent (or fairness of the exchange) is not explicitly required by article 2, it is implied in the Maori text, which states that chiefs would negotiate an agreed upon price with Crown agents:

> ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kaihoko e meatia nei e te Kuini he kaihoko mona.[1]

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1. Text reproduced in I H Kawharu (ed), *Waitangi: Maori and Pakeha Perspectives of the Treaty*, Auckland 1989, pp 316–318. The Maori term implying equity is whakarite.

Even if the text of article 2 does not explicitly require an adequate equivalent fully consented to, the context of the Waitangi, Mangungu, and Kaitaia korero in February and April of 1840 suggests a firm Maori desire for something like a fair or just price for resource transfers. Repeatedly, Maori speakers at these korero (the most extensively documented of all Treaty discussions) complained about Pakeha attempts to defraud them.[2] Moreover, the adequacy of the equivalent need not be confined to immediate payments. If Maori expected ongoing security or development opportunities as part of the 1840 bargain entered into by the Crown, this long-term equivalent should be investigated.

Finally, while Treaty texts offered Maori less than explicit protection against dispossession and political subordination, Normanby's instructions to Hobson of August 1839 were explicit. Normanby insisted that Maori:

> must not be permitted to enter into any [land purchase] contracts in which they might be the ignorant and intentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this – will be one of the first duties of their official [Crown] protector.[3]

Maori also expressed fears of dispossession and subordination at the Waitangi Treaty korero. There Te Kemara (Ngati Rahiri), Rewa, and Moka (Ngai Tawake) all called upon Hobson to return lands which the Lieutenant Governor later referred to as 'unjustly held . . .'[4] Tamati Pukututu (Te Urio-o-te Hawato/Ngongo) beseeched Hobson to protect Maori from piritoka and piriawaawa (migrants who would steal their land), while Wai (Ngai Tawake) asked him to stop Pakeha cheating Maori out of fair equivalents in trade.[5]

Tareha (Ngai Tawake), a dominant political figure in the Bay of Islands, rejected political subordination:

> No Governor for me – for us – we are the chiefs – we won't be ruled. What, you up, and I down – you high, and I Tareha, the great chief low? I am jealous of you, go back, you shan't stay. No, no, I won't assent . . .[6]

Perhaps for this reason, Tareha did not sign, although his son Mene did. Even Tamati Waka Nene (Ngati Hao), who turned the tide of debate in favour of the Treaty, evoked a spectre of dispossession and subordination:

> The Govr return – what then shall we do? – Is not the land gone? Is it not all covd [covered] with men, with strangers, over whom we have no power, we are down, they

2. See Rigby, 'Empire on the Cheap', claim Wai 45 record of documents, doc F8, pp 23–35
3. Normanby to Hobson, 14 August 1839, BPP, 1840, (238) p 39
4. Anne Salmond, 'Treaty Transactions', claim Wai 45 record of documents, doc F19, pp 21–24
5. Ibid, pp 25–26
6. Ibid, pp 28–29

> are up . . . O Govr sit [or remain] I may sit, don't you go away – remain for us, a father – a judge – a peacemaker.

Hobson's account confirms that Nene's message to protect Maori registered:

> You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us![7]

Similar themes of Maori demanding Treaty protection from dispossession and subordination echoes at Mangungu and Kaitaia. Makoare Taonui (Te Popoto), Tareha's political peer at Hokianga, rejected the subordination of a colonial subject:

> we will be our own Governor. How do the Pakehas behave to the black fellows of Port Jackson? They treat them like dogs!

You will never treat us like that, he said, with conviction. Wi Tana Papahia (Te Rarawa) too, rejected the idea that the Governor would be as high as Maungataniwha and Maori 'nothing but little hills'. Mohi Tawhai (Te Mahurehure), in an attempt to put Hobson on the defensive, even suggested that he came 'to deceive us.'[8] In regard to land rights, Taonui proclaimed, 'it is from the earth we obtain all things; the land is our father, the land is our chieftainship; we will not give it up'.[9]

Kaitoke (Te Hikutu) accused Pakeha of cheating Maori out of land and out of a fair exchange relationship.[10] Mohi Tawhai, in his third contribution to the debate, asked Hobson what he would do to remedy Maori grievances over such unjust dealings.[11]

Taonui, in his last contribution, appeared to yield to Hobson the Crown's right to hold Maori land in trust for future generations.[12]

Although most chiefs decided to accept Hobson's authority as a protector, Kaitoke and 50 others sought to withdraw their consent, stating that 'if the Governor thought they had received the Queen he was must mistaken'.[13] Hobson told Gipps: 'I did not, of course, suffer the alteration.'[14]

At Kaitaia the speeches may have been less strident, but rangatira again spoke out in defence of their right to retain resources and authority. Reihana Teira (from Mangonui/Parapara) defended the Maori right to practice shifting agriculture and forestry, as did Matiu Huhu (from Awanui/Kaitaia), who expressed concern 'that a great many Pakehas (strangers) are coming to take the Land . . .'[15] Rawiri Tiro (from Kaitaia/Ahipara) signed that much land had already 'been bought round about by the

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7. Ibid, pp 31–32
8. Ibid, pp 39–40
9. Ibid, p 40
10. Ibid, p 41
11. Ibid, pp 43–44
12. Ibid, p 44
13. Ibid, pp 47–48
14. Ibid, pp 48–49
15. Ibid, pp 51–52

Pakehas . . .', an observation which Poari Mahanga (from Pukepoto/Ahipara) endorsed.[16]

Nopera Panakareao (Te Rarawa/Te Patu) upstaged everyone with his famous 'Shadow of the Land' speech. Salmond interprets the meaning of the speech in the context of Willoughby Shortland's promise at Kaitaia to protect Maori ways. According to Salmond, Panakareao believed that the Treaty:

> guarantee of rangatiratanga safely secured Maori in the possession of their lands . . . [which] would remain under Maori control.[17]

This affirmation of Maori rights and authority brought forth a loud affirmative chorus as the Kaitaia Treaty signing started.

Table 1: Treaty signers, Waitangi, Mangungu, Kaitaia

Source: Miria Simpson (comp), *Nga Wharangi o te Tiriti*, Wellington, 1990; and Claudia Orange, *An Illustrated History of the Treaty of Waitangi*, Wellington, 1990

Date	Name	Iwi*	Hapu	Comments
6 Feb	Hone Heke	NP	Te Matarahurahu	
"	Te Wharerahi (Hori Kingi)		Ngai Tawake	Older brother of Rewa and Moka
"	Tamati Pukututu	NP	Te Uri-o-Te Hawato, Ngongo T Uo	
"	Hakero (Hakiro)	"	N Tawake	
"	Hikitene(Wikitene)	?		
"	Pumuka	NP?	Te Roroa	
"	Te Tao	"	Te Kai Mata	
"	Reweti Atuahaere	"	Ngati Tautahi	
"	Wiremu Hau	"	Te Whiu	
"	Te Kaua	"	Te Herepaka	
"	Toua or Tona?	"		
"	Mene	"		Son of Tareha
"	Tamati Waka Nene	"	Ngati Hao	
"	Matiu (Teuka)Huka?	"		

16. Ibid, p 52
17. Ibid, p 8

Date	Name	Iwi*	Hapu	Comments
6 Feb	Te Kamera (Kaitieke)		Ngati Kawa	
"	Wharau	"	Ngati Tokawero	
"	Ngere	"	Te Urikapana	
"	Patuone (Eruera Maihi)		Ngati Hao, Ngati Pou, Te Roroa	
"	Paora Nohimatanga	"		
"	Ruhe	"		Son of Kopiri
"	Rewa (Manu)	"	Ngai Tawake	Wharerahi brother
"	Moka (Te Kaingamata)	"	Ngai Tawake, Te Patu Heka)	"
17 Feb	Pomare (Whetoi)	"	Ngati Manu	
13? May	Kawiti	"	Ngati Hine	
"	Te Tirarau	NW	Te Uri-o-Hau	
"	Taurau	"		Brother of Tirarau
"	Te Roha	"	Te Uri-o-Hau	
Un-known	Kaitara Wiremu Kingi	NP	Ngati Hineira,Te Urikapana	
13? May	Taura	"?		
"	Papahia	TR		
"	Takiri	"		
"	Te Toko	"		
"	Wiremu Tana Papahia	"		Signed for himself alone
"	Te Tai	"		Also Papahia's son
"	Te Toroihua	NP?		For Kane? Kaue?
"	Te Keha	"		
"	Wao	"		
Un-known	Takurua	"		Te Kemara's daughter, married Te Tai

Date	Name	Iwi*	Hapu	Comments
13? May	Te Hinake	NP?		Ngati Hau (Hao) te ingoa o te Iwi
"	Te Totohu	"		'Omanaia te w[h]enua'
"	Omanu Te Wunu	"		
"	Nga Manu	NP	Ngati Hao, N Kaharau	
"	Hiro	"?		
"	Te Marama	"		
"	Moe Ngaherehere	"		
"	Mahu	"		
"	Wiremu Wuna	"		
"	Te Tawaewae	"		
"	Te Whareumu	NP		
"	Te Makoare	"?		
"	Te Ahu	"		
"	Tukupunga	"		
"	Tawatanui	"		
"	Te Rawiti	"		
"	Kuihanga	"		
"	Paraha	NP	Ngati Hine	
"	Tahua	"?		
"	Te Puka	"		
6 Feb	Hara	NP	Te Uri-o-te-Hawato, Ngati Rangi	
"	Hakitara	TR	Te Aupouri?	
"	Hawaitu (Tamati)	NP	Te Uri-o-Hua	
"	Te Matataki (Matatahi)	"	Te Kapotai	
"	Rawiri Taiwhanga	"	Ngati Tatahi, Te Uri-o-hua	
"	Paraara	"		

Date	Name	Iwi*	Hapu	Comments
6 Feb	Ana Hamu	NP	Te Uri-o-ngongo	Te Koki's widow
"	Hira Pure	"	Te Uri-o-Hua, Te Rere-o-hua	
"	Iwi	"	Ngati Rangi (TR acc to Marsden), Te Urikapana	
"	Whiorau	"	Te Whanua Rara	
"	Wiremu Watipu	"	Ngati Wakaheke/ Whakaheke?	
"	Piripi Haurangi	"?		
"	Pokai	"	Ngati Rahiri	
"	Te Kauwhata	"	Ngati Wai	
"	Tuirangi	"	Te Matarahurahu	
"	Hohepa Otene (Pura)	"	Te Urimahoe, Te Uri-kopura	
"	Hone Kingi Raumati	"	Ngati Toro	
"	Tuhakuaha	"	Ngai Tawake	
"	(Te Koroiko/ Korohiko?)		N Tuwharetoa	(Te Rangi-ita)
"	Iwikau (Te Heuheu)	"	N Turamakina	
12 Feb	Haki	NP	Te Urikapana	
"	Rewiri (Rawiri)	"		
"	Te Pana	"		
"	Honi Makinaihuinga?	"		
"	Pangari	"	Ngati Hua	
"	Rangatira (Moetara)	"	From Pakanae	
"	Tio (Te Tukuaka)	"	Te Pouka	
"	Karekare	NW?	Te Uri-o-hau?	
"	Tungarawa	NP?		
"	Paka	"		
"	Te Wharekorero	"	From Ororu?	

Date	Name	Iwi*	Hapu	Comments
12 Feb	Marupo	NP?	Matahuruhuru, N Kawa	Spoke against Treaty at Waitangi, but signed there and here, at Hokianga
"	Toto	NP?		
"	Toko	"		
"	Piripi Ngaromotu	"		
"	Wiremu Rameka	"	Ngati Rahiri, Ngati Rangi	
"	Wiremu Patene	"	Te Uri-kopuru	
"	Manaihi	"		
"	Paratene (Te Ripi)	"		
"	Te Hira	TR	From Motu Kiore?	
"	(Wiremu Waka)Turau	NP	Ngati Hao	
"	Te Reti	"?		
"	Kenana	"		
"	Pero	Waikato		Acc to Royal, Te Kanawa's son
"	Pero	Ngati Paoa	From Hauraki, acc to Marsden	
"	Te Uruti	NP	Ngai Tupoto	
"	Witikama Rewa	"?		
"	Tiro	"		
"	Tipa and Toro	"		Possibly twins
"	Matiu	NP	Te Uri-o-Ngongo?	
"	Kaihu	"	Te Hikutu	
"	Kaitoke (Te Whakawai)	"	"	
"	Huu? Hua? Wera?	"?	Ngai Tupoti	
"	Kiri Kotiria	NP	Te Hikutu	
"	Tamati Hapimana	"	Ngati Matakiri?	
"	Te Kekeao Paratene	"	Ngati Matakiri, Te Uritaniwha	

Date	Name	Iwi*	Hapu	Comments
12 Feb	Makoare Taonui	NP	Te Popoto	
"	(Raniera) Kahika	"		
"	Aperahama Tautoru	"	Widely believed to be Makoare Taonui's son	
"	Kaitoke Muriwai	"	Te Popoto?	
"	Te Naihi (Rotohiko?)	"	Ngati Uru	
"	(Wiremu Hopihona?)	Tahua	Te Popoto	
"	Te Tuku	NP		
"	Ngaro	"		
"	Rawiri Mutu	"	Ngati Hua	
"	Wiremu Whangaroa	"		
"	Timoti Takari	Waikato?	Ngati Po	
"	Hamiora Matangi	NP	From Waima	
"	Arama Hongi	"	Ngati Uri	
"	Haimona Tauranga	NP?		
"	Te Kure (Kotiria)	"		
"	Heremaia	"		
"	(Arama Karaka) Pi	NP	Te Mahurehure at Waima	
"	Repa Mango	"	Ngati Rehia?	
"	Maunga Rongo	"	Ngati Uru?	Makoare Taonui's son
"	Wiremu Manu	"?		
"	Takahorea	"		
"	Kawau (Whakanau)	" TR?		
"	Mohi Tawhai	NP	From Waima	
"	Timoti Mito	NP?		
"	Hamiora Paikoraha	NW?	Acc to Ngata, Te Roroa from Waipoua	

Date	Name	Iwi*	Hapu	Comments
12 Feb	Huna Tuheka	NP	Ngati Pakau (at Tuheke)	
"	Wiremu Kingi	"	Ngati Rehia?	
28 April	Nopera Panakareao	TR	Te Patu	
"	Paora Ngarue	"		
"	Wiremu Wirehana	"		
"	Rimu	"		
"	Himiona Tangata	"	(Mission teacher, father of Renata Tangata†)	
"	Matenga Paerata	"	Te Patukoraha	
"	Rapata Whakahoki			
"	Hare Popata (Bobarts) Waka	"	Kaitote	
"	Taua			
"	Taitimu	TA		
"	Matiu Huhu			Acc to Urquhart, Papahia's brother†
"	Tokitahi			
"	Paratene Waiora			
"	Rapiti Rehurehu			
"	Koroneho (Colenso) Pupu			
"	Piripi Raorao			
"	Kopa			
"	Meinata Hongi			
"	Otopi			
"	Paetai			
"	Marama			Usually a woman's name
"	Paratene Karuhuri			
"	Tamati Pawau			

Date	Name	Iwi*	Hapu	Comments
28 April	Reihana Teira (Ngakaruwhero)		From Mangonui (Parapara†)	
"	Watene Patonga			
"	Wiremu Ngarae			
"	Hohepa Poutama			(Later summoned to Hone Heke's deathbed†)
"	Hare Matenga Kawa			
"	Kingi Kohuru			
"	Matiu Tauhara			
"	Hamiora Potaka			
"	Huatahi (Hetaraka)		Acc to Ngata	
"	Marakai Mawai			
"	Utika Hu (Utikahu?)			
"	Hare Huru	NK/TA	Acc to Marsden	
"	Tamati Mutawa			
"	Hauora		From Knuckle Point	
"	Tomo			
"	Puhipi (Te Ripi)		From Pukepoto and Ahipara	
"	Ereonora		Wife of Panakareao	
"	Poari Mahanga		Chief of Pukepoto and Ahipara	
"	Rawiri (Tiro)		Chief of Kaitaia and Ahipara	
"	Kepa Waha (Waka?)			
"	Koroniria Haunui			
"	Ngare			
"	Hamiora Tawari			
"	Te Whiti		Chief of Awanui	
"	Ruanui			
"	Haunui			

Date	Name	Iwi*	Hapu	Comments
28 April	Ruri (Kuri)		Acc to Marsden, Te Aupouri chief	
"	Kowaraki (Kawaraki)			
"	Rawiri Awarau			
"	Ru			
"	Papanui			
"	Hakaraia Kohanga			
"	Kawahutiki (Kawaheitiki?)			
"	Pera Kamukamu			
"	Karaka Kawau			
"	Paora Hoi			
"	Himiona Whareora			
"	Aperahama		From Oruru	

* Iwi identifications (all based on Orange)
NP Nga Puhi
NW Ngati Whatua
TR Te Rarawa
TA Te Aupouri
NK Ngati Kahu

† Based on Treaty notes provided by the Reverend Dennis Urquhart (apparently prepared during the 1990 Kaitaia commemoration of the signing of the Treaty).

The Waitangi Tribunal has indicated on numerous occasions that Treaty meanings transcend the official texts. From Salmond's exposition of the political and cultural context of the three Northern Treaty korero, Maori participants appear to have believed that the Treaty would protect their customary rights and authority. The indigenous expectation of protection, therefore, appears to support the view that the Treaty obligated the Crown to protect Maori from the consequences of dispossession and subordination.[18]

18. The Tribunal's application of the contra proferentum rule in the Orakei case would appear to support this view. See William H Oliver, *Claims to the Waitangi Tribunal*, Wellington, 1991, pp 77–78.

3.1.3 Comparative colonial context

In determining the extent to which the Crown met, or failed to meet, its Treaty obligations, historians should adopt a bifocal vision. We should measure the Crown's performance by twentieth century Tribunal standards, without losing sight of the fact that the Crown operated in a nineteenth century colonial context and with a set of distinctive assumptions about the interests of indigenous people. This section will explore the paternalism at the centre of these assumptions as well as the limits of the Crown's authority in the 1840s. The circumstances prevailing in New Zealand bear comparison with what transpired later in Fiji and Samoa, before returning to the question of the standards it is realistic to measure Crown actions by in New Zealand.

New Zealand historians have frequently referred to the Treaty of Waitangi as an exercise in humanitarian idealism. Sinclair's standard general history referred to it as inaugurating a 'new and noble experiment' in colonial history.[19] Few historians have fully recognised the paternalism that is implicit in the actions of a colonial authority assuming protective responsibilities over an indigenous people. In 1840 most Crown officials embraced at least four fundamentally paternal assumptions:

(a) that Maori, like other African, Amerindian, and Pacific peoples, were uncivilised savages inherently unable to protect themselves;
(b) that Maori had squandered most of their land in improvident pre-Treaty transactions;
(c) that they were incapable of self-government and would meekly accept Crown authority; and
(d) that to survive and prosper Maori needed to learn how to become obedient subjects of the Crown.[20]

Although the Waitangi Tribunal has translated this Victorian paternalism into twentieth-century protective obligations, historians cannot deny the contradiction between paternalism and effective protection. In the nineteenth century the Crown officials who pledged to uphold the Treaty were accountable to their imperial superiors, not to the people they were supposed to protect. Of all historians, probably Peter Adams has best expressed this contradiction when he argued that the:

> Treaty was intended to protect Maoris only insofar as their rights were compatible with British dominance . . .[21]

Nineteenth-century officials were bound to see their Treaty obligations in a different light to that of a twentieth century Tribunal seeking to remedy the injustices of the past. Those officials believed that Maori were privileged to become the subjects of the world's greatest empire. If they failed to become obedient subjects, they did not deserve the Crown's paternal protection.

In addition to the contradiction between paternalism and protection was that of means and ends. In order to effectively protect Maori, Crown officials required the

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19. Keith Sinclair, *A History of New Zealand*, Harmondsworth, 1959, p 71. See also Claudia Orange, *The Treaty of Waitangi*, Auckland, 1987, pp 38, 59.
20. Some of these assumptions are discussed as 'imperial illusions' in Rigby, 'Empire on the Cheap' (pp 9–16).
21. Peter Adams, *Fatal Necessity: British Intervention in New Zealand 1830–1847*, Auckland, 1977, pp 14–15

means to enforce their authority. Until 1845 they were repeatedly denied adequate means. Hobson and FitzRoy's imperial superiors instructed them to administer the colony with little more than its own revenues.[22] The problem with a user-pays colony was that it depended upon the Crown getting lots of land cheap. It could then sell it to settlers at a considerable profit. Initially the Crown believed it could use the surplus land generated by improvident pre-Treaty transactions to fund colonial administration.[23] Old land claims, however, proved to be a harder nut to crack than the Crown anticipated, and they failed to yield surplus land returns to the Crown until 1850–60 (see below).

Until Governor Grey arrived in New Zealand with £50,000 to 'repress rebellion', the Crown lacked the means to extend its authority over its indigenous subjects. This, in Victorian eyes, was a necessary precondition for effective protection. In other words, the Crown could protect Maori only as British subjects obeying British law. Crown officials could not conceive of a situation in which they protected Maori obeying their own law. When Te Rauparaha and Heke enforced their version of Maori law, the Crown regarded them, almost by definition, as 'in rebellion.' Henry Williams circulated 400 copies of the Maori Treaty text during the Northern War, in part to convince Maori that it required their obedience to the Crown.[24]

The closest parallels to New Zealand's protective colonial history in the South Pacific are Fiji and Samoa. In the area of pre-colonial land transactions, Fiji and Samoa experienced the same kind of pre-colonial land rush that occurred in New Zealand in 1839–40. In both Fiji and Samoa a post-American Civil War cotton boom, as well as the expectation of colonial intervention, provoked this rush in the 1860s and early 70s.[25] Just as in New Zealand, this land rush contributed to the breakdown of indigenous authority prior to the establishment of de facto colonial control.

In all three cases, colonial authorities took prompt action to investigate and decide the future of indigenous land claimed by Europeans. Article 7 of the Fijian Deed of Cession 1873 required such action, as did article 4 of the Berlin Treaty on Samoa 1889. During the late nineteenth century, the Fiji Native Land Commission investigated claims to about 20 percent of the total land area and granted about 8.2 percent to Europeans.[26] The Samoan Lands Commission granted about 20 percent of the total land area to Europeans, who claimed virtually all of Samoa. Malama Meleisea has pointed out that the Samoan land granted to Europeans included 60 percent of the most valuable plantation and township land.[27]

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22. Rigby, 'Empire on the Cheap', pp 21–23, 54–57
23. Hobson to Gipps, 16 January 1840, G30/1 p 10; Gipps's speech in introducing the New Zealand Land Bill, 9 July 1840, BPP, 1841 (311), pp 63–64
24. Ralph Johnson, 'A History of Intercultural Encounter in the Northern War, 1844–1846', MA thesis, University of Auckland, 1995, p 45
25. Peter France, *The Charter of the Land: Custom and Colonization in Fiji*, Melbourne, 1969, pp 81–83; Rigby, 'Benevolent Imperialism? The Commercial Origins of American Samoa', *South Pacific Forum*, vol 4, no 2, April 1988, pp 78–85
26. Deryck Scarr, *Fiji: A Short History*, Sydney, 1984, p 85; Scarr, *The History of the Pacific Islands*, Melbourne, 1991, p 240
27. Malama Meleisea, *The Making of Modern Samoa*, Suva, 1987, pp 43–45

Samoans, therefore, appear to have fared much worse at the hands of a colonial land commission than the Fijians. How did Maori fare by comparison? Under the circumstances, did the Crown meet its obligations under the Treaty in the way it acted upon old land claims?

3.1.4 Old land claims

(1) *Historical debate*

The debate begun at Waitangi on 5 February 1840 about the Crown's obligations under the Treaty has continued ever since. Even before that event, Hobson had addressed apprehensive Pakeha land claimants in Sydney. There, on 10 January 1840, the future Governor indicated that Maori were not:

> in a condition to treat with Europeans for the sale of their lands, any more than a minor would be . . .

Maori, he believed, were not competent to enter into equitable contracts.[28] To assert Crown control over granting title to land, Hobson issued proclamations in Sydney on 14 January, and again at Kororareka on 30 January. This proclamation stated simply that the Crown henceforth:

> does not deem it expedient to recognise as valid any Titles to Land in New Zealand which are not derived from or confirmed by Her Majesty . . . But in order to dispel any apprehension that it is intended to dispossess the Owners of any Land acquired on Equitable Conditions . . . I do hereby further Proclaim . . . that a Commission shall be appointed . . . to enquire into and report on all Claims to such Lands.[29]

Claimant and Crown historians have presented a detailed account of the formation of the two major land claims commissions in northern New Zealand. The first, composed of Matthew Richmond and Edward Godfrey, and appointed by New South Wales Governor Gipps in 1840, served until late 1844.[30] The second, operated by Francis Dillon Bell under the 1856 Land Claims Settlement Act, undertook a major investigation of 1375 claims between 1857 and 1863.[31]

While the Muriwhenua debate on old land claims during 1992 and 1993 raised many issues, Jack Lee's recent book, *Old Land Claims in New Zealand*, probably expressed the most widely held views on this subject. Lee argued that the nineteenth-century Land Claims Commissions did generations of New Zealanders a great service. He maintained that the Crown commissions reduced the acreage claimed from in excess of 66 million acres (the total land area of New Zealand) to 10 million acres 'by applying very restrictive principles . . .' and disallowing 'all

28. Hobson to Gipps, 16 January 1840, Governors series [G] 36/1
29. 30 January 1840, land titles proclamation, Hobson papers, MS 2227 folder 1, ATL; cited in Claudia Orange, *Treaty of Waitangi*, Wellington, 1987, p 34
30. William Spain's 1842–45 commission operated only as far north as Taranaki.
31. The relevant Muriwhenua (Wai 45) reports are Alemann (docs F11, H8); Boast (docs F18, G7); Wyatt (doc F17); Nepia (docs G1, G8); Loveridge (doc T2); Armstrong (docs I4, I5); Armstrong and Stirling (doc J2); and Oliver (doc L7). See also the Tribunal's 'Tentative Statement on Issues', 8 July 1993 (doc I6) in respect of the adequacy of the previous commission investigations.

extravagant "purchases."[32] The Crown then granted only 267,175 acres of this 10 million acres effectively claimed by pakeha, according to Lee.[33] Lee relied upon Bell's estimate that the Crown acquired an additional 204,000 acres of surplus land and approximately 109,000 acres of scrip land. (For a definition of these terms, see the glossary.) He estimates that post-1865 old land claim settlements could not account for more than a further 2.5 million acres, so that the Crown 'allowed' little more than 30 percent of claims heard, and alienated no more than 4.6 percent of the total land area of New Zealand. This, of course, compares favouraby with the 8.2 percent of Fiji and the 20 percent of Samoa granted to Europeans.

Lee concluded therefore:

> There can be no doubt about the justice underlying the policies of Hobson, FitzRoy, Grey as Crown Colonial Governors here, nor about the intentions of the British Government as to the fair treatment of the Maori people in the matter of the Old Land and Pre-Emptive land purchases. Prior to 1840, speculators . . . had purchased millions of acres of New Zealand land, and a calamity would certainly have befallen the Maori race, and, indeed, the genuine European settlers, but for the resolute administration of the [land claims] legislation designed to avert this.[34]

Although Lee expressed qualms about the Crown's 'dubious title to' surplus land (which was not asserted in either Fiji or Samoa), he praised Commissioner Bell as 'largely responsible for bringing to a close the lingering problem' of old land claims prior to 1865.[35]

In summarising Muriwhenua claimant and Crown evidence on old land claims, William H Oliver came to entirely different conclusions for that particular area. Oliver estimated that Crown grants and surplus land arising from old land claims accounted for about 15 percent of the most valuable Muriwhenua land (a regional figure much higher than Lee's national estimate of 4.6 percent).[36] He also distinguished two phases of Crown policy and practice. During the Crown Colony period (1840–53) Oliver found the Crown's investigations and actions fraught with inconsistency and temporising.[37] Only after 1856, when Bell took over as Land Claims Commissioner, did the Crown begin to assert its claims to specific areas of surplus land. It did this as part of a process of guaranteeing secure Crown grants based on survey. While Bell couldn't be accused of temporising, Oliver found his peremptory dismissal of numerous Maori protests over the extent and disposition of surplus land to be a function of his loyalty to settler interests.[38] In Oliver's words, Bell's:

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32. Jack Lee, *Old Land Claims In New Zealand*, Kerikeri, 1993, pp ix–x. This 10 million acre figure obviously does not include the 20 million acres claimed by the New Zealand Company in Taranaki, Wanganui, Wellington, Nelson, and Marlborough.
33. Ibid, p x. This apparently includes 28,381 acres granted as a result of 1844–46 pre-emption waiver claims.
34. Ibid, p 20
35. On surplus land, see ibid, p 14. On Bell, see ibid, p vi.
36. Oliver, 'The Crown and Muriwhenua Lands', claim Wai 45 record of documents, doc L7, p 3
37. Ibid, pp 5–14
38. Ibid, pp 15–22, 34

identification with the cause of colonisation fashioned the lens through which he observed and recorded his activities, most especially those that related to Maori interests, if they inhibited colonisation.[39]

(2) *Definitions, aggregate data, and the survey problem*

Despite his well-known administrative efficiency, the data Bell collected on old land claims is less than reliable. In relying almost entirely upon what Bell published as to the extent of old land claims and the components thereof, that is, Crown grants, native reserves, surplus land, and scrip land, Lee accepted Bell's data without question, and, like Bell, he never satisfactorily defined his terms. The glossary attempts to remedy this deficiency.

The reliability of Bell's original aggregate acreage data should be assessed by comparing it with the results of the 1946–48 Surplus Land Commission (SLC) investigation, and a recent one conducted by Michael Harman and Barry Rigby. Here is a brief tabular comparison of the three sets of aggregate data (excluding New Zealand Company claims):

Table 2: Old land claims: aggregate data

Bell totals (acres)			
Claims	Grants	Scrip (£)	Surplus
10,322,453	292,475	109,289	204,243
SLC totals (acres)			
Claims	Grants	Scrip (£)	Surplus
651,174	266,828	138,902	94,698
Preliminary Rigby/Harman totals (acres)			
Claims	Grants	Scrip (£)	Surplus
9,274,540	441,948	123,664	140,204

The most significant discrepancy in these figures appears to be found in the SLC acreage estimate of surplus land (less than half Bell's figure, and substantially lower than Rigby and Harman's). Fortunately, the Lands and Survey staff assisting the SLC explained the reasons for their departure from Bell's estimate by identifying six differences in their categories:

(a) claimed (and usually surveyed) land subsequently purchased by the Crown, accounting for 42,913 acres;

(b) scrip land which Bell failed to distinguish from surplus land in his 1862 report accounted for 50,457 acres which should not have been classed as surplus land;

39. Ibid, p 21

(c) land within claims taken by the Crown under the Bay of Islands Settlement Act 1858 for which claimants received compensation accounting for 5474 acres;
(d) land claims settled after 1865 with John Jones in Otago and James Busby at Ngunguru/Tutakaka accounting for 10,000 acres;
(e) land claimed but included in the Bay of Plenty Confiscation area totalling 7638 acres (for which claimants received compensation); and
(f) land returned to Maori at Puketotara (near Kerikeri), accounting for a 1583-acre discrepancy.[40]

Harman and Rigby took all six considerations into account in reaching aggregate figures. The fact that the resulting grant acreage estimate was almost double the SLC's (and substantially more than Bell's) demonstrates the difficulty of reconciling this kind of data. All that can be said at this point is that all aggregate estimates need to be carefully examined on the basis of clearly defined terms of reference.

The inherent inaccuracy of pre-triangulation survey techniques, as well as undefined terms, may have contributed to the acreage discrepancies. All surveys conducted before 1865 were conducted without the benefit of triangulation. According to Brad Patterson, former official historian of the Department of Lands and Survey, such surveys could not possibly produce exact acreage figures.[41]

Bell compounded this problem by relying upon the services of numerous private surveyors. Prior to 1856, few claims had been surveyed, mainly because FitzRoy had not made this a pre-requisite of Crown grants.[42] Bell finally laid down standard operating procedures for private surveyors on 8 September 1857. These procedures, or 'Rules', required surveyors to connect plans 'with some neighbouring survey' to allow for some form of cartographic consistency in the absence of scientifically established co-ordinates. Bell required surveyors to file 'a written description of the boundaries' with each plan, and also:

> a certificate . . . that every boundary line . . . has been properly cut on the ground, and that the survey has been completed without disturbance from the Natives.[43]

In fact, few surveyors followed these procedures. Of the 420 or so old land claim plans still held by the Department of Survey and Land Information, only about 10 percent are accompanied by a surveyor's certificate declaring the lines to be 'properly cut' or 'completed without disturbance . . .'[44]

By allowing private rather than Crown surveyors to conduct essential definition activity, Bell rendered the potential for inadequate, inaccurate, or inconsistent

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40. 'Comparison of Return of Commissioner Bell . . . of Lands Reverting to the Crown with the Position as Ascertained by the Lands and Survey Dept', not dated, MA 91/9, exhibit B, pp 72–74
41. Theophilus Heale, New Zealand's first Inspector of Surveys, made this abundantly clear in his published reports (Heale reports, 2 August 1867, AJHR, 1867, A-10B p 5; 7 March 1871, ibid. A-2A, pp 19–20).
42. For a critique of this expediency and the problems it created, see Rigby, 'Empire on the Cheap', p 68.
43. 'Rules Framed and Established by the Land Claims Commissioner, Francis Dillon Bell, Esquire, in Pursuance of the Power Vested in Him in that Behalf of the "Land Claims Settlement Act 1858"', 8 September 1857, *New Zealand Gazette*, MA91/9, exhibit B, pp 81–82
44. Certification has been quantified by inspecting all original OLC plans on microfiche at DOSLI head office. Their microfiche series has about 20 or 30 of the plans missing. I have not included them in my count.

information much greater than it needed to be. On the question of Maori verification of boundaries, much depended upon whether or not they consented to the surveyor's work. During 1843, the Crown established procedures to ensure the certainty of extinguishment by availing itself of the judgment of both the Protectorate Department, and that of a qualified surveyor. The Crown insisted that 'every precaution should be used to ensure a certain knowledge that the rights of the natives . . . have been completely extinguished . . .' For every claim, the protector or sub-protector had to 'certify that after due inquiry he is fully satisfied of the alienation of their [the Pakeha claimant's] lands by the former aboriginal owners'.[45]

The protector was to file this report together with a properly certified surveyor's report. The only cases in which a certified surveyor filed such reports, to my knowledge, were John P Du Moulin's signed, but undated, statements with respect to several claims near Kororareka. In accordance with his instructions, Du Moulin stated that his Orongo survey was 'Not obstructed by the Aborigines . . . [and] No claims of ownership have been proffered on me by them, or on their behalf.'[46]

There remains a question of whether the 1843 'Surveyor's Special Report', or Bell's 1857 'Rules' regarding surveys completed 'without disturbance', was sufficient to verify Maori consent to extinguishment. The plain fact of the matter is that in only a few claims out of over 1000 did a surveyor file a 'special report' during the 1840s, and only about 10 percent of the private surveyors complied with Bell's certification requirement regarding boundary marks or Maori dissent. In both cases, of course, Maori had to register dissent with Pakeha surveyors who weren't under any statutory obligation to explain their role and status to Maori. The fact that Maori may have failed to register their dissent, in my view, cannot be construed as an act of affirming consent to the accuracy of boundaries. To establish such consent requires direct evidence that Maori engaged in the transaction, traversed boundaries with the surveyors, and verified the geographic extent of the transaction.

Essentially, Bell compelled neither claimants nor the private surveyors recording boundary information to provide any sort of independent verification of this information, such as the 1840s protector's reports were supposed to provide. Thus, the information Bell reported, both on the extent of surveyed areas, and on the correspondence between these boundaries and those agreed upon prior to the Treaty remain to be verified. SLC staff attempted to do this, but with very limited success. Bell's failings, and those of the SLC, cannot be treated satisfactorily at this level of generality. They need to be analysed in relation to specific claims in which the Crown carried out different types of investigation.

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45. Colonial Secretary to Chief Protector, 21 April 1843, H H Turton (comp), *Epitome of Documents*, Wellington, 1883, B, p 78
46. 'Surveyor's Special Report on [Clendon's Orongo] Land Claim', not dated, MA91/18 (claim 121), p 8. H Tacy Kemp's 'Protector of Aborigines Special Report' on the same claim was similarly undated. Both reports recited the boundaries but named no Maori verifying the accuracy of them.

(3) *Centres of transactions/investigations*
Seven main centres of pre-Treaty transaction activity have been identified in the Auckland district.

Number of claims:

(a)	Bay of Islands	244
(b)	Whangaroa	42
(c)	Hokianga	105
(d)	Oruru/Mangonui	50
(e)	Kaipara	41
(f)	Mahurangi	6
(g)	Tamaki/Papakura	3

3.2 ISSUES: BAY OF ISLANDS

The Bay of Islands, the most intensively transacted area, will now be examined with reference to the four main issues identified in the introduction:

(a) the representation of Maori interests;
(b) the boundary questions arising;
(c) the adequacy of equivalent exchanged; and
(d) the equity of the outcome (or whether the Crown provided for the foreseeable resource needs of Maori).

3.2.1 Representation of Maori interests

The dynamic tribal history of the Bay of Islands between 1815 and 1840, when Maori participated in over 240 pre-Treaty transactions, makes it difficult to assess how representative these participants were. The nature of the difficulty can be illustrated by traversing Jack Lee's account of it in *I Have Named it the Bay of Islands*.[47] Lee records how various hapu later associated with Nga Puhi began moving from the Hokianga area into the Bay of Islands during the eighteenth century. Hongi Hika's tupuna moved into the Waimate/Kerikeri area and Ngati Pou moved north to Whangaroa at about the time that Cook, du Surville, and du Fresne visited New Zealand.[48] Anne Salmond argues that Nga Puhi drove Ngati Pou out of the Bay northward partly because of their association with the French, who carried out indiscriminate reprisals after the killing of du Fresne in 1772.[49] Hone Heke's hapu, Ngati Rahiri, apparently moved to Waitangi from inland areas during the early nineteenth century.

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47. Jack Lee, *I Have Named it the Bay of Islands*, Auckland, 1983, p 287
48. Ibid, p 33. See also Jeffrey Sissons, Wiremu Wi Hongi, and Pat Hohepa, *The Puriri Trees are Laughing: A Political History of Nga Puhi in the Inland Bay of Islands*, Auckland, 1987, pp 54–76, and Anne Salmond, *Two Worlds: First Meetings between Maori and Europeans, 1642–1772*, Auckland, 1991, pp 220–1377.
49. Ibid, pp 386–387, 397–402

According to Lee, Waraki of 'Ngati Pou or Ngati Rehia' transacted Waitangi land (now the 1840 Treaty house) in 1815, with CMS missionaries Hall and Kendall.[50] Waraki's daughters married Ruatara (Ngati Rehia), who transacted Oihi (in the Northern Bay) with Marsden that same year, and Heke.[51] In January 1816 Maori muru'd Hall at Waitangi, forcing him to return to Oihi. Although Lee suggests that Heke's Ngati Rahiri then displaced Waraki's Ngati Pou/Ngati Rehia at Waitangi, the full story simply isn't known.[52] When Dr Ross tried to establish himself at Waitangi in 1833, Maori muru'd him, too. Again, it is unknown who did it, or why.[53]

James Busby began a series of transactions at Waitangi in 1834, culminating with his 1872 Crown grant of 9374 acres there. Whether or not he was dealing with all people who had legitimate interests in that land. Apparently none of the recorded Maori evidence presented to Land Claims Commissioners on the Busby Waitangi claims has survived.[54] According to Lee, Maori had muru'd Busby shortly before the first 1834 Waitangi transaction. Titore Takiri (Ngai Tawake) then punished Reti, 'the chief offender' in muru'ing the British Resident by compelling him 'to give up 200–300 acres of his land at Puketona' to Busby. However, Lee believes that, since Reti shared 'his title to the Puketona . . .' with his Ngati Rahiri kinsman, Hone Heke, this was improper. None the less, Busby eventually acquired the entire area along the northern side of the Waitangi River from the Treaty house to a point several miles west of, and including, Puketona Pa.[55]

At Busby's residence, later to become the Treaty House, 25 Northern rangatira met and selected their flag in 1834. There, too, 35 rangatira signed the 1835 Declaration of Independence.[56] When over 200 Maori and Pakeha gathered there to debate the Treaty on 5 February 1840, Te Kemara (Ngati Rahiri) challenged Busby's right to claim Waitangi as his own. He called upon Busby to return Waitangi to its rightful Maori owners. As translated by Colenso, Te Kemara exclaimed:

> My land is gone – gone – all gone – the inheritances of my ancestors, fathers, relatives, all gone, stolen, – gone – with the Missionaries – Yes, they have it, all, all, all – that man there the Busby and that, there, the Wiremu, [Williams] they have my land the land on which we stand this day, this even this under my feet return it to me – O Govr Return me my lands . . .[57]

Colenso added a condescending footnote to this 50 years later stating that Te Kemara's rhetoric 'was all mere show – not really intended' because Te Kemara

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50. Lee, *Bay of Islands*, pp 35, 73
51. Ibid, Waraki's whakapapa, pp 277–281
52. Ibid, pp 34–35, 73–74
53. Ibid, p 165
54. See the incomplete OLC 1/14–22 file, and the Crown's undated summary of the missing files in MA 91/18 (14–24), pp 6–8.
55. Lee, *Bay of Islands*, pp 174–175. SO 930A (reproduced as figure 5) shows the full extent of Busby's Waitangi grant.
56. Salmond, 'Treaty Transactions', p 18
57. Ibid, p 21

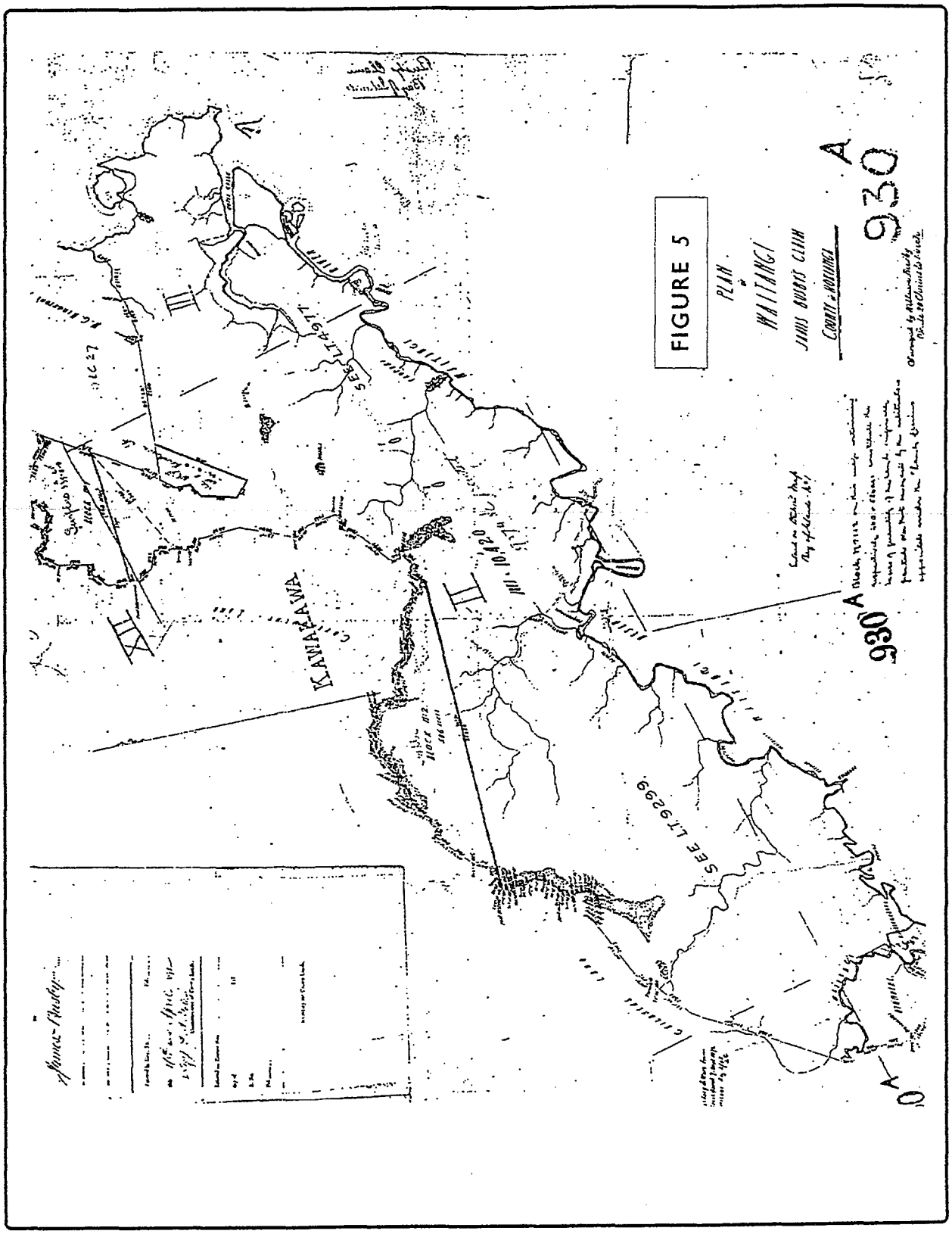
FIGURE 5
PLAN
WAITANGI
COUNTY of HOBSON
930 A
SEE LT 9299
SEE LT 4977
KAWAKAWA

apparently later supported Busby's and Williams' claims before the Land Claims Commission.[58]

The lack of recorded Maori evidence about Busby's Waitangi claims means we have to rely upon the veracity of Colenso's statement. The deeds Te Kemara supposedly signed have disappeared from Busby's old land claims file. We know that Te Kemara maintained his rights at Haruru Falls along the southern boundary of Busby's surveyed grant (see fig 1) in opposition to Polack's claim later assigned to one of Busby's sons.[59] We also know that Te Kemara disputed the Davis claim (OLC 773) further up the Waitangi River between Puketona and Waimate.[60] Yet the nature of Te Kemara's rights at Waitangi (including Haruru and Puketona) remain mysterious.[61]

If the nature and distribution of Maori rights at Waitangi is shrouded in such mystery, how could the Crown grant Busby 9374 acres there without implementing reserve provisions?[62] Part of the answer to this question lies within the eurocentric legal assumptions embedded in the Crown's investigation of pre-Treaty transactions. Despite frequent allusions to the need for commissioners to confirm the bona fide nature of transactions, neither the Land Claims Ordinances of the 1840s, nor the Land Claims Settlement Act 1856, required commissioners to verify quite explicitly that Maori transacting land had a right to do so, and that they did so in a way compatible with customary practices. Although the 1843 verification of extinguishment procedure required protectors to establish beyond reasonable doubt 'that the rights of the natives . . . have been completely extinguished . . .' this was recorded in a pro-forma way, and then only in a few claims.[63]

In 'Empire on the Cheap', it is argued that, for the Crown to determine what rights Te Kemara held at Waitangi, for example, it needed to develop a sophisticated understanding of the sources of those rights and customary ways of exercising or transferring them.[64] New South Wales Governor Gipps drafted the statute which established the 1840s Land Claims Commissions in almost total ignorance of this complex subject.[65]

In his preamble to the statute and in his speech introducing it to the New South Wales Legislative Council, Gipps treated Maori as 'uncivilized People' or 'minors',

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58. Ibid (citing William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*, Wellington, 1890, pp 17–18)
59. Bell's record of Te Kemara's evidence, 22 September 1857, OLC 5/34
60. Te Kemara's protest to Bell, not dated, J Davis to Bell, 26 July 1858, OLC 1/773
61. In later criticising Tupai's claims to be 'the Son of Ta arka Epiketea head Chief of Waitangi . . .', Protector Clarke wrote that 'Campbell [Te Kemara] the principal Chief of Waitangi, and Hapetahi would . . . dispute Tupai's claim to Chieftainship upon any Native principle' (Clarke to New Zealand Land Commissioners, 4 June 1841, OLC 1/409).
62. According to the commissioners' reports recited in the text of Busby's original grants, the Crown should have reserved the Ratoa Valley, a 1500-acre area (claim 20), and another area along the Waitangi River (claim 21): Godfrey Richmond reports, 2 May 1842, OLC 1/14–24; Crown grants R5 fol 41 (claim 18), fol 43 (claim 20), fol 44 (claim 21). None the less, Busby excluded them from his survey and in 1872 the Crown granted him everything except 1000 acres of surplus land (see fig 1).
63. 'Protector of Aborigines Special Report', not dated, MA 91/18 (claim 121), p 7
64. Rigby, 'Empire on the Cheap', pp 43–45
65. Donald Loveridge, 'The New Zealand Land Claims Act of 1840', claim Wai 45 record of documents, doc I2, pp 53–56, 60, 90–91

without individual alienation rights.[66] On the other hand, section 2 of the Act (which become the New Zealand Land Claims Ordinance 1841 in slightly altered form) recognised Maori alienation rights, together with other methods of transferring land rights. Commissioners were to determine:

> all titles to land . . . which are held or claimed by virtue of purchases or pretended purchases conveyances or pretended conveyances leases or pretended leases agreements or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes . . .[67]

None the less, when it came to reporting pre-Treaty transactions, commissioners adopted a printed form that referred only to 'purchased', 'alleged purchase', 'bona fide purchase', 'sellers', 'Deed of Sale', Chiefs having 'admitted the payment they received, and the alienation of the Land', and they could recommend either in perpetuity 'grants' and nothing else.[68] In other words, while Gipps was aware of other methods of transferring land rights, his commissioners were apparently not to report them. Without investigating the sources and nature of Maori land rights, they evidently assumed that they were absolutely alienable in the European sense and transferrable in no other way which could be reported.[69]

Busby opposed this piece of legislation as an attempt to defraud him out of what he considered to be his rightfully claimed property, especially at Waitangi. He confided in Colenso that the limit Gipps placed on grant acreage meant that '"Our own Waitangi" is no longer ours – for there can be no doubt that this clause was aimed at it'.[70]

He none the less claimed over 10,000 acres at Waitangi and 40,000 acres at Waipu and Whangarei.[71] Busby never considered that Maori may not have freely and knowingly alienated these lands, but he had a vested interest in this view of Maori land rights. In late 1839 he had sold for more than £800 over 20 'Victoria' town lots out the area he called Victoria adjacent to his Waitangi residence, which he hoped to turn into the colonial seat of government.[72] When commissioners eventually asked Busby to produce further Maori support for his Waipu claim, the major author of the English Treaty text exclaimed that this was tantamount to 'an invasion of the Constitutional rights of [British] subject as secured by *Magna Charta* and a violation of the Treaty entered into with the Aborigines of this Country . . .'[73]

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66. Ibid
67. New Zealand Claims Ordinance 1841
68. Commissioner's report form no 49 and no 48. See OLC 1/328, pp 3–6. These forms were used in almost all commissioner's reports.
69. The only exception to the alienation only rule were claims affected by CMS trust arrangements such as at Waimate. There, commissioners recommended 'No Grant . . .' (Godfrey Richmond report, 10 November 1843, OLC 1/676–679).
70. Busby to Colenso 4, 25 July, Colenso, *Journal*, vol IV, pp 88–89, 95–98, ATL
71. Godfrey Richmond reports 2, 27 May 1842, OLC 1/14–24
72. Charles Baker, *Journal*, 1 November 1839, ATL typescript, p 3; Colenso to CMS, 24 January 1840, CMS/CN/M11. Godfrey Richmond reports, 2 May 1842 (claims 14–15), OLC 1/14–24. This lists 27 Pakeha buyers of these Victoria lots. Commissioners required Busby to reimburse them when Hobson declined to locate his capital there.
73. Busby to Godfrey/Richmond, 17 May 1842, OLC 1/14–24

He repeated these charges to the Secretary of State for the Colonies in 1850 claiming again that commissioners' investigations violated Maori rights under article 2 of the Treaty to freely dispose of property they no longer wished to retain.[74] It apparently never occurred to Busby that Maori may have had a fundamentally different understanding of their land rights.

Although Muriwhenua claimant researchers such as Margaret Mutu, Phillipa Wyatt, Maurice Alemann, Richard Boast, and Michael Nepia have argued that these transactions should be viewed within a distinctively Maori context, that context needs to be established for each particular area. The Bay of Islands context may have differed substantially from that in Muriwhenua. If there was a distinctively Maori view of how the transactions affected their rights, one would most expect to find it in the Bay of Islands, the most intensively transacted of all areas prior to the Treaty.

Even the one-sided evidence produced largely by Pakeha claimants, which commission staff recorded only in English, did not entirely silence Maori voices. A number of Maori witnesses evidently thought Pakeha had dealt with the wrong people. Along the peninsula defined by the Te Puna and Kerikeri inlets, Bateman's 1500-acre claim provoked Wiremu Hau (Te Whiu), a Treaty signer, to protest Puhi's right to transact. Hau claimed 'This also is one of my places stolen by Puhi that he sold to [another Pakeha] Mr Hargreaves.'[75]

Bateman told the commissioners that he had satisfied Hau's claim by telling him to press Te Kemara (Ngati Rahiri) for a share of the purchase price.[76] Hau persisted, however, and told the commissioners that 'the land belonged to our Forefathers . . . [from] time immemorial . . . We and our tribe have always lived there, and it has never been deserted'.[77] Clarke added that 'Ngatawai' (Ngai Tawake?) believed that:

> their village and boundary lines may be included in the [Bateman] purchase . . . they had never been consulted in the purchase, nor had they received any payment, nor signed a document alienating their right to this property.[78]

Te Kemara maintained that his rights in the area were 'because my forefathers lived there', even though he hadn't lived there for more than 21 years. He and Hakiro added further complicating factors: 'The Ngatahu [?] Tribe have always and now live on the land claimed by William Hau which I sold to Captain Bateman.'[79]

Hakiro (of Ngai Tawake, who signed the Treaty as 'Hakere') indicated that he had deliberately excluded 'the part claimed by William Hau and a small portion belonging to . . . McKay' from his transaction with Bateman.[80]

From this evidence, anyone can see that the 1500-acre area claimed by Bateman was a thicket of overlapping Maori rights. Clarke's summary declaration read:

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74. Busby to Newcastle, 30 November 1850, ibid
75. Hau to Protector Clarke, 19 February 1841, MA 91/18, p 2. Hau later led the Puketotara surplus land protest (see below).
76. Bateman, sworn statement, 5 November 1841, ibid, pp 3–4
77. Hau, sworn statement, 12 November 1841, ibid, p 4
78. Clarke, sworn statement, 12 November 1841, ibid
79. Te Kemara, unsworn statement, 12 November 1841, ibid, p 4
80. Hakiro, unsworn statement, 12 November 1841, ibid

> THOMAS BATEMAN 1,500 acres disputed by WILLIAM HAU and the whole of the Natahia [Te Whiu?] Tribe who are residents on the soil.[81]

The commissioners, Godfrey and Richmond, recommended reserving or excluding from Bateman's 382-acre grant:

> all the portion claimed by Wiremu Hau, and the part reserved for the [unidentified] Native which can be pointed out by the Chief Kamera [Te Kemara].

Also in their report, the commissioners indicated that Hau disputed 'a large portion of this [1500-acre] Claim on behalf of himself and the Ngatauru [Te Whiu?]'.[82] This would appear to be a conclusive recognition of Hau's rights in the land, but what happened as a result of the commissioners' recommendations?

First, Governor FitzRoy increased Bateman's grant from 382 to 1200 acres in 1844 without stating any grounds for his decision.[83] Bateman never had his grant or the extent of Hau's rights surveyed. Instead he sold his 1200-acre floating or unsurveyed grant to William Smellie Grahame, an Auckland businessman, prior to Commissioner Bell's investigation in 1857. Grahame employed William Tacey Clarke (son of former Protector George) to survey the area. He surveyed 1827 acres including a 440-acre area between Te Tiki and the Rangitane River which may have been the area Hau originally claimed. Grahame told Bell that he paid £50 to 'certain Natives for the surrender of their claim . . . through Mr Kemp' in this area.[84] Clarke's survey therefore identified no Maori reserves but did, like Busby's Waitangi survey, identify surplus land for the Crown.[85] Eventually the Crown acquired an additional 542 acres in Grahame's surveyed claim area under the terms of the Bay of Islands Settlement Act 1858 and compensated Grahame £948 10s.[86] This area the Crown designated a Bay of Islands settlement reserve to attract Pakeha settlers to the area 'to promote the civilization of the Aborigines'.[87]

At Orongo or Pomare Bay claimed by James Reddy Clendon, the United States Consul at Kororareka (1838–41) Maori rights remain unclear. Although Clendon transacted the area with Pomare (Ngati Manu, another major Treaty signer) it is unknown what other Maori with rights there. We know that at least some other Maori claimed rights because H T Kemp reported them to be properly extinguished. His surviving report, however, fails to identify either who held rights or how they were extinguished. It reads, simply:

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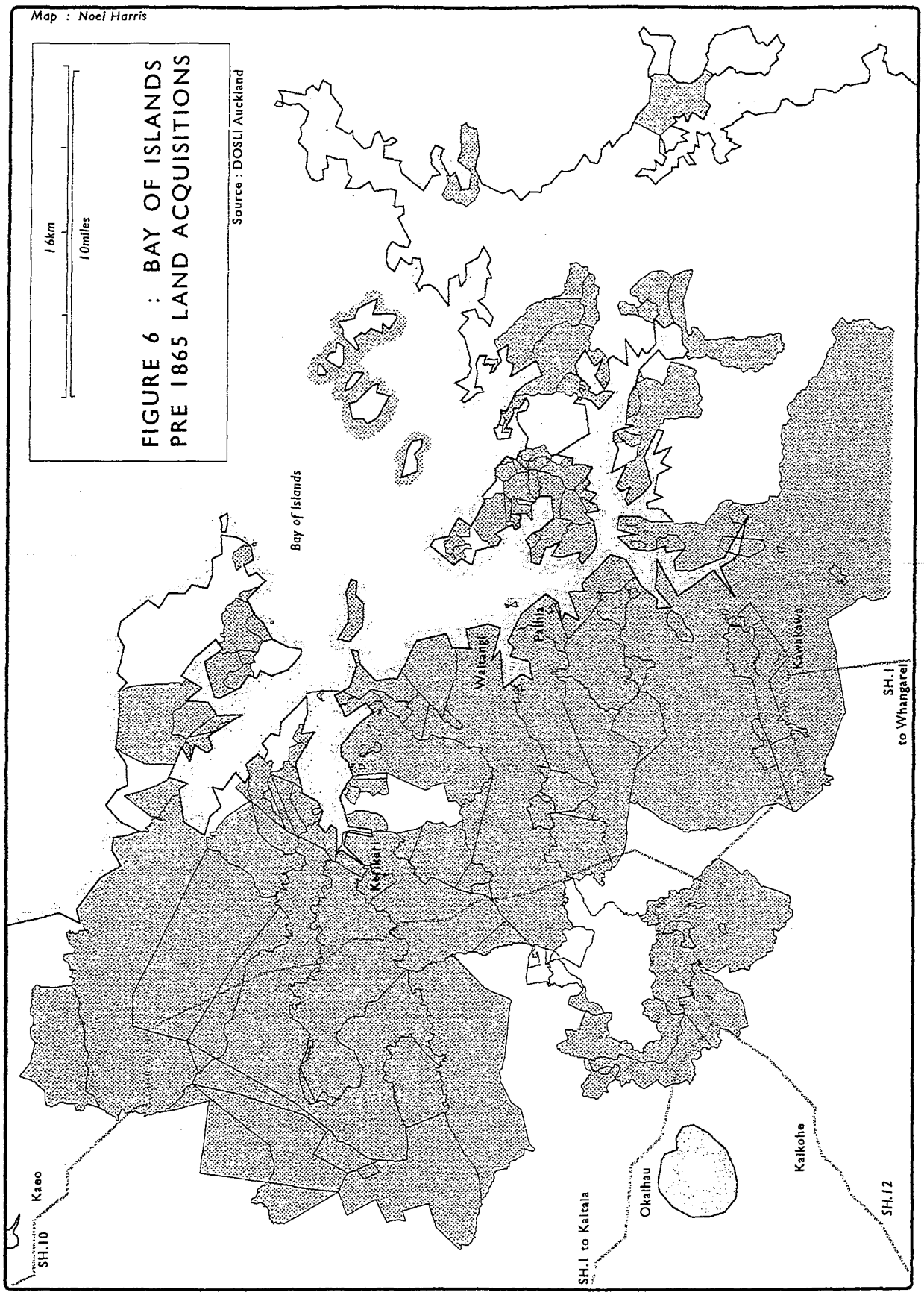
81. Clarke, signed statement, 2 November 1841, ibid
82. Godfrey Richmond report, 31 May 1843, ibid, p 7
83. FitzRoy minute, 15 June 1844, ibid, p 8
84. W S Grahame, sworn statement, 31 August 1857, ibid, p 9. Grahame evidently produced no Maori witnesses to verify the accuracy of his statement, but Bell apparently accepted it without further investigation.
85. See OLC, plan 16. It identified a 1157-acre grant for Grahame and 670 acres of surplus land.
86. This stands in sharp contrast to the £50 Grahame paid Maori for 440 acres in the same area. Bell report, 16 May 1862, ibid, p 11
87. Bay of Islands Settlement Act 1858. The surveyed Kerikeri old land claims of Edmonds, Shepherd, the so-called seven (missionary) families, and the CMS formed the boundaries of the settlement area as originally defined. Ibid, pp 473–474 (see fig 20).


Map : Noel Harris
FIGURE 6 : BAY OF ISLANDS
PRE 1865 LAND ACQUISITIONS
16km
10miles
Source : DOSLI Auckland
Bay of Islands
Waitangi
Pahia
Kawakawa
Kaeo
SH.10
Okaihau
SH.1 to Kaitaia
Kaikohe
SH.12
SH.1
to Whangarei

> I certify upon honour, after due enquiry amongst the reputed Aboriginal Proprietors of the above lands, that I am satisfied that all aboriginal rights thereto have been extinguished.
>
> [Signed] H Tacy Kemp, Protector of Aborigines.[88]

This report recited the boundary description contained in the deed, as did the attached 'Surveyor's Special Report on Land Claim'.[89] Thus, even where the Crown undertook to extinguish native title with finality, it gave no indication of the grounds for its decision in that regard.

A further question of extinguishment arose in the Edmonds Kerikeri claim in which Waikato (Te Hikutu) asserted that neither he nor his 'Tribes were . . . sufficiently paid'. When the commissioners asked him why he had signed the deed if he wasn't satisfied with the payment, he answered:

> By signing the Deed, I sold the land, although not fully satisfied but I consider the land sold as a great payment was given to the other natives. (H T Kemp, Interpreter)[90]

Edmonds may have made an additional payment, because 10 months later Waikato chose 'to correct his Evidence'. He stated:

> That he is perfectly satisfied with the payment he has received from Mr Edmonds, and that the rest of the Tribe interested in the sale of the land are also satisfied.[91]

While this appears to bear on the issue of adequacy of the equivalent rather than on Maori rights, the two are related. If several Maori held rights in the same land (as appears to have been the case), the question arises, who would determine the extent of these overlapping rights? At Kerikeri, Edmonds apparently got Philip King to divide payment among different groups. King stated that:

> they all agreed that I should divide it [the payment] as they were not friendly to each other and could not agree about it.[92]

Unfortunately, no independent Maori evidence corroborates either Waikato or King's view. Other Maori protested Waikato's widespread transactions.[93] Again, we do not know whether all Maori with rights to the land agreed to, or even understood, the consequences of absolute alienation.[94]

In one case, at least, even though the commissioners determined that Maori had not extinguished their rights, the Crown still acquired scrip land. In the Thomas

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88. 'Protector of Aborigines Special Report', not dated, MA 91/18 (claim 121), p 7
89. Ibid, p 8
90. Waikato, unsworn statement, 25 November 1841, MA 91/18 (claim 172), p 6
91. Waikato, statement, 16 September 1842, ibid, p 9
92. King, sworn statements, 25 November and 23 December 1841, ibid, p 7
93. For example, at Whananaki and Moturoa. Summary, MA 91/19 (408), p 1; Tupai to Lieutenant-Governor, 10 March 1841, OLC 1/409
94. Eventually, the Crown granted Edmonds seven acres at Kerikeri, 548 acres near Lake Omapere, and awarded him £2000 in scrip for land the Crown took under the terms of the Bay of Islands Settlement Act 1858. Summary, pp 1–2, OLC 1/409.

Potter Parahau/Tuainui claim (380) near Mangonui Te Tii, Commissioner Fitzgerald reported on the basis of written evidence on file that:

> There is no proof that the land Claimed was ever purchased from the Natives.[95]

Godfrey had earlier recommended no grant because the claimant had failed either to appear, or to have an agent present evidence on his behalf.[96] The claimant, none the less, had W Clarke survey the 50-acre area, filed the survey, and apparently received scrip at the standard rate of £1 per acre. Although the claim was not brought before Bell in 1857–58, Lands and Survey staff working for the Surplus Lands Commission in 1946–48 recorded tersely: 'Land reverted to the Crown and has been used [subsequently] as Crown Land.'[97]

While the Parahau/Tuainui scrip land, where the Crown apparently extinguished unpurchased Maori rights, must have been due to some sort of error, other scrip situations appear equally anomalous. The John Salmon/Whananaki claim (408) improbably resulted in a Crown grant near Kerikeri, apparently because Whananaki people disputed Waikato's (Te Hikutu) right to transact their land. Commissioner FitzGerald offered Salmon the right to select over 2000 acres at Papakura in 1843, but the following year told him that Maori challenged the Crown's right to grant land there.[98] Despite the fact that FitzGerald wrote that Salmon's 'title to the land [at Whananaki] proposed to be exchanged *is not proved* . . . it is proved that £600 was invested' (emphasis in original).[99]

Since Salmon was unable to obtain land at Papakura he had Clarke survey 103 acres at Kerikeri. The Crown then reserved this granted area under the terms of the Bay of Islands Settlement Act and compensated Salmon accordingly during the 1860s.[100] Again, the evidence suggests that the Crown exchanged the Kerikeri land for Salmon's Whananaki claim despite the commissioner's 1844 report that Salmon's Whananaki title '*is not proved*'.[101]

The question of who had rights in the area is probably beside the point, because the Crown failed to prove, even to its own satisfaction, that Maori alienated any of their rights. Whananaki, none the less, appears to have been a disputed area. According to Lee, Waikato had disputed with Noa (Ngati Manu) a January 1836 Whananaki transaction conducted by Day and Bord. Te Hikutu from Kaihiki (north of Kerikeri and at least 30 miles from Whananaki) and Ngati Manu from the Kawakawa, Taumarere, and Opua areas (about 10 miles from Whananaki) took their dispute to Busby at Waitangi. Busby's attempted mediation failed spectacularly as Te Hikutu shot and killed the two Ngati Manu representatives. According to Lee,

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95. Robert A FitzGerald report, 15 October 1844, OLC 1/380. For a more detailed examination of the Crown position on scrip land, see the Kapowai case presented as a boundary dispute.
96. Godfrey report, 1 December 1842, ibid
97. OLC plan 243; summary, MA 91/19 (380), p 1. One wonders why surplus land commissioners did not bring this error to the attention of the Crown and the public in their published report.
98. Summary, MA 91/19 (claim 408), p 1
99. FitzGerald minute, 24 April 1844, ibid, p 3. FitzRoy approved the exchange. FitzRoy minute, 25 April 1844, ibid.
100. OLC plan 26; Salmon, sworn statement, 31 March 1864, MA 91/19 (408), p 12
101. FitzGerald minute, 24 April 1844, ibid, p 3

Waikato 'is said to have admitted that his [Whananaki] claim was not substantial . . . [but] there is no doubt that he did have interests at Whananaki'.[102] Perhaps Waikato 'did have interests at Whananaki', but the question which the Crown failed to answer was: what was the nature and extent of his rights there?

The same paucity of evidence, particularly on the Maori side, hampers our understanding of the rights Maori transacted with Thomas Spicer, a Kororereka merchant, at Uruti/Raparapa south-east of the trading port. Godfrey and Richmond recommended 472-acre grants there, where they reported in pro-forma fashion that named 'Chiefs . . . have admitted . . . the alienation of the Land.'[103]

This in turn relies on the pro-forma affirmations of two chiefs. Moreover, the survey information for both claims raises puzzling questions. Three Uruti plans survive, two as old land claim plan 198, and one as old land claim plan 419. Charles Heaphy, Commissioner of Native Reserves, located the first among his official records in 1876. The Bay of Islands Resident Magistrate Barstow noted on the original of this plan (presumably surveyed during the 1850s) that it overlapped adjacent Turner and Clendon claims 'and that the part pointed out by the natives [as Spicer's] when he was present did not exceed 8–10 acres'.[104] If Maori believed Spicer to be entitled to no more than eight to 10 acres would they have known that the Crown apparently paid him £547 in scrip and assumed title to 418 acres in the area as scrip land?[105] The Crown made a confusing situation worse by apparently double granting Uruti to both Spicer and Aberline. The latter eventually received £250 in scrip for what looks like the area of Spicer's grant.[106]

The Crown often paid claimants scrip to remove Pakeha from areas of potential conflict. This probably occurred in the Whytlaw Kapowai/Kohekohe (520) claim in which commissioners recommended a 733-acre grant. A member of Governor FitzRoy's staff insisted that:

> this amount of acres must however be verified by the Certificate of an Accredited Surveyor and Protector of Aborigines. Until that is done any and every Deed for land exchanged [for scrip] must be withheld.[107]

The Crown, however, did not require these reports before it issued Whytlaw scrip and claimed title to approximately 2000 acres in the area. This area, however, was 'in constant dispute, the Natives holding that the major portion was Native land' until commission inquiries in 1907, and again in 1921, led to its return to Maori ownership.[108]

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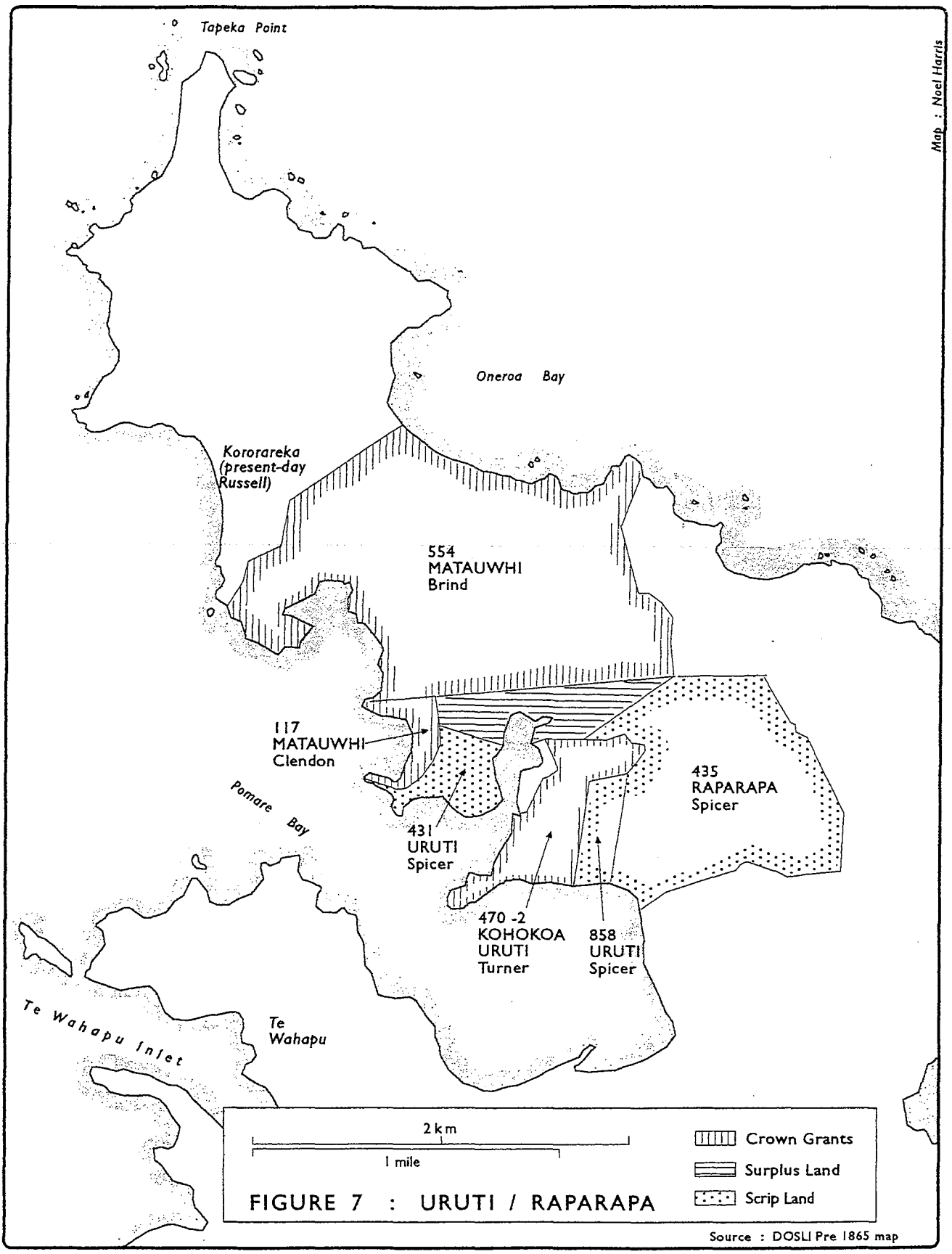
102. Lee, *Bay of Islands*, p 192
103. Richmond Godfrey reports, 30 June 1842, MA 91/9 (431, 435), pp 2, 4
104. See Heaphy note, 1 November 1876, on OLC plan 198
105. Summary, MA 91/19 (431, 435), pp 1, 3; OLC plan 419. The Crown appears to have paid Spicer £175 for the 46 acres at Uruti (claim 43) and £372 for the 372 acres reverting to the Crown at Raparapa (claim 435).
106. Bell memo, 13 November 1857, OLC 1/858
107. This appears to be Major Thomas Bambury's minute on Whytlaw to Colonial Secretary, 24 January 1844, MA 91/19 (520), pp 10–12
108. Lands and Survey staff recorded that the 1921 Commission inquiries 'finally settled the dispute': summary, ibid, p 1.


Tapeka Point
Map : Noel Harris
Oneroa Bay
Kororareka
(present-day
Russell)
554
MATAUWHI
Brind
117
MATAUWHI
Clendon
435
RAPARAPA
Spicer
Pomare Bay
431
URUTI
Spicer
470 -2
KOHOKOA
URUTI
Turner
858
URUTI
Spicer
Te Wahapu Inlet
Te
Wahapu
2 km
1 mile
Crown Grants
Surplus Land
Scrip Land
FIGURE 7 : URUTI / RAPARAPA
Source : DOSLI Pre 1865 map

In a number of cases, Maori assertions of rights led the Crown to exclude disputed areas from the surveyed boundaries of an old land claim. Commissioners would normally identify either the Maori claimants or the disputed areas in their grant recommendation statement. For example, at Waimate they excluded 'the two Acres which the Chief Piripi Hamangi [Haurangi] states', in his evidence before the commissioners, 'he did not sell.'[109] The Crown granted Clark 1426 acres, and his plan does not show this two-acre area excluded by order of the commissioners.[110] Presumably, Haurangi regained control of his two acres.

In cases where commissioners believed claimants had not fully extinguished Maori rights, but had come to a satisfactory informal accommodation, they might not qualify their grant recommendation. This appears to have been the situation at Te Karaka, a mile south of Paihia, where Henry Williams had allowed:

> The Natives . . . from time to time to cultivate . . . and to sit there for the purpose of fishing – which right I still leave with them, but they have no rights to sell any of the land again.[111]

Godfrey recommended a 60-acre grant to the CMS at Te Karaka without reciting the 'right' Williams was prepared to 'leave' to Maori.[112]

Such informal sharing of rights was probably more typical of CMS claimants than others. Samuel Haywood Ford, the CMS surgeon, claimed '20,000 acres more or less' at Waikare. He declared:

> I purchased this land at the urgent request of the natives who were desirous of disposing of it to one who wd act as their guardian allowing them to cultivate portions of land within my boundaries.
>
> This is expressed in the Deeds and there are now many natives settled in legal and undisturbed possession on my purchase.[113]

In other cases, however, CMS missionaries acted to deny continued Maori rights in pursuit of their own interests. Occasionally they gave these interests religious overtones. James Shepherd, who maintained private claims at Kerikeri and Whangaroa, declared that although:

> many pious men may censure us [land claimants] . . . I do feel that I am not my own, neither is land mine, but to use for the glory of God, whose is all the earth, as well as the cattle on a thousand hills.[114]

In addition to surveying claims totalling 15,413 acres in the hills between Whangaroa and Kerikeri, Shepherd had William Clarke survey him a 1187-acre

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109. Godfrey Richmond report, 8 April 1843; Haurangi's statement, 3 November 1842, OLC 1/633–634
110. OLC plan 55, surveyed by R A Fairburn (son of Clarke's fellow CMS missionary and Tamaki land claimant, William Fairburn) on 27 January 1858.
111. Williams, sworn statement, 6 January 1842, OLC 1/660, 662–669. The Crown later claimed the area as surplus land: Leadam, memo, March 1872, OLC 1/666.
112. The CMS originally claimed 100 acres at Te Karaka: Godfrey report, 20 June 1842, ibid, p 77.
113. Ford to New Zealand land commissioners, 13 September 1841, OLC 1/706
114. Shepherd to CMS secretary, 12 June 1840, CMS/CN/M12, ATL

Waitete claim along the northern shores of the Kerikeri inlet and a 1940-acre Okura claim due south of Kerikeri township.[115] Tirarau (presumably not the Kaipara chief of that name) transacted the Waitete area with Shepherd in 1837. Wiremu Hau (Te Whiu) supported Tirarau's right, but Ngoki and Wakarau (or Whakarua of Ngati Mau) opposed the inclusion of Motu Aroha in the claim.[116] Godfrey and Richmond therefore recommended that 'Aroha' be excluded from Shepherd's 343 acre grant.[117]

Clarke included the 30-acre 'Aroha' Native Reserve in his survey of Shepherd Waitete claim. Thus the island was specifically reserved rather than excluded as required by the 1843 commissioners' recommendation.[118] Likewise, Clarke's survey of Shepherd's Okura claim included the 101-acre 'Pukewhau' Native Reserve.[119] Since Clarke surveyed both reserves well after Maori appeared before the commissioners in 1845, we have no way of knowing whether they agreed to the reserves set aside for them at Aroha and Pukewhau. Bell filed no Maori, and little other, evidence regarding these reserves, so we can only speculate on the reasons for their creation. Perhaps they represented an attempt to reserve something for Maori within reach of Kerikeri township.

In the case of both the Waitete and Okura claims, the commissioners heard much evidence from other Pakeha whose claims overlapped Shepherd's. At Waitete, Grahame's claim overlapped, and at Okura Aberline's claim overlapped Shepherd's claims.[120] The Crown further complicated matters by including both in the Bay of Islands Settlement Reserve 1858, and then conducting the 1860 Hikuwai Crown purchase, bisecting Waitete and the 1873 Te Papa Crown purchase of surplus land derived from Shepherd and Aberline's overlapping Okura claims.[121] Such multiple overlapping transactions confuse even current day historians. Maori with rights affected must have found such transactions almost incomprehensible (see fig 8).

The Godfrey Richmond practice of expecting claimants to produce two and only two Maori participants in the original transaction also does not provide sufficient support for the proposition that this provided Maori with adequate representation. During the 1860–61 Waitara debate in Parliament, Crown agents argued (partly on the basis of Bay of Islands evidence) that Maori individuals frequently sold land without fear of repercussions. Governor Browne quoted CMS missionary James Hamlin's statement that, before 1840, Bay of Islands Maori 'of every degree of rank sold his land without reference to any other authority.'[122] While this may have been a common practice, Hamlin's words suggest that it could well have been contrary to custom.

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115. Summary, MA 91/21 (802–803, 805–806), pp 1–4
116. Wiremu Hau and Ngoki, unsworn statements, 14 December 1842, ibid, p 15
117. Godfrey Richmond report, 8 April 1843, ibid, p 13
118. OLC plan 226. Maori also took a survey to the Native Land Court to obtain title: ML plan 411.
119. OLC Plan 17; ML plan 2622. The Crown later reduced the size of the Pukwhau reserve from 101 to 68 acres: Te Kerikeri deed, 28 December 1865, H H Turton (comp), *Maori Deeds of Land Purchases in the North Island*, vol I, pp 76–77.
120. Summary, MA 91/21 (805–806), pp 3–4
121. Summary, MA 91/21 (805), p 3; ibid (857), p 1
122. Browne to Newcastle, 4 December 1860, AJHR, 1861, E-1, p 7 (see also 'Notes on Sir William Martin's Pamphlet', not dated, AJHR, 1861, E-2, p 44)

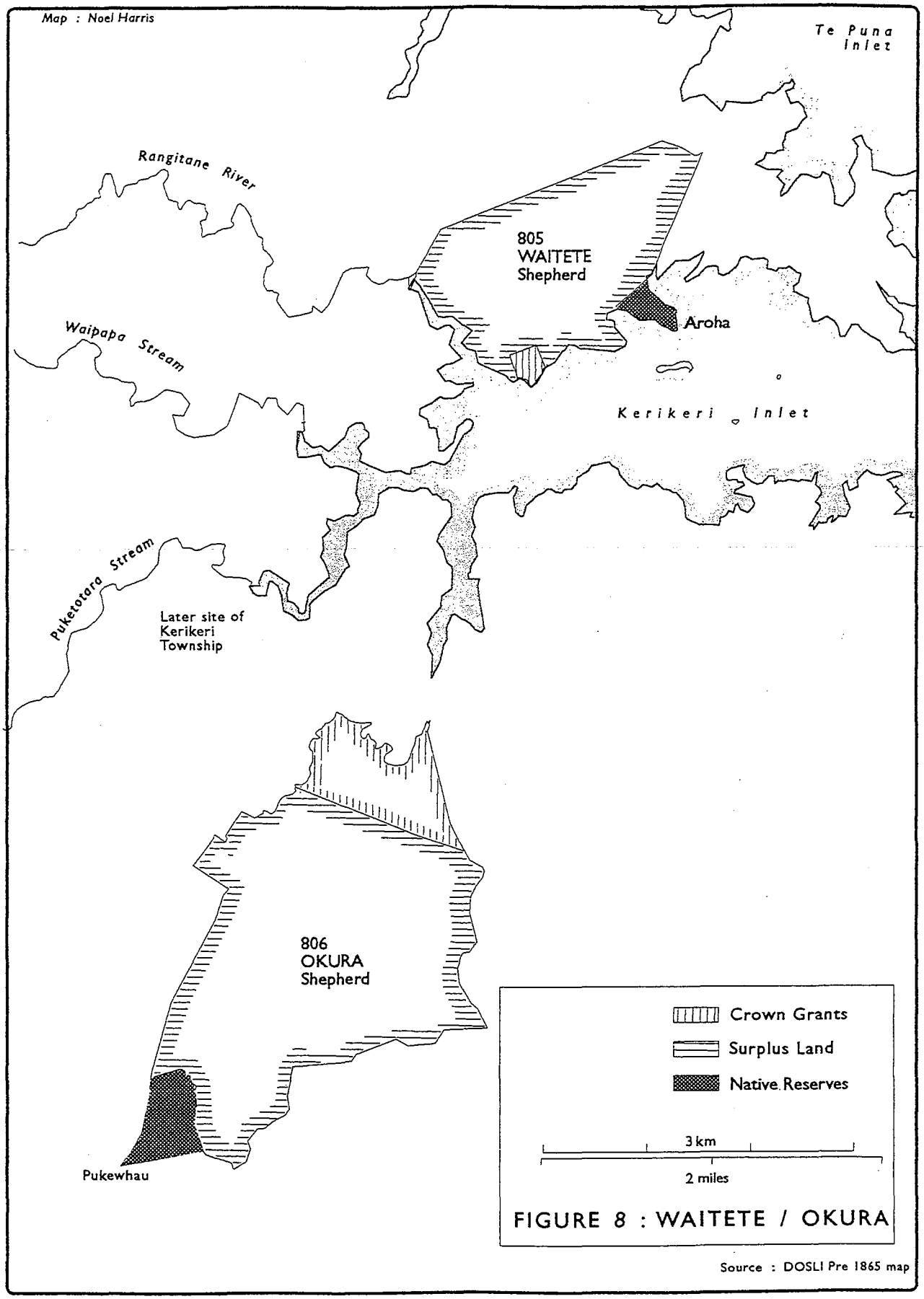

FIGURE 8 : WAITETE / OKURA

Source : DOSLI Pre 1865 map

This is quite apart from the adequacy of the commission's practice of allowing claimants to select affirmers, and the practise of recording what amounted to pro-forma Maori evidence only in the English language.[123] Even if we take Godfrey and Richmond's two Maori affirmer rule as adequate, they didn't necessarily follow their own rules in all case.

In Busby's Waipu/Whangarei claims (23–24) they did. Busby produced only one Maori affirmer for each claim and maintained that this should have been sufficient to satisfy the commissioners.[124] As Acting Governor, Willoughby Shortland informed Busby that his refusal to produce a second Maori affirmer obliged the Crown to consider his Waipu/Whangarei claims null and void.[125] This failure to produce a second affirmer, however, didn't disqualify G B Waetford's Kumea claim (872). He transacted an area probably overlapping Ormond's Puketi claim (809) with Titore Takiri (Ngai Tawake) and no-one else, despite the fact that Wiremu Hau and his Te Whiu kin claimed they had rights in the area. Since only one Maori transacted, only he could appear before Godfrey to support Waetford's claim.[126] None the less, Godfrey recommended a 244½-acre grant for Waetford, who eventually exchanged it for £244 10s in scrip.[127] Likewise D McKay produced only one Maori affirmer for his Mangonui Te Tii claim (1003), but this didn't prevent Godfrey from recommending a 40-acre grant.[128]

In their few discussions of proper Maori representation, Crown agents sometimes distinguished between property and political rights. In 1841, for example, Tupai, the chief mate of a trading vessel, claimed ownership of Moturoa (at the entrance to Kerikeri inlet) in spite of David Salmon's claim to have bought it from Waikato (Te Hikutu).[129] Tupai buttressed this property claim with a claim that he was heir to 'Ta arka Epeketea' (Te Aka), the 'Head Chief in the Bay of Islands . . .' On the basis of alleged political preeminence, Tupai then claimed undefined property rights at Waitangi, Te Rawhiti, and Whananaki, as well as at Moturoa.[130] In response, Protector Clarke admitted Tupai's chiefly position, but denied him any property rights at Moturoa (claimed by David Salmon on the basis of an 1834 Te Hikutu transaction). As far as Tupai's position at Waitangi was concerned, Clarke stated that: 'Campbell [Te Kemara] the principal chief of Waitangi and Hapetahi would Ifear dispute Tupai's claim to Chieftainship upon any Native principle.[131]

Unfortunately, Clarke did not attempt to explain to the commissioners the relevant 'Native principle', or the relationship between property and political rights.

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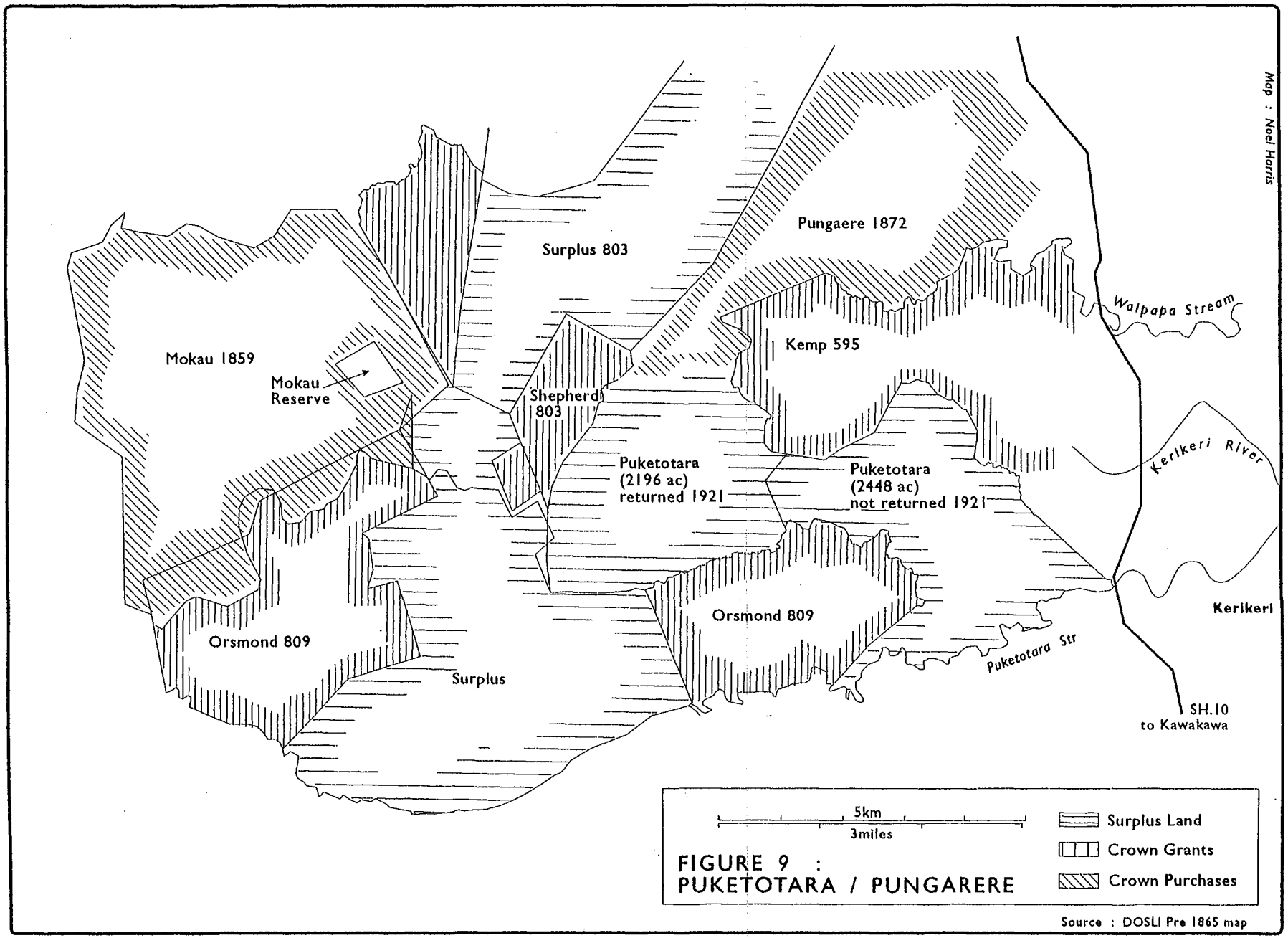
123. For an examination of the hearing process, see the Muriwhenua debate on the adequacy of commission procedures in Boast (claim Wai 45 record of documents, doc F16); Wyatt (doc F17); Armstrong (doc I4), and Armstrong and Stirling (doc J2).
124. Godfrey Richmond to Busby, 22 April 1842, OLC 1/14–24; Busby to Godfrey Richmond, 17 May 1842, OLC 1/14–24
125. Shortland to Busby, 14 June 1842, OLC 1/14–24
126. Titore, unsworn statement, 27 September 1842, MA 91/21 (872), p 2
127. Summary, Godfrey report, 24 March 1843, MA 91/21 (872), pp 1, 3–4
128. Summary, Akero, unsworn statement, 18 November 1842, MA 91/21 (1003), pp 1, 7
129. Waikato, unsworn statement, 16 November 1841, OLC 1/409
130. J G Bailey (Tupai) to Lieutenant-Governor of New Zealand, 10 March 1841, OLC 1/409
131. Report enclosed in Clarke to New Zealand land commissioners, 4 June 1841, OLC 1/409


Map : Noel Harris
Pungaere 1872
Surplus 803
Waipapa Stream
Kemp 595
Mokau 1859
Mokau Reserve
Shepherd 803
Puketotara (2196 ac) returned 1921
Puketotara (2448 ac) not returned 1921
Kerikeri River
Orsmond 809
Orsmond 809
Surplus
Puketotara Str
Kerikeri
SH.10 to Kawakawa
5km
3miles
Surplus Land
Crown Grants
Crown Purchases
FIGURE 9 : PUKETOTARA / PUNGARERE
Source : DOSLI Pre 1865 map

Consequently, historians today have great difficulty in attempting to reconstruct these crucial patterns of rights.

Three adjoining Pakeha claims inland from Kerikeri gave rise to the long-standing Puketotara dispute over Maori rights. These were the Kemp Waipapa (595), the Shepherd Tiheru (803) and the Orsmond Puketi (809) claims. Of these three, the Kemp Waipapa claim was most central (see fig 9).

After hearing evidence about Kemp's 1835 transaction with Ngai Tawake, Commissioners Godfrey and Richmond recommended that the Crown grant James Kemp 1078 acres at Waipapa. Governor FitzRoy chose to increase the acreage to 5000 acres in 1844, without recording the grounds for his decision.[132]

Outside Kemp's unsurveyed grant was a much larger claim area. When eventually surveyed in 1857, 1866, and 1872, this claim area (including Kemp's grant) was found to contain 18,417 acres. This area consisted of:

Kemp's Waipapa grant, OLC plan 60 (1857)	6589 acres
Pungaere block, ML 313 (1866)	7184 acres
Te Mata/Puketotara, ML 3169 (1872)	4644 acres
Total	18,417 acres

See figure 10.

During 1847 Governor Grey attempted to reduce the area FitzRoy granted to Kemp and other missionary claimants. Essentially, the Crown asked these claimants to exclude from their grants 'Lands to which the Natives may establish a just claim, or which may be required for the use of the Natives.' Instead, Kemp proposed:

> that the surplus land included in my Land Claims . . . be put in Trust for the entire benefit of the moral and religious welfare of the Native race . . . to be held in Trust with the Church Missionary property for that purpose only.[133]

In his October 1847 letter, Kemp highlighted the essence of what the Crown would later proclaim as its right to Puketotara, that is, its claim to surplus land. This was the total claim area, minus the acreage granted. At Puketotara and Pungaere, this area came to 11,828 acres. Kemp made it clear, however, that he would never advocate returning this area directly to Maori. Kemp considered that returning surplus land, as opposed to holding it in trust:

> would be a source of much evil, for this reason that all who sold land would expect to receive some, and would lead to quarrelling amongst themselves, and the Settlers at large . . .[134]

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132. Godfrey Richmond report, 30 May 1842; FitzRoy minute, 20 September 1844, MA 91/20 (595), pp 3B, 6. On FitzRoy's unstated grounds for increasing the grants of CMS missionaries, see Dean Cowie, 'To Do All the Good I Can: Governor FitzRoy', MA thesis, University of Auckland, 1994, pp 81–82.
133. Colonial Secretary to Kemp, 10 September 1847; Kemp to Colonial Secretary, 11 October 1847, OLC 1/595. See my general discussion of CMS trust deeds in examining the equity of the outcome of Crown actions in the Bay of Islands.
134. Kemp to Colonial Secretary, 11 October 1847, ibid

Although Kemp continued corresponding with the Crown on this subject for over a decade, nothing came of his trust proposal. During that decade, however, the Te Whiu hapu undertook direct negotiations with Kemp to ensure that the Puketotara area returned to Maori.

The Te Whiu hapu apparently had not been consulted when Kemp transacted Puketotara with Ngai Tawake in 1835. According to Hone Peti's 1891 account, Te Whiu had a much greater claim to the area than Ngai Tawake. When they took the matter up with Kemp he reportedly agreed 'to return the greater part of Puketotara to us . . . [and] to lay down a permanent boundary as an end to the matter.'[135]

Consequently, in 1857 Kemp instructed his surveyor, William Clarke, to exclude Puketotara from the plan filed with the Land Claims Commission. In doing this, Kemp and Clarke acted contrary to Bell's 1857 instructions to claimants and their surveyors that 'As a general rule claimants will be required to survey the whole external boundary of their claim as the same was originally acquired from the Natives . . .'[136]

When Kemp appeared before Bell at Russell in September 1857 he presented his Waipapa survey, which clearly excluded both Puketotara and Pungaere. Bell did not record Kemp as saying anything about his prior agreement with Te Whiu. Nor did Bell record the presence of any Maori when Kemp appeared.[137]

Six months later, a Maori witness named 'Karuhorongia', with interests in the adjoining Tiheru area, requested the right to examine the Waipapa (Te Mata) survey. This apparently alerted Manu Rewa (Ngai Tawake) to a potential dispute. He therefore agreed to accompany Bell 'to Te Kerikeri to see [the Waipapa?] claim by Mr Kemp Snr.' This Tiheru discussion may well have prompted Rewa's objections to Kemp's boundaries at Bell's Kerikeri hearing on 26 March.[138]

At this hearing Bell failed to record whether or not Kemp was present. Bell identified the objectors as 'Manu (Rewa) and other Natives', and 'Taratarorua and Mangaparirua' as the areas they objected to Kemp including in his survey.

During this March 1858 hearing Bell apparently realised for the first time that:

> Kemp had left out of his Survey a considerable portion of those Boundaries; firstly at Tarata, Rotorua and Tiheru, and secondly a large block between the Waipapa and Rangitane rivers.

Bell would have none of this:

> The Commissioner after explaining the law to the Natives, over-ruled all their objections, And he announced that it [ie, the land excluded in Kemp's survey] would be taken possession of for the Government, as it could not for a moment be allowed that a claimant should return to the Natives any portion of the land originally sold.

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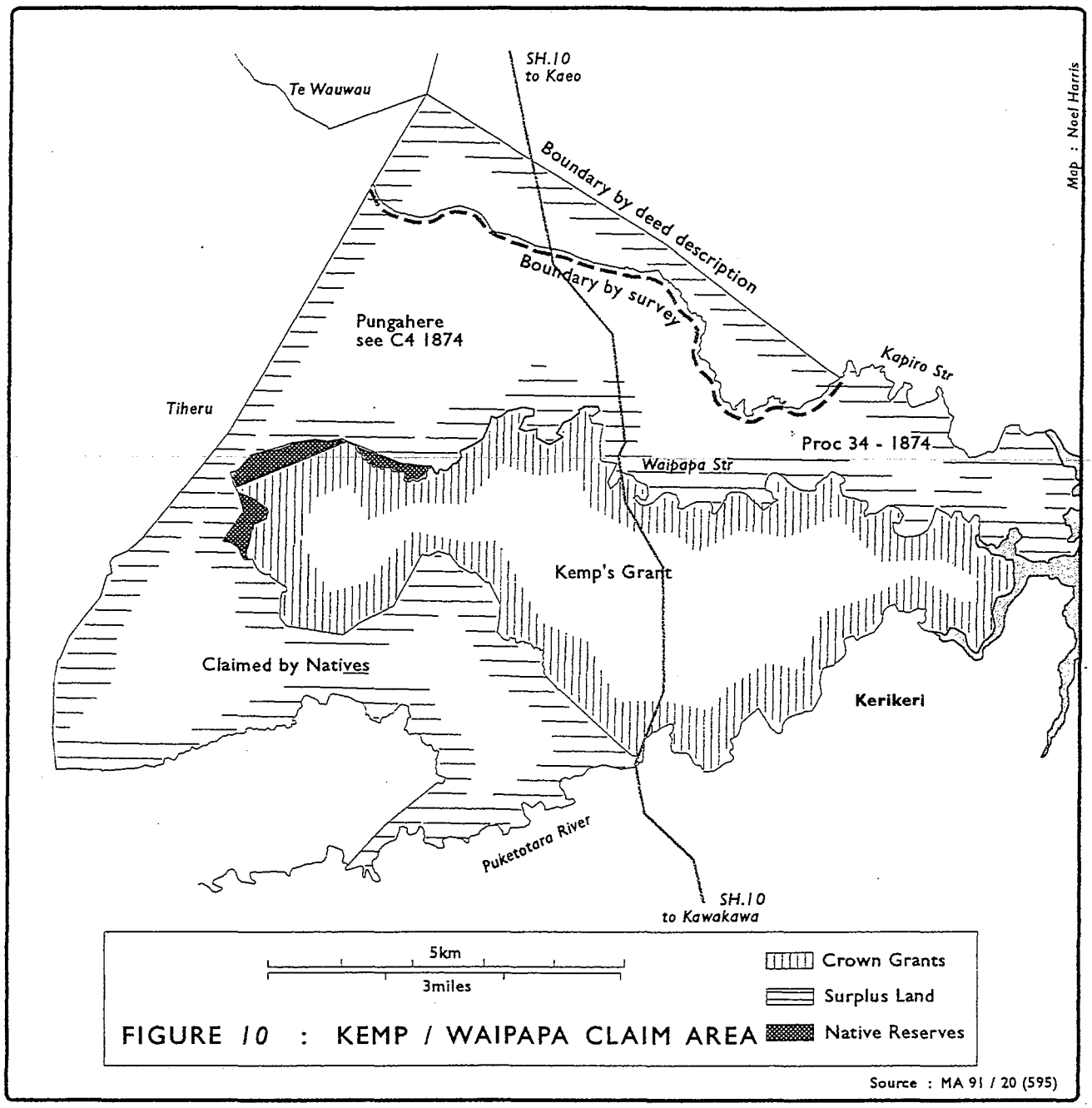
135. Hone Peti, petition, 17 June 1891, MA 91/20 (595), p 23
136. Land Claims Commission 'Rules', 8 September 1857, MA 91/9, exhibit B, pp 81–82
137. Plan of Waipapa 1857, OLC plan 60; Kemp's sworn statement, 25 September 1857, MA 91/20 (595), p 7
138. Bell memo, 17, 26 March 1858, MA 91/20, pp 10, 19. A younger brother of the famous Maori mediator Wharerahi, Manu Rewa signed the Treaty of Waitangi as 'Rewa': Miria Simpson (ed), *Nga Tohu o Te Tiriti*, Wellington, 1990, p 7.


Te Wauwau
SH.10
to Kaeo
Boundary by deed description
Boundary by survey
Pungahere
see C4 1874
Kapiro Str
Tiheru
Proc 34 - 1874
Waipapa Str
Kemp's Grant
Claimed by Natives
Kerikeri
Puketotara River
SH.10
to Kawakawa
Map : Noel Harris
5km
3miles
Crown Grants
Surplus Land
Native Reserves
FIGURE 10 : KEMP / WAIPAPA CLAIM AREA
Source : MA 91 / 20 (595)

Bell concluded his memorandum with a reference to Rewa asking 'that the Government might give them back a small portion', to which Bell replied that only the Governor could authorise this.[139]

Since Bell's 1858 memorandum forms the most complete statement of the Crown's claim to Puketotara, the limits of that record require careful consideration. His record says little or nothing about which Maori groups claimed rights, the basis upon which they claimed those right, and precisely where they claimed rights. Of Maori who appeared before Bell, we know only that Rewa was present. Bell identifies no Te Whiu representatives among the 'others' who attended. Bell similarly failed to record the sources of the Maori rights as explained to him. Were they rights based on ancestry, occupation, conquest, or on agreements with Kemp? We simply do not know. All conclusions about what transpired on 26 March 1858 at Kerikeri have to be tentative and conjectural, because Bell's memorandum is so incomplete.

After the Kerikeri hearing, surveyor William Clarke reported to Bell his efforts to get James Kemp to include surplus land at Puketotara and Pungaere in a revised Waipapa survey. In June 1858 he stated that he had:

> written to Mr Kemp relative to the land he has left out [of his Waipapa survey] . . . I think it likely I will induce him to have it surveyed – But if not; Could I not be authorised to survey it as I know all the boundaries?[140]

Three weeks later Clarke reported discussions with Kemp on extending his survey boundaries to include Puketotara and Pungaere. Kemp declared that he would not do this unless Bell specifically requested him to do so. Clarke indicated:

> I suppose unless he claims this surplus land as being part of his original Purchase, it cannot be proved that the Native title is extinct.[141]

Clarke renewed his offer to survey the surplus irrespective of Kemp's wishes, but Bell failed to act upon his request.

The unsurveyed nature of the surplus strengthened the Maori case when they came to reconstruct a history of the dispute during the 1890s. Although it was compiled over 33 years after Bell's account, Hone Peti's history of what was at issue in this dispute should be read as another side of the story. Peti would have been a young man when Bell rejected Maori rights in the Puketotara–Pungaere area. During the 1860s Crown officials compiling a 'register of chiefs' described him as:

> an intelligent young man [in his 30s] possessing influence with his [Te Whiu] people on account of his shrewdness – [he] works as a carpenter for the settlers – much respected by all.[142]

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139. Bell memo, 26 March 1858, ibid, p 10
140. Clarke to Bell, 15 June 1858, OLC 4/32
141. Clarke to Bell, 5 July 1858, ibid
142. Register, Waimate District, c 1865, MA 23/25. His 'abode' is listed as 'Rangaunu' or Waimate.

In setting out the grounds for Te Whiu's complaint about the Crown's denial of its rights at Puketotara, Peti traverses history right back to the original pre-Treaty transactions, a subject on which Bell made no comment.

According to Peti the original 1835 transaction between Kemp and Ngai Tawake was in the category of 'purely fraudulent (tahae, steal)' He identified 'Maanu [Rewa] and Te Kaingamata [Moka]' as the Ngai Tawake leaders who, together with Kemp, failed to consult Te Whiu. Furthermore, instead of carefully identifying boundaries, Ngai Tawake and Kemp traversed only part of the area referred to in the deed, but wrongfully included Te Whiu kainga at 'Manako, Te Uraura and Otongaiti.'[143]

In no part of his 1891 account does Peti ever mention Bell's 1858 Kerikeri hearing. It therefore appears likely that Ngai Tawake, not Te Whiu, protested Kemp's claim there. On the other hand, Ngai Tawake were never able to record their side of the story, which may have differed from Te Whiu's. We therefore have two incomplete accounts, Bell's and Te Whiu's, when we should have at least three.

Although Bell rejected Maori claims to the surplus land surrounding Kemp's Waipapa grant, the fact that Kemp had deliberately excluded this area from his survey (despite Clarke's strenuous efforts to the contrary) meant that the Crown had failed to define the exact extent of its claim. Te Whiu therefore took their Puketotara claim, and Ngai Tawake took their Pungaere claim to the Native Land Court. Te Whiu employed Richard C Davis junior (another missionary son) and Ngai Tawake employed William Clarke to survey their respective claims in 1866.[144]

Since Judge Frederick Maning heard both of these claims during the 1860s, and since his Native Land Court (NLC) minute books have not survived, we are again faced with an incomplete record of what took place. We know, however, that Ngai Tawake took their 7184-acre Pungaere survey to the NLC in 1868 where Maning awarded them title. Apparently the Crown failed to challenge their claim, despite Bell's 1858 pronouncement that the entire area between the Waipapa and Rangitane rivers was Crown surplus land. This is the very area Maning awarded to Ngai Tawake in 1868.[145]

This swift progress of the Ngai Tawake Pungaere claim through the NLC was not emulated by the Te Whiu Puketotara claim. Although both surveys commenced in 1866, the Puketotara survey clashed with Kemp's Waipapa boundaries at certain points. Maning instructed both parties to traverse and resolve the disputed boundaries before the matter was reheard. Although Te Whiu apparently resolved what appeared to be honest differences with Kemp, there is no record of Maning's action upon the settlement.[146] All we have on record is a survey completed by J O Barnard in December 1872 for 'William Hou [Hau], Hau [Hare] Napia, Honi [Hone] Peti and Hamiora [Hau].' It covered the entire 4644-acre area along the southwest and west of Waipapa, and was approved by the Inspector of Surveys,

143. Hone Peti, petition, 17 June 1891, MA 91/20 (595), pp 22–23. I have been unable to locate these kainga on survey plans or maps.
144. Summary, Peti petition 1891, MA 91/20, pp 1, 24; ML 313 (Pungaere), ML 3169 (Te Mata or Puketotara)
145. Summary, MA 91/20 (595), p 1; ML plan 313; NLC certificate of title, 16 October 1868, DOSLI ref 921
146. Peti, petition 1891, MA 91/20 (595), p 24

Theophilus Heale, presumably before being presented to the NLC in support of Te Whiu's application for title.[147]

As it happened, Te Whiu had to bring their claim before Maning's successor, Judge Henry Monro, at Ohaeawai on 7 April 1875. Present with Monro was William Webster, the Crown's district officer. Presumably, Webster was able to consult Bell's map of the Bay of Islands area, which showed the Kemp Waipapa claim as adjoining the Orsmond Puketi and Shepherd Tiheru claims on the west, the 1856 Omawhake Crown purchase and other Kerikeri claims on the south, and the King Otaha claim on the north. In his 1862 report, Bell refers to how he was able:

> to compile a plan of the whole country about the Bay of Islands and Mongonui, showing the Government purchases there as well as the Land Claims; and a connected map now exists of all that part of the Province of Auckland which lies between the Waikato River and the North Cape.[148]

In any case, Monro did not record the nature of the Crown's objections. All he recorded was:

> Te Mata
> Surplus Land – Dismissed.[149]

At Pungaere the outcome was entirely different. After having been awarded title in 1868, Ngai Tawake then sold the entire 7184-acre area to a private purchaser in May 1869. Peti noted in his 1891 petition that Te Whiu could have sold Puketotara in this same way, but chose to safeguard what they regarded as their birthright.[150]

According to Peti, Te Whiu continued to occupy Puketotara, irrespective of Monro's dismissal of their claim. The hapu even advertised its proprietorship of Puketotara in the Kawakawa newspaper issued on 24 November 1880, to prevent their kinsman, Hamiora Hau, from leasing out timber cutting rights there without hapu permission. Gum diggers, too, all paid their royalties to Te Whiu.[151]

Not until 1889 did the Crown begin to exercise its rights at Puketotara. As Peti later told the NLC, a Crown official arrived there in July 1889 to object to the long-standing practices of Te Whiu leasing out and claiming gum royalties.[152] A Crown Lands Ranger reported in May 1890:

> The Waimate Maoris have been leasing a large block at Puketotara marked as Crown lands . . . I went to Mr Kemp of Kerekeri about it. He says the Maoris always believed they had the best right to Puketotara . . . Old Mr kemp told the Maoris they could have the land that was cut off [his survey].

147. Plan of Te Mata, ML 3169. Te Mata, also referred to as Te Mata te Tiheru, is the highest point in the north-eastern section of the survey area.
148. This 'connected map' appears to have survived as Auckland roll plan 16 (untitled, no date) (see fig 16).
149. Northern minute book, 7 April 1875, vol 2, fol 63. Judge Monro apparently crossed out Heale's note approving ML 3169 on the plan without either signing or dating his erasure. F W Fisher to chairman of the Native Affairs Committee, 31 August 1911, MA 91/20 (595), pp 16–17.
150. Summary, Peti petition, ibid, pp 1, 25
151. Peti petition, ibid, pp 24–25
152. Northern minute book, 25 September 1890, vol 10, fol 191

> Peti . . . one of the principal men who claims the land . . . said let the Government bring it before the Court and prove their title.[153]

Percy Smith, then Commissioner of Crown Lands in Auckland, and later Surveyor General, reported that during the 1880s both he and the legal advisor to the Lands Department, John Curnin, had decided that Puketotara was Crown surplus land. He wrote:

> If any act of ownership is exercised by the Crown there will no doubt be some trouble with the Maoris who still claim it, but still, as it is Crown land, and they are selling timber off it, I think the Ranger should stop them.[154]

Te Whiu's response was to take the matter once more before the NLC. This time Judge Walter Puckey presided. Initially he appeared sympathetic to Te Whiu. Prior to hearing the case in Russell on 25–26 September 1890, he provided Peti with a 21 November 1889 memorandum from Judge Edgar which contained a remarkable admission, apparently written by William C Kensington from the Auckland Commissioner of Crown Lands office, completely at variance with Percy Smith's view (quoted above). As read out to Judge Puckey by Peti, Kensington had written regarding Puketotara:

> there is some doubt whether or not this is Crown land but that Mr Heale after looking into the question considers that the right of the Crown was not substantiated.[155]

Partly on the strength of this evidence, Puckey asked Peti to prepare a list of owners. He did so, and handed it to the Judge on the following day. Puckey recorded 'No objector appeared.'[156] At this point, Puckey seemed to be preparing to award Te Whiu title to Puketotara. Then, in a virtual repeat of Monro's 1875 dismissal, Puckey recorded on 14 October the same year:

> Puketotara [block] 58
> App[licant] H Napia & ors Crown land
> Dismissed[157]

Since Puckey, like Monro, provided no grounds for his decision, we can only guess that another Crown intervention, possibly Smith's, may have caused the dismissal. According to later Maori testimony, Judge Puckey 'was about to give his decision [when] a wire came from Auckland saying the land belonged to the Government'.[158]

The Native Land Court's dual dismissal of Te Whiu's Puketotara claim prompted Peti to petition Parliament in 1891. Since Te Whiu had exercised its rights at

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153. John Maxwell to Thomas Humphries, 20 May 1890, MA 91/20 (595), p 14
154. Smith to Minister of Lands, 1 July 1890, ibid, p 15
155. Northern minute book, 25 September 1890, vol 10, fol 189
156. Ibid, 26 September 1890, vol 10, fol 197
157. Ibid, 14 October 1890, vol 10, fol 277
158. Rameka evidence, 17 May 1907, AJHR, 1907, C-18, p 4

Puketotara for generations, Peti believed that their claim was greater than the Crown's.[159]

While Peti's 1891 petition languished for over a decade, he organised more general Maori opposition to the Crown's claim to surplus land.[160] Consequently, the House of Representatives commissioned Native Affairs Committee chairman, Robert M Houston, to further investigate the situation in 1907. Hone Rameka appeared before Houston at his 17 May 1907 hearing in Russell. There Rameka retraced the history of the dispute as he understood it.

Though Rameka's understanding departed from Peti's on matters of detail, he restated the fundamentals of Te Whiu's claim. They had lived on the land for generations, while the Crown had not exercised significant rights there.[161] Te Whiu could have been considered to have established their rights by adverse occupation against the Crown, although Maori never considered the Crown to have established valid title at Puketotara.

Houston made no attempt to evaluate the merits of the case. He simply recommended that the Crown take remedial action in six areas, including Puketotara, where 'landless natives' lived near 'undisposed of' surplus land.[162] The Crown, however, failed to act on Houston's recommendations. With regard to Puketotara, officials continued to rely upon the fact that the NLC had twice dismissed Te Whiu's claim.[163]

A further Te Whiu petition in 1911 put Puketotara on the list of claims requiring the attention of the 1920 Native Land Claims Commission. This commission, consisting of Native Land Court Judge, Robert Noble Jones; John Strauchon and John Ormsby, heard almost two days of oral evidence on Puketotara on 28–29 July 1920.

The Crown's legal representative, John Knight, cross-examined both Hone Rameka and Hone (Hamiora) Hau on what appeared to be a boundary overlap on the northwest side of Puketotara. An area there claimed by Te Whiu had been surveyed as part of Shepherd's Tiheru claim during the 1850s.[164] Ngai Tawake supported Te Whiu's claim, but suggested that his people retained an interest in the land and 'should be included if the land is returned.'[165]

The Jones commission took a conciliatory tone in its report. It avoided references to boundary and hapu disputes. It also relied upon the embarrassing Kensington memo, a section of which Hone Peti had read into the NLC Minute Book in 1890. The 1920 report stated that:

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159. Peti petition, 1891, MA 91/20 (595), pp 25–27
160. In particular, he confronted Premier Seddon with the grievance at a Waitangi Te Tii hui on 15 March 1899: *Notes of Meetings . . . in respect of the Proposed Native Land Legislation . . .* ,Wellington, 1899, pp 73–76. I am indebted to Michael Nepia for this reference.
161. Rameka evidence, 17 May 1907, AJHR, 1907, C-18, p 4
162. Houston to Governor, 22 July, 1907, ibid, p 1. The other surplus land areas investigated by Houston were Motuopao, Tangonge, Waimamaku, Kapowai, and Opua.
163. Fisher to Houston, 31 August 1911; chief surveyor to Judge Wilson, 7 June 1916; Judge Wilson to chief surveyor, 8 June 1916, MA 91/20 (595), pp 16–19
164. Rameka and Hau evidence, 29 July 1920, MA 83/1, pp 184–185
165. Piripi evidence, 29 July 1929, MA 83/1, p 186

> . . . Crown officers seem to have claimed it [Puketotara] to belong to the Crown as surplus land . . . The Crown itself seemed to have some doubt as to its position, while the Natives continued to claim it . . .[166]

The commissioners apparently encouraged opposing counsel to negotiate an interim settlement soon after the July hearing. By October they were able to report that Edward Bloomfield, acting on behalf of Te Whiu, and Knight, had agreed to the return of the western-most 2196 acres to Maori.[167] For the boundaries of this area, see figure 11.

Section 80 of the Reserves Act 1920 gave this settlement statutory effect.[168] Although this appears to have been proposed as an interim settlement, pending a long-term arrangement, the Crown did little to pursue the matter further after 1920.

Eventually Maori were virtually shut out of the entire Puketotara-Pungaere area. According the Auckland Roll plan 4 (ca 1863), they were left with no land in this area during the latter part of the nineteenth century. At Puketi (809) the Crown granted 5014 acres to the Ormonds and Shepherd and retained 6727 acres as surplus land. At Waipapa the Crown granted Kemp 6598 acres, it claimed 4694 acres of surplus at Puketotara, and purchased 7184 acres at Pungaere in 1870. At Tiheru it granted Shepherd 1528 acres and retained 2335 acres as surplus land.[169] The only indications of any Native Reserves in the area appear on a twentieth-century sketch map of the Waipapa claim area (see fig 10). The three areas of 'Native Land' appearing at the western end of Kemp's Waipapa grant may have been created as an poorly documented early twentieth-century attempt to remedy the situation. As far as can be determined, they no longer remain in Maori ownership.

To conclude this discussion of the representation of Maori rights, it is necessary to comment briefly upon the degree of common understanding exhibited both in the pre-Treaty transactions and in the commissioners' investigations of them. While the dearth of Maori evidence makes it impossible to establish the nature of Maori understanding with any certainty, a few points need to be considered. One is the possibility of Maori understandings of pre-Treaty transactions, and of Commission investigation thereof, fundamentally divergent from the Crown's understandings of them. We need only recall Colenso's recorded advice to Hobson at Waitangi on 6 February 1840 that he was convinced that Maori 'did not fully understand what they had signed' at Waitangi.[170] In fact, one cannot even assume that Maori signatures on the Treaty represented consent in the European sense. Although Te Kemara, Rewa, Moka, Pumuka, Wai (Wao?), Hakiro, and Marupo opposed the Treaty as explained by Hobson on February, they none the less signed it on 6 February.[171] Their tohu may have signified their affirmation of participation in the solemn events of 5 and 6 February 1840, but it didn't necessarily signify their

166. Native Land Claims Commission, report 1, 8 October 1920, AJHR, 1920, G-5, p 6
167. Terms of proposed 1920 settlement, MA 91/20 (595), p 30
168. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1920
169. Auckland roll plan 4, OLC plans 15, 60, 28
170. Colenso memo, 6 February 1840, ATL; 11 February 1840, PS in Colenso to CMS, 24 January 1840, CMS/CN/M11
171. Kawiti, who spoke against it on 5 February, signed later. Tareha, another opponent, did not sign, although Hakero, his son, did. Marupo signed again at Mangungu on 12 February (see table 1).

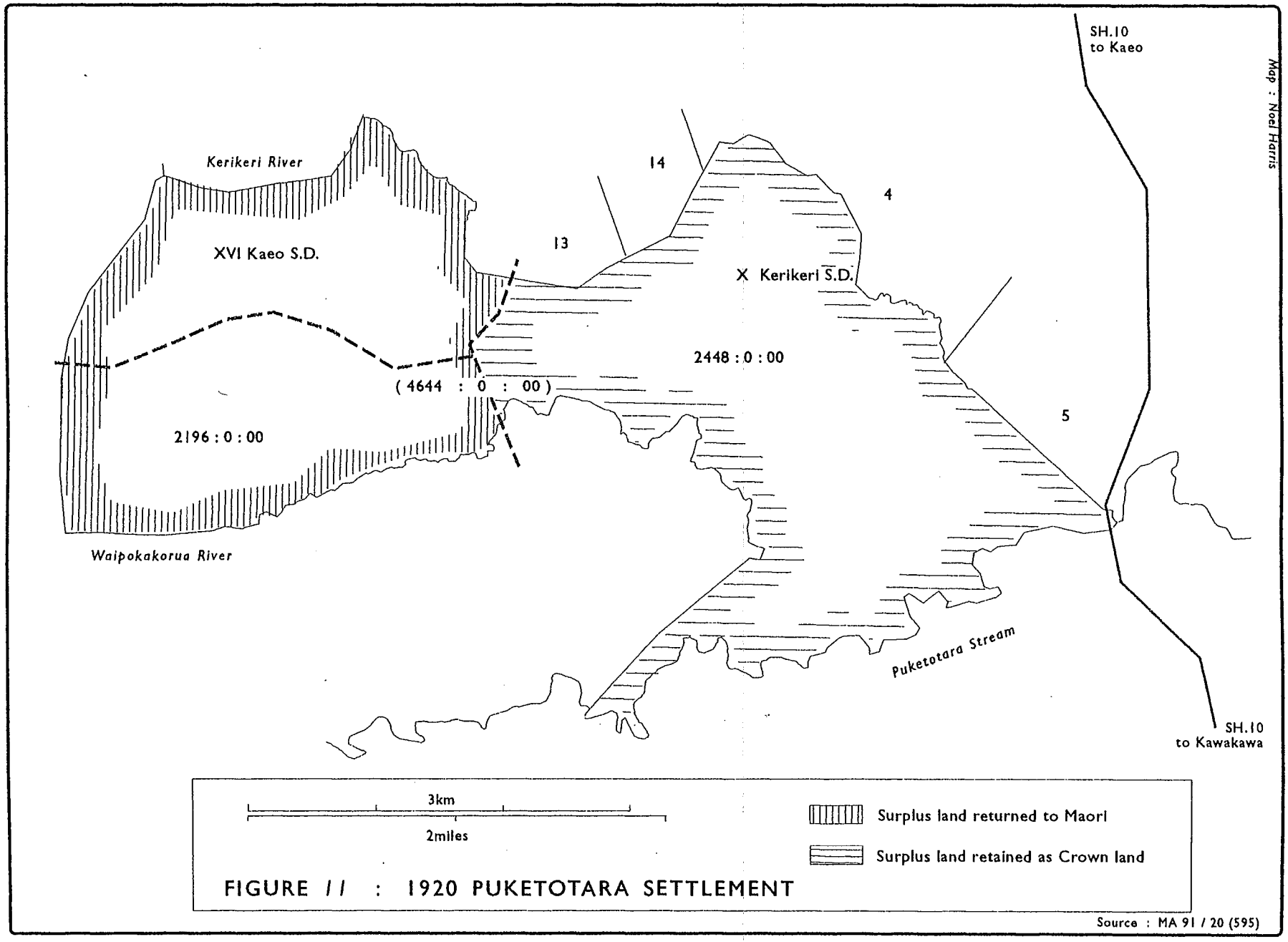

FIGURE 11 : 1920 PUKETOTARA SETTLEMENT

Source : MA 91 / 20 (595)

support of Hobson's expressed wishes. Nor do their tohu establish a common understanding of the terms expressed in different Treaty texts.

Table 3: Register of chiefs (circa1865, MA 23/25)

Waimate district

Name	Tribe	Age	Abode
Awa Hiria te	NP (Ngatitautahi)	60	Kaikohe
Hakiro Wi te	NP (Ngatihine)	50	Waiomio
Hara Heta te	NP (Ngatirangi)	40	Ohaeawae
Haupokia	NP (Ngatirangi)	70	Waimitimiti
Hau Wiremu	NP (Te Whiu)	60	Rangaunu
Hongi (Hare)	NP (Te Tahawai)	60	Te Pupuke
Hongi Riwhi	NP (Ngaitupango)	30	Te Ngaere
Hongi Wi	NP (Te Uri o hua)	40	Kaikohe
Huingariri	NP (Ngatirehia)	50	Te Toatoa
Haratua	Ngatikawa	60	Oromohoe (sic)
Kemara Wi Morenga	NP (Ngatirahiri)	30	Waitangi
Kawiti Maihi Paraone	NP (Ngatihine)	50	Waiomio
Kaire Wiremu	NP (Uritaniwha)	60	Te Waitohi
Katene Wiremu	NP (Uritaniwha)	30	Te Ahuahu
Hira Kingi Hou	NP (Ngaitupango)	50	Te Ngaere
Hou	NP (Ngatirangi)	50	Ohaeawae
Horongohi Piripi	Ngarehauata	60	Tautoro
Marupo Himi	NP (Ngatirehia)	40	Oromahoe
Ngere Whare	NP (Ngaitupango)	45	Matauri
Peti Hone	NP (Te Whiu)	35	Rangaunu
Poti Hare	NP (Ngatitautahi)	40	Kaikohe
Pouroto Eru	NP (Uri o hua)	50	Kaikohe
Putete Paora	Tahawai	50	Pupuke
Reti Rameka	NP (Ngatirahurahu)	60	Hau o Tapiri

Name	Tribe	Age	Abode
Taipa Haki	NP (Ngarehauata)	70	Ngawhitu
Takira Hori Kemara	NP (Ngatirehia)	75	Te Toatoa
Taukawau Reihana	NP (Ngatirangi)	35	Mangakahia
Tepene Wiremu	NP (Ngatiawa)?	40	Kawakawa
Tete Wikiriwhi	NP (Ngatikaihoro)	40	Kaikohe
Titaha Henare	NP (Ngatimanu)	40	Karetu
Taugo? Hikuwai	Ngatimau?	45	Aroha
Tiriohai?	Ngatirangi	40	Ohaeawai
Tupe Hemi	NP (Te Whanaupani)	30	Te Touwai
Tupe Henare	NP (Te Whanaupani)	35	Te Touwai
Waikato	NP (Hikutu)	80	Kaiwhaiki?

Kaihiki

Name	Tribe	Age	Abode
Whareoneone Pene	NP (Ngarehauata)	30	Ngawhitu
Wirihahe? Hare	NP (Uritaniwha)	35	Te Ahuahu

Russell district

Name	Tribe	Age	Abode
Ihaka	NP (Ngaitawake)	25	Rawhiti
Ikanui Horiana	NP (Parupuha)	37	Paroa
Kokowai Wairhi	NP (Kapotai)	70	Waikare
Korahonui	NP (Kapotai)	80	Waikare
Mangonui Kerei	NP (Ngaitawake)	48	Rawhiti
Nene Tamati Waka	(Ngaitawake)	85	Kororareka
Ngahapa Heuere	NP (Kainga Kuri)	45	Matapouri
Ngere Hori Maka te	NP (Whanauwhero)	40	Whananaki
Pairau	NP (Ngatawake)	50	Te Rawhiti
Paka Mohi	NP (Ngatiwai)	55	Whangaruru

Name	Tribe	Age	Abode
Pi Wepiha	NP (Kapotai)	50	Waikare
Poihipi	NP (Kapotai)	40	Waikare
Puanaki	NP (Ngatiwai)	45	Whangaruru
Rewharewha	NP (Ngatihuta)	40	Te Rawhiti
Tawatawa Hotereni	NP (Ngatiwai)	70	Whangaruru
Tarapota Rewiri	NP (Ngaitawake)	40	Te Rawhiti
Tamihaua	NP (Whanauwhero)	75	Whananaki
Teete Wiremu te	NP (Kapotai)	50	Waikare
Wairua Warena	Ngaitawake	45	Te Rawhiti
Wehiwehi Hou	Ngatiwai	70	Whangaruru

Similarly, Maori signatures on pre-Treaty deeds are certainly evidence of participation in transactions, but are they evidence of common understanding? If there isn't sufficient evidence to establish the degree of common understanding of the pre-Treaty transactions and the commissioners' investigations of them, how can we assume any effective representation of Maori rights? If Maori believed they were participating in some form of transaction which shared rather than alienated their rights, how could they represent themselves or their kinspeople effectively in what the Crown subsequently called alienation? Just the fact that the Crown was unable to explain to more than about 5 percent of Maori witness before the 1840s commissions the meaning of a simple judicial oath ('Do you promise to tell the truth . . . ?') suggests a Maori understanding of Commission proceedings very different to the Crown's.

Finally, Maori understandings of the consequences of pre-Treaty transactions must have changed over time. When they realised that they were being shut out of areas in close proximity to Kerikeri, Kororareka, and Waimate, for example, they were likely to feel that they had become strangers in their own land. Since the Maori who inherited the consequences of pre-Treaty transactions were often not the people who negotiated them prior to 1840, some degree of repudiation inevitably occurred. In the Puketotara case, Hone Peti's generation inherited the consequences of the actions of Wiremu Hau's. This may help explain why the Puketotara protest began only very slowly after 1865, and did not become a cause celebre until the 1890s.

3.2.2 The boundary question

The boundary issue of whether the Crown clearly identified commonly understood and accepted boundaries for old land claims proceeds directly from a consideration of the respective rights transacted. As indicated above, several claim areas contained numerous overlapping Pakeha and Maori claims. Rather than canvass numerous

examples of where overlapping claims created inevitable boundary disputes in the Bay of Islands area, I will concentrate on the disputed Kapowai area which illustrates the boundary question with special reference to its scrip land ramifications.

In the Kapowai area on the south side of the Waikare Inlet at least four Pakeha claims converged. They were William Cook's (127), George Greenway's (202), M Whytlaw's (520) and S A Wood's (536), all in close proximity (see fig 12).

Two of these claims, Cook's and Greenway's, resulted in surveyed grants, the boundaries of which are identified on figure 12. The other two resulted in scrip awards for Whytlaw and Wood. Since scrip claims usually weren't surveyed, they were fertile fields for generating boundary disputes. So it proved at Kapowai where these disputes raged on for almost 80 years before the Crown conceded a settlement.

Even in the case of the best established claim, that of William Cook at Pahiko, boundary disputes arose. By 1840 Cook had already resided in New Zealand for 17 years working as a ships' carpenter, repairing vessels at various anchorages around the Bay. In 1824 he married Tiraha, a woman of considerable authority within the Kapotai hapu of Waikare. By 1840 they had eight children and were living at Orare Point on the north side of the Waikare Inlet, a popular anchorage for visiting trading and whaling ships.[172] Cook claimed 40 acres around his Orare Point residence and 200 acres across the inlet at Pahiko to provide an inheritance for his children. In presenting oral evidence in support of his Pahiko claim in 1842, Cook indicated:

> I have allowed the Natives [to] cultivate and stay on part of this land but with a clear understanding that I was to have full possession of the whole of the Land whenever I required it.[173]

Godfrey and Richmond took no notice of continued Maori occupancy at Pahiko in recommending a 200-acre grant there for Cook and his heirs.[174] Pi and Kapotai, as leading Waikare rangatira, both supported Cook's claim. Cook had obviously acquired a respected position in Maori society through his family and valuable skills, so the commissioners had less reason to anticipate disputes arising from their recommendation.[175] Had surveyors established the boundaries of Cook's grant with Maori cooperation during the 1840s, disputes may well have been avoided. However, since Governor FitzRoy enabled claimants to obtain unsurveyed grants as a result of commissioner recommendations, Cook had no incentive to pay for what could be an expensive survey.[176]

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172. Cook to Colonial Secretary, NSW, 6 November 1840, OLC 1/126–127; Lee, *Bay of Islands*, p 287
173. W Cooke, sworn statement, 21 February 1842, OLC 1/126–127. Cook signed his name with an 'e' in 1842 but later dropped it.
174. Godfrey Richmond report, 23 March 1843, OLC 1/126–127
175. Pi and Kapotai, unsworn statements, 21 February, 6 October 1842, OLC 1/126–127
176. FitzRoy apparently waived survey requirements for the issuance of Crown grants in 1844 as a matter of temporary expediency: Rigby, 'Empire on the Cheap', p 68.

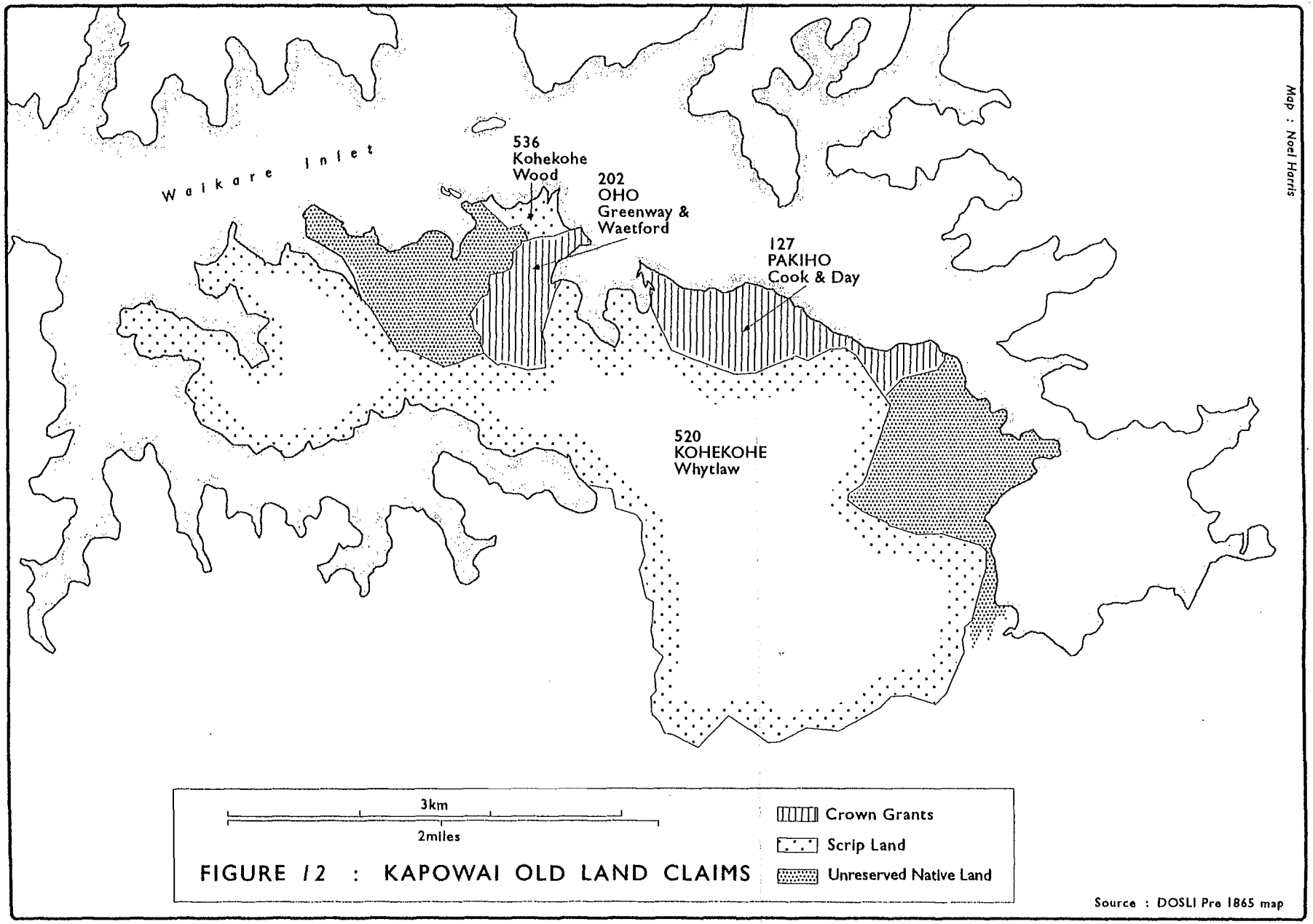

FIGURE 12 : KAPOWAI OLD LAND CLAIMS

FitzRoy's ill-advised waiving of survey requirements for Crown grants compounded deficiencies in the Crown's ill-defined scrip land policy. Hobson introduced this policy as part of his Land Claims Ordinance 1842. By issuing scrip in exchange for scattered grants, he hoped to concentrate settlement in the Hokianga, Bay of Islands, and Auckland city areas.[177] If a claimant voluntarily accepted the Crown's scrip offer, he could expect to receive credit equivalent to the commissioners' grant recommendation. This credit could then be exercised at Crown land auctions, which took place mainly in the Auckland city area. The Crown evidently assumed that the original vacated grant (which should have been surveyed) would become part of the public domain for later disposal. The fact that FitzRoy dispensed with survey requirements, however, meant that the extent of the Crown's scrip land remained unclear.

When Commissioner Bell arrived in the Bay to give legal certainty to previously unsurveyed grants in 1857, boundary disputes about Cook's grant surfaced. Wepiha, the son of Pi, claimed an area called Tepere which Cook wished to include in his survey. Wiremu Te Teete, the son of Kapotai, also denied that his father received his share of the payment.[178] Both Wepiha and Te Teete became assessors in the 1860s, so Bell could not dismiss their concerns out of hand.[179] Bell went to the almost unprecedented lengths of going to Waikare to spend four hours mediating between the Maori disputants. Eventually he decided to exclude Tepere from Cook's grant because it wasn't included in the original deed boundary description. He added, however:

> As I left the place another set of natives raised a dispute on the subject of a small piece of land they had been cultivating in another part of the claim: but this time the place was within the Boundaries of one of the Deeds, and I dismissed the objection.[180]

While deciding boundary disputes on the basis of what was included or excluded in the original deed description appeared to be an equitable procedure, it was not one which would work in every case. George Greenway's claim, half a mile or so along the inlet towards the bay, also resulted in a 200-acre grant recommendation in 1843. In Greenway's case, 'Kokia' had stated a claim to part of the land, so Godfrey and Richmond specified that the grant was to exclude 'any portion belonging to Kokia which', they added, 'is supposed to be very trifling'.[181]

Just as in Cook's case, Greenway failed to survey his grant prior to Bell's 1858 investigation. He also transferred his property rights to Charles Berry Waetford in 1848. When Waetford presented the claim to Bell, he stated that Kokia had died without exercising any rights he acquired as a result of the 1843 grant

177. Hobson's address, 14 December 1841, BPP, 1842 (569), pp 198–199; Land Claims Ordinance 25 February 1842
178. Cook, sworn statement, Bell memo, 19 March 1858, OLC 1/126–127
179. Both are reported to be in their 50s c 1865. They are listed with three other Kapotai chiefs, all from Waikare. Russell district, register of chiefs, MA 23/25
180. Bell memo, 3 April 1858, MA 23/25. Bell apparently allowed Te Teete to negotiate with Tiraha, Cook's wife, on the question of payment. Bell memo, 19 March 1858.
181. Matati, Korokonui, unsworn statements, 23 November 1841, 15 February 1842; Godfrey Richmond report, 23 March 1843, OLC 1/202

recommendation. Waetford claimed to have been 'in uninterrupted possession' of the land since 1848 even though 'the chief Waiti . . . occupies part of the land by my permission.'[182]

Although Waetford stated an oath in 1858 that Waiti 'recognises the [claim] Boundaries to be correct . . .', two years later he reported otherwise. After filing his survey plan, he told Bell:

> I have submitted to a large curtailment of the original purchase in order to prevent dispute with the natives in their present excited state respecting their Lands . . . I engaged the attendance of Kokowai, native Assessor, principal Chief of Waikare to point out to the Surveyor the Boundaries . . . I, purposely absenting myself, instructed the Surveyor to accept the boundaries as pointed out.[183]

This represents one of the few examples in which the evidence supports Maori consent to surveyed grant boundaries. Although it was contrary to the commissioners' general rule of insisting upon a survey of originally described boundaries, Bell failed to record any objections.[184] Greenway's original (1840s) 200-acre grant, consequently, became a 117-acre grant to Waetford. This stands in contrast to the Cook grant just half a mile away. It increased from 200 acres in the 1840s to 226 acres when surveyed in 1860.[185]

While the Cook and Greenway/Waetford claims were relatively modest and probably adjusted to the satisfaction of local Maori, the same could not be said of the 3000-acre Whytlaw Kohekohe claim. Whytlaw's claim exceeded the entire area of the Kapowai peninsula, north and east of the Waikino Creek and north of Waipapa comes to approximately 2709 acres, according to the most recent survey data.[186]

Evidence recorded at commission hearings in Kororareka during 1842 suggest that Maori, at least, believed that Whytlaw could not validly claim the entire peninsula. Even without considering the Cook and Greenway/Waetford claims, Matatahi Wero maintained Whytlaw's claim 'does not quite extend to the Waikino River.'[187] Kokowai, who Bell later described as the 'principal Chief of Waikare' apparently signed the deed, but shared no part of the payment and, therefore, declared 'I did not part with my portion of the land.'[188] In their recorded statements, both Matatahi and Te Wangarau weren't able to describe the boundaries in detail, but they maintained that they could point them out on location.[189]

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182. Waetford, sworn statement, 22 March 1858, OLC 1/202. The 'chief Waiti' is apparently Te Waiti Pakerehu of Kapotai: list of chiefs enclosed in Clendon to Native Secretary, 2 October 1861, AJHR, 1862, E-7, p 17.
183. Waetford to Bell, 21 May 1860, OLC 1/202
184. Bell report, 2 September 1861, ibid
185. Charles Vickers completed Cook's survey on 3 April 1860 and Waetford's on 13 April 1860. OLC plans 72, 136.
186. When Whytlaw originally stated his claim he estimated it as 6000 acres, well over twice the land area of the peninsula, which the commissioners, none the less, reported as a 3000-acre claim: Whytlaw to Colonial Secretary New South Wales, 29 April 1841, OLC 1/520.
187. Matatahi, unsworn statement, 30 September 1842, OLC 1/520
188. Kokowai and Matatahi, unsworn statements, 30 September 1842, OLC 1/520
189. Matatahi and Te Wangarau, unsworn statements, 30 September, 7 October 1842, OLC 1/520

The commissioners' report relied, as always, on deed boundary descriptions (no matter how inaccurate these may have been). The description stated that boundaries commenced 'at the junction of the Manukau Creek with the Waikare River', thus apparently excluding current day Kapowai B2, section 16, and approximately half of the State forest (a combined area of perhaps 260 acres) east of Manukau Creek (see fig 13).

Though the reported boundaries read 'Southwest [from Manukau Creek] to the Waikino River' in recognition of Matatahi's statement that 'it does not quite extend to the Waikino River', Godfrey and Richmond added: 'The boundaries do not extend quite to the Waikino river – the natives must point them out.'[190]

The commissioners evidently assumed upon making such a recommendation that Whytlaw would have to survey his claim prior to receiving a grant, and that Maori would accompany the surveyor and point out the boundaries to him.[191] Just as with the Greenway/Waetford claim, the commissioners attached as a condition of the 733-acre grant they recommended for Whytlaw, an exclusion of land claimed by a Maori witness. In the commissioner's report this exclusion was stated as 'excepting the portion of the Land belonging to the Native Kokowai' from Whytlaw's grant.[192]

As indicated earlier, the commissioners assumed that any deficiency in boundary information would be corrected upon survey. At almost the same time that FitzRoy waived survey requirements for the issuance of Crown grants, Major Thomas Bambury writing 'For the Governor' informed Whytlaw that although he was entitled to a 733-acre grant as recommended by the commissioners:

> this amount of acres must however be verified by the Certificate of an Accredited Surveyor and Protector of Aborigines. Until that is done any and every Deed for land exchanged [for scrip] must be withheld.[193]

Whytlaw had requested an exchange of scrip for his claim because, in September 1843, the Crown announced by Gazette Notice that it was reserving action upon the commissioners' recommendation for his and several other Bay of Islands claims 'for further consideration'. Whytlaw considered that this threw 'doubt and uncertainty over' the legality of his anticipated grant. He therefore sought to exchange his Kapowai claim for an equivalent area nearer the new colonial capital of Auckland.[194]

Although the Crown did not act upon the 1843 certification procedure indicated by Bambury, it apparently sent Thomas Cass, an assistant to Surveyor General C D D Ligar, to Kapowai in early 1844. He stated the obvious in reporting that Whytlaw's claim 'contains considerably more than the 773 acres which he is

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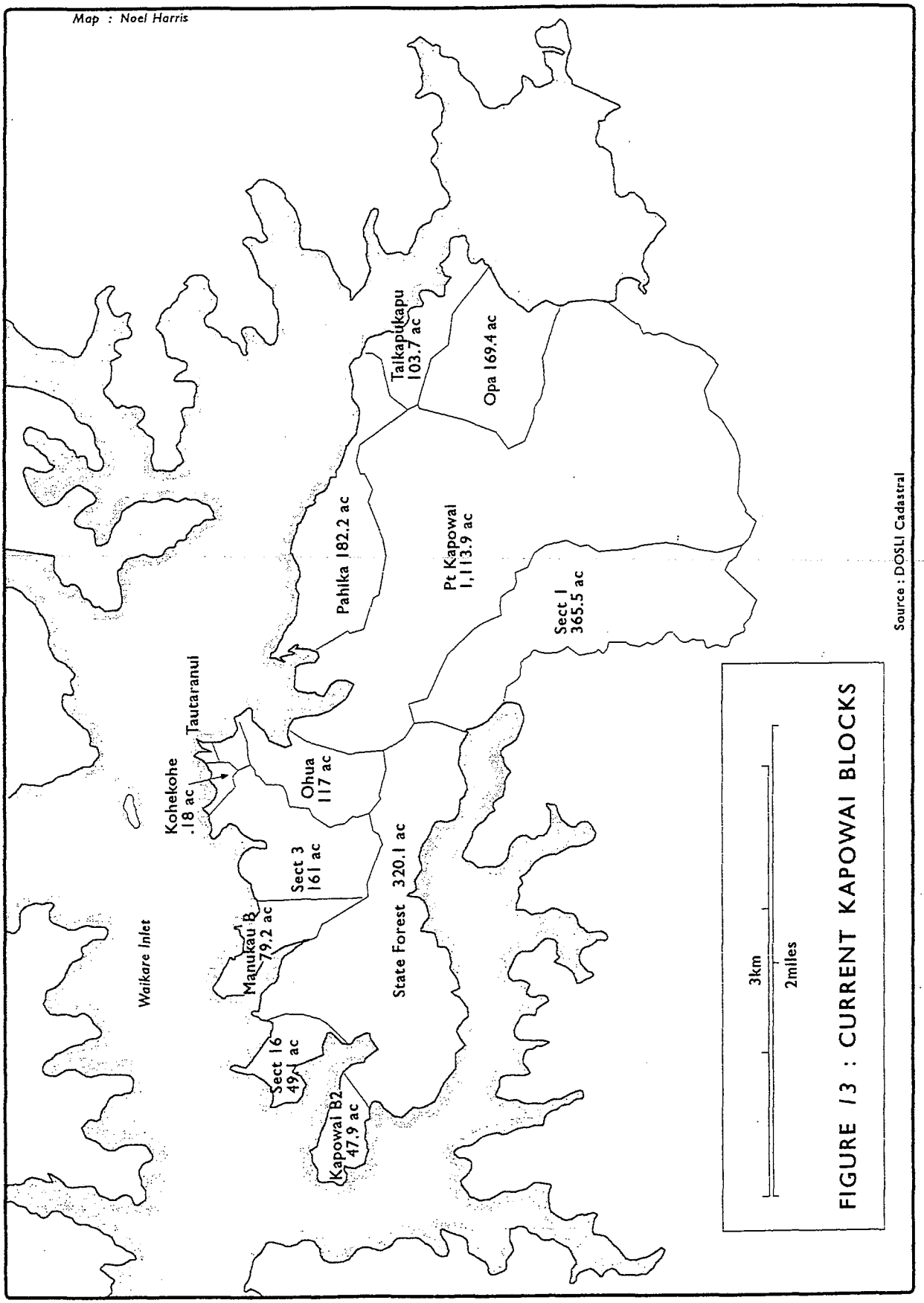
190. Godfrey Richmond report, 24 March 1843, OLC 1/520
191. Indeed, this procedure was one the Crown required in its 1843 announced reports to be filed by protectors and surveyors. As already indicated, however, this verification procedure was recorded as being carried out in only three or four cases near Kororareka.
192. Ibid. Warihi Kokowai was still considered the 'Principal Chief of Kapotai' during the 1860s, though by then he was in his 70s and 'very infirm': Russell district, register of chiefs, MA 23/25.
193. Thomas Bambury, minute, 26 January 1844, OLC 1/520
194. Whytlaw to Colonial Secretary, 24 January 1844, MA 91/9(520), p 10


Map : Noel Harris
Taikapukapu 103.7 ac
Opa 169.4 ac
Pahika 182.2 ac
Pt Kapowai 1,113.9 ac
Sect 1 365.5 ac
Tautaranui
Kohekohe .18 ac
Ohua 117 ac
Sect 3 161 ac
Manukau B 79.2 ac
State Forest 320.1 ac
Waikare Inlet
Sect 16 49.1 ac
Kapowai B2 47.9 ac
3km
2miles
FIGURE 13 : CURRENT KAPOWAI BLOCKS
Source : DOSLI Cadastral

awarded, and [has] been allowed to exchange'.[195] Without determining the extent of Whytlaw's claim (or the area Kokowai claimed), the Crown allowed him to exercise £1827 worth of scrip in the Auckland city area.[196]

In unsurveyed areas the Crown simply failed to define the extent of its claim to ownership. The Crown had a further interest in Kapowai, however, because in addition to issuing Whytlaw scrip for his Kohekohe claim, it also granted another claimant, S A Wood, 100 acres there. Commissioners reported in 1843 that Whytlaw's claim extended 'to a point called Kohukohu [Kohekohe] including the Island Motu Mareti', after having reported in 1842 that Wood claimed 'Kohekohe . . . immediatly opposite the Island of Muta Kura.'[197] This would appear to be a case of obvious overlap.

Such errors were quite understandable, since Godfrey and Richmond probably heard evidence relating to at least 200 claims between May 1842 and March 1843. None the less, the error made with respect to Kohekohe went undetected at the time since Wood, like Whytlaw, chose to exchange his claim for scrip, and was allowed to do so without having it surveyed.

Commissioners heard similar Maori evidence in support of both Whytlaw and Wood's claims. Matatahi, who supported Whytlaw's claim in 1842, had made similar supporting statements for Wood in 1841.[198] In both cases, Surveyor General Ligar apparently sent one of his subordinates to inspect the land. On the basis of his subordinates' report, Ligar questioned whether Wood should receive the requested scrip since it appeared that only 20 out of 100 acres could be located at Kohekohe.[199] This failed to deter the Crown from granting Wood 100 acres at Kohekohe on 30 July 1845. Wood never exercised his scrip. Nor did he ever file a Kohekohe survey.[200]

Since both Whytlaw and Wood's Kohekohe land remained unsurveyed even after Bell's investigations, their rights fell into abeyance. In Wood's case, Bell voided his grant on 27 May 1862, when he failed to submit it for examination.[201] Native Land Court Judge H H Halse also 'dismissed' the claim upon which the Crown based its grant on 17 January 1880. Then Land Claims Commissioner Charles Heaphy declared it 'abandoned' on 1 March 1880, along with dozens of other moribund claims.[202]

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195. Cass to Ligar, 30 April 1844, OLC 1/520. Ligar anticipated this by stating on 3 February 1844: 'I am as confident of this fact [that Whytlaw claimed more than he was granted] as I could possibly be, except I had actually surveyed the land': Ligar, minute, 3 February 1844, OLC 1/520.
196. This amount was calculated by deducting his grant acreage from the normal maximum figure of 2560: William Browne to Colonial Secretary, 25 May 1844, OLC 1/520.
197. Godfrey Richmond reports, 24 March 1843, 30 May 1842, OLC 1/520, 536. The boundary descriptions in both cases were taken from the respective deeds.
198. Matati (Matatahi), unsworn statement, 23 November 1841, OLC 1/536. Matatahi may not have perjured himself in stating that he had not sold this land to another person; he may very well have been confused about the respective boundaries.
199. Ligar to Colonial Secretary, 21 June 1844, OLC 1/536; Wood to Colonial Secretary, 13 January 1845, OLC 1/536; FitzRoy minute, 17 January 1845, OLC 1/536
200. Wood to Colonial Secretary, 13 January 1845, OLC 1/536. Summary MA 91/20 (536), p 1
201. Bell minute, 27 May 1862, OLC 1/536
202. Minutes on Richmond Godfrey report, 30 May 1842,OLC 1/536

The Whytlaw claim area was an entirely different matter, however, since it involved several thousand rather than just 100 acres. During the 1890s, the Crown decided to stake its claim to the bulk of the Kapowai peninsula outside the Cook and Waetford grants, and outside Native Land Court awards at Manukau in 1868 (ML 719), Kohekohe in 1870 (ML 1169), Taikapukapu in 1866 (ML 259), and Opa in 1867 (see fig 13).

The Crown apparently failed to oppose the four Maori claims all along the Waikare Inlet within the larger claim area. None the less, as it began to survey hitherto unsurveyed parts of the Bay of Islands outside Crown purchased and granted areas, it effectively claimed the Kapowai hinterland by theodolite and chain.

In accepting earlier old land claim and NLC-approved surveys along the Waikare Inlet, the Crown surveyors during the 1890s failed to resolve numerous inconsistencies. First the NLC surveys placed Kohekohe, the supposed site of both Whytlaw and Wood's claim, in two different locations. ML plan 719 (Manukau 1868) located it near the mouth of the Manukau Creek. ML plan 1169 (Kohekohe 1870), also surveyed by John Russell, put it at least a mile to the east. When Russell surveyed Manukau in 1868, he marked the land adjoining on the west and south (later claimed by the Crown) 'Native Land'. In contrast, he marked the 18-acre area he surveyed in 1870 as Kohekohe (opposite Motumoreti) as 'Wood'.[203]

Far from resolving these inconsistencies, Crown surveyors compounded them. W J Wheeler in January 1892 accepted Russell's 1868 location of Kohekohe at the mouth of Manukau Creek, even though someone pencilled the 1870 block location over a mile away. Most importantly, Wheeler designated the entire Kapowai hinterland as 'Whytlaws OLC'. This area, which he calculated to be 2170 acres, fronted the Waikare Inlet at the mouth of Puakainga Creek. Shortly after Wheeler filed his survey (SO 6355) this 2170-acre area, based on what the Crown claimed to be Whytlaw's old land claim, became a 'Small Grazing Run' leased to Henry Lane.[204] According to SLC staff 50 years later, the Crown's leasing of this area was a subject of 'constant dispute' with 'the Natives holding that the major portion was Native Land.'[205]

The Crown resurveyed the area in 1896 and again in 1900. In SO 6355A (1896) and SO 6355B (1900), 'Whytlaws OLC' became 'Small Grazing Run No 12.' In this resurvey activity, the only benefit to Maori was the identification of four wahi tapu sites in the eastern sections of the disputed land.[206]

Kapotai people, led by Wiremu Te Teete, petitioned Parliament in the 1890s protesting the Crown's lease of their land to Lane. They claimed Kapowai was papatupu land outside the grants to original old land claimants such as Cook. They concluded their petition stating:

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203. ML plans 719, 1169 (see fig 13)
204. SO 6355 bounded on the southwest and south by the Waikino and Waihaha Streams as in figure 13.
205. Summary 91/19 (520), p 1
206. Identified provisionally in SO 6355A, and more definitively in SO 6355B.

> Kapo[w]ai is a burial ground used for that purpose from former times down to the present and we are quite sure that this land Kapo[w]ai throughout all its extent was never sold to the Europeans.[207]

Just as with Puketotara, Kapowai came before Commissioner Houston in 1907. Henare Kepa explained to him:

> We do not understand how the land was taken. This land is still owned by us, and is still unadjudicated.

He recalled the Cook and Greenway pre-Treaty transactions and the Manukau, Taikapukapu, and Opa NLC awards. Kereama Hori reiterated:

> Ever since I had breath this land has been known to be ours . . . Our permanent buildings and our cultivations were on this, and our sacred spots.[208]

Houston made the same kind of general recommendation regarding Kapowai that applied to Puketotara: that the Crown should graciously grant unallocated surplus land to displaced Maori 'without prejudice to the Crown's legal right to such "surplus lands"'.[209]

The Crown, however, failed to act upon any of Houston's recommendations. Consequently, Kereama Hori petitioned Parliament in 1919 for the return of 'te wahi nui tonu o Kapowai Poraka' or the 'main portion of the Kapowai Block.'[210] The matter then came before the 1920 Native Lands Claims Commission immediately after it heard another series of Puketotara witnesses. Bloomfield appeared for both the Kapowai and for the Puketotara claimants. He retraced the history of the area, indicating that the Whytlaw claim for 3000 acres was the source of the problem. Bloomfield maintained that the Crown never satisfactorily established the exact boundaries of this area and never exercised any rights there.[211] Pou Werekake, Pene Rameka, and Wiremu Hori reiterated what Henare Kepa and Kereana Hori had stated in 1907: that Maori retained cultivations and wahi tapu in the area claimed by the Crown.[212]

The commissioners virtually accepted these arguments and recommended the return of most of the Crown land to Maori.[213] Section 81 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1920 gave statutory effect to this settlement. While the return of disputed land in 1920 may be said to have remedied the long trail of grievances originating in the Crown's handling of several old land claims, the commission report failed to identify the source of the problem. The commissioners reported only that the Crown based its claim upon 'dealings with

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207. 'Petition of Wiremu Te Teete and 43 Others', not dated, LS-A [8] 88/2173, NA Auckland
208. Kepa and Hori, sworn statements, 17 May 1907, AJHR, 1907, C-18, p 4
209. Houston report, 22 July 1907, AJHR, 1907, C-18, p 1
210. Hori petition, AJHR, 1919, I-16, p 16
211. Bloomfield statement, 30 July 1920, MA 83/1, pp 192–193
212. Werekake, Rameka, Hori statements, 30–31 July, MA 83/1, pp 202–208
213. The only area not returned was recommended as an exchange for a 50-acre old settlement called Ohinereria outside Kapowai: Native Land Claims Commission report, 8 October 1920, AJHR, 1920, G-5, pp 5–6.

various old land claims', while Maori claimed that Kapowai 'was not affected by such claims'.[214] They reported nothing of the scrip land basis of the Crown's claim, and nothing of the potential for disputes arising from the combination of uncertain legal status and indefinite boundaries associated with scrip land.

Table 4: Kapowai blocks

Blocks	Hectares	Acres
Kapowai B2	19.4249	47.9
Section 16	19.9400	49.1
State Forest	129.6000	79.2
Manukau B	32.1320	79.2
OLC 72	47.4620	117.0
OLC 136	73.8955	182.2 + 44(DP)
Section 1	148.0137	365.5
Pt Kapowai	451.0221	1113.9
Taikapukapuka	42.0873	103.7
Opa	68.6093	169.4
	1097.0	2709.5

3.2.3 Adequacy of equivalent

This section, on the third selected issue raised by old land claims, the adequacy of the equivalent, begins by describing the way the Tribunal defined it in the Muriwhenua land claim. It will then summarise submissions of the two parties before the Tribunal to convey a sense of the potential debate about this same issue in other northern areas. A brief recapitulation of the Land Claims Commission method of establishing the equivalent exchanged is then followed with selected examples. Finally, it assesses what can be concluded about this issue.

The Muriwhenua land Tribunal's 'tentative statement on issues' on 8 July 1993 responded to, and to a certain extent summarised, previous claimant and Crown submissions. Several of the Tribunal's questions affect the adequacy of the equivalent issue.

(a) Were the terms sufficiently certain as to boundaries and price?
(b) Were the terms and conditions, including the consideration, consistent with equity and good conscience?
(c) Was the Crown obliged to ensure that the terms and conditions of the transactions were fair, sufficiently certain, and adequately documented, or

214. NLC Commission report, 8 October 1920, AJHR, 1920, G-5, p 5

> that they adequately reflected the expectations of the particular parties and, if so, were adequate inquiries made to that end?[215]

These questions suggest that the degree of contractual precision, as well as sufficiency of price (the usual definition of adequacy of equivalent) require investigation. An equivalent exchanged might have included more than a simple payment in cash or goods at the time of entering into the bargain. Whether or not it was specified in a written deed, Maori may have expected subsequent payments and/or services as an essential part of the bargain. If such was the case, however, one may well ask whether such conditions required a precise record in order to give them binding character.

In response to these questions, one party suggested a major equivalent, evidently undiscovered by successive Crown commissions investigating old land claims. This party argued that the maintenance of reciprocal relationships between Maori and Pakeha was a fundamental condition of each bargain. In other words, the continued presence and/or provision of services by Pakeha was an essential part of the equivalent.[216] The argument continued that ongoing payments required in some transactions were further evidence of the Maori expectations. In respect of simple sufficiency of price, this party argued that the Treaty principle requiring the Crown to demonstrate active protection of Maori rights obligated it to ensure that the price paid was a fair one. This party also pointed out that in response to FitzRoy's 1843 inquiry about the legal basis of the Crown's claim to surplus land, the Secretary of State for Colonies, Lord Stanley, stated as one of three prerequisites for such a claim:

> that neither on the grounds of inadequacy of price nor on any other ground could the former proprietors of the land require that the sale of it should be set aside.[217]

If the Crown was obligated to discover adequacy, then it needed to define a consistent measure. Yet, according to this party, the Crown established no reliable measures of the equity of these transactions.

In response to this case, and to the Tribunal's tentative issues statement, the other party's arguments stressed formal contractual categories. Thus transactors became 'buyers and sellers' operating in an environment of rapid commercialisation, rather than one in which Maori priorities prevailed. The other party argued that evidence regarding ongoing payments and settler occupation could be explained by a well-understood contractual relationship in which sellers were merely trying to maximise commercial advantage.

On the specific question of sufficiency of price, the other party stated that Maori sellers determined what amounted to a fair price. If they were willing to sell their land for an agreed upon price, and affirmed this before commissioners, they had established the equity of a market transaction.

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215. 'Tribunal's Tentative Statement on Issues', 8 July 1993, claim Wai 45 record of documents, doc I6, p 2
216. Judicial protocol precludes the identification of the particular party presenting these arguments because the Muriwhenua land claim has not yet been reported on by the Tribunal.
217. Stanley to FitzRoy, 26 June 1843, BPP, 1844 (556), app IV, p 188

In response to Gipps' advice to Hobson in 1840 that further compensation might be necessary to remedy any deficiency in pre-Treaty payments for land, the other party stated that the commissioners never required such remedial action. The other party also rejected the argument that the Crown ought to have established a consistent measure of sufficiency of price. Such a measure, while theoretically desirable, was simply not feasible in the chaotic market conditions of the 1830s and 40s, the argument went.

In sum, the other party submitted that commissioners fulfilled their statutory duty to establish the equitability of a transaction when they verified Maori consent. Accordingly, no other reliable measure of equity was available to them.

These arguments regarding adequacy of equivalent, and whether or not it formed a measure of equity, have bypassed the rather mundane business of recapitulating what commissioners asked claimants to present as the basis of their claim. When initially called upon to state their claim, the Crown asked claimants to identify the extent of the land claimed, the consideration given, the locality, and the time of purchase.[218] In filing statements of claim, claimants invariably gave descriptions of goods exchanged, which varied greatly.[219] At the commission hearings, claimants normally produced two supporting Maori witnesses and deed documentation. Commissioners routinely asked Maori witnesses (through an interpreter) to confirm that they had received the stated payment. They would then report Maori confirmation in the words of their printed form:

> A Deed of sale was executed by the above-named Chiefs and others, and they have admitted the payment they have received and the alienation of the land.[220]

Commissioners would sometimes add in handwriting that:

> The execution of the deed and the payment to the natives has been proved by [a Pakeha witness].[221]

An equally important part of the commissioners' payment report, however, was the conversion of what claimants said they had paid into values prescribed by Schedule or sliding scale of the Land Claims Ordinance 1840. This scale increased the value of payments made before the speculative land rush of 1839. Commissioners then tripled the value thus calculated, on the assumption that New Zealand goods were worth three times their market value in Sydney.

These calculations can best be illustrated by referring to the convenient example of Puckey's Pukepoto claim. In his 1840 statement of claim with respect to Pukepoto, Puckey said he had given 'In cattle trade and cash £50'.[222] The £50 in this

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218. New Zealand Land Claims Ordinance 1841; instructions to commissioners, not dated, OLC 5/4
219. See, for example, Puckey's Pukepoto claim describing the consideration as 'in cattle trade and cash £50' while William Murphy's Tahere's Bush claim referred to a detailed list of the goods exchanged: Puckey to Colonial Secretary, New South Wales, 25 November 1840, OLC 1/774–776, pp 13–14; Murphy to Colonial Secretary, 20 January 1841, OLC 1/847, pp 3–6.
220. Godfrey report, 15 April 1843, OLC 1/848–849, pp 2–6
221. Ibid
222. Puckey to Colonial Secretary, 25 November 1840, OLC 1/774–776, pp 13–14

statement seems to represent the total combined value of the goods and cash given, but it remains ambiguous. In any case, when he appeared before Commissioner Godfrey in early 1843, Puckey produced deeds in English and Maori which recorded that he'd exchanged £14 in cash and £45 in goods and livestock in 1839 when the alleged initial transaction took place. On the same deed were recorded subsequent payments in December 1839. These subsequent payments included £13 in cash and a dozen or so named trade items and livestock.[223] Godfrey valued the goods exchanged at £20 10s, which he then tripled. He valued the livestock (five cows and a calf) at £83, and he omitted from his calculation two horses given in 1842 as they were 'after the [January 1840] Proclamation for which no allowance is made.' Godfrey then added up his three sets of figures to get a payment total of £171 10s.[224]

The point of retracing Godfrey's calculations is to illustrate the unreliable nature of the payment information generated. The commissioner valued goods at three times their Sydney market value (which he can only have guessed at, since such prices must have fluctuated), but apparently made no inquiry into the condition of the goods upon receipt, nor into whether the two Maori supporting the claim were in a position to verify receipt. The tripling formula was apparently intended to offset expenses incurred by claimants in transporting goods to New Zealand. Whatever the case, by tripling the value of goods, commissioners made it appear that claimants paid more for the land than they actually did.

Bell recorded payments in his 1863 schedule of claims at triple their originally-declared value. For Pukepoto he recorded simply that £171 10s was the 'Payment to the Natives.'[225] Surplus Land Commission staff compounded the problem by not only accepting these 'payment' figures, but also attempting to render them even more 'scientific' by recalculating the sliding scale on claims resulting in grants.[226]

Although commission payment calculations increased values, the successive applications of the tripling formula made the figure appear to be an original one representing the exact value of what was exchanged. In the Muriwhenua Land hearings, the Crown argued that the sliding scale was never intended to be a measure of equity between Maori and Pakeha, but only between Pakeha claimants. In other words, the Crown used it to ensure grants were in proportion to payment up to the recommended maximum acreage.[227] None the less, by calculating grant acreage this way, the commissioners established the benchmark which determined the acreage the Crown could claim as surplus or scrip land, after the award to the claimant.

In some claims Godfrey and Richmond did concern themselves with the question of equity between claimants and Maori regarding payment. In 1841, the commissioners examining James Busby's Whangarei/Waipu claims, asked him very

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223. Pukepoto deed, 19 December 1839, ibid, p 9
224. Cash £27 + goods £20 10s x 3 = £61 10s + livestock £83 = total £171 10s: Godfrey report, 15 April 1843, ibid, pp 2–5.
225. Appendix to Bell report, AJHR, 1863, D-1, p 59. He defended the formula in his 1862 report, but failed to reiterate this in tabulating payments for individual claims.
226. Summary of schedules, series 9, MA 91/10, pp 18–19. In this chart, Lands and Survey staff tabulated the difference between old land claims, grants, and 'entitlements' based on their laborious, and ultimately futile, calculations.
227. 'Crown Closing Submissions', claim Wai 45 record of documents, doc O1, p 106

directly whether or not he considered he gave the Natives fair payment for their land. Busby answered that his 'conscience perfectly acquits me of any injustice or unfairness'.[228] In regard to a Kaipara claim, the commissioners stated in July 1842: 'we are obliged to ascertain very clearly that the Natives have actually received a fair consideration for their land'.[229]

Commissioners considering Busby's and the above Kaipara claim appear to have recognised that Maori transactors could not effectively assess the adequacy of the equivalent. Most Maori, however shrewd they were as bargainers, had insufficient knowledge of market conditions throughout New Zealand to bid up the price of their land. As in most pre-colonial situations, it was a buyers' market and, in recognition of this, the above examples suggest that the commissioners were prepared to remedy apparent inequities. None the less, since they were provided with no consistent measures for assessing equity, the commissioners intervened very infrequently to ensure the adequacy of the equivalent.

In addition to the general adequacy issue, other payment problems appear in the evidence filed for many claims. The most typical payment problem arose from a Maori group not receiving a share of the payment. This occurred with Bateman's claim (59) along the area between Te Puna and Kerikeri Inlet, where there were several overlapping claims. Wiremu Hau's (Te Whiu) initial objections prompted Bateman to direct him to get his share of the payment from Te Kemara (Ngati Rahiri).[230] Hau rejected this proposed settlement saying (as translated): 'I have never offered to give up this land for £20.0.0 or £25.0.0.'[231]

Godfrey and Richmond consequently insisted that Hau's portion was to be excluded from Bateman's grant. Subsequently, Grahame, who took the claim before Bell in 1857, claimed that he had paid 'certain natives [£50] for the surrender of their claim . . . through Mr Kemp', but we do not know whether Hau received this payment.[232] All we know is that Grahame received compensation for nearly £1000 when part of his grant was included in the Bay of Islands settlement reserve.[233]

Hau (who also featured in the Puketotara dispute) had to pursue another dispute regarding payment due in the Thomas Joyce Mokau/Kaitohe claim (270) north of Kerikeri. The Pakeha claimant gave Hau a £62 promissory note, which he had not delivered on by 1858. Consequently, Hau suggested to Commissioner Bell that the transaction became null and void and that the bulk of the land should revert to Maori. Bell, however, maintained that:

> it was very important with reference to other cases before me, that the principle should be maintained of an alienation once being final . . . [could not be voided]. I acquainted

228. Busby, sworn statement, 8 February 1841, OLC 1/14–24, regarding his Waipu claim (24) repeating his earlier answer to the same question regarding his Whangarei claim (23). Busby, sworn statement, 2 February 1841, OLC 1/14–24.
229. Godfrey and Richmond to Colonial Secretary, 27 July 1842, MA 91/9, exhibit V
230. Bateman, sworn statement, 5 November 1841, MA 91/18 (59), pp 3–4
231. Hau, sworn statement, 12 November 1841, MA 91/18 (59), p 4
232. Godfrey Richmond report, 31 May 1843; Grahame, sworn statement, 31 August 1857, MA 91/18 (59), pp 7, 9
233. Bell report, 16 May 1862, MA 91/18 (59), p 11

> Wi Hau that the land could not be given back to him, but that he was clearly entitled to have the balance of money paid.[234]

Thus, the commissioner felt that incomplete payment did not invalidate the original contract. As a result the Crown paid Hau £100 and acquired 992 acres of surplus land outside of the resulting grant.[235]

Commissioners occasionally used subsequent payments to resolve boundary disputes. On the north-eastern side of James Shepherd's Upokorau (803) claim, Heremaia Te Ara (Ngati Uru) objected that it included his land at Kaitiaka (see fig 14).[236] Shepherd even admitted in response to te Ara's questioning that:

> There were cultivations within the piece of land in dispute [Kaitiaka], between the time I made the purchase [1836 and 1837] and the holding of the Commissioner's Court in 1842, and also since. This was done with my permission.[237]

Bell referred the dispute to Land Purchase Commissioner H T Kemp, who (just as with the nearby Hau Mokau/Kaitohe case) recommended that Shepherd pay Te Ara an additional £20. Commissioner Domett later recorded that Kemp 'obtained from Heremaia an acknowledgement of the receipt of £20 from Mr Shepherd in satisfaction of his [Te Ara's] claim . . .'[238] Te Ara, however, may not have found this payment as satisfactory as Shepherd and Kemp.

What, then, can be concluded about this issue? The key Tribunal question which needs to be answered appears to be:

> Was the Crown obliged to ensure that the terms and conditions of the transaction were fair, sufficiently certain, and adequately documented, or that they adequately reflected the expectations of the particular parties, and, if so, were adequate inquiries made to that end?[239]

If, indeed, the Crown was obligated to ensure the fairness and certainty of what was exchanged in pre-Treaty transactions, the foregoing suggests that the (admittedly incomplete) evidence indicates something that fell far short of this measure. The Godfrey Richmond commission gathered insufficient evidence, and spent too little time examining it, to meet such a standard of fairness and certainty. It inquired into Busby's view of the fairness of his payments at Whangarei/Waipu, but it failed to record Maori perceptions of fairness, or Maori perceptions of other expectations (such as long-term equivalents). The way the tripling formula increased payment values (which determined grant, surplus, and scrip acreage) means that it is highly misleading for Lee to argue that claimants paid nearly nine shillings an acre for their grants, implying that Maori received an adequate equivalent in return.[240]

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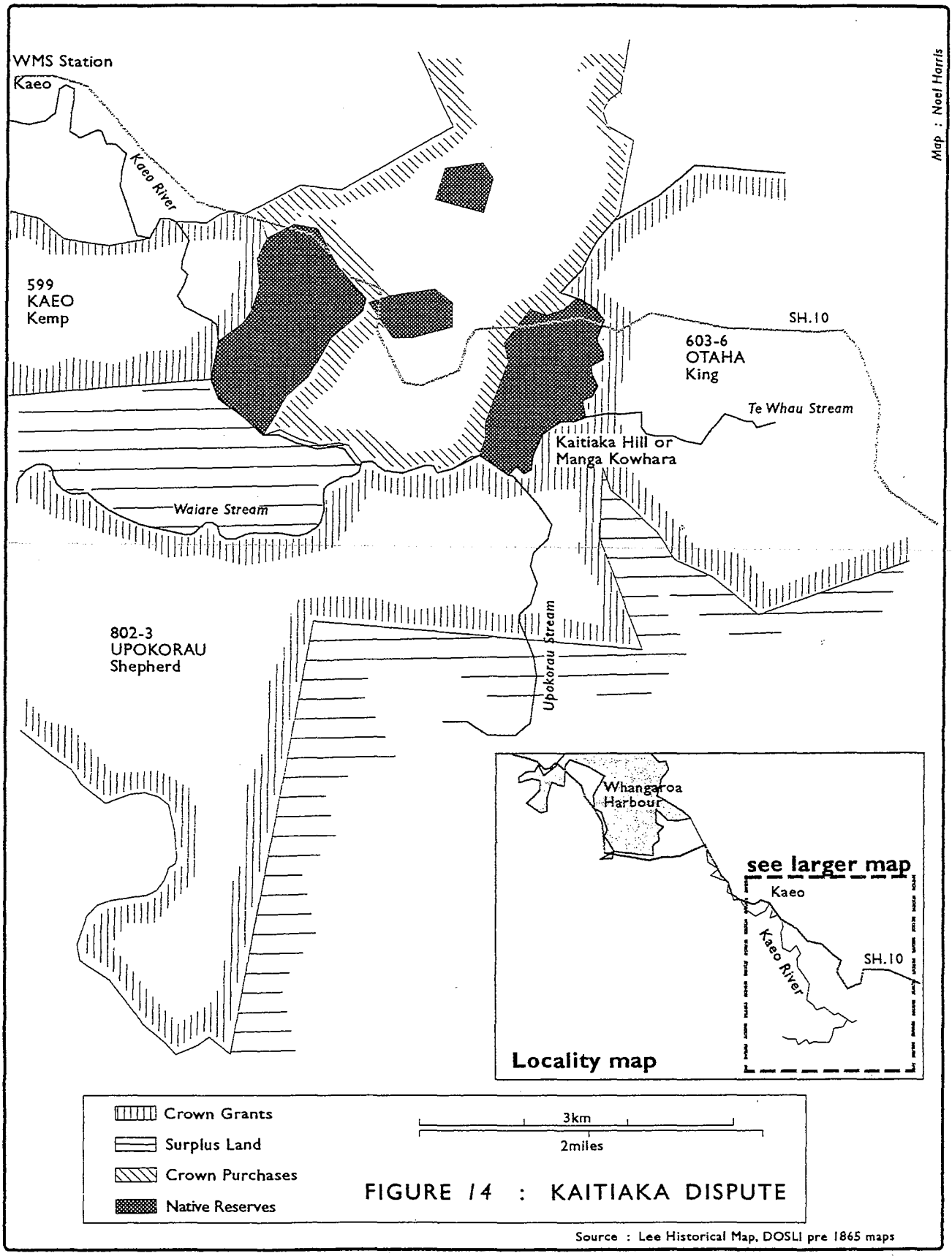
234. Bell to McLean, 30 June 1858, MA 91/18 (270), pp 11–12
235. Kemp to Bell, 6 June 1858; Bell to McLean, 30 June 1858; McLean memo, 5 August 1858, ibid, pp 7–8, 11–12
236. Heremaia te Ara, sworn statement, 24 January 1862, MA 91/21(802–806), p 23
237. Shepherd, sworn statement, 24 January 1862, MA 91/21(802–806), p 25
238. Bell, further order, 22 March 1864; Domett memo, 24 August 1864, MA 91/21(802–806), p 30
239. "Tentative Statement on Issues', 8 July 1993, claim Wai 45 record of documents, doc I6, p 2
240. Lee, *Old Land Claims*, p 11


WMS Station
Kaeo
Kaeo River
599
KAEO
Kemp
SH.10
603-6
OTAHA
King
Te Whau Stream
Kaitiaka Hill or
Manga Kowhara
Waiare Stream
802-3
UPOKORAU
Shepherd
Upokorau Stream
Map : Noel Harris
Whangaroa
Harbour
see larger map
Kaeo
Kaeo River
SH.10
Locality map
Crown Grants
Surplus Land
Crown Purchases
Native Reserves
3km
2miles
FIGURE 14 : KAITIAKA DISPUTE
Source : Lee Historical Map, DOSLI pre 1865 maps

3.2.4 Outcomes in the Bay of Islands

The crucial issue arising from old land claims is captured in the simple question: what were Maori left with in the area affected at the conclusion of the main commission investigation in 1865? This issue is best examined in the most intensively-transacted old land claims area of all, the Bay of Islands. As early as 1846, Governor Grey perceived that the extensive nature of the missionary claims there may have contributed to the Northern War. Though subsequent historians have been quick to dismiss Grey's allegations as politically motivated, none of them investigated his allegations to determine whether missionary claims were extensive enough to be prejudicial to Maori interests in the Bay of Islands.[241]

Grey's arguments condemning the extent of missionary land claims were definitely politically motivated. He believed that missionaries dominated the official Protectorate Department, especially under FitzRoy, and he was determined to eliminate such domination. In his infamous 25 June 1846 'blood and treasure' despatch, he accused Williams and Clarke, in particular, of prevailing upon FitzRoy to increase their grants over the already substantial awards recommended by Commissioners Godfrey and Richmond. FitzRoy's 'extended' grants, Grey argued, violated Maori rights and drove them to rebellion. Thus, with typical inflammatory rhetoric, he concluded that missionaries were expecting the Crown to expend much 'blood and treasure' to protect their ill-gotten grants from the righteous indignation of Maori.[242]

Having publicly advanced such extravagant arguments, Grey did indeed try to substantiate them. He maintained that Maori continued to occupy areas within the boundaries of the unsurveyed missionary grants. He stated that: 'It is by no means clear that they [Maori] understood that they gave an absolute title to the land such as the Crown title conveys'.[243]

Later, with particular reference to the Henry Williams grants, he maintained that the Crown should have made the establishment of sufficient Native Reserves a condition of such grants. Invoking article 2 of the Treaty, he maintained that the Crown 'had no power without any regard to the claims of the natives to grant absolutely . . . to Archdeacon Williams that [land] which in no respect belonged to the Crown'.[244]

Grey's politically inspired insinuation that missionary claims included areas occupied by Maori was not just empty rhetoric. Missionaries and Busby, in fact, attempted to preempt this kind criticism by concluding trust deeds to allow Maori to continue living within claimed areas. In early 1839, CMS missionaries in the Bay

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241. A H McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, pp 200–201; James Rutherford, *Sir George Grey: A Study in Colonial Government*, London, 1961, pp 133–136; L M Rogers, *Te Wiremu: A Biography of Henry Williams*, Christchurch, 1973, pp 243–249. See also Robin Fisher, 'Henry Williams' in *The Dictionary of New Zealand Biography*, Wellington, 1990, vol 1, p 594. Fisher dismisses Grey's questioning of Williams' claims and rejects as false Grey's allegations of a causal relationship between these claims and the Northern War.
242. Grey to Gladstone, 25 June 1846, BPP, 1848 (1002), p 106
243. Grey to Earl Grey, 2 August, 1 September 1847, BPP, 1848 (1002), pp 110, 117–120
244. Grey to Earl Grey, 10 February 1849, BPP, 1848 (1170), pp 73–74. As it turned out, Williams took corrective action when he had his claims surveyed during the 1850s, he established three small native reserves within his main Pakaraka grant. OLC plan 54; Crown grants R 15, fol 7.

of Islands reacted to similar criticism of their land claims which had surfaced in the House of Lords committee hearings on New Zealand. The northern CMS subcommittee (consisting of Henry Williams, his brother William, and George Clarke) announced that their trust deeds ensured that 'immense tracts of good land . . . remain in [the] possession of the natives' who otherwise were 'continually parting with their land'. These trust deeds differed from regular purchases or alienation, which were:

> made with the full understanding that they do not revert again to the New Zealanders. They are secured to the purchasers and his heirs forever with a right to everything pertaining thereto.[245]

The CMS subcommittee apparently deposited 17 trust deeds with George Clarke when he left the CMS to become Protector of Aborigines in 1840. The trust deeds, copies of which may not have survived, apparently protected Maori land, particularly in the immediate vicinity of Waimate, Kaikohe, Kawakawa, and Whananaki.[246] Upon receipt of this information, the Governor of New South Wales, George Gipps, instructed Land Claim Commissioners to:

> not recommend the alienation to other Individuals (ordinary claimants) of any portion of the lands vested by those deeds of Trust in the missionaries for the benefit of the Aborigines or at least . . . not . . . without fully considering these [trust deed] Claims, and being perfectly satisfied that a Counter Claimant may have a better Title.[247]

In the case of at least one of the trust deeds, the CMS submitted a claim for examination by the commissioners. In November 1842 the missionaries produced Ruhe, father of the recently executed Maketu, to affirm the original trust transaction at Waimate. According to the recorded evidence, he 'gave very reluctant evidence'.[248] With this in mind, the commissioners reported that because the 'land is described in this Case was purchased by the [Church Missionary] Society solely for the benefit of the Natives . . . No grant is Recommended'.[249]

In another case, Clarke intervened as Protector of Aborigines to ensure the enforcement of a trust deed. At Whananaki (see above), Clarke maintained that a 1835 trust deed meant that it could not be granted to John Salmon, a later claimant.[250] In a further twist to this story, Salmon attempted to exchange his Whananaki claim for Crown land, apparently derived from Fairburn's Tamaki claim near Papakura. There he encountered once more the obstacle of a CMS trust deed. Governor FitzRoy instructed the Colonial Secretary to inform him that 'the land

245. Remarks of the Northern (CMS/NZ) Subcommittee on Parent Committee letter, 9 August 1838, CMS/CN/M11
246. Each deed is described briefly in Clarke to Colonial Secretary, 16 November 1840, IA 1/1841/135. I am indebted to David Armstrong for this reference.
247. E Deas Thompson (on behalf of Gipps) to commissioners, 2 January 1841, IA 1/1841/135. The commissioners requested copies of these deeds and Hobson directed that they be supplied with them: Hobson, memo, 5 February 1841, IA 1/1841/135.
248. Ruhe, unsworn statement, 14 November 1842, OLC 1/676–679
249. Godfrey Richmond report, 10 November 1843, OLC 1/676–679
250. Summary, MA 91/19 (408), p 1

formerly purchased by Mr Fairburn cannot be touched, except under the authority of the Trustees of Native Reserves, who are are not yet embodied'.[251]

According to Clarke, the area Fairburn claimed was also protected by a CMS trust deed as 'A Tract of Country situated on the River Thames on a river called "Wairoa" containing at least 30,000 acres'.[252]

The fate of the CMS trust deeds beyond Whananaki and Tamaki/Wairoa remains largely a matter of conjecture. For the most part they appear to have been ineffective at protecting Maori interests because the Crown generally failed to give them legal effect.[253] While the commissioners may have deliberately avoided granting land immediately north of Waimate and along the eastern boundary side of Pakaraka (including Taiamai), they did not recommend the creation of Native Reserves there. The fact that the commissioners failed to recommend Kawakawa grants to claimants such as Black (923) and Milne (926) did not necessarily uphold Maori rights in the area. Commissioners did recommend grants to Church (97–98) which remained unsurveyed floating grants until the Crown purchased most of the Kawakawa North area in 1859.

In a highly significant area immediately adjacent to the Treaty House at Waitangi, Henry Williams and the CMS appear to have established an informal trust deed without informing the commissioners. This area, on the south side of the Waitangi River estuary, is today known as Te Tii.[254] In 1843, Richmond recommended a 600–700-acre grant to the CMS at Te Tii or Waitara. He also recommended that Maori be reserved 'the right to reside at the Pa, and to cultivate the land from thence to the stream called Hineriria.' He added to this report that:

> Kamera [Te Kemara] can point out the Boundaries, and also those of the part reserved for the use of the Natives.[255]

Te Kemara stated, according to Kemp, that Williams had previously guaranteed the retention of their pa, 'provided we did not sell it to any other Person'.[256] At Richmond's Kororareka hearings in late 1841 and early 1842, no one recorded a June 1839 agreement between Williams and Maori to return the area to its original owners. None the less, when the area came before the Native Land Court over 50 years later, Judge Puckey referred to a document by which Williams returned the area to Maori before the Treaty. He stated bluntly on 18 September 1890:

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251. Fitzroy to Sinclair, 18 February 1845, MA 91/19 (408), p 5
252. Clarke to Colonial Secretary, 16 November 1840, IA 1/1841/135. Alan Ward traversed the troubled history of the Fairburn Tamaki/Wairoa transaction in his contribution to Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 9–14.
253. See the analysis of what appear to be 1840 and 1841 trusteeship agreements between Richard Taylor and the people of Muriwhenua north in Rigby, 'The Muriwhenua North Area and the Muriwhenua Claim' (claim Wai 45 record of documents, doc B15) and David Armstrong's response to it in 'The Taylor Purchase' (doc F1).
254. It is the site of Te Tiriti o Waitangi Marae which hosts the manuhiri attending the recent annual Waitangi Day observances. The spelling is often given as Te Ti.
255. Richmond report, 14 April 1843, OLC 1/666
256. Te Kamera, unsworn statement, 3 January 1842; H Williams, sworn statement, 3 January 1842; H Williams, sworn statement, 28 December 1841, and sworn statement, 3 January 1842, OLC 1/666

> From the time this land was returned by Mr Williams the natives have been in undisputed possession till a few years ago, when it appeared to have been claimed by the Government as surplus land . . .[257]

Puckey's predecessor Maning had been less sure of the legal position when Maori first claimed 702 acres at Te Tii in court in January 1867. He failed to determine title both on this occasion, and again in January 1875. According to Puckey, this was partly due to Maning's understandable confusion 'as to whether or not the land had been already granted or whether or not it was surplus land and partly owing to disputes among the claimants'.[258]

Although Richmond recommended a grant to the entire area claimed (approximately 700 acres) to the CMS, they apparently were never issued one. The most direct evidence of this omission is the plan sketched on the 1851 CMS Paihia grant which was one of the first properly surveyed Crown grants. This plan shows the Te Tii area along the northern boundary of Paihia as 'Native land' in bold capitals.[259] Furthermore, the wording of the 1851 Crown grant is derived from other related Paihia claims (662–665, 667) and included the words: 'with the exception of certain land occupied by the Native sellers', a recapitulation of Richmond's Waitara/Te Tii recommendation.[260] Bell apparently assumed that the CMS accepted the 1851 Paihia grant as all that they were entitled to in the entire area between Te Tii to Opua (see fig 15).

According to NLC evidence, Te Kemara feared that Bell would claim the ungranted area at Te Tii as Crown surplus land when he conducted his Bay of Islands hearings in 1857 and 1858. Edward Marsh Williams, a son of Henry, stated that Te Kemara deliberately gathered Ngati Rahiri together at Te Tii during the Bell hearing. They apparently fenced it off to ensure that the Crown did not claim it as surplus land. Williams in 1891 reiterated the legal basis upon which Ngati Rahiri occupied Te Tii:

> My father was aware that the natives had sold all their land therefore [in June 1839] he gave them the land now before the Court for a sea side residence . . . The tribe have resided there I should think for more than 100 years.[261]

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257. Waitangi Te Tii hearing, 18 September 1890, NMB 10:170
258. Ibid
259. Crown grant, 15 December 1851 (CMS Paihia), R5E, no 386
260. Bell confused claim numbers in his 1863 schedule. Richmond's 1843 report refers to the Waitara /Te Ti claim as 299H. This 600–700 acre claim should then have become 666 in his 'new series'. Instead, he made claim 666 a seven-acre claim in error, and grouped it together with all other Paihia claims: appendix to Bell's report, AJHR, 1863, D-14, p 52.
261. Te Tii rehearing, 13 July 1891, NMB 10:361–362. In addition to having written the Maori Treaty of Waitangi (dictated to him by his father), Edward Williams served as a resident magistrate and NLC judge. This undoubtedly added to the weight of his testimony.

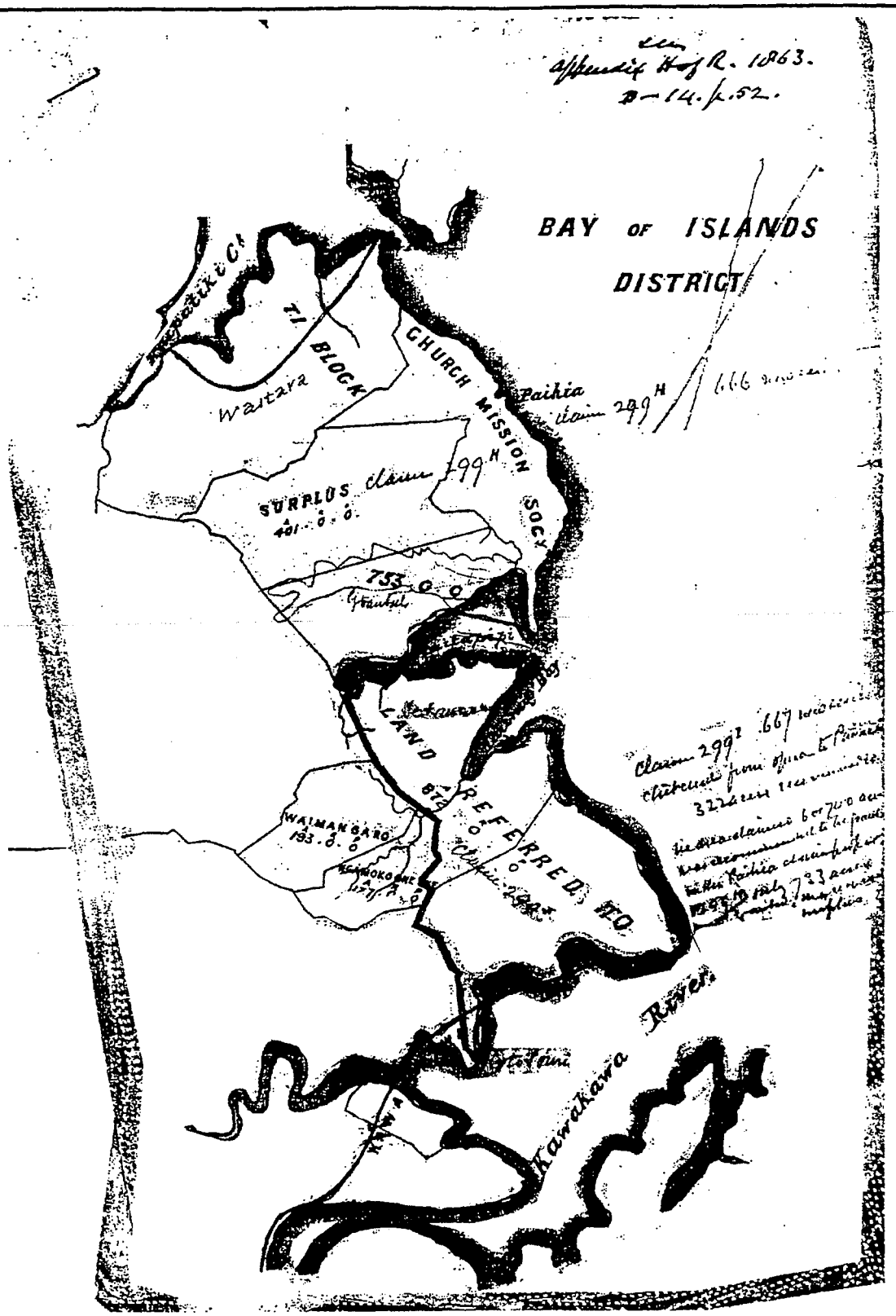

FIGURE 15 : TE TII / OPUA

Source : OLC 1 / 666

Bell's record of his 1857 hearings do not contain any references to CMS Paihia claims of Te Tii.[262] None the less, Bell appears to have included Te Tii in his estimate of surplus acreage at Paihia.[263]

A Land Claims Commission official investigated the Te Tii situation in 1872. He referred to how both Te Tii and Takauere (south of Paihia) both 'lay "within the piece marked 'Church Mission' on Mr Bells (general) map"'. Theophilus Heale, the Inspector of Surveys, recommended that the matter of native title to ungranted land originally claimed by the CMS be referred to the NLC.[264] As indicated above, Judge Maning was unwilling to determine native title to Te Tii in 1875 without more specific information about the status of the CMS claim.[265]

According to Puckey's 1890 minutes, the NLC dismissed Henare Te Rangi's application for title determination to the 700-odd acres at Te Tii on 19 October 1889 'having been informed that it was Crown land', that is, all except 97 acres that the Crown was prepared to consider within the jurisdiction of the NLC. The Crown claimed the balance (that is, 600-odd acres) as surplus land. Although Puckey rejected the Crown's reasoning on the grounds that Williams had returned the entire area to Maori, Maori applicants before him apparently claimed only 82 acres. He therefore upheld this partial claim without decisively rejecting the Crown's surplus land claim.[266]

Maori thus ended up with a very small 'reserve' on the south side of the Waitangi River. Edward Williams' 1891 statement that they 'had sold all their land' is the way the situation is described in Auckland roll plan 16 (circa 1863), which shows little unalienated land on either side of the Waitangi River as far as Waimate and Pakaraka in the west, Kerikeri in the north, and Kawakawa in the south. The Crown ignored Henry Williams' 1839 action in attempting to provide a place for Maori at Te Tii (see fig 16).

An examination of the 10,000-acre Waitangi block along the northern side of the river (including the site of the Treaty House), makes this almost complete landlessness even more graphic. It also may explain why Maori clung so persistently to their precarious foothold at Te Tii, and why they invariably referred to it as Waitangi Te Tii.

Busby successfully claimed the 10,000 acres along the northern side of the Waitangi River Valley. Although the Crown issued him with nine separate grants, totalling 3264-acres in 1844 Busby never accepted the Crown's right to grant him less than one-third of his original Waitangi claims. From Godfrey and Richmond's reports on the number of witnesses Busby produced in support of his Waitangi claims, he evidently invested a great deal to ensure that he would preserve his ample

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262. Notes for various sittings of the court, 21 September, 14 October 1857, OLC 5/34. Bell did not keep a similarly compact record of his 1858 hearings. Some details of these later hearings are scattered among individual claim files but unfortunately not in the CMS/Pahia and Te Tii files.
263. Bell report, AJHR, 1862, D-10, p 21. 'Kawa Kawa' should be Paihia in his return.
264. Leadam memo (quoting Heale's 10 May 1871 letter), March 1872, OLC 1/666
265. Paradoxically, the land claims commissioner commissioned Maning to investigate unsettled land claims in 1874. Unfortunately, he failed to report on the status of the CMS Te Tii claim: Maning to Atkinson, 9 February 1875, OLC 4/38.
266. Waitangi Te Tii hearing, 18 September 1890, NMB 10:170–172. See also the two previous days' hearing minutes, NMB, vol 10, fols 161–170.

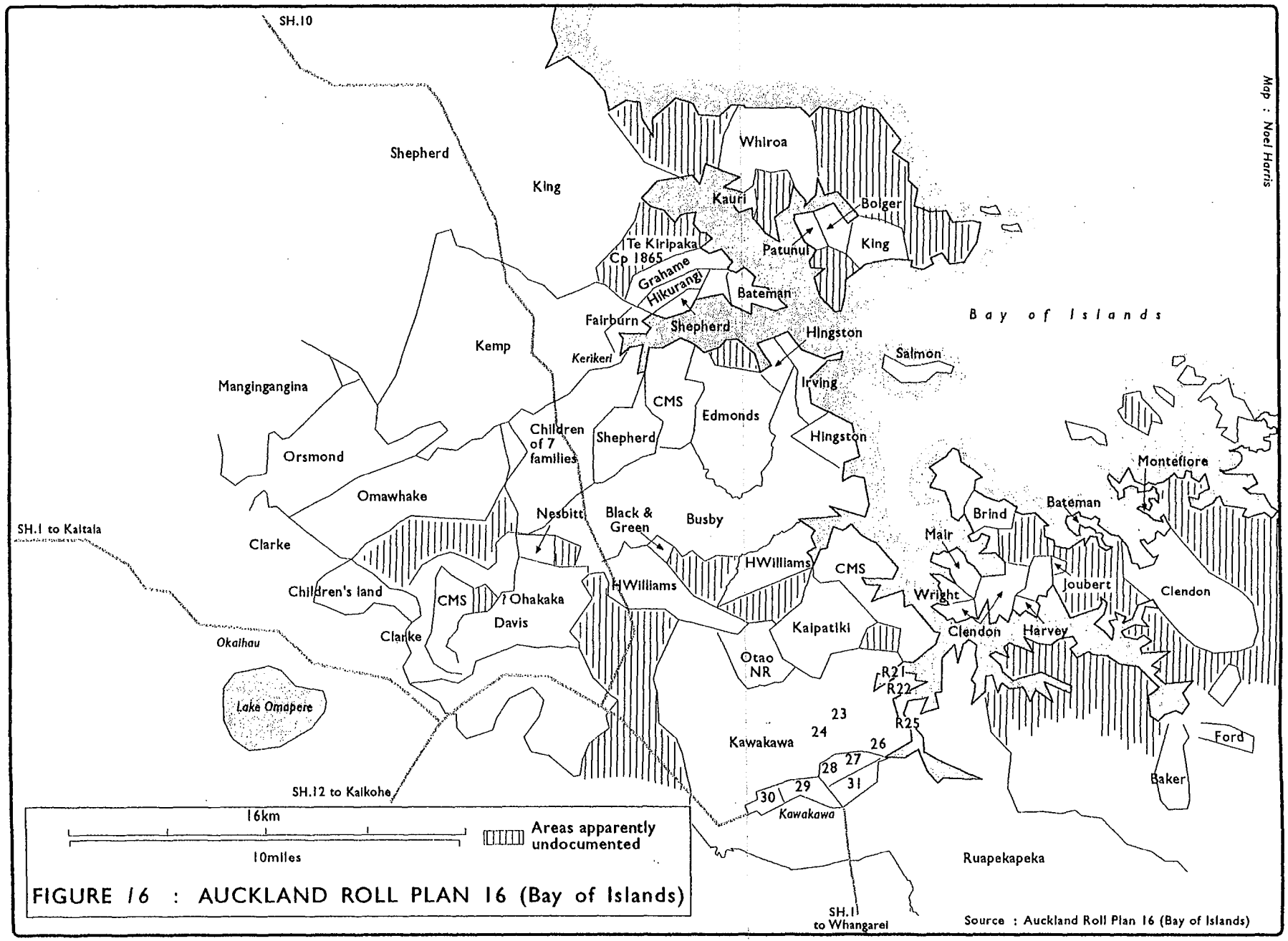

FIGURE 16 : AUCKLAND ROLL PLAN 16 (Bay of Islands)

Source : Auckland Roll Plan 16 (Bay of Islands)

place at Waitangi. The commissioners' Waitangi reports can be summarised as follows:

Table 5: Busby's Waitangi claims

Claim number	Claim acreage	Witnesses	1844 grant
14	270	9	Area claimed
15	25	7	Area claimed
16	500	5	159 acres
17	2000	8	217 acres
18	80–100	5	Area claimed
19	60	9	Area claimed
20	1500	4	868 acres
21	5000	11	1074 acres
22	150	3	Area claimed[267]

When the commissioners recommended grants, they assumed that the entire area would be pointed out to surveyors by Maori who participated in the original transaction, the people best equipped to identify the correct boundaries. In a case where Busby's claim conflicted with an adjacent Hingston claim, the commissioners took the unusual step of examining the disputed area themselves. According to their report, they:

> visited the land and ascertained that the Native sellers can point out the exact boundaries of those two purchases – they [Godfrey and Richmond] consequently recommended that both claims . . . be surveyed together.[268]

Thus, the commissioners expected that surveys would necessarily precede the issuance of grants, and give necessary precision to their less than precise grant recommendations.

Commission recommendations specified three areas as native reserves at Waitangi. Reserves also required surveys to bring them into effect. One reserve clause, for example, referred to the Ratoa Valley as 'reserved to the Natives'.[269] Another referred to 'One hundred and fifty (150) Acres that were returned or granted to the Natives by Mr Busby . . . [on] 19 Feb 1839 to be reserved for them'.[270]

267. Godfrey Richmond report, 2 May 1842, OLC 1/14–24
268. Godfrey Richmond report, 2 May 1842 (claim 16), OLC 1/14–24
269. Godfrey Richmond report, 2 May 1842 (claim 18), OLC 1/14–24
270. Godfrey Richmond report, 2 May 1842 (claim 20), OLC 1/14–24

A third report referred to the fact that Busby had deposited a kind of trust deed with the Protector of Aborigines 'returning and guaranteeing to the Natives a portion of the above [claimed] land' along the Waitangi River.[271]

The question of what happened to these three reserve recommendations remains a major historical puzzle. William Clarke apparently surveyed Busby's Waitangi claims during the 1850s. In January 1858 he sent Bell a 'Sketch of the Claims at Waitangi &c' which clearly shows the '10,400' acreage figure for Busby (see fig 17).[272]

Neither this sketch nor the eventual survey plan (SO 930A) show the location of any of the reserves Godfrey and Richmond recommended in 1842.[273] Two of the three reserves are shown, however, on new grant plans, apparently prepared during the 1850s, but dated 1844. These grant plans, however, were not incorporated in the eventual survey plan (SO 930A).[274]

When Busby appeared before Bell on 23 September 1857 at Russell, he refused to recognise the validity of the 1856 Act under which Bell operated. Bell threatened him with the cancellation of his 1844 grants, but also sought to persuade Busby:

> that the Act was an advantage and not an injury to him as well as others, [and] that there was a further step to be taken after the repeal of the Grants – namely the making out of a new Grant to any person who showed good title to the land. If therefore he would give me the plan of the survey he had made of the 10,000 acres claimed by him, I should probably prepare a new Grant for the amount to which the Act entitled him . . .[275]

Busby inquired whether filing his survey plan would prejudice his legal position. Bell answered him it would not, but again warned him:

> that it was probable if I did not get *his* survey I would make an order for a[nother] survey . . . charging him for the same pursuant to the Act.[276]

Although Bell did not record having received Busby's Waitangi survey, the fact that it received an old land claim plan number (281) indicates that he filed it. Busby continued to insist upon the validity of his 1844 grants, but, after the Supreme Court dismissed his case, he agreed in 1867 to submit the dispute to binding arbitration. Two of the three arbitrators reported in Busby's favour in 1868, assuring him of clear title to all except 1000 acres of the originally claimed area.[277]

Although nothing in the award statement referred to reserves for Maori, in a subsequent letter to Busby seeking to clarify the terms of the award, the two arbitrators wrote: 'we award you the Bay of Islands [Waitangi] land only, *from*

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271. The reserve boundary description suggests that straddled both sides of the river: Godfrey Richmond report, 2 May 1842 (claim 21), OLC 1/14–24.
272. This sketch, dated 14 January 1858, is filed with Clarke's survey letters in OLC 4/32.
273. For the eventual 1872 survey, see figure 5.
274. Busby Crown grants R10E, fol 8; R16E, fol 14; R17E, fol 15, DOSLI, Heaphy House, Wellington
275. Notes of various sittings, 23 September 1857, OLC 5/34, pp 4–5
276. Ibid, p 5
277. 'Arbitrator's Award in the Case of James Busby Esq', 6 April 1868, AJHR, 1869, D-11, pp 3–4

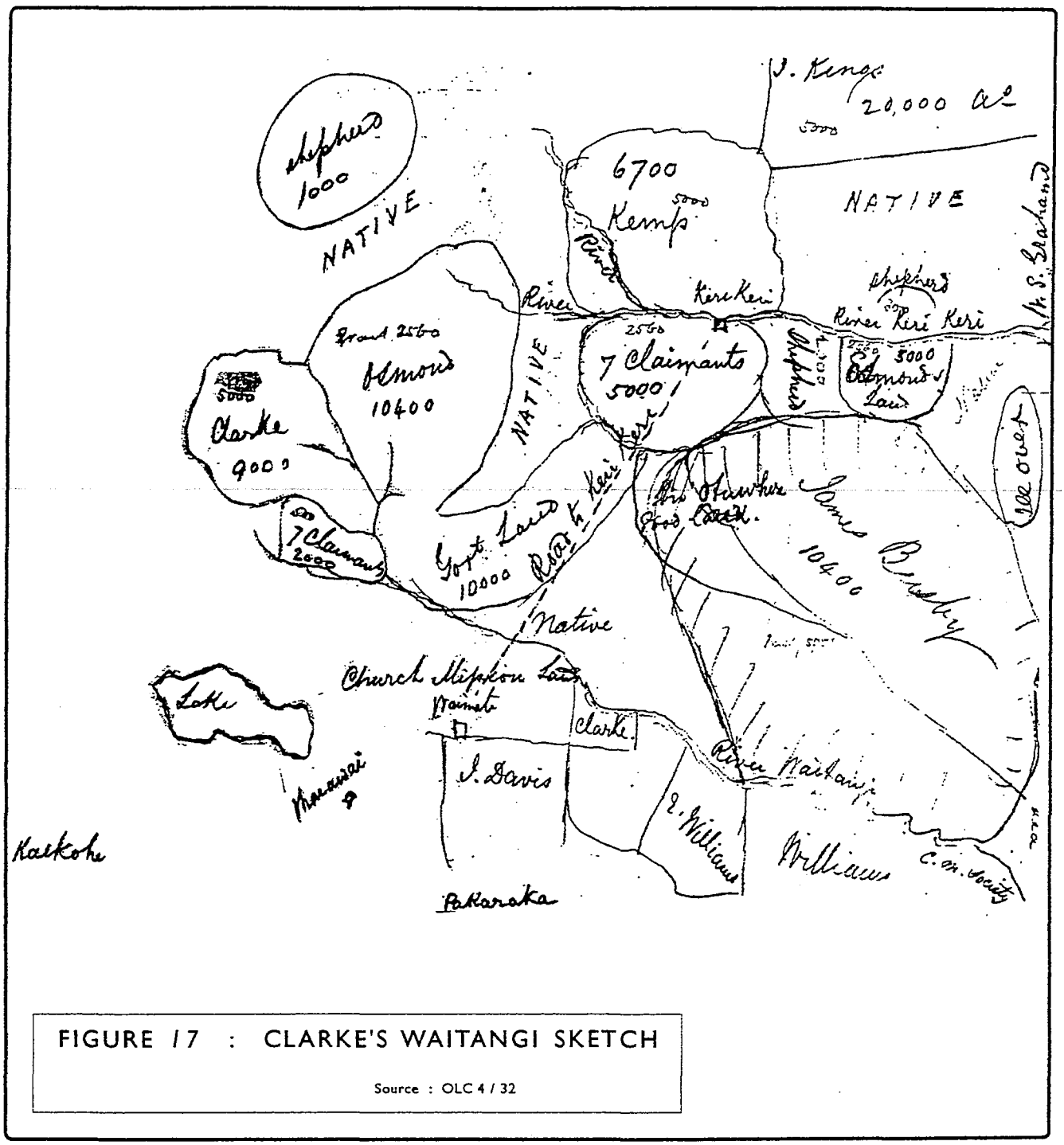

FIGURE 17 : CLARKE'S WAITANGI SKETCH

Source : OLC 4 / 32

which we withheld small portions you reconveyed to the Natives' (emphasis added).[278]

What the arbitrators thought they had 'withheld' (or reserved) for Maori remains a mystery. According to the available survey information, they 'withheld' nothing (see fig 5). The only possible explanation of what they may have misunderstood may lie within the terms of the original Waitangi grants. Although they restated the commissioners' 1842 recommendations regarding Maori reserves, later surveys ignored them. Jackson and Mackelvie may well have thought that all the reserved areas were all outside the surveyed and granted area.[279]

The Waitangi story appears to involve Crown errors in failing to implement the 1842 reserve recommendations and the 1844 grant provisions indicated as surveyed reserves in new grants prepared during the 1850s. Had the Crown diligently instructed its officers to implement such recommendations, these errors could have been avoided. Since the commissioners made very few reserve recommendations, exercising proper care in identifying them would not have markedly increased the work involved. Commissioner Bell, however, placed greater priority on making surveys coterminous and inclusive than he did upon instructing surveyors to implement reserve recommendations.

Bell's survey correspondence with William Clarke make these priorities quite clear. During his September and October 1857 hearings, Bell approached Clarke about the desirability:

> of Connecting the Different surveys which I have made in this district . . . showing the different portions which will fall to Govt [as surplus land] on the issue of the new Crown Grants.[280]

Clarke's January 1858 'Sketch of the Claims at Waitangi' (fig 17) was a preliminary effort to connect relatively coterminous claims. For each of the major claims, Clarke wrote grant acreage alongside surveyed acreage. On the back of his Waitangi sketch, Clarke sketched the Puketi-Waimate area in greater detail. He wrote on the bottom 'Govt will get close to 40,000 acres of surplus land'.[281]

Clarke was evidently more concerned with identifying areas the Crown claimed as surplus land than with areas that the commissioners recommended as Native Reserves. His Waitangi sketch, and the Puketi-Waimate addendum to it, showed no Native Reserves. It shows unreserved 'Native' land in five areas (four of which were areas of subsequent Crown purchases), but nothing for Maori within a surveyed old land claims area of over 85,000 acres (see fig 17).

Clarke's subsequent correspondence with Bell shows how active he was in seeking to connect the various surveys north of the Waitangi River, particularly in surplus land areas. He made strenuous efforts to recover surplus land for the Crown

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278. Jackson and Mackelvie to Busby, 15 October 1868, AJHR, 1869, D-11, p 4
279. SO 930A surveyed by William Busby (probably during the 1860s) does identify a 'Waitangi Reserve' on the south side of the river upstream from Haruru. This, however, was outside the Busby claim area. It may also have been a public reserve, rather than a native reserve (see fig 5).
280. Clarke to Bell, October 1857; Bell memo 25, Nov 1857, OLC 4/32
281. 'Sketch of the Claims at Waitangi etc', OLC 4/32

at Puketotara and Pungaere (see above).[282] This was consistent with Bell's goal to connect survey boundaries. Clarke believed that since he had surveyed the majority of old land claims in the Bay of Islands area, he was in the best position to reach Bell's goal. In June 1858 he expressed concern:

> that the Government will have a difficulty (amounting almost to an impossibility) in forming an accurate connected Plan of the lands already surveyed in the north – if I am not authorised either to assist someone else in connecting them or to connect them myself very soon.[283]

Bell apparently authorised this connecting exercise. The following month Clarke refers to a similar exercise northwest of the Bay of Islands. He wrote to Bell:

> In a former letter you asked me to connect Okaihau with the Hokianga – I have not done this but will soon. Mr H T Kemp proposes that the connecting lines should be surveyed in the line that would be most suitable from Waimate to Hokianga.[284]

Clarke worked, therefore, both for Land Claims Commissioner Bell and Land Purchase Commissioner Kemp between 1856 and 1863. This allowed him to connect old land claims with Crown Purchase surveys.

In some cases Bell and Clarke's insistence on connecting surveys may have led to errors. For example, on the south side of the Kerikeri Inlet, within the Bay of Islands settlement reserve, the Crown eventually claimed an area it assumed to have been the location of a 'valid' Day claim. Clarke referred to this area in a 19 April 1860 letter to Bell as:

> Land which is entirely claimed by Natives – but is shown on the General Plan [of the Bay of Islands settlement reserve] as Day's land . . . [It was] a triangular shaped piece surrounded by other claims.[285]

Bell's assistant, McIntosh, provided Clarke with a 'tracing from the Northern maps' showing this triangular area to be Day's claim.[286] This 'Northern Map' was probably what became Auckland roll plan 16, which clearly shows the triangular area referred to (see fig 18).

Day certainly claimed this area, and in 1860 transferred it to Buckland for £150.[287] None the less, Crown Commissioners never upheld the claim. In 1842 Godfrey and Richmond recommended 'No Grant' because Day failed to appear to substantiate his claim. Then, in 1864, Bell declined to order a grant because Buckland could not substantiate the extinguishment of Native title.[288]

Yet the Crown subsequently claimed the land. The SLC staff investigating the matter believed that Bell had recorded it as 'surplus land' in his 1863 list of claims.

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282. Clarke to Bell, 15 June 1858, OLC 4/32
283. Ibid
284. Clarke to Bell, 5 July 1858, OLC 4/32
285. Clarke to Bell, 19 April 1860, OLC 4/32
286. McIntosh to Clarke, 4 May 1860, OLC 4/32
287. Day memo, 5 November 1860, MA 91/20 (652), p 3
288. Summary, MA 91/20 (652), p 1

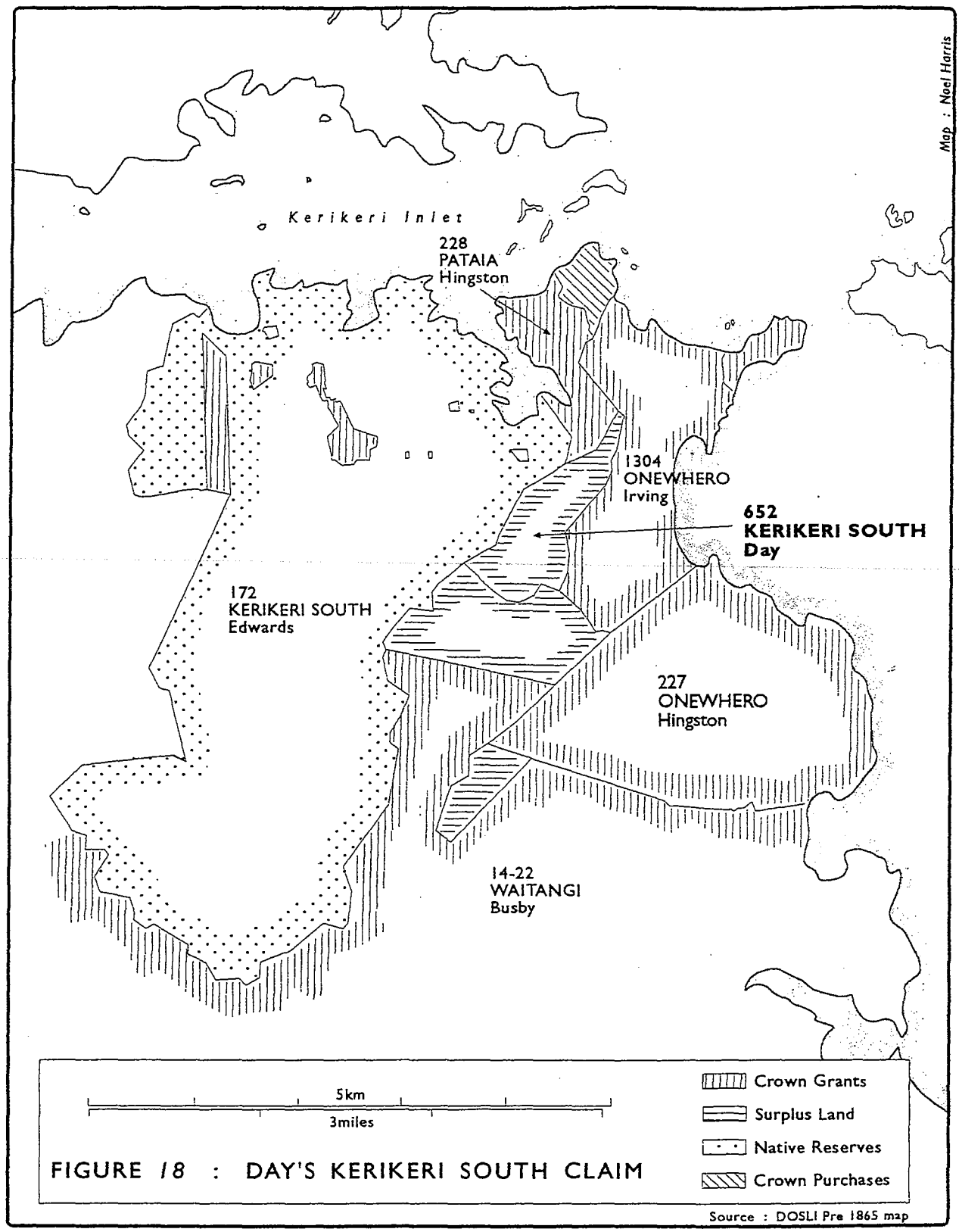


FIGURE *18* : DAY'S KERIKERI SOUTH CLAIM

In fact, Bell recorded the payment of £280 to Buckland for the area.[289] While the Crown was entitled to exchange scrip under the terms of the Bay of Islands Settlement Act 1858 to extinguish Pakeha claims, this did not automatically extinguish Native title (as Bell admitted in declining to order a grant in 1864). Irrespective of this, according to SLC staff, the land reverted to the Crown as part section 37, block XII, Kerikeri.[290] This was surely in error, an error perhaps best explained by the fact that the area was 'on the map', a map which Clarke helped Bell's staff put together.

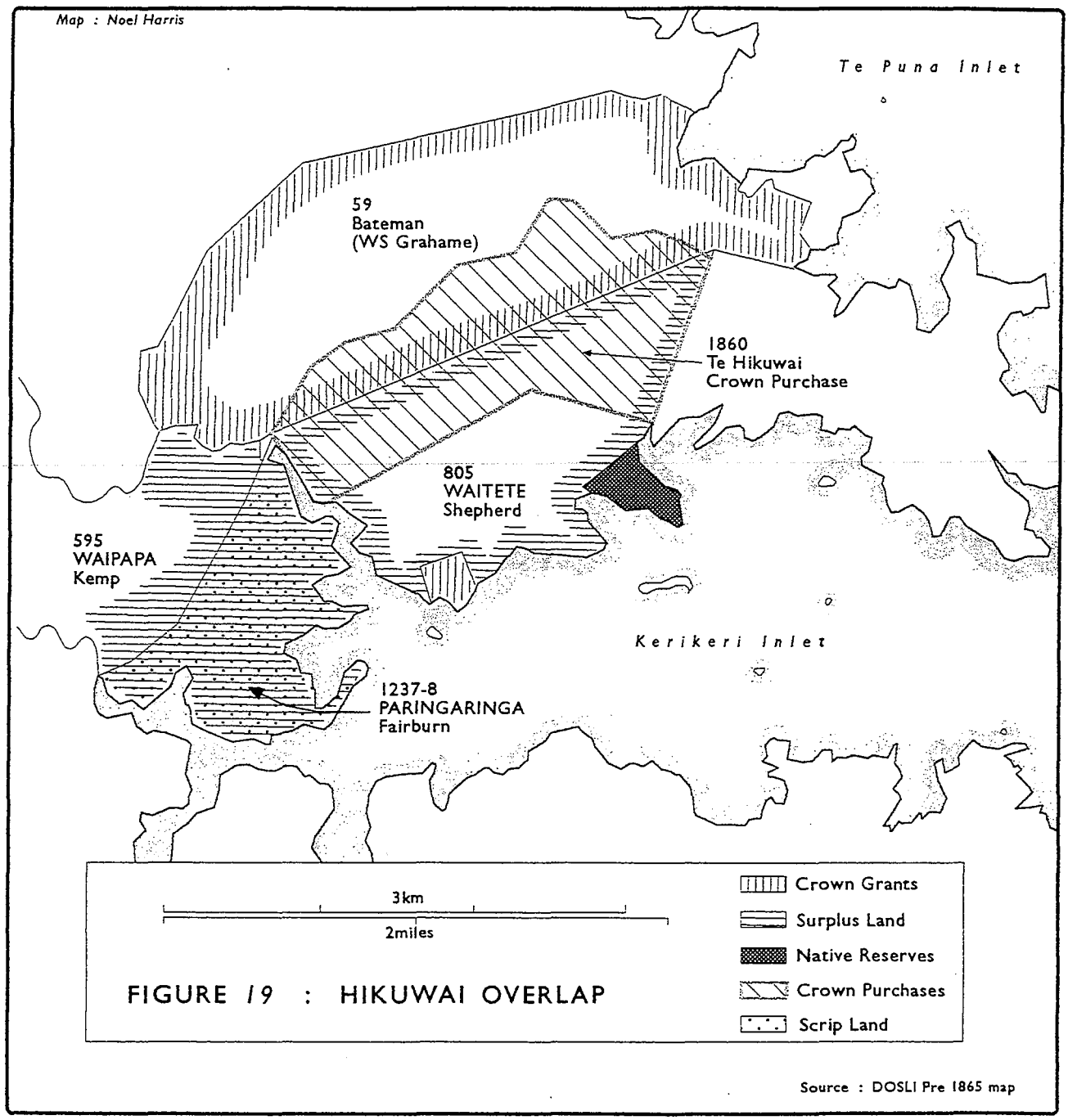
Clarke's participation in Crown purchase surveys adjoining old land claims may have served to avoid overlap between the two. This wasn't always the case, however. For example, in 1858, when Clarke surveyed the Hikuwai area northeast of Kerikeri, he asked Bell to send him tracings of the Grahame survey (OLC plan 16) to ensure that the Crown purchase didn't conflict with Grahame's boundary on the north side and Shepherds's Waitete boundary on the south side. Since Clarke had surveyed the Waitete claim (OLC plan 226) he should have been well aware of the southern boundary. Yet his Hikuwai Crown Purchase boundaries overlapped both the surplus area identified in plan 226, and the area surveyed for Grahame in the north and east (see fig 19).

Multiple overlaps such as these may have resulted from a Crown insurance policy of repeatedly extinguishing what it considered to be residual Maori rights. Along the peninsula between the Kerikeri and Te Puna Inlet the only Maori land identifiable in 1865 was the 30-acre Aroha reserve arising from the 1843 commission recommendations concerning Shepherd's Waitete grant.[291] Although Maori later reclaimed areas along the Te Puna Inlet through the NLC, in 1863 30 acres along the Kerikeri Inlet was all they could legally claim. This was along an important peninsula of perhaps 10,000 acres, the home of at least one hapu (Ngati Mau), next door to the growing township of Kerikeri.[292]

Since both sides of the Kerikeri Inlet had been set aside for the Bay of Islands settlement reserve, the Crown have assumed that Maori rights had been extinguished throughout the area prior to the passage of the 1858 Act. The terms of the Act itself tends to support this view. The preamble declared, as one of the main purposes of the Act, that it was 'especially to promote the civilisation of the Aborigines', but this is the only reference to Maori in the entire statute. The Act provided for the compensation of individuals in the process of obtaining grants, which appears to rule out Maori, and makes no allusion to unextinguished Maori interests.[293]

Maori had for some time been seeking the establishment of a prosperous township in the Bay of Islands. In February 1851 over 90 Maori, including Hohaia Waikato, Mohi Tawhai, Arama Karaka Pi, Moka, and Makoare Taonui, petitioned the

289. Appendix to Bell's report, AJHR, 1863, D-14, p 52; summary, MA 91/20 (652), p 3
290. Ibid
291. Godfrey Richmond report, 8 April 1843, MA 91/21 (802–806), p 13
292. The register of chiefs (c 1865) lists Tango Hikuwai as the principal chief of the Ngati Mau hapu residing at Aroha (MA 23/25). See also Clendon's list of chiefs, hapu, and residence enclosed in James R Clendon to Native Secretary, 2 October 1861, AJHR, 1862, E-7, pp 17–20. Clendon lists Hikuwai as living at Pukewhau, south of Kerikeri.
293. Bay of Islands Settlement Act 1858


Map : Noel Harris
Te Puna Inlet
59
Bateman
(WS Grahame)
1860
Te Hikuwai
Crown Purchase
805
WAITETE
Shepherd
595
WAIPAPA
Kemp
Kerikeri Inlet
1237-8
PARINGARINGA
Fairburn
3km
2miles
Crown Grants
Surplus Land
Native Reserves
Crown Purchases
Scrip Land
FIGURE 19 : HIKUWAI OVERLAP
Source : DOSLI Pre 1865 map

Governor to establish a town at Mangonui Te Tii, north of Kerikeri. This town was to be both for the Governor, and for Maori, as a symbol of their ongoing relationship:

> mo te Taone kia tukua mai e to Kawana . . . homai e koe he Taone ki tenei whakaminenga hei pa[i] mo matou ko to matou whakakotahitanga tenei ki a te kuini . . .[294]

Both Maori and Pakeha suffered from the effects of the economic downturn following the Northern War and the departure of settlers who accepted scrip in exchange for their Bay of Islands claims. The Bay of Islands Settlement Act 1858 was an attempt to kick-start the depressed local economy. Consequently, Maori may have been prepared to stand aside while the Crown allocated land within the Bay of Islands settlement reserve almost at will.

Crown Bay of Islands settlement decisions included redefinition of reserve boundaries. The schedule attached to the 1858 schedule included all claims adjoining the Kerikeri Inlet east of Kemp's Waipapa (595). This area included the very large Shepherd Okura (806) and CMS Childrens' claim, as well as the CMS Kerikeri (672–673) claim (see fig 20).

In 1860, however, the Crown twice changed the reserve boundaries. It added the disputed Day claim (652) in the southeast, but subtracted a large area on the southwest side formed by the Shepherd, CMS, and Childrens' claim referred to above. It also subtracted part of the Grahame claim north of the Hikuwai Crown purchase.[295] On the same day on which he proclaimed a substantial reduction in the Bay of Islands settlement reserve area, Governor Browne proclaimed a massive expansion of the area which could become subject to the provisions of the Act (from the original 15,000 acres to 199,000 acres). This proclamation, printed immediately above the one reducing the area, named as the new boundaries the Takou River in the north, Lake Omapere (or Mawhe) in the west, and the Waiomio and Kawakawa Rivers in the south (see fig 20). The Crown apparently made no attempt to resolve the confusion with later Gazette notices.[296]

Generally, however, the Bay of Islands settlement reserve did not accomplish its objective. The intended wave of immgrants didn't materialise during the 1860s, and in 1870 Parliament repealed the 1858 Act.[297] Its ultimate failure may have eliminated the prejudicial effect on Maori rights. On the other hand, nothing in the Act, or in any of the almost annual proclamations stemming from the Act recognised the existence of continuing Maori rights in the Kerikeri and surrounding areas.

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294. Petition, 5 February 1851, Grey papers, GNZ MA 378, Auckland Public Library
295. Notification, 27 February 1860, *New Zealand Gazette*, 1860, p 46. The Crown estimated that these boundary changes reduced the area within the reserve from 15,000 to 9200 acres.
296. Ibid, pp 45–46. The only difference between the two proclamations was the one affecting the smaller area 'reserved' the land while the one affecting the larger area referred to it being 'set apart' and eligible for being reserved. The distinction was probably too legalistic for most people to understand.
297. As late as 1865 a member of the House of Representatives was promoting the Bay of Islands settlement in Britain: W C Daldy, *New Zealand, Bay of Islands Special Settlement*, London, 1865; Repeal of Bay of Islands Settlement Act, 12 September 1870.

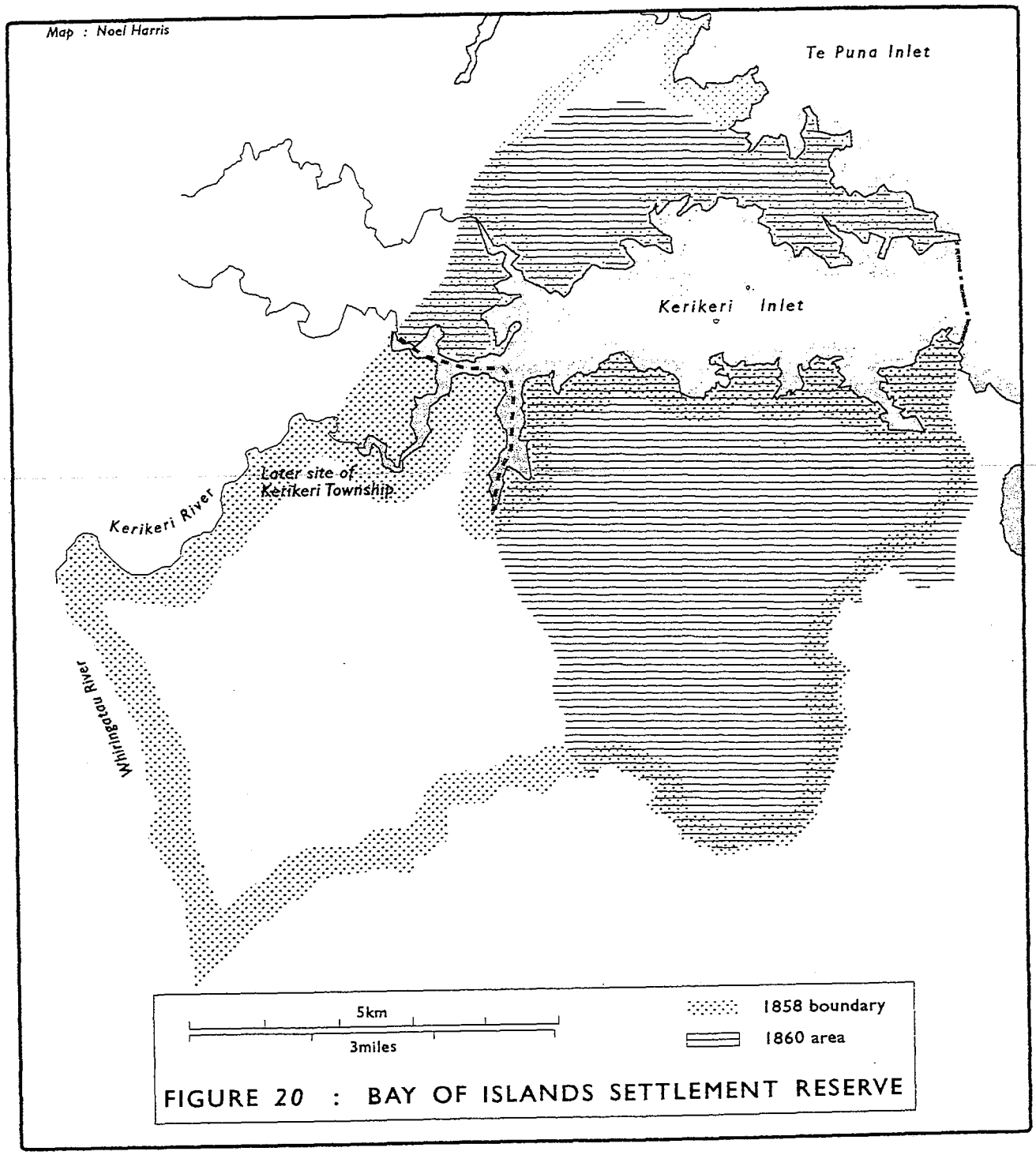

FIGURE 20 : BAY OF ISLANDS SETTLEMENT RESERVE

During 1857, Henry Williams had criticised Land Purchase Commissioner Kemp for concentrating his purchase activity in the area surrounding Kerikeri. Williams believed that Kemp had ignored sizable Maori land offers in the vicinity of Pakaraka and Kawakawa. Williams' informant then reported to Donald McLean, Kemp's superior, that the land adjacent to Pakaraka/Kawakawa:

> is good land and would sell readily indeed [to settlers. The] Williams [family] could have purchased it for the govt if allowed long ago. They are anxious to see settlers about them and say that the natives will sell all the best districts . . . if these blocks now offered were purchased. My opinion is that the Native title should be extinguished over all lands as soon as possible . . . I would urge you to hasten Kemp in this matter.

The letter concluded by referring to how influential the Williams family were among Maori.[298]

Indeed, Henry Williams had been able to rally Maori support to his cause when Governor Grey accused him of dispossessing them during 1846–49. In 1848, Williams had Te Kemara and Te Tao sign what amounted to affidavits in which they swore to have willingly 'disposed of' (i tukua) Pakaraka. When Williams asked them whether they wished the land returned, as Grey alleged, they answered:

> He teka rahoki na te Wiremu tana wahi matou na matou wahi.

This, Williams translated as:

> No indeed, Williams' portion belongs to him and our portion belongs to us.[299]

Williams recorded the same sort of Maori declaration of support headed by Tamati Waka Nene in the case of Clarke's Whakanekeneke claim (634). In the margin of Nene's statement he wrote:

> By the following statements recently made by Chiefs who sold land to the Mission families – Judgement may be formed as to the correctness of His Excellency's communication 'That the Missionaries have illegally and unjustly deprived the natives of land which they are entitled to . . . [are] opposed to the rights of the natives . . . [and have] wrested [land] from the natives.[300]

In an unpublished manuscript now among the Williams family private papers, Henry Williams linked his extensive claims to the protective intent of the CMS trust deeds. He maintained that the CMS farm at Waimate, for example:

> was formed for the sole benefit of the Natives to show them what could be accomplished by a steady and scientific mode of agriculture.

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298. White to McLean, 10 November 1857, McLean papers 633, ATL
299. 'Questions Proposed to Two Chiefs of the Bay of Islands with the Answers', 23 August 1848, Williams papers, 73, 83, Auckland Institute and Museum
300. Williams's marginal note on Tamati Waka Nene's statement, 10 February 1848, Williams papers, 83

Maori were 'repeatedly invited' to live on CMS land at both Waimate and Paihia. None residing on CMS land had 'ever been disturbed . . .'. He referred to the fact that:

> Many Natives were residing upon such land near the Waitangi [Haruru] Falls at the time of the [1845–46] disturbance.[301]

Williams stressed that during the Northern War Maori did not retaliate against missionary property. Since the war, he wrote, Maori had continued to offer the Crown land for purchase without becoming landless. He believed that Maori trusted missionaries, who had their welfare at heart (especially in training them in scientific agriculture and animal husbandry). Finally, Williams referred to his largest claim at Pakaraka. He stated that 'no disturbance' between Maori and missionary families had occurred over this land.[302]

The location of the Williams family land at Pakaraka raises major questions about how old land claims affected Maori rights, and whether Maori retained sufficient resources in 1865. Pouerua, within the boundaries of the Williams Pakaraka property, is one of the most intensively-studied sites of ancient Maori occupation anywhere in New Zealand. During the 1980s, University of Auckland archaeologists conducted intensive excavations throughout the area claimed by and granted to the Williams family. Douglas Sutton reported in 1990 that these excavations had uncovered at Pouerua:

> the best surviving example of pre-European Maori field systems, settlements and fortifications. Furthermore, it was the site of early European settlement and is well described in English language narratives. It is also the heartland of Nga Puhi . . .[303]

The Maori history of Pouerua/Pakaraka confirms this view. In their study of the political history of Nga Puhi in the inland Bay of Islands, Sissons, Wi Hongi, and Hohepa consider Pouerua/Pakaraka to be almost the cradle of modern Nga Puhi. Wi Hongi's traditional narrative of the ancestral origins of Nga Puhi links Ngati Rahiri from Waitangi with Ngati Rangi of Pakaraka.[304] From this account it appears that both Te Kemara and Marupo had established themselves as leading Pakaraka rangatira by the 1820s, while both retained important interests at Waitangi.[305]

It seems almost inconceivable that Te Kemara, Marupo, Te Tao, and others could be divesting themselves of such an important ancestral area when they transacted Pouerua/Pakaraka in 1835.[306] The deed contained no reserve provisions, the commissioners therefore recommended none, and Grey was therefore able to

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301. Land purchase, not dated, Williams papers, 95
302. Ibid. Philippa Wyatt, a Muriwhenua claimant resercher, has produced evidence that Taiamai Maori indeed disputed part of the Williams Pakaraka claim: claim Wai 45 record of documents, doc L6, pp 31–32.
303. Douglas G Sutton (ed), *The Archaeology of the Kainga: A Study of Precontact Maori Undefended Settlements at Pouerua, Northland, New Zealand*, Auckland, 1993
304. Sissons, Wi Hongi, and Hohepa, *The Puriri Trees are Laughing*, pp 65–67, 76–79
305. Ibid, pp 38, 49
306. Pouerua deed, 21 January 1835, H H Turton (comp), *Maori Deeds of Old Private Land Purchases*, Wellington, 1882, p 120

condemn Williams for this in 1846–47 (see above). When Williams surveyed the area during the 1850s, he evidently instructed the two surveyors involved (Samuel Eliot and William Clarke) to remedy this. The original survey plan (OLC plan 54) shows three reserves:

(a) Ngahikunga (186 acres);
(b) Ngamahanga (29 acres); and
(c) Umutakiura (24 acres).[307]

When Clarke then surveyed nine separate grants for members of the Williams family at Pouerua/Pakaraka he certified that these subdivisions were 'effectually marked upon the ground without interruption from the Natives'.[308]

In all, the Crown granted the Williams family 6380 acres at Pakaraka in August 1857. These were the very first grants ordered by Bell. He delivered them to Henry Williams without hearing further evidence at Russell on 21 September 1857.[309]

Significantly, the three reserved areas included neither the kainga site around the volcanic cone of Pouerua, nor the lakeshore kainga disputed by Taiamai people in 1840.[310] According to Lee, Hone Heke's remains were buried on the Umutakiura Native Reserve when he died in 1850.[311] Freda Kawharu, on the other hand, believes Heke was buried in a urupa called Kaungarapa.[312] According to Kawharu, Kaungarapa near Pakaraka is one of the most tapu urupa known to Maori. Although it appears to be outside the Williams family grant, it indicates that Pakaraka must have retained special ancestral significance for Nga Puhi.

Although the three Pakaraka reserves may have been an acknowledgement of this significance by the Williams family, the Crown repurchased the largest of these reserves in 1860 on behalf of the family.[313] According to Bell, the Maori owners of this 186-acre area were willing to accept the £50 offered by Kemp in early 1860 'to give it [Ngahikunga] up to the Claimants . . .' The Williams family then paid the Crown £93 (or 10/- per acre), as provided for in the eighth clause of the Land Claims Extension Act 1858.[314] Thus, within a few years of the establishment of Pakaraka reserves, the Williams family purchased over three-quarters of the reserved area along what appears to be a fertile river valley (see fig 21).

The Crown's involvement in the purchase of the largest Pakaraka reserve is consistent with Crown purchase patterns elsewhere in the Bay of Islands. Generally, the Crown purchases connected old land claim areas. Along the mid-Purerua Peninsula the adjoining 1855 Te Wiroa and Purerua Crown purchases were, in fact, conducted on behalf of Thomas Hansen, the old land claimant.[315] Kemp then

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307. Eliot completed the original plan in May and June 1857, OLC plan 54
308. Clarke memo, 13 July 1857, enclosed in H Williams Jnr to Bell, 15 July 1857, OLC 1/521–526
309. Crown grants, 24 August 1857, R15, fols 1–9; Bell's notes, 21 September 1857, OLC 5/34, p 1
310. See Wyatt, claim Wai 45 record of documents, doc L6, pp 31–32. Johnson's journal refers to 'some acres' in this area 'under native cultivation' along the valley (presumably Waiaruhe) near Pouerua: Johnson's journal, 19 March 1840, Auckland Public Library.
311. Jack Lee, historical map of the Bay of Islands (Kawakawa SD sheet)
312. Freda Kawharu, 'Hone Wiremu Heke Pokai', in *The People of Many Peaks*, Wellington, 1991, vol I, p 8
313. Ngahikunga deed, 16 February 1860, TCD, I:59
314. Bell order, 31 May 1861, OLC 1/521–526
315. Te Wiroa deed, 25 August 1855; Purerua deed, 25 August 1855, Turton, vol I, pp 40, 42. Hansen surveyed the area in OLC plans 244 and 182.

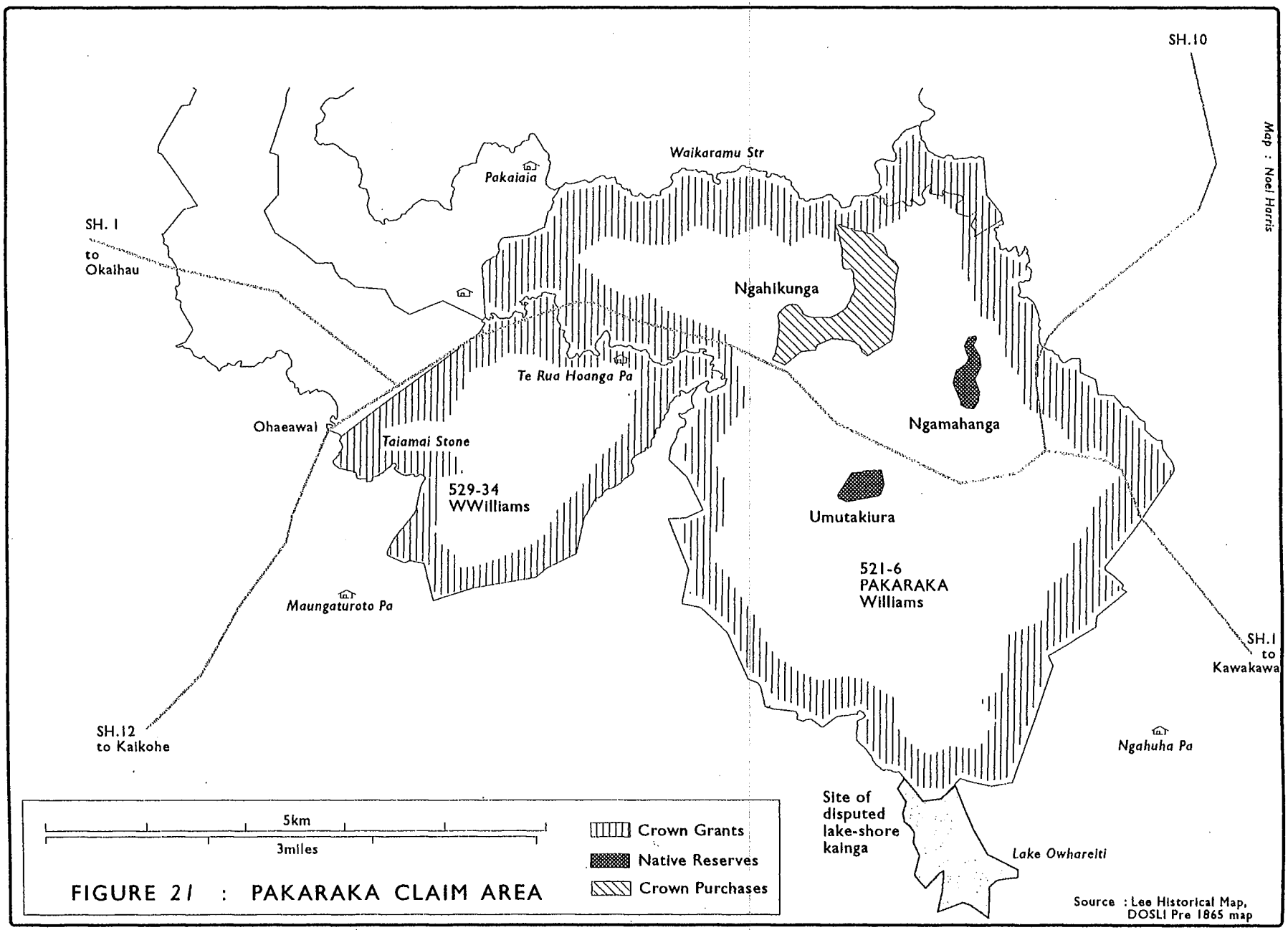


FIGURE 21 : PAKARAKA CLAIM AREA

negotiated subsequent 1860 purchases along the Te Puna Inlet to connect them with old land claims. In an area of perhaps 6000 acres stretching from the original CMS station at Rangihoua to the north coast of the Purerua peninsula, only two tiny areas were reserved for Maori (see fig 22).[316]

Kemp completed a pattern of coterminous extinguishment along the northern Kerikeri peninsula with the 1865 Te Kiripaka purchase. This purchase connected the largest single block of surplus land in the Bay of Islands, that derived from the overlapping King Otaha (603–606) and Kemp Waipapa (595) claims, with the original Bay of Islands settlement reserve.[317]Although Ngai Tawake successfully claimed the 7000-acre Pungaere section of this surplus land in 1866, the Crown purchased this area, too, in 1870.[318] Although a substantial area of unalienated land lay south of the Kerikeri Inlet between the Shepherd/Okura (806) and Edmonds (172) claims, this was also included in the Bay of Islands settlement reserve. The Crown then purchased some of it in 1873 (after the repeal of the Bay of Islands Settlement Act) as the Te Papa block.[319] Thus, the coterminous pattern of Crown purchases and old land claims around Kerikeri resembles that in the mid-Purerua peninsula (see fig 23).

In the Waimate area the only significant Crown purchases adjoining old land claims were those at Omawhake, Okokako, and Pukewhau. The 1856 Omawhake purchase of 7000 acres along the southern boundary of the Orsmond Puketi (809) claim excluded the Te Wiroa Wahi Tapu and 'all lands which were formerly sold to Europeans . . .'[320] The 1857 Okokako purchase of 500 acres nearer Waimate adjoined the Nesbitt (353), Davis (773), and Bedggood (65) claims near Waimate. Remaining Maori land at Rangaunu and Whakataha north of Waimate divided the township from the Omawhaka and Okokako purchases (see fig 24).

Finally, the 1865 Pukewhau purchase allowed Tango Hikuwai to reclaim a small part of the area hemmed in by the CMS Families (735), the Shepherd/Okura (806), and Busby/Waitangi (14–22) claims. The Crown purchased 468 acres and reserved 68 acres for Maori.[321]

Although Henry Williams expressed his desire in 1857 to have the Crown purchase the areas surrounding Pakaraka, Maori land remained on its north-east and south-west sides at Oromahoe and Ngawhitu respectively.[322] Only a mile from the eastern extremity of the Williams Pakaraka grants, however, the Crown established the western boundary of the Kawakawa North purchase in June 1859. This was the first substantial Crown purchase with significant areas reserved for Maori. Adjoining this 15,000-acre purchase on its northern boundary was the 1032-acre Otao Native Reserve. Furthermore, an area of 1739 acres along the Kawakawa River valley (the

316. One was within the 1855 Te Wiroa Crown purchase, the other, barely six acres, near Rangihoua. OLC plan 21 (Te Puna) and OLC plan 244 (Te Wiroa).
317. Te Kiripaka deed, 28 September 1865, Turton, vol I, p 74
318. Summary, MA 91/20 (595), p 1
319. Te Papa block, 10 November 1873, Turton, vol I, p 83
320. Omawhake deed, 26 February 1856, Turton, vol I, pp 43–44
321. Te Kerikeri (Pukewhau) deed, 28 December 1865, Turton, vol I, pp 77–78
322. White to McLean, 10 November 1857, McLean papers, 633

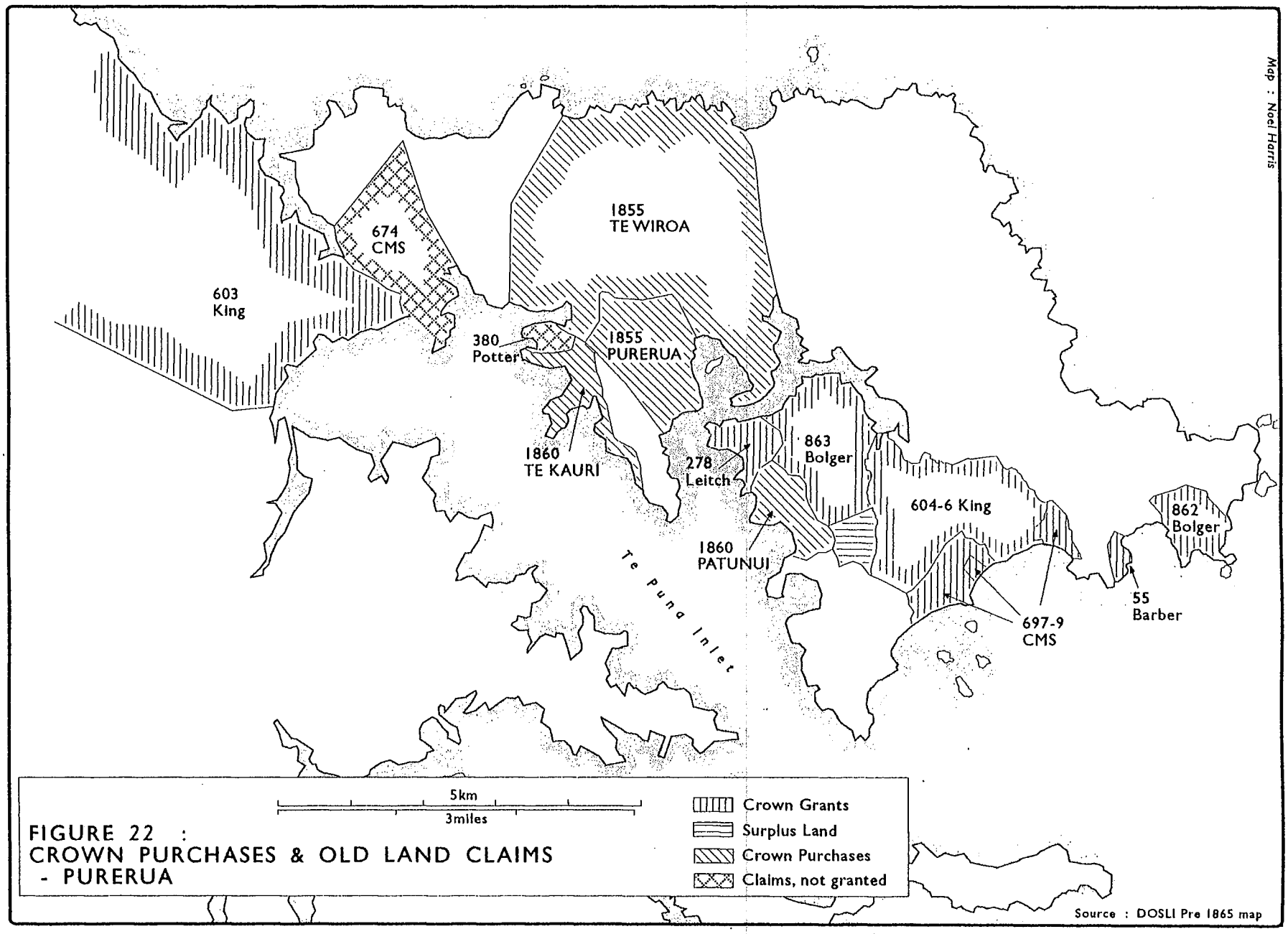


FIGURE 22 :
CROWN PURCHASES & OLD LAND CLAIMS
- PURERUA

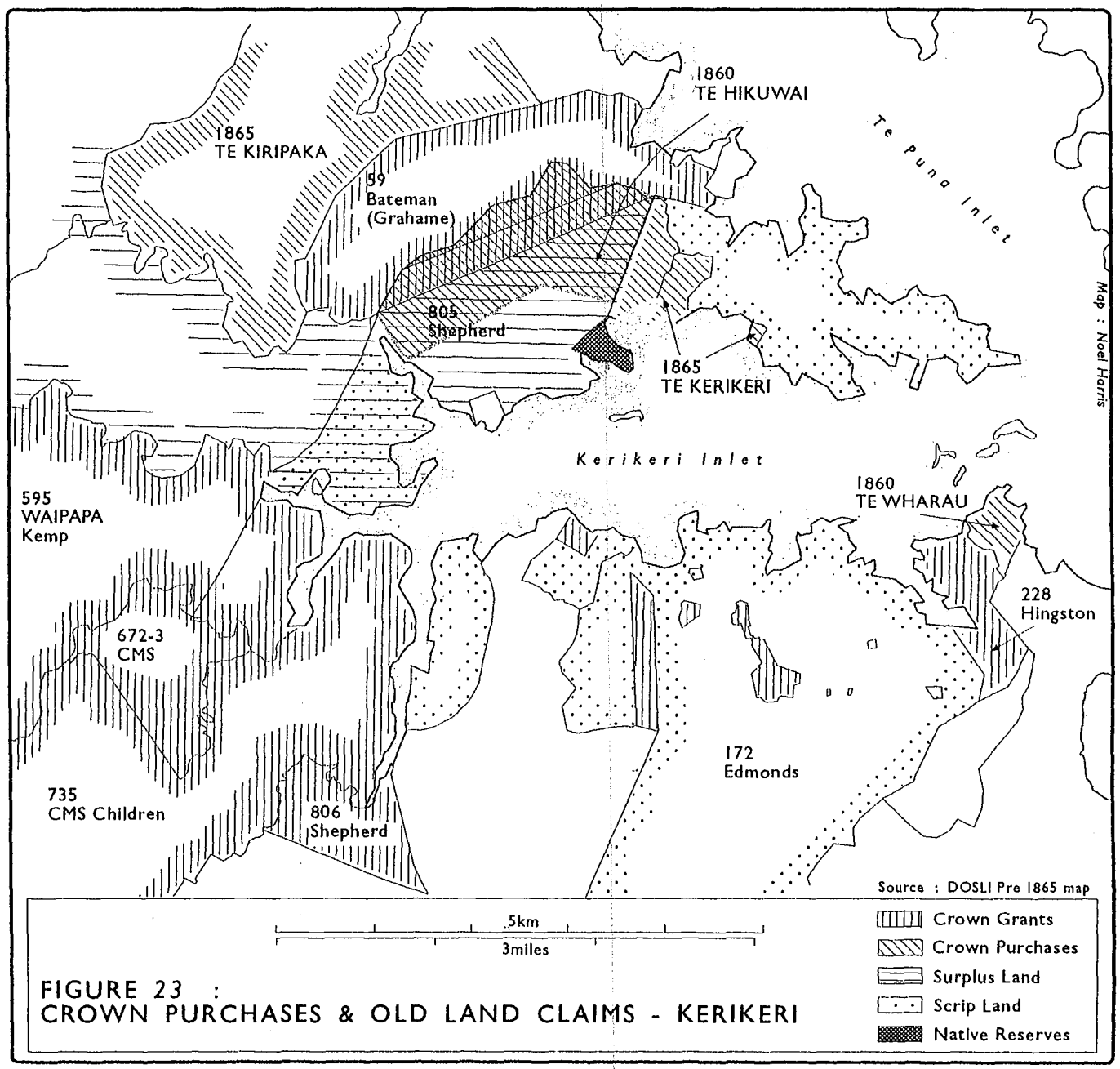
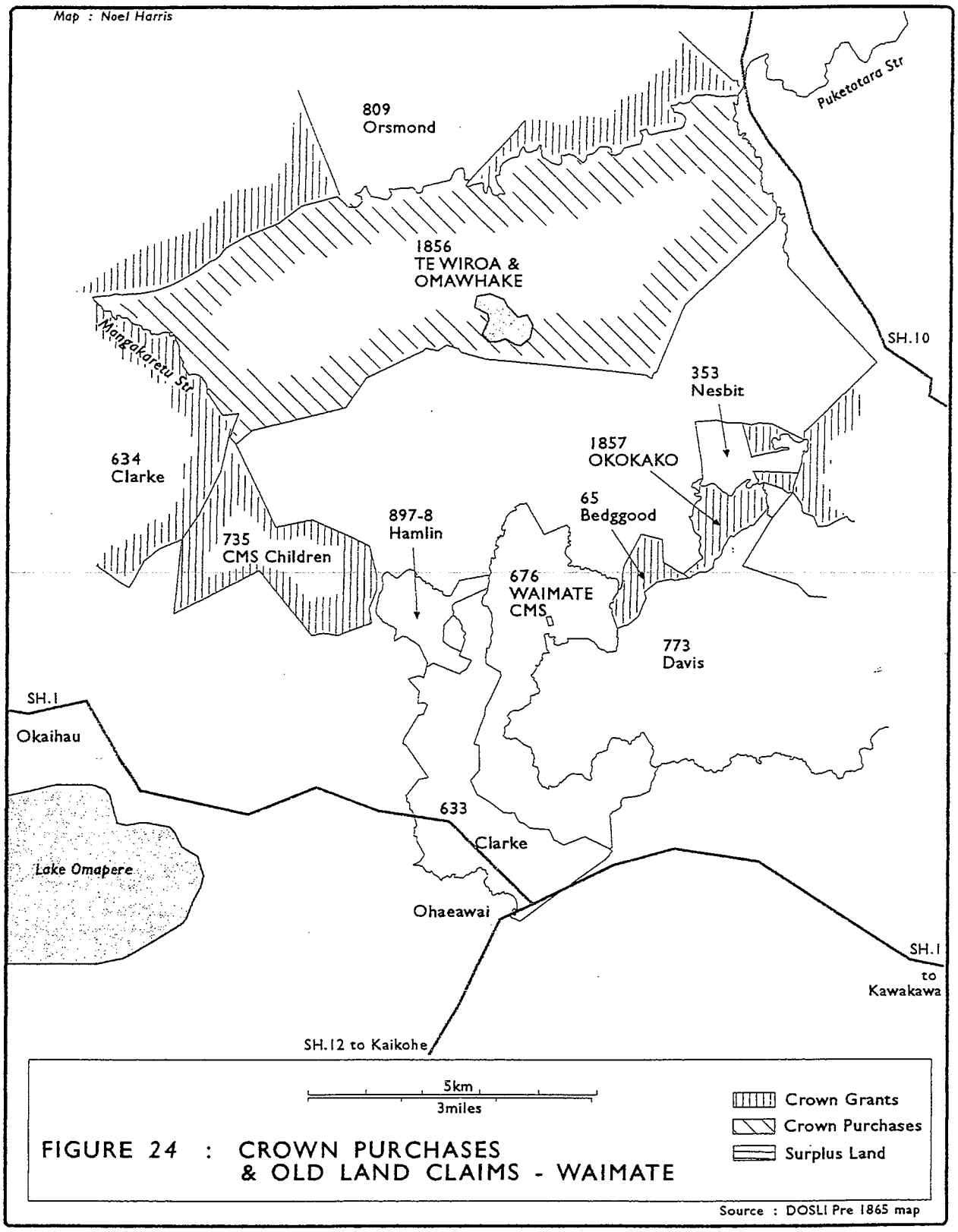
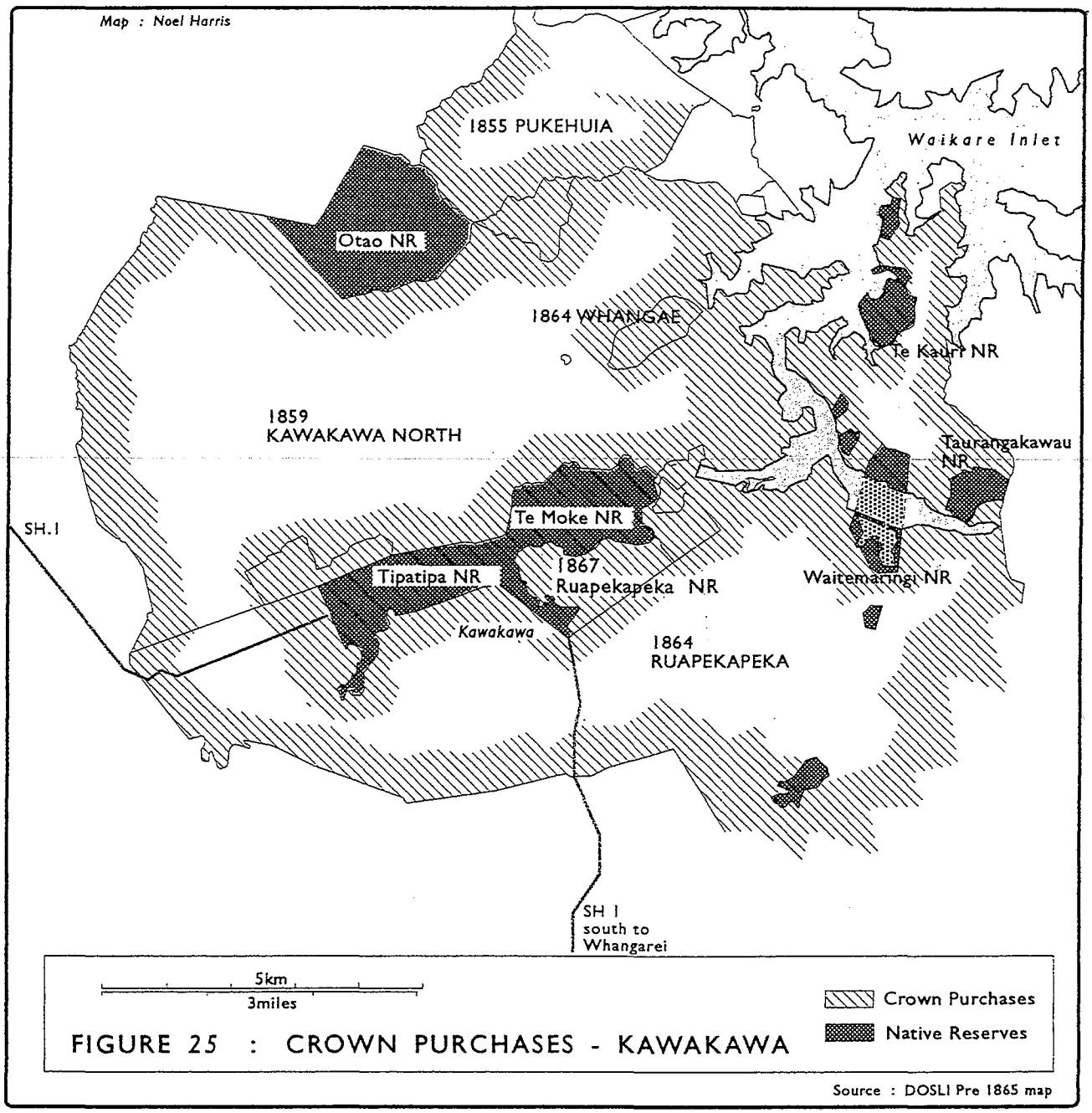


FIGURE 23 :
CROWN PURCHASES & OLD LAND CLAIMS - KERIKERI


Map : Noel Harris
809
Orsmond
Puketotara Str
1856
TE WIROA &
OMAWHAKE
Mangakaretu Str
SH.10
353
Nesbit
1857
OKOKAKO
634
Clarke
65
Bedggood
897-8
Hamlin
735
CMS Children
676
WAIMATE
CMS
773
Davis
SH.1
Okaihau
633
Clarke
Lake Omapere
Ohaeawai
SH.1
to
Kawakawa
SH.12 to Kaikohe
5km
3miles
Crown Grants
Crown Purchases
Surplus Land
FIGURE 24 : CROWN PURCHASES
& OLD LAND CLAIMS - WAIMATE
Source : DOSLI Pre 1865 map


Map : Noel Harris
1855 PUKEHUIA
Waikare Inlet
Otao NR
1864 WHIANGAE
Te Kauri NR
1859
KAWAKAWA NORTH
Taurangakawau
NR
Te Moke NR
SH.1
1867
Ruapekapeka NR
Waitemarangi NR
Tipatipa NR
Kawakawa
1864
RUAPEKAPEKA
SH 1
south to
Whangarei
5km
3miles
Crown Purchases
Native Reserves
FIGURE 25 : CROWN PURCHASES - KAWAKAWA
Source : DOSLI Pre 1865 map

site of today's town) remained in Maori hands.[323] Although the Crown repurchased part of the township site with the 24,000-acre Ruapekapeka purchase in 1864, Maori retained most of the reserved land adjoining the township (see fig 25).[324]

No significant pre-1865 Crown Purchase activity occurred in the Paihia/Waikare/Kororareka area. Just as Kawakawa was a predominantly Crown purchase area, the areas fronting the Bay were invariably littered with old land claims. By 1865, little or no Maori land remained at Kororareka, or on the waterfront at the head of the Waikare Inlet. Most of the Maori land remaining consisted of an estimated 3000-acre area between Paroa Bay and the Waikare Inlet, and the rugged area generally known as Te Rawhiti, east of Manawaora (see fig 26).

3.3 CONCLUSION

In conclusion, I will describe what I believe to be the overall result of old land claims and Crown purchases in the Bay of Islands area. I will then suggest that this result was consistent with the intentions of both Land Claims Commissioner Bell and District Land Purchase Commissioner Kemp in seeking the extinguishment of Native Title. Finally, I will comment upon what can be reconstructed about the patterns of Maori settlement and political authority in the Bay of Islands in 1865.

From the foregoing maps of Crown purchases and old land claims in the Bay of Islands, it appears that approximately 60 percent of the total area had passed out of Maori hands by 1865. If one considers ownership of the most valuable land from both a commercial and agricultural point of view, however, Maori appear to have retained the least valuable land almost everywhere except in the immediate vicinity of Kawakawa. Kawakawa, where Maori retained 1400 acres of reserved land in 1865, did not realise its commercial potential until after that date, however, with the development of coal and the railway. The other commercial and administrative centres of Kerikeri, Waimate, and Russell were amidst the most intensively transacted old land claim areas.

If Maori ended up with the least valuable 40 percent of the land, was this an intentional or an accidental byproduct of Crown actions? The Oliver conclusion for Muriwhenua can provide a useful guide for the consideration of the Bay of Islands situation. Oliver noted McLean's oft-expressed 'sanguine hopes' for the commercial development of Northland as a whole, and Kemp's promotion of the Bay of Islands settlement reserve to that end.[325] Maori evidently wished to participate fully in such commercial development, but their retention of so little land close to commercial centres impaired their ability to do so.[326] Oliver concludes that the relative landlessness suffered by Muriwhenua Maori was the logical outcome of deliberate Crown policy choices. In his words:

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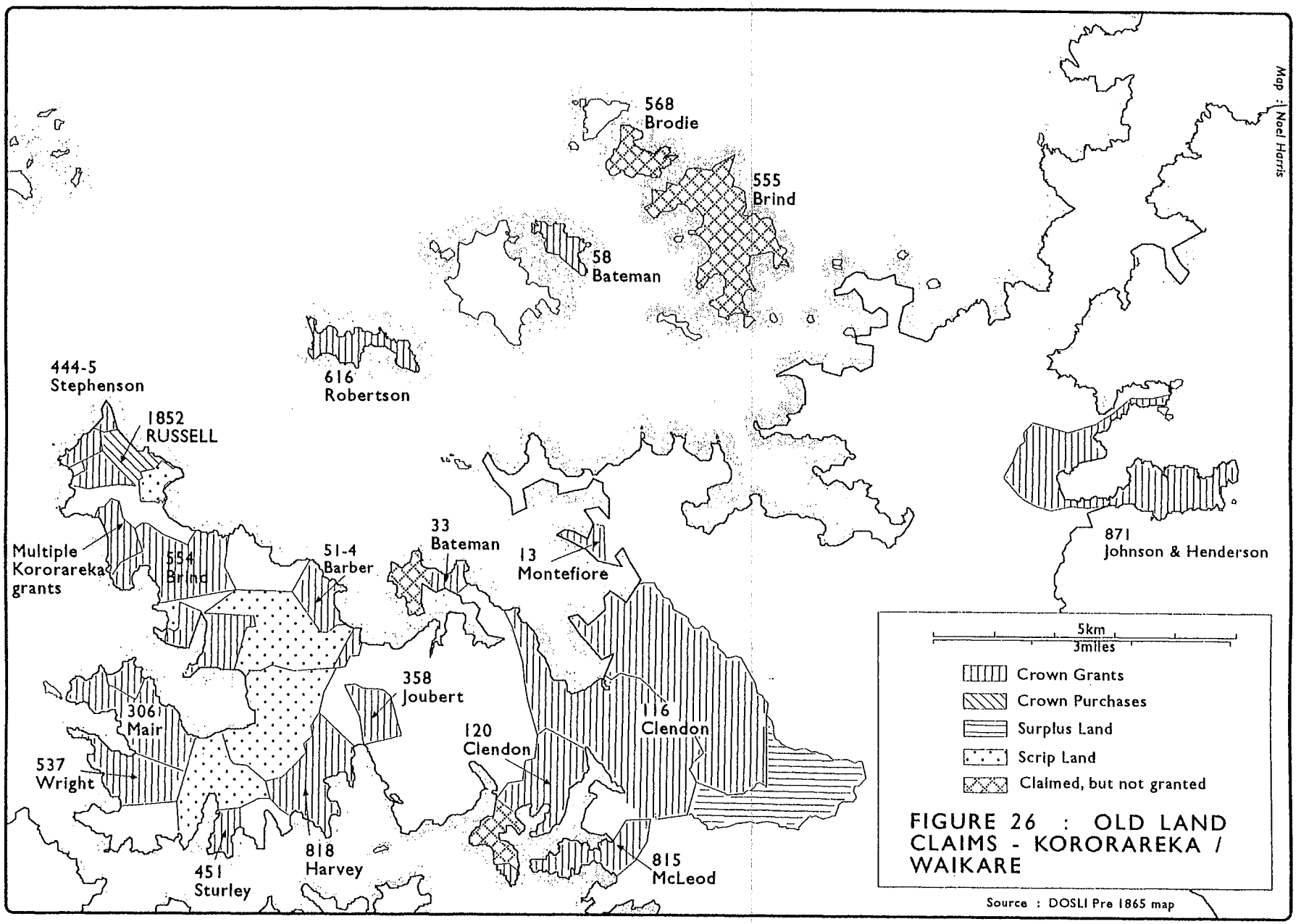
323. Kawakawa north deed, 2 June 1859, Turton, vol I, pp 55–56. These reserves are clearly marked on Sampson Kempthorne's September 1859 survey plan (SO 946).
324. Ruapekapeka deed, 11 June 1864, Turton, vol I, pp 65–66
325. Oliver, 'The Crown and Muriwhenua Lands', claim Wai 45 record of documents, pp 24–25
326. Ibid, pp 25–30


Map : Noel Harris
568
Brodie
555
Brind
58
Bateman
616
Robertson
444-5
Stephenson
1852
RUSSELL
Multiple
Kororareka
grants
554
Brind
51-4
Barber
33
Bateman
13
Montefiore
871
Johnson & Henderson
358
Joubert
3061
Mair
537
Wright
120
Clendon
116
Clendon
451
Sturley
818
Harvey
815
McLeod
5km
3miles
Crown Grants
Crown Purchases
Surplus Land
Scrip Land
Claimed, but not granted
FIGURE 26 : OLD LAND CLAIMS - KORORAREKA / WAIKARE
Source : DOSLI Pre 1865 map

policy makers chose options which had harmful consequences for Maori, and that Muriwhenua Maori shared in these consequences . . . Three major policy options were rejected in favour of other policies which had the opposite effect:

1. Lands designated (surplus) from pre 1840 transactions could have been disposed of in ways which would have benefitted the Maori population, perhaps by their return to the original sellers, perhaps by their retention by the Crown under some form of trust.
2. Crown land purchases could have proceeded in a less precipitate manner, could have been directed to a result less extreme than the extinguishment of Maori title, and could have been halted at some point well before a state of near landlessness had been achieved.
3. The alienation of land could have been accompanied by the provision of reserves adequate for foreseeable needs and by provision for their inalienability.[327]

While Kemp and McLean represented a Crown agency (the Native Land Purchase Department) dedicated to the 'extinguishment of Native Title' was Land Claims Commissioner Bell (a judicial officer) inspired by the same dedication? A critical reading of Bell's 1862 report to Parliament yields part of the answer to this question. First, Bell accepted the tripling formula which increased the value of the cash and goods exchanged in pre-Treaty transactions. He believed that old land claimants probably invested more per acre in 'extinguishing native title than the Government did.'[328] On his survey regulations, Bell defended his decision to offer claimants generous allowances to insure the inclusion of all land transacted. This gave claimants a tangible incentive to insure that surplus land would not 'revert' to Maori. In Bell's words:

> The result has been not only to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown; but to connect the claims together, and lay them down on a map. Under the arrangements which I directed to be adopted by the surveyors . . . , I was enabled, as the original boundaries of a great number of the Claims were coterminous, to compile a map of the whole country about the Bay of Islands and Mangonui, showing the Government purchases there as well as the Land Claims; and a connected map now exists of all that part of the Province of Auckland which lies between the Waikato River and the North Cape.[329]

A remarkable feature of Bell's 1862 report was how little attention he devoted to the almost 300,000 acres granted to claimants, and how much was devoted to surplus land and unsettled claims. Only two short paragraphs are devoted to grants, while almost a page of explanation and a two-page return refer to surplus land claimed by the Crown.[330] He explained that he hadn't pressed the Crown's rights to surplus land in all cases. He regretted that his report took:

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327. Ibid, p 34
328. Bell report, 8 July 1862, AJHR, 1862, D-10, p 5
329. Bell report, 8 July 1862, AJHR, 1862, D-10, p 5
330. Ibid, pp 6–7, 8–9, 21–22

> no account of any claims which lapsed or were not referred to any Commissioner, with the exception of those cases where the land was given up to myself by the natives. There are many cases where (so far as I can form a judgement) *bona fide* purchases were made . . . and *if the state of the country had permitted I should have taken measures to recover as much as the natives would agree to give up of this land for the Crown.* [Emphasis added.][331]

Evidently, he was deterred from 'recovering' such surplus land, not because Maori needed it, but because such actions during the New Zealand Wars may have encouraged Maori to repudiate previous sales in other areas. He believed that his 'recovered' 200,000 acres of surplus land, plus neighbouring Crown purchased areas, were virtually 'open for settlement.'[332]

Maori hardly figure at all in Bell's report. In his consideration of whether any 'further relief should be granted' to old land claimants, Bell is prepared to concede that a case for injustice may have existed.[333] Nowhere in this section does he refer to Maori objections lodged at his hearings. Apparently he didn't consider that Maori may have harboured a sense of injustice about how he invariably dismissed these objections. Since Bell was reporting to a Parliament in which Maori weren't represented, and since Parliament was preoccupied with the New Zealand Wars in 1862, he almost entirely ignored Maori rights . To this extent Commissioner Bell participated in the Crown's attempt to extinguish Native title as widely as possible.

In the Bay of Islands, unextinguished Maori rights must have depended to a large extent upon those who actually exercised them by residing in communities in which indigenous authority remained intact. Information on patterns of Maori habitation during the 1860s remains fragmentary. Perhaps the best attempt to record it was an 1863 mapping exercise, apparently carried out by John White, James Fulloon, and S Percy Smith for the chief Government surveyor. They attempted to locate all major Maori settlements throughout the North Island, partly in an effort to trace geographically the Maori population data that F D Fenton compiled for the Crown in 1859.[334] In the Bay of Islands the map-makers located (and in some cases mis-located) five settlements in the coastal or 'Bay of Islands' area where Fenton estimated a Maori population of 731. In the Waimate/Kawakawa area where Fenton estimated a Maori population of 910, they locate only Kawakawa near where Waimate should be (see fig 27).[335] While not much can be concluded from this incomplete information, it suggests that the Bay of Islands continued to support a significant Maori population, even if it was concentrated outside commercial centres.

Such a pattern is confirmed by the unpublished 'Register of Chiefs' compiled during the 1860s by Crown agents. This list includes hapu and residence information (see table 4). The register also leaves the impression of the durability of indigenous

331. Ibid, p 8
332. Ibid, pp 8–9
333. Ibid, pp 15–19
334. F D Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, Auckland, 1859
335. Authorship of the map has been established by Smith's 1891 marginal note on the draft version entitled 'Map of the Northern Island of New Zealand . . . Native Population and Native Settlements', 1863, AAFV 997/G171, NA Wellington.

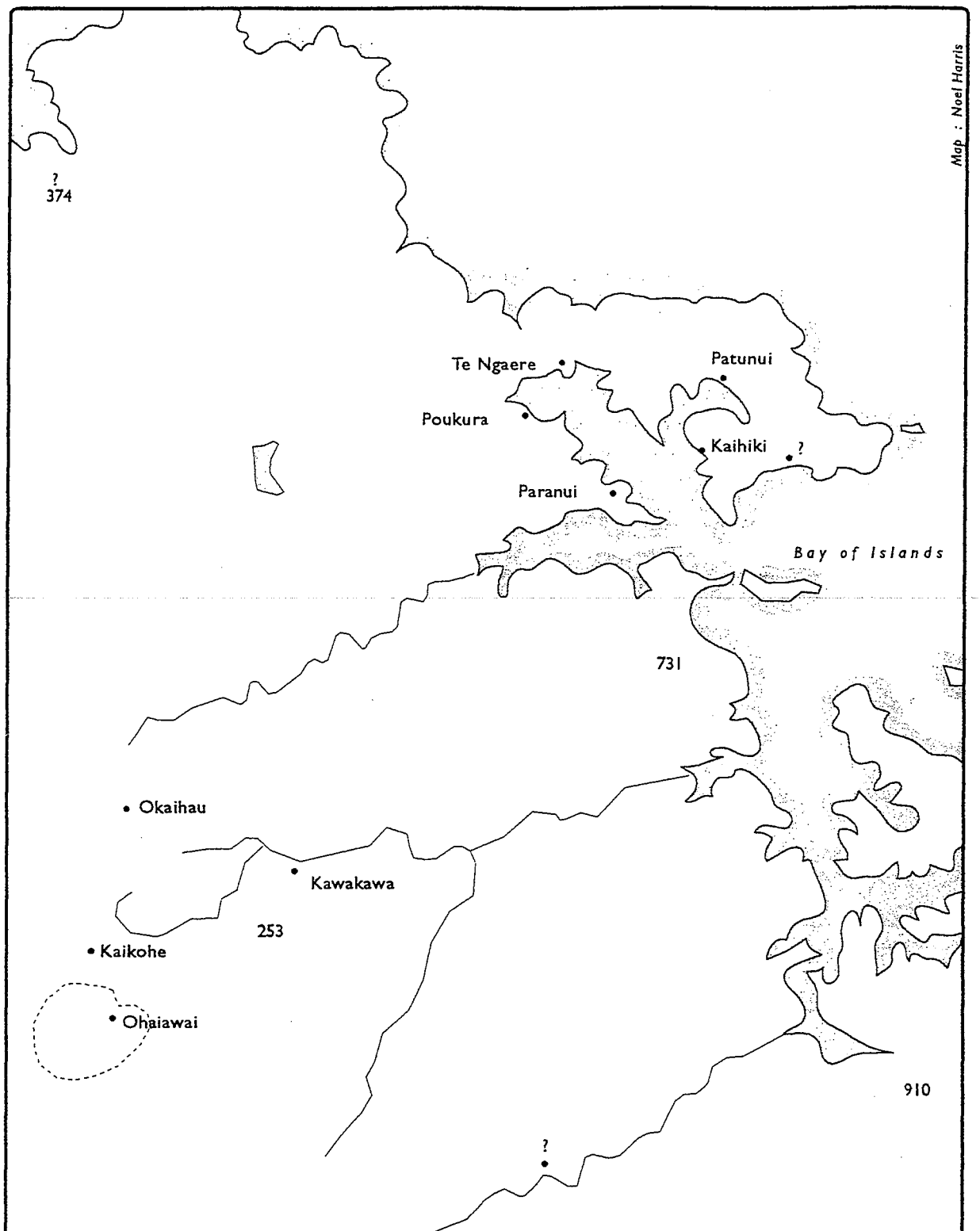


FIGURE 27 : MAP OF THE NORTHERN ISLAND OF NEW ZEALAND
Native Population & Native Settlement

16km
10miles

Compiled by Andrew Sinclair, Chief Govt Surveyor 1863

Source : AAFV / G171

political authority. This picture is further supported by the fact that when Governor Grey introduced his 'new institutions' in 1862, he put them into practice first in the Bay of Islands.[336] Thus, while relative landlessness may not have eroded Maori political authority in the Bay of Islands by 1865, its long-term economic and political effects require further investigation.

Finally, on balance, how did the old land claim commissions perform in carrying out the Crown's Treaty obligations? Clearly, the Richmond Godfrey Commission lacked the resources necessary for a thorough inquiry into the sources of Maori rights and the extent to which they had been transferred. The protectorate, too, simply lacked the resources necessary to carry out its 'extinguishment' reports, and FitzRoy unwisely dispensed with surveys for the very same reason. The question arises, however, did the Crown not have an obligation to properly resource the Richmond Godfrey, protectorate, and surveyor's investigations of old land claims?

When Bell reinvestigated these claims after 1856, the Crown could not possibly plead poverty. During the period of Bell's Commission, the Crown invested at least £500,000 in its Native Land Purchase operations. None the less, Bell narrowed his investigation to such an extent that he effectively denied Maori the right to question anything fundamental about the original transactions and their subsequent consequences. As far as Bell was concerned, Richmond and Godfrey had established beyond all reasonable doubt that Maori had knowingly alienated their land. His task, he believed, was merely to establish the extent of what they had alienated, and the proportion of that area which he could assign to the public domain as surplus or scrip land. He made very few reserve recommendations, preferring instead to rely upon those made earlier by Richmond and Godfrey.

Unlike his predecessors, Bell had maps at his disposal which indicated the extent of what Maori retained. He knew that coterminous OLC/Crown purchase surveys systematically shut Maori out of commercially valuable areas all around the Bay of Islands. He knew this because he, Kemp, and Clarke administered what amounted to a coterminous extinguishment of Maori interests.

Maori may not have been fully aware of the consequences of coterminous old land claims and Crown purchases before 1865. They probably did not have good maps at their disposal. If the Puketotara, Kapowai, and Waitangi examples are anything to go by, Maori probably became aware of how they were being shut out only very gradually. In that respect the history of the Maori response to colonial land commissions resembles the Fijian and Samoan responses.

The immediate impact of the pre-colonisation land rush in all three cases was quite chaotic and confusing. It took decades for the respective land commissions to sort out who should get what land. By the time they did so, many of the original transactors had died, and the whole set of circumstances that led to the transactions had changed. In New Zealand, Fiji, and Samoa, the inherent difficulties in sorting out land claims had the effect of undermining indigenous authority. The colonial authorities were then able to determine the outcome in accordance with colonial

336. 'The First Maori Parliament or District Runanga', *Te Karere Maori*, 23 May 1862, pp 13–20

priorities. In New Zealand this meant making land available for Pakeha settlement without completely dispossessing Maori.

Bay of Islands Maori may have retained 40 percent of their land but, like Samoans who retained 40 percent of their most valuable land, they may have expected a better deal from a paternal authority. Among Bay of Islands Maori, the Treaty became a symbol, not of fulfilment, but of an unfulfilled ideal.

CHAPTER 4

PRE-1865 CROWN PURCHASES

4.1 THE APPROACH

4.1.1 Sampling technique

The following survey of Crown purchase in the Auckland district is based on the same sampling technique used with old land claims. Instead of attempting to analyse almost 300 recorded pre-1865 Crown purchases throughout the district, this report concentrates on those conducted in the Kaipara area.

With the exception of the south Auckland area, Kaipara was the most intensively Crown-purchased area within the district prior to 1865. Working from a Crown purchase index generated by the Department of Survey and Land Information, the total numbers of purchases have been grouped into the following areas:

Muriwhenua	24
Hokianga	2
Whangaroa	5
Bay of Islands	26
Whangarei	49
Kaipara	39
Mahurangi/Kumeu	22
Waitemata/Auckland	36
South Auckland	73
Hauraki Gulf	7
Total	283

Kaipara has been selected rather than south Auckland, despite the greater intensity of Crown purchase activity there, because south Auckland has been more difficult to quantify, and because it has already been the subject of a research report commissioned by the Tribunal.[1] Although the Crown also negotiated more purchases in the Whangarei area than in Kaipara, that area was less intensively transacted. The larger number of purchases covered a much larger total area, stretching from near Kawau Island in the south to near Whangaruru Harbour in the north, a distance of

1. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 15–40, 79–84. The difficulty in quantifying purchase activity in this area arises from the Crown's failure to survey more than about 20 percent of pre-1865 Crown purchases.

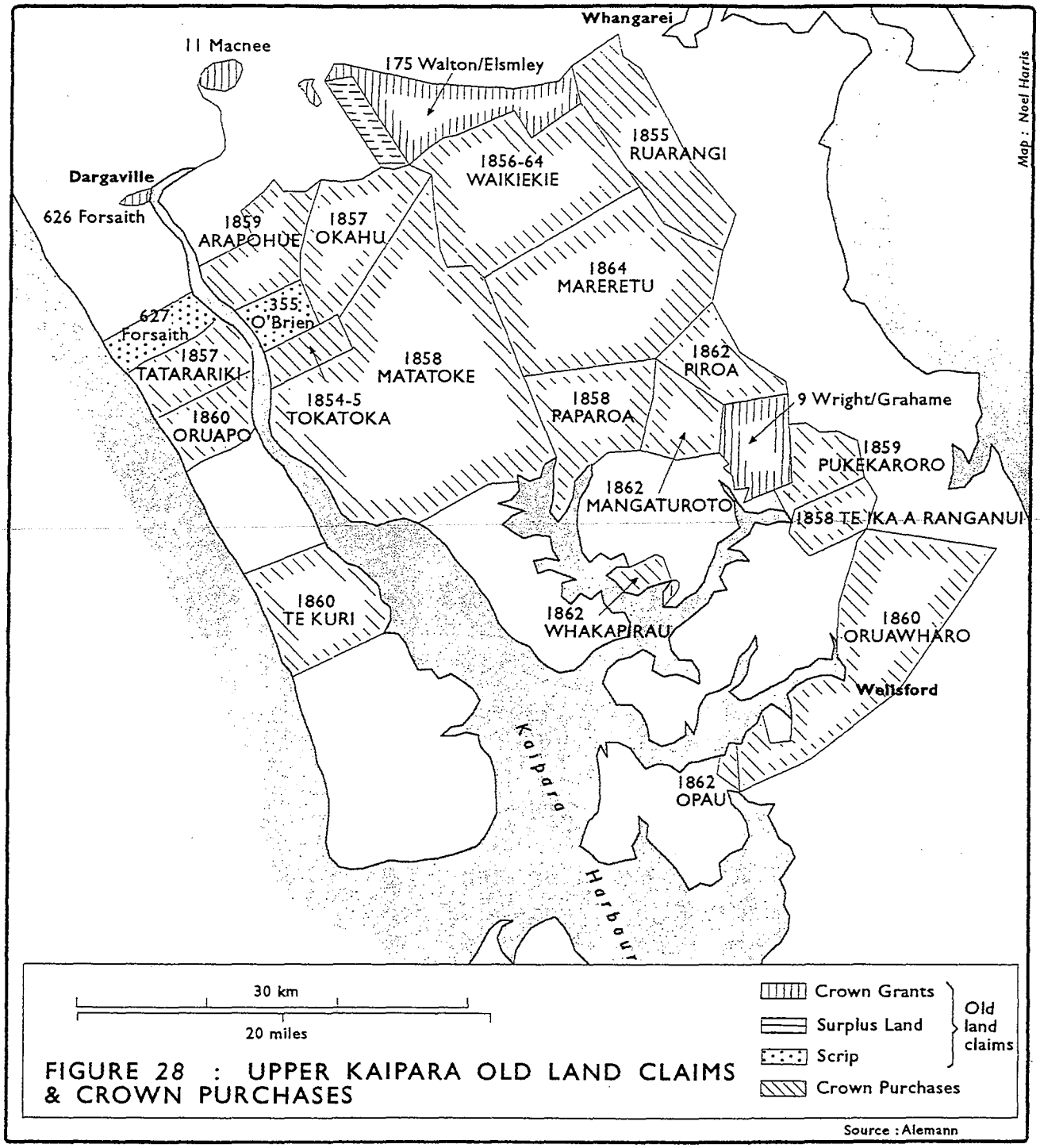
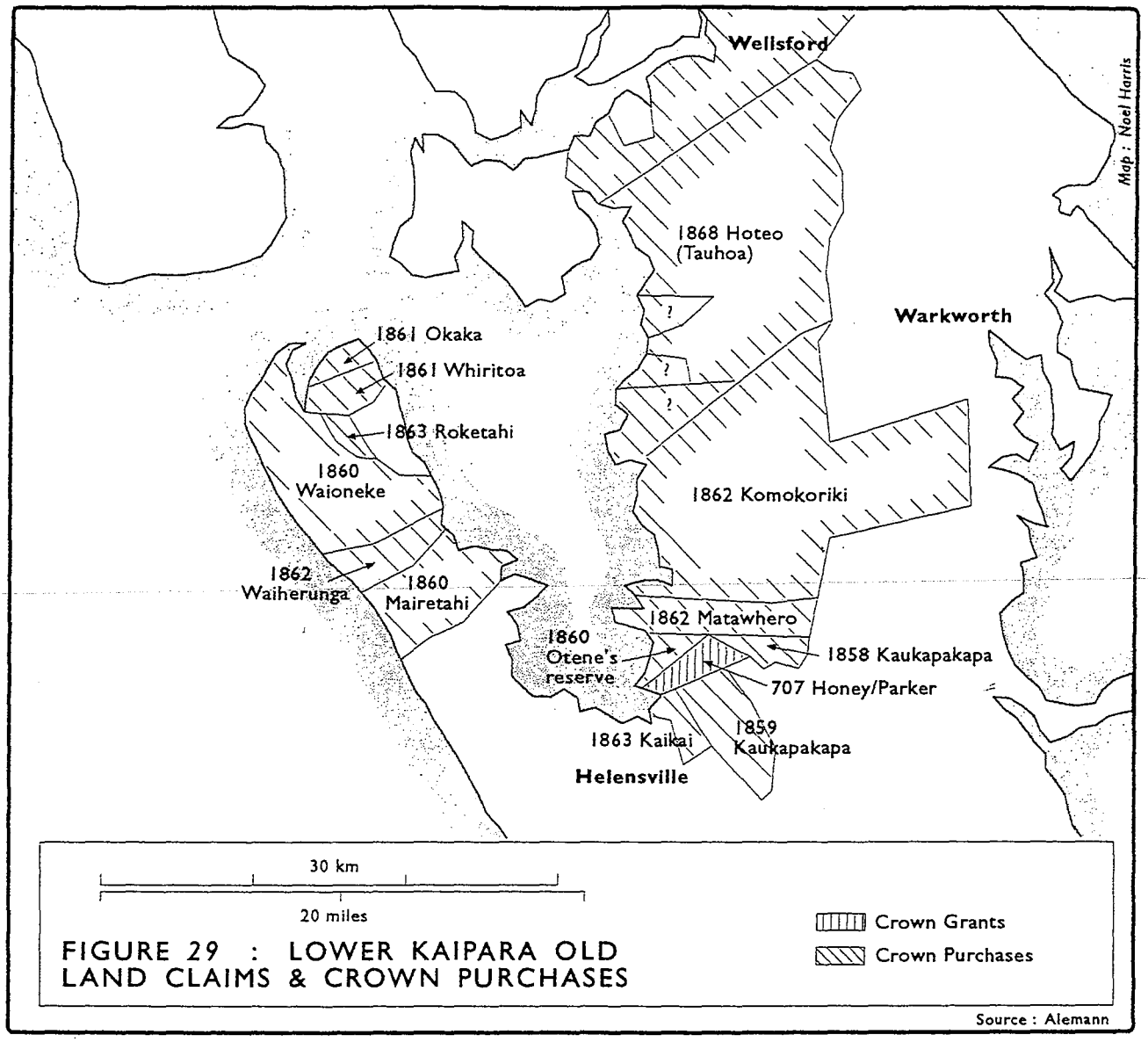


FIGURE 28 : UPPER KAIPARA OLD LAND CLAIMS & CROWN PURCHASES


Wellsford
Map : Noel Harris
1868 Hoteo
(Tauhoa)
Warkworth
1861 Okaka
1861 Whiritoa
1863 Roketahi
1860
Waioneke
1862 Komokoriki
1862
Waiherunga
1860
Mairetahi
1862 Matawhero
1860
Otene's
reserve
1858 Kaukapakapa
707 Honey/Parker
1859
Kaukapakapa
1863 Kaikai
Helensville
30 km
20 miles
Crown Grants
Crown Purchases
FIGURE 29 : LOWER KAIPARA OLD LAND CLAIMS & CROWN PURCHASES
Source : Alemann

almost 100 miles.[2] The Kaipara area has been defined as extending from the Kaukapakapa south purchase near Helensville to Mangakahia and Dargaville in the north. Essentially this is the area which surrounds the Kaipara Harbour, extending a distance of about 60 miles.

4.1.2 Issues

As with old land claims, the analysis of Crown purchases in the Kaipara area will focus on four issues.

(1) *Were Maori interests properly represented in Crown purchase negotiations?* In considering this issue, the Crown's standards for determining proper Maori representation will be examined. This will include a discussion of the Crown's picture of Kaipara Maori leadership, composed during the 1860s, in the so-called register of chiefs. Most disputes over Maori representation in Crown purchase transactions occurred between Tirarau's Te Parawhau, Te Roroa, and Nga Puhi kin, and the Te Uri o Hau led by Paikea, Arama Karaka, and others. Since these leaders figured prominently in the 1860 Kohimarama 'Conference of Chiefs', and since the Crown wished that conference to devise principles to guide it in subsequent purchases, Kaipara has been briefly noted in relation to Kohimarama. Finally, a section is devoted to the 1862–63 Mangakahia dispute, even though it occurred in an area closer to Whangarei than to Kaipara. This is primarily because Mangakahia illustrates how Crown purchase negotiations could provoke violent conflicts. Mangakahia also assumed national importance and enduring historical significance when the Crown attempted an 'arbitrated' settlement between the Maori involved in the conflict.

(2) *Did the Crown clearly identify purchase boundaries acceptable to Maori?* Exploration of this issue will begin with an outline of how previous old land claims complicated the boundaries of several Crown purchases. The relationship will then be traced between surveys and negotiations. Following this narrative, the question will be posed, could complex Maori interests in land based on kin, usage, and conquest yield to the simple geographic boundaries established by survey?

(3) *How adequate was the equivalent exchanged or the purchase price paid?* This section will concentrate on purchase price rather than on any implied long-term equivalent, such as a promise of development. In very simple terms, the difficulty of undertaking meaningful price per acre calculations for this area or any other within the Auckland district will be outlined and what appears to have been a widespread pre-payment practice will be examined. Known as Tamana in the Te Roroa area north of Dargaville, in Kaipara this practice has particular relevance to the Hoteo/Tauhoa area west of Warkworth. Finally, comparisons will be made

2. The lack of survey information for over 25 percent of Whangarei purchases makes them more difficult to quantify than those in Kaipara, where unsurveyed purchases account for less than 5 percent of the total.

between Crown purchase prices and the fragmentary information available on the prices paid to the Crown by subsequent settlers.

(4) *In 1865, were Maori left with sufficient resources for future generations?* The question of whether or not Kaipara Maori were left with sufficient land at the conclusion of the main burst of Crown purchases remains to be answered. Part of the question involves exploring the nature of several native reserves set aside in Crown purchases. It also requires a brief assessment of the Maori population in the Kaipara area at 1865. Finally, it requires some attention to the relationship between land ownership and political authority. Did the Crown leave Kaipara Maori economically and politically marginalised by the intensive pre-1865 purchases?

Before considering the first of these four issues, it is necessary to describe the sources used in this study. The existing historical interpretations of Kaipara Crown purchases will also be briefly surveyed. Following that, Kaipara old land claims will be introduced as laying the groundwork for Crown purchases. Finally, the special background of the architect of most Kaipara Crown purchases, John Rogan, will be outlined.

4.1.3 The sources

This study relies largely upon published primary and secondary sources. Published primary sources include the 'Extinguishment of Native Title' correspondence in the 1861 *Appendices to the Journals of the House of Representatives*. They also include the Crown purchase deeds and plans published by Turton during the 1870s and 1880s. A comparison was made between Turton and the original deeds and plans held at the Department of Survey and Land Information's Heaphy House in Wellington. The results are summarised in the following table of pre-1865 Kaipara Crown purchases.

Published Crown purchase correspondence has been supplemented with Rogan's private letters in the McLean papers, and with the unpublished 'Register of Chiefs' held at the National Archives in Wellington.[3] Likewise, basic old land claim information has been obtained from Commissioner Bell's published 1863 list, but this has been supplemented by consulting both original OLC files and Surplus Land Commission summaries of them at the National Archives.[4]

This study is necessarily limited by the range of sources consulted. None of the original Maori Affairs (except MA 23/25), Internal Affairs, or Justice Department files have been consulted. Nor has the Maori correspondence in the Grey and McLean papers, or missionary and unpublished local history sources. This study is also limited as far as socio-economic data is concerned. There has been no attempt made to analyse the relationship between the timber trade and Crown purchases, simply because that kind of information is not readily available in Wellington.

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3. Register of chiefs, c 1865, MA 23/25 (see table 9)
4. Appendix to the report of the Land Claims Commissioner, AJHR, 1863, D-14 (see also table 7)

TABLE 6: KAIPARA CROWN PURCHASES

DOSLI CPI DEED NO	DIST	BLOCK NAME	LOCALITY	DATE	YEAR	ACREAGE: estimated (e), actual (a)	a & e	PRICE	TURTON'S DEED REF	PLAN	PURPOSE	REMARKS
188	AUC	TOKATOKA (Parore's claim)	KAIPARA	10 SEP 1855	1855			150	p 190	-		Written deed signed by Paore (see TD No 147). £220 received this day.
184	AUC	OKAHU No 1	KAIPARA	23 NOV 1857	1857	16000	e	500	p 194	+		Written deed signed by Paikea and 2 others of Te Uriohau (see TD No 150). Additional payment made upon finding the block to contain a further 2,600a (see AUC 185).
186	AUC	TATARARIKI (Patarariki?)	WAIROA RIVER; KAIPARA	24 MAR 1857	1857	12000	a	350	p 192	+		Written deed signed by Timoti and 83 others (Te Uriohau?) (see TD No 149). Maori version of deed on DOSLI SEP NO 7. Acreage given as 'about' 12,000a on the plan.
175	AUC	KAUKAPAKAPA (East)	KAIPARA	08 DEC 1858	1858	5787	a	500	p 200	+		Printed deed signed by Karauria and 38 others of Ngati Whatua (see TD No 154). Reserve is marked on the original plan, for sale of see AUC 177. IN FILE 24 AUG 1891
181	AUC	PAPAROA	KAIPARA	23 DEC 1858	1858	15021	a	500.7	p 201	+		Printed deed signed by Mihaka Karena and 100 others (including signatures of children) of Te uriohau (see TD No 155). Tutaemakano (72a) set aside as a reserve.
182	AUC	MATAKOHE	KAIPARA	03 MAR 1858	1858	68000	e	3900	p 198	+	MATAMATA AERODROME	Printed deed of sale signed by Timoti and 26 others of Te Uriohau (see TD No 153). £1900 received by Paikea and others on 6 May 1858 (see AUC 182-ii), and £2000 received this day. IN FILE 24 AUG 1891.
183	AUC	TE IKA A RANGI NUI	KAIPARA	19 FEB 1858	1858	8128	a	500	p 196	+		Printed deed signed by Piripi and 14 others of Te Uriohau and Ngati Whatua (see TD No 152).
185	AUC	OKAHU No 2	KAIPARA	25 SEP 1858	1858	2600	e	100	p 196	-		Written deed signed by Paikea and two others of Te Uriohau (see TD No 151). This was an additional payment to AUC 184 upon finding the block to contain a further 2600a.

187	AUC	WAIKIEKIE No I.	KAIPARA	30 Oct 1856?	1858		a	400	p 190	+		Written deed signed by Paikea and 28 others (see TD NO 148). Maori translation of deed (with plan) on DOSLI SEP No 103. * See also AUC 171.
176	AUC	KAUKAPAKAPA WEST	KAIPARA	24 MAR 1859	1859	5223	a	300	p 205	+		Printed deed signed by Hauraki and 10 others of Ngati Whatua (see TD No 157). IN FILE 24 AUG 1891. Reserve for Keene marked on original plan, for sale of see AUC 178.
179	AUC	PUKEKAKORO	KAIPARA	21 JUL 1859	1859	8400	a	422.9	p 206	+		Printed deed signed by Arama Karaka and five others of Te Uriohau (see TD No 158). 50a reserve set aside for Arama Karaka. Plan shows bordering blocks.
180	AUC	ARAPOHUE	WAIROA RIVER KAIPARA	02 FEB 1859	1859	9500	a	350	p 203	+		Printed deed signed by Kahu and 20 others of Te Koroa and Ngati Kawa (see TD No 156). IN FILE 24 AUG 1891.
159	AUC	MAIRETAHI	KAIPARA	24 AUG 1860	1860	5950	a	297.5	p 214	+		Written deed signed by Paore Tuhare and five others of Ngati Whatua and Mangamata (see TD NO 163). 350a reserve called Mairetahi shown on plan. IN FILE 24 AUG 1891.
160	AUC	WAIONEKE	KAIPARA	21 DEC 1860	1860	20600	a	1030	p 215	+		Written deed signed by Manukau, Keene and Paraone of Wairuhe te Mangamate (see TD 164). £330 paid previously and £700 paid this day. Two reserves set aside, Waiharekeke (81a 3r 11p) and Karangata (40a).*
161	AUC	TE KURI	KAIPARA	24 DEC 1860	1860	13320	a	661	p 217	+		Printed deed signed by Tmairangi and two others of Te Wairuhe, Te Rarawa, and Te Kawewahie. £39 10s paid previously and £622 paid this day. Otaho Reserve (680a) set aside (see TD No 165).
162	AUC	ORUAPO No 1	KAIPARA	27 DEC 1860	1860	8842	a	232.1	p 218	+		Printed deed signed by Paikea and five others of Te Uriohau and Ngati Whatua (see TD No 166). Full consideration £442 10s. Same area as in AUC 163. 90a reserve called Tapapahuakaroro set aside (sold in AUC 166). See AUC 163 for further transactions.

163	AUC	ORUAPO No 2	KAIPARA WAIROA	31 DEC 1860	1860		a	210		-	RESERVE	Printed deed signed by Te Otene Kikokiko and two others of Ngati Whatua (see TD No 167). £60 received this day. Same reserve set aside as in AUC 162.*
173	AUC	ORUAWHARO No 1	KAIPARA	27JAN 1860	1860	30000	e	500	p 211	+		Printed deed signed by Te Otene and 18 others of Ngati Whatua (see TD No 161). For subsequent transaction see AUC 174. Paraheke set aside as a reserved (wahi tapu). Plan on 173-ii.
174	AUC	ORUAWHARO No 2	KAIPARA	02 FEB 1860	1860			700	p 212	+		Printed deed signed by Nikora and 23 others of Te Uriohau (see TD No 162). For previous transaction see AUC 173. Paraheke set aside as a reserve (wahi tapu). PlLan on 174-ii.
177	AUC	OTENE'S RESERVE KAUKAPAKAPA BLOCK EAST	KAIPARA	06 JAN 1860	1860	200	a	27	p 209	-		Printed deed signed by Otene Kikokiko of Ngati Whatua (see TD No 160). Sale of reserve set aside in AUC 175.*
178	AUC	TE KEENE'S RESERVE KAUKAPAKAPA BLOCK WEST	KAIPARA	05 JAN 1860	1860	200	a	15	p 208	-		Printed deed signed by Keene and two others of Ngati Whatua (see TD No 159). Sale of reserve set aside in AUC 176.*
164	AUC	OKAKA	KAIPARA	19 NOV 1861	1861	1851	a	138.83	p 222	+		Printed deed signed by Paora Tuhare and two others of Te Taou o Ngati Whatua (see TD No 169). Te Rare set aside as a reserve.
165	AUC	WHIRITOA	KAIPARA	28 NOV 1861	1861	1558	a	116.85	p 224	+		Printed deed signed by Karauria and Keene for Ngati Whatua. Atiu reserve (37a) set aside on survey of Whitiroa (see TD No 170). This reserve was later sold by Keene for £2 15s on 25 June 1862 (see TDR No 11 TI:p719).
98	AUC	KOMAKORIKI NO.2 (additional)	MAHURANGI	04 NOV 1862	1862	395	a	39.5	p 264	+		Printed deed signed by Hemara and Te Keene of Ngati Rango. See TD No 204. IN FILE 24 AUG 1891.
99	AUC	KOMAKORIKI No 1	MAHURANGI	29 SEPT 1862	1862	35395	a	3500	p 264	+		Written deed signed by Hemara and 15 others of Ngati Rango. See TD No 203. IN FILE 24 AUG 1891. PLan shows bordering blocks. See AUC 98 for a later transaction on this block.
153	AUC	Otiaho Reserve (part of)	KAIPARA	22 JUL 1862	1862	474	a	35.55	p 226	+		Printed deed signed by Manukau and Paraone Ngaweke of Te Uriohau (see TD No 172).

154	AUC	WAIHERUNGA	KAIPARA	24 JUL 1862	1862	2884	a	216	p 228	+		Printed deed signed by Arama Karaka and others of Te Uriohau (see TD No 173). Otai Reserve, 36a 1r 0p set aside (later sold, 16 Sept 1862 for £2 14s 6d - see TDR No 17, p 721).
155	AUC	MATAWHERO. No 1.	KAIPARA	26 NOV 1862	1862	5480	a	342.5	p 233	+		Printed deed signed by Te Koakoa te Moananui and Wiremu Pungaru of Ngati Whatua (see TD No 177). See Auc 156 for subsequent payment. 24 acre reserve called Te Karae, shown on plan sold by Keene and Wiremu Pungaru for £3, see TDR No 20, p 722.
156	AUC	MATAWHERO No 2	KAIPARA	08 DEC 1862	1862			342.5	p 234	-		Printed deed signed by Wiremu Rewheti and seven others of Ngati Whatua (see TD No 178). See AUC 155 above for previous payment.
166	AUC	TAPAPAHUAKARORO RESERVE ON ORUAPO BLOCK	KAIPARA	22 JUL 1862	1862	90	a	10	p 225	+		Printed deed signed by Paikea and Arama Karaka of Te Uriohau (see TD No 171). Sale of reserve form AUC 162 and 163. Area appears to be wahi tapu.
167	AUC	OPOU	KAIPARA	24 JUL 1862	1862	985	a	98.5	p 229	+		Printed deed signed by Matikikuha and five others of Te Uriohau (see TD No 174). Plan shows bordering blocks.
168	AUC	WHAKAPIRAU	KAIPARA	24 JUL 1862	1862	2600	a	260	p 230	+		Printed deed signed by Paikea and seven others of Te Uriohau (see TD No 175). 100a reserve shown on plan.
169	AUC	PIROA	KAIPARA	29 JUL 1862	1862	9200	a	500	p 231	+		Printed deed signed by Arama Karaka and eight others of Te Uriohau (see TD No 175). Plan shows bordering blocks.
172	AUC	MAUNGATUROTO	KAIPARA	21 May 1862	1862	6815	a	511.13	p 221	+		Written deed signed by Miriama and four others of Ngai Tahuhu (see TD No 168). Plan shows bordering blocks. IN FILE 24 AUG 1891.
157	AUC	ROKETAHI	KAIPARA	05 AUG 1863	1863	810	a	101.25	p 239	+		Written deed signed by Te Para and two others of Ngati Whatua (see TD No 182). Plan shows bordering blocks. IN FILE 24 AUG 1891.
158	AUC	ARARIMU	KAIPARA	14 FEB 1863	1863	7165	a	1433	p 236	+		Written deed signed by Paora Tuhaere and four others of Te Taou (see TD No 179). Paore Tuhaere received an advance of £750 on this purchase on 20 Jan 1863, see TDR No 21, p 723.

170	AUC	KAIKAI	KAIPARA	31 JUL 1863	1863	2230	a	334.5	p 237	+		Printed deed signed by Te Otene and five others of Nagti Whatua (see TD No 181). IN FILE 24 AUG 1891.
171	AUC	WAIKIEKIE	KAIPARA	28 APR 1864	1864	33800	a	566.67	p 242	+		Printed deed signed by Paikea and eight others of Te Uriohau. Plan shows bordering blocks. For previous transactions see AUC 187 and TDR No 13 TI:p 720.*
191	AUC	MARERETU	KAIPARA KAIPARA	06 MAY 1864	1864	27500	a	2162.5	p 244	+		Printed deed signed for by Paratene Tauputai and 12 others of Te Uriohau £1912 10s (see TD No 185). £150 advance received by Matikikhha and five others on 1 Aug 1862 (see TDR No 14 TI: p 720).* IN FILE 24 AUG 1891

4.1.4 Historiography

While the existing historical works on Kaipara Crown purchases are not extensive, at least three works suggest a commonly accepted interpretation. Two local histories and a recent best-selling book on the general application of Treaty principles express a 'willing seller' view of Crown purchases. Dick Butler, in his history of the Kaiwaka area published in 1963, outlines details of some of the major transactions with little overt interpretation.[5] Dick Scott's history of the Te Pahi area, published in 1987, is much more explicit. He argues that Ngati Whatua/Te Uri o Hau sold their Kaipara Land to provide 'a cushion of European settlement between the Ngapuhi and Auckland'.[6] Stuart Scott's recent book, *The Travesty of Waitangi*, argues that the North Island Crown purchase deeds published by Turton demonstrate the 'scrupulous care' with which the Crown's agents operated. He maintains that:

> The sales represented by Turton's 656 Deeds were signed by willing sellers in carefully regulated circumstances and exactly in [accordance with?] the terms of Article II of the Treaty, which were meticulously respected by the Crown.[7]

4.1.5 Old land claims and Crown purchases

Maurice Alemann's thesis on the subject makes it quite clear that Kaipara Crown purchases can be understood only in relation to the old land claims which preceded them.[8] In two cases, at least, it is difficult to distinguish the two categories. Furthermore, an old land claim lay at the heart of the 1862–63 Mangakahia dispute, even though Crown purchase negotiations probably triggered the explosion.

The two cases which are difficult to categorise either as old land claims or Crown purchases are those arising out of the 1842 muru at Te Kopuru and out of O'Brien's disputed Whakahara claim. According to Alemann, Tirarau muru'd trader (and later protectorate official) Thomas Forsaith's property in retaliation for alleged desecration of a local urupa. Governor Hobson instructed Protector George Clarke Senior to demand compensation from the offending chief after referring the matter to the Colonial Secretary in London.[9] According to Alemann, Protector Clarke then 'extracted' an undertaking from Tirarau to cede 6000 acres to the Crown as compensation. On his upper Kaipara map, Alemann shows this area (six or seven miles south of Dargaville) as 'surplus land' arising from Forsaith's old land claim at Te Kopuru.[10] Since the Crown apparently awarded Forsaith scrip, valued at £3390,

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5. Dick Butler, *This Valley in These Hills*, Maungaturoto, 1963, pp 63–82
6. Dick Scott, *Seven Lives on Salt River*, Auckland, 1987, p 13
7. Stuart Scott, *The Travesty of Waitangi*, Christchurch, 1995, pp 43–44. For less sanguine views of pre-1865 Crown purchases, see M P K Sorrenson, 'Maori and Pakeha', and Ann Parsonson, 'The Challenge to Mana Maori', in Geoffrey Rice (ed), *The Oxford History of New Zealand*, 2nd ed, Auckland, 1992, pp 147–148, 178–179.
8. Maurice Alemann, 'Early Land Transactions in the Ngati Whatua Tribal Area', MA thesis, University of Auckland, 1992, pp 1–3
9. Hobson to Stanley, 25 March 1842, CO 209/14, p 202
10. Alemann, Ngati Whatua transactions, pp 14–16

the area may be better described as 'scrip land'.[11] The O'Brien old land claim at Whakahara on the opposite side of the lower Wairoa River is one that Alemann considers to be appropriately classed 'either as an Old Land Claim or a Crown Purchase'.[12] O'Brien originally claimed 60,000 acres, but according to Bell's information, commissioners 'disallowed' his claim or recommended no grant. None the less, in late 1854 the Whangarei District Land Purchase Commissioner, John Grant Johnson, effectively upheld O'Brien's 'disallowed' claim, which had become a source of conflict between Maori from the Hokianga to Kaipara.

Johnson reported that this claim had brought unidentified Hokianga and Kaipara tribes 'to issue with the Natives of the Wairoa under Parore and Tirarau'. Johnson indicated that his superiors had 'instructed' him 'to complete' O'Brien's Whakahara 'purchase . . . [as] a matter of necessity' because it had provoked intertribal conflict. The Crown determined that O'Brien had originally paid Maori £289 15s, and reimbursed him that amount. Johnson then paid Maori an additional £170 in December 1854, after they signed a formal deed of conveyance.[13] This transaction, therefore, appears to be properly described as a 'Crown purchase' even though it originated from a 'disallowed' old land claim. Furthermore, although O'Brien originally claimed 60,000 acres, when Johnson examined the land he estimated it to be no more than 3000 acres in extent (see fig 5).[14]

The process by which a 60,000-acre 'disallowed' old land claim became a largely undocumented 3000-acre Crown purchase illustrates the problem of satisfactorily reconstructing some of the pre-1865 transactions. In the case of Whakahara, the Crown evidently thought Land Claims Commissioner recommendations were not binding. Since commissioners had not recommended a grant, the claim area remained unsurveyed when Johnson 'completed' the transaction in 1854. Even where commissioners recommended grants, such as in the Wright/Grahame Te Wairau (OLC 9) and Elmsley/Walton Omana (OLC 175) claims, these areas remained unsurveyed until the late 1850s. This invariably led to disparities between claimed and surveyed acreage, as illustrated by the following table of Kaipara old land claims.

In the cases of the Te Wairau and Omana claims, disparities between claimed and surveyed acreage run in both directions. At Te Wairau, near the head of the Otamatea River, Wright and Grahame claimed 40,000 acres but surveyed only 6446 acres in grants and 636 acres as surplus land. Conversely, at Omana, Elmsley and Walton claimed only 6000 acres, but had 44,171 acres surveyed. In both cases the disparities appear to be due to simultaneous overlapping old land claim and Crown purchase surveys. These cases will be referred to in more detail when examining survey overlaps as part of the subsequent discussion of the boundary question.

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11. Bell appendix, AJHR, 1863, D-14, p 49. Bell appears to be mistaken when he refers to this scrip exchanged 'for 678 acres ceded by the natives of Kaipara as compensation for a robbery'. Forsaith apparently claimed 678 acres at Te Kopuru, but the amount of scrip he received in exchange for his claim there suggests that the Crown claimed much more than 678 acres.
12. Alemann, Ngati Whatua transactions, p 32
13. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, p 94
14. For some reason the Crown failed to lodge the 1854 Whakahara deed, and its accompanying sketch map, among the original Crown purchase deeds now held in Wellington.

CLAIM	CLAIMANT	LOCALITY	DATE	CLAIMED	SURVEY	GRANT	SCRIP	SURPLUS	PLAN	REMARKS
942	WMS	Tangiteroria	17 Nov 1836	400		400				Granted 8 Nov 1855
942	Atkins						133		124	Granted 5 Jan 1864
935	Edmund Roff	Ureroa	27 Dec 1837	80	80	80			215	Granted 10 Feb 1862
175	Walton & Emsley	Omano	7 Sept 1839	6000	44,171	4666		5820	239	26,508 acres Waikiekie Cp Alemann p 22
175	Walton					7042				6625 acre survey allowance
626	T S Forsaith	Mangawhare	10 Sept 1839	400						
626	Atkins					251				Granted 5 Jan 1864
11	J V Macnee	Mihirau	22 Oct 1839	4000		2232				Granted 1844
11	W S Grahame					1818			169	Grant 2 Mar 1858 excl. 53 acres Wahi Tapu
628	T S Forsaith	Hokorako	29 Oct 1839	2000		823			50,136	Granted 14 Mar 1858
25	Samuel Hawke	Oruawharo	10 Dec 1839	12,000						Withdrawn. Inc in later Cp. Alemann p 31
918	Alex Ross	Whakahunui	17 Dec 1839	300		150				Granted 22 Oct 1844
918	John Wilson					198			70	Granted 9 May 1864
956–957	Jackson & Petersen	Waitieke	1 Jan 1840	5000			2560			SLC staff unable to locate the area
936	Edmund Roff	Otarawa	3 Jan 1840		80	80			216	Granted 10 Feb 1862
9	Wright	Te Wairau	10 Jan 1840	40,000	6446	3223		636	11	Overlapped Piroa & Pukekaroro Cps (or at least the former)
9	Grahame		10 Jan 1840			3223				Unclear whether Feton's OCC plan 10 is acted upon
284	Edward Lord	Okeo	10 Jan 1840	5000						Crown acquired 539 acres. Shown on p 18 map as surplus p 29
284	(Grahame)									Scrip paid to H Walton as trustee for Lord estate
26	W M Christmas	Koririkopunui	20 Jan 1840	1000		706				Granted 30 Dec 1844
26	Thos Bray					250			146	Granted 19 Jan 1864
646–647	(Makepeace) & E Powell	Pawera (Kotiritiri)	29 June 1840	720						Reverted to Crown as 'surplus' Alemann p 28
646–647	Makepeace		4 July 1840	750			106		100	
355	Andrew O'Brien	Whakaikara	1 Jan 1840	60,000			289			Additional Payments in 1854. Cp Alemann p 32
627	T S Forsaith	Te Kopuru	1 Jan 1842	678				678		Alemann believes area contained 6000 acres, p 16
707	Honey & Parker	Kaukapakapa				1600			257	Granted 30 Dec 1844
	TOTALS			138,328	50,777	26,742	3088	7134	51,683	

Table 7: Kaipara old land claims

Likewise, the old land claim origins of the 1862–63 Mangakahia dispute will be referred to in detail in the more in-depth discussion of the Maori representation issue below.

4.1.6 Rogan's background

In the remainder of this introduction, I will briefly traverse the special background of the most important Crown purchase agent in the Kaipara area, John Rogan. Although Rogan does not appear in either the 1940 or 1990 *Dictionary of New Zealand Biography*, he may rank among a handful of the most important purchase agents prior to 1865. According to the 1990 dictionary entry on New Zealand Company surveyor Frederic A Carrington, Rogan arrived in New Zealand on 8 February 1841 with the company's Taranaki survey party.[15] By the early 1850s, Rogan had begun a series of Crown purchase surveys in the Kawhia and Taranaki areas. He had also begun a close personal association with the major architect of Crown purchase policy throughout New Zealand, Donald McLean.[16]

During the mid-1850s, Rogan reported the increasing opposition of many Maori to Taranaki purchases. In early 1855, for example, he reported Maori obstruction of his survey of the Hua block. To McLean, he wrote that he told Maori 'that should they continue to interrupt me in the survey . . . it is most probable you will send me instructions to proceed to some other district'.[17]

Rogan combined duties as a purchase agent and surveyor after 1855 in both Taranaki and Whaingaroa. During 1857, and again in 1860 and 1861, Rogan visited Waitara to attend both to the vexed purchase negotiations, and to the related surveys.[18] Thus, both before and during his Kaipara activities, Rogan experienced concerted Maori opposition to Crown purchases. This undoubtedly influenced the way he operated in the Kaipara area.

Rogan's close personal association with his superior, Donald McLean, also guided his purchase activities. In addition to conducting a regular private correspondence with McLean after 1852, Rogan evidently partnered him in several private business ventures such as South Island 'sheep speculation'.[19] Rogan also took charge of the Land Purchase Department office in Auckland during McLean's frequent absences at Ahuriri during 1857–63. During this time Rogan looked after McLean's personal business affairs and invested in south Auckland land.[20] While acting for McLean in Auckland, Rogan also reported the frequent political attacks on the performance of the Land Purchase Department. In March 1858, for example, he informed McLean of his suspicion that 'the [Stafford] Ministry are desirous of smashing our department altogether'.[21] When McLean remained at Ahuriri managing his extensive

15. *Dictionary of New Zealand Biography*, Wellington, 1990, vol 1, p 72
16. Rogan and McLean, 20 December 1852, 21 August 1854, McLean papers fol 540, ATL
17. Ibid, Rogan to McLean, 19 January 1855
18. Ibid, Rogan to McLean, 12 November 1855, 24 August 1857, 22 May 1860, 12 July, 15 August 1861, fols 540–541
19. Ibid, Rogan to McLean, 11 April 1857, fol 540
20. Ibid, Rogan to McLean, 23 November 1858, 23 May 1859; ibid, Rogan to McLean, 5 November 1859, 22 November 1862, 19 September 1863, fol 541
21. Ibid, Rogan to McLean, 6 March 1858, fol 540

private land holdings and political interests, Rogan observed the changing political situation in Auckland. As Rogan reported in September 1859, emigrant ships had just unloaded hundreds of land-hungry settlers. He added 'the old settlers are quite lost in the Crowd the changes which are taking place here are beyond all description'.[22]

Thus Rogan's personal association with the head of his department, his substituting for him in Auckland, and his awareness of political power, made him a particularly influential Crown purchase agent. In the Kaipara area he claimed a success that had eluded him as a Crown purchase agent in Taranaki.

4.2 REPRESENTATION OF MAORI INTERESTS

4.2.1 The Crown's standards

When the shooting broke out at Mangakahia in 1862, Rogan's response must have been influenced by his previous experiences at Waitara. In analysing the origins of the northern dispute, Rogan stressed the history of the Musket Wars. He recited how in 1825 Nga Puhi, supported by Tirarau, 'almost exterminated' Ngati Whatua, and Te Uri o Hau, at Te Ika a Ranganui. Rogan believed that this act of conquest would always ensure an uneasy relationship between Tirarau's people (usually described as Te Parawhau) and the Te Uri o Hau, who remained in the Kaipara area.[23]

Implicit in Rogan's judgement of proper representation of Maori interests in the Kaipara area was the assumption that the Crown had to consider both the conquerors and the conquered. Francis Dart Fenton, during his brief sojourn at Kaipara as its first resident magistrate, offered a similar judgment. He shared Rogan's assumption of the need to balance the interests of 'Ngapuhi' and 'Ngati Whatua'. In 1854 he recommended the completion of the first major Kaipara Crown purchase at Tokatoka to 'form a good neutral territory between the Ngapuhi and Ngati Whatua tribes'.[24] Johnson, the Whangarei District Commissioner, concurred with Fenton. Having encountered a maze of overlapping Maori interests at Ruakaka, Waipu, and Mangawhai, Johnson counselled caution. In 1856 he told McLean that:

> the complicated nature of the claims of tribes and individuals require much patient investigation before a conclusion [of Crown purchase negotiations in his district] can be arrived at . . .[25]

Two standards the Crown used in determining the representation question could therefore require the balancing of conflicting Maori interests and careful investigation.

In 1856 the Crown became more explicit about these standards in the submissions of its various agents to the board of inquiry into the 'State of Native Affairs'.

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22. Ibid, Rogan to McLean, 25 September 1859, fol 541
23. Rogan memo, 15 May 1862, AJHR, 1863, E-4, no 14, pp 15–16
24. Fenton to Johnson, 1 December 1854, enclosed in Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, no 1, pp 93–94
25. Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, no 42, pp 69–70

Chaired by the Surveyor-General C W Ligar, this board heard evidence from 34 selected informants (24 Pakeha and nine Maori) including Rogan, McLean, and Fenton. Fenton told the board:

> The Kaipara Natives are willing to sell their lands, and they complained that the Treaty of Waitangi is infringed by the Government not purchasing their lands when offered for sale. Their argument is, that if they are precluded from selling to any but Government, the Government are bound to purchase when the offer is made, otherwise to release them from the restriction [of pre-emption].

He went on to state that Maori preferred pre-emption to private sale, and required tribal consent since Fenton had 'never heard of a native holding a strictly individual title to land'.[26] Rogan, appearing as the Whaingaroa District Land Purchase Commissioner, emphasised the difficulties he had encountered in Taranaki. He, too, stressed the need for tribal consent before proceeding with major purchase, or with the individualisation of tenure.[27]

The board's final report covered most aspects of the representation question. On the nature of customary tenure, it found that among Maori 'title or claim to land . . . arose from occupation . . . [but] existed no longer than it could be defended from other tribes'. It also concluded that individual rights were always subordinate to overriding tribal rights.[28] Although the board accepted the need for tribal consent to purchase, it recommended offering selected chiefs individual Crown grants for lands reserved from purchase.[29] McLean endorsed these findings. He stated that Crown purchase agents were all fully apprised of the complexity of customary tenure and conflicting claims in various areas. He also reassured the Governor that his agents would exercise the 'utmost caution' in negotiating purchases.[30]

By late 1860, however, the Crown's standards for assessing appropriate representation had changed from those established in 1856. The apparent consensus on the complexity of Maori interests in land declared by the board of inquiry and McLean in 1856 had evidently foundered on the shoals of the Waitara dispute. In December 1860, Governor Browne declared that not only was there no consensus on the nature of customary tenure, but that no consensus was possible. He stated quite categorically that:

> there is nothing more certain than that there exist among the Native Tribes themselves no fixed rules by which the practice of the Government in its dealings with them for land could be guided.[31]

The Governor's views followed those McLean had expressed to the House of Representatives when he appeared there to defend the Crown's actions at Waitara

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26. Fenton's evidence, 9 April 1856, BPP, 1860 (2719), pp 267–268. On the general subject of pre-emption waiver policy, see Rose Daamen's national theme report.
27. Ibid, Rogan's evidence, April 1856, pp 275–276
28. Ibid, board report, 9 July 1856, p 237
29. Ibid, pp 237–238
30. Ibid, McLean to Governor's private secretary, 4 June 1856, pp 306–308
31. Browne to Newcastle, 4 December 1860, AJHR, 1861, E-1, p 6

in August 1860. On that occasion members asked him to explain his apparent acceptance of overriding tribal rights in 1856, and his rejection of them at Waitara. When asked to 'describe the meaning of Tribal right', McLean answered:

> It varies so much in different parts of the country, I should wish to know what part of the country you refer to – as the custom which prevails in one place does not in another . . .

When asked to define hapu as opposed to tribal 'alienation' rights, McLean answered:

> In some tribes the different hapus must be consulted, in others the chiefs; much depends upon the personal character of the latter . . . The various hapus or families which compose a tribe most frequently have the right of disposal [of land], but not always: the custom varies.
>
> How do you discover what the rights of the parties are?
>
> You must discover them by inquiry of the people in the district where the land is situated, and elsewhere.[32]

The former Attorney-General, William Swainson, found McLean's rejection of clear procedures for guiding Crown purchases, or for determining customary tenure, completely unacceptable. In addressing the Legislative Council, also in August 1860, he declared disbelief that 20 years after the Crown's acquisition of sovereignty:

> half of Her Majesty's subjects . . . the acknowledged owners of the soil, should be left without any recognised law and without any constitutional tribunal for determining their conflicting claims to land . . .[33]

The following year, the former chief justice, William Martin, made the same points with even greater eloquence and conviction. With specific reference to Waitara, he declared the pressing need for an independent tribunal to conduct a full and fair investigation of title to disputed land.[34] The Crown responded to Martin's criticism by publishing 28 pages of notes on his 38-page pamphlet. These notes, of which no official was willing to claim the authorship, simply reiterated Browne and McLean's 1860 statements. Thus, when Martin referred to the need for tribal consent to purchases expressed in customary ways, the notes read:

> It is necessary to say at the outset that there are no fixed rules of Native Tenure applicable alike to all the tribes of New Zealand . . . nothing is more certain than that there were no fixed rules of tenure.[35]

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32. 'Opinions on Native Tenure' attached to Browne to Newcastle, 4 December 1860, AJHR, 1861, app A, p 3
33. Ibid, app E, p 51
34. 'Further Papers Relative to the Taranki Question: Copy of a Pamphlet by Sir William Martin DCL', continuation of papers presented 24 August 1860, AJHR, 1861, E-2, p 12
35. 'Notes on Sir William Martin's Pamphlet', AJHR, 1861, E-2, pp 40, 44

A regrettable feature of these debates about the proper representation of Maori interests in Crown purchase negotiations was the lack of Maori participation. McLean deliberately avoided consulting Maori on these matters. He testified in 1856:

> It is not advisable to say much to the natives about the purchase of their lands; they get suspicious and a desire arises in their minds to retain them.[36]

Even Rogan shrank from too much discussion with his so-called 'friends' from Kaipara. In November 1858 he referred to:

> the arrival [in Auckland] of my friends the Uriohau from Kaipara, which places me in the midst of the fire . . .[37]

Rogan also expressed contempt for pressing the flesh with Maori, something invariably demanded at hui. When he observed Taranaki Commissioner Robert Parris hongi a kuia at Waitara in 1857, he exclaimed that it:

> was too much for me and [I] was consequently compelled to retire in private and roar [with laughter] for about half an hour to myself . . .[38]

The limited available evidence suggests that neither McLean nor Rogan allowed Maori to speak for themselves on the representation question.

4.2.2 Register of chiefs circa 1865

Probably the clearest indication of the Crown's view of who represented whom among Kaipara Maori is the register of chiefs compiled during the 1860s. Although we do not know who completed the information for each chief, it appears to draw heavily on Rogan's reports. Because this is such a valuable source of the Crown's view of Maori leadership, it has been reproduced in full.

The most striking feature of this register is the clear hierarchy of authority perceived by the Crown. Paikea Te Hekeua is described as 'the Paramount Chief of Te Uriohau' and Arama Karaka Haututu as his likely successor. Apihai Te Kawau is 'the chief of his tribe' which is described as Te Taou (today identified with Ngati Whatua).[39] Then Te Otene Kikokiko is described as 'Principal Chief' of the 'Ngatiwhatua' tribe, and Te Keene Tangaroa as 'one of the leading men of Kaipara' with his tribe given as 'Te Taou & Ngatiwhatua'. Parore Te Awha is named as a 'Principal Chief' of Nga Puhi at Kaihu (north of Dargaville).[40]

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36. McLean's evidence, 17 April 1856, BPP, 1860 (2719), p 304
37. Rogan to McLean, 23 November 1858, McLean papers, fol 540
38. Ibid, Rogan to McLean, 24 August 1857
39. Instead of Te Kawau's customary residence of Orakei, the register lists Kopironui (which is presumably in the Kaipara area).
40. See Garry Hooker, 'Parore Te Awha', in *The Dictionary of New Zealand Biography*, Wellington, 1992, vol II, pp 377–378. There he is described as a 'Nga Puhi and Te Roroa leader'.

Maori leadership qualities are often related to participation in Crown purchases and to 'loyalty' during the New Zealand Wars. Apihai Te Kawau receives praise as the chief who:

> invited Governor Hobson to come and settle in Auckland. He sold nearly all his land to the Govt; and his tribe has become well disposed towards the Govt and settlers from that period.[41]

Te Keene Tangaroa, likewise, is described as 'an adherent to the Govt for many years and . . . the means of inducing the natives of this district to dispose of their land'. Paikea's involvement in the 1860 Wairoa dispute with Tirarau refers to the situation which led to the 1862–63 Mangakahia dispute (see below). Despite his involvement in this dispute he is praised as having 'always been well disposed towards the Govt'.

The register reveals how the Crown appointed a number of 'loyal', cooperative chiefs as assessors, both to assist in the administration of justice, and in the negotiation of Crown purchases. Manukau Rewarewha, who had been guilty of provoking tauas prior to his appointment as an assessor, had, 'behaved well since'. Another assessor, named Matiu, managed the 'public business of the [Te Uri o Hau] tribe such as the sale of land'.[42] Te Keene is also described as 'more true to his trust than any Native Assessor in Kaipara'.

Surprisingly, the two chiefs who did not get good conduct ratings, and the one who receives most praise, came from what the Crown considered to be 'outside' iwi. The two chiefs considered 'very troublesome', Hemara Karawai and Parata Mate, are described as Nga Puhi from Puatahi.[43] On the other hand, Winiata Tomairangi Papahia of Te Rarawa (originally from the Hokianga/Whangape area) is given fulsome praise for the following qualities the Crown attributed to him:

> He lives generally as a European and is the only chief in Kaipara who cultivates with the plough – his settlement [Omapou near Oruawharo] is the only industrious one in the District. The result of this is an abundance of food. The R[esident] M[agistrate] has assisted him in purchasing a section of land on which he is about to clear and cultivate. He has become active during the war in counteracting the effects of false rumours spread over the North by emissaries from Waikato. He is one of the best assessors in Kaipara.

The troublesome Nga Puhi chiefs, by contrast, aided and abetted the Waikato prisoners who escaped from their internment on Kawau Island in 1864.[44] With these exceptions, and with the exception of Tirarau's role, the Crown considered most Kaipara Maori to be loyal and cooperative, especially in matters of land purchase.

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41. He is also praised for having attempted 'to prevent Waikato from going to war in 1863'.
42. This may have been Matiu Te Aranui, a principal in the Mangakahia dispute. His death in late 1862 explains the absence of a register entry for him.
43. According to the 1863 map of native settlements, Puatahi is on the eastern shore of Kaipara Harbour near Tauhoa: AAFV 97/G171.
44. See Dick Scott, *Seven Lives on Salt River*, Auckland, 1987, p 16

Table 8: Register of chiefs, circa 1865

NAME	TRIBE	AGE	ABODE	CONDUCT	REMARKS
Karawai, Hemara	Ngapuhi	45	Puatahi		This man together with Parata Matiu and the Ruarangi party were very troublesome in the Kaipara district about two years ago – they made several attempts to cause mischief – he killed two cows belonging to a settler and made several attempts to cause trouble – joined Waikato on the top of Tamahunga – and urged an attack on outsettlers since Waikato left but having no support from the Kaipara nation they have been quiet and civil.
Karaka, Arama (Haututu)	Te Uriohau	45	Otamatea	Good	This man will probably become the principle chief of the tribe after the death of Paikea – He is of high birth – from another tribe which merged into the Uriohau – he is remarkable for his abilities as a speaker.
Kawau, Apihai Te	Te Taou	90	Kopironui	Good	This man is the chief of his tribe, by birth and as a warrior formally – he invited governor Hobson to come and settle in Auckland. He sold nearly all his land to the Govt: and his tribe has become well disposed towards the Govt and settlers from that period. He undertook the journey to Ngaruawahia to endeavour to prevent the Waikato from going to war. Pension 40.0.0 pds
Manakau, Rewharewha	Te Uriohau	48	Arapaoa	Good	Second class chief – This man was remarkable some years ago for holding 'tauas' and kept the natives in the area in continual excitement. He accepted an appointment as Assessor and has behaved well since– He is remarkable for hospitality and has kept his people from interfering with the settlers residing in his neighbourhood. There is a contest between him and Arama Karaka for the lead in the tribe.
Mate, Parata	Ngapuhi	45	Puatahi		See Hemara Karawai
Muriwai, Nopera	Te Taou	75	Muriwai	Good	Receives 10 a year persuasion – very inferior
Otene, Te Kikokiko	Ngatiwhatua	75	Paparona	Good	Principal Chief – this man exerted his influence in inducing the tribe to give up Ruarangi – The public business of the tribe such as the sale of land is generally managed by Matiu (an assessor)– he is peaceably disposed and does not trouble much about general matters. He was the principal party of the gift of 10a to the Govt – on which the current House and other buildings now stand.
Paikea	Te Uriohau	80	Otamatea	Good	This man is the Paramount Chief of Te Uriohau – he is known in connection with the Wairoa dispute against Tirarau & Parore – he collected 400 men in 1860 to fight for the Wairoa. This dispute cost the Govt a considerable sum of money in food at Auckland with a view to settle the question a boundary was partially agreed to and Mr Rogan purchased up to it on the south side . . . . The Natives are now friends and may so continue. Tirarau is now about to bring land under the operation of the Native L. Court which will test the Wairoa question. Paikea and his people have supported their own minister for 8 years – Paikea has always been well disposed towards the Govt.
Parore	Ngapuhi	75	Kaihu	Good	Principal Chief – combined with Tirarau against the Uriohau. He was early connected with Hone Heke – but did not join him in the war at the Bay. – He flies the Union Jack , and has been remarkable among his country men as a man of peace. His people have nearly all died off – he is now comparative helpless.

Papahia, Winiata Tomairangi	Rarawa	46	Omapou	Good	Native Assessor – This man is now the acknowledged chief of the Natives from the North who have Immigrated into the District. – He has elevated himself into this position by his abilities and his marriage with a chief woman from Hokianga. He lives generally as a European and is the only chief in Kaipara who cultivates with the plough – his settlement is the only industrious one in the District. The result of this is an abundance of food. The RM has assisted him in purchasing a section of land on which he is about to clear and cultivate. He has become active during the war in counteracting the effects of false Rumours spread over the North by emissaries from Waikato– He is one of the best assessors in Kaipara.
Tauhia, Te Hemara	Ngatirango	50	Mahurangi	Good	Principal Chief of his place one of the oldest assessors and remarkable for the order in which he keeps his district. He is always able to settle disputes satisfactorily among his people and the Europeans. He is remarkably acute and I believe he adheres to the Govt: because he cannot well do otherwise. he was employed by the Govt: with the escaped prisoners from the Kawau and did good service on that occasion.
Tangaroa, Te Keene	Te Taou & Ngatiwhatua	50	Whanepapa	Good	One of the leading men of Kaipara – by birth a chief and related to all the Kaipara tribes by his father and to Waikato by his mother. He has been an adherent to the Govt for many years and has been the means of inducing the natives of this district to dispose of their land. He has been of real service to the government during the war by putting down natives who were constantly spreading false rumours in the North. He is more true to his trust then any Native Assessor in Kaipara.
Tipene, Wiremu	Te Uriohau	55	Te Tauhara & Oruawharo	Good	This man has been a native preacher for many years, a chief by birth and has more real influence than Paikea himself – although a teacher he urged the tribe to make a stand against Tirarau for the Wairoa – He is now an Assessor and is on good terms with that Chief. His rank is the same as that of Arama Karaka and Manukau Te Rewharewha.
Tirarau, Te	Te Parawhau	70	Mataiwaka	Good	Paramount Chief of Te Wairoa and all Whangarei. This man may be said to be perhaps the greatest chief in this land of New Zealand – by birth and as a warrior formerly, but his influence is now on the decline. He has nearly always been successful in battle and the fame of his exploits are known throughout the North. He took the lead in the late feud against the Mangakahia Natives about land , and which was put an end to by His Excellency the Governor. Tirarau decidedly maintained his reputation for skill in war in this his land battle – He took part in the destruction of Mr Forsaiths property at Mangawhare – and he led an expedition to Whangarei at the time of Hekes war and sacked that village – these are the only acts of aggression that I am aware of against settlers that Tirarau has been guilty of. On the other hand Heke sent him a quantity of bullets with a message to the effect that he intended to remove his warriors from the Bay of Islands pass through his territory and Kaipara to take Auckland which could have been accomplished at that time but Tirarau took the bullets and threw them into the river and sent the messenger away. Tirarau has been a protector to the settlers in his district since that time.
Reweti, Tamata	Ngatiwhatua	50	Te Kawau	Good	A Second class chief – remarkable for his upright conduct – brother in law to Ruarangi and was one of the first to give him up to the law. he exercised all the influence in keeping his people quiet at that time. He is now failing in his health from a tumour on the left side of his head , he may be said to be one of the best Natives in Kaipara.

4.2.3 Tirarau's paramountcy

Although the Crown agents often treated Tirarau as troublesome, they never made the mistake of discounting his importance on this basis. In fact, the author of the Kaipara section of the register refers to him as:

> Paramount Chief of Te Wairoa [roughly Upper Kaipara] and all Whangarei. This man may be said to be perhaps the greatest chief in this part of New Zealand.

Even though the register entry considered that 'his influence is now on the decline', it traced his role in the 1862–63 Mangakahia dispute, and his refusal to allow Heke's taua to reach Auckland during the Northern War of 1845–46. After recounting Tirarau's legendary act of throwing Heke's bullets into the river, the entry concludes by describing him as 'a protector of the settlers in his district since that time' (see table 8).

Even prior to Rogan's arrival in Kaipara, Johnson, the Whangarei Land Purchase Commissioner, had identified Tirarau as a key chief. In December 1853, Johnson reported that he had 'ascertained the nature of native claims' in the Whangarei area. He decided that Nga Puhi prevailed north of the harbour, and Te Parawhau south, but that both were 'in a great measure, controlled by Tirarau, the chief of the Wairoa River in Kaipara'. Johnson, therefore, proceeded:

> thither to gain his consent to the object of my mission, which I obtained in general terms over any tract of country for which I could make arrangements with the more immediate owners . . .[45]

This suggests that Johnson saw Tirarau as exercising a form of political authority over 'the more immediate owners' and that the Crown needed to consult him prior to negotiating purchases in both the Kaipara and Whangarei districts.

Tirarau demanded such consultation in the Mangawhai purchase negotiations of the following year. Johnson recommended compliance with his wishes, because:

> his influence is paramount . . . and . . . [he] will materially assist the more firm establishment of the authority of the Government in these newly acquired districts . . .[46]

Johnson felt Tirarau was crucial to stemming the influence of an anti-Crown purchase movement based in Kaikohe. This movement apparently arose from within the ranks of those who had fought against the Crown in the Northern War, because Johnson identified it with Hone Heke's widow.[47] Thus, recognition of Tirarau's paramountcy served to reinforce the Crown's authority.

The Crown recognised Tirarau's 'paramountcy' in other ways. In the 1854 Maungatapere purchase (near Whangarei), Johnson 'guaranteed' him 'a preemptive

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45. Johnson to Colonial Secretary, 12 December 1853, H H Turton (comp), *An Epitome of Official Documents*, Wellington, 1883, C55
46. Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, no 2, pp 47–48
47. Office of Korongohi and Kuao to Whangarei chiefs, 18 February 1854, AJHR, 1861, C-1, no 2, encls 1, 2, p 49

right of purchase of (1000) acres' of reserve land. Johnson recommended that his superiors approve the purchase because, he argued, it would produce a:

> moral effect on the Native mind [set] by the example of an influential chief like Tirarau, in conjunction with several others who . . . fought against us [in the Northern war] now disposing to the Crown for European colonization, a tract of land situated in the midst of one of their most valuable and cherished localities.[48]

The following year the Colonial Secretary authorised Johnson to arrange a Crown grant for Tirarau at Maungatapere. Although the evidence is contradictory, it appears that the Crown deducted £500 from the purchase price to pay for Tirarau's grant.[49] Be that as it may, when the Crown reported all its grants to 'Aboriginal Natives' in 1862, Tirarau appeared as the recipient of two of only 16 such grants throughout Auckland province.[50]

When Rogan arrived at Kaipara in 1857 he quickly discovered that Tirarau was not to be trifled with. Rogan had to mediate between Tirarau's and Te Uri o Hau interests at Waikiekie almost immediately. By 1859 Rogan appears to have tired of having to placate Tirarau in a series of land disputes. He described the 'paramount' chief to McLean as a 'queer character'. Rogan reported that control over kauri cutting at Kaipara appeared to be 'the great bone of contention' between Tirarau and Paikea (representing Te Uri o Hau).

In addition to this, however, Tirarau was also in dispute with the leading Pakeha timber trader and old land claimant in the area, Henry Walton, to whom he was related by marriage.[51] Tirarau was in a position to prevent Walton's timber workers loading a trading vessel, and he had even prevented Maori from patronising Walton's store near Tangiteroria.[52] Shortly after this, Rogan reported how when 'one of Tirarau's women' had been abducted to the Bay of Islands without his consent, Rogan felt compelled to rectify the situation. He accompanied Parore and a party of 700 Maori to retrieve her. Rogan's comment on Tirarau's authority over Walton could well apply to this situation as well: 'so much for living under despotic rule'.[53] While Rogan respected Tirarau's authority, he did so ruefully, realising that he had no other alternative until the Crown acquired more substantive authority.

4.2.4 Disputes in individual transactions

One of the ways in which the Crown could enhance its authority was by resolving land disputes. The first major dispute in which Rogan attempted to mediate between Tirarau and Te Uri o Hau centred on the 1856–64 Waikiekie purchases. The overlapping Elmsley/Walton old land claim complicated this dispute (to be discussed further as a 'boundary question'). The 1856 deed, which McLean signed

48. Johnson to McLean, 12, 20 November 1854, AJHR, 1861, C-1, nos 22, 24, pp 61–62
49. Kemp (Acting Chief Commissioner) to Colonial Secretary, 30 January 1855; Johnson's return of money received 1854–56, enclosed in Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, no 42, pp 69–72
50. 'Return of all Crown Grants Issued to Aboriginal Natives', AJHR, 1862, E-10, p 27
51. According to Steven Oliver, Walton married Tirarau's niece, Kohura: DNZB, vol 2, pp 526–528.
52. Rogan to McLean, 1 February 1859, McLean papers, fol 541
53. Ibid, Rogan to McLean, 1 February, 29 March 1859

on behalf of the Crown, said nothing about the overlapping old land claim. Furthermore, Tirarau did not sign either the 1856 or the 1864 deeds.[54] None the less, a cryptic note on the original 1856 deed, a note which Turton decided to omit from the published version, reveals Tirarau's intervention in the negotiations. It states simply:

> Paikea [of Te Uri o Hau] not to urge his claims on the North bank of the Tauraroa – Tirarau not to claim land south of Tauraroa.[55]

Although the Tauraroa River appeared to provide the Crown with a neat dividing line between Tirarau's and Te Uri o Hau interests, this neglected at least two complicating factors. The first was the fact that Tirarau had negotiated the pre-Treaty transaction which formed the basis of the Elmsley/Walton old land claim. When eventually surveyed, this claim extended to the south-eastern boundaries of the 1856 and 1864 Waikiekie purchase.[56] Secondly, during the period between 1856 and 1864 the Crown attempted to purchase extensively to the north of the Tauraroa River, but encountered Te Uri o Hau opposition.

In what appears to be a letter written in early 1857, Rogan reported to McLean that Paikea had declined the invitation of the Chief Land Purchase Commissioner to meet at Mangawhare. He wrote:

> Te Uriohau cannot complain with justice as you have given them the opportunity of defending their own rights if they have any to the land offered by Tirarau and Parore.[57]

The area under negotiation appears to have been a sizable one north of the Tauraroa, which Tirarau referred to as Tangihua. In March 1857, Rogan reported that Tirarau:

> requested me to tell the Ngati Whatua tribe that he had written to you for money on account of Tangihua . . .

Rogan indicated Te Uri o Hau were 'rather offended' and threatened to obstruct the Waikiekie surveys 'should you give way to Tirarau's demands'. Rogan advised McLean that he would visit Paikea to win his consent to the Tangihua purchase. If he was able to placate Te Uri o Hau:

> We shall I Think, succeed in purchasing the whole country from the natives as far as Hokianga.[58]

Rogan, however, did not succeed in mediating a Waikiekie/Tangihua settlement. In early 1859, Governor Gore Browne had to summon two disputants to Auckland to placate them.[59] In May 1859 Rogan informed McLean:

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54. 30 October 1856, Waikiekie no 1; 28 April 1864 Waikiekie no 2, TCD, vol 1, pp 190–192, 242–243
55. Note on Auckland 187 deed, original deed held at DOSLI, Heaphy House, Wellington.
56. 7 September 1839, Omana deed, TPD, pp 199–201
57. Rogan to McLean, not dated, McLean papers, fol 544
58. Ibid, Rogan to McLean, 19 March 1857, fol 540
59. Ibid, Rogan to McLean, 1 February 1859, fol 541

> The Kaipara people are all waiting to hear from H E [Gov. Browne] for the great meeting which is to take place when you return from the south.[60]

This 'great meeting' apparently took place in 1860 in Auckland. According to the register of chiefs, Paikea 'collected 400 men in 1860 to fight for the Wairoa'. This almost certainly refers to the Waikiekie dispute, which fed into the later Mangakahia dispute. The register continues:

> This dispute cost the Government a considerable sum of money in food at Auckland [and] with a view to settle the question a boundary was partially agreed to, and Mr Rogan purchased up to it on the South side . . .[61]

The boundary in question was the Tauraroa River. The note inscribed on the 1856 deed ('Paikea not to urge claims . . . North . . . of . . . Tirarau not to claim land south of'), therefore, probably dates from the 1860 Auckland settlement.[62]

For some reason the Crown chose not to publicise its 1860 Waikiekie settlement in the pages of *Te Karere Maori*. None the less, Tirarau's brother acknowledged the Crown's role in the 'Te Wairoa dispute' with Paikea, as well as its role in preventing Maori coming to blows during an earlier (1840s) Mangakahia dispute.[63] Rogan indicated in a private letter to McLean that sometime after the Waikiekie meeting and before the Kohimarama one, Te Uri o Hau were struck down with some sort of epidemic. Rogan even tried to dissuade them from coming to Kohimarama in July 1860, despite his awareness that they would profess their loyalty.[64] The Crown undoubtedly felt it had settled the Waikiekie dispute long before the final payment to Te Uri o Hau in 1864. None the less, when Rogan reported land disputes to McLean in mid-1861 he referred, in the present tense, to:

> the great question which is well known to the Government as existing between Tirarau and Paikea for several years past . . . [65]

Other disputes which Rogan reported in 1861 included the Te Kopuru area, which had been the subject of Crown action in 1842 in response to Tirarau's muru of Forsaith's Mangawhare property (see above). In 1861 Rogan reported that Rapana and his people 'repudiate the [1842] transaction . . .', in which Tirarau apparently consented to the Crown obtaining 6000 acres at Te Kopuru. Rogan maintained that Rapana and his people were involved in the two other disputes. One centred on the eastern boundary of the 1859 Arapohue Crown purchase near Waikiekie, and the other the 1860 Oruapou Crown purchase south of Te Kopuru.[66] In both cases, Paikea represented Te Uri o Hau interests. He apparently secured control of the right to

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60. Ibid, Rogan to McLean, 23 May 1859
61. Paikea entry, register of chiefs, Kaipara, MA 23/25
62. Note on Auckland 187 deed, DOSLI, Heaphy House
63. Taurau Te Tirarau to Governor, 14 July 1860, *Te Karere Maori*, vol VII, no 18, 30 November 1860, p 12
64. Rogan to McLean, 13 July 1860, McLean papers, fol 541
65. Rogan to McLean, 5 June 1861, AJHR, 1861, C-1, no 20, pp 101–102
66. The hapu/iwi identity of Rapana's people is not entirely clear from Rogan's report. They appear to be Ngatikawa and/or Nga Puhi.

distribute the payment among various groups, even though he was willing to allow the Crown to act as a referee in the disputes.[67]

In reporting these several disputes, Rogan compared them to the severity of the Waitara situation which he had personally investigated that same year. When McLean sent Rogan to Waitara, Te Uri o Hau protested. They appealed to the Governor not to send Rogan there 'lest trouble should be brought to the people, and upon the lands of Kaipara'.[68] In contrast to Waitara, the Kaipara disputes were, according to Rogan:

> of a minor nature which will easily be overcome by giving the Natives time to withdraw their objections . . . such as the Oruawharo case which is now finally settled.[69]

4.2.5 Kohimarama conference

The Kohimarama conference of chiefs in July and August 1860 allowed the Crown the opportunity to showcase Kaipara loyalty in contrast to Waitara. Although the Te Uri o Hau delegation didn't arrive during the first two weeks of the conference, other Maori groups began a stream of professions of loyalty which Kaipara continued. Tamati Waka Nene began this stream on 10 July in response to Governor Browne's opening speech.[70] Taurau Te Tirarau professed his loyalty to God and the Queen on 11 July.[71] Raniera Te Iho (Ngati Kahungungu–Wairarapa) proclaimed 'Ko Taku Awhitanga tenei i a Kuini, ko te tukunga i taku whenua'. This the Crown translated 'I Prove my allegiance to the Queen by parting with my lands'.[72] When McLean gave Te Uri o Hau chiefs the floor on 1 August they appeared to be the most loyal of all Maori. Paikea evoked memories of Te Ika a Ranganui with his words:

> Ka mea nga iwi kia poutou ahau, ka piri ahau ki te Kuini, tapapa ana au i nga pukau o te Kuini . . .
>
> Other tribes threatened to cut me in pieces, but I kept close to the Queen and stooped to shelter under her wings.[73]

Several of Paikea's supporters referred to Te Ika a Ranganui as breaking the mana of Te Uri o Hau, forcing them to seek the protection of God and Queen.[74] Manukau (Rewharewha?) suggested that only in allying themselves with the Crown had Te Uri o Hau been able to avenge Te Ika a Ranganui. In his words, 'Kua ea te

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67. AJHR, 1861, C-1
68. Kaipara people to Governor, 30 April 1861, *Te Manuhiri Tuarangi*, vol I, nos 6–7, 1, 15 June, pp 13–14. McLean explained that Rogan was not being permanently transferred: McLean to Paikea, 25 May 1861, AJHR, 1861, C-1.
69. Rogan to McLean, 5 June 1861, AJHR, 1861, C-1, no 20, p 102. He included no further information about this 'Oruawharo case'.
70. Browne's speech, 10 July, Nene's response, *Te Karere*, vol VII, no 13, pp 6–7, 14–15
71. Ibid, p 19
72. Ibid, Raniera Te Iho, 11 July, p 28. He went on, 'Ko taku tukunga tenei i aku whenua kia a Kuini' (I give up my land to Queen Victoria).
73. Ibid, Paikea, 1 August, vol VII, no 15, p 51. He added, 'He nohinohi au i oku wahi whenua' (I am but small amongst the dwellers in the land).
74. Ibid, Wiremu Tipene, Arama Karaka, 1 August, pp 51–52

Ikaranganui'.[75] To cap it all off, Paikea offered the entire conference a loyalty resolution on 10 August. Te Manihera Ruia, a close relative of Tirarau's, seconded it, and it passed unanimously.[76]

The theme of linking land purchase to loyalty, introduced by Raniera Te Iho, continued with other speakers throughout the conference. Hori Winiata (Nga Puhi–Kaipara) stated that he thought land purchases were a means of attracting the Queen's law to his area.[77] None the less, several Maori concerns about Crown purchase practices surfaced during Kohimarama. In reply to the Governor's opening address, Ngati Whatua (Orakei) chiefs cautioned him: 'let not the lands [of Maori] be bought carelessly'.[78] Paora Tuhaere referred to a disputed Crown purchase at Taurarua very early in the proceedings.[79] Mohi te Ahi-a-te Ngu (Waikato–Manukau) protested Crown purchase activity at Pukekohe, stating:

> I parted with my lands whilst I was in ignorance. After you [the Crown] had acquired all my lands you laughed at me for my folly.[80]

Finally, for all their effusive professions of loyalty, both Ngati Whatua and Te Uri o Hau maintained that the Crown had no right to exclude Maori from national political decision making.[81] Although the Crown disseminated the written proceedings of the Kohimarama conference in the expectation that Maori would see it as an almost unanimous vote of confidence, the Maori messages were much more mixed. In providing editorial comment in the last issue of the conference proceedings, the Crown stated confidently that Maori:

> will now give up their barbarous Maori habits for the civilised customs of the Pakeha, they will abandon Ture Maori for the just and enlightened laws of the Pakeha.[82]

Many Maori, on the other hand, saw Kohimarama as the beginning of a process of national political representation in which their voices would be heard. The Crown even conceded that Kohimarama pointed towards Maori 'self government', and that it would become an annual event.[83]

Although Tirarau's brother and Te Uri o Hau pledged their common loyalty to the Crown at Kohimarama, they remained steadfast in their defence of their respective

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75. Ibid, Manukau, 1 August, pp 52–53. Translated: 'by our alliance we were "avenged"'.
76. Ibid, Paikea resolution, 10 August 1860, vol VII, no 16, p 6
77. Ibid, Winiata, 8 August, vol VII, no 17, p 23
78. Ibid, Ngatiwhatua Chiefs to Governor, 16 July 1860, vol VII, no 18, pp 23–24. Paora Tuhaere, Te Keene, Arama Karaka, and 16 others signed this letter.
79. Ibid, Tuhaere, 13 July, vol VII, no 13, pp 41–42. Te Waka Te Ruki (Ngatimahanga-Whaingaroa) accused him of being 'a land seller . . . for it was he who sold Taurarua': 16 July, vol VII, no 14, p 14.
80. Ibid, 28 July, vol VII, no 15, pp 27–29. In fact, Rogan had investigated Maori grievances in the Pukekohe area and reported that 'the natives were clearly in the right, and we have in fact taken possession of a very considerable portion of the most valuable part of the land': Rogan to McLean, 3 July 1858, McLean papers, fol 540.
81. Ibid, Nga Rongomau (Kaipara), 1 August; Tuhaere, 2 August, pp 55, 71
82. Ibid, introduction, vol VII, no 16, pp 3–4. The editor was apparently T H Smith, whom McLean had appointed as secretary of the conference.
83. See Claudia Orange, 'The Covenant of Kohimarama: A Ratification of the Treaty of Waitangi', *New Zealand Journal of History*, vol XIV, no 1, 1980, pp 61–82; *Te Karere*, vol VII, no 16, pp 4, 12–13

tribal interests in Kaipara land. Although references to resolution over Maori land disputes at Kohimarama were vague, the Governor had proposed a legal mechanism for determining individual title to Maori land.[84] Following this, McLean had lectured the chiefs:

> You are aware that many of the disturbances amongst you have arisen out of the subject of land. There are a great many errors in the Maori customs regarding land.[85]

Although McLean foreshadowed the creation of the Native Land Court with these remarks, the Crown failed to offer a specific proposal.

The Crown's preoccupation with Waitara and Waikato conspired to prevent a reconvening of chiefs in 1861. Grey's replacement of Browne in late 1861 also led to a shift in Crown policy away from national consultation and towards the creation of 'new institutions'. These institutions included district rununga, empowered to decide Maori land disputes.[86] Although the Crown did not move to establish a Kaipara runanga, it did publish an intention to do so in March 1862. After ascribing the frequency of land disputes 'to absence of any lawful tribunal to decide titles' in the Kaipara area, *Te Karere* announced that this problem would be promptly remedied because:

> the whole of the Native people on the Kaipara, have gracefully accepted the newly devised system, for the better government of the New Zealand race, [Thus] it is but reasonable to assume that all Maori matters, including land titles, will be quietly settled and in order.[87]

Yet the Crown failed to establish a regularly constituted native district at Kaipara until February 1864.[88] In fact, just two months after the Crown announced its intentions to settle land disputes peaceably, Kaipara Maori had taken the law into their own hands at Mangakahia. The 1864 proclamation of 'new institutions' in Kaipara were therefore little more than the locking of an empty barn.

4.2.6 The 1862–63 Mangakahia dispute

The 1862–63 Mangakahia dispute broke out in an area just north of the disputed Waikiekie purchase. Tirarau transacted part of the area with CMS missionary Charles Baker prior to 1840. He also disputed a substantial part of Baker's claim before Commissioner Godfrey in 1844. Initially, FitzRoy ordered Baker a 1316-acre grant in accordance with the commissioner's recommendations.[89] Commissioners' and FitzRoy took care in stating that this Baker grant should not include land that

84. Ibid, Browne's letter, 18 July 1860, vol VII, no 13, pp 29–30
85. Ibid, McLean, 23 July 1860, vol VII, no 15, pp 1–2
86. See Alan Ward, *A Show of Justice*, Auckland, 1973, pp 137–139. Grey described these institutions in the pages of *Te Karere* in December 1861 as 'Nga Tikanga mo nga Maori'. *Te Karere*, vol I, nos 18–19, pp 6–8
87. *Te Karere*, vol II, no 7, p 11. The concluding phrase in Maori read 'whakaotia marietie i runga i te Ture'.
88. Order in Council, 3 February 1864, *New Zealand Gazette*, 1864, no 7, p 7
89. Tirarau's statement, 12 April 1844, FitzRoy minute, not dated, MA 91/20 (claim 547), pp 8–9

Tirarau claimed in 1844. When Lieutenant-Governor Wynyard attempted to expand Baker's grant to 2560 acres in 1851, Tirarau protested.[90] Rogan's Tangihua Crown purchase negotiations during 1857 almost certainly included much of the Mangakahia area and involved a great deal of survey activity there. In January 1857, Matiu Te Aranui, the person who would become Tirarau's main protagonist, protested Tirarau selling Maungaru to McLean.[91] None the less, Rogan stated that if matters could be properly adjusted between Tirarau and Te Uri o Hau:

> we shall I think, succeed in purchasing the whole country from the natives as far as Hokianga.[92]

Te Aranui renewed his Maungaru protest in early 1858, prompting Rogan to attempt mediation.[93] Tirarau's Te Parawhau kinsman, Hori Kingi Tahua, thwarted this attempt when he alleged that Baker had 'secretly sold' Mangakahia to Te Aranui in 1836.[94] H T Kemp attended a hui on 19 April 1858 at Mangakahia at which the protagonists almost came to blows. Kemp apparently ordered W Clarke to survey the full extent of Baker's original claim, but Tirarau obstructed the survey. Bell insisted upon a full survey, but conceded: 'these inter tribal disputes still exist and the time of their probable settlement is very uncertain'.[95]

Baker was consequently never able to survey the land he claimed at Mangakahia, though the Crown was later to claim the area, partly on the basis of his claim.[96]

Having failed to resolve the Mangakahia dispute through the adjustment of Baker's claim, the Crown apparently renewed purchase negotiations in 1860. Te Aranui protested again, alleging that Tirarau, in league with Henry Walton, was surveying his land at Mangakahia and Wairua.[97] Matikikuha (Te Uri o Hau) also alleged that Tirarau sought to extend the purchase boundaries as far west as Maungatipa, and as far north as Purua (an area of several thousand acres).[98] Rogan agreed to suspend purchase negotiations until the 'Mangakahia natives' (presumably Te Parawhau) reached a 'better understanding' with Te Uri o Hau. Soon, however, Tirarau complained that Te Aranui was surveying at Whatitiri, right in the middle of the disputed area.[99] Tirarau then attempted his own form of mediation with Paikea, the most senior Te Uri o Hau leader.

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90. Ibid, summary, p 1
91. Te Aranui to Governor, 28 January 1857, MA 13/101. For the location of Maungaru, see figure 30.
92. He appears to be referring to the area north of the Waikiekie Crown purchase: Rogan to McLean, 19 March 1857, McLean papers, fol 540.
93. Rogan minute, 30 January 1858, enclosed in Te Aranui to McLean, 18 January 1858, MA 13/101
94. Tahua to Governor, 24 February 1858, MA 91/20 (547), p 10
95. Ibid, Bell report, 28 July 1859, pp 17–18
96. Ibid, A Halcombe to D A Tole, 29 January 1873, p 24. The Crown compensated Baker for his claim in 1865 and in 1873 stated '. . . The Government claims the land covered by Revd Chas Baker's original claim'.
97. Te Aranui to Governor, 17 December 1860, 31 January 1861, MA 13/101
98. Ibid, Matikikuha to Governor, 19 February 1861. Garry Hooker believes that Matikikuha's concluding statement, 'Kia mutu i te Kopuru', expresses resentment at the Crown's acquisition of Te Kopuru during the 1840s. I am indebted to Garry for his advice on this, and many other, puzzling facets of the Mangakahia dispute.
99. Rogan minute, 16 March 1861, on Te Aranui to Governor, 31 January 1861, MA 13/101; Parore, Tirarau, and others to Governor, 4 April 1861, MA 13/101

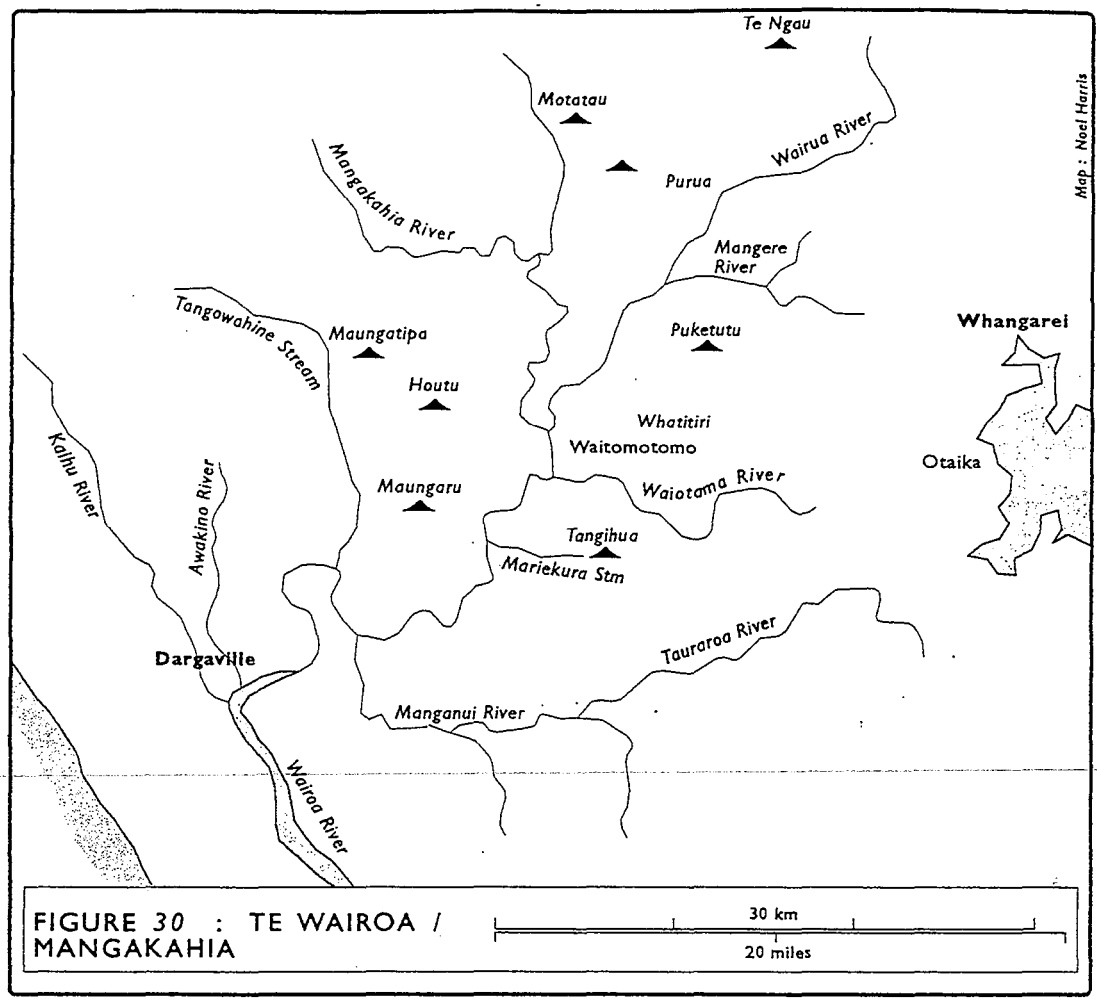

FIGURE 30 : TE WAIROA / MANGAKAHIA

Tirarau attended the tangi of Paikea's wife in May 1861. Upon leaving the tangi he stated, according to Rogan: 'Ko te Wairoa kia Paikea.' At a subsequent Otamatea hui, Paikea held Tirarau to his word. He extended the boundaries of Te Wairoa as far north as Motatau and as far east as Whangarei.[100] In late October Rogan reported that Paikea was demanding the tribute or 'hikipene' from Upper Wairoa settlers that they had previously paid Tirarau in recognition of his authority. Rogan admitted that the dispute had broadened from the original conflict over Mangakahia land, to be one over both land and authority in the larger Te Wairoa area.[101]

In an attempt to narrow the dispute, Rogan offered his services 'to strike a boundary line on the debatable land' at Mangakahia. Tirarau rejected this offer, insisting that the Crown suspend all surveys. Although Rogan generally supported a negotiated solution, he let McLean know that he considered Tirarau to be a more valuable ally than Te Aranui. Tirarau was prepared to donate the land in the

100. Rogan to McLean, 31 October 1861, MA 13/101; Paikea to Governor, 30 August 1861, MA 13/101
101. Rogan to McLean, 31 October 1861, MA 13/101; Paikea to Governor, 30 December 1861, MA 13/101

Mangakahia area for the building of a Whangarei–Kaipara road.[102] Te Aranui, on the other hand, could depend upon more diverse Maori support. His Maori allies came from both Te Uri o Hau and from Bay of Islands and Hokianga Nga Puhi. Furthermore, Bay of Islands Civil Commissioner George Clarke cast Tirarau in the role of the aggressor and implicitly supported Te Aranui.[103]

Although the Acting Native Secretary, Henry Halse, proclaimed the Crown's neutrality in the dispute, both protagonists evidently felt that they had sufficient support to force the issue.[104] According to Clarke, when Te Aranui began to 'mark what he considered his boundary line [at Waitomotomo in May 1862] he was immediately met and opposed by Tirarau'.[105] As a result of the initial fighting, which involved several hundred people, including Te Arawa gumdiggers, at least three deaths occurred.[106]

Rogan's analysis of the origins of the dispute emphasised it as a continuation of the history of Te Ika a Ranganui and Waikiekie. He considered it a simple matter of Te Uri o Hau, represented by Paikea and Te Aranui, arrayed against Tirarau and Parore of Nga Puhi. He repeated the story of how, in 1861, Tirarau 'ceded the Wairoa' (including Mangakahia) to Paikea. Apparently Tirarau expected Paikea to 'cede' him a comparable area in return, but Paikea instead 'returned home, levying taxes on the Europeans under Tirarau's protection'. Subsequently, in Rogan's mind, both Te Aranui and Tirarau sought to sell Mangakahia to the Crown as an acknowledgment of their authority there.[107]

While Rogan's analysis appears flawed in several respects, it is persuasive in identifying the rights represented in the dispute. The simple division of Te Uri o Hau and Nga Puhi interests is flawed in that Te Aranui received important support from northern Nga Puhi, while Tirarau had historically been at odds with them.[108] Rogan's depiction of Tirarau 'ceding' Wairoa in the expectation of a return 'cession' from Paikea is more persuasive. What he appears to identify here is a symbolic exchange of political rights. Certainly, when Rogan reported that, far from reciprocating, Paikea levied 'taxes on the Europeans under Tirarau's protection', he is indicating that Tirarau exercised authority over both Maori and Pakeha in the area. So, to solve the Mangakahia dispute, the Crown would have to establish exactly what was in dispute. Was it the extent of political authority, or was it defined proprietary rights?

Governor Grey had been fully apprised of the political implications of the Mangakahia dispute well before the shooting started. In response to preliminary

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102. Rogan to McLean, 16 October 1862 (sic), AJHR, 1862, C-1, pp 377–378. This dispatch should have been dated 1861, not 1862: ibid, Rogan memo, 15 May 1862, AJHR, E-4, pp 15–16.
103. Tirarau complained about Te Aranui drumming up support in Kaipara and the Bay of Islands during 1861: Parore, Tirarau, and others to Governor, 4 April 1861, MA 13/101; Clarke to Native Minister, 7, 20 February 1862, AJHR, 1863, E-4, no 1–2, pp 6–7.
104. Halse to Clarke, 26 February 1862, AJHR, 1863, E-4, no 3, p 8; Tahua and Tirarau to Governor, 18 May 1862, MA 13/101
105. Ibid; Clarke to Native Minister, 5 June 1862, AJHR, 1863, E-4, no 8, pp 11–12
106. See Steven Oliver, 'Te Tirarau Kukupa', DNZB, vol 2, pp 526–528
107. Rogan memo, 15 May 1862, AJHR, 1863, E-4, no 14, pp 15–16
108. According to Garry Hooker, Tirarau was related by marriage to Te Uri o Hau, and to Nga Puhi by descent. He believes that Te Aranui 'as a Ngati Rangi/Te Uri O Hau objected to Tirarau and Te Parawhau (Nga Puhi) claiming mana' in the larger Mangakahia area: personal communication, 10 May 1995.

plans to visit Kaipara and Mangakahia, Tirarau told Resident Magistrate Walter Buller that if Grey chose to consult Te Uri o Hau first, he would not meet the Governor. He proposed in early 1862 to meet Grey at Mangawhare, and from there to take him up to meet Te Aranui's people at Mangakahia. Butler translated Tirarau's message to Grey as:

> If the Governor should begin his new system with Te Uriohau, let him end it there. He and Paikea may work out their own tikanga; I shall remain at a distance.[109]

When Grey finally reached Mangakahia with Waka Nene after the 16 May hostilities, the Crown reported his arrival as that of a triumphal peacemaker. According to *Te Karere*, both sides 'simultaneously dipped' flags flying over their respective pa before lowering them completely. Then 'all the people hailed the Governor as their father, and the friend of Peace'.[110]

Te Uri o Hau withdrew from the disputed area, which they defined even more broadly than they had in 1861. This time it extended all the way from Kaihu in the west, to Ruakaka/Waipu in the east. Grey resisted the broader Te Wairoa definition in favour of the narrower one 'From Mangakahia to Puketutu'.[111] None the less, when the matter was under arbitration in 1863, the Maori minute-taker, James Fulloon, defined the disputed area as 'mo Mangakahia mo Tangihua, mo Whatitiri, mo Te Wairoa, mo Maungaru, mo Tu Tainoi me era atu wahi'.[112] The disputed area had again grown, apparently without the Crown even realising it.

Grey arranged for both sides to nominate two members of a four-person Arbitration Court to hear evidence relating to the dispute. Tirarau nominated Walton and C Heath as his arbitrators and Kaikohe Chief Te Hira Te Awa took over the opposing side when Te Aranui died in December 1862. Te Hira nominated Te Hemara Tauhia (Mahurangi) and Eruera Te Paerimu (Orakei) as his arbitrators.[113] The proceedings of the Arbitration Court, printed in successive issues of *Te Karere*, provide a preview of what was to appear in Native Land Court minute books after 1863. Maori testimony inevitably dwelt on descent and special kinship associations with both the land and cultural events across a wide area. At the end of six days' hearing, virtually nothing entered the record about previous Crown actions. The published record omits references to any Crown purchase negotiations in the disputed area, and only one witness referred to the pre-Treaty transaction there.[114] Rogan, the best-informed Crown official on the background to the dispute, apparently attended the hearing, but neither side chose to call him as a witness.[115]

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109. Buller to Grey's private secretary, 5 April 1862, AJHR, 1863, E-4, no 17, pp 18–19
110. *Te Karere*, vol II, no 11, 1 July 1862, pp 1–2
111. Te Aranui to Governor, 18 June 1862; 'Memo of Interview between H E Sir George Grey and the Chiefs of the Uriohau', 27 June 1862, MA 13/101
112. Fulloon's notes of original evidence, Arbitration Court, 13–19 January 1863, MA 13/101
113. *Te Karere*, vol III, no 1, 12 February 1863, pp 1–3. Commissioner Bell presided at hearings even though he was not an arbitrator.
114. Minutes of Arbitration Court, 13–19 January 1863, *Te Karere*, vol III, nos 2–6. Te Rewiti Maika referred to Baker's old land claim: vol III, no 4, p 6.
115. Rogan to McLean, 24 January 1863, McLean papers, fol 541

Predictably, the arbitrators could not agree on the merits of the case and referred it back to Governor Grey for his decision.

Grey's published decision in favour of Tirarau bears only a remote relationship to the published evidence. The main reason for Grey's decision was stated as evidence that Tirarau's kin had been in 'undisturbed occupation' at Mangakahia for five generations, and that Te Aranui's kin hadn't. Surviving evidence does not support such a conclusion. In fact, Grey's other findings contradict it. He conceded that both protagonists descended from the same ancestor although Te Aranui's claims in that respect were probably stronger. While unwilling to recognise Crown purchase activities as a cause of the dispute, Grey indicated his willingness to suspend such activities until the dispute had been amicably resolved.[116] For the dispute to be amicably resolved, as indicated above, the Crown logically should have indicated the basis of the dispute, its geographic limits, and a way out of such an impasse. Suspending Crown purchase activity at Mangakahia certainly avoided aggravating the situation there, but didn't necessarily stop it from recurring, or help the Crown avoid it elsewhere.

In order to avoid such disputes in the future, the Crown needed to devise an equitable way of determining Maori representation. Presumably it could have attempted this in consultation with Maori at either the local (runanga) or the national level. Grey chose to operate at the local level, but his 'new institutions' did not continue beyond 1865. At Mangakahia, Maori may have resolved the dispute in their own way without Crown assistance. In April 1863 Rogan reported:

> that old Paikea had given up the Wairoa to Ti[rarau] to do what he likes with it and will not join Matiu's party against him . . .[117]

Paikea may have been simply acknowledging Tirarau's 'cession' of this area upon the death of his wife in 1861, but this probably contributed more towards an amicable resolution than Grey's much heralded 'Decision' of 7 February 1863.

4.3 THE BOUNDARY QUESTION

4.3.1 Old land claim overlaps

The old land claim complications of the two major disputes referred to above (the 1857–60 Waikiekie, and the 1862–63 Mangakahia disputes) demonstrate how boundary overlaps could aggravate disputes. Since most old land claims were surveyed at the same time as Crown purchases, boundary disputes arising from the two different types of transaction could easily become confused. The best demonstration of the overlap effect can be seen in figure 31.

The overlap of over 20,000 acres between the Elmsley/Walton Omana claim and the 1856 and 1864 Waikiekie purchase boundaries compromised the terms of the

116. 'The Decision of the Governor in the Dispute between Matiu and Te Tirarau', 7 February 1863, *Te Karere*, vol III, no 1, pp 4–6
117. Rogan to McLean, 4 April 1863, McLean papers, fol 541

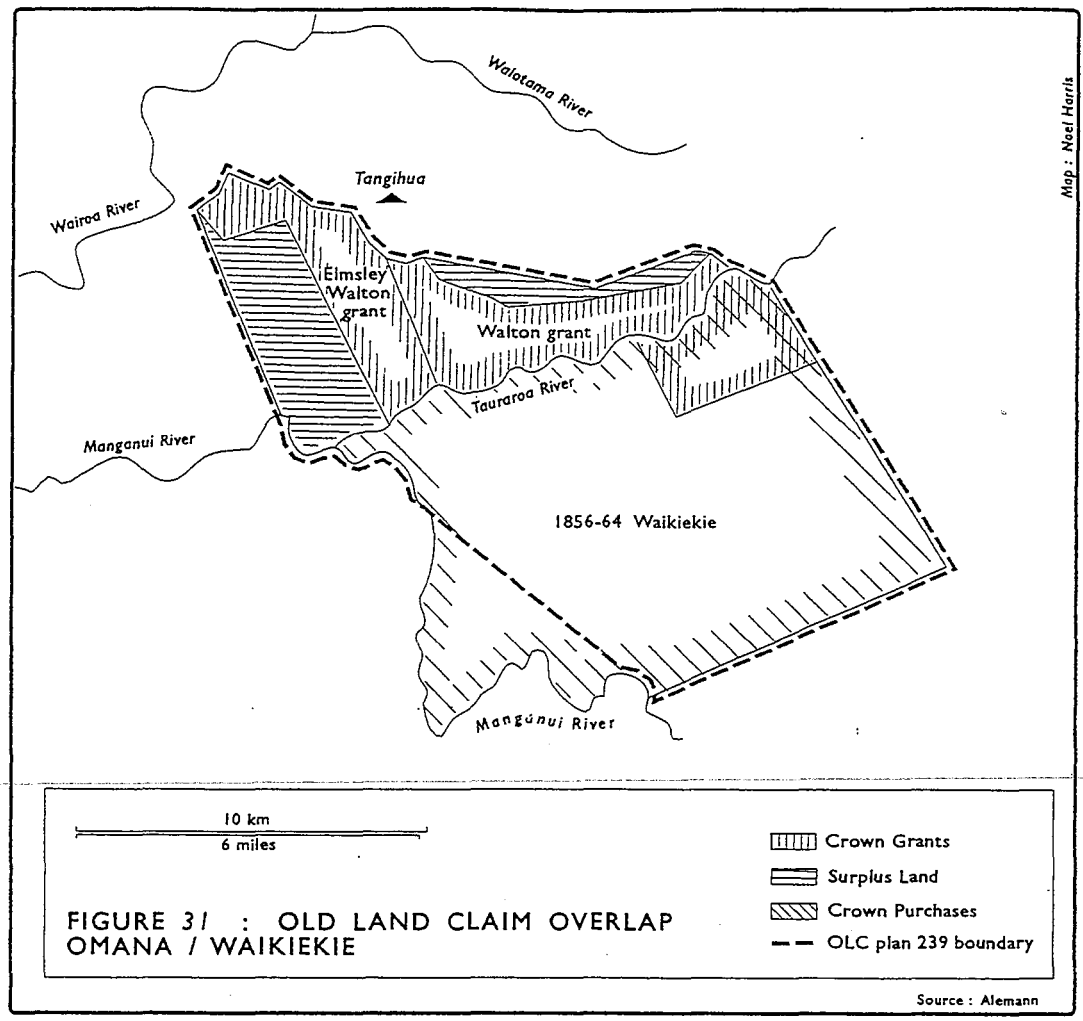

FIGURE 31 : OLD LAND CLAIM OVERLAP OMANA / WAIKIEKIE

Waikiekie settlement. That settlement, apparently agreed upon in 1860, established the Tauraroa River as the boundary between Tirarau's and Te Uri o Hau claims. As can be seen from figure 31, however, the Omana transaction, negotiated with Tirarau prior to 1840, extended almost as far south of the Tauraroa as the Waikiekie purchase negotiated with Te Uri o Hau.[118]

A feature of the Omana/Waikiekie overlap which made it potentially even more contentious was the fact that it is almost entirely 'surplus land'. As indicated in numerous reports to the Muriwhenua Land Tribunal, surplus land emerged almost entirely from the private surveys demanded by Commissioner Bell after 1856.[119] Maori were understandably confused when the Crown advanced both surplus land and Crown purchase claims to the same area. Just as Bell insisted on surveyors establishing the original claim boundaries at Mangakahia in 1858 and 1859, he did

118. On the way surveyors created this overlap, see Alemann, Ngati Whatua transactions, pp 21–22.
119. Alemann, 'Pre-Treaty Transactions', claim Wai 45 record of documents, doc F11; Boast, 'Surplus Lands . . . in the Nineteenth Century' (doc F16); Nepia, 'Muriwhenua Surplus Lands . . . in the Twentieth Century' (doc G1); Armstrong and Stirling, 'Surplus Lands . . . 1840–1950' (doc J2)

this also at Omana and with an even more extensive Te Wairau claim at the head of the Otamatea River.

William Wright and William Smellie Graham claimed 40,000 acres at Te Wairau on the basis of a deed signed on 10 January 1840 by Paikea.[120] When the claimants brought this area to Bell's attention in January 1857, they indicated their willingness to allow the Crown to survey a large part of it. In response to this request, Bell stated his grounds for normally requiring private surveys of old land claims. The major reason for this requirement was Bell's:

> supposition . . . that while the natives will give possession to a claimant and surveys to be made of all land they originally sold [to] him, they were likely to object to the Crown taking possession of any surplus land afterwards, if only the part to be granted to the claimants is surveyed by him.[121]

Bell was prepared to waive this rule at Te Wairau, however, because there he saw no possibility of a boundary dispute and Crown surveyors 'may obtain probably more than 30,000 acres . . . much of which will be found to be of excellent quality'. He insisted that Crown surveyors identify this area as surplus and warned that if 'the natives afterwards object to surrendering the surplus to the Crown', a new Crown purchase would be costly. Bell proposed, therefore, that he work closely with the District Land Purchase Commissioner to establish 'that the natives admit the alienation of the whole claim'.[122]

In effect, Bell proposed that the claimants privately survey what they were entitled to be granted, and the Crown survey the surplus. Almost immediately this proposal encountered obstacles. When Hubert Fenton (son of F D Fenton) attempted to survey the area west of the present day site of Maungaturoto, he encountered Maori opposition. This was despite the fact that he'd paid Paikea £10 to show him the boundaries.[123] The Colonial Secretary, Gisborne, also questioned Bell's judgement in allowing Crown surveyors to identify the surplus. He could not see how this could occur without negotiating further Crown purchases which would destroy the whole purpose of the exercise. He stated:

> A waiver, in the Northern part of this Island of that well known right of the Crown to alienated 'Native Land' [ie surplus] would probably cost the Government many thousand pounds.[124]

The claimants also complicated matters by commissioning a second private survey which superseded the first. In response to Gisborne's criticism, Bell wrote:

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120. Deed, 10 January 1840, TPD, pp 299–300. Paikea was the sole Maori signer of the only surviving English version of the deed, but Tirarau apparently witnessed the signing.
121. Bell memo, 10 January 1857, MA 91/18(9), pp 7–8
122. Ibid
123. Ibid, Fenton to Bell, 27 April 1857, p 9. Bell recommended that the Crown reimburse him for the sum he had paid Paikea: ibid, Bell memo, 26 August 1857, p 10.
124. Ibid, W Gisborne memo, 4 November 1857, p 11

> The principal thing to avoid in transactions of this kind with the natives, is the appearance of uncertainty on the part of Government, and after the land having twice been gone over by the surveyors, it does not seem desirable to delay the land purchasing operations for the chance of getting a little more as included in the original claim.[125]

While Bell as a judicial officer was telling Rogan, a Crown Purchase Commissioner, to avoid 'the appearance of uncertainty on the part of Government', he was really conceding that Crown purchases were necessary to make up the surplus.

Eventually the only official surplus surveyed out of the Te Wairau claim was a 298-acre area at the confluence of the Otamatea and Kaiwaka Rivers. Much of the originally estimated 30,000 acres of surplus had to be purchased by the Crown in its 1859 Pukekaroro and 1862 Piroa transactions.

Some of the originally estimated surplus appears to have been included in the Busby old land claim and subsequent Waipu and Mangawhai Crown purchases. The 1840 Te Wairau deed identified its eastern boundary as 'Tokirau' (Tokerau) or the coast. The Whangarei commissioner, Johnson, discussed this further overlap with Tirarau during the Waipu and Mangawhai Crown purchase negotiations of 1853–54.[126] Since Johnson chose to deal with the 'immediate owners' at Waipu/Mangawhai rather than 'the great chiefs possessing a feudal right over the land' who had negotiated with Busby, he apparently had no difficulty in ignoring the Te Wairau old land claim with Bell's support.[127]

The vagueness of the deed reference to the coastal boundary of Wright and Grahame's claim suggest fundamental problems in the Crown's adherence to a strict surveying regime. If Paikea transacted an area over which he exercised political influence rather than possessing exclusive proprietary rights, was it appropriate to survey conventional European boundaries? In fact, the Crown failed to adhere to a strict surveying regime at Te Wairau simply because it would have increased the degree of overlap. Yet Crown purchases had to be defined irrespective of overlap. As previously indicated, in Kaipara almost all were so defined.[128]

4.3.2 Surveys and negotiations

Rogan's background as a professional surveyor probably accounts for the high proportion of surveyed Kaipara Crown purchases. The 1855 Tokatoka and Ruarangi purchases (which were surveyed only after deed signings) had been concluded prior to his arrival by the Whangarei commissioner, Johnson. Johnson's normal modus operandi was to define the area by sketch map prior to the signing of deeds and payments.[129] In instructing Rogan to proceed to Kaipara in 1857, McLean wrote:

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125. Ibid, Bell to Rogan, 17 December 1857, p 13
126. Johnson to Colonial Secretary, 12 December 1853, in Turton, *Epitome*, C55–56; Johnson to Bell, 11 January 1858, MA 91/18(9), pp 15–16
127. Johnson to Colonial Secretary, 6 January 1854, in Turton, *Epitome*, A57; Bell memo, 11 January 1858, MA 91/18(9), p 16
128. All of the 39 major Kaipara Crown purchases were accompanied by some sort of survey, while less than 20 percent of south Auckland purchases were: Husbands, Riddell, *South Auckland Alienations*, p 15.
129. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, no 1, pp 93; Johnson to McLean, 11 September 1855, AJHR, 1861, C-1, no 35, pp 66

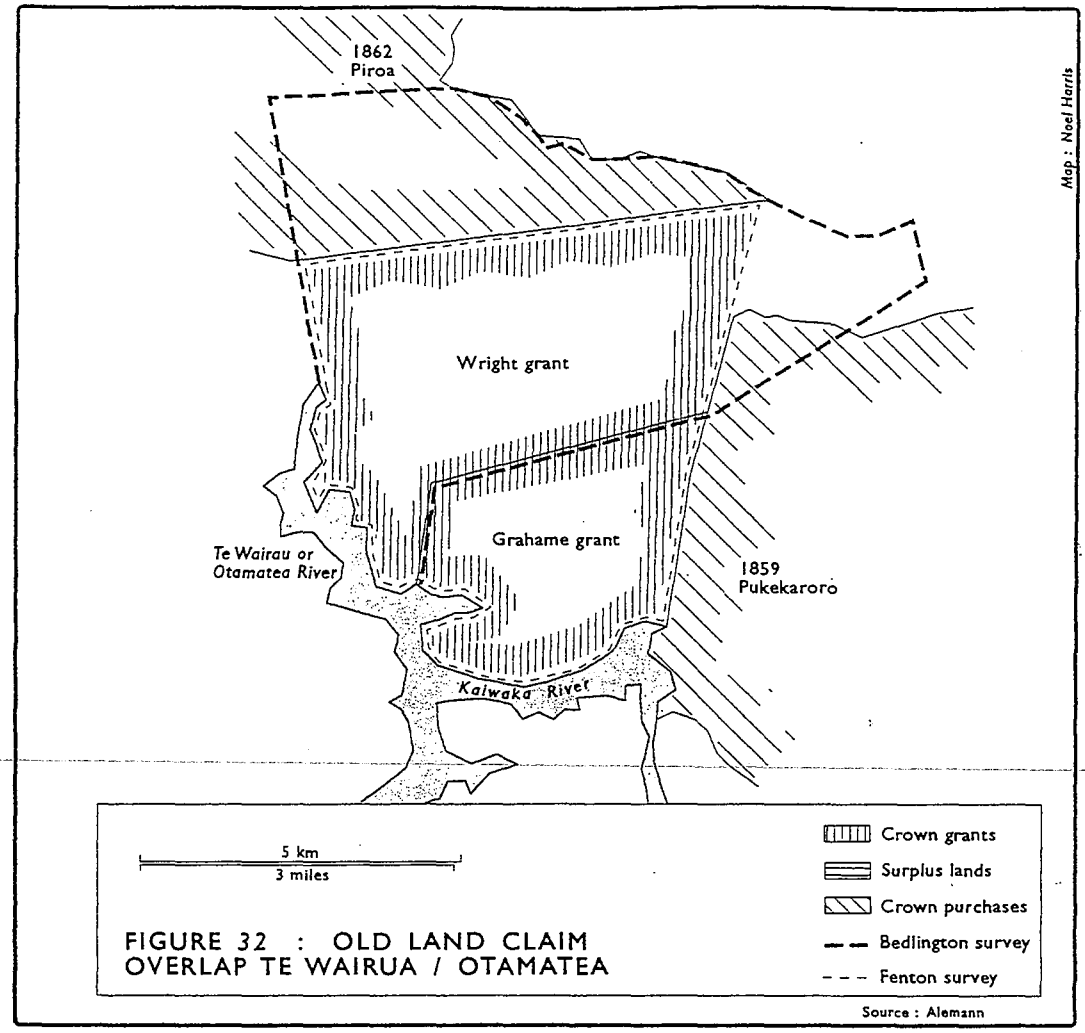

FIGURE 32 : OLD LAND CLAIM OVERLAP TE WAIRUA / OTAMATEA

> From your long experience in land purchasing operations it will be hardly necessary for me to remind you of the extreme care and accuracy that will be required in defining the boundaries of the Block, for which purpose a surveyor has been instructed by the Waste Lands Commissioner to accompany you and cut the lines under your personal superintendence.[130]

McLean's instructions to Rogan were prompted in part by the findings of the 1856 Board of Inquiry into Native Affairs. The board agreed with Governor Browne's instructions on the need for surveying to be an essential part of Crown purchase negotiations.[131] McLean's instructions fell short of the board's recommendations in one important respect. The board agreed with Browne that Maori should traverse boundaries with surveyors so that the 'whole of the transaction should be the act of the natives themselves'.[132] McLean's instructions said nothing of the need for authorised Maori negotiators to point out boundaries.

130. McLean to Rogan, 31 January 1857, in Turton, *Epitome*, C101
131. Browne memo, not dated; board of inquiry report, 9 July 1856, BPP, 1860 (2719), pp 235–236, 240–241
132. Ibid

McLean's first specific instructions to Rogan directed him to survey the full extent of the Waikiekie purchase. The 1856 Waikiekie deed included a clause requiring additional payment for acreage in excess of the 12,000 acres Johnson originally paid out on.[133] The Waikiekie surveying operation, however, proved much more difficult than either Rogan or McLean anticipated. At one time three survey teams, headed by Buchanan, Fenton, and McCabe, were working on different boundaries. Rogan was dismayed to find, however, that two of these groups had been 'unceremoniously deserted' by their Maori labourers. Without the people to move camp for them, these teams couldn't complete the work. Rogan privately complained to McLean that requiring fully chained and cut survey lines necessarily kept Maori on the job longer than they desired. He preferred the old Johnson 'sketch survey' method as 'much more expeditious'.[134]

Part of the difficulty Rogan encountered with the Waikiekie surveys arose from his attempt to extend them north of the Tauraroa River in what became an abortive Tangihua Crown purchase attempt. By March 1857, Rogan had anticipated that the Tangihua part of the operation might have to be abandoned.[135] Rogan was also dissatisfied with his reliance upon the services of privately contracted surveyors during the troublesome Waikiekie/Tangihua survey operations. In July 1859 he appealed to McLean to send the young S Percy Smith to Kaipara because he was 'a good surveyor and a very neat draftsman'.[136] Eventually Rogan employed Smith in the Kaipara Crown purchase surveys, beginning in late 1859.[137]

In 1860 Smith's name appears on most of the Crown purchase deeds as the 'Government Surveyor, Kaipara District'.[138] Andrew Sinclair, the Chief Government Surveyor, witnessed most of the 1861–62 deeds, and then Smith's name reappears after mid-1863.[139] This all suggests that the Crown took a great deal more care to properly survey Kaipara purchases than it took in other areas, such as south Auckland. In fact, the surveyors' field books recording Smith's Kaipara activities in 1859–60 and in 1862 are the only surviving documents of that kind in the Auckland district prior to 1865.[140]

Despite the evident care with which the Crown conducted its Kaipara surveys, we still don't know whether authorised Maori representatives traversed the boundaries with Smith and Sinclair. Presumably the Maori labourers who accompanied the Waikiekie/Tangihua survey teams were not authorised to verify the accuracy of the boundaries in this way. Evidence of how Te Aranui's attempted survey of Mangakahia precipitated the shooting there in May 1862 demonstrates how Maori could view surveys as an assertion of definitive rights. The Crown, therefore, could

133. McLean to Rogan, 2 February 1857, in Turton, *Epitome*, C101
134. Rogan to McLean, not dated, McLean papers, fol 544
135. Rogan to McLean, 19 March, 8 April 1857, McLean papers, fol 540
136. Rogan to McLean, 25 July 1859, McLean papers, fol 541
137. Rogan to McLean, 5 November 1859, McLean papers, fol 541
138. Mairetahi, 24 August 1860; Waioneke, 21 December 1860; Te Kuri, 24 December 1860; Oruapo I, 27 December 1860; Oruapo II, 31 December 1860; TCD, vol I, pp 214–222
139. Roketahi, 5 August 1863; Pukeatua, 20 January 1864, TCD, vol I, pp 239–242
140. Field books 84, 86, DOSLI Auckland

have made purchases 'the act of the natives themselves' by ensuring their participation in verifying the accuracy of surveys.

4.3.3 Multiple Maori interests

While the sum of Crown surveys presented a tidy picture of relatively coterminous (or contiguous) purchases, the question remains: was this tidy picture consistent with the multiple Maori interests in land? Perhaps the untidy picture of overlapping transactions at Omana/Waikiekie and at Te Wairau/Otamatea was more consistent with such interests.

The multiplicity of Maori interests had been revealed in 1853–54 when Johnson investigated the Mangawhai, Waipu, and Ruakaka areas. In addition to his distinction between 'the great chiefs possessing a feudal right over the land' and 'the immediate owners', Johnson catalogued claims based on descent, association, and occupancy.[141] For an area extending approximately 30 miles south of Whangarei Harbour this meant that Johnson had to identify approximately 80 claimants in at least 15 separate groups 'shewing their ground of claim, and the amount awarded to them'.[142]

While the Mangawhai, Waipu, and Ruakaka areas may have been exceptional in this proliferation of Maori interests, the cases in which the Crown negotiated purchases with single groups may have been much more exceptional in Maori terms. The 1858 Matakohe purchase, for example, covered 68,000 acres but was negotiated with only Te Uri o Hau. It seems likely that other tribal groups had interests in such a large area, but they may have relied upon their Maori kin rather than the Crown to acknowledge such interests.[143] Likewise, the two 1860 Oruawharo purchase deeds were signed by Ngati Whatua and Te Uri o Hau, but not by Winiata Tomairangi Papahia and Te Rarawa. From the available documentary evidence it appears that Te Rarawa occupied the Oruawharo area during the 1860s. Although they may have been represented in the 1860 Crown purchase negotiations, Papahia didn't sign either deed.[144] On the other hand, Papahia signed the 1860 Te Kuri deed on behalf of Te Rarawa, a purchase which included 206 acres reserved for them on the western side of the lower Wairoa.[145] Why the Crown chose to acknowledge Te Rarawa interests in one area, and not in another, remains a mystery.

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141. Johnson to Colonial Secretary, 31 December 1853, in Turton, *Epitome*, C56–57; Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, no 2, pp 47–48
142. Ibid, 'Schedule of Native Claimants to Mangawhai', encl 3; ibid, 'Schedule of Native Claimants to Ruakaka and Waipu', encl 4; ibid, 'List of Futher Sums Demanded', attached to Johnson to Colonial Secretary, 20 March 1854, encl 5, pp 50–51
143. Ibid, Rogan to McLean, 20 March 1858, p 97
144. The register of chiefs c 1865, MA 23/25. See also Rogan's 'Report . . . as to the Working of "The Native Lands Act, 1865", in the District of Kaipara', 29 July 1867, AJHR, 1867, A-10A, p 3. This refers to Papahia as one of the four Kaipara chiefs farming along European lines with a horse and plough given him by McLean before 1865.
145. Te Kuri, 24 December 1860, TCD, vol I, pp 217–218. The Crown purchased the 474 acres (almost 70 percent) reserved for Te Uri o Hau 18 months later, but the entire area went through the NLC in 1868: Ibid, Otiaho, 22 July 1862, pp 227–228; NLC certificate of title, 4 March 1868, DOSLI ref 4944.

4.4 THE ADEQUACY OF THE EQUIVALENT

4.4.1 Price per acre calculations

The high proportion of surveyed purchases in the Kaipara area make price per acre calculations possible, but such calculations should be used with caution. The price per acre column on table 6 is based largely on price and area information derived from deeds and plans. In addition to this information, Turton mentions 'Deed Receipts', which record a series of payments sometimes in excess of that recorded on the original deed. Where possible we have added these sums to the figures derived from the deed. In at least four cases, however, the Crown advanced sums which Maori agreed to repay upon completion of the survey. In these cases, we have not added to the sum stated in the deed.[146]

The average price per acre that the Crown paid for Kaipara land according to our calculation was 1s 2d (or 14.3 pence). This figure varied from three shillings for the 2230-acre Kaikai purchase in 1863, to fourpence per acre for 30,000-acre Oruawharo purchases of 1860. In the case of Kaikai at the southern extremity of the harbour, near the present site of Helensville, the Crown paid one shilling an acre more than Rogan thought the land was worth. In 1861 he commended the quality of the 'rich alluvial soil' there, and its access to water transport, but thought it worth two shillings an acre, not the three shillings eventually paid.[147] At the other end of the scale, the Crown got Oruawharo cheaply in 1860, apparently because of its size and the fact that only one group (Te Uri o Hau) negotiated the purchase. When the Crown negotiated the smaller adjacent area of Opou with a number of groups during 1861, Rogan reported his expectation 'that the Natives will not be induced to accept less than £100 which will be at a rate of about 2s an acre'.[148] This would suggest that bargaining conditions and the quantity, as much as the quality, of the land affected the price paid.

4.4.2 Evidence of price paid

Although evidence of price negotiation in Kaipara Crown purchases is extremely limited, a few trends emerge. One is that Rogan appears to have avoided the extremely detailed cataloguing of multiple interests which Johnson carried out in the Mangawhai-Waipu-Ruakaka purchases. Although Johnson originally estimated that £400 would buy Mangawhai, when all the claims had been added up the purchase price exceeded £1000.[149] Despite the additional payments resulting from the large number of Mangawhai claims, the Crown still paid little more than 4d per acre for an area estimated as 50,000 acres.[150] This was consistent with the Governor's instructions to Johnson (relayed by the Colonial Secretary) that he was authorised

146. See receipts 13–15, 19, table 9
147. Rogan report, 14 September 1861, in Turton, *Epitome*, C108
148. Ibid. The Crown eventually paid precisely two shillings an acre. Opou, 24 July 1862, TCD, vol I, p 229
149. Johnson to Colonial Secretary, 31 December 1853, in Turton, *Epitome*, C56–57
150. Mangawhai, 3 March 1854, TCD, vol I, p 133

to pay 'not more than 6d an acre' for 'a large block' and 'as much as 1s per acre' for 'smaller desirable blocks, which may prove available [for settlement] at once'.[151]

Another disincentive for engaging a large number of Maori in Crown purchase negotiations were the disputes that could arise over the divisions of the payment. At Tokatoka in late 1854, Johnson encountered a dispute over payment division between Tirarau and Paikea. One of the claimants, Parore Te Awha, insisted on receiving his share from H Atkins, the Mangawhare trader, rather than from another chief. In such cases, the Crown had to become directly involved in payment distribution.[152] In cases where Maori controlled the distribution of the payment, their method often puzzled Crown agents. At Whakahara, for example:

> The money was, by Tirarau's consent, placed before Taramoeroa, who immediately handed it over to Tirarau and Parore. These two chiefs having seen this mark of respect publicly shown to them as the former conquerors of the land in question, felt their pride satisfied, and formally placed the whole amount again before Taramoeroa, by whom it was divided among the real owners of the soil.[153]

Some evidence of prepayments remains from the period while Johnson acted as the major Crown purchase agent in Kaipara. On the same day which he reported the Tokatoka and Whakahara payments, Johnson also reported that he'd advanced Manukau Rewharewha a sum for a large block between the Wairoa and Otamatea Rivers. Johnson chose to do this because Manukau 'was anxious for cash' and had 'a strong voice in affairs here'.[154] This appears to have been a £50 prepayment for the Matakohe Crown purchase finally concluded in 1858.[155] Prepayments raise at least two issues. The first involves the question of whether they compromised the interests of other Maori with interests in the land who may have been opposed to the purchase. The second involves the inadequate documentation usually accompanying prepayments.

It is not absolutely clear from the Crown's records that Johnson's 1854 payment to Manukau was for Matakohe. When McLean instructed Rogan to complete the purchase of an 'extensive block' in early 1857, he appears to be referring to Matakohe, but he fails to identify the area positively. McLean informed Rogan that, though this 'extensive block' appeared to be 'comparatively valueless' because of large swampy or heavily forested areas within it, he believed it also contained valuable agricultural and pastoral land. He therefore instructed Rogan to:

> extinguish the Native Title to it at as low a rate as possible, and on no account to exceed the rate of 8d per acre.[156]

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151. Sinclair to Johnson, 22 January 1854, AJHR, 1861, C-1, no 1, p 47
152. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, no 1, p 93
153. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, no 2, p 94. This area, between Tokatoka and Aropohue, had been the subject of O'Brien's old land claim (see fig 28).
154. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, no 3, p 95
155. Ibid, Johnson's return of expenditure 1854–56, enclosed in Johnson to McLean, 3 April 1856, p 71. This return records a £50 payment for Matakohe on 10 December 1854.
156. McLean to Rogan, 3 January 1857, in Turton, *Epitome*, C101

This 'extensive area' could have been the Matakohe and/or Paparoa blocks purchased in 1858, or it could have been the Waikiekie and/or Tangihua blocks under negotiation during 1857–58.[157]

Although McLean's eightpence per acre for larger blocks represented an increase of twopence per acre from what the Governor had defined as the offering price in late 1854, Rogan's letters reveal lower offers to Maori. In reporting the £500 payment for Okahu in 1857, Rogan indicated that trader William White wrote a 'furious epistle' on behalf of disappointed Maori. Rogan confided in McLean that he wished to show his negotiating 'teeth to Kaipara people' to lower 'their 2/- to 6d' per acre.[158] In early 1858, Rogan told McLean that:

> the Kaipara Natives returned to Auckland asking [for] 2/- a acre for the 68,000 [acre Matakohe] block which of course they will not get.[159]

Te Uri o Hau had the advantage of being able to come to Auckland in large numbers to negotiate with the Crown on matters of price, but Rogan and other officials drove a hard bargain. The Crown initially offered them £2000 for both Matakohe and Te Ika a Ranganui at about sixpence per acre.[160] Although Te Uri o Hau eventually got over one shilling an acre for both, Rogan told them he would not 'return with them to Kaipara' to announce the deal. He confided in McLean that he refused to do this because:

> I think I should be making myself too cheap to be constantly at their beck and call.[161]

Maori apparently left a substantial portion of the Matakohe purchase price with Rogan as 'bate' (presumably bait) to get him back up to Kaipara. Not only was he personally disinclined to go, but the Native Minister, C W Richmond, also advised him against further negotiations until McLean returned from Ahuriri.[162]

Rogan's correspondence with McLean reveals some examples of where the Crown took full advantage of its superior bargaining position. In mid-1859, for example, Rogan told McLean:

> you got that Pakiri block [south of the river] at a ridiculously low price the Kauri alone is worth twenty times the sum paid by the Govt.[163]

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157. The Tangihua area is the most elusive of all the above because it never resulted in a defined Crown purchase. Evidence that it was under negotiation during this period comes almost entirely from Rogan's private letters to McLean: Rogan to McLean, 19 March 1857, McLean papers, fol 540.
158. Rogan to McLean, not dated, McLean papers, fol 544; Okahu I, 23 November 1857, TCD, vol I, p 194
159. Rogan to McLean, 12 January 1858, McLean papers, fol 540
160. Ibid, Rogan to McLean, 16 February 1858
161. Ibid, Rogan to McLean, 20 February 1858
162. Ibid, Rogan to McLean, 6 March 1858
163. Rogan to McLean, 24 June 1859, McLean papers, fol 541

In the same letter he advised McLean that the adjacent Waikeri-a-wera block was 'worth more than twice that figure' of sixpence an acre he thought McLean paid for Pakiri. He added: 'I suppose so long as I get it reasonable it will be all right'.[164]

When Maori began to speak at Kohimarama on 11 July 1860, they lost no time in denouncing Crown offers of sixpence an acre. Te Keene, a key figure in many Kaipara Crown purchases, stated that he had asked the Crown for five shillings an acre, but received only sixpence an acre. The message he drew from this was:

> Na kahore he ture i a hau. na konei a hau i pouri ai. Ko te ahua kau o te ture kei au . . . Therefore I have no law. On this account am I grieved. Only the shadow of the Law belongs to me.[165]

McLean responded to this and similar criticism in his 23 July speech at Kohimarama. He justified low Crown purchase prices by stating:

> if the land is allowed to lie waste it produces no return. When acquired by the Government it is surveyed and can only then be called productive land . . . it is population or improvement consequent on European settlement which really enhances the value thereof.[166]

Arama Karaka also indicated that the Crown owed Kaipara people the unpaid balance of previous purchases. He said that unless this balance was paid it could become a source of discontent (pouri).[167]

Perhaps as a result of the Kohimarama conference, the Crown appeared to exhibit greater generosity in purchase negotiations after 1860. At least, Rogan's September 1861 report on current negotiations indicates that the Crown was much more price conscious than it had been in previous reports. In the Whakapirau, Matawhero, Opou, and Kaikai negotiations, Rogan was prepared to pay between two shillings and 2/6 an acre. On the sandy South Head of the harbour he was prepared to accept 1/6 per acre even though the Government 'fixed' a 'uniform' price of 1s an acre. Maori initially asked for three shillings but Te Keene agreed to 1s 6d in a letter to the Native Office. Rogan concluded that:

> as it was really important to have the south head as a pilot station, it is desirable to purchase these blocks at the price asked . . .[168]

Consequently, the average price per acre paid before 1860 of one shilling per acre improved to 1s 10d per acre after 1860.[169]

The greater generosity of the Crown after Kohimarama could have been related to the New Zealand Wars as much as to the conference. As previously indicated,

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164. Ibid. In fact, McLean appears to have paid more than twice that for Pakiri south: Pakiri, 1 March 1858, TCD, vol I, p 261.
165. Te Keene, 11 July 1860, *Te Karere*, vol VII, no 13, p 24
166. Ibid, McLean, 23 July 1860, vol VII, no 15, pp 1–2
167. Ibid, Arama Karaka, 3 August 1860, p 75
168. By this, Rogan meant the 1s 6d that Te Keene was prepared to settle for, not the original three shillings Maori had asked for: Rogan report, 14 September 1861, in Turton, *Epitome*, C108–109.
169. See table 6. I am indebted to Mark Larsen for undertaking this price per acre calculation.

more than one Maori representative at Kohimarama expressed their willingness to engage in Crown purchases as evidence of their loyalty to the Crown.[170] Charles Heaphy developed the link between Crown purchases and loyalty in his 'Statistical Notes relating to the Maori and their Territory' published in 1861. In this attempt to refute allegations that the Crown had provoked Maori resistance in Taranaki and Waikato, Heaphy praised the tribes who he believed had already sold most of their land. He identified these tribes as Te Rarawa, Ngati Whatua, and Ngati Kahungungu. Both of the model northern tribes, he argued, were:

> busily engaged in supplying the markets of Mongonui and Auckland with their produce – seem to be perfectly satisfied with the neighbourhood of the white man to whom they have sold a moiety, at least, of their lands.[171]

In conclusion, Heaphy argued that responsibility for the outbreak of war lay not with over-zealous Crown purchase agents, but with the 'jealousy' of Taranaki and Waikato Maori towards other tribes who had benefited economically from Crown purchases.[172] Although Kaipara Maori may not have perceived the same benefits that Heaphy imagined they enjoyed, they may well have shared his understandings of the link between loyalty and participation in Crown purchases. Conversely, the Crown may have understood that, if it was to retain the loyalty of Kaipara Maori, it had to exhibit greater generosity in Crown purchase negotiations after 1860.

4.4.3 Deed receipts and on-sale prices

One of the manifestations of the higher price paid per acre after 1860 was the increased number of payments made after that date. Turton's so-called 'Deed Receipts' (DR) form the only surviving evidence of these payments.

These payments fall into four main categories:

(a) advance on purchases repaid when the land was surveyed, for example, DR 13, 14, 18;
(b) advances on purchases which were not completed before the end of 1865, for example, DR 15, 19, 22;
(c) payments for native reserves excluded from previous Crown purchases, for example, DR 9, 10, 11, 17, 20; and
(d) payments made subsequent to the signing of a purchase deed, for example, DR 7, 24.

All of these payments, except the two in the last, subsequent payment category, were made after 1860. The inadequate documentation associated with all these receipts make it difficult to verify information indicated. For example, it is difficult,

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170. For example, Raniera Te Iho: 'I prove my allegiance . . . by parting with my lands': *Te Karere*, vol VII, no 13, p 28, and Hori Winiata (Ngapuhi–Kaipara), '. . . I parted with my land . . . so that I might enter [into the Queen's law] . . .': ibid, vol VII, no 17, p 23.
171. Heaphy, 'Statistical Notes Relating to the Maoris and their Territory', AJHR, 1861, E-1C, p 3. In his accompanying map of Crown purchases, Heaphy included lower Kaipara within Ngati Whatua territory.
172. Ibid, p 2. Stuart Scott reproduced Heaphy's 'Notes' as an appendix to prove that Maori, not the Crown, provoked hostilities in 1860, 'out of love of plunder and hatred of Europeans': Scott, *Travesty of Waitangi*, pp 46, 169–170.

Table 9: Turton's kaipara 'deed receipts'

No	Block	Date	Sum	Comments
7	Tokatoka	31 October 1856	£30	For an additional area
9	Tipare	10 December 1861	7s 10d	Reserve 1861 Okaka purchase
10	Waiharakeke	10 December 1861	7s 10d	Reserve 1860 Waioneke purchase
11	Atiu	26 June 1862	£2 15s 6d	Reserve 1861 Whiritoa purchase
13	Waikiekie	10 December 1861	£150	Advance to be repaid upon survey
14	Mareretu	1 August 1862	£150	Advance to be repaid upon survey
15	Pukekura	1 August 1862	£10	Advance to be repaid upon survey
17	Otai	16 September 1862	£2 14s 6d	Reserve 1862 Waiherunga purchase
18	Mareretu	10 October 1862	£10	Further advance
19	Hoteo (Tauhoa)	18 November 1862	£30	Advance to be repaid upon survey
20	Te Karae	22 November 1862	£3	Reserve 1862 Matawhero purchase
22	Tauhoa (Hoteo)	18 April 1863	£300	Advance on surveyed land, to be repaid upon final payment
24	Ruarangi	7 August 1855	£175	Final instalment

if not impossible, to verify whether or not the advances indicated in the first two categories were repaid upon completion of the transaction. There is also evidence of other advances not accompanied by a receipt. In 1862 Percy Smith reported that Maori had returned the £50 which Rogan advanced to them prior to the signing of the Maungaturoto deed.[173]

During 1862, the House of Representatives required the Crown to publish a 'Return of all sums paid and presents made to Natives'. At least two payments 'on account of Land Purchases' to Kaipara chiefs (Arama Karaka and Te Keene) could have been in the form of advances. This cannot be verified because the return fails to identify the particular purchase associated with the payments.[174] In the same return, and under the heading 'Advances under imprest for payments to Natives' are recorded three separate payments to assist Arama Karaka. Two of these, totalling £95, were for the construction of his flour mill, and the third was a £10 loan 'to enable him to complete his house'.[175] While these payments may not have related directly to Crown purchase activity, Arama Karaka and Te Keene did sign a large number of the Kaipara deeds and receipts.[176]

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173. Smith to McLean, 10 June 1862, AJHR, 1862, C-2, p 380
174. Return, AJHR, 1862, E-12, p 14. The payments were as follows: 13 August 1861, Arama Karaka, £700; 28 November 1861, Te Keene, £116 11s.
175. Ibid, p 17. The Crown recorded a total of £1358 advanced to North Island Maori under this heading.
176. Arama Karaka signed at least 15 (out of 54) Kaipara deeds and receipts, while Te Keene signed at least 17. Other frequent signers were Paikea (approximately 15), Wi Tipene (9), and Otene (6).

Probably the most significant receipts were those in the category of payments which did not result in purchases prior to the end of 1865. In November 1862 and April 1863 the Crown advanced £330 for the purchase of the 41,400-acre Hoteo or Tauhoa area. The first £30 was advanced to Te Keene on condition that it be repaid when the land was surveyed.[177] The subsequent £300 receipt is described as a loan paid by Rogan to Te Keene, Te Otene, and two other Maori for land surveyed by Smith. Maori agreed to return this sum upon completion of the purchase.[178] For reasons that remain unclear, the area under negotiation did not go through the Native Land Court until early 1867 (with Rogan presiding). According to Alemann, the Crown finally purchased this very significant area joining Upper and Lower Kaipara purchases on 12 December 1868.[179] The question remains, however, did the 1862–63 payments predetermine the eventual purchase. If so, did such prepayments compromise the interests of other Maori not involved in the 1862–63 negotiations?

The final question to be addressed in connection with payment issues is that of on-sale prices. McLean admitted a wide disparity between what the Crown paid Maori and what it received from settlers for the same land. At Kohimarama he indicated that this disparity could stretch from threepence an acre paid to Maori, to £2 an acre paid by settlers to the Crown for the same land.[180] According to local historian Dick Butler, this disparity was not as pronounced in the Kaipara area. His examination of *Auckland Provincial Gazette* notices for the period from October 1863 to June 1864 revealed that the average on-sale price was 10 shillings per acre, in contrast to the 1s 10d average price paid to Maori from 1861–65.[181] Any precise comparisons in this regard are almost impossible due to the dearth of reliable on-sale price information.

On the other hand, since the disparity obviously concerned Maori at Kohimarama, it cannot be dismissed, however difficult it is to measure. As indicated above, Rogan was fully aware of the fact that the Crown was paying 'ridiculously low' prices for very valuable properties.[182] Rogan and McLean were both well informed about on-sale prices because they both engaged in private land speculation during their service as Crown purchase agents. In 1859 Rogan told McLean that he bought land near Auckland (whether privately or for the Crown isn't clear) 'for £5/10/- an acre which will soon be worth £20 an acre.'[183] In 1863 Rogan reported that his:

> late Whangarei purchases have been offered for sale . . . [T]he price I dare say averaged 15/- an acre. What do you think of that[?] I gave 1/- 12 mos ago.[184]

177. Hotea (sic), 18 November 1862, TCD, vol I, p 722
178. Tauhoa, 18 April 1863, TCD, vol I, p 273. According to Alemann, the Tauhoa area included Hoteo: Alemann, Ngati Whatua transactions, p 71.
179. Ibid. See Kaipara minute book, vol I, fol 117, for the Tauhoa hearing record.
180. McLean, 23 July 1860, *Te Karere*, vol VII, no 15, pp 1–2
181. Butler, *This Valley*, pp 81–82. Butler's estimate of 8½d paid to Maori is evidently too low.
182. Rogan to McLean, 24 June 1859, McLean papers, fol 541. This is where he refers to the kauri at Pakiri being 'worth 20 times' what McLean paid for the land.
183. Ibid, Rogan to McLean, 5 November 1859
184. Ibid, Rogan to McLean, 7 January 1863

Finally, in 1865 Rogan privately negotiated the purchase of 1000 acres of Maori land at Kaipara for which McLean personally loaned him £500 of his private funds.[185] How ironic that the two officials who had been most instrumental in paying Kaipara Maori an average of 1s 2d per acre between 1854 and 1865, were privately willing to pay them 10 shillings an acre in late 1865.[186]

4.5 RESOURCE ENDOWMENT

The final, and perhaps the most telling, issue arising from Crown purchases in the Kaipara area is the extent to which they left Maori with sufficient resources to support future generations. Although the area and quality of land retained is usually treated as the main indicators of resource endowment, the extent to which Crown purchases and policies affected local Maori political authority, an essential human resource, also warrants some investigation. This discussion will begin with consideration of Crown's standards regarding Maori natural and human resources.

4.5.1 The Crown's standards

The Crown established a standard for protecting Maori resources in Normanby's August 1839 instructions to Hobson. In these instructions, Normanby stated that the Crown should obtain Maori land only 'by fair and equal contracts'. Furthermore, Maori:

> must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, – will be one of the first duties of their official protector.[187]

The Crown therefore assumed protective obligations regarding land greater than those stated in article 2 of the Treaty. In the English version of the Treaty the Crown merely undertook to purchase from Maori 'such lands as the proprietors thereof may be disposed to alienate' at an agreed price.[188] The Crown's protective obligations towards Maori political authority feature more in the Maori version of article 2 of the Treaty, which reads:

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185. Rogan to McLean, 6 August, 26 October, 13 November 1865, McLean papers, fol 542
186. Rogan evidently lost money on his investment in south Auckland land during the New Zealand Wars: 'the war has ruined me already': Rogan to McLean, 23 July 1863, McLean papers, fol 541. He was apparently completely dependent on McLean to finance his 1000-acre Kaipara purchase.
187. Normandy to Hobson, 14 August 1839, BPP, 1840 (238), p 39
188. In Maori, 'ka tuku ki te Kuini to hokonga o era wahi wenua, ki te ritenga o te utu'. Treaty text reprinted in I H Kawharu (ed), *Waitangi*, Auckland, 1989, pp 316–318.

> Ko te Kuini o Ingarangi ka wakarite ka whakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino rangatiratanga o o ratou kainga me o ratou taonga katoa.[189]

Although not explicit, the Maori version of article 2 implies that the Crown undertook to protect Maori authority over resources (human and natural) as much as it undertook not to allow Maori to become Normanby's unwitting authors of injuries to themselves. The often ignored Treaty preamble also states that the Crown was:

> anxious to protect their [Maori] just rights and property . . . i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua . . . [190]

After the abolition of the Protectorate Department in 1846, the Crown's protective obligations remained. By the mid-1850s, however, when the Crown came to reassess its purchase policies, protective obligations apparently received very little serious attention. The 1856 Board of Inquiry report paid more attention to the existence of an anti-purchase league south of Auckland than to the Crown's protective obligations.[191] Rogan's private correspondence with McLean is also devoid of explicit references to such obligations. At the same time, both Rogan and McLean were particularly aware of how the increasing flow of immigrants to New Zealand during the 1850s increased the demand for extensive purchases of Maori land.

In an 1857 report to the Governor, McLean outlined a Crown purchase strategy for Northland which appears to have taken precedence over protective obligations. Stressing both the success of the Nova Scotian settlement at Waipu, and the dawning of the steamship era, he recommended 'liberal and comprehensive' policies designed to promote northern settlement and development. In addition to extensive Crown purchases, he recommended the Crown's resumption of scrip land and making Crown grants available to cooperative rangatira (such as Tirarau). Of Kaipara's commercial potential, he reported that the area:

> was capable of maintaining a large and flourishing population . . . [with] kauri timber . . . which might be worked with great advantage to the European colonists and also to the Native population . . .[192]

Thus, when Rogan arrived at Kaipara that year, he began wholesale purchase negotiations designed to get as much land as possible being made available for settlement.

Writing to McLean while on overseas leave during 1858, Rogan stated:

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189. In Kawharu's translation, this reads: 'The Queen . . . arranges [and] agrees to the Chiefs to the subtribes to people all of New Zealand the unqualified exercise of their chieftainship over their lands over their villages and over their treasures all': ibid, pp 319–320.
190. Ibid, p 316
191. Board report, 9 July 1856, BPP, 1860 (2719), pp 237–245. The board recommended that the Crown grant reserved areas to selected chiefs in an effort to combat communal restraints upon individual economic development (pp 238–239).
192. McLean to Gore Browne, 20 March 1857, AJHR, 1862, C-1, pp 355–357

> . . . I am becoming anxious to get back again to work and [to] finish the remaining portion of Kaipara as far out as it can be done.[193]

Political pressure, as well as McLean's instructions, undoubtedly conditioned Rogan's desire to press on with the work of Kaipara Crown purchases. In 1859 he reported Henry Sewell's well-publicised attack on the Native Land Purchase Department. In Rogan's words, Sewell claimed:

> we are frittering away the 500,000 [pound Imperial loan] without much result and a more comprehensive system should be adopted, such as buying large tracts in one block for forming large settlements . . .

Rogan added, perhaps with his fruitless Tangihua negotiations in mind, that this was 'all very well if it can be done'. With reference to his own Kaipara performance he concluded:

> all things considered I am not dissatisfied with what I have done for my money up until the present time.[194]

Later that year Rogan reported again his intention to successfully complete 'extensive [purchase] operations' at Kaipara in a 'long campaign'.[195]

The only acknowledgement of protective functions to be found in Rogan's official correspondence comes in references to native reserves (to be dealt with below) and, after 1860, references to McLean's request for information on disputes. In 1861 McLean instructed all his subordinates to send him:

> a special Report showing the real state of the land question in your district, distinctly pointing out any difficulties or claims that may exist, with reference to any particular block, together with an expression of your opinion as to the validity or otherwise of such claims.[196]

In response to this instruction, Rogan reported that at Kaipara 'the great question' was the longstanding dispute 'between Tirarau and Paikea'. He reported five other disputes but concluded that they were 'minor' and 'easily overcome'.[197] While the reporting of disputes bears only indirectly on the Crown's fulfilment of protective obligations, it does indicate some awareness of the dangers of wholesale purchases carried out without ensuring the consent of all parties.

4.5.2 Adequacy of reserves

Without a doubt, the Crown's main attempt to fill its protective obligations towards Kaipara Maori came in the creation of native reserves prior to 1865. As early as 1854, McLean called for locating reserves close enough to Pakeha settlements to

193. Rogan to McLean, 28 September 1858, McLean papers, fol 540
194. Rogan to McLean, 29 March 1859, McLean papers, fol 541
195. Ibid, Rogan to McLean, 25 September, 5 November 1859
196. McLean to District Land Purchase Commissioners, 20 May 1861, AJHR, 1861, C-8, no 1, p 1
197. Rogan to McLean, 5 June 1861, AJHR, 1861, C-1, pp 101–102

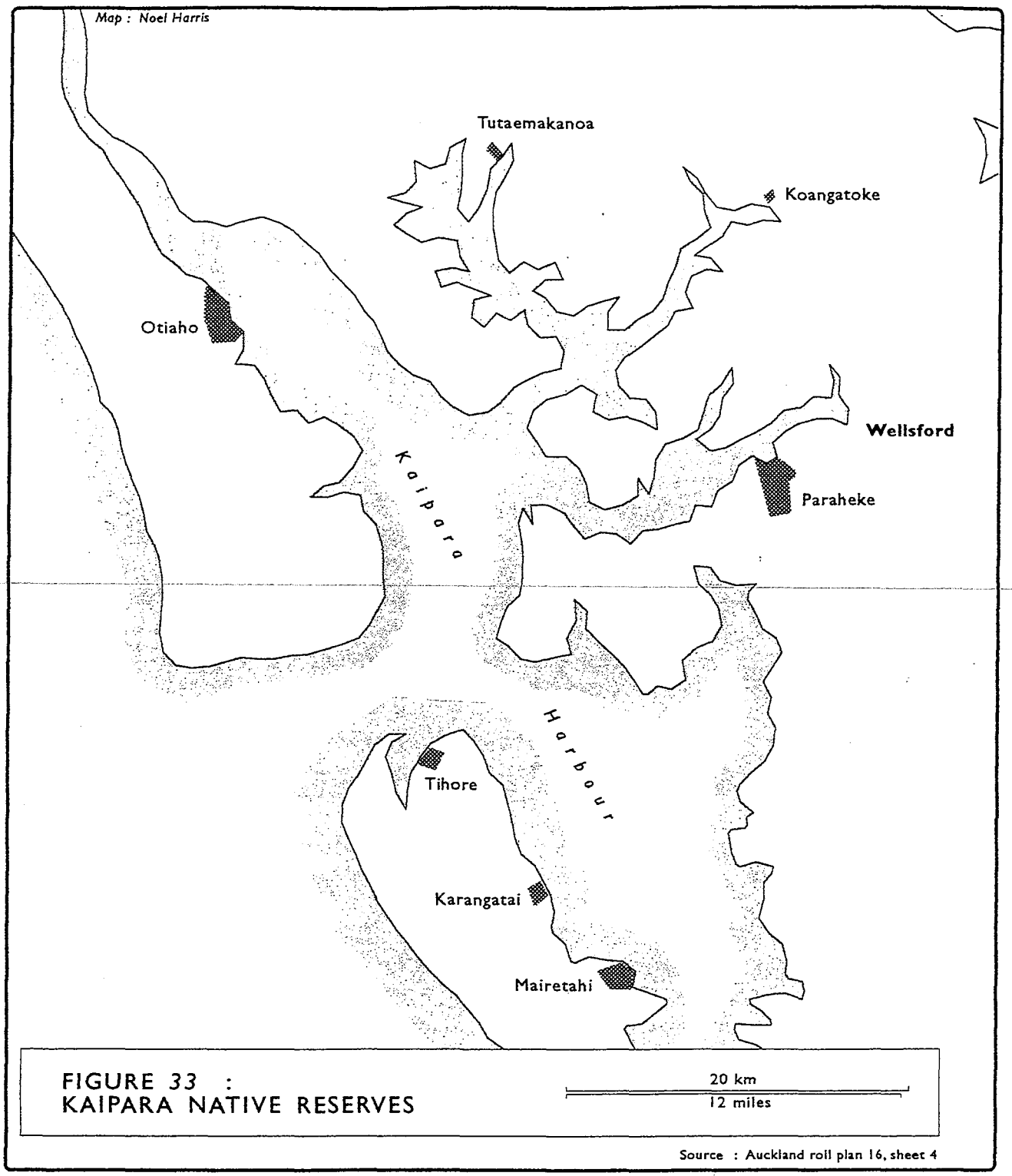

FIGURE 33 :
KAIPARA NATIVE RESERVES

enable them to receive beneficial flow-on effects from anticipated commercial development.[198] The Native Reserves Act 1856 stipulated that each reserve should be administered by trustees such as Crown officers, missionaries, and 'responsible chiefs', once the Crown determined the 'assent of the aboriginal inhabitants' to create such a reserve.[199]

In McLean's original instructions to Rogan, assigning him to Kaipara, he specifically stated that:

> You will be good enough to take care that ample and eligible reserves are made for the use of the Natives, the selection, number and extent of which must be determined by the wishes of the vendors themselves, and your own discretion.[200]

McLean reiterated the need to set aside reserves with an instruction sent to all District Commissioners in 1861. He instructed them to define reserve boundaries with natural features, and to have reserves properly surveyed before completing payment for the Crown purchase in question.[201]

In pursuit of these instructions, Rogan presided over the creation of the 15 Kaipara native reserves listed below.

Table 10: Kaipara native reserves

Date	Crown purchase	Name	Acres	Source
8 December 1858	Kaukapakapa	Whakatiwai*	200	Deed (AUC 177)
23 December 1858	Paparoa	Tutaemakanoa	78	AJHR, 1862, E-10
24 March 1859	Kaukapakapa West	Kaukapakapa*	200	Ibid (AUC178)
21 July 1859	Pukekaroro	Koangatoke	50	AJHR, 1862, E-10
27 January 1860	Oruawharo	Paraheke	1051	Ibid
24 August 1860	Mairetahi	?*	350	Ibid
21 December 1860	Waioneke	Karangatai	40	Ibid
21 December 1860	Waioneke	Waiharakeke*	81	Turton's receipt 10
24 December 1860	Te Kuri	Otiaho*	680	AJHR, 1862, E-10
27 December 1860	Oruapo	Tapapahuakaroro*	90	Ibid
19 November 1861	Okaka	Tipare*	54	Turton's receipt 9
28 November 1861	Whiritoa	Atiu*	37	Ibid, 11
24 July 1862	Waiherunga	Otai*	36	Ibid, 17

198. McLean to Colonial Secretary, 29 July 1854, in Turton, *Epitome*, D21
199. Catherine Nesus, 'Native Reserve Legislation', claim Wai 27 record of documents, doc N36, pp 6–14
200. McLean to Rogan, 31 January 1857, in Turton, *Epitome*, C101
201. McLean to District Land Commissioners, 3 May 1861, AJHR, 1861, C-8, no 2, p 1

Date	Crown purchase	Name	Acres	Source
24 July 1862	Whakapirau	Ohutu	100	Plan
26 November 1862	Matawhero	Te Karae*	24	Turton's receipt 20

* Later purchased by the Crown. See list below.

By the time the Crown came to prepare a comprehensive list of native reserves in 1862, however, it listed only seven for Kaipara.[202] As indicated by the asterisks in table 10, the Crown eventually purchased nine of the original 15 Kaipara native reserves. The Crown purchases of previously created native reserves all occurred between January 1860 and November 1862. They occurred in the sequence indicated in table 11.

Table 11: Crown purchases of Kaipara native reserves

Date	Name	Acres	Originally reserved
5 January 1860	Kaukapakapa	200	24 March 1859
6 January 1860	Whakatiwai	200	8 December 1858
10 December 1861	Tipare	54	19 November 1861
10 December 1861	Waiharakeke	81	21 December 1860
26 June 1862	Atiu	37	28 November 1861
22 July 1862	Tapapahuakaroro	90	27 December 1860
22 July 1862	Otiaho*	474	24 December 1860
16 September 1862	Otai	36	24 July 1862
22 November 1862	Te Karae†	24	26 November 1862

* The Crown purchased 474 acres out of an originally reserved area of 680 in 1860, but the full 680 acres went through the NLC in 1868.[203]

† The Crown purchase of the reserve preceeded the larger Matawhero purchase of which it was to have been a part.

The above list indicates that most of the reserves were purchased within 18 months of having been originally created. In Rogan's few surviving reports of reserve purchases, he offers no explanation for why he acted this way.[204] None of McLean's instructions provide any answers as to why the Crown acted in this way, either. All that can be said is that the Crown reduced the number of Kaipara reserves

202. 'Return of General Reserves for Natives', AJHR, 1862, E-10, pp 4–5
203. NLC certificate of title, 4 March 1868, DOSLI ref 4944
204. Rogan to McLean, 10 January 1860, AJHR, 1861, C-1, no 16, p 100

from 15 to six during 1860–62. Although it may have recorded its reasons for doing so, that record has apparently not survived.

4.5.3 Evidence of Maori settlement

The most logical explanation for the reduction of the number of Kaipara reserves appears to be an attempt to concentrate Maori settlement. Since evidence about the extent of Kaipara Maori settlement is extremely limited, any explanation must be considered largely hypothetical. F D Fenton coordinated the only official Maori census compiled during the period in question.[205] Apparently Rogan acted as Fenton's enumerator for the Kaipara area.[206] The population totals published in 1859 were 390 for 'Upper Kaipara' and 490 for 'Lower Kaipara' giving the area a grand total of 880 people.[207] These figures can be compared to the 1631 recorded for the Bay of Islands area (including Waimate, but not Kaikohe).

While the Bay of Islands' population almost doubles Kaipara's for a similar area, Fenton's figures should not be taken as entirely accurate. In both areas (and indeed throughout New Zealand), Maori appear to have practised shifting agriculture and made frequent journeys to different areas.[208]

Fenton did not allow for this at all. None the less, Fenton and Rogan's figures suggest that the Kaipara area was relatively less populous than the Bay of Islands. This may have provided grounds for both the Crown and Maori to agree upon the reduction in the number of Kaipara reserves, and for the greater number of Crown purchase agreements in the Kaipara area.

The only direct evidence of the geographic extent of Kaipara Maori settlement depended upon Fenton and Rogan's population figures. In 1863 John White, James Fulloon, and Percy Smith drafted a map of 'Native Population' and 'Native Settlement' in the North Island. With the 1859 census figures recorded adjacent to Fenton's districts, the three drafters attempted to locate the position of known Maori settlements. For Kaipara, Smith undoubtedly used his local knowledge obtained in numerous surveying expeditions prior to 1863. The result can be seen in figure 34, a reproduction of the original sketch map.[209]

Despite Smith's local knowledge, the map contains a number of errors (Te Kopua, for example, is on the Wairoa, not the Arapaoa River). It should, therefore, not be taken as a precise record of the extent of Maori settlement. None the less, it probably does provide a reliable indicator of what Crown officials thought about the extent of Kaipara Maori settlement. In a word, the picture created by figure 34 is that of 'scattered' Maori settlement.

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205. F D Fenton, *Observations of the State of the Aboriginal Inhabitants of New Zealand*, Auckland, 1859. The Government published this 'census' data 'to draw attention to the . . . decrease' in the Maori population.
206. Rogan to McLean, not dated (probably 1858), McLean papers, fol 544
207. Of this number, 353 (or 40 percent) were female: 'Table Showing (as far as can be ascertained) the Aboriginal Native Population . . .' Fenton, *Observations* (no page number).
208. See Ian Pool, *Te Iwi Maori*, Auckland, 1991, pp 51–52
209. 'Map of the Northern Island . . .' (AAFV 997/G171). This sketch map was redrafted in a much more polished 'Map of the Northern Island . . .' (AAFV 997/G5). Neither was ever published.

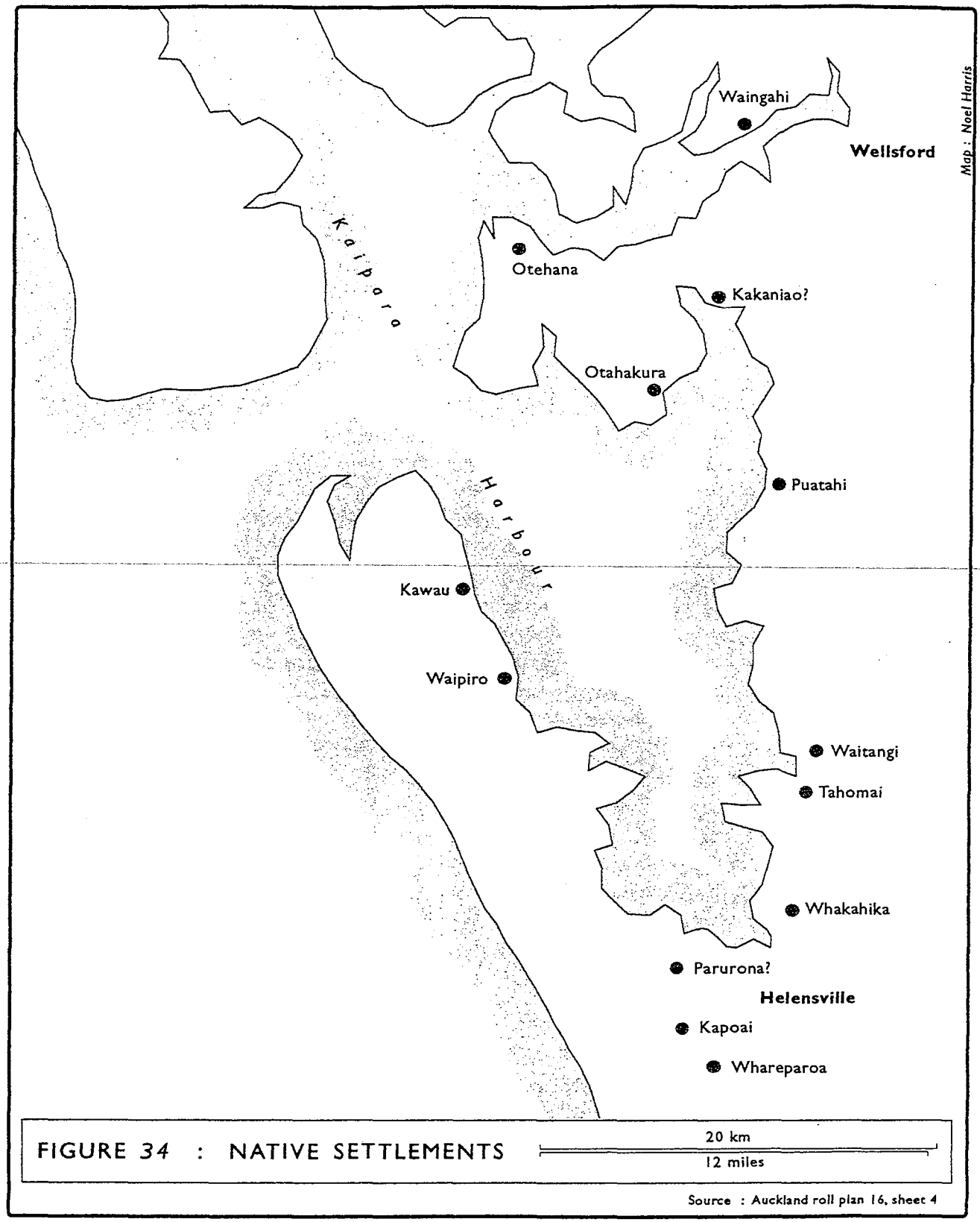

FIGURE 34 : NATIVE SETTLEMENTS

Source : Auckland roll plan 16, sheet 4

This picture may have convinced Crown officials that they could purchase extensively and reserve very little land without depriving Maori of necessary resources. Crown purchase agents probably shared Fenton's view of a steady decline in the Maori population.[210] This may have convinced the Crown to provide Kaipara Maori with what amounted to a declining resource base.

4.5.4 The overall impact of Crown purchases

The overall impact of Crown purchases on Kaipara Maori can be gauged in two different ways. Firstly, the Crown purchased a substantial proportion of the area's most valuable agricultural, pastoral, forestry, and coastal land. A digital scanning of figures 28 and 29 reveal that approximately 57.45 percent of Kaipara land passed out of Maori control prior to 1865.

The second way of gauging the impact of Crown purchases is an examination of how they affected local Maori political authority. Crown purchase agents Johnson and Rogan believed they were enhancing the authority of rangatira such as Tirarau and Paikea by negotiating Crown purchase agreements with them. Johnson made it quite clear in 1854 that he would treat Tirarau as 'paramount' because this would ensure a 'more firm establishment of the authority of the Government in these newly acquired districts'.[211] Rogan apparently believed that Johnson had gone too far, accommodating Tirarau at the expense of Paikea and Te Uri o Hau. He described how Tirarau's 'despotic' rule paralysed Walton's commercial activity.[212] Rogan completed no Crown purchase agreements with Tirarau. Evidently he preferred to work with his Te Uri o Hau 'friends'.[213]

The Te Uri o Hau and Ngati Whatua professions of loyalty at Kohimarama on 1 August 1860 provide weight to the argument that they saw Crown purchases as their protection against Nga Puhi and other erstwhile enemies. Paikea referred to the Queen's sheltering wings preventing a repeat of Te Ika a Ranganui.[214] Rogan reported the following year that Ngati Whatua (including Te Uri o Hau) were:

> the most consistent friends to the Government of all the Northern Natives excepting Tamati Waka's tribe.

He quoted Apihai Te Kawau's famous whakatauaki welcoming Hobson to Auckland as unconditional support for the Crown expressed by those who had barely survived Nga Puhi muskets. He concluded:

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210. Fenton believed that this steady decline, or 'continuous decrease', in the Maori population was 'admitted by nearly all those who have the means of forming an original opinion on the subject': Fenton, *Observations*, p 2.
211. Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, no 2, pp 47–48
212. Rogan to McLean, 1 February 1859, McLean papers, fol 541
213. Rogan to McLean, 23 November 1858, McLean papers, fol 540
214. *Te Karere*, vol IV, no 15, 3 August 1860, p 51. 'Ka mea nga iwi kia poutoa ahau, ka piri ahau ki te Kuini, tapapa ana au i nga pukau o te Kuini.'

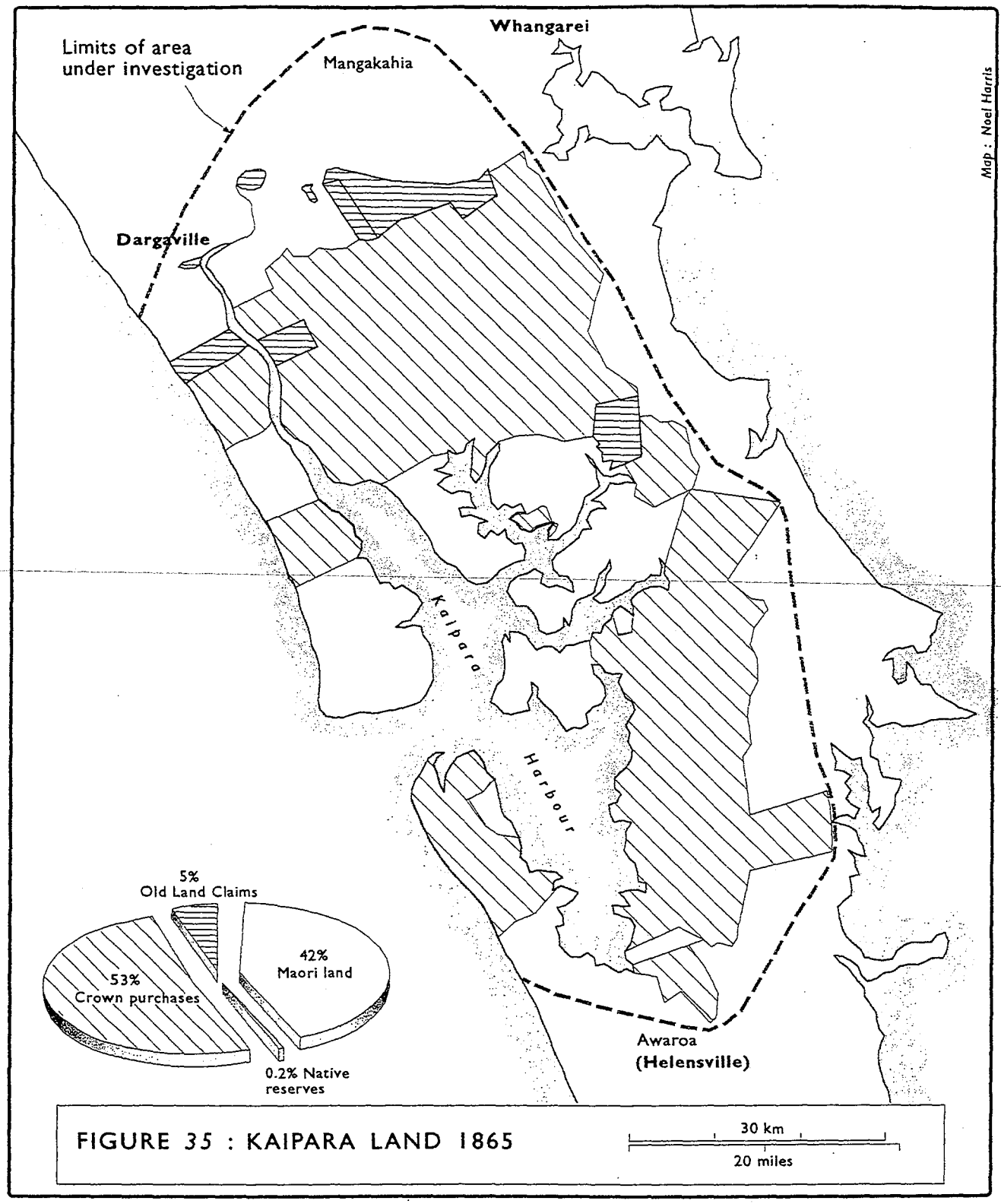

FIGURE 35 : KAIPARA LAND 1865

> they have been equal to their word in this respect, because they have been selling land to the present time, and with few exceptions, the whole of their territory is now under offer to the Government.[215]

Rogan went on to relate overhearing Kaipara Maori conversations around campfires late at night after most had apparently fallen asleep. He said his hosts would express malicious glee over the reported military reverses Waikato suffered in Taranaki during 1860. He claimed to have overheard them saying, 'at last we have had payment for our fathers who were eaten', presumably by the fathers of those who fell in Taranaki.[216] Thus, the Crown could claim to have exercised its protective obligations in Kaipara, not by ensuring the retention of land in Maori control, but in ensuring the protection of local iwi and hapu.

None the less, in taking Kaipara loyalty for granted, the Crown may have unintentionally undermined Maori political authority there. When Governor Grey began establishing his 'new institutions' in early 1862, he appears to have overlooked Kaipara. In January 1862 the Crown declared both Mangonui and the Bay of Islands 'Native Districts' in an effort to make rununga instruments of local government.[217] By March of that year most of the predominantly Maori areas throughout the North Island had been declared native districts, but not Kaipara. An article in the same issue of *Te Karere* listing many of these new districts indicated that Kaipara Maori definitely wanted 'new institutions' to resolve land disputes. The unsigned article recorded the frequency of such disputes in the past in 'the absence of any lawful tribunal to decide titles to land'. Kaipara Maori, however, had decided to remedy this deplorable situation. They:

> have gracefully accepted the newly devised system, for the better government of the New Zealand race [thus] it is but reasonable to assume that all Maori matters, including land titles, will be 'quietly settled and in order'.[218]

The Crown, however, failed to act upon this local initiative until after the Mangakahia dispute had exploded into open warfare.

Almost as an afterthought, the Crown proclaimed Kaipara a native district by Order in Council on 3 February 1864.[219] This was more than a year after the arbitration of the Mangakahia dispute in Tirarau's favour. By then the Maori had discovered the limitations of Grey's form of local self-government. They resumed discussion of a matter broached at Kohimarama – the need for effective national political representation for Maori. According to Rogan, Kaipara Maori fancied McLean as their representative in the General Assembly. Writing about this shortly after Kaipara became a native district, Rogan told McLean: 'The Kaipara natives all

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215. Rogan to Native Secretary, 28 September 1861, AJHR, 1862, E-7, p 5
216. Ibid
217. *Te Karere*, vol II, no 5, 5 February 1862, pp 29, 30–32
218. This last phrase in Maori read 'whakaotia marietie i runga i te Ture': *Te Karere* vol II, no 7, 13 March 1862, p 11.
219. *New Zealand Gazette*, 1864, no 7, 24 February 1864, p 7

swear by you . . . I stand next in their estimation.'[220] In 1864, McLean languished in the political wilderness, having been forced out of his position as Chief Native Land Purchase Commissioner. Rogan's words, therefore, could have been designed to soothe his wounded ego. None the less, Rogan persisted in trying to recruit McLean to represent Maori in Parliament. Later that year he wrote:

> . . . The Uriohau have in fact held a meeting on the subject of electing a member to represent their interests in the Ho of Assembly and yours was the first name mentioned – of course, their voice will be small in the matter [but] would you take the membership if the northern natives were unanimous in this matter.[221]

Of course, Te Uri o Hau failed to convince other iwi to embrace McLean in this way. Their reported willingness to promote his candidacy, however, indicates the extent to which they may have become dependent on political figures associated with the Crown.

For both Kaipara Maori and for the Crown's Kaipara representative, John Rogan, 1865 was a watershed year. On 1 April that year, the Crown proclaimed an end to the pre-emption principle contained in article 2 of the Treaty of Waitangi. Maori henceforth were at liberty to sell land privately after it passed through the Native Land Court. Kaipara Maori exercised this right almost immediately by selling 1000 acres to Rogan after he (as the first Kaipara Native Land Court judge) had determined title to it.[222]

After having served eight years as Kaipara Land Purchase Commissioner, Rogan served almost as long as the Native Land Court judge there. In his role as judge, Rogan complained about the Crown's reduction of the number of chiefs acting as assessors to assist the Court. This, he told McLean, reduced his authority because: 'The Chiefs rule them [Kaipara Maori] and I rule the Chiefs'.[223] Therein lay the nub of the Kaipara contradiction. The Crown could claim to have effectively protected Kaipara Maori from the misfortunes they suffered in 1825. Of course, the circumstances that led to Te Ika a Ranganui had changed even before 1840, so that a credible threat to Kaipara security no longer existed, at least after 1845. But in forming a kind of alliance with Kaipara Maori, in part through numerous purchases of their land, the Crown may have unwittingly eroded both the natural and human resource base of the area. If Rogan indeed ruled the chiefs, they surely lacked the political resources to represent effectively the interests of their own people.

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220. Rogan to McLean, 4 March 1864, McLean papers, fol 542. Earlier, Rogan endorsed a *Southern Cross* editorial stating that McLean had 'no equal . . . in the management of Natives': Rogan to McLean, 24 April 1863, McLean papers, fol 541.
221. Ibid, Rogan to McLean, 23 June 1864
222. Ibid, Rogan to McLean, 6 August 1864. As previously mentioned, McLean loaned Rogan the £500 with which to buy this land.
223. Ibid, Rogan to McLean, 13 November 1865

CHAPTER 5

PRE-1865 COMPARATIVE DATA

5.1 SAMPLING TECHNIQUE

Any comparative study employing a sampling technique needs to proceed according to an explicit methodology. A comparative study should assist in establishing the frequency with which a sample may appear in a general population. In other words, a comparison should indicate how typical or atypical the sample may be. I selected the Bay of Islands and Kaipara as sample areas within the Auckland district owing to the intensity of transactions there, but this may have made them more atypical than typical.

To establish the typicality or otherwise of the Bay of Islands and Kaipara, I will attempt three kinds of comparisons. The first will be a comparison between these two areas to explore their different historical, demographic, and resource characteristics. The second kind of comparison will be between these two areas and two other areas, Muriwhenua and south Auckland, at opposite ends of the district. The third kind of comparison is based on aggregate old land claim and Crown purchase information for both the Auckland district and other districts.

5.2 ISSUE APPROACH

With the three kinds of comparisons described above, a multi-issue approach such as presented for the Bay of Islands and Kaipara becomes difficult, if not impossible. All comparative studies require some form of quantitative analysis to convey at least a degree of precision. Even though the issues of representation, boundaries, and price negotiation are essentially qualitative in nature, they do yield a measurable outcome in the fourth issue. This fourth issue, what was left in Maori hands at the end of 1865, has to be the focus of this comparative chapter.

Consequently, I will make no effort to examine the frequency and nature of disputes in Muriwhenua and south Auckland. I will compare mainly what appears to have been the tangible outcomes of Crown activity in the different areas, and in the district as a whole. A more detailed analysis of all the issues in other areas within the district may require further investigation.

5.3 BAY OF ISLANDS/KAIPARA COMPARISON

The different historical, demographic, and resource characteristics of these two areas may be briefly traversed. The longer and more intense history of pre-Treaty Pakeha trade and settlement in the Bay of Islands perhaps explains the intensity of old land claim activity there. When the outcomes of old land claims, Crown grants, surplus land, and scrip awards are compared, this pattern becomes obvious:

Area	Grants	Scrip (£)	Surplus
Bay of Islands	59,328	8700	31,317
Kaipara	26,742	3088	7134

The 1825 military defeat inflicted upon Ngati Whatua and Te Uri o Hau at Te Ika a Ranganui by Nga Puhi apparently contributed to this kind of disparity between the two areas. By all accounts, Nga Puhi of the Bay of Islands enjoyed trade, technology, demographic, and political advantages over their Kaipara neighbours during the 1830s. Conversely, the Crown-sponsored shift of administrative and commercial activity from the Bay of Islands to Waitemata/Auckland during the 1840s may have reversed this balance to the advantage of Ngati Whatua/Te Uri o Hau. With the passage of the Bay of Islands Settlement Act 1858, the Crown apparently attempted to rescue the Bay from the depression it had contributed to during the previous decade. None the less, as explained in the old land claims chapter, this act failed to kick-start the local economy.

A comparison of Crown purchase activity in the Bay of Islands and Kaipara reveals the reverse of the old land claim pattern. According to the Auckland district Crown purchase schedule, the following pattern emerges:

Area	Acreage	Price (£)	Price/acre
Bay of Islands	70,597	8839	30s 04d
Kaipara	372,103	22,197	14s 32d

Both the old land claim and Crown purchase figures presented above should be used only with appropriate caution. In the case of old land claims, I have indicated the amount that Commissioner Bell determined the Crown to have paid claimants in scrip, which could then be exercised in the Waitemata/Auckland area during the establishment of the new colonial capital there. I have assumed that the Crown acquired an acreage equivalent to the scrip exchanged in the Bay of Islands and Kaipara, as (by its own rules) it was legally entitled to do. Maps of both areas indicate that the Crown acquired a greater quantity of scrip land than the cash or land credit quantities it gave to claimants. In fact, I have probably erred on the conservative side in the above tables by estimating what the Crown appears to have acquired on the basis of what it paid claimants. Likewise, Crown purchase acreage figures depend either on survey information, or upon Turton's estimates in

compiling his published deeds and plans volumes during the 1870s. In the Bay of Islands, however, we lack any sort acreage information for eight out of 27 (or almost 30 percent) of Crown purchases. This means that Crown purchase figures for the Bay are much less reliable than the comparable Kaipara figures.

While recognising the limitation of these figures, it is still possible to estimate the relative proportions of land transferred out of Maori ownership before 1865. In Kaipara the Crown purchased an estimated 53 percent of the entire land area, and presided over the transfer of a further 5 percent as a result of old land claims. In the Bay of Islands it appears that about 25 percent of the entire area passed out of Maori ownership as a result of old land claims, while the Crown purchased perhaps 20 percent directly. In Kaipara the Crown reserved much less than one percent for Maori, while in the Bay of Islands it reserved about one percent. In Kaipara in 1865, therefore, 42 percent on the entire area remained unreserved Maori land. In the Bay of Islands about 54 percent remained as unreserved Maori land.

This, of course, says nothing about the quality of the remaining land, whichever way that quality is measured. A cursory examination of the remaining Maori land in the Bay of Islands suggests that it was predominantly marginal land, remote from the main commercial and transport centres. Concentrated along the northern coast of the Purerua peninsula, near Rangaunu/Whakataha, Oromahoe, south of Pakaraka, and in the Te Rawhiti/Whangaruru peninsula, this land is all relatively rugged. In the 1860s much of it may have been forested, but it is difficult to estimate the value of either its timber or arable land. All that can be said about the value of the land remaining in Maori ownership is that it appears to have been less valuable in commercial terms than the land transferred before 1865.

If it is difficult to assess the value of Maori land in the Bay of Islands at 1865, it is even harder to do so in Kaipara. While Maori retained a substantial acreage with reasonably good water access between the Paparoa purchase in the north, and Hoteo (or Tauhoa) purchase in the south, the value of these lands would also depend upon the use of its forest resources. Again, it is almost impossible to determine how Maori were placed to benefit from commercial forestry during the 1850s and 60s. The Crown purchases at the Dargaville and Helensville ends of the harbour appear to be more strategically placed with respect to both trees, trading stations, and transport. Beyond this, speculation on relative economic benefits is not useful.

A demographic comparison should also be taken into account in any estimate of per capita resource distribution. Using Fenton's published figures as the most reliable pre-1865 demographic data, the Bay of Islands Maori population of 1641 is almost double the Kaipara figure of 880.[1] From this figure we can estimate a per capita land ownership figure of 375.57 acres for Kaipara, which is higher than the comparable figure for the Bay of Islands.

In all comparisons of different areas, a number of imponderables should be acknowledged. To what extent, for example, did the intensity of pre-Treaty transactions, and subsequent investigations of them, promote conflicts over land and

1. 'Table Showing (as far as can be ascertained) the Aboriginal Native Population of New Zealand', in F D Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, Auckland, 1859. I have included Waimate and Kawakawa and excluded Kaikohe from the Bay of Islands figure.

authority in the Bay of Islands?[2] Did the Crown contribute to the outbreak of war in the north during 1844–45 in the way that Governor Grey alleged in his 'blood and treasure' despatch? Did the removal of the colonial capital, scrip exchanges, and the subsequent Northern War condemn Bay of Islands Maori to relative marginality? If so, does the Crown share responsibility for this?[3] On the other hand, if Kaipara Maori benefitted from their proximity to the relocated colonial capital of Auckland after 1842, was this a reward for their continued expressions of loyalty to the Crown? Could the Crown have consciously rewarded 'loyal' Ngati Whatua/Te Uri o Hau at the expense of 'disloyal' Nga Puhi (with the notable exception of Tamati Waka Nene) in this way? Finally, of course, there remains considerable doubt over whether Te Uri o Hau really benefitted from all their professions of loyalty. Didn't they end up losing more land than Nga Puhi, and who did Grey ultimately favour in the Mangakahia/Te Wairoa dispute?

When Bay of Islands and Kaipara Maori considered the benefits of colonisation, they often regarded towns as the most tangible manifestation of such benefits. During 1851 Nga Puhi petitioned the Governor to establish a bicultural town in the Bay of Islands.[4] Later Maori support for the Bay of Islands Settlement Reserve confirms this desire for a town with its associated services. Ngati Whatua, of course, welcomed Hobson's decision to move the colonial capital to Auckland for the same reason.[5] Kaipara Maori undoubtedly benefitted from their proximity to the commercial and administrative services there.

James Belich recently touched on the relationship between Maori and colonial towns throughout the North Island. In his account, during the mid-19th century, towns 'represented the median of Maori–Pakeha relations. Tribe and town were twin communities co-operating in an often tense but more or less equal "symbiosis"'.[6] This symbiosis of tribe and town led Belich to describe the period from 1840 to 1860 as 'the heyday of New Zealand race relations'.[7]

Although Ngati Whatua and Te Uri o Hau benefitted from the establishment of the colonial capital at their doorstep, no historian has demonstrated the extent of these benefits, and how they compared with services to the settler population. There remains, also, the question of whether the Crown promised the benefits of town-based services to Maori in persuading them to sell their land.

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2. This is one of the arguments Philippa Wyatt presented in the concluding chapter of 'The Old Land Claims and the Concept of "Sale": A Case Study', MA thesis, University of Auckland, 1991, pp 229–257.
3. In one area, the Crown did initiate policies that were intended to achieve a southward shift of commercial activity, and succeeded in doing so. This was its scrip exchange policy first announced as part of the 1842 Land Claims Ordinance: see Rigby, 'Empire on the Cheap', claim Wai 45 record of documents, doc F8, pp 59–60.
4. They recommended Mangonui Te Tii as the site for this town: petition, 5 February 1851, Grey papers, GNZ MA 378.
5. Alemann, Ngati Whatua transactions, pp 103–113
6. James Belich, 'The Governors and the Maori', in Keith Sinclair (ed), *The Oxford Illustrated History of New Zealand*, Auckland, 1990, pp 84–85
7. Ibid, p 86

5.4 MURIWHENUA COMPARISON

Muriwhenua is useful for comparative purposes. The ongoing Tribunal historical investigation there makes it perhaps the most studied of all areas within the Auckland district. While its pre-Treaty history of remoteness from the centre of most intense contact in the Bay of Islands resembled Kaipara's, it also shared the bay's post-1842 lapse into marginality when the Crown moved administrative and commercial activity southward. While Muriwhenua Maori, like Te Uri o Hau, remained loyal during the Northern and New Zealand Wars of the 1840s and 60s, they also had very little to show for it by 1865. Demographically, Muriwhenua resembles the profile Fenton produced for the Bay of Islands rather than Kaipara. Fenton reported the Muriwhenua population as 1988 (compared to 1641 in the bay, and 880 in Kaipara) in 1859.[8] Muriwhenua, thus, resembles the bay in some ways and Kaipara in others.

Muriwhenua's history of old land clams and pre-1865 Crown purchases shares features from both the Bay of Islands and Kaipara. According to the relevant schedules, the Crown presided over an old land claims process by which 11 percent of the entire area (as opposed to 25 percent in the bay and 5 percent in Kaipara) passed out of Maori ownership. In Muriwhenua the Crown purchased 36 percent of the total area, compared with 20 percent in the bay and 53 percent in Kaipara. Native reserves in Muriwhenua appear to account for a further one percent of the entire area, about the same proportion as in the bay. Thus, by 1865, Muriwhenua Maori retained about 53 percent of the entire area (defined by the boundaries of Mangonui County prior to 1990), compared with about 55 percent in the bay and 42 percent in Kaipara.

Crown purchase activity in Muriwhenua resembled that in Kaipara (to a much greater extent than the bay's) as far as survey activity is concerned. In both Muriwhenua and Kaipara, it possible to estimate the area of all except one or two purchases (as opposed to seven in the bay) on the basis of contemporaneous survey data. None the less, the disputed 1863 Mangonui purchase presents a major difficulty in Muriwhenua. Since the Crown failed to survey this purchase before Turton published his deeds and plans, he reproduced the sketch map from the original deed but refrained from estimating acreage. I have estimated that the Crown acquired 10,000 acres by purchase, and a further 7000 acres by scrip exchanges (of questionable legality) in the immediate hinterland of the port of Mangonui.[9]

Despite the limitations of Crown purchase data, it is still possible to make a meaningful price per acre calculation for Muriwhenua and Kaipara, though not for the Bay of Islands. In Muriwhenua the average ninepence per acre figure is substantially lower than the halfpenny per acre paid in Kaipara. At the same time, it is worth remembering that the Kaipara figure increased dramatically after Te Uri

8. '. . . Native Population . . .', in Fenton, *Observations*. This figure is the aggregate of Fenton's totals for Ahipara, Muriwhenua (ie, Te Hapua/Te Kao), Mangonui, and Kaitaia.
9. Claimant researcher Maurice Alemann estimates the area to be 22,000 acres, but he treats it entirely as scrip land: Alemann, 'Muriwhenua Land Tenure', claim Wai 45 record of documents, doc M4, p 1. The legally questionable nature of these scrip exchanges derives from Commissioner Godfrey's failure to investigate the claims upon which the Crown later based its title to Mangonui scrip land.

o Hau relayed a strong protest to Crown officials about low purchase prices at the 1860 Kohimarama conference. Before Kohimarama the Crown paid an average price of one shilling per acre (much closer to the Muriwhenua figure), but afterwards it paid an average of 1s 10d per acre in Kaipara. This may well have reflected a response to insistent Te Uri o Hau and Ngati Whatua requests for more liberal Crown payments. The disadvantage distance inflicted on Muriwhenua Maori gave them fewer political opportunities to improve their bargaining position. The distance between Auckland and the far north apparently dictated that no Muriwhenua representatives were able to attend the Kohimarama conference.

Oliver's analysis of the tangible outcomes of Crown actions in Muriwhenua may well be applicable to other areas within the Auckland district. In Muriwhenua, Oliver found that the pre-1865 pattern of major Crown land transfers out of Maori ownership and control continued throughout the nineteenth and early twentieth centuries. By 1908, when the Stout–Ngata commission reported on the extent of remaining Maori land, all except 18 percent of the land in the area was owned by non-Maori, and Maori controlled only about 9 percent of the entire area. In Oliver's account, twentieth century landlessness was a logical consequence of the pattern of alienation established before 1865.[10]

At a time when Muriwhenua Maori controlled about 9 percent of the available land, they constituted, according to the 1906 census, 42 percent of the population of Mangonui county.[11] Using both Stout–Ngata and 1906 census data, Oliver's analysis can be extended to both the Bay of Islands and Kaipara. In the Bay of Islands county (including Kaikohe and Motatau), 2571 Maori retained ownership of 228,737 acres.[12] Thus, the Bay of Islands' Maori land ownership of 88.9 acres per capita exceeded the comparable Muriwhenua figure of 53.4 acres. In the counties of Rodney, Otamatea, and Hobson around the Kaipara Harbour (considerably larger than the area in which I examined Crown purchases) 1421 Maori retained ownership of 118,470 acres in 1906–08, or 83.3 acres per capita.[13]

Oliver also contended that in 1865 Maori retained the least productive land in Muriwhenua. He noted that, after 1865, Crown purchase agents continued to urge Maori to sell them their best land; 'a quarter of the bullock', not 'the head and the hoofs'. This marginal Maori land, the Crown contended, would increase in value in proportion to its proximity to Pakeha settlement. Oliver rejected the logic of this. He argued that 'The idea that Maori would share in a flourishing agrarian economy could have no reality unless they retained the essential land base.'[14] Clearly, sufficient productive land accessible to transport and commercial centres was needed as an essential land base.

Oliver believed that the Crown could have ensured that Maori retained this essential base by implementing its well-known reserve policy. In Muriwhenua,

10. Oliver, 'The Crown and Muriwhenua Lands', claim Wai 45 record of documents, doc L7, pp 2–3. The Crown vested almost half the Maori land in Mangonui County in the Tokerau Land Board, which usually leased it without the consent of owners.
11. Table II (Maori population); table XVI (non-Maori population), *Census of New Zealand*, 1906
12. Stout–Ngata commission report, AJHR, 1908, G-1J, p 7
13. AJHR, 1908, G-1G, p 1
14. Ibid, pp 25–27

however, the Crown reserved only about one percent of the entire area (or about 4 percent of the Crown-purchased area) for Maori before 1865. Oliver found that the pattern of inadequate reserves prior to 1865 continued after that date when the Crown charged the Native Land Court with responsibility for protecting Maori land.[15] Consequently, he concluded that the Crown could have protected Maori land, but chose not to. Oliver argued that the Crown could have halted purchases 'well before a state of near landlessness' afflicted Maori. It could have provided adequate reserves, and it could have reserved surplus land.[16]

Charles Heaphy, as Commissioner of Native Reserves, alerted the Crown to each of these options as early as 1871. He reported that both Te Rarawa and Ngati Whatua were 'in danger of becoming paupers'. He calculated that Te Rarawa (in which he probably included all Muriwhenua iwi) had only 19 acres reserved per person. He therefore recommended a moratorium on Crown purchases from both Te Rarawa and Ngati Whatua. He further recommended that the Crown reserve surplus land in the Hokianga/Bay of Islands area for Maori purposes.[17] Unfortunately, the Crown adopted none of these recommendations.

5.5 SOUTH AUCKLAND COMPARISON

At the opposite end of the Auckland district from Muriwhenua, south Auckland stands as another area worthy of comparison. The 1993 Husbands–Riddell report commissioned by the Waitangi Tribunal defined this area as extending from Otahuhu south to a line between the Waikato River mouth and Miranda (on the Firth of Thames).[18] South Auckland differs from other areas within the district in that it experienced both pre-emption waiver claims and confiscations, in addition to the more typical old land claims and Crown purchases. Generally, the pattern of Crown land transfers in south Auckland is a more complex one than that of other areas, with the possible exception of Waitemata–Auckland.

Our south Auckland schedules indicate that the Crown granted 10,786 acres to pre-Treaty old land claimants, and acquired 23,963 acres of surplus land in the process.[19] According to Husbands–Riddell, the Crown granted an additional 2140 acres to pre-emption waiver claimants. It probably acquired an additional 5000 acres of surplus land in the process.[20] Husbands–Riddell point out the difficulty of quantifying south Auckland Crown purchases because only about 13 percent of

15. Ibid, pp 31–33
16. Ibid, p 34
17. 'Report from the Commissioner of Native Reserves', 19 July 1871, AJHR, 1871, F-4, p 5
18. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, p 1. The Auckland district boundary falls 5–10 miles north of this line, roughly at the Bombay Hills.
19. Ibid, pp 9–10. Husbands' and Riddell's surplus land estimate of 71,512 acres of appears too high. It apparently included parts of the extensive Fairburn/Tamaki claim that were later Crown purchased. I have relied upon the conservative Surplus Land Commission estimate of 21,500 acres of 'nominal surplus' in the Fairburn claim area: summary, MA 91/23 (590), p 1.
20. Ibid, pp 34–35. Again, Husbands and Riddell appear to have overestimated the amount of surplus land arising from these claims. They calculated that the Crown acquired between 15,000 and 17,000 acres of surplus land from pre-emption waiver claims.

the published deeds are accompanied by plans. None the less, using a digital scan of old land claim/Crown purchase maps, they calculated that by the end of 1865 the Crown had presided over the alienation of approximately 58 percent of south Auckland.[21] Coincidentally, this is the same percentage alienated in Kaipara during the same period.

Of this 58 percent of land that was alienated, the Crown confiscated almost half during early 1865. Although the Crown confiscated 135,907 acres, this included 40,031 already purchased by the Crown. Therefore, I have taken 95,878 acres as the effective confiscated acreage.[22] While the Crown reserved about 4 percent of the total area prior to 1865, it then confiscated about 7000 acres of the Pukekohe and Pukaki native reserves. This left less than 3 percent of the total area as reserved land.[23] According to Husbands–Riddell, the remaining 40 percent of the area which was unreserved Maori land 'lay in the infertile and inaccessible Hunua and Wairoa ranges'. They concluded that the extent of alienation meant that the Crown failed in its obligations 'to ensure that South Auckland Maori were left with "a sufficient endowment for their foreseen needs"'.[24]

5.6 AUCKLAND DISTRICT AGGREGATE DATA

The limitations of survey information in south Auckland highlights the difficulty of estimating accurately the extent of grants, scrip/surplus land, and Crown purchases for the district as a whole. The best available old land claim data for the Auckland district can be tabulated as follows:

	Grants	Scrip (£)	Surplus
Pre-Treaty	363,584	101,206	133,372
Pre-emption waiver	28,381	7917	31,468
Total	391,965	109,123	164,840

These figures depend largely upon Bell and the Surplus Land Commission corrections of his data. They can be relied upon with regard to grant acreage, which is invariably supported by relatively accurate survey and title information. Unfortunately, their data is less reliable when it comes to scrip/surplus acreage. None the less, by comparing the above aggregate data with area data, we can see how the proportions differ.

21. Ibid, pp 16–17
22. Ibid, pp 17, 44
23. Ibid, pp 14, 47
24. Ibid, pp 38–39

Area	Grants	Scrip (£)	Surplus
Muriwhenua	27,955	12,887	27,456
Bay of Islands	59,328	8700	31,317
Kaipara	26,742	3088	7134
South Auckland*	10,786	549	23,963
Total	124,811	25,224	89,870
Percentage of district total	34.3	24.9	58.0

* South Auckland surplus figures do not include pre-emption claims

This data suggests that the four areas investigated in this chapter are not too atypical of the district as a whole. The most atypical feature of the above figures is the percentage of surplus land. This is mainly due to the 21,500 acres of 'nominal surplus' contained within the Fairburn Tamaki (south Auckland) claim.

The district-wide picture of Crown purchases appears quite similar to old land claims. Just as with old land claim data, acreage and price information is incomplete. The best Crown purchase estimates I have arrived at are as follows:

Area	Acreage	Price (£)	Price per acre
Muriwhenua	215,187	8097	9s 03d
Whangaroa	25,800	1908	17s 75d
Hokianga	14,584	2250	37s 02d
Bay of Islands	70,597	8839	30s 4d
Whangarei	266,527	17,649	15s 89d
Kaipara	372,103	22,197	14s 32d
Mahurangi/Kumeu	188,195	11,950	15s 23d
Waitemata/Auckland	28,299	481	4s 8d
South Auckland	416,386	16,051	9s 23d
Hauraki Gulf	45,556	1,360	7s 16d
Total	1,643,234	90,746	13s 25d

The most atypical features of the above data are the variations in price per acre, particularly in the Bay of Islands and Hokianga. In case of the Bay of Islands, little

weight can be placed upon this figure because acreage information isn't available for almost 30 percent of pre-1865 Crown purchases there.[25]

When the incomplete Crown purchase acreage figure is added to old land claim figures for the district, it appears that the Crown presided over the transfer of 2.3 million acres out of an estimated total land area of 4.3 million acres.[26] If these figures can be relied upon as relatively accurate estimates, the Crown transferred about 53 percent of the total land area out of Maori hands before the end of 1865. When we consider that the total land transfer proportions varied between 45 percent in the Bay of Islands and 58 percent in Kaipara and south Auckland, these areas appear to be more typical than atypical.

Finally, the incomplete Auckland district aggregate data can be compared with even more incomplete data from other districts, to give some indication of how typical the areas under investigation are in the broader national context. In comparing Auckland district old land claims with other districts it soon becomes evident that they are quite atypical in their extent. Auckland district old land claims based on pre-Treaty transactions apparently account for 82 percent of the national grant, and 95 percent of the national surplus, acreage. In grants/surplus resulting from pre-emption claims, Auckland's atypicality is even greater. All the grants and 97 percent of the surplus resulting from Crown actions upon such claims occurred within the Auckland district. This atypicality also characterises the pre-emption waiver grants/surplus within the Auckland district. They all occurred in either the Waitemata/Auckland or south Auckland areas. Hauraki was the only other district affected by surplus land arising from this class of claims.

This Auckland atypicality, however, is partly the result of Bell and the Surplus Land Commission's decisions to limit the scope of their respective investigations. Both Bell and the Surplus Land Commission considered the extensive New Zealand Company claims based on pre-Treaty transactions in Taranaki, Wanganui, Wellington, and the northern South Island. Since we have depended upon Bell and the Surplus Land Commission for most of our old land claim data, our schedules show very insignificant grant and no surplus acreage in these areas. At the same time we know that the New Zealand Company changed the land history of all these districts, particularly in laying the foundations of subsequent Crown purchases. The fact that they do not feature prominently in the quantitative data, and that they thereby increase the statistical atypicality of Auckland, is therefore somewhat misleading.

This picture of Auckland atypicality appears to be less pronounced when Crown-purchased acreage is added to transfers resulting from old land claims. When the percentage of all land transferred is compared for each district, we are again confronted with serious problems regarding the incomplete nature of the data. For example, in Wairarapa, which experienced the largest number of pre-1865 Crown purchase transactions in any single area, only about 10 percent of 150 deeds or

25. In the case of Hokianga, the very low acreage figure makes the price per acre deviation from the Auckland district average less significant.
26. This estimate of the total area of the Auckland district is based on a digital scan, which calculated that the district contains 17,554 square kilometres or 4,335,838 acres.

receipts are accompanied by survey plans. In this case, we have had to estimate from an 1870 Crown purchase map that 85 percent of the area passed out of Maori ownership by the end of 1865. Of course, 99 percent of the southern South Island (the area investigated by the Ngai Tahu Tribunal) had passed out of Maori hands by 1865. At the other end of the scale, it appears that less than one percent of the volcanic plateau district changed hands before 1865. According to this very sketchy total transfer comparison, Auckland looks less atypical than it does when compared with other districts solely on the basis of old land claims.

CHAPTER 6

CROWN PURCHASES, 1866–73

6.1 INTRODUCTION

Purchases by the Crown during 1866–73 occupy what could be described as an interregnum between two Native Land Purchase agencies. The Crown abolished McLean's NLP Department in 1865. Even though the 1870 and 1873 Immigration and Public Works Acts provided £700,000 to finance purchases, the Crown failed to set up a special agency for this purpose until October 1873.[1] The result of the absence of a single agency devoted to promoting and coordinating Crown purchases can be seen in the accompanying table which shows only 31 purchases during this period.[2]

The approach of this chapter differs from that followed in the pre-1865 old land claim and Crown purchase chapters. Lack of sufficient documentary evidence has prevented the detailed examination of the issues of representation, boundaries, equivalents, and outcomes. Instead, the issues raised by the 1865–73 Crown purchases are peculiar to that period. They are:

(a) the lack of satisfactory documentation;
(b) negotiation anomalies;
(c) the adequacy of reserves; and
(d) Crown protective responsibilities.

6.2 CROWN PURCHASE CATEGORIES

In contrast to the pre-1865 purchase era when the Crown acquired almost 1.6 million acres in the Auckland district, its 1866–73 acquisitions totalled less than 250,000 acres. Even this figure is an inflated one. The Crown originally negotiated the 1867 Waiuku purchase of 68,000 acres in 1864. For that reason, this discussion treats Waiuku as a renegotiated pre-1865 purchase. The figure may also appear to have been inflated by the inclusion of 12 provincial purchases which together account for a greater area than direct Crown purchases. Reasons for including these purchases in the total is explained in the section dealing with provincial purchases.

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1. Notes on land purchase, not dated, MA/MLP 1/2 74/346; 'Statement of Native Minister re Land Purchases in North Island', 10 August 1875, H H Turton (comp), *An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, 1883, C220–223
2. 1866–73 Crown purchase table attached.

The relatively small number of purchases during 1866–73 allows a detailed examination of these purchases in four separate categories:

(a) those preceded by private purchases;
(b) provincial purchases;
(c) renegotiated pre-1865 purchases; and
(d) Native Land Court facilitated purchases.

6.2.1 Purchases preceded by private purchases

When Governor Grey proclaimed the end of pre-emption on 1 April 1865, he inaugurated an era in which general government, provincial, and private agents were simultaneously negotiating the purchase of Maori land. While no historian has ever determined the extent of post-1865 private purchases, in the Auckland district at least two private purchases passed into Crown hands.

Since Maori disputed ownership of the Pungaere area during Land Claims Commissioner Bell's 1857–58 hearings, the 1872 Crown purchase there provides an example of related private and public activities both before and after 1865. Before 1865 Te Whiu and Ngai Tawake (both Nga Puhi hapu) disputed ownership of the areas surrounding James Kemp's Waipapa grant. Te Whiu claimed Puketotara on the south side, Ngai Tawake claimed Pungaere on its north side, but Bell claimed both as Crown surplus land (see fig 6). Despite Bell's insistence that Pungaere was Crown land, Mangonui Huirua and Wi Kaire successfully claimed ownership of the 7000 acres in the Native Land Court.[3] Almost as soon as they obtained their Crown grant, Huirua and Kaire sold the entire area to John Charles McCormick of Auckland for £300.[4] The haste which attended this sale may have been due to the awareness of the principals that the Crown might reclaim the area as surplus land at any time.[5]

When the Crown agents approached McCormick in 1872 and offered to purchase the area for £718, they must have rued the day that they let Pungaere slip through their fingers.[6] When Maori took the area to the Native Land Court, the Crown may have expected Judge Maning to throw the claim out. Since the Crown failed to survey surplus land excluded from old land claim plans in the Auckland district prior to the 1890s, Maning apparently upheld the Maori claim because the best available maps didn't show the area as Crown land.[7] The fact that Maning's record of the Pungaere hearing has not survived means that much of the case has to be left to conjecture. Since little documentary evidence survives in the Native Land Purchase

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3. NLC certificate of title, 16 October 1868, DOSLI ref 921. Prior to 1873, the NLC issued certificates of title as well as recommending the issuance of Crown grants. Neither were registered in what came to be known as the Torrens system.
4. Deed of conveyance, 25 May 1869, Auc 466 A1, DOSLI, Heaphy House Wellington
5. The Pungaere Crown grant to Huirua and Kaire, though issued in 1868, was not registered in Wellington until 23 July 1869, by which time the land had already been sold: Crown grant, 16 October 1868, Auc 466 B1.
6. Deed of conveyance, 17 September 1872, Auc 466C. The wording of the 1869 and 1872 deeds is almost identical. Apparently the well-known Auckland legal firm of Whitaker and Russell drafted both documents.
7. The best available map was probably Auckland roll plan 16, which was a compilation of Crown purchases and old land claims (see fig 16).

files about either the 1869 or the 1872 purchases, we are also left to conjecture about surrounding circumstances, although some evidence suggests Maori sold Pungaere to pay survey costs (see below).

According to NLP files, Robert Vaile (apparently acting as an agent for McCormick) offered Pungaere at two shillings an acre to the province in mid 1872.[8] The superintendent, Thomas Gillies, then recommended that the general government purchase the block. He believed that about a third of it would be available for immediate settlement.[9] The general government's Auckland agent, Daniel Pollen, complied with this request using Immigration and Public Works funds to finance the transaction.[10]

Patupukapuka, a 21-acre area near Mangonui, appears to be a second example of a Crown purchase preceded by a private purchase. When Pororua Wharekauri brought the area before the Native Land Court in 1867, he stated that he had already 'exchanged' it with James Berghan, a well-known settler. Although Pororua wished Judge W B White to order title in favour of Berghan, the Native Land Court had no power to do so.[11] Eventually, the Native Land Court issued a certificate of title to Pororua. This document survives as the only evidence that the Crown purchased Patupukapuka. The certificate, unaccompanied by any sort of deed, occupies its own file amidst the original Crown purchase deeds. Presumably, the Crown inherited this document from either Pororua or Berghan after paying either or both for the land.[12]

6.2.2 Provincial purchases

After 1865, provincial purchase agents moved into the void created by the abolition of the NLP Department. In some cases, such as the Hoteo purchase, provincial agents completed the work begun by the Native Land Purchase Department. In other cases, such as Tureikura and Te Onekura, custody of provincial purchases passed to the general government after the abolition of the provincial system in 1876. Then there are also provincial purchases which have been almost impossible to document because a fire in 1872 apparently destroyed the evidence.

The Crown advanced Maori £330 in prepayments for Hoteo in the 41,400 acre area between Port Albert and Awaroa (today's Helensville), during 1862–63. Since the Crown failed to complete the purchase prior to the establishment of the Native Land Court, the Court determined Maori title to Hoteo in 1867.[13] The area that passed through the Native Land Court excluded two riverbank reserves, and two coastal areas. Such exclusions make it perfectly obvious that Maori went through the Native Land Court as a prelude to completing the alienation process begun prior to 1865.

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8. Robert Vaile to Gillies, 22 June 1872, MA/MLP 1/1 73/10
9. Gillies to Colonial Secretary, 26 June 1872, MA/MLP 1/1 73/10
10. Pollen to Under-Secretary of Public Works, 4 November 1872, MA/MLP 1/1 73/10
11. White initially ordered title for both Pororua and Berghan, but this was also contrary to statute: Patupukapuka hearing, 7 March 1867, Northern minute book, vol I, fol 25.
12. CT, 7 March 1867, Auc 5657, DOSLI, Heaphy House Wellington
13. CT, 16 February 1867, DOSLI, ref 4932. See Paul Hamer's references to this block in chapter 7.

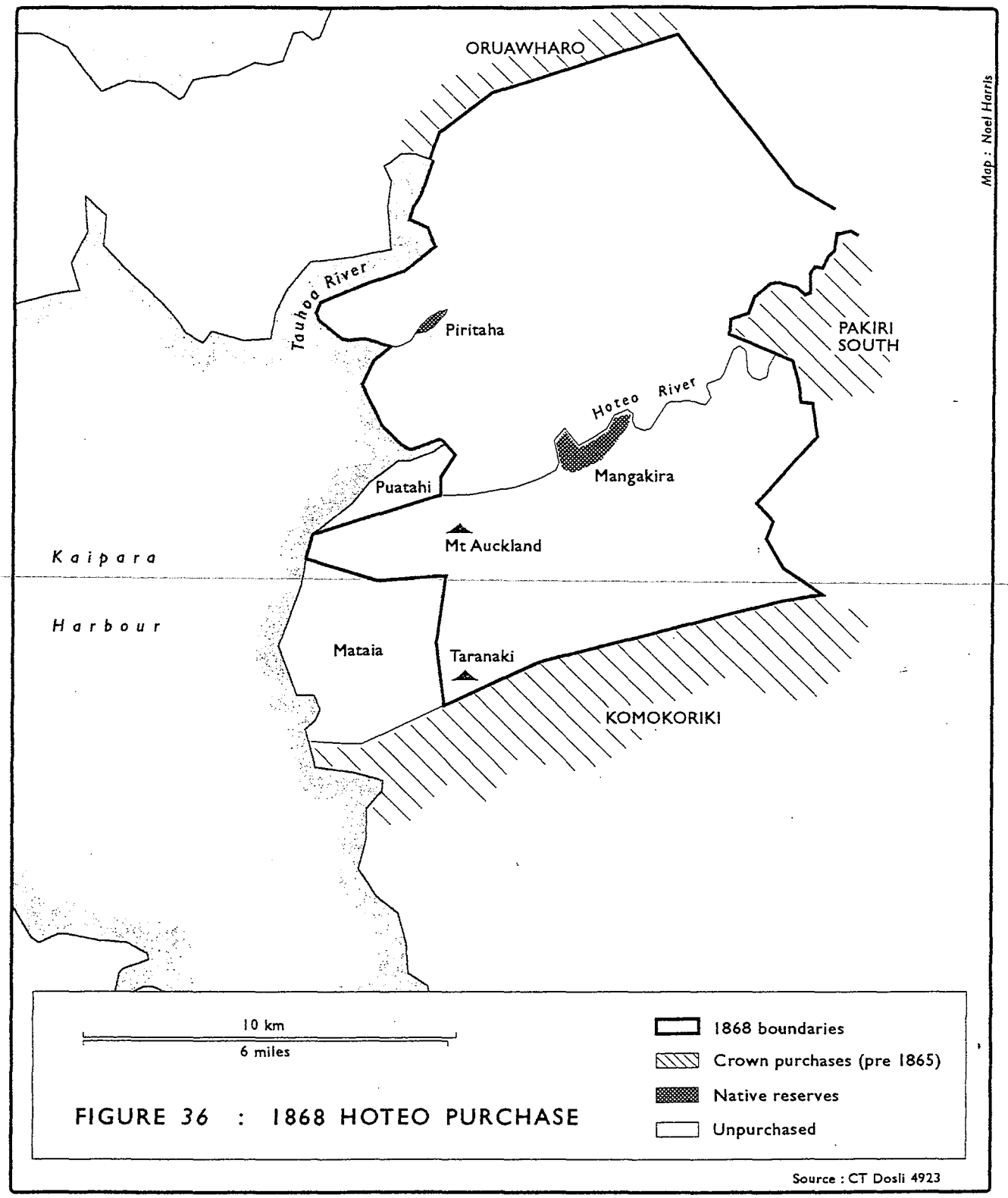

FIGURE 36 : 1868 HOTEO PURCHASE

Provincial agents completed the Hoteo purchase, according to Alemann, on 12 December 1868.[14] Presumably the Auckland Provincial Building fire of November 1872 destroyed the purchase documentation, because the general government did not place any evidence of the Hoteo purchase in its deed files. Apparently, the Crown assumed that the provincial government completed the purchase properly before conveying it to the general government in 1876.

Some provincial purchase deeds evidently survived the 1872 fire. Central deed files include an 1871 conveyance of the 1969 acre Tureikura block in the Te Puna area of the Bay of Islands.[15] Strangely, the Native Land Court granted this area to a single individual, Hone Taotahi, in 1867. He then mortgaged the property to E M Mackecknie in 1870, before selling it to provincial agents the following year.[16] Again, the paucity of documentation makes it impossible to conclude much about the nature of these transactions.

The smaller 323-acre Te Onekura purchase near Helensville is even less well documented than the Tureikura purchase. The only direct evidence of the purchase is an endorsement on the 1871 Crown Grant to Maori stating 'Transfer No 188 . . . to [Provincial Superintendent] Thomas B Gillies 20 October 1873'.[17] Although we know the names of the principals and the extent of the area (from the plan inscribed on the grant), we know neither the purchase price, nor any other information about the circumstances surrounding the transaction. Such lack of satisfactory documentation may not have created legal difficulties at Tureikura and Te Onekura, but they did in other provincial purchases.

A 1950 royal commission investigation into the undocumented Opouturi purchase near Kaitaia raised serious questions about the Crown's discharge of its legal obligations. The investigation arose out of Maori petitions to Parliament in 1923 and 1948 denying the validity of the Crown's ownership of the 250-acre area. The commission (chaired by Judge Dalglish) found that Opouturi was one of at least a dozen areas where the original provincial deed had apparently been destroyed in the 1872 fire.[18] To establish that the Crown had indeed acquired legal ownership of Opouturi, the commission had to rely upon an 1872 letter listing duties on recent conveyances.[19] While Vincent Meredith, as 'counsel assisting the commission', argued successfully that such indirect evidence proved the validity of the Crown's claim, Hall Skelton, representing Maori, exploited the doubts created by lack of direct evidence. He alleged that Government 'manipulations' of the incomplete record suggested illegal action.[20] Even though the commission upheld the Crown's position, it recommended the payment of compensation to Maori.[21]

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14. Alemann, Ngati Whatua transactions, p 71
15. Deed, 10 November 1871, Auc 1740C, DOSLI
16. Very seldom would the NLC award an area exceeding 1000 acres to a single individual: Crown grant, 1 April 1867; mortgage document, 15 May 1870, Auc 1740A, 1740B
17. Crown grant, 23 November 1871, Auc 1028, DOSLI
18. Commission report, 4 December 1950, MA 98/5, pp 13–16, 33–34. H M Christie and R Ormsby completed the commission's membership.
19. Ibid, H H Lusk to Colonial Secretary, 6 November 1872, pp 10–12
20. Proceedings, 11 July 1950, MA 98/1, p G1
21. Commission report, 4 December 1950, MA 98/5, p 35. The Crown evidently paid Maori £75: Under-Secretary for Maori Affairs to Secretary of Internal Affairs, 12 November 1951, MA 5/13/213.

6.2.3 Renegotiated pre-1865 purchases

Although the General Government lacked a department responsible for Crown purchases between 1866 and 1870, some pre-1865 purchases had to be renegotiated during these years. At West Waiuku, from the south head of the entrance to Manukau Harbour to the Waikato River mouth, and on Waiheke Island, the effects of confiscation and multiple Maori interests required renegotiation. At Waiuku, confiscation upset pre-1865 reserve provisions, and at Waiheke Ngati Maru interests, which had been overlooked, demanded recognition.

The Husbands–Riddell report indicates the labyrinth of multiple Crown purchases affecting the West Waiuku area prior to 1865. At least nine Crown purchases and five old land claims littered this 68,000-acre area. To further complicate matters, the Crown confiscated the southern two-thirds of the area (including native reserves) in 1865.[22]

The 1864 Waiuku no 2 purchase negotiated with Ngati Te Ata created 15 reserves, totalling 5153 acres, and 15 wahi tapu, totalling 1253 acres. The deed specified that these areas were reserved only for those tribes 'as have not been engaged in rebellion' ('mo te iwi, ara mo matou kihai i uru ki te whawhai').[23] Although Ngati Te Ata generally 'remained loyal to the Crown in both word and deed', according to Husbands and Riddell, the Crown confiscated about two-thirds of their 1864 reserves.[24] In an attempt to remedy this inexplicable injustice, Parliament passed the Friendly Natives' Contracts Confirmation Act 1866 which restored the confiscated reserves to Maori.[25] Civil Commissioner James Mackay then persuaded Ngati Te Ata to sign a new deed in which the Crown agreed to complete a schedule of payments begun in 1864.[26]

That, however, was not the end of the story. Charles Heaphy, as Commissioner of Native Reserves, reported that the Crown conveyed the Waiuku reserves to certain chiefs as trustees on behalf of their hapu. According to Heaphy, they:

> contracted for the actual sale of some of the reserves, and let others in an irregular manner . . . They have also sold the valuable timber, to the material injury of the land, and lesser claimants complain that this is done without their concurrence or participation.[27]

To remedy this, in 1874, John White, a freelancing 'Native Agent', proposed individual partitions of each reserve with the Crown paying the survey costs. Heaphy reported that Maori consented to this arrangement, formalised with the 1876

22. Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 12, 24–25, 43–44
23. Deed, 2 November 1864, TCD, vol I, pp 350–353
24. Husbands and Riddell, p 43
25. 'Report of Commissioner of Native Reserves', 29 May 1874, *Epitome*, D88
26. Deed, 1 January 1867, TCD, vol I, pp 355–358. The 1864 and 1867 deeds were virtually identical, although a larger number of Maori signed in 1867.
27. Heaphy report, 29 May 1874, *Epitome*, D88

Waiuku Native Grants Act. Maori may have preferred individualisation to being at the mercy of unaccountable trustees.[28]

Waiuku reserve arrangements affected only Ngati Te Ata, the dominant resident iwi. At Waiheke, the Crown was prepared to purchase the interests of Ngati Maru, apparently a largely non-resident iwi. It did so, while guaranteeing the continued rights of Ngati Paoa in a deed of 1867.[29] The plan inscribed on this deed identifies a 2100-acre Ngati Paoa reserve, and larger areas of native land which the Native Land Court presumably granted individuals of Ngati Paoa descent.[30]

While 18 Ngati Maru individuals signed the 1867 deed in return for £300, two years later a further 31 individuals received £150. The deed stated that Ngati Maru 'parted with all the[ir] claims and interests' ('Kua oti atu o matou paanga . . . me nga take katoa') at Waiheke.[31]

The 1867 and 1869 Ngati Maru/Waiheke purchases resemble the 1864 and 1867 Ngati Te Ata/Waiuku purchases in that they appear to be tidying up exercises. In both cases they followed a welter of confusing pre-1865 transactions. At Waiheke at least three Crown purchases and 12 old land claims preceded the 1867 and 1869 purchases.[32] The Waitangi Tribunal's report on the Waiheke Island Claim records that the pre-1865 Crown purchases negotiated with Ngati Paoa alienated approximately three-quarters of the island. The Tribunal accepted the subsequent Native Land Court title determinations in Ngati Paoa's favour as indicating that they were the proper people for the Crown to be dealing with. None the less, the Tribunal reported that Ngati Maru's position:

> may deserve further study . . . It is clear that Ngati Paoa and Ngati Maru are most closely related tribes, enjoying a common ancestor . . . and that for a time they lived together on Waiheke . . . [After 1865] Ngati Maru continued to insist that they had not relinquished a share in the land.[33]

The 1867 and 1869 purchases, therefore, appear to represent the Crown's attempt to ensure that Ngati Maru did not continue to claim Waiheke land in the Native Land Court. Continuing Ngati Maru claims cast doubt on the wisdom of the decision of Crown purchase agents to ignore their interests prior to 1865.

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28. 'Report of the Commissioner of Native Reserves' (the Heaphy report), 30 June 1875, AJHR, 1875, G-5, pp 1–2; Waiuku Native Grants Act 1876
29. Deed, 18 October 1867, TCD, vol I, pp 306–307
30. Maori land titles list 1865–85, DOSLI, Heaphy House Wellington. Unfortunately, this is not a complete list of Native Land Court awards. Noticeably absent are many areas privately purchased from Maori before 1870, listed in 'Return of [Native] Lands . . . Sold', MA-MT 1/1B, no 157
31. Deed, 7 December 1869, TCD, vol I, p 307
32. All three pre-1865 Crown purchases were negotiated with Ngati Paoa: deeds 18 May; 12, 28 June 1858, TCD, vol I, pp 293, 302, 304; ibid, receipt, 10 July 1854, p 736. Commissioner Bell listed a total of 2482 Crown-granted acres at Waiheke: 'Appendix to the Report of the Land Claims Commissioner', 8 July 1863, AJHR, 1863, D-14.
33. Waitangi Tribunal, *Waiheke Island Report*, Wellington, Department of Justice: Waitangi Tribunal Division, 1987, pp 8–9

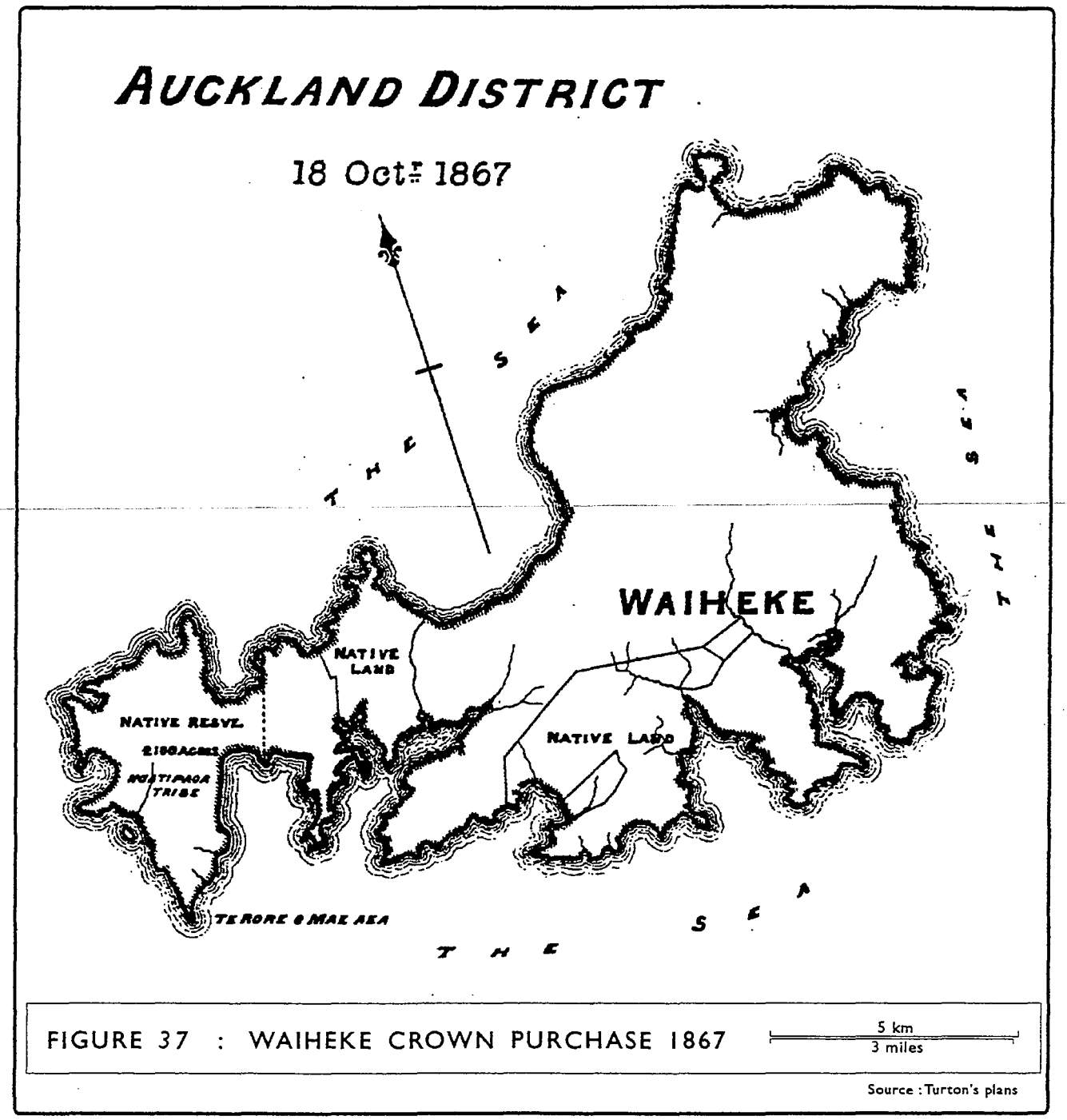

FIGURE 37 : WAIHEKE CROWN PURCHASE 1867

6.2.4 Native Land Court facilitated purchases

The Native Land Act 1865 required the Crown to purchase land from only those Maori whom the Native Land Court determined to be its rightful owners. In some cases, however, the Native Land Court appears to have facilitated purchases, and may well have legalised purchase arrangements made prior to its title determination. Such appears to have been the case with the 1872 Kaitaia north purchase, and with 1873 Pakiri north arrangements which subsequently embarrassed the Crown.

The 1872 Kaitaia purchase featured Native Land Court Judge Frederick Maning, with Resident Magistrate William B White acting as Crown agent (rather than in a judicial capacity). Since Maning's Native Land Court minutebooks have not survived we know very little about how he determined title to the 11,000-acre Kaitaia block in 1868. Te Rarawa and Te Patu disputed the area, but Maning awarded title to 10 Te Rarawa individuals. Since Te Patu lived nearby, their exclusion from the title may have promoted the possibility of a purchase. The titleholders lived a considerable distance from the area, mostly in the Ahipara/Whangape area.[34] These people had little to gain economically from such a large and distant block which they had to have surveyed at their own expense prior to the title determination.

White had earlier reported that since most Maori couldn't afford expensive surveys, they applied for Native Land Court title determinations only if they had 'previously agreed to sell the land.'[35] In ordering title to the block, Maning also took the unusual step of partitioning it between the agriculturally valuable northern half, and the rugged southern half. When Chief Judge Fenton later questioned him about this, Maning maintained that Maori told him the southern portion (which he restricted from alienation for 21 years) contained gold deposits. He justified this restriction on the grounds that it protected the Crown's, not Maori, interests. He believed that the Crown would eventually want to purchase that area, and he believed that it should purchase it from Maori, rather than from Pakeha speculators who would almost certainly bid up the price.[36]

A notorious land speculator, and later member of the House of Representatives, John Lundon, obtained control of the adjoining Ruaroa block at about the time of the Kaitaia title determination.[37] He soon cast his covetous eyes upon the green rolling country of the northern section which Maning had not restricted the title to, perhaps in anticipation of a Crown purchase. White therefore prevailed upon Pollen to authorise him to negotiate the purchase of Kaitaia north in 1871.[38] To complete the purchase, however, White required the further cooperation of Judge Maning. Since three of the 10 Kaitaia titleholders had died before White could get them to sign a purchase deed, he applied for a special Native Land Court succession hearing.

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34. CT, 23 October 1868, DOSLI, ref 1064; Tamaho Maika report, *Northlander*, 17 August 1922
35. White to Fenton, 5 July 1867, AJHR, 1867, A-10, p 10
36. Maning to Fenton, 23 October 1872, claim Wai 45 record of documents, doc F20, vol II, pp 586–587
37. Maori later petitioned Parliament that Lundon obtained control of this area without ever paying for it: 'Petition of Timoti Puhipi', AJHR, 1882, I-2, no 364, p 22. David Routledge refers to Lundon as a man capable of 'both high-minded altruism and blatant skulduggery': DNZB, Wellington, 1993, vol II, pp 279–280
38. White to Pollen, 26 December 1871, claim Wai 45 record of documents, doc F20, vol II, pp 581–582

Maning willingly complied. As a result, seven surviving titleholders signed a deed in July 1872, and three successors to deceased titleholders signed another in September.[39]

The Kaitaia north purchase then became the very first purchase in Auckland province financed out of the Immigration and Public Works Act 1870. More importantly, the Native Land Court title determination in favour of absentees, its expensive survey requirements, and the cooperation between Judge Maning and White (himself a former Native Land Court Judge), paved the way for the purchase.

The 1873 Pakiri north arrangements provide an even more vivid example of cooperation between the Native Land Court and Crown purchase agents. The original north/south divide at the Pakiri River grew out of a 38,000-acre 1858 purchase at what Rogan considered a bargain-basement price.[40] When Rogan completed the Waikeri-a-wera purchase the following year, the 30,000 acres north of the Pakiri River remained the only Maori land along the east coast from Auckland to Whangarei. As the only Maori outlet to the east coast, one would have expected Maori to have clung to it like a last prized possession.

A dramatic series of events conspired to compromise Maori possession of their last coastal outlet. In September 1864 Tainui prisoners escaped from Kawau and persuaded Hori Te More to supply them from John McLeod's store at Waitangi, a few miles north of Helensville.[41] McLeod, the founder of Helensville and later Bay of Islands member of the House of Representatives, prevailed upon Te More to promise compensation. When Te More failed to fulfil this promise, McLeod successfully sued him for almost £300.[42] Representing Te More in the Auckland Supreme Court was the architect of the highly questionable 1873 purchase arrangement, John Sheehan.[43] When he entered Parliament as the member for Hobson in 1872, Sheehan supported McLeod's bid to have the £300 Te More owed him paid by the Crown and deducted from the Pakiri north purchase price. Sheehan assured the Native Minister, McLean, that this was acceptable to Maori, and that he was willing to negotiate terms without charging for his services.[44]

Native Land Court Judge Rogan had determined title to Pakiri north in 1870 in a manner that greatly complicated subsequent purchase. He awarded title to a woman, Rahui Kiri, and two minors, including the son of Te More.[45] Even though Sheehan persuaded Arama Karaka to allow him to act as a joint trustee for one of the minors, under the terms of Maori Real Estate Management Act 1867 trustees could not sell the property of their wards. Since he had just entered Parliament, however, Sheehan

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39. Deeds, 31 July, 25 September 1872, TCD, vol I, pp 27, 88
40. He told McLean 'you got that Pakiri block at a ridiculously low price the Kauri alone is worth twenty times the sum paid by the Govt': Rogan to McLean, 24 June 1859, McLean papers, fol 541
41. For part of the story, see James Belich, *The New Zealand Wars*, Auckland, 1986, pp 197–198.
42. McLeod to McLean, 28 June 1872, MA 13/62
43. Sheehan shared many of Lundon's personal and political characteristics. Both were central figures in native land purchase scandals. See their entries written by Waterson and Routledge respectively in NZDB, vol II, pp 279–280, 465–469.
44. Sheehan memo (apparently enclosed in McLeod's letter to McLean) 28 June 1872, MA 13/62
45. CT, 7 March 1870, DOSLI, ref 325. Although Rogan ordered the issuance of certificates of title for Pakiri north on 29 April 1869, in this report the date of issuance by the chief judge of the NLC has been taken as the effective date in this and all other cases.

foolishly thought he could pass another act to make such a sale legal. During early 1873 he told the Crown purchase agent, Colonel Thomas McDonnell, that he 'would see about this' or arrange this matter satisfactorily in Parliament.[46]

Both provincial and central government officials had declared support for the Pakiri north purchase as early as October 1872, and in December McLean authorised a £100 payment to McLeod on the understanding that it would be deducted from the purchase price.[47] Later Maori evidence indicates that Sheehan never obtained their consent for paying off McLeod, although McLean and McDonnell probably accepted Sheehan's assurance that he acted with full Maori consent. Sheehan couldn't even obtain the consent of Rahui Kiri to the purchase. She was not willing to sell her share of the land, although she was willing to allow the Native Land Court to partition it to allow the other two-thirds to be sold.[48]

Crown agent McDonnell applied to the Native Land Court on 30 December 1872 for the necessary partition order.[49] Anticipating no difficulties in obtaining Native Land Court cooperation, Sheehan then drafted a purchase agreement which he, McDonnell, Te More, and Karaka signed on 21 February 1873 in Helensville, where the Native Land Court sitting took place. This agreement specified three conditions necessary for the completion of the purchase. These were that the block was to be partitioned to allow two-thirds of it to be sold; that the trustees 'shall be authorised by Law to dispose of a freehold interest'; and, since Te More's son had died, that the Native Land Court would declare him successor. McDonnell also paid £20 out of a total purchase price of £2000.[50] This extraordinary agreement, therefore, required simultaneous Native Land Court and parliamentary support to allow the completion of the purchase. McDonnell reported, however: 'Mr Sheehan assures me that there will be no difficulty in obtaining the necessary legal authority for the fulfilment of the agreement'.[51]

Sheehan, of course, believed that he had already obtained all the necessary Maori support, but in this he was mistaken. When the Native Land Court heard the matter of McDonnell's application for the Pakiri partition, Rahui Kiri spoke out against it. She apparently had second thoughts about the whole business. Although McDonnell applied for the required Native Land Court succession order on 24 February, the Native Land Court eventually appointed Te More's grandson, not himself, to succeed.[52] Finally, Sheehan and McLean failed to obtain 'the necessary legal authority' for the 1873 agreement. They apparently had a falling out later that year over the Hawkes Bay Alienation Commission, and the law forbidding trustees from selling property remained in effect.[53]

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46. McDonnell to T M Haultain, 16 March 1874, MA 13/62
47. Ibid, Gillies to McLeod, 17 October 1872; R J Gill (Native Office) to Lewis, 17 December 1872
48. McDonnell to Pollen, 24 December 1872, *Epitome*, C111
49. McDonnell to Haultain, 16 March 1874, MA 13/62
50. Ibid, memorandum of agreement, 21 February 1873
51. McLean even allowed this dispatch to be published: McDonnell to Pollen, 26 February 1873, AJHR, 1873, G-8, no 18, pp 19–20
52. The NLC did not issue its succession order until March 1875: McDonnell to Haultain, 16 March 1874, W S Reid (Solicitor General) to Native Minister, 9 April 1877, MA 13/62.
53. Waterson suggests that Sheehan used his position as counsel for Maori petitioners to attack McLean's record as NLP Commissioner: NZDB vol II, p 458.

At this point the Crown had sufficient notice that it was entering into a highly questionable undertaking, and that unless it took definitive steps to stop the purchase and recover the funds advanced, damaging consequences could follow. Instead of containing the damage, the Crown allowed Sheehan to keep the Pakiri pot boiling. During 1873, he acted as an agent for an Auckland capitalist, Stannus Jones, in negotiating a £300 timber lease, the cost of which he then passed onto the Crown. This, like McLeod's £300 owing, was to be deducted from the purchase price agreed upon.[54] The Crown then allowed Edward Torrens Brissenden to complete Sheehan and McDonnell's 1873 efforts the following year.

Brissenden, who eventually became the fall guy for the entire fiasco, signed a purchase deed with Sheehan, Karaka, and Te More at Sheehan's private club in Auckland on 12 May 1874. This deed purported to transfer title to the entire 31,000-acre area, despite the fact that one of the three owners opposed the sale and didn't sign, while the three vendors signing had no legal right to sell on behalf of others.[55] According to a subsequent auditor, Brissenden put £700:

> on the table . . . Out of this money Sheehan took either £200 or £300 for Jones. £300 was banked in the name of the Trustees of Wi Apo [Karaka and Sheehan], and it is impossible to discover how the rest was divided.[56]

Once the money had been transferred, Brissenden attempted to persuade Rahui Kiri to reverse her earlier decision to oppose the purchase. He reported in August 1874 that when he had her signature on the deed '. . . I shall make the title good at the first sitting of the Native Land Court at Kaipara.'[57]

It took Native Minister McLean several years to decide to withdraw from further negotiations. In 1876, shortly before his death, McLean accepted H T Clarke's advice that the 'whole transaction is illegal. The land is held by Trustees . . . [with] no power to sell.'[58] Although the Crown dismissed Brissenden as purchase agent and successfully sued him for £800 unaccounted for, it apparently failed to learn the deeper lessons of the Pakiri fiasco.[59]

Well before Brissenden came into the picture, the Crown had allowed Sheehan, McDonnell, McLeod, and Jones to draw upon public funds on the understanding that they would legalise the purchase in simultaneous Native Land Court and parliamentary action after the fact. As late as 1877, the Crown Trust Commissioner charged with investigating fraud committed in purchases of Maori land, was still advocating this course of action. He recommended the appointment of another native land purchase officer to 'explain all these matters to the Natives; to arrange with

54. Ibid, Haultain to Native Minister, 5 September 1876
55. Deed, 12 May 1874, TCD, vol 1, p 249
56. J E Fitzgerald (Audit Commissioner) to Native Minister, 5 March 1877, MA 13/62
57. Ibid, Brissenden to St John, 26 August 1874
58. Ibid, McLean minute, 25 April 1876, on H T Clarke to Native Minister, 24 April 1876
59. Ibid, F M P Brookfield (Crown solicitor) to Attorney-General, 31 May 1877

Rahui for the sale of her interest . . . [and] to validate the purchase [by a special Act of Parliament]'.[60]

Even though McLean effectively disavowed the purchase, he apparently made no public declaration of this fact. When Sheehan succeeded him as Native Minister in 1876, he was able to continue his efforts to legalise the Pakiri north purchase.[61]

Two cursory parliamentary investigations into the Pakiri north purchase allowed Sheehan to fend off allegations of fraud. As Premier Grey's Native Minister in 1877, he told the House Public Accounts Committee that he made no money out of Pakiri, and that McLean, not himself, had accepted responsibility for amending the law to allow trustees to sell on behalf of minors.[62] Brissenden denied any malfeasance, even though he was prepared to admit that he had rushed into the 1874 purchase. This he attributed to Pollen's pressure to get Pakiri into the Crown's hands, since the Great North Road was being surveyed through the block. Thus, he said:

> I did not much inquire into it . . . seeing that these Natives had received money from the Government, and had been acknowledged by the Native Office [in 1873] . . . I went into the matter fearlessly.[63]

In late 1877, Sheehan shepherded through Parliament the amendment to the Maori Real Estate Management Act he had sought since 1872. It allowed trustees to sell the property of minors and validated prior sales (such as Pakiri).[64] After this, Charles Nelson, a Brissenden subordinate at the 1874 deed signing, pursued the Pakiri purchase to the Helensville Native Land Court in his NLP agent capacity. There, on 17 July 1880, Judge Rogan ordered the necessary partition.[65] The Pakiri purchase was therefore very much a live issue when it came before the House of Representatives's Native Affairs Committee later that year.

Reverend William Gittos, on behalf of Arama Karaka, and Karaka himself, prompted this committee investigation by petitioning Parliament to clarify the legal situation regarding the Pakiri north purchase.[66] While Sheehan had lost his position as Native Minister prior to this investigation, his membership of the committee allowed him to dominate its Pakiri hearings.[67] Consequently, the committee's findings made no mention of Sheehan's complicity in the highly questionable origins of the Pakiri purchase. All it was prepared to report was that there was:

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60. Ibid, Haultain to Native Minister, 22 March 1877. Haultain recommended this ex-post facto legalisation of the purchase despite having already refused to certify the absence of fraud under the terms of the Native Lands Frauds Prevention Act 1870: ibid, Haultain to Native Minister, 5 September 1876.
61. On Sheehan's meteoric political ascent, see Duncan Waterson's entry on him in NZDB, vol II, pp 456–459
62. Sheehan's evidence, 8 November 1877, AJHR, 1880, I-2A, pp 52–53
63. Ibid, Brissenden evidence, 10 November 1877, p 56
64. See his 27 November 1877 speech in moving the second reading of the Bill in the House: NZPD, 1877, vol 27, pp 513–514, 522–525.
65. Nelson's evidence to Native Affairs Committee, 17–24 August 1880, AJHR, 1880, 1–2A, pp 36, 48
66. Gittos and Karaka petition summaries, AJHR, 1880, I-2, pp 31, 36
67. See Sheehan's cross-examination of Gittos and Karaka, AJHR, 1880, I-2A, pp 6, 10–16, and his own evidence (pp 24–25).

> difficulty in arriving at a definite conclusion [which] has been greatly increased by the fact that no accounts, journals, or records of any sort . . . kept by the trustees, . . . or anybody else connected with the matter . . .[68]

As a result, the Crown succeeded in completing the purchase of two-thirds of Pakiri north in 1881. The most controversial of all 1866–73 Crown purchases was finally 'legal'.[69]

6.3 ISSUES ARISING FROM 1866–73 CROWN PURCHASES

6.3.1 Lack of satisfactory documentation

The House's Native Affairs Committee's difficulty in respect of Pakiri north highlights the even greater difficulty that confronts historians trying to reconstruct the purchases of 1866–73. The committee overstated this difficulty to its own advantage, in that it was too inclined to rely upon Sheehan's version of events. None the less, the lack of a regularly constituted NLP Department during the years in question meant that purchasers such as McDonnell, and quasi-private agents such as Sheehan, entered into little official correspondence.

Lack of satisfactory documentation is even more severe in provincial purchases inherited by the general government. In none of the 13 cases listed as provincial purchases did the general government register a deed of conveyance in its own files. This, of course, allowed Maori objectors to the Opouturi purchase to deny the existence of such a document, and to necessitate a royal commission investigation into the matter in 1950. While that commission upheld the Crown's title at Opouturi, there remains the question of whether or not it should have made such a definitive finding on the basis of indirect evidence. In the case of Patupukapuka, apparently neither the provincial nor the general government filed a deed.

The issue, stated in its most general form, is this: did the Crown fulfil its Treaty obligations to Maori in failing to preserve a satisfactory record of its purchases? In cases where it could not produce the minimal documentation of a deed of conveyance, what were its Treaty obligations?

6.3.2 Negotiation anomalies

Even in purchases where negotiation documents exist they normally raise more questions than they answer. The available evidence regarding Pakiri indicates how the simultaneous actions of private entrepreneurs (such as Sheehan, McLeod, and Jones), provincial and general government purchase agents (such as McDonnell) and Native Land Court judges, could produce a confusing situation. Although Sheehan and McDonnell certainly used the Native Land Court to promote the purchase, Maori opposition to the latter's application for partition and succession orders in 1873 led to legal complications which even Sheehan couldn't ignore. Sheehan tried

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68. Native Affairs Committee report, 28 August 1880, pp 1–2
69. Deeds, 8 February, 23 June 1881, Auc 1265, 1266, DOSLI, Heaphy House Wellington

to resolve one anomaly with his retrospective law change in 1877, and Nelson with his promotion of a further Native Land Court partition order in 1880. While such retrospective action may have been legal, was it proper and consistent with the Crown's Treaty obligations?

A further anomalous situation arose with McDonnell's Marunui purchase negotiations during 1873. This area, adjoining the pre-1865 Waipu, Pukekaroro, and Mangawhai purchases, included land granted to a settler named Thomas Henry.[70] Rogan believed that at least 500 acres of the land that the Crown granted to Henry was not, in fact, Crown land. Rogan asked Whangarei Land Purchase Commissioner Johnson how this situation arose, since Johnson negotiated the Mangawhai purchase out of which the Crown granted Henry his land. Johnson replied that Henry's own surveyor marked out the land, but he didn't answer Rogan's question as to 'why the Govt authorized the survey of Mr Henry's land when the native title was not extinguished[?]'.[71]

Henry was prepared to admit that the Crown had made a mistake in failing to properly survey the area, but he was prepared to contribute to an amicable settlement.[72] The principal Maori owner of Marunui, Arama Karaka, insisted that the Crown should pay him the 10 shillings an acre that Henry paid for the land in 1854. McDonnell was clearly desirous of 'a speedy settlement', since he was seeking Karaka's cooperation in the simultaneous Pakiri negotiations.[73] The plan attached to the 6 March 1873 Marunui purchase deed showed the disputed Thomas land outside the northeastern boundary.[74]

Crown officials realised they would have to pay Karaka for the land wrongly granted to Henry, but they were prepared to accept neither responsibility for the mistake, nor Karaka's price of 10 shillings an acre. One official accused Henry of causing the problem, and stated that if he wasn't willing to contribute to a settlement 'he can be made to suffer otherwise'.[75] Pollen accepted his subordinate's recommendation of a five shillings an acre settlement. He instructed McDonnell to inform Karaka that 'although the Govt got 10/- from Henry they have expended more than that in making roads in the District and on surveys'.[76]

Karaka eventually accepted six shillings an acre, but only under protest. McDonnell, in reporting this settlement, added that Karaka 'declared emphatically that his treatment had been most unjust, and that he consented only in consequence of his being pressed for money'.[77]

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70. Henry purchased a 3000-acre property (Mangawhai lot 122) in 1854, and received his Crown grant for it in 1864: McDonnell memo, 14 February 1873, MA/MLP 1/1 73/132.
71. 'Memorandum of Mr Rogan's Statement Respecting the Marunui Block . . .', 2 February 1873, MA/MLP 1/1 73/5
72. Ibid, Henry to Pollen, 20 January 1873, 73/92. He was willing to pay Maori 2s 6d per acre for whatever the Crown determined was outside its purchase boundaries.
73. McDonnell to Pollen, 11, 26 February 1873, *Epitome*, C111–112
74. The Crown paid Karaka and Hone Waiti Hikitanga £270 for 2160 acres at Marunui: deed, 6 March 1873, TCD, vol I, pp 247–248.
75. TGB(?) to Pollen, 7 May 1873, MA/MLP 1/1 73/5. Because Henry indicated his willingness to contribute 2s 6d an acre to compensate Karaka, this threat was a gratuitous one: Henry to Pollen, 20 January 1873, MA/MLP 1/1 73/92.
76. Pollen to McDonnell, 27 June 1873, MA/MLP 1/1 73/5
77. McDonnell to Knowles, 7 August 1873, AJHR, 1875, G-7, no 3, pp 2–3

Since Karaka had featured in a large number of Crown purchase negotiations, he obviously expected greater generosity. Henry, too, should not have been blamed for the Crown's failure to properly survey the disputed area in the first place.

A similarly anomalous negotiation situation arose in the hotly disputed Mangakahia area before the end of 1873. With the 1862–66 Te Wairoa/Mangakahia dispute in the background, John White commenced negotiations in this area in early 1873. Shortly beforehand, the Native Office dispensed with White's services as an interpreter. He then tried to lure the fledgling NLP section of the office to retain his services on a commission basis. He told Pollen that he knew Maori throughout Tai Tokerau and 'succeeded in obtaining the Authority . . . to Survey and Sell their land'.[78] Pollen and McLean initially thought he should seek his commission from Maori, rather than from the Crown, in negotiating purchases.[79] At about this time, however, Gillies recommended that White resume purchase negotiations at Mangakahia because he knew 'the political circumstances affecting some of the land'.[80]

In visiting Mangakahia in early 1873, Superintendent Gillies 'promised' Maori there 'that a Government officer would . . . negotiate with them'. If the general government wouldn't do this, he wrote, 'I shall be prepared to do so at once on private account'.[81] When White arrived at Mangakahia in February, he immediately began to negotiate a purchase of the area earlier claimed by Reverend Charles Baker, but vacated by him in 1865 (as a result of the bitter conflict) in exchange for land elsewhere.[82] White failed to consult the office of the Land Claims Commissioner about this, because it had only just determined that the unsurveyed area within Baker's claim should revert to the Crown.[83] White concluded that the 'Ngapuhi Hapu' occupying the land previously claimed by Baker 'will not give it up without remuneration'. He proposed paying them one shilling an acre, after having the area surveyed and passed through the Native Land Court.[84]

White then travelled with two Mangakahia Maori to Helensville, apparently to pay a deposit, engage a surveyor, and apply for the necessary Native Land Court hearing. According to Pollen he paid a £7 deposit as part of a purchase agreement with 'Matiu', in which Maori were to receive between 1s 3d and 1s 6d an acre. McDonnell later reported that 'Matiu' didn't represent the majority of Mangakahia Maori, who thereupon rejected the terms of his agreement with White.[85] In a section of this report deleted from the printed version, McDonnell went even further in criticising White's conduct. He alleged that White had negotiated:

> for a large tract of country . . . mostly bush and mountains, on behalf of somebody in Melbourne!

78. White to Pollen, 31 December 1872, MA/MLP 1/1 73/18
79. Pollen minute, 6 January 1873; McLean minute, 26 February 1873, MA/MLP 1/1 73/18
80. Pollen to McLean, not dated, MA/MLP 1/1 73/201
81. Gillies to Pollen, 11 February 1873, *Epitome*, C112
82. Dommet memo, 14 January 1865; D A Tole (Commissioner of Crown Lands in Auckland) to Under-Secretary of Crown Lands, 24 January 1873, MA 91/29 (547), pp 21–22
83. Ibid, Arthur Halcombe (for Land Claims Commissioner) to Tole, 29 January 1873 (telegram), p 24
84. White to Pollen, 26, 28 February 1873, MA/MLP 1/1 73/177, 73/211
85. McDonnell to Pollen, 7 April 1873, *Epitome*, C112–113

> I am sorry to say that Mr White has made an error in conferring with two only, out of many influential chiefs, who are very much irritated in consequence.[86]

Pollen soon decided to replace 'Native Agent' White with the salaried NLP officer McDonnell in pursuing Mangakahia negotiations. Pollen informed McLean that White's:

> action in this matter has been so very imprudent and his demands for remuneration so large that I have withdrawn my instructions to purchase and [have] taken the matter out of his hands.[87]

White's blundering, however, appears to have alerted Mangakahia Maori to the dangers of Crown agents negotiating with minority interests. In July, Parore warned Rogan:

> We have heard that all the land is going to be surveyed, by the people of Mangakahia, if that is true, then I will cause all the district to be bad or evil. My idea is, if I wish my land surveyed, I myself will instruct the pakeha.[88]

Although McDonnell won Tirarau and Parore's support for continuing the negotiations in mid-1873, other Maori began to express objections.[89] Consequently, the Crown failed to complete negotiations in the disputed Te Wairoa/Mangakahia area until mid-1875 when Tirarau became the principal vendor in the Purua and Tangihua purchases.[90]

Although the Marunui and Mangakahia negotiation anomalies pale in comparison to those generated at Pakiri, those anomalies raise similar questions about the propriety of the Crown's actions. While the Crown's actions at Marunui and Mangakahia were undoubtedly within the law, were they proper and consistent with Treaty obligations?

6.3.3 Adequacy of reserves

Apart from in the 1867 Waiuku and 1868 Hoteo purchases, the Crown failed to reserve land for Maori between 1866 and 1873. This could be explained in part by the absence of a single Crown agency devoted to native land purchases to implement the Crown's previously stated policy of providing for the foreseen needs of Maori. The appointment of Charles Heaphy as a national Commissioner of Native Reserves in 1870 should have allowed the Crown to remedy this situation.

In his first major report to Parliament, Heaphy identified part of the problem. He identified that although reserves created out of pre-1865 Crown purchases in

86. McDonnell to Pollen, 7 April 1873, MA/MLP 1/1 73/331
87. Pollen to McLean, not dated, MA/MLP 1/1 73/201
88. Parore Te Awaha and others to Rogan, 5 July 1873, encl 1 in Rogan to McLean, 29 July 1873, AJHR, 1873, G-1A, p 1
89. McDonnell to Knowles, 7 August 1873, AJHR, 1875, G-7, no 3, pp 2–3; Wharepapa to McLean, 18 August, McDonnell memo, 8 September 1873, MA/MLP 1/1 73/4728, 73/7
90. Deeds, 23 June 1875, TCD, vol I, pp 128–132. Purua and Tangihua were several miles northeast and southeast of Baker's claim; that is, they were outside the area White negotiated for in early 1873.

Auckland province appeared to be 'a tolerably sufficient provision for the future wants' of Maori, he believed that some tribes had 'sold recklessly, and are in danger of becoming paupers.' He identified the endangered tribes as Te Rarawa, Ngati Whatua, and Patukirikiri of Hauraki.[91] He calculated that Te Rarawa reserves amounted to only about 19 acres per person. He therefore recommended that the Crown should allow 'none of the cultivations of the Rarawa and Ngatiwhatua . . . to be sold'.

Heaphy further recommended that the Crown should create endowments for Maori purposes out of the Hokianga/Bay of Islands surplus land. He stated that the Crown would find it difficult to settle Pakeha on this land (without explaining why). He went on, stating, 'These difficulties would not exist, however, in many cases if the lands were appropriated as endowments towards the support of Natives in local hospitals'[92]

He then listed 23,185 acres of reserves and Crown land (not including surplus land) as 'Lands that may advantageously be proclaimed as Endowments for the support of Natives'.[93]

The Crown apparently failed to act upon Heaphy's recommendations, with respect both to calling a moratorium on Crown purchases from Te Rarawa and Ngati Whatua and to creating endowments out of Hokianga/Bay of Islands surplus land.[94] Even in the case of West Waiuku, where the 1867 purchase restored pre-1865 reserves, the Crown failed to protect them against alienation by individuals without tribal consent.[95] The issue remains: did the Crown fulfil its obligations to provide reserves adequate for the foreseen needs of Maori?

6.3.4 Crown protective responsibilities

During 1866–73, Crown officials appear to have wanted to pass on the bulk of their protective responsibilities to Maori to the Native Land Court. According to Heaphy, the Native Land Court exercised these responsibilities by placing some form of limitation upon the alienation of approximately 13 percent of the area passing through the court before 1872.[96]

Despite these limitations upon alienation, the statutes defining the Native Land Court title determination process created what could be described as the necessary conditions for alienation. These necessary, but insufficient, conditions were:

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91. 'Report from the Commissioner of Native Reserves', 19 July 1871, AJHR, 1871, F-4, p 5
92. Ibid
93. AJHR, 1871, F-4, list E, pp 42–44
94. The 1872 Kaitaia purchase is an example of a purchase from Te Rarawa of cultivable land, and the 1872 Pungaere purchase included a significant area of surplus land, even though the NLC had awarded Maori title in 1868.
95. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wellington, Department of Justice: Waitangi Tribunal Division, 1985, p 19
96. Heaphy listed restrictions contained in 267 NLC title documents, covering 258,735 acres in the Auckland province: 'Grants with Limitations,' list C1 enclosed in Heaphy report, 19 July 1871, AJHR, 1871, F-4, pp 7–14. Inspector of Surveys Heale estimated that approximately two million acres passed through the NLC in Auckland province during this period: Heale to Fenton, 7 March 1871, AJHR, 1871, A-2A, no 2, encl 5, p 18.

(a) the concept of individual, as opposed to community ownership, fundamental to the Native Land Court enabling legislation;
(b) that Maori were bearing the expense of surveying land brought before the Native Land Court, without the means of defraying costs available to old land claimants; and
(c) the additional court and associated agency costs.

Although most Maori probably thought of themselves as representing community interests when they brought land to the Native Land Court for title determination, the Native Land Act 1865 dictated that they received individual title without respect to community interests. The purpose of the Act, stated in its preamble, was to 'encourage the extinction of such proprietary [Maori] customs and to provide for the conversion of such modes of ownership into titles derived from the Crown'.[97]

Although section 23 of the Act allowed the court to issue certificates of title in the name of tribes, as well as individuals, only individuals could bring claims and apply for succession to land.[98] Section 50 provided for the partition of individual interests, and section 47 provided for the alienation of such individual interests which were not explicitly restricted.[99] The so-called 10-owner rule embodied in section 23 also promoted individual ownership rights and prevented whole communities from being represented by a large number of individuals named on title documents. This rule prevailed until the 1873 Act.[100]

The individual nature of title determined by the Native Land Court was seldom clear in the Crown deeds of conveyance. The Kaitaia deed of September 1872, following the specially arranged Native Land Court succession hearing, made it clear that, as Crown grantees, the named vendors were 'owners in fee simple'.[101] Although Maori may not have understood this legalese, in effect, the Crown (in compliance with Native Land Court title determination orders) granted absolute individual property rights untrammelled by community obligations. Grantees were therefore free to alienate these rights. Since Judge Maning applied the 10-owner rule very literally at Kaitaia, he assisted W B White in completing the purchase because it then required the consent of only 10 absolute owners.[102]

Even in cases in which the Crown attempted to protect community interests with trust arrangements, it often failed to enforce such arrangements, or to specify them as grant limitations. Clearly, the Crown failed to enforce the trustee terms of the Maori Real Estate Management Act 1867 at Pakiri. Furthermore, according to Heaphy, the Crown granted the west Waiuku reserves to chiefs on the assumption that they would act as trustees for their hapu. Heaphy reported that most of the grantees violated their trustee responsibilities without admitting any fault by the Crown. Either the Crown failed to specify such responsibilities in the terms of its

97. Native Land Act 1865
98. Ibid
99. Ibid
100. Ibid. Section 47 of the 1873 Act repealed this rule.
101. Deed, 25 September 1872, TCD, vol 1, pp 27–28
102. Maning also assisted White by excluding Te Patu interests from the title. For an incisive critique of the 10-owner system, see Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claim 1865–1950', claim Wai 45 record of documents, doc F10, pp 74–76, 83.

grants or it failed to enforce such terms. Whatever the case, the Crown's remedy was not to perfect trust arrangements, but to dispense with them entirely. Again, individual title prevailed at the expense of community interests.[103]

The cost of surveys borne by Maori can be estimated from information produced in the 1880 Pakiri investigation. Karaka told the House's Native Affairs Committee that Maori paid £300 for the survey of 30,000 acres.[104] Since Pakiri was relatively accessible from Auckland, and because previous Crown purchases defined all its boundaries, this figure may have been much lower than the average. None the less, Pakiri survey costs had to be paid out of the Crown purchase price.[105] In 1867, W B White stated his belief that, such was the burden of survey costs, that Maori would bring their land to the Native Land Court only if they had previously negotiated purchase arrangements.[106] Inspector of Surveys, Theophilus Heale, confirmed this observation when he wrote:

> The Native landowner is already placed at a great disadvantage in getting his land surveyed: rarely possessing money, he is obliged to find someone to survey his land on credit, and so often pays double what it costs a European . . .[107]

Pakeha land claimants bringing land before Commissioner Bell before 1863 were able to defray their survey costs with a system of generous allowances. Essentially the claimant could pay his surveyor in additional land granted explicitly for this purpose.[108] Since the additional land granted would otherwise become surplus land, the Crown could afford to be generous to Pakeha. The Crown exhibited no such generosity to Maori claimants after 1865. Instead of receiving generous survey allowances, Maori had to endure what was later formalised as a system of survey liens. They had to pay for surveys in full, often by forfeiting the land to those who could pay survey costs, whether they were Crown or private purchase agents.[109]

During Colonel T M Haultain's 1871 investigation of the operations of the Native Land Court, Bay of Islands Resident Magistrate Barstow told him that Mangonui Huirua 'was compelled to sacrifice' the 7000-acre Pungaere block for £300 to pay his surveyor. He paid W H Clarke, his surveyor, £90 'during the work in progress', but evidently sold the land in order to pay the £60 outstanding a year later. According to Barstow:

> If Europeans wish to secure any particular block under the present system, their best plan is to get a surveyor to undertake the work, then induce him to press for payment,

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103. At west Waiuku, the Waiuku Native Grants Act 1876 gave statutory effect to this individualisation of reserves created by the 1864 and 1867 Waiuku purchases.
104. Karaka's evidence, AJHR, 1880, I-2A, pp 11, 13
105. Ibid
106. White to Fenton, 5 July 1867, AJHR, 1867, A-10, no 5, p 10
107. Heale report on NLC surveys, 2 August 1867, AJHR, 1876, A-10B, p 5. He made the same kind of observations four years later: Heale to Fenton, 7 March 1871, AJHR, 1876, A-2A, pp 19–20.
108. Although provided for as a 1s 6d per acre survey allowance in section 44 of the 1856 Act, Bell later changed it to a 15 percent addition to grant acreage: Land Claims Settlement Act 1856; M Alemann, 'Pre-Treaty Purchases', claim Wai 45 record of documents, doc F11, pp 29–31.
109. Survey liens were not formally introduced until after 1873: 'Native Land Court Surveys', AJHR, 1879, H-19, p 7.

> and they can get the land from the Native owner on almost any terms by advancing the money. Some Maoris are easily imposed upon by interested individuals, and the Government ought to interfere to give them [Maori] further protection.[110]

Apparently, Maori forfeited Pungaere to pay excessive survey costs.

In addition to survey costs, Maori also incurred court and associated agency costs arising from the title determination process. In the case of the 56,000-acre Muriwhenua north block purchased privately in 1873, court fees amounted to £7 12s (including a £4 hearing fee). A note on Maning's title determination order indicates that these fees were 'Not Paid' in Court. They were probably paid later by the purchasers of the land.[111] Normally the Native Land Court would charge claimants £1 per hearing day, and £1 for the examination of the required survey plan. If the Native Land Court upheld the claim, Maori would have to pay a further £1 for the Native Land Court-issued certificate of title, plus £1 for a Crown grant prepared in Wellington.[112] In addition, Maori had to pay other Native Land Court fees associated with partition and succession processes, such as those required in the Pakiri case.

The Pakiri case also highlights hidden agency costs associated with the Native Land Court and Crown purchases. The 1877 and 1880 parliamentary hearings revealed that Sheehan acted for Maori in putting the block through the court in 1869. Furthermore, Judge Rogan effectively appointed him to act as a trustee for one of the titleholders.[113] Sheehan denied making any money out of Pakiri, but, even if this was true, Maori clearly incurred other costs in becoming dependent upon his services. Obviously, they lost control of the purchase process when Sheehan began deducting payments for McLeod and Jones, apparently without Maori consent.[114] Maori also lost control of the situation in that they had no way of understanding the legal implications of each twist in the purchase negotiations. In 1877 the Solicitor General recommended that the Crown initiate civil actions against Sheehan, Karaka, and Te More to recover the public funds they had handled.[115] Although the Crown eventually decided to proceed against Brissenden, rather than the aforementioned, the whole affair placed Maori in a certain amount of legal jeopardy.[116] In sum, the agency costs associated with an native land purchase-facilitated purchase process can be added up, not so much in pounds, shillings, and pence, as in effective control. The extent to which Sheehan exercised control in the Pakiri north purchase was in almost direct inverse proportion to Maori control.

Overall, the Native Land Court proved unable to protect Maori interests in Crown purchase transactions. The only effective protection it could have exercised would

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110. Haultain, 'Notes of Conversation with Mr Barstow RM', 4 February 1871, AJLC, 1871, no 1, p 47
111. Rigby, Muriwhenua north report, claim Wai 45 record of documents, doc B15, p 41
112. Fees schedule, Pungaere Crown grant, 23 July 1869, Auc 446B, DOSLI
113. Sheehan's evidence, 8 November 1877, 9 August 1880, AJHR, 1880, I-2A, pp 24, 51
114. Although Sheehan denied acting as Jones' agent, he admitted negotiating the terms of his timber lease to ensure that they did not conflict with the 1873 purchase agreement. He also admitted paying Jones his share of the purchase price: Sheehan's evidence, 8 November 1877, AJHR, 1880, pp 52, 54.
115. W S Reid to Native Minister, 9 April 1877, MA 13/62
116. For example, during his extended cross-examination of Karaka before the Native Affairs Committee, Sheehan implied that contradictory aspects of Karaka's testimony might have amounted to perjury: Karaka's evidence, 3–4 August 1880, AJHR, 1880, I-1A, pp 1–16.

have been either in granting communal rather than individual title, or in enforcing effective trust arrangements. Although legislation allowed for both communal title and effective trust arrangements, such protective actions apparently ran counter to the prevailing individualist values underlying Crown policy. These values, expressed in Sewell's 1870 evocation of the necessity of 'detribalisation', seriously impaired the Crown's ability to protect Maori community interests.[117]

The issue, generally stated, is whether the individualist values underlying Crown policies were consistent with its Treaty obligations. Was it possible to protect Maori land rights without recognising that communities, rather than individuals, normally exercised these rights?

6.4 CONCLUSION

The evidence of greatly diminished Crown purchase activity during 1866–73 may reflect another dimension of the values underlying the prevailing policy. By dismantling the Native Land Purchase Department in 1865, the Crown assumed that private entrepreneurs would take over responsibility for purchasing Maori land. The number of private purchases undoubtedly exceeded Crown purchases during these years, but because the Crown failed to monitor private purchases carefully, few are properly documented. An unpublished list of private transactions in Auckland province between April 1865 and 15 June 1869 records the sale of 184,558 acres.[118] In essence, the Crown divested itself both of its dominant purchasing role, and its monitoring role. Although a trust commissioner appointed under the terms of the Native Land Frauds Prevention Act 1870 could have fulfilled an effective monitoring role, the limited evidence of Haultain's investigations in the Auckland district make it impossible to gauge his effectiveness.[119]

Even where the Crown did enter into the purchase negotiations outlined above, it did so without adequately documenting its activities. It entered onto a bewildering array of ad hoc arrangements with provincial and private agents, and with the Native Land Court. The picture of 1866–73 Crown purchases is therefore one of weak institutions, poorly coordinated. This institutional weakness, as much as the deliberate individualism underlying policy, accounts for diminished Crown purchase activity. Of course, such diminished activity was also a by-product of the prevailing climate of individualism.

Finally, there remains the issue of whether the Crown's second waiver of pre-emption in 1865 was consistent with its Treaty obligations. A much greater acreage appears to have changed hands after 1865 than areas privately purchased after the

117. Sewell made this statement to the House of Representatives in explaining the NLC's objects. These were bringing Maori land 'within the reach of colonisation' by allowing it to be purchased and destroying, wherever possible, 'the principle of communism [or tribalism] which ran through the whole of their institutions': NZPD 1870, vol IX, p 361.

118. Registrar of Deeds, 'Return of [Native] Lands . . . Sold or Leased . . . ', MA-MT 1/1B 157

119. Native Land Frauds Prevention Act 1870. The Act required the commissioner to verify that a purchase neither was 'contrary to equity and good conscience' nor violated the terms of any trust. He was required to confirm receipt of the stated purchase price 'and [the fact] that sufficient land is left for the support of the Natives' (ss 4, 5).

first waiver in 1844.[120] Therefore, one may well ask: what did the Crown do to ascertain Maori consent to waiver, and what did the Crown do to protect Maori community or individual interests once it had waived its pre-emptive rights? If it didn't take sufficient precautions, could the waiver itself be regarded as in breach of the Crown's protective obligations under the Treaty?

120. The 184,558 acres privately purchased in Auckland province between 1865 and 1869 should be compared with Rose Daamen's finding in her national pre-emption waiver report.

CHAPTER 7

THE NATIVE LAND COURT AT KAIPARA, 1865–73

7.1 INTRODUCTION

This report is a study of the operation of the Native Land Court in the Kaipara district during the years 1865–73. This period is comonly referred to by the Native Land Court as the 'ten-owner' perod, because of the provision in the Native Lands Act 1865 which prevented the court from awarding title of blocks of customary Maori land to more than 10 owners.[1] This study, therefore, is an attempt to ascertain the extent of Maori land passing the court during this period, as well as to identify the injurious effects of the court process – and, in particular, the 10-owner system – on Kaipara Maori, especially in terms of land loss.

It should be stressed that this is an examination of events in Kaipara specifically and not the operation of the court in general. Nor is it an assessment of the Native Lands Act 1865 and its successors per se. This report is therefore a contribution to our understanding of land alienation and Treaty grievances in the Auckland district alone, although the themes raised here no doubt have application wherever the court operated.

The Kaipara district, for the purposes of this study, is the expanse of territory from the Waitakere ranges in the south to the Kaihu valley in the north, and from the Kaipara heads in the west to Pakiri in the east. It was within this area that the blocks of land fell that were investigated by the 'Kaipara' court. The size of this territory may be estimated at approximately 1.25 million acres.[2] This differs from the more compact area defined by Barry Rigby in his study of Kaipara Crown purchases, as that stretching around the Kaipara Harbour 'from the Kaukapakapa south purchase near Helensville to Mangakahia and Dargaville in the north' (see sec 4.1.1), and estimated by him as around 775,000 acres.[3] The Kaipara court 'district' was bounded by those of Hokianga, Whangarei, Mahurangi, and Orakei.[4]

Time constraints have limited the range of sources used in this study. The primary source of reference is to the minute books themselves, from the first sitting in

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1. The court could award blocks of 5000 acres or more to an entire tribe, but showed a marked reluctance to employ this provision.
2. I am grateful to the the Tribunal's mapping officer, Noel Harris, for this calculation.
3. Ibid, fig 11
4. I am unaware of whether these districts were well-defined officially or somewhat loose arrangements. The Kaipara court dealt with a claim to the Whangateau block, for example, which is adjacent to Mahurangi (Kaipara minute book 2, p 84).

Tukapoto in June 1865 to the time of the enactment of the Native Lands Act 1873 – and the consequent end to the 10-owner period – at the end of that year. The minute books are of course problematic as reliable sources of information, as we have no way of knowing the proportion of the discussion before the court that was recorded, as well as the veracity of the translation from Maori into English of the testimony of witnesses. Nevertheless, the minute books contain much information which is useful, and they provide a good deal of insight into the attitude of the court. They allow us, for example, to make a number of observations about the amount of land passing the court, the number of individuals for whom certificates of title were ordered, the amount of land being sold or restricted, the cost of surveys, and the roles played by various individuals. A number of other published primary and secondary sources have been used to support as well as fill out the information in the minute books, such as AJHR returns, local histories, and reports prepared by claimant and Tribunal researchers.

7.2 THE ADVENT OF THE NATIVE LAND COURT

Many historians have documented the inequities occasioned by the operation of the Native Land Court from 1865, but it is as well to recount here some of the more harmful aspects of the system. The court followed hard on the heels of the New Zealand Wars and proved itself, in Jamie Belich's words, 'an effective mechanism of subtle conquest'.[5] Disputed land sales – such as that at Waitara which led to the war in Taranaki – had disrupted the Crown's land purchase plans, but rearranging Maori land ownership to remove the erstwhile obstacles was seen as a solution, in that the Native Land Court system ended communal Maori land ownership. It was, therefore, perceived as the means to overcome the most important barriers to the acquisition of Maori land.

The Native Lands Act 1865 established the Native Land Court as a tribunal for adjudicating on the ownership of Maori customary land and transmuting that ownership into a form cognisable under English law. The Act replaced the Native Lands Act 1862, under which the court had not yet been constituted nationwide because of the advent of the New Zealand Wars (although, as discussed below, Rogan appears to have invoked its provisions in Kaipara in 1864). The 1862 Act allowed for a a large degree of input from local Maori leaders working as assessors in the court's decision-making, but the selection of Francis Dart Fenton as chief judge of the court in January 1865 was, as Alan Ward has put it, 'eventually to have a fateful influence on the whole future of Maori land legislation'.[6] Fenton imposed a formal English-style court procedure, with decision-making essentially resting with the Pakeha judge, rather than the runanga-like system of adjudication in part provided for by the 1862 legislation.

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5. James Belich, 'The Governors and the Maori, 1840–1872', in Keith Sinclair (ed), *The Oxford Illustrated History of New Zealand*, Auckland, 1990, p 94
6. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Auckland, 1973, p 180

The 1865 Act expressed in legislation Fenton's conception of the court, and opened the way for the wholesale alienation of vast amounts of Maori land. Under the legislation, any one Maori could bring a claim for the investigation of title to a block of land owned in common by a whole tribe. Then, once the judge had made his decision as to ownership, title was awarded to 10 or fewer owners, with the allowance for blocks larger than 5000 acres to be awarded to an entire tribe being almost completely disregarded. Claudia Orange considers that the 1865 Act 'effectively severed the threads of Crown protection and nullified the treaty's second article'.[7] The Crown, for its part, abandoned its own purchasing of Maori land[8] and ended its pre-emptive rights, thus leaving Maori vulnerable to the almost unfettered predations of settler land-purchasers. According to Ward:

> The Maori people were consequently exposed to a thirty-year period during which a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land agents and money-lenders made advances to rival groups of Maori claimants to land, pressed the claim of their faction in the Courts and recouped the costs in land. Rightful Maori owners could not avoid litigation and expensive surveys if false claims were put forward, since Fenton, seeking to inflate the status of the Court, insisted that judgments be based only upon evidence presented before it.
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> . . . . .
>
> The system invited not co-operation but contention between parties who – although the Court frequently divided the land – could win all, or lose all, on the Judge's nod. It ushered in an era of bitter contesting, of lying and false evidence. The legalistic nature of the Court also instituted a costly and tedious paraphernalia of lawyers, agents, legal rules and precedents – a morass in which Maori floundered for decades, frittering away their estates in ruinous expenses and still all too often not getting equitable rewards.[9]

Often legitimate claimants to blocks of land were unaware that their lands were being investigated by the court until it was too late and the court had awarded title to a minority of those rightfully entitled, or even those with a much inferior claim to the land. Where Maori were aware that others were pursuing claims to their lands through the court, they could face considerable expense in travelling to the place of sitting in order to be heard. Many of those who brought claims to the court did so solely because they had arranged to sell the land, yet any rightful owners who opposed the sale might become so indebted in opposing the sellers' claims before the court that, in due course, they were forced into the position of sellers themselves. Since Maori land could become security for debts, the 'predatory hordes' would encourage Maori indulgence in liquor and goods as an indirect route to acquiring Maori land. Similarly, surveyors held a lien on Maori land where their charges had not been met, and could be awarded the certificate of title to a block of land by the court in lieu of their payment.

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7. Claudia Orange, *The Treaty of Waitangi*, Wellington, 1987, p 179
8. The rationale behind this was that the end to pre-emption would expedite the alienation of Maori land, thus ending the necessity for Crown purchases. The Crown resumed land purchasing with a vengeance in the 1870s, however, under Julius Vogel's immigration and public works policy.
9. Ward, pp 185–186

Regardless of the circumstances leading to a block of land being considered by the court, there was no guarantee – once title had been awarded to the 10 or fewer owners, and exchanged for a Crown grant – that it would remain in Maori possession for long. Those awarded title to the blocks were usually chiefs and hapu leaders, who may well have been mandated by their tribe to receive title on behalf of the group. But this trustee function was not recognised by statute and was thus open to habitual abuse. As Claudia Geiringer has pointed out in her study of the operation of the court in Muriwhenua, it was a contradictory state of affairs indeed for the court to be charged with ascertaining 'by such evidence as it shall think fit the right title estate or interest of the applicant and of all other claimants to or in the land' while, at the same time, awarding an alienable title to 10 or fewer owners.[10] The Waitangi Tribunal has already commented that 'it is patently clear that the award to a few, to the disinheritance of many was demonstrably wrong.'[11] In effect, the interests of the vast majority of rightful owners were completely disregarded, and, as Geiringer points out, if a trustee relationship between the chiefs and their people existed, it did so in spite of the court system, and not because of it.[12]

7.3 THE KAIPARA DISTRICT: A BACKGROUND

Sittings of the Kaipara court from 1865–73 were held in Tukapoto, Te Awaroa, Helensville, Maungawetere, and Te Tanoa. The Kaipara court dealt primarily with land in the rohe of the Ngati Whatua tribe and its various hapu, as well as touching upon Ngapuhi, Parawhau, and Te Roroa territory in the north. The information in the minute books, however, cannot be reliably used to show respective hapu interests in the Kaipara area. These were presumably overlapping and fluid, and individuals could be granted land in quite separate areas, whether claiming these areas through the same or distinct descent lines. Nevertheless, we can observe that Te Roroa interests were centred around present-day Dargaville and north into the Kaihu valley; Parawhau were awarded land inland to the east towards Tangiteroria; the largest Ngati Whatua group, Te Uri-o-hau, received land around all sides of the Kaipara Harbour; Ngati Rango were centred in the east around Cape Rodney and present-day Warkworth; while the Taou and Mangamata hapu were awarded title to blocks south of Helensville to the Waitakere Ranges.[13]

Of course, it is more accurate to state that various chiefs, who represented these groups, were awarded title to the blocks brought before the court. For example, to speak of Parawhau is largely to speak of Te Tirarau. Similarly, Te Hemara Tauhia represented Ngati Rango in the eyes of the court. The 10-owner period secured to

10. Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claim, 1865–1950', claim Wai 45 record of documents, doc F10, 1992, p 74. This apparently inquisitorial function was vitiated by Fenton's aforementioned insistence on the use solely of evidence presented in court.
11. Waitangi Tribunal, *Orakei Report 1987*, Wellington, Brooker and Friend Ltd, 1987, p 32
12. Geiringer, p 78
13. Te Taou and Te Uri-o-hau are generally seen as hapu of Ngati Whatua, but it is not the intention of this report to enter into any debate on inter-hapu relations. For example, Te Taou chief Te Otene Kikokiko told the court that 'the ancestors of the Taou tribe are distinct from that of the Ngati Whatua – foreign tribes would call us all Ngatiwhatuas but we ourselves know the distinction': Kaipara minute book 2, p 130.

the chiefs a new-found status (to be discussed in the following section) as, more often than not, sole owners of tribal land with the legal power to alienate that land without reference to the rest of the tribe. So who were these chiefs?

Blocks passing the Kaipara court were frequently awarded to a small circle of chiefs, many of the most regular of whom – Te Otene Kikokiko, Paora Tuhaere, Te Keene Tangaroa, Paikea Te Hekeua, Arama Karaka Haututu, Parore Te Awha, Te Tirarau, Te Hemara Tauhia, Pairama Ngutahi, Manukau Rewharewha, Matikikuha, Paraone Ngaweke, and Wiremu Reweti – were included in a Government list published in 1870 of the principal chiefs of the Kaipara region.[14] Most of these names also feature in the unpublished 'Register of Chiefs', dating from around 1865 and held in National Archives in Wellington.[15] Rigby observes that the leaders cited in the register as the most important chiefs were often those who had most assisted the Government in its purchases of Kaipara land. Similarly, he notes that those employed by the court as assessors tended to be recorded as 'cooperative' chiefs who had also assisted in land sales, or were praised for their adoption of European customs.

Generally, the Crown's relations with the Kaipara chiefs were good. After earlier periods of war with their Ngapuhi neighbours to the north, Ngati Whatua appear to have been keen to sell land to the Crown in the interests of their own security. Likewise, the Crown was interested in creating a buffer of Pakeha settlement between Ngapuhi and Auckland. In 1857 John Rogan was appointed district land purchase commissioner and travelled widely in Kaipara, inspecting land Maori wished to sell.[16] As the Waitangi Tribunal has noted, Rogan 'did not need to resort to pressure tactics. Between 1854 and 1861 over a quarter of a million acres were purchased.'[17]

Between 1862–65 about 1000 non-conformist[18] settlers arrived in Auckland to settle around the Kaipara Harbour in a number of special settlements in the Paparoa, Oruawharo, Matakohe and Komokoriki blocks, all recent Crown purchases. These settlers, known as Albertlanders, had their main settlement at Port Albert on the Oruawharo River. Local Maori appear to have been particularly welcoming of these Pakeha, extending hospitality at every opportunity. Shortly after their arrival, the first Albertlanders were welcomed by Paikea Te Hekeua and Arama Karaka Haututu with a large feast. Paikea told his guests:

> I now have my heart's desire. . . . I have sold large blocks of land to the Government so that my Pakeha brothers may live by me in good friendship and peace. We are all the children of the great Queen Victoria. You are my Pakehas, and I and my tribe will be ever ready to protect you with our bodies. You have much to teach us, and you may

14. AJHR, 1870, A-11, p 4
15. Register of chiefs, MA 23/25, NA Wellington. The Kaipara section has been cited and reproduced in full in table 8.
16. C M Sheffield, *Men Came Voyaging*, 1963, p 48
17. Waitangi Tribunal, *Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 40
18. English protestants who did not accept a national church.

learn many things from us that will be useful to you. May we be brothers for ever. That is the wish of Paikea.[19]

Two other incidents demonstrate the good relations between Ngati Whatua and the Crown in Kaipara leading up to the 1865–73 period. After the outbreak of the Waikato War in 1863, and the corresponding apprehension on the part of the Government that Maori north of Auckland would attempt to open a second front in the war, a number of Kaipara chiefs (including Paikea, Arama Karaka, Matikikuha, Manukau Rewharewha, and Wiremu Tipene) placed a message in the *Albertland Gazette*, offering words of reassurance about their intentions towards their new neighbours:

> This is a word to our beloved friends, the Pakehas, at Oruawharo, Matakohe, Paparoa, Mangawai, and in all Kaipara.
>
> Some of you may have heard false reports concerning the Maoris and their plans for the future. Do not think we have forgotten our promise made to you in the beginning and at the feast of Otamatea. We have united ourselves to you with feelings of love and good faith.
>
> . . . . .
>
> We do not share the feelings of those foolish tribes who are sending away their Pakehas, and with them all wisdom and useful knowledge. We do not wish to return to the customs of ignorance and darkness which we left far behind, but rather to reach to those heights of knowledge which our friends the Pakehas point out to us.
>
> If there be confusion in the North or South of this island, we have no sympathy with these things, but desire to live as in the days that are past; that is, in the light.
>
> It causes us sorrow that some tribes will walk in the darkness of war but our determination is to keep trouble far from the peoples of Kaipara.[20]

While the wording undoubtedly owes much to the Reverend William Gittos, who helped the chiefs prepare the message, the intention to dispel any unease or distrust is clear. A willingness to sell land was perhaps the easiest way for Maori to win Pakeha confidence, and it is just as well to bear these earlier sentiments in mind when considering the amount of land passing the court after 1865. As Rigby notes, Ngati Whatua chiefs had already offered numerous expressions of loyalty to the Crown at the Kohimarama conference in July and August 1860, often couching these in terms of their willingness to sell land.

In 1864, however, Kaipara Maori had the opportunity for a more tangible show of support for the Crown when 200 Waikato prisoners, taken at the battle of Rangiriri in November 1863, escaped from their internment on Kawau Island and made their way to the Kaipara area. Despite attempts by the Waikato Maori to enlist support, Ngati Whatua refused to shelter them and bade them to go in peace.[21]

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19. J L Borrows, *Albertland: The Last Organised British Settlement in New Zealand: An Account of Brave Endeavour, Disappointment, and Achievement, North of Auckland on the Shores of the Kaipara Harbour*, 1969, p 85
20. Ibid, pp 86–87
21. Borrows, pp 88–92; *Te Roroa Report 1992*, p 40

On the other hand, the Government's presence in Kaipara had slowly been increasing from the mid-1850s, particularly in terms of land purchases. As discussed, Rogan was appointed district land purchase commissioner in 1857, and took up many of the responsibilities carried by Fenton during his time as resident magistrate in Kaipara from 1854–56. After the murder of two settlers in December 1863, Rogan was elevated to the position of resident magistrate early the following year. In 1864 he was also appointed a judge of the Native Land Court.[22] Both Fenton and Rogan appear to have cultivated profitable relations with the Kaipara chiefs. Fenton acquired lands belonging to Te Keene Tangaroa on the South Head peninsula, which he named 'Crosland' in memory of his home district in Yorkshire.[23] Rogan, for his part, purchased the 515-acre Makiri block from Ngati Whatua, despite having just presided over the investigation of title. According to one local history:

> Te Keene and other Kaipara chiefs saw the wisdom of having Judge Rogan, then boarding with a settler, established in a residence at Te Makiri. There he would be handy both to Auckland, fount of administrative and military knowledge sought by Ngatiwhatua, and to Kaipara, his sphere of activity.[24]

Among his other 'business' interests in the region, Rogan also obtained 160 acres from the Crown's 1858 purchase of the Te Ika-a-Ranginui block.[25]

It seems Kaipara Maori leaders were generally enthusiastic about the advent of the court. After Rogan was appointed resident magistrate, Te Otene Kikokiko gifted the Crown land at Te Awaroa for the purpose of a courthouse. Rogan himself convened the court, including Wiremu Tipene and Te Keene Tangaroa as assessors, as early as June 1864 to hear Maori claims to Otamateanui and Te Pua a Mauku,[26] both of which he awarded to Te Otene.[27] When a new courthouse was built in Helensville in 1865, the surrounding fence was constructed from timber given by Te Tirarau.[28] Maori realised the court could be used to advantage in some cases, and old warrior chiefs such as Te Tirarau and Parore Te Awha were now content to continue their erstwhile battles with their Te Roroa and Te Uri-o-hau neighbours in court, pursuing mana rather than a title they could alienate.[29] As the Waitangi Tribunal has noted:

> Maori used the Hokianga and Kaipara courts to settle disputes and decide ownership for their own purposes. These included defining areas of land for leasing rights to cut timber and flax and dig gum for sale to Europeans, a welcome source of annual income;

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22. Sheffield, pp 47, 62, 65
23. Ibid, p 47
24. Ibid, p 72; see also Kaipara minute book 1, p 75
25. *Centennial of Kaiwaka: Ratau o Kaiwaka, 1859–1959*, Kaiwaka Centennial Association, pp 20–21
26. Otamateanui, of 396 acres, and Te Pua a Mauku, of 67.5 acres, had already been sold by Te Otene and Ngati Whatua to John McLeaod, the Pakeha founder of Helensville, and his brother Isaac respectively.
27. Sheffield, pp 64–65; Ward, p 180
28. Sheffield, p 66
29. See the entries for Parore and Te Tirarau, *Dictionary of New Zealand Biography*, vol II, pp 377–378, 526–527 respectively, and the *Te Roroa Report 1992*, p 44.

also, for leasing or selling small blocks to European traders for depots, stores and residences.[30]

In 1865, however, Maori could have had little idea of how the court system would destabilise Maori society, or of the extent to which it would expedite the alienation of their lands. According to the Tribunal, neither Te Roroa nor Ngati Whatua ki Orakei realised initially that the 'trustee' concept was insecure 'and that the ten owner system would disinherit all those whose names were not included [in the certificate of title].'[31]

7.4 THE 10-OWNER SYSTEM AND 'TRUSTEESHIP'

In all, the Kaipara court under judges Rogan and Monro ordered certficates of title for 145 blocks of land (totalling 273,431 acres) from 1865–73. This is set out below.

Acreage	Number of blocks	Acreage	Number of blocks
0–9	13	1000–1999	16
10–49	15	2000–4999	12
50–99	15	5000–9999	5
100–249	27	10,000–19,999	2
250–499	15	20,000–50,000	5
500–999	14	none given	6

A total of 456 names were ordered for these titles, at an average of 3.1 names per certificate. However, the number of individuals who actually appeared on the titles was only 209. Obviously, some individuals featured very often, as shown in the table opposite.

In other words, the 20 names listed above – less than 10 percent of all 209 individuals named on certificates of title – accounted for 37.3 percent of all 456 separate awards made by the Kaipara court. Over 60 percent of those awarded land by the court (128 out of 209 individuals) featured only once each. As discussed, the most frequent recipients all featured in the 1870 Government list of the principal chiefs of the region, which also gave the population of the Kaipara district – stretching from Orakei to Kaihu – as 705.[32] An 1874 return gave the population of the Kaipara district (excluding Orakei) as 1,313.[33] Thus, the 209 individuals awarded land by the Kaipara court from 1865–73 may equate to roughly 15–30 percent of the

30. *Te Roroa Report 1992*, p 41
31. Ibid, p 44; see also *Orakei Report 1987*, p 2
32. AJHR, 1870, A-11, p 4
33. AJHR, 1874, G-7, p 4

Names appearing most regularly in court orders:

Arama Karaka Haututu	24	Mata Tira Koroheke	8
Paikea Te Hekeua	12	Pera Tare	7
Te Otene Kikokiko	12	Te Wiremu Reweti Te Whenua	7
Paora Tuhaere	9	Paora Kawharu	7
Te Tirarau	9	Apihai Te Wharepouri	7
Paraone Ngaweke	9	Parore Te Awha	6
Matini Murupaenga	8	Ngawaka Tautari	6
Te Hemara Tauhia	8	Wiremu Marua	5
Pairama Ngutahi	8	Mihaka Makoare	5
Kiwara Te Ro	8	Hone Waiti Hikitanga	5

Others:

9 individuals	4	34 individuals	2
18 individuals	3	128 individuals	1

overall number of persons who lived in the area during these years. However, since 128 of these people had certificates ordered for them only once, and a further 34 only twice each, it becomes apparent that the vast majority of Kaipara Maori (admittedly including minors) either received no grants of land or at best one or two during the 10-owner period, despite the fact that certificates for 145 claims totalling over 270,000 acres were awarded by the court. Moreover, the most frequent grantees were often either the sole recipient of title or shared the title with only one or two others, regardless of the block's size. Similarly, Geiringer observes that, in Muriwhenua, Judge White frequently awarded title to fewer than 10 owners, and often to only one.[34]

As mentioned above, the rationale for fewer names appearing on the certificate was that the owners would act as 'trustees' for the tribe. In two specific cases, the court recorded that those awarded title to Mairetahi and Hoteo held the land 'in trust for others'.[35] Undoubtedly, many Maori supported their chiefs assuming this role. For example, in the case of the Tuhirangi block, Arama Karaka informed the court that the tribe had consented to him, Paikea, and Pairama standing 'as the three principal claimants in the land'.[36] Often legitimate claimants would explain to the court that they had ceded their interests to an individual to facilitate the tribe obtaining a Crown title to the land. This was sometimes explained as a practicality to allow for the land to be easliy 'dealt with', which presumably means 'sold'.[37] There were other reasons why the name of only one chief was placed on the title. In the Orakei case, for example (to venture slightly out of the Kaipara district), the lawyers for the competing parties agreed, as a compromise solution to the quarrel

34. Geiringer, p 75
35. Kaipara minute book 1, pp 12 (Mairetahi), 130 (Hoteo)
36. Kaipara minute book 2, p 83
37. See, for example, the case of the Opanake block, with regard to the selection of Parore Te Awha and Te Rore Taoho as the grantees, where Arama Karaka Haututu stated that 'Two persons have been selected by the tribes, and only two so as to facilitate dealing with the land': Kaipara minute book 3, p 52.

over which names should go on the certificate of title, that the name of the Ngati Whatua 'paramount' chief Apihai Te Kawau alone should go on the certificate.[38]

The Kaipara court seems to have been largely guided by the evidence and advice of the principal chiefs that appeared before it. Most of the important decision-making concerning to whom title should be awarded seems to have taken place outside the courtroom. Claimants would state, for example, that they had 'arranged among ourselves' who the grantees should be,[39] that 'an arrangement had been arrived at out of Court',[40] or that 'This piece of land has been settled by a Runanga'.[41] The court would occasionally adjourn proceedings 'to allow the matter to be settled amongst the owners'.[42]

Fenton, for his part, hoped that the chiefs would become a European-style landed gentry and that the colony would witness 'the conversion of the Maori nation into two classes, – one composed of well-to-do farmers, and the other of intemperate landlords'.[43] The disenfranchisement of so many Maori, whether potential or actual, certainly made Fenton's hope realistic. Rogan filed the following report on the Kaipara district to Fenton in 1867:

> It is with much pleasure I have to state that the effects of the Native Lands Act on the welfare of the population of Kaipara, both Native and European, is better than I anticipated. The Natives were never in such a position before, and I am glad to say that they have as a rule sufficient sense to appreciate it. Pairama has an estate for which he receives £300 per annum. Arama Karaka, Manukau, and other chiefs, are leasing extensive runs to Europeans, who are in a position to carry out their agreements; and after the next sitting of the Court shall have been held, a large proportion of the lands in central Kaipara will be taken up and stocked.
>
> . . . . .
>
> European farming was first introduced into Kaipara by yourself years ago, by presenting Pairama with a plough; afterwards the Government, through Mr McLean, gave ploughs to Tomairangi and Manukau, long before the Native Lands Act was passed. Te Hemara of Mahurangi has improved his property recently by fencing, and building a neat house with verandah and brick chimney, which may be said to have resulted from the sale of some of his land after certificates were obtained. Several weather-boarded houses have recently been erected by the Natives in Kaipara, and by my advice they are about to cause brick chimneys to be built. There is a marked improvement in the mode of living adopted by the chiefs. European articles of furniture are found in the houses about Otamatea; and I have frequently been astonished to see, at Paikea's and Arama Karaka's settlements, all the principal people living, while I have been there, quite in accordance with the manners of Europeans.[44]

38. *Orakei Report 1987*, p 37
39. Kaipara minute book 2, p 66 (Te Nukuroa 1)
40. Ibid, p 145 (Ihumatao)
41. Ibid, p 165 (Kakatamanawha)
42. Kaipara minute book 1, p 165 (Te Ra Te Awa); see also Kaipara minute book 3, p 25 (Ngahokowhitu)
43. AJHR, 1867, A-1, p 4
44. AJHR, 1867, A-10A, pp 3–4

Indeed, Rogan's picture is of the chiefs profiting handsomely from the introduction of the Native Land Court system. As Ward observes, the chiefs were sometimes 'downright extravagant, living in flashy imitation of the settler gentry'.[45]

Te Hemara's 'neat house with verandah and brick chimney' may have pleased Rogan, but the chief's lifestyle may well have come at a price to other Maori. As Wiremu Pomare, of Ngapuhi, told the Government in 1871:

> There is a block of 2,537 acres of land at Puhoi Mahurangi, near the Hot Springs, belonging to Te Hemara and thirty-one others; it was heard in Court in January, 1866, and Te Hemara got the Crown grant in his own name; he has sold some portions of the land and mortgaged other parts, but the other owners have never received any portion of the money and have received no redress. The Court was asked in the first instance to insert all the names of the thirty-one that were interested, but it was subsequently arranged that Te Hemara's name only should be inserted. I was present on the occasion; it was one of the first pieces of land adjudicated upon by the Court. Te Hemara also sold a piece of land of eight acres called Orakorako, near Mahurangi, for which a certificate was granted to him alone at the same Court, and under similar circumstances he has sold the land and never gave the others a share of the money. The Pakehas often advise the Natives to get as few names as possible to a grant for the convenience of selling. I know that the law was amended on this point in 1867, but I would not allow the ten grantees to lease the land until it had been subdivided.[46]

As Geiringer notes, the court assumed no responsibility for ensuring the 'trustees' evenly divided any payment monies for lands sold immediately after passing the court.[47] Two local histories record that Te Tirarau and Te Otene Kikokiko both evenly divided the proceeds of land sales amongst their people, with Tirarau even 'always taking the smaller amount'.[48] Similarly, Arama Karaka told the court that he had distributed the £125 received from the sale of the Pupuke block amongst all the owners.[49] However, while the minute books do not clearly reveal whether any owners defrauded the tribe of their legitimate interests, it is evident that the fear existed that they would. When the certificate for the Kaitara 1 block was ordered for Arama Karaka Haututu on 7 January 1867, Pairama Ngutahi stated:

> It is possible that the person entrusted with the Grant may abuse the power in which case there would be personal recrimination and the matter would end here, I speak in reference only to the Kaipara tribe.

Similarly, Henare stated:

> There is no one to dispute this piece, the only evil likely to arise will be from the abuse of power in relation to the man in whose name the land is [vested] as mentioned

45. Ward, p 213
46. *Return Relative to the Working of the Native Land Court Acts and Appendices Relating Thereto*, Government Printer, Wellington, 1871, p 35 (report ordered by the Legislative Council)
47. Geiringer, p 77
48. See Sheffield, p 65, re Te Otene sharing the proceeds of the sale of Otamateanui and Te Pua a Mauku, and E K Bradley, *The Great Northern Wairoa*, 1972 (1982), p 9, re Tirarau.
49. Kaipara minute book 2, p 17

> by Pairama if he should abuse his power then we who are interested will search out the matter.[50]

It is unclear what sort of 'personal recrimination' would follow for a 'trustee' who abused his or her power, but the trustees had the power to alienate land and beneficial owners therefore had no legal avenues for redress.

An example of a direct allegation of the abuse of trust with respect to a 'trustee' is to be found in the evidence in the case of the Te Horo block in May 1869, where Wiremu Reweti stated that the eventual sole grantee, Maata Tira Koroheke:

> held some money back that ought to have been given to us. I now come to oppose this piece of land. The money for all the land about the Awaroa that has been sold has been retained by Maata and I oppose this for that reason. I said I would not oppose her if when the money was paid for the land she would give us a portion of it . . . I went to Maata and she said why should a person of no importance like you speak to me . . . She was angry with me for applying for money . . . I am now fully aware of the wrong she has done me.[51]

Paora Tuhaere and Wiremu Te Wheoro felt that 25 names should be the maximum number allowed for a large block, thus ensuring that each hapu might be properly represented in the certificate. Eru Nehua argued that the names of all concerned should be entered on the title and, if these were considered too numerous, the land subdivided. 'This is the opinion', he ventured, 'of all the Natives about Whangarei, who would be willing to pay the expenses of subdivision whenever they could get the money. If the present system is continued, the grantees should not have the power even to lease the land.'[52] Paora Tuhaere himself appears to have been a particularly conscientious 'trustee', despite being amongst the privileged minority of chiefs who regularly featured in court orders for certificates of title. In the Orakei case in 1868 he objected most strongly to Fenton's initial ruling on ownership, as he felt too many names had been omitted from the certificate, despite the fact that his own name appeared. Years later, when addressing the chiefs assembled at Orakei in 1879, he said:

> It was the Native Land Court that took away the authority over the land from the land and put the authority in a Crown grant . . . if the land had remained under the old authority of your fathers there would have been no Crown grants, and your lands would not have been wasted.[53]

Where only one owner was chosen (often by an out-of-court tribal runanga), however, there were those who felt they had been overlooked for quite other reasons. In the case of the Huarau block in May 1869, witnesses stated to the court that Heremaia Pahi should be named as the sole owner. Paraone Ngaweke, however, stated that:

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50. Kaipara minute book 1, p 104
51. Kaipara minute book 2, pp 171–175
52. *Return Relative to the Working of the Native Land Court Acts*, pp 26, 34
53. *Orakei Report 1987*, p 40

> I have heard what Arama Karaka said about this land being given to Heremaia. What he said is correct but Hereni has ignored me altogether. Although I have an equal claim to Heremaia through ancestry if they recognise me as regards this land I shall cease my opposition. Let Heremaia be called I should like to hear what he has got to say.

Heremaia, for his part:

> recognise[d] Paraone as regards this land through ancestry but the Runanga decided that the 'tikanga' of this land should be left to me . . . If the land is decided in my favour I will sell it.

This seems to have sufficed for Paraone, who withdrew his earlier demand to have his name inserted in the Crown grant and consented that it be issued to Heremaia.[54] This example perhaps supports the Parsonson 'Pursuit of Mana' thesis that the Native Land Court was a stage upon which competing groups and individuals sought to have their mana recognised.[55] Indeed, Paraone was satisfied by a simple acknowledgement of his ancestral rights in court, and did not seem perturbed that the recipient of the title, Heremaia, was about to sell the land anyway.

A similar example is the Te Opu block. Arama Karaka Haututu stated that a runanga had decided that the land would be sold to 'the Pakeha' and that he and Riria Rangaunu should be the grantees. Manukau Rewharewha stepped forward and objected 'on the ground that the land belonged to the whole of them.' That said, he immediately added 'I now withdraw my objection in favour of Arama Karaka'.[56] It seems that, once he had asserted his interest in front of those assembled, Manukau could let the matter rest.

7.5 ASSESSORS

Whereas the Native Lands Act 1862 envisaged a council of local Maori leaders working with a Pakeha judge in adjudicating on land ownership, the 1865 Act required the presence of only two assessors and, in 1867, this was reduced to one. At the first sitting in the district at Tukapoto on 26 June 1865 under judges Rogan and Monro, the Maori assessors were Wiremu Tipene Hawato and Winiata Tomairangi, the latter being a Rarawa chief from Oruapou.[57] Despite his role of assessor, Wiremu Tipene was granted title to the Puketotara block on 28 June 1865 and to the Te Whenuahou block on 15 August 1866; in fact, he even signed the minute book beneath the court order in his capacity as assessor.[58] No other instances appear of assessors approving certificates for themselves, although other assessors, such as Matikikuha Parakai, Pairama Ngutahi and Te Hemara Tauhia, were regular claimants and grantees.

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54. Kaipara minute book 2, p 163
55. Ann Parsonson, 'The Pursuit of Mana', in Oliver and Williams (eds), *The Oxford History of New Zealand*, 1981
56. Kaipara minute book 2, p 170
57. AJHR, 1870, A-11, p 4
58. Kaipara minute book 1, pp 27, 66

Assessors were often not well regarded. In an 1871 submission on the workings of the court, Paora Tuhaere and Wiremu Te Wheoro stated that the assessors:

> are of no use, and have little or nothing to say to the cases that are being tried; they sit like dummies, and only think of the pay they are going to get. Wiremu Hikairo [of Te Arawa, who was assessor at Helensville in February 1871] is perhaps an exception, but he was taught at school. None of the other Assessors have done any good, and always support the side in which they have friends or other interest.[59]

Te Wheoro resigned, after having acted as assessor at seven courts (including Te Tanoa in February 1868), to express his opposition to the operation of the court in general. Eru Nehua of Ngapuhi objected to the 'invariable selection of chiefs as assessors. They should be men of good judgment, selected for their intelligence.' He advocated a system whereby Maori could elect their own assessors.[60] In a similar vein, Wiremu Patene of Waikato stated that he had:

> never heard the Maoris speak well of the assessors, and I do not like them myself, they are so partial and are deceivers. However, I would not like to see them done away with, but let us have just and intelligent men. . . . They need not necessarily be chiefs. I should not object to a man of lower rank than myself being appointed, if he were really able and intelligent.[61]

Geiringer points out that it is hard to tell exactly what contribution the assessors made. The failure of the assessor system, she argues, 'is indicated by their silence.'[62] Indeed, it is difficult to find any evidence of input by the assessors in the Kaipara minute books.

7.6 SECTION 17

Under section 17 of the Native Lands Act 1867, the court was required to register the names of all the owners of a particular block of land in its records. The court was charged with ascertaining the interests:

> of every person who and every tribe which according to Native custom owns or is interested in such land whether such person or tribe shall have put in or made a claim or not.[63]

This was a somewhat ineffectual statutory change, however, as the court largely ignored it and continued to make decisions based only on evidence presented before it. Furthermore, the 10 (or fewer) actual owners still had the absolute power to alienate land once it had been subdivided. Until that point, they could lease it for up to 21 years. The Kaipara court displayed a general reluctance to make use of

59. *Return Relative to the Working of the Native Land Court Acts*, p 26
60. Ibid, p 34
61. Ibid, p 36
62. Geiringer, p 83
63. Cited in Geiringer, p 84

section 17. Cases frequently ended with the comment 'There was no satisfactory evidence to enable the Court to comply with Clause 17 of the Act of 1867'.[64]

At times the court lightly dismissed its obligation to be proactive in registering names under section 17. For example, in the case of the Marunui block, Arama Karaka provided 39 names of rightful owners of the land, but added that 'There may be twice twenty others'. Judge Monro noted that:

> The names of all the persons interested in this block could not be obtained, to enable the Court to comply with clause 17. The principal witness stated that there might be forty more besides those named.

Monro evidently did not see fit to establish who the 40 others actually were. He also disregarded the testimony of Hone Waiti Hikitanga, who stated that 'Arama Karaka has named the whole of those who are in any way interested in this piece of land. I know of no others.'[65]

Similarly, in the case of Ahikiwi, Maka Te Haupu provided 36 names and stated 'These are all who have an interest as far as I know'. However, Monro commented that 'It was ascertained that the whole of the persons interested were not enumerated by Maka Te Haupu – satisfactory evidence could not be obtained'.[66] We can take it for granted that the minute books do not record the full discussion on the question of evidence for section 17. Nevertheless, it is apparent that the court made little effort to make use of this provision. Two of the few cases where it was used were the registration of the 66 owners of the Kaihu block in 1871 and the 27 owners of Pukehuia in 1873.[67]

Geiringer observes that Judge White also tended to ignore section 17 in Muriwhenua, simply carrying on with his title investigations as before 1867.[68]

7.7 RESERVES

Geiringer notes that, under the 1865 Act, judges had the option of recommending that blocks be made inalienable. From 1866, however, an amendment required the judge to designate reserves where the needs of claimants necessitated it. Section 20 of the 1867 Act required the court in each case:

> to inquire and take evidence as to the propriety or otherwise of placing any restriction on the alienability of the land comprised in the claim or of any part thereof or of attaching any condition or limitation to the estate to be granted.[69]

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64. See, for example, Kaipara minute book 2, pp 32 (Turakiawatea), 34 (Ihumatao), 49 (Paeroa), 50 (Matunui), 58 (Raekau), 62 (Tokatapu), 66 (Te Nukuroa 1 and 2), and 68 (Mangaiti).
65. Ibid, pp 53, 56
66. Ibid, pp 59–60
67. Ibid, pp 235–237; Kaipara minute book 3, p 17
68. Geiringer, p 85
69. Cited in Geiringer, p 105

Rogan, however, was unsympathetic to these requirements. With regard to the provision ushered in by the 1866 amendment, he stated that 'I feel . . . persuaded that such measures will not be necessitated in the district of Kaipara.'[70] He even seems to have implied that the retention by Maori of their lands was undesirable, commenting while resident magistrate that 'The Kaipara natives are proverbial for indolence and will never do ordinary labour so long as they have a block of land for sale.'[71]

In all, Rogan and Monro specifically designated blocks as restricted or inalienable in 24 separate cases, totalling 9820 acres. For the 21 cases where the acreage of the block was recorded in the court minutes, the average size of each 'reserve' was 468 acres. From the available information it appears that no more than three and a half percent of all land passed by the Kaipara court from 1865–73 was reserved from sale. In a number of cases the land was possibly made inalienable (except by lease for a period less than 21 years) pending subdivision only, whereafter the various owners would be free to sell their portions.[72] In a couple of cases – Patotara and Puatahi – the court made no mention of restrictions despite the fact that Maori evidently retained these areas as reserves (see sec 7.8). Despite this, and the shortcomings of the minute books as full and relaible records, it suffices to say that the amount of land reserved by the Kaipara court was next to insignificant.

Restrictions were generally granted where they were requested,[73] but such requests were not frequent. Given the costs of survey and the subsequent need to sell land to defray these charges, this is perhaps not surprising. Restrictions were sometimes granted for the sake of young children. For example, the Kohekohe block of 10 acres was awarded to Te Puhi and Parore Te Awha and made inalienable on account of Te Puhi's children, despite Parore's claim in court that 'he was about to convey this land to a European'.[74] Heta Paikea's request that Te Tanoa be made inalienable was on account of the land being intended for a Maori town.[75] In the case of Aoroa No 2 (31 acres 1 rood 14 perches), the land was reserved because it had been given by Te Uri-o-hau and Ngatikawa for a Wesleyan mission station.[76] In the majority of cases no specific reason was given for the restrictions, but, where reasons were given, the provision of land as a sufficient endowment for the present and future needs of Maori, as envisaged by Lord Normanby in his instructions to Hobson, was not the primary consideration.

The case of Pariraunui is also worth mentioning. Paora Kawharu of Te Taou, the sole recipient of title to the 66-acre block, asked that it be made inalienable. His

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70. AJHR, 1867, A-10A, p 4
71. Cited in Dick Butler, *This Valley in the Hills: The Story of Maungaturoto, Brynderwyn, Bickerstaffe, Batley, Marohemo, Whakapirau*, 1963, p 96
72. The minute books do not record the reasons for such restrictions. Under section 17 of the 1867 Act, however, the power of the (up to) 10 owners named on the title to alienate was restricted pending subdivision, in that they could lease the land for up to 21 years but not sell: Geiringer, p 84.
73. One example where this was not the case is the 1220-acre Papurona block, where Te Otene Kikokiko, one of the grantees, asked for the land to be restricted. No order to this effect was given: Kaipara minute book 2, pp 224, 227.
74. Ibid, p 19
75. Ibid, p 52
76. Ibid, p 215

agent, John Sheehan, however, 'stated that Paora Kawharu was under a misapprehension he did not wish his land made inalienable'. Consequently, no restrictions were granted.[77]

Paora Tuhaere and Wiremu Te Wheoro felt that 50–500 acres should be reserved for every Maori man, woman, and child, according to the land they held, and that while they might be allowed to lease some of it, they could not sell it on any account.[78] However, Hemi Tautari, of the Bay of Islands (who, incidentally, could 'see no faults in the [Native Land Court] system' at all, and who sat as an assessor at Helensville in April–May 1869), stated that 'sufficient land is reserved for the Natives' and that, 'If the land is of good quality, five acres for each would be sufficient.'[79] This view was presumably not shared by many other Maori. Wiremu Hikairo favoured a minimum of 50 acres per person, while Wiremu Pomare and Wiremu Patene advocated the reservation of no less than 100 acres per person.[80] Fenton, by contrast, observed that:

> As a great public question, I think it is admitted that the chief object of the Government of a Colony is as rapidly as possible to cause the waste lands to be brought into profitable occupation, by cattle and sheep first, but ultimately by the labour of a settled agricultural population. . . . If the quantity of land determined by the officers of the Crown as necessary to be retained by the Maoris, in the case of the final settlement of their claims under the Ngaitahu deed, is to be taken as a criterion,[81] I think it will be found that the amount locked up, even in Hawke's Bay, still exceeds their necessities.

Fenton opposed the introduction of compulsory restrictions, as he felt that Maori would not 'relish the power to make imprudent acts being taken away from them.'[82]

Pakeha administrators may have had their reasons for not enforcing minimum reservations. As noted above, Fenton hoped a chiefly land-holding elite would grow from the 10-owner system, and was therefore presumably reluctant to agree to set aside significant holdings for every Maori. The retired Colonel Haultain, formerly Minister of Defence under the Stafford administration, echoed Fenton's views with his own July 1871 advice to Donald McLean that:

> It is impossible to obtain from the Natives, any definite opinion as to the minimum quantity of land that should be reserved for each individual, and it must depend much on its quality and locality. But it would be no bad rule to lay down, that each Maori chief should have amply sufficient to maintain himself like an English gentleman, supposing him to put forth the necessary industry and energy for its cultivation.[83]

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77. Ibid, p 87
78. *Return Relative to the Working of the Native Land Court Acts*, p 26
79. Ibid, p 30
80. Ibid, pp 32, 36
81. Ngai Tahu were initially awarded only some 35,757 acres out of a tract of 34.5 million, roughly equivalent to a thousandth of their previous domain: Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker's Ltd, 1995, p 358. In 1868, Fenton increased the size of the reserves made under the Kemp deed from an average of 10 acres per person to 14 acres, and it is to this that he might well have referred: Waitangi Tribunal, *Ngai Tahu Report 1991*, Wellington, Brooker and Friend Ltd, 1991 p 508.
82. *Return Relative to the Working of the Native Land Court Acts*, p 11
83. Ibid, p 8

Haultain's concern was with the chiefs rather than with the provision of a sufficient endowment for Maori generally.

Having regard to the future needs of all Maori in the area, it seems evident that the Kaipara court should have been more proactive in designating blocks of land inalienable. As mentioned, Patotara, the 53-acre reserve set aside out of the Crown's purchase of the Pukekaroro block in 1859, passed before Rogan and Monro in June 1865 with no order that it be restricted.[84] Title was awarded to Arama Karaka, one of the six signatories to the Pukekaroro deed of sale. Similarly, Puatahi was retained by Maori as a reserve but not deemed inalienable by Rogan when he investigated title in March 1866.[85] Whereas Patotara and Puatahi seem to have remained in Maori hands at least until 1886,[86] other lands that should have been reserved slipped away more quickly. For example, the 1633-acre Paraheke block was reserved from the sale of Oruawharo as a wahi tapu in 1860, but, when up for investigation of title before the court in 1866, was passed without restrictions despite Rogan being informed that the land was a 'sacred place'.[87] In 1869 it was purchased by Pakeha settlers anxious to link the Albertland settlements of Port Albert and Wharehine more closely, between which the block lay.[88] The pressure Maori must have been under to part with this land is a matter for speculation, but it may well have been a reluctant sale. One local history records that the reserve's 'extensive mangrove flats were the traditional eel-fishing grounds of the local Maoris.'[89]

To leave Kaipara Maori with an equivalent to that retained by Ngai Tahu, as Fenton thought reasonable, was certainly to render them paupers. The Waitangi Tribunal has variously described Ngai Tahu's reserves as 'paltry and unproductive', 'woefully insufficient', 'niggardly', and 'pitifully small'.[90] Yet Fenton, Rogan and others presumably did not feel they were leaving Maori with next to nothing. As Geiringer has written with respect to Muriwhenua:

> Most Pakeha officials, both inside and outside the Court room, acknowledged at least in theory the principle that Maori should not be left completely destitute. . . . In practice, however, the Court was not prepared to place any limits on the alienation of Muriwhenua land.[91]

7.8 LAND SALES

Claimants before the Kaipara court often stated that land for which they sought title had already been sold by them or was about to be sold, as set out in the table following.

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84. Kaipara minute book 1, p 40
85. Ibid, p 54
86. 'General Return of Native Reserves in the Auckland Provincial Land District', AJHR, 1886, G-15, p 8
87. Kaipara minute book 1, p 68
88. Sir Henry Brett and Henry Hook, *The Albertlanders: Brave Pioneers of the Sixties*, 1927, p 124
89. Borrows, p 123
90. *Ngai Tahu Ancillary Claims Report 1995*, pp 229, 358, 359
91. Geiringer, p 113

Land already sold	Area (acres, roods, perches)	Buyer	Price
Wai o Mu	2a 0r 1p	Isabelle Nelson	£25
Te Whenua Hou	2a 1r 2p	Wiremu Tipene Hawato	£30
Taupaki	118a of 12,868	Government	
Hoteo	41,400a	Provincial government	£2300
Pupuke	50a	'a European'	£125
Hautapu	147a	Hobbs	
Hatoi	10a	Bishop Pompallier	£10
Waima	10a	Hobbs	
Te Opu	794a	'the Pakeha'	
Waikino 2	90a	'the white man'	
Okapakapa	100a	Government	£50 advance
Pouto	10a	Government	£50

Land to be sold	Acreage	Land to be sold	Acreage
Hukatere	1060 out of 10,410	Pakaraka	137
Tumutumunui	125	Horehore	1732
Tungotungo	243	Tunatahi	167
Huarau	100		

Thus, with 19 examples recorded above, in over 10 percent of all claims passed by the court, those awarded title specifically stated that they had already sold the land in question, or were about to sell it. It is probable that the figure here is in reality much higher, and that recourse to the court to secure a legal title was invariably made in order to effect or complete a sale of land to a private purchaser or the Crown. Indeed, Judge White observed, with reference to Mangonui, that survey charges and other court expenses 'deter the Natives from coming before the Court, unless they have previously agreed to sell the land.'[92]

Indeed, information located elsewhere shows that a number of other blocks were sold to settlers within a comparatively short time of being investigated by the court. This is set out below (with further particulars of some blocks in the tables above).[93]

92. AJHR, 1867, A-1, p 10
93. The sources used for this information are: Oahau, Mateanui, Huarau, Te Opu, Ahikiwi, Waikino 1, Waikino 2, Te Wairau: Butler, pp 75–76; Paraheke, Unuwhao: Brett and Hook, pp 124, 357; Makiri: Sheffield, p 72; Tunatahi: *Dictionary of New Zealand Biography*, vol II, p 110. Where these sources did

Block	Area (acres, roods)	Year in NLC	Seller(s)	Buyer	Price	Year
Oahau	113a	1865	Arama Karaka Haututu	William Carr		1866
Mateanui	80a	1868	Arama Karaka Haututu	Joseph Masefield	£144 15s	1871
Huarau	100a	1869	Heremaia Pahi, Te Para Wairoa Waho	Joseph Masefield	£50	1871
Te Opu	795a	1869	Arama Karaka Haututu, Riria Rangaunu	Joseph Masefield	£590 10s	1877
Ahikiwi	1000a	1868	Maka Te Haupu, Mihaka Wharepapa, Hirini Puhia	William and Ernest Jackman	£2000	1872
Waikino 2	90a	1871	Arama Karaka Haututu	Jane Gloyn		1879
Waikino 1	50a	1871	Arama Karaka Haututu	Albert George Harvison		1881
Te Wairau	5a 3r	1873	Arama Karaka Haututu, Te Pepene Paki	William Montague		1881
Unuwhao	2800a	1866	Manukau Rewharewha, Pairama	E and T Coates		1868
Makiri	515a	1867	Te Otene et al	Judge Rogan		circa 1865
Paraheke	1633a	1866	Matikikuha, Paikea, Rupua, Himana, Paratene Taupuki			1869
Tunatahi	167a	1871	Parore, Tiopera Kinaki, Te Rori Taoho, and seven others	Joseph Dargaville		1872

The sales recorded here may perhaps represent the tip of the iceberg. Records of private purchases of land from Maori are more difficult to trace than Crown purchases, but it would seem apparent that Kaipara Maori were on-selling many blocks to settlers only a short time after making claims to the land through the court. The following account of a Kaipara land purchase from W D Hay in *Brighter Britain* is perhaps somewhat colourful, but it gives something of the atmosphere and circumstances of the time:

> We had our korero with the chiefs, and arranged to purchase a block, or a section of a block rather, on the Pahi. We selected our location – from such and such a creek, and back from the river as far as such and such a range. We offered ten shillings an acre for it, the then market price. The chief said, 'Kaipai!' [sic] and so that was settled.

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not record the sellers, I have taken these from the lists of those awarded title in the minute books. Sheffield records that Te Otene and the Ngati Whatua tribe sold Makiri to Rogan, but title to the block was awarded by the court to Apihai Te Kawau.

> Then we got up the Government surveyor for the district, and to it we went with billhook and axe, theodolite and chain, fixing the boundaries and dimensions of our slice of forest. Said the surveyor, after plotting and marking a map. 'There you are! Two thousand and twenty-one acres, two roods and a half!' 'Right', said we; and proceeded to the next business.
>
> A Land Court was held by the Crown official at Helensville. Thither proceeded the Ngatewhatua [sic] chiefs, with the surveys and maps of the section we had chosen. They make out their claim to the land, according to established usuage [sic], and receive a Crown grant as a legal title. This is then properly transferred to us in lieu of our cheque. Various documents are signed and registered, and we stand the proud possessors of so much soil and timber; while the Maoris make tracks straight to the hotel, with much rejoicing.[94]

Just how wisely Maori used the money they received from land sales is unclear. Keith Sorrenson has observed that, while in town attending court sittings, Maori lived in squalor and 'frequently spent long periods intoxicated as they squandered the money advanced by purchase agents'.[95] Obviously, many publicans and storekeepers were equally well versed in encouraging Maori to indulge and thus run up large debts, which could be recouped in land. The image of Maori wasting purchase moneys on alcohol is slightly misleading, therefore, as much of the shopkeepers' and publicans' trade was done on credit. Nevertheless, a local history records that the settler Joseph Masefield's store at Batley (Oahau) was flourishing, in part because Maori 'were selling large blocks of land to the government' and, after every sale, 'the store would be invaded by practically the whole tribe and they would buy nearly all Masefield's stock.'[96] A constant source of distress to the Methodist missionary in Kaipara, William Gittos, apparently, was 'his inability to teach the Maori people thrift, and a sense of responsibility where their property was concerned.'[97]

Whether Kaipara Maori squandered purchase monies or ran up large debts, however, is largely beside the point. The court system, under which Maori could be exploited into selling their lands, which required attendance at distant sittings for long periods, and which handed alienable titles to a small number of individuals, only encouraged social disruption and profligacy. Rogan wrote in 1868 that:

> The immoderate use of tobacco and spirits, their uncleanly habits and perhaps more than all, indolence, is amongst other things the great cause of the gradual, but certain decay of the natives in Kaipara in particular and New Zealand generally.[98]

At a court sitting in March 1871 Rogan canvassed Kaipara Maori opinion about the sale of alcohol. Apparently, '20 people only' advocated teetotalism. They were

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94. Quoted in Butler, pp 59–60
95. Keith Sorrenson, 'Land Purchase Methods and their Effect on Maori Population, 1865–1901', *Journal of the Polynesian Society*, vol 65, 1956, p 191
96. Sheffield, p 137
97. Ibid, p 100
98. Cited in Butler, p 105

led by the Christian Arama Karaka who, Rogan noted, was reminded by Tirarau that he was not an abstainer himself.[99]

Advice to the court from claimants that they had already sold land or were about to do so was sometimes accompanied by a rejoinder to the effect that the land was quite superfluous to the sellers' requirements (see, for example, Arama Karaka's comments in the cases of Marunui, Tumutumunui and Pakaraka).[100] In the case of the Tungotungo block, Te Waaka Tuaia informed the court that he wished:

> no restrictions to be placed on this land as it is already arranged to sell it we have land besides this for cultivations.
>
> The Court explained to Te Waaka the reason of asking questions with respect to restrictions was that in Hawkes Bay Grants had been issued to the Natives without restrictions and they disposed of those lands and afterwards blamed the Court for not making restrictions it was therefore necessary that the Court should hinder the Natives from becoming paupers . . .
>
> Te Waaka: I understand what you say but in respect of this land neither he nor his ancestors had ever cultivated on it.[101]

Rogan's expression of concern to hinder Maori 'from becoming paupers' is his only one recorded in the minute books.

The index to Turton's Deeds reveals a total of only six Crown purchases in the Kaipara district of lands that had passed the court during the 10-owner period. With the establishment of the court in 1865 the Crown ended its right of pre-emption and disbanded its Native Land Purchase Department.[102] It recommenced the large-scale acquisition of Maori land in the 1870s, however, under Vogel's immigration and public works policy. Another reason for the low number of Crown purchases is probably that the Crown had already purchased such a large amount of Kaipara land prior to 1865, as outlined by Rigby. The six purchases recorded by Turton are set out below.

Deed no	Block and acreage	Area (acres, roods)	Date	Price
186	Taupaki (part)	118a	18 September 1867	£59
187	Owhetu	523a 3r	23 November 1871	£100
188	Marunui	2160a	8 March 1873	£270
189	Pouto	10a	5 December 1873	£50
190	Pakiri	20,000a of 31,400a	12 May 1874	£1600
191	Arakiore	470a	26 October 1874	£10

99. Ibid, p 97
100. Kaipara minute book 2, p 53; Kaipara minute book 3, pp 14, 15
101. Kaipara minute book 1, p 136
102. Ward, p 185

The Pakiri purchase was a drawn-out affair which was originally commenced in 1858. Some dispute seems to have led to it being renegotiated and, eventually, two-thirds of the 31,400-acre block was purchased from two of its three owners. In February 1873, Hori Te More agreed to sell his 10,666-acre share for £1000 and Arama Karaka Haututu and John Sheehan, as trustees for the owner Wiapo Te Whakaotinga, a minor, agreed to sell for the same price.[103] On 11 May 1874, however, Government land purchase agent E T Brissenden was able to confirm to the Under Secretary of the Native Department that he had 'at last succeeded in clearing away the many obstacles attending the purchase of 20,000 acres of the Pakiri Block' for a sum of £1650 (£1600 to the owners and £50 to 'outside claimants'). Brissenden stated that he had also acquired Owhetu for £100.[104] The third owner of Pakiri, Rahui, refused to part with her share of the block. Brissenden was quite satisfied with the purchase price as the block contained 'several thousand acres of fine alluvial soil' and offered 'the best site that could be found north of Auckland for a special settlement'.[105] Interestingly, the Pakiri block had originally been 'reserved' for the Albertland settlement, but was later rejected in favour of the Matakohe and Paparoa Crown purchases on the Arapaoa River,[106] perhaps because the purchase could not be finally effected.

While not recorded by Turton, the Crown also purchased the 41,400-acre Hoteo or Tauhoa block. The court minutes for the time of its investigation in January 1867 record that it had been 'disposed of . . . lately to the Provincial Government.'[107] Rigby notes that the final acquisition of Hoteo – a 'very significant area joining Upper and Lower Kaipara purchases' – does not appear to have been completed until 1868.

7.9 SURVEYS

Survey charges were detailed for 52 blocks totalling 118,196 acres. Charges for these blocks amounted to a total of £3052, or an average of sixpence an acre. The most frequent surveyors were Tole, with 22 surveys, O'Meara with eight, Rintoul with seven, and Harding, Blake, and Government surveyors with four each.

From the table opposite, it is readily apparent that the survey of smaller blocks entailed proportionately far greater expense than larger blocks, and that the average figure of sixpence per acre is misleading. The more interesting statistic is the comparison between the cost of surveying a block and the amount for which it could then be sold. For example, the survey of the Owhetu block cost £40, yet the sale price was only £100. The Government paid £1600 for 20,000 acres of the 31,400-acre Pakiri block, yet the block's survey cost its owners £400. While it must remain speculative, it seems that owners paid between 25–40 percent of the on-sale value

103. Lieutenant-Colonel Thomas McDonnell (land purchase commissioner) to Honourable Dr Pollen (general government agent), 26 February 1873, *Epitome*, p 112
104. Brissenden to H T Clarke, 11 May 1874, *Epitome*, p 145
105. Brissenden to Clarke, 30 May 1874, *Epitome*, p 146
106. Borrows, p 27
107. Kaipara minute book 1, p 56

Size of block (acres)	Number	Price per acre
0–9	1	£1 5s
10–49	5	8s 6d
50–99	5	3s 7d
100–249	6	2s
250–499	7	1s 6d
500–999	8	1s 6d
1000–1999	9	1s
2000–5000	8	9d
above 30,000	2	2d

of their land to have it surveyed. The land could not be sold without a legal title, but a title required a survey, and Maori indebtedness from survey costs may well have hastened many sales. Smaller blocks fetched comparatively better prices but necessitated higher survey charges.

In a number of cases – such as Paeroa 1, Paeroa 2, Marunui and Te Nukuroa 2 – the court ordered that the Crown grant should be delivered into the relevant surveyor's possession to secure his charges. Thus, even where the land's eventual grantee had not ordered a survey, they could not receive their grant until the (sometimes exorbitant) survey costs had been paid.

In several cases, however, the surveyor Edward O'Meara's charges were disputed. In the case of Oneonenui, where he had charged £112 11s 6d for 787 acres, Paora Tuhaere objected and the matter was referred to the inspector of surveys in Auckland and was subsequently heard by Chief Judge Fenton, in Auckland, on 9 March 1871, under section 69 of the Native Lands Act. The evidence is perhaps worth recording:

> O'Meara: I am a licensed surveyor. I got Oneonenui surveyed by another licensed surveyor [a Mr Baker], at Paul's request. I charge 2/6 per acre. That is a fair charge considering the delays made by Natives. £4/4/- for attendance at Court.
>
> X Ed by Paora Tuhaere: Did you not say if there were 3000 acres you would charge 1d per acre less than anyone else?
> Yes except one man who was living among the Natives.
>
> What surveyor has charged more than you?
> Tole. He charged £40 for 500 acres [presumably Owhetu].
>
> Did you know that 9d was charged at Arakiore for 400 acres by Tole?
> I never heard of it.
>
> Did you know that Blake charged 9d an acre for Muriwai?
> I asked Blake and he said the Maoris cut all the lines. All he had to do was take the distances and observations.

X Ed by Chief Judge: Was there any Native Agent concerned in this matter?
Yes.

Was any commission agreed to be given him?
Yes – every Native Agent gets it.

How much?
Ten pence on the sum received.

How much did you pay over the survey?
£29.

Over these four surveys?
Travelling expenses.

If you had taken your own labourers how much would you have charged?
2/- if there had been no delay.

What could there have been?
As much as with Natives – I allude to the delays of settling boundaries changing them etc.[108]

The court's decision was to charge £49 4s (including £4 4s for two days' court attendance), thus less than half O'Meara's original charge. Paora Tuhaere also objected to O'Meara's charge of £105 for the 891-acre Ururua block and £17 2s for the 66-acre Rangiahua block, while Te Otene Kikokiko objected to O'Meara's lien of £118 10s on the 1164-acre Hauekau block. Fenton ruled charges of £33 2s, £5 2s, and £36 2s for these blocks respectively, including in each case a charge of £2 2s for court attendance. Thus, where survey costs where actually disputed and ruled upon under section 69, the surveyor's original charges were reduced in these cases by over 300 percent.

Surveyors were a cause of much disquiet amongst Maori during this period. Blocks of land were often surveyed more than once, as opposing claimants employed their own surveyors for the same piece of land. The court could only recognise one survey, however, meaning any others were a waste of time and expense. Maori seem to have favoured the idea of Government surveyors doing all the survey work, thus circumventing the possibility of double-up. Charges, according to Wiremu Te Wheoro and Paora Tuhaere, varied between ninepence to 2s 6d per acre.[109]

Wiremu Pomare provided the following account of the problems inherent in the survey of land under the Native Lands Act:

I have heard of several cases in which the surveyors have caused great trouble to the Natives. 1220 acres of my land at Mahurangi was surveyed by Campbell; he was to receive £2 per day, and the bill came to £33. I could not pay the money at once, and Campbell threatened to sell the land, and instructed a lawyer to demand the money, who said that the land should be sold if I did not pay it. I did pay it, and got my Crown grant, but it cost me a great deal of money. We had an agreement with the surveyor specifying

108. Kaipara minute book 2, pp 238–240
109. *Return Relative to the Working of the Native Land Court Acts*, p 26

> the terms, and telling him that he might have to wait for his money, but it was not witnessed, and it was our own fault; but these things often happen, and Maoris get frightened when they are threatened with the law, and do as they are required. Patuone, of the Bay of Islands, was imposed upon about two years ago. The surveyor said he would do the work and wait for the payment until the land was sold, and now he demands payment. He should have ascertained before he commenced when the land was to be offered for sale. A piece of land in which I was interested at Puketapu (Waimate) was surveyed against my wish, and now we must have it done over again, because I don't approve of the first survey.[110]

The case of the Ohauroa block also illustrates the way rightful owners of blocks of land could be both unaware of the survey of their land and be forced to testify in court lest their names be omitted from the Crown grant. The eventual grantee, Manukau Rewharewha, stated that he appeared:

> as an objector. This piece is part of Hukatere as was also Kakatamanawha. When Hukatere was surveyed I left this piece as a run for my horses. During my absence the land was surveyed by Pairama without my knowledge. When I came back the survey was completed and I was very sorry. I went and took up the surveyors pegs and through [sic] them away. The reason I done this I was offended that my friend did not come and ask me about the survey. This is the fourth piece that has been cut off Hukatere. I wish my name to be inserted in the Crown Grant.[111]

Similarly, in the case of the Te Wai o Parewhakahau block (which was dismissed by the court upon the production of evidence from John White that the Provincial Government had previously purchased the land), the claimant, Tautari, stated that:

> the land had been surveyed clandestinely several times. I have spoken about it several times to Mr McLean . . . I have not surveyed this land myself. This land has been taken by the Europeans. I wish this land to be given back to me.[112]

The court could be impatient with Maori who openly expressed their concerns with a particular survey. For example, in the case of the Pohutu block, Wiremu Marua stated that he 'did not see the survey of this land. I do not know whether the survey is correct or not. If the line is right I do not object.' He was told by Rogan, however, 'that his objection was a frivolous one, that if he had any doubt of the correctness of the line he should have gone on the ground and examined it for himself.'[113]

As confirmed by Edward O'Meara's testimony above, it was a common practice for 'native agents' (usually licensed interpreters) to persuade Maori to have their lands surveyed and then receive a commission from the surveyor who was

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110. Ibid, pp 35–36
111. Kaipara minute book 2, p 166
112. Kaipara minute book 1, p 95. See also the cases of the Manginahae and Motutare blocks, which Henare Taramoeroa and Te Kiri respectively claimed had been 'surveyed by stealth': Kaipara minute book 2, pp 82, 86.
113. Kaipara minute book 2, pp 90–91

contracted to do the work. Bay of Islands Resident Magistrate Barstow reported in February 1871 that:

> I cannot state whether interpreters have visited the Natives as agents for surveyors, or have sold the job after obtaining the Natives' assent thereto. The Natives are sometimes informed that they will not have to pay for the surveys until the lands have been disposed of, and in this way are induced to bring their lands before the Court; but payment is demanded and pressed at an earlier period, and the owners are worried into parting with their land at a sacrifice to meet the liability.
>
> . . . . .
>
> If Europeans wish to secure any particular block under the present system, their best plan is to get a surveyor to undertake the work, then induce him to press for payment, and they can get the land from the Native owner on almost any terms by advancing the money.[114]

The acquisition of Maori land under the court system could thus be a calculating and cynical enterprise, where surveys were just one technique of prising Maori land from its owners.

7.10 CONCLUSION

The experience of Kaipara Maori under the 10-owner system from 1865–73 may well have differed from that of other tribal groups in other parts of the North Island. Perhaps most importantly, Kaipara had remained relatively insulated from the turmoil occasioned by the fighting elsewhere in the 1860s, and the relations of the region's leaders with the Crown were generally very good. This political background is important to bear in mind when considering the period after 1865, as is the fighting between Ngati Whatua and Ngapuhi in the 1820s (and the subsequent desire on the part of Ngati Whatua to sell land to the Crown for their own security); the Crown's similar aim of creating a buffer of settlement between Ngapuhi and Auckland; and the many expressions of 'loyalty' and willingness to sell land made by Kaipara chiefs throughout the early 1860s. These matters are dealt with by Rigby more fully in his report on Kaipara Crown purchases.

Nevertheless, certain universal themes are apparent in the information contained in the Kaipara minutes books which undoubtedly apply to other parts of the country. These are also backed up by Geiringer's research on the 10-owner period in Muriwhenua. They include the inadequacy of the de facto role of the 10 (or fewer) owners as 'trustees'; the ineffectiveness of the assessors; the court's unwillingness to make use of the statutory provisions which may have ameliorated the situation for Kaipara Maori, such as section 17 and those relating to reserves; the extent of land passing from the tribal estate and into the hands of private purchasers; and the injurious effects of numerous aspects of the Native Land Court system, such as the cost of surveys, the necessity of travelling long distances to attend lengthy hearings, and the predations of shopkeepers, publicans, agents, and the like.

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114. *Return Relative to the Working of the Native Land Court Acts*, p 47

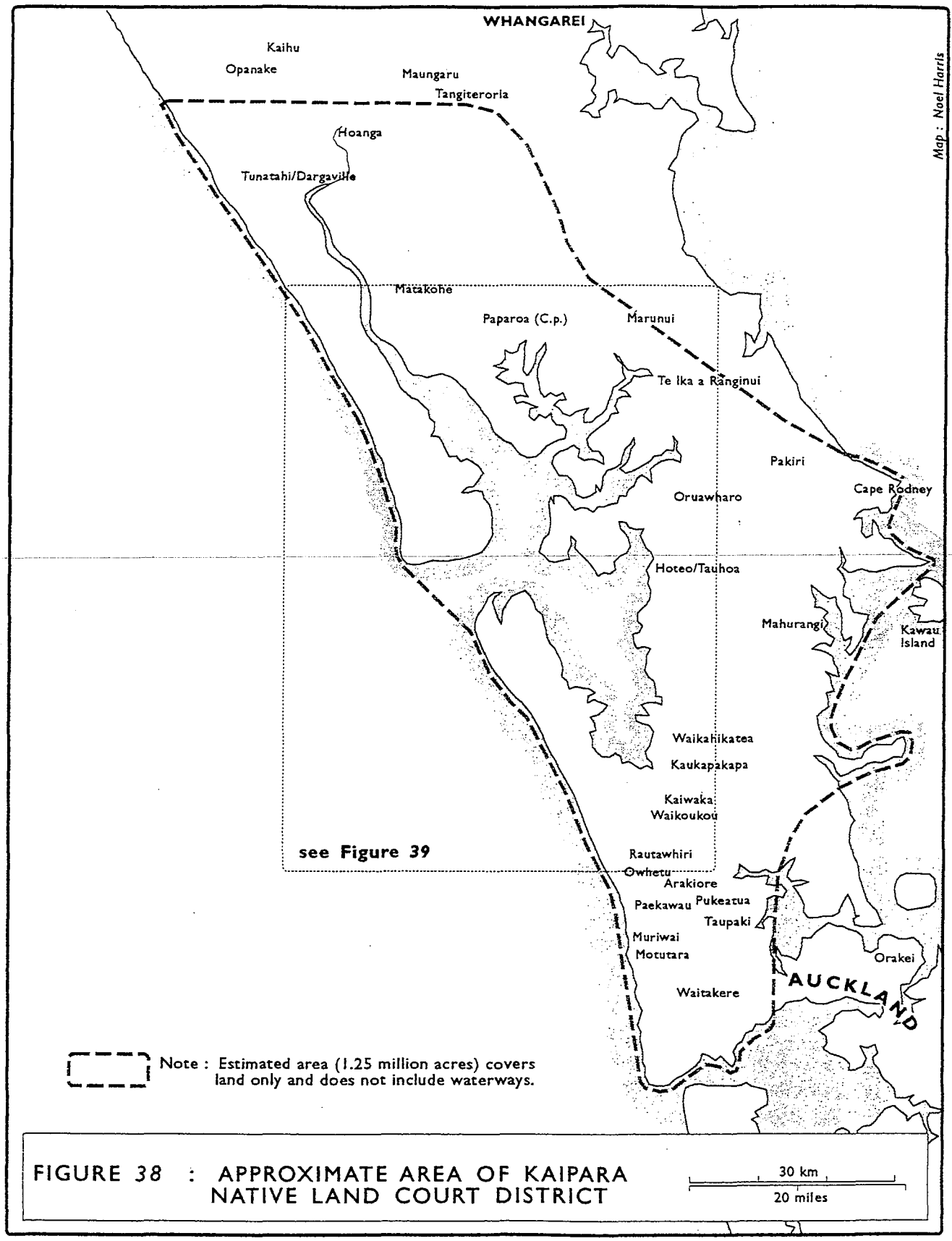
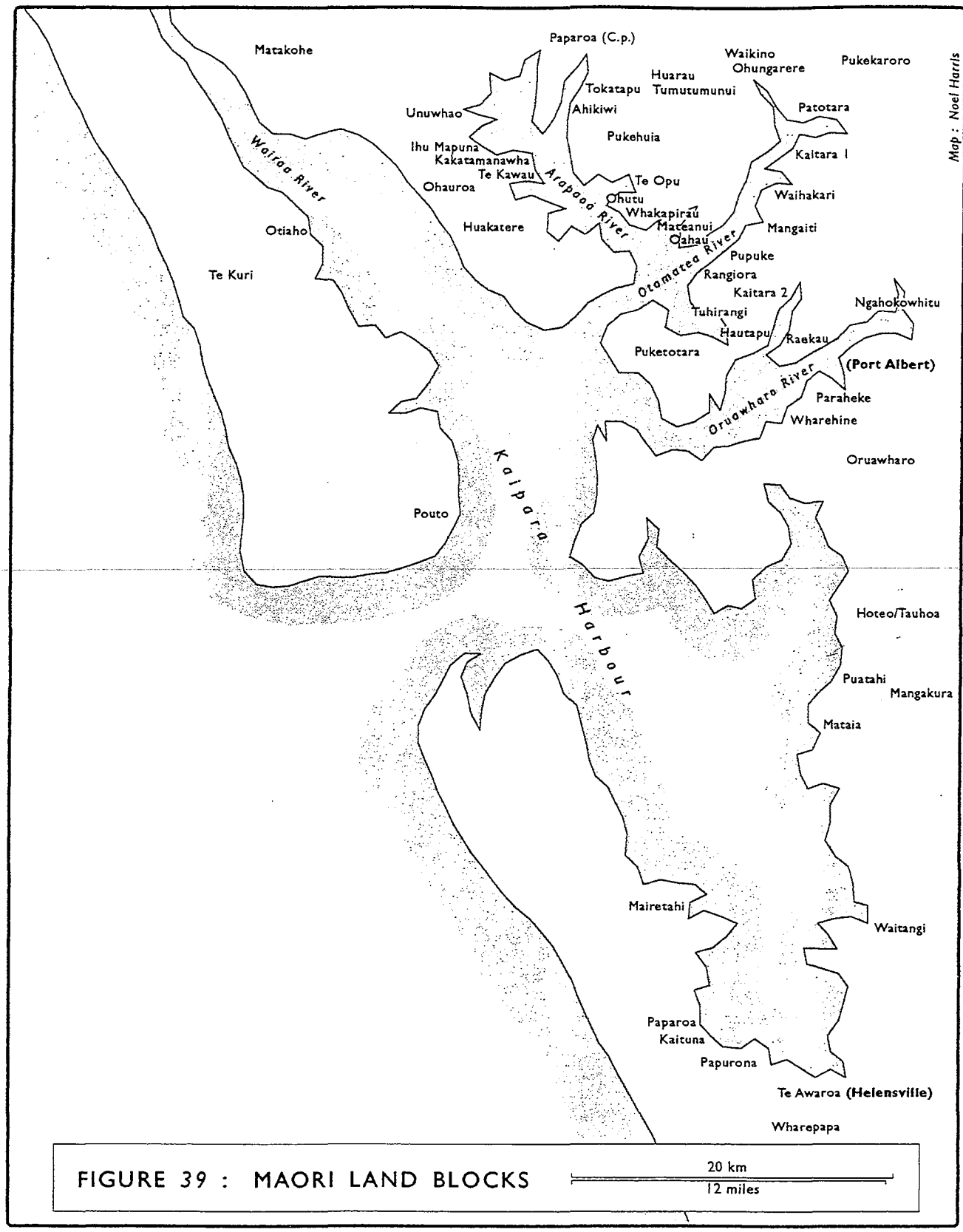


FIGURE *38* : APPROXIMATE AREA OF KAIPARA NATIVE LAND COURT DISTRICT


Matakohe
Paparoa (C.p.)
Waikino
Ohungarere
Pukekaroro
Huarau
Tumutumunui
Tokatapu
Ahikiwi
Unuwhao
Patotara
Pukehuia
Ihu Mapuna
Kakatamanawha
Te Kawau
Kaitara 1
Ohauroa
Te Opu
Waihakari
Ohutu
Whakapirau
Mateanui
Oahau
Mangaiti
Huakatere
Otiaho
Pupuke
Rangiora
Te Kuri
Kaitara 2
Tuhirangi
Ngahokowhitu
Hautapu
Raekau
Puketotara
(Port Albert)
Paraheke
Wharehine
Oruawharo
Pouto
Hoteo/Tauhoa
Puatahi
Mangakura
Mataia
Mairetahi
Waitangi
Paparoa
Kaituna
Papurona
Te Awaroa (Helensville)
Wharepapa
Wairoa River
Arapaoa River
Otamatea River
Oruawharo River
Kaipara Harbour
Map : Noel Harris
FIGURE 39 : MAORI LAND BLOCKS
20 km
12 miles

The evidence points to Kaipara Maori being worse off in 1873 than in 1865. Rogan, who was in a good position to observe, was convinced that the local Maori population was dwindling and that the people were in a state of 'gradual decay'. Indeed, while not partaking in the New Zealand Wars and suffering the subsequent hardships of casualties and confiscation, Kaipara Maori fell victim to the 'subtle conquest' spoken of by Belich. The years 1865–73 undoubtedly saw the alienation of significant amounts of Kaipara land and, while the question of how purchase monies were spent remains largely a matter for speculation, probably resulted in little tangible benefit to Kaipara Maori, other than to a few chiefs. Kaipara chiefs were undeniably willing sellers, but even they may have grown apprehensive as to the long-term effects of their actions.

The Waitangi Tribunal has already found that the 10-owner system breached the Crown's obligations under the Treaty. It suffices to reiterate here that, especially in terms of the retention by Maori of a sufficient endowment for their present and future needs, the Crown's creation of the Native Land Court system showed a disregard for its responsibility to protect Maori interests guaranteed under the Treaty.

APPENDIX I

PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

PRACTICE NOTE

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL

GLOSSARY

Crown grant: The legal instrument by which the Crown attempted to guarantee secure title to a defined area. Written boundary descriptions within the grant document defined 1840s grants. Only during the 1850s did the Crown require surveyed grant boundaries to be included in the document. The Crown grant is the precursor to the modern certificate of title introduced after 1870.

Native reserve: An area which commissioners or the Crown set aside for Maori within a larger area claimed to have been alienated prior to 30 January 1840. In some cases (eg, at Waitangi), the Crown failed to implement commissioners' reserve recommendations that accompanied their grant recommendations.

Surplus land: The difference between the area commissioners determined to have been alienated prior to 30 January 1840 and that included in the Crown grant and/or reserved area. After 1856, Commissioner Bell required most claimants to survey both areas at the same time, thereby defining the extent of surplus. The Crown claimed title to surplus land where commissioners determined that Maori had consented to the original transaction.

Scrip land: Claimed areas that claimants vacated after accepting a Crown offer of equivalent value in the form of either a promissory note (scrip) or cash. Claimants normally exchanged their scrip for land in the vicinity of Auckland after it became the colonial seat of government in 1841. The Crown then claimed title to the supposedly vacant scrip land.