

Figure 10: District 3 (the Bay of Plenty)

CHAPTER 3

THE BAY OF PLENTY

A Rangahaua Whanui district report was not commissioned for the Bay of Plenty because of the amount of claims-related research being undertaken there. This discussion therefore comes from alternative sources. The discussion of the Western Bay of Plenty (roughly west of Maketu) is drawn largely from reports by Evelyn Stokes and Vincent O'Malley.¹ For the Eastern Bay of Plenty, the discussion is based on submissions presented by claimants and the Crown held on the record of documents for Wai 46. In addition to these reports and submissions, independent research was commissioned by the Waitangi Tribunal to show the extent and timeframe of land alienation in the Te Puke area. This discussion is an introduction only to the issues pertaining to this district and is not comprehensive or exhaustive.

3.1 Principal Data

3.1.1 Estimated total land area for the district

The estimated total land area for district 3 (the Bay of Plenty) is 1,448,530 acres.

3.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 3 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was almost 100 percent in 1860, 42 percent in 1890, 31 percent in 1910, and 21 percent in 1939 (or approximately 39.4 acres per head according to the 1936 census figures provided below).

3.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- confiscation;
- purchases under the Native Land Acts

1. E Stokes, 'Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands', report prepared for the Waitangi Tribunal, 1990; V O'Malley and A Ward, 'Draft Historical Report on Tauranga Moana Lands', report commissioned by the Crown Congress Joint Working Party, June 1993; V O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864–1981', report commissioned by the Crown Forestry Rental Trust, June 1995

3.1.4 Population

The population of district 3 was approximately 7500 to 8500 in 1840 (estimated figure), 3515 in 1891 (estimated from census figures), and 7671 in 1936 (also estimated from census figures).

3.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch from Waihi inland to a point east of Te Aroha and then along the Kaimai Ranges and across to Kawerau, keeping north of the Rotorua Lakes. From Kawerau, the boundary runs across the Raungaehe Ranges and then south, following the Kahikatea and Huiarau Ranges to a point north-east of Maungapohatu. The boundary then heads north-east via the Raukumara Ranges to the coast just east of Cape Runaway.

The district is mountainous on its inland boundary and has a long coastal frontage in the Bay of Plenty. Numerous rivers drain into the bay, including the Kaituna, Tarawera, Rangitaiki, Whakatane, and Motu Rivers. A number of harbours and inlets also dot the coast, the largest being Tauranga Harbour. Food sources along the rivers and in the harbours provided for substantial Maori coastal settlement. Fish could be caught in the rivers, sheltered harbours, open ocean, and inland waters. Eels and freshwater fish flourished in the rivers that flowed into the harbour. Along the coastal lowlands, kumara grew well in the mild climate. The forests of the ranges provided a valuable source of food in the form of berries and birdlife, as well as timber for building whare and canoes.²

3.3 Main Tribal Groupings

3.3.1 Western Bay of Plenty

The earliest inhabitants of Aotearoa, Te Tini o Toi, and Te Kawerau, were closely associated with the Bay of Plenty region. They intermarried with later migrants from Te Arawa known as the descendants of Hei, Waitaha, and Kinonui. These people claimed the land at Katikati and Te Puna, and later at Tauranga, and were known as Waitaha a Hei. Also, Ranginui of the Takitimu waka returned to Tauranga, having landed at Mount Maunganui, and he gave his name to the people who settled there. They originally maintained peaceful relations with Ngamarama Maori (descendants of Toi who already resided there) but eventually drove Ngamarama inland to Irihanga. Finally, another waka, Mataatua, briefly visited Tauranga, leaving Toroa (among others), who became an important ancestor for some tribes in the region, including Ngaiterangi and Ngati Pukenga, who migrated west to Tauranga. Ngaiterangi later moved east from Tauranga and established a very uneasy peace with Te Arawa.

2. Stokes, p 3

By the end of the eighteenth century, Ngaiterangi had migrated from the eastern Bay of Plenty to the coastlands from Maketu to Nga Kuri a Whare. Waitaha and other Te Arawa tribes were established at Te Puke, having been largely displaced by Ngaiterangi. Ngaiterangi in turn established close relations with Ngati Ranginui through marriage. Sections of Tainui people (Ngati Haua and Ngati Raukawa) dwelt over the ranges inland and maintained a long-standing rivalry with Te Arawa people.

A series of skirmishes in the early nineteenth century were the undercurrent to a long-standing conflict between Ngaiterangi and Te Arawa. In 1836, Ngaiterangi joined with Ngati Haua in an attack on Te Arawa, who in turn responded quickly and effectively, recovering some ancestral lands lost previously.

3.3.2 About 1840

Ngaiterangi were a leading tribe in the area, largely occupying the coastline at the eastern end of Tauranga Harbour. The label 'Ngaiterangi', however, was inappropriately used in the nineteenth century by Government and land purchase officers to refer to all Tauranga Maori.

On the other hand, Ngati Ranginui were reluctantly acknowledged by the British in the nineteenth century. According to O'Malley, they were in the Katikati–Te Puna block at the time of its purchase.³ In particular, Pirirakau, a hapu of Ngati Ranginui, were located inland at Whakamarama (near the Kaimai Ranges). Pirirakau and other hapu who claim descent from the Takitimu waka developed close ties with some Tainui tribes over the Kaimai Ranges.

Ngati Pukenga forced Ngaiterangi from Opotiki in the early eighteenth century, later supporting them at Maunganui and settling at Papamoa. Ngati Pukenga claim descent from Waitaha and had close relations with the Ngaiterangi hapu, Ngati He.

Te Arawa hapu battled for 10 years with Ngaiterangi and eventually settled on a boundary between the groups in 1845 that ran from Wairakei inland to Puwhenua and on to the Kaimai Ranges. Waitaha and Tapuika of Te Arawa occupied the Te Puke area and maintained a long-standing rivalry with the Tainui people.

Ngati Tokotoko and Ngati Hinerangi are both descendants of Ngamarama, and both claim land in Te Puna on the Tauranga side of the Kaimai Ranges, having been pushed there by pressure from Ngati Raukawa and Ngati Haua to the west and Ngati Ranginui to the east. They later developed close relations with these tribes.

Ngati Haua (of Tainui) were granted occupation of Tauranga by Ngaiterangi allies after a successful campaign against Te Arawa, settling more or less permanently at Omokoroa. Ngati Haua, along with Ngati Raukawa sections of the Tainui people, maintained close ties with the coastal people and relied on Tauranga moana for their food resources.

3. O'Malley and Ward, p 12

3.3.3 Eastern Bay of Plenty

The following discussion is drawn largely from claimant evidence on the record of documents for Wai 46. It is intended to introduce a number of the hapu and iwi with an interest in the area, and is not intended to be comprehensive or exhaustive.

Ngati Awa ancestors derive their chiefly authority from the Toroa line of the Mataatua waka. In particular, Maruahaira, Hikakino, Taiwhakaea i, Awatope, and Irawharo played a part in the conquest and settlement around Otamarakau, Pukehina, Maketu, and Tauranga. Various divisions of Ngati Awa that have assumed their own independent identities include Ngatiterangi and Te Whanau a Apanui.⁴ In addition, prior to 1865, Ngai Te Rangihouhiri and Ngati Hikakino (both independent Ngati Awa hapu) occupied territory in the Te Awa a te Atua and Otamarakau regions, neighboured by allied Ngati Awa hapu, Ngati Irawharo, and Te Tawera. Also prior to 1860, the Ngati Awa hapu Warahoe lived at Otipa (near the Matahina Dam) and owned a large area of land between Awakeri and the present location of the dam.⁵ Te Patutatahi and Te Whanau o Taiwhakara occupied territory at Otamaruru and further inland to Te Tiringa and the vicinity of present-day Edgecumbe and Te Teko.⁶

Further to this, the following evidence was given in the Compensation Court:

All the land from Te Awao te Atua to Otamarakau and on to Maketu belonged to Ngati Awa by conquest. The defeated tribe were Waitaha [who were driven up to Rotoehu] . . . All this land has been in the possession of Ngati Awa for eleven generations. Our northern boundary went from Waitahanui to Tipuaki, Manawahe and Otitapu. From there to Te Wahe o Te Pareta then to Otamaka and Te Paripari on the Tarawera River. This was the boundary of the lands of Ngati Awa. The hapu of Ngati Awa who own these lands were Ngati Rangihouhiri, Hikakino, Nga Potiki, Te Tawera, Ngati Runa, Ngati Reki, Kawerau and Ngati Awa.⁷

Whakatohea traditionally occupied the coastal lands surrounding Opotiki, which they largely deserted following a series of attacks on them in the 1820s and 1830s (in particular, raids by Ngapuhi in 1823 and 1825). Under the leadership of Tikoto, however, Whakatohea re-established themselves in their ancestral lands at Opotiki from 1840.⁸

Ngati Makino traditionally occupied the area between the Bay of Plenty coast and the Rotorua lakes. Ngati Makino were earlier known as Waitaha, after their ancestor Waitaha-a-Hei. They are closely interrelated with the larger tribal group, Ngati Pikiiao, of the Arawa waka.⁹ Incursions by Ngapuhi in the 1820s forced Ngati Makino to move inland, vacating their traditional coastal lands. In their absence,

4. Submission on behalf of Ngai Taiwhakaea–Te Patutatahi, Ngati Hikakino, and Ngai Te Rangihouhiri hapu (Wai 46 rod, doc 16), pp 5–8

5. Ibid, p 4

6. Ibid, p 1

7. Ibid, p 9

8. B Gilling, 'The Raupatu of Whakatohea: The Confiscation of Whakatohea Land, 1865–1866' (Wai 46 rod, doc c9), p 5

9. D Alexander, 'Nineteenth Century Crown Purchases of Ngati Makino Lands' (Wai 46 rod, doc g4), p 5

other Arawa hapu moved out towards the coast to live on the lands abandoned by the raid, thwarting the ambitions of neighbouring tribes (at the same time creating confusion among Arawa hapu as to the priority of authority in the vacated and later reoccupied lands).¹⁰ Bordering Ngati Makino to the west were Ngati Whakahemo, also of Waitaha-a-Hei and with whom Ngati Makino are closely related, and, to the east, Ngati Hikakino and Ngai Rangihouhiri hapu of Ngati Awa, with whom Ngati Makino have shared a tradition of enmity, although there are linkages between these hapu owing to their close proximity.¹¹

3.4 Principal Modes of Land Alienation

3.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Archdeacon Brown purchased land in the Western Bay of Plenty on behalf of the Church Missionary Society in 1838 and 1839. Te Papa 1 of 30 acres extended from 'Taumatakahawai, going on to Herekura, and from thence to the Kauere, going on by the seaside . . . from thence to the sandbanks called Maruru and Aopo', and it included 'whatever may be found growing thereon or deposited therein'.¹² Goods to the value of £24 were given in exchange for the land, and the deed was signed in late 1838. The second block of 1000 acres was purchased from 27 chiefs, who signed a deed in early 1839. Goods to the value of £92 8 shillings, and a calf worth £8 were given in payment for the land, which extended from Taumatakahawai to Herekura and Kauere, inland to the river and on to Warepapa (and other places listed), crossing over the land to Pukahinahina and on to Pokorau, on again to Ririiti (and other places) and finally back to Taumatakahawai. Once again, the deed included all things growing on, and deposited above or below, the earth.

A 3840-acre block at Pakihi, sold by Whakatohea in January 1840, was claimed by specific missionaries. The adjoining 2500-acre Ngaio block was also sold in January 1840 to the Church Missionary Society itself, and 11,470 acres were surveyed, with 3832 acres granted to the claimants, 853 acres issued in scrip, and 6785 acres going to the Crown as surplus land.

3.4.2 Pre-1865 Crown purchases

There were no pre-1865 Crown purchases in district 3.

3.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 3.

10. Ibid, p 6

11. Ibid, p 5

12. Transcribed from H H Turton and F D Bell, *Maori Deeds of Old Private Land Purchases in New Zealand*, Wellington, Government Printer, 1882, pp 378–379

3.4.4 Confiscations

(1) *Western Bay of Plenty*

By Order in Council of 18 May 1865, the tribal area of Ngati Ranginui and Ngaiterangi (extending from Nga Kuri a Wharei on the coast inland to Te Aroha mountain, along the crest of the ranges south to Puwhenua, east to Otanewainuku, and out to sea at Wairakei on the coast) was confiscated by the Crown under the New Zealand Settlements Act 1863.¹³ The area was originally estimated to contain 214,000 acres and was known as the Tauranga block. The confiscated land was subsequently administered in a variety of ways. A 50,000-acre block known as the ‘confiscated block’, located between the Waimapu and Wairoa Rivers, was retained by the Crown.

The Crown paid £11,700 for the Katikati–Te Puna blocks (within the confiscation boundary), which amounted to 93,188 acres. From this forced purchase, reserves were made at Ohuki, Matapihi, Rangiwaea, Matakana, and Motuhua. Ngaiterangi were paid £7700 for their interests in the land and were reserved 6000 acres of what was described as ‘good agricultural land’.¹⁴ This purchase can be described as a ‘compulsory purchase’ on account of Civil Commissioner H T Clarke’s statement that ‘It was distinctly understood by the Natives at the time that peace was made, that Te Puna would be absolutely required by the Government, but that it would be paid for’.¹⁵

Ngati Pukenga were also paid £500 in 1866 for any interest they might have had to the west of the Waimapu River. Ngati Tamatera received £600 as their half of the share of the payment for the Katikati block, while Te Moananui apparently accepted £380 (see chapter 2 for a further discussion and alternative figures). Ngati Pukenga received £500 plus some reserves, while Ngati Paoa (a hapu of Ngati Hura) accepted £100 for their claims to land near Hikurangi.

The Crown also acquired the ‘CMS block’ in 1864 (originally purchased from Maori prior to 1840) and subsequently surveyed the land for the township of Tauranga. Finally, 210 blocks of land with a gross area of 136,191 acres were returned to ‘Ngaiterangi’ under the Tauranga District Lands Acts of 1867 and 1868.

(2) *Eastern Bay of Plenty*

In September 1865, following the deaths of the Reverend Carl Sylvius Volkner (at Opotiki in March 1865) and Fulloon (at Whakatane in July 1865), the Government issued a proclamation pardoning those who had been in rebellion against the Crown in the early 1860s and announcing its intention to send a military expedition into the Bay of Plenty to apprehend the parties responsible for the deaths. Martial law was declared two days later. Resistance to this military expedition led to confiscations in the region in January 1866. The report of the select committee on confiscated lands indicated in 1866 that a total of 480,000 acres was confiscated. The

13. *New Zealand Gazette*, 1865, p 187

14. AJHR, 1867, a-20, p 27

15. *Ibid*, p 12

boundaries of the lands taken (which also included Ngati Awa lands) were described by Order in Council as running from:

the mouth of the Waitahanui River, Bay of Plenty, and running south for a distance of twenty miles; thence to the summit of (Mount Edgecombe) Putanaki, thence by a straight line in an easterly direction to a point eleven miles due south from the entrance of the Ohiwa harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara River, and thence following the coastline to the point of commencement at Waitahanui.¹⁶

Of the land described, approximately 100,000 acres would be used for compensation and reserves for 'friendly' Maori. The committee stated that, because about:

one half the original Native owners had been friendly or neutral, one-half of the land must be restored to them; that of the other half, or 50,000 acres, 25,000 acres will be required for military settlement; and that the remaining 25,000 acres will be available for any other purpose.¹⁷

A reserve at Opape (acreage unknown) was set aside for the rebels of the Whakatohea tribe who had surrendered. Two other reserves, Hiwarau and Hokianga, were established for the 'surrendered rebels and loyal natives' of the Upokorehe hapu (once again the acreage is not provided). A reserve was also established at Whakatane for Ngati Pukeko and Ngati Awa, and smaller reserves were set aside for particular Whakatohea chiefs (in some cases on the condition that they remain loyal until Crown grants were issued in 1870¹⁸).

According to one set of figures, by mid-1873 the confiscated lands in the Bay of Plenty district had been disposed of as follows: 96,261 acres were awarded in compensation to 1074 loyal Maori; 104,952 acres were awarded to 1717 surrendered rebels (at 61 acres each); 87,000 acres were awarded to Te Arawa (for loyal service to the Crown); 40,832 acres were surrendered; 23,461 acres were used for military settlers; 10,325 acres were allocated to university endowments and so forth; 3832 acres for old land claims; 10,930 acres were identified as miscellaneous; 5000 acres were identified as an error in the former estimate; 98 acres had been sold; and 500 acres had gone to surrendered Urewera. This left a balance of 56,809 acres in the hands of the Government.¹⁹

16. *New Zealand Gazette*, 11 September 1866, p 348 (RDB, p 4118)

17. 'Report of the Select Committee on Confiscated Lands', 14 August 1866, AJHR, 1866, f-2, p 3

18. AJHR, 1867, a-18, pp 3-4. Boundaries for the larger reserves are also given.

19. J H H St John to Native Minister, 12 August 1873, AJHR, 1873, c4b, pp 5-6

3.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) 1865–73

Note that confiscations, the Katikati–Te Puna purchase, and re-purchases of confiscated lands returned to Maori by the Compensation Court and commissioners were occurring between 1865 and 1873, as discussed below.

(2) 1874–90

From 1873 to 1885, negotiations were made with Ngati Pikiao for 30,000 acres at Waitahanui. Eventually in May 1885, following payments amounting to at least £4000, the court awarded the block to the Crown.

In 1879, advances were made on the Tahunaroa block, which had been reserved from the Waitahanui negotiations. In 1883, a deed was drawn up that awarded the Crown 5619 acres of Tahunaroa 1, for which £297 was paid (after costs had been removed), and five reserves were set aside for the 10 original grantees.²⁰ It was subsequently discovered that the actual size of this block was 8980 acres. Following adjustments to the boundaries, Tahunaroa 1 (excluding the Parakiri, Otumarukura, and Te Kapua reserves) was awarded to the Crown in August 1885.

Following this sale, the court awarded a 3000-acre block within the remaining land at Tahunaroa to an individual Maori for the sum of £230. The remaining 12,217 acres (later revised to 8590 acres), called Tahunaroa 3, was awarded to the 10 original grantees on the deed for the entire block.²¹

From 1879 to 1880, £329 was paid to the trustees of the Whakarewa block, which was under lease. It is unclear as to whether this was rental money or money advanced on a purchase of the land.²² In February 1884, the Whakarewa block (excluding two reserves of 1000 acres and one of 112 acres) was declared to be Crown land.

The Crown also acquired Rangiuru 3 in 1883 (6746 acres); Waitahanui 1 in 1885 for £180 (26,407 acres); Waitahanui 2 in 1887 (no acreage available); and the Tumu Kaituna block in 1889 (3000 acres). Private purchases were made in 1888 at Paengaroa a1 (656 acres) and Tahunaroa in the early 1900s (3300 acres).

In 1893, Tahunaroa 3 was partitioned by the court into Tahunaroa 3a (300 acres) and Tahunaroa 3b (8290 acres). In November 1894, 11 of the 14 shares in block 3b were purchased at the price of three shillings an acre. In October 1885, the court partitioned out the Crown's interest in the block and reserved 1185 acres for the one owner who had not signed the deed.

(3) 1890–1910

According to digital calculations made using the maps reproduced at the start of this report, land alienation between 1890 and 1910 amounted to 155,382 acres. In

20. Alexander, p 168

21. Ibid, p 171

22. Ibid, p 198

particular, it would appear that the Whakatohea back country land was beginning to be acquired during this time.

(4) 1910–35

With respect to post-1910 purchases, the Bay of Plenty research district fell within the Waiariki and Waikato Maori Land Boards, which also included the Waikato, volcanic plateau, and Urewera Rangahaua Whanui districts. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all the files would be necessary to establish which of the board's alienations fell within the Bay of Plenty. According to maps reproduced in volume i, however, approximately 151,000 acres were alienated in district 3 between 1910 and 1939.

(5) *Examples of public works takings*

As in all districts, takings were made in the Bay of Plenty for certain public works. For a general discussion of public works policy and law, see volume ii, chapter 11. Public works takings and the subdivision of Maori-owned blocks into residential suburbs had a considerable impact on Maori land in the western Bay of Plenty, especially after 1886, as the Tauranga urban area expanded. In particular, the post-1940s expansion of Tauranga city into Ngati He and Ngai Te Ahi lands and the construction of a motorway through these lands are both issues currently before the Waitangi Tribunal (Wai 342 and Wai 370 respectively). For example, the Maungatapu and Hairini blocks were awarded to Maori in 1883 and 1884, having been part of the earlier confiscation, and were later partitioned into numerous subdivisions. In the 1960s, land in these blocks was proclaimed for the construction of a motorway to connect Maungatapu to the Matapihi Peninsula.²³ According to Heather Bassett, Maori were denied the right to fair, equitable, and timely compensation for the land taken.²⁴

3.5 Outcomes for Main Tribes in the Area

In 1908, the Stout–Ngata commission reported on Opotiki County, which ran from Ohiwa to Whangaparaoa and included the lands of Whakatohea, Ngaitai, Whanui-a-Apanui, Whanau-a-te-Ehutu, and Whanau-a-Pararaki. It made the following observations:

- (a) Overall, within Opotiki County, 85,312 acres were leased or under negotiation for lease, and 23 acres per head remained in Maori hands for their occupation (with a population of 1319).
- (b) Whakatohea were reported as having only 35,444 acres in 1908, with no surplus land for sale.

23. H Bassett, 'Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga', report commissioned by the Waitangi Tribunal for Wai 342 and Wai 370, June 1996

24. *Ibid.*, pp 17–18

- (c) North of Whakatohea, Ngaitai held 64,706 acres, including 12,000 acres of papatupu land.
- (d) The bulk of Whanau-a-Apanui land, north of Ngaitai, was still papatupu land, estimated at around 40,000 to 50,000 acres. Whanau-a-Apanui also held title to 31,126 acres, much of which was leased to Europeans.
- (e) The lands of Whanau-a-te-Ehutu and Whanau-a-Pararaki were inextricably mixed, although it appears that little of their land had passed through the Native Land Court.
- (f) Ngai Taiwhakaea–Te Patutatahi at that time held 270 acres of poor quality land, which was leased for \$25 per acre for five years, and, in conjunction with another Ngati Awa hapu, had an interest in a 240-acre block, which was leased for 21 years in 1987. There are over 1000 owners in both blocks.²⁵ Ngati Awa hapu also owned the Rurima Islands and were the custodians of wahi tapu totalling 25 acres.²⁶

By the 1880s, 96 percent of Ngati Makino lands had been alienated.²⁷

By 1908, less than one-seventh of Maori land in Tauranga remained. While some hapu were reasonably well-endowed with land, according to the Stout–Ngata commission, other Maori had virtually none left. In 1900, a return of ‘Landless Maori in the Waikato, Thames Valley, and Tauranga districts’ included the names of several hundred Tauranga Maori. In 1927, the Sim commission reported that one 600-acre block was owned by 111 members of the Ngaitamarawaho hapu, while a second block containing 59 acres was owned by 61 persons, and a further 41-acre block was owned by 112 persons. It was noted that, for a rural people, this was hardly ample land, even for their subsistence.

Research commissioned by the Waitangi Tribunal relating to the land between the Tauranga confiscation block and the Otamarakau block (that is, the area around Te Puke) indicated that, of the 193,892 acres in this area, only 12,430 acres (6.4 percent) remain in the ownership of the Arawa tribes today. Most of this land was purchased in the early twentieth century.²⁸

3.6 Examples of Treaty Issues Arising

3.6.1 Old land claims

The commissioner who examined and appraised the pre-Treaty Tauranga purchase in 1844 appears to have disregarded evidence that Maori named in the deed were not present at the distribution of the payment and, furthermore, that some Maori had been absent at the time of the sale and received no payment at all. The evidence of Alfred Brown was also questionable – including his assertion that he had enjoyed

25. Submission on behalf of Ngai Taiwhakaea–Te Patutatahi et al, p 13

26. Ibid, p 14

27. Alexander, p 3

28. For details of this land, see the submissions on the record of documents for Wai 46 supplied by Harris Martin (no document number was available at the time this report was written).

‘undisturbed possession’ of the land since its purchase. Although they might not have challenged Brown’s occupation of the land, intermittent complaints had been made by groups claiming to have interests in the land that were not recognised at the time the deeds were signed.²⁹

Further discrepancies arose over the surveying of the land once the deeds had been signed, which revealed that the area under negotiation was 1333 acres, not the 1030 acres originally estimated. O’Malley argues that, had a survey been required for a Crown grant, this situation might have been avoided altogether.³⁰ It should be noted, however, that Maori at that time used natural features to delineate an area under negotiation, rather than using precise acreages.

3.6.2 Confiscations

(1) *Western Bay of Plenty*

According to the Waitangi Tribunal’s Manukau report, ‘the Tainui people of Waikato never rebelled but were attacked by British troops in direct violation of article 2 of the Treaty of Waitangi’.³¹ O’Malley and Ward comment that:

in view of the Waikato tribes’ experiences, it is difficult to know whether Tauranga Maori could possibly have interpreted the arrival of British Imperial troops on their own doorstep as anything other than Governor Grey’s intention to attack them. From this perspective, their decision to take up arms was not a rebellion but a prudent effort to defend their ancestral lands against an unexpected British assault.³²

The confiscation of the 50,000 acres of land at Tauranga as punishment for ‘rebellion’, and the subsequent inclusion of other lands in the 1865 Order in Council (discussed later), were violations of the Tauranga tribes’ article 2 right to the undisturbed possession of their lands. Furthermore, the Crown considered ‘loyalists’, ‘ex-rebels’, and ‘surrendered rebels’ eligible for grants, while ‘unsurrendered rebels’, in particular those Pirirakau who refused to attend meetings and opposed surveying prior to 1866, were omitted.

The Governor’s decision to retain one-fourth of the land (that being the 50,000 acres between the Waimapu and Wairoa Rivers) and to return the other three-quarters to Maori, and the subsequent decision to ‘purchase’ land north of the Wairoa River at three shillings per acre, meant that the Crown officials erroneously continued to refer to the return of three-quarters of the land when the ‘compulsory purchase’ of the Katikati–Te Puna blocks meant that less than half the district was available for Maori.³³ Furthermore, O’Malley and Ward argue that Government compensation paid to ‘friendly Maori’ was not equitable. For example, while £1000

29. O’Malley and Ward, pp 23–34

30. Ibid, p 27

31. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed, Wellington, Department of Justice: Waitangi Tribunal, 1989, p 17

32. O’Malley and Ward, p 62

33. O’Malley, p 11

compensation was paid to nine ‘Ngaiterangi’ chiefs in August, Government officials did not distinguish between Ngaiterangi and Ngati Ranginui but rather referred to all Tauranga tribes as ‘Ngaiterangi’.³⁴ Those lands to which Ngati Ranginui had the strongest claim were among those confiscated (and retained) by the Crown, despite the fact that Ngati Ranginui were no more involved in the war than Ngaiterangi had been.

(2) *Eastern Bay of Plenty*

The Crown has acknowledged that ‘the confiscation of land, as it occurred in the Eastern Bay of Plenty region, constituted an injustice and was therefore in breach of the principles of the Treaty of Waitangi’.³⁵ The following discussion considers issues on a tribal basis, as raised in evidence on the record of documents of the Waitangi Tribunal.

(a) *Ngati Awa*: There appears to be some inconsistency in the manner in which the law was applied within the boundaries of Ngati Awa land in that, during the trial for the murder of Fulloon, evidence was given that certain other Maori had also been killed or ‘murdered’, but the perpetrators of those crimes were not brought to trial.³⁶ Other grievances of the Ngati Awa hapu against the Crown include the military campaign against Te Hura and his supporters and the destruction of many hapu and kainga by Crown forces.

Furthermore, the confiscation of all the hapu lands and resources has been described by claimants as a ‘double punishment’ in view of the imprisonment and execution of Te Hura and his supporters, who were charged with murder. Even if the confiscations were an appropriate punishment for the charge of murder, only six hapu were immediately involved in the incident, although all Ngati Awa hapu were subject to confiscations.³⁷

Some of the confiscated lands returned to Hikakino, such as the Rangitaiki 31 block, actually belonged to other Ngati Awa hapu, including Ngati Pukeko.³⁸ Furthermore, Te Rangihouhiri and Hikakino were awarded an ‘insultingly insignificant area of land’, which included pa sites and kainga of Omarupotiki and Te Matata.³⁹ Ngati Awa also object to the award of their lands to the Crown’s kupapa supporters, such as Ngati Tuwharetoa, Ngati Manawa, Ngati Pikia, and Ngati Raukawa. In 1874, J Wilson (the land commissioner in the area) commented on the state of Te Rangihouhiri ii and Hikakino when compared with other Ngati Awa hapu who had been given land in the Tarawera River region. He said:

Some of the Natives adjacent got as little as four acres per head, but the Tarawera Natives obtained twenty-two and a half ares per head for men, women and children.

34. O’Malley and Ward, p 41

35. Wai 46 roi, paper 2.116, para 3 (memo of Crown counsel concerning raupatu and proposed interim report)

36. Wai 46 rod, doc 16, p 3

37. Wai 46 rod, doc 19 (closing submissions of counsel for Ngati Awa), p 9

38. Wai 46 rod, doc 16, p 4

39. Ibid, p 8

The hapu that received four acres per individual Rangihouhiri and Nga Potiki are in a far worse position, they live at Rangitaiki.⁴⁰

The Sim commission also recommended that Te Rangihouhiri and Hikakino be given some land at Matata or Kawerau because they clearly did not have enough land to sustain themselves. The commission stated that:

The land returned to these hapu is estimated at approximately 278 acres . . . of [which] 187 acres were taken under the Public Works Act, leaving them with an area of slightly over 100 acres, the bulk of which, according to evidence submitted, is sandy and poor quality . . . We think that, owing to the confiscations, these hapu have not sufficient reserves for their ordinary maintenance, and recommend that some land in the locality of Matata be given to them.⁴¹

According to claimant evidence, the Crown's response was that suitable land was not available.⁴²

(b) *Whakatohea*: Despite the fact that Whakatohea had land at Opotiki confiscated for their 'rebellion', evidence shows that, after the first few months of the military invasion, there was very little 'rebellion' by Whakatohea and that only about 50 Maori were engaged in such activities, led by Maori from other tribes such as Te Kooti and Euri Tamaikowha, and that other Whakatohea actively supported the Government's forces.⁴³

It has also been argued that the confiscation of the Whakatohea lands contravened the principles and restraints of officially declared confiscation policy. For example, while Colonial Secretary Fox had stated that the objective of confiscation was 'neither punishment nor retaliation',⁴⁴ these were clearly the motivations for the confiscation of Whakatohea's rohe after the killings of Volkner and Fulloon. Whakatohea's most productive land was confiscated, leaving the tribe to survive from the resources provided by the sea, the forests, and the mountains.

While the 1865 proclamation of peace stated that land would be taken in order to maintain peace and compensate the bereaved families of Volkner and Fulloon, considerably more land was taken than was required for these purposes.⁴⁵ In addition, Whakatohea were not given sufficient time to comply with the provisions of the proclamation and martial law before troops invaded the district (a period of three days). The resistance given by Whakatohea in response to this invasion could be termed 'armed resistance' at best, but it is not easily characterised as 'rebellion'. Rather, Whakatohea can be seen as defending their homes from attack.⁴⁶

40. Ngati Awa research, petitions relating to Wai 46 (revised 9 June 1995), pp 43–44

41. AJHR, 1928, g-7, p 24

42. Wai 46 rod, doc 16, p 15

43. Gilling, p 110

44. *New Zealand Gazette*, 21 May 1864, pp 233–237. Also printed in AJHR, 1864, e-2.

45. Gilling, p 179

46. *Ibid*, p 180

When confiscations were made, there was little indication that attempts had been made to focus punishment on the individual convicted murderers, as opposed to the whole tribe. All Whakatohea who surrendered in 1865 and 1866 were confined to the 20,000-acre Opape reserve, which had previously been Ngati Rua rohe. This led to conflicts between hapu over living space and resources.⁴⁷ The Compensation Court awarded little extra land to Whakatohea. Those awards it did make were controversial, particularly the awarding of land at Ohiwa to Wepiha, which outraged Whakatohea and Government officials alike.

It would appear that those Maori who were in 'rebellion' against the Government after 1866 were forced into that position by Government action. While the level of Whakatohea involvement in the murder of Reverend Carl Sylvius Volkner in 1865 (central to the confiscations) is uncertain, there is some indication that two major hapu, Ngati Rua and Ngati Ira, may not have been involved in the killing at all and may even have opposed it.⁴⁸

The 1920 Native Land Claims Commission found that Whakatohea had been disproportionately disadvantaged by the confiscations that were adjudged by the Sim commission to be illegal because they were based upon revenge for a criminal act rather than rebellion. Sim thought that the confiscations had been excessively harsh for Whakatohea, but recommended only £300 compensation per annum.⁴⁹ In 1946, the Labour Government paid Whakatohea £20,000 compensation for the settlement of grievances. This was administered by the Whakatohea Maori Trust Board following its establishment in 1952.⁵⁰ In 1992, Mokomoko received an official pardon for the murder of Volkner, and in 1996, heads of agreement were reached between Whakatohea and the Crown for \$40 million in compensation for all historical grievances suffered by Whakatohea.

(c) *Ngati Makino*: The confiscation line passed through Ngati Makino land, implicating them in the punishment for rebellion. In fact, there were varying responses and motivations among different branches of the tribe to the events of 1865 and 1866.⁵¹

The sale of the Tahunaroa block also raises questions that require further consideration. First, according to Alexander, there is an indication that the names on the deed were intended only to be trustees of the land, although in negotiating the purchase of the land, the Crown chose to interpret these names as owners with the right to sell on behalf of all those with an interest in the land. Furthermore, it appears that those who had an interest in the land understood that Tahunaroa was the land reserved for Ngati Makino from the Waitahanui purchase and was not to be sold. The Crown, in purchasing this land, only obtained the signatures of three of the 10 names listed on the deed.⁵²

47. Gilling, p 181

48. Ibid, p 178

49. AJHR, 1928, g-7, p 22

50. NZPD, vol 275, p 727

51. Alexander, p 29

52. Ibid, pp 160–170

3.6.3 The management of lands to be returned to Maori

District Surveyor Heale expressed concern at the injustices to the Maori inhabitants caused by the Government's delays in proceeding with the scheme for military settlement, because Maori were refraining from settling and cultivating until decisions had been made by Government officials.⁵³ The survey began in 1864, but not until 18 May 1865 was the actual confiscation made by Order in Council. Heale also noted that:

it is impossible to deny that the long delay in taking any decisive steps at Tauranga is at variance with the spirit of the engagement made in August 1864 [by the government of the day with respect to giving back to Maori a portion of the confiscated land] and that it has been productive of consequences unfavourable to the Government in the eyes of the Natives.

Heale went on to attribute the increasing dissatisfaction among Maori and their developing relationship with Pai Marire to Government delays in proclaiming and surveying the lands.⁵⁴

3.6.4 The Tauranga District Land Act 1867

The Tauranga District Lands Act 1867 resolved questions of validity with respect to the earlier Order in Council in what amounted to, according to O'Malley, 'an implicit acknowledgement on the part of the Government that it had not thus far acted in accordance with the requirements of the New Zealand Settlements Act 1863', which provided for compensation courts to hear the claims of 'loyalists' and 'rebels' on confiscated lands.⁵⁵

The 1867 Act specifically named Ngaiterangi as the owners of the land confiscated under the New Zealand Settlements Act 1863. The claim of Ngaiterangi to the land was challenged by other hapu and tribes in the area; the strongest dispute coming from Pirirakau (a Ngati Ranginui hapu), who had refused to participate in the surrender of land in August 1864. Maori also alleged that some who had not fought had lost land and that not all owners had been consulted (including paramount Ngaiterangi chief Tupaea) nor had they consented to the Katikati–Te Puna purchase.

Under the Act, tribes with competing interests were not allowed the opportunity to protest and were prevented from lodging a legal challenge against Crown actions in Tauranga. They were instead forced to compete for some share of the payment. Even within Ngaiterangi proper, according to O'Malley, there were Maori who did not know of the transaction until it was completed.⁵⁶

An amendment to the Act in 1868 extended the boundaries of the block to include land west of the Wairoa River, despite strong protest from Maori. Appeal by

53. AJHR, 1867, a-20

54. Ibid

55. O'Malley, p 19

56. Ibid, p 42

Maori was not possible because all Government transactions were declared legal under the legislation.

3.6.5 Commissioners of Tauranga lands

Because the whole Tauranga district was confiscated and thereby became Crown land, there was no investigation of the land by the Native Land Court. Some applications were made (applicants unspecified) for the investigation of title in 1865, but the Crown refused to allow the Native Land Court (or the Compensation Court) any meaningful involvement in the process of returning the lands in the district, instead doing so in a 'haphazard and protracted manner' by means of specially appointed commissioners of Tauranga lands. Chief Judge Fenton advised the Government that 'a sitting is necessary',⁵⁷ and when no hearing occurred, he wrote to the Native Minister on several occasions insisting that claims at Tauranga be heard by the court, explaining that he felt the Government did not have 'any right to deprive the considerable class of Her Majesty's subjects of the benefit of the Courts'.⁵⁸ The official response was that 'the Government does not consider that in the present unsettled state of the District it would be advisable to hold a Court at Tauranga'.⁵⁹

It was decided by Commissioner Brabant that, because the whole of the Tauranga moana tribal area was confiscated by the Crown, commissioners were not bound by considerations of traditional or tribal rights in deciding the location of reserves and land grants.

The commissioners of Tauranga appeared to have had no clear guidelines as to how to proceed in the returning of land to Tauranga Maori. In 1881, Brabant commented that 'There is no direction in the Acts as to how the enquiry should be made'.⁶⁰ O'Malley asserts that the absence of clear and open guidelines for the proceedings of the commissioner was undoubtedly prejudicial to Maori interests because the commissioners were under no obligation to determine customary ownership in returning lands and in fact often did so on the basis of 'loyalty' to the Crown as they perceived it.⁶¹ Furthermore, the land was returned as individualised title, not to hapu groupings.

3.6.6 Reserves

At the same time, Brabant assured Maori that the commissioners would try to ensure that all hapu were granted sufficient land for their kainga and cultivations and that land grants were made to individuals for services rendered to the Government and the military. Evelyn Stokes concludes that whatever other criticisms can

57. DOSLI files

58. Ibid

59. Ibid

60. Brabant to T W Lewis, Under-Secretary of the Native Department, 16 May 1881, 'Miscellaneous Papers, 1879-85', DOSLI Hamilton Tauranga confiscation file 4/26 (RBD, vol 127, pp 48,670-48,671)

61. O'Malley, p 32

be made of the administration of the Tauranga District Lands Act, the commissioners made an effort to ensure that all the hapu of Tauranga moana had reserves granted to them.⁶²

In 1878, alienation restrictions were imposed on all lands returned to Maori from that date. Commissioner Wilson said:

all reserves as are necessary to the support of the Natives in the way of cultivation and residence should be rendered inalienable; otherwise . . . the Natives will sooner or later be tempted to sell them. I think the reserve of each hapu should, if possible, be separate, that it should be of good quality, and sufficiently large to support the hapu. In making reserves I am endeavouring to conform to these conditions . . .⁶³

Despite this restriction, a number of these blocks had been sold by the 'trustees'. In addition, some of the 'native reserves' were subsequently translated into individual or Maori freehold title, while some were held in trust by the Crown as Crown land and used for other purposes such as Tauranga educational endowment reserves (under the 1896 Act of that name).

In 1877, H T Clarke (the Native Secretary) estimated that, for Maori to retain 50 acres per head as sufficient land for them to live on, a minimum of 62,250 acres was required, leaving a mere 6750 acres available for European purchase within the confiscation area.⁶⁴ Wilson, on the other hand, was of the opinion that 'there is much surplus Native land in the district, which the Natives cannot cultivate or occupy'.⁶⁵ While Clarke's estimates may have been unreliable, according to O'Malley there is no evidence that Wilson had made a substantial study of this matter and purchasing of the land continued.

By the beginning of 1879, about 19,734 acres of the land so far investigated and Crown granted to Maori had been either sold or granted without restrictions.

John Bryce, the Native Minister, stated in 1882 that Crown policy with regard to the removal of alienation restrictions was to ensure that Natives had 'amply sufficient land for their maintenance', that alienation should only occur with the unanimous agreement of all Maori owners, and that the price paid for land must be *prima facie* fair and reasonable.⁶⁶ But it appears that these instructions were only as effective as the officials who administered them.⁶⁷ For example, Brabant, the commissioner of Tauranga lands, was of the opinion that Tauranga tribes owned more land than they needed for their own purposes, and he recommended the removal of alienation restrictions in just about every case he was involved in. In 1882, Brabant noted that:

Although the Tauranga lands are all inalienable, except by leave of the Governor, a native who can show any evidence of title can, it appears, always obtain advances, the

62. Stokes, pp 156, 217

63. AJHR, 1879, sess 1, g-8

64. Clarke to Native Minister, May 1877, AJHR, g-1, vol 2

65. Wilson to Native Minister, 8 July 1879, AJHR, 1879, vol 1, g-8, p 3

66. DOSLI Hamilton file 4/25 (RDB, vol 126, pp 48,638-48,639)

67. O'Malley and Ward, p 81

purchaser trusting that time or turn in the political wheel to enable him to perfect his title.⁶⁸

More generally, between 1 April 1880 and 31 March 1885, restrictions were removed in respect of 33,033 acres of Maori land in the Tauranga district. The typical reason provided for removing restrictions was that the ‘Natives have sufficient land for their subsistence’, when in fact little consideration had been given to whether remaining land was adequate.⁶⁹ O’Malley writes that ‘the alienation restrictions were regarded by settlers, speculators and Crown officials alike as little more than formalities to be completed before land transactions were confirmed’.⁷⁰ For example, Ngati Haua, who had been recognised in reserves granted at Omokoroa, were ‘persuaded’ to sell 83 acres for £350 (in order to settle another dispute). In another instance, Ngati Tokotoko and Ngati Hinerangi, who had occupied the Tauranga side of the Kaimai Ranges, were also recognised in reserves granted at Omokoroa, Huharua, and the parish of Te Puna. When quarrels arose between Ngati Tokotoko and Mangapohatu at Huharua, however, a Government official ‘took possession of this strip to separate the disputants’. No separate reserves were allocated to Ngati Tokotoko. One township section at Tauranga was reserved for Ngati Raukawa.

In 1885, a commission investigated the matter of restrictions on the alienation of Maori land and called into question the whole process of private land purchasing in Tauranga and the actions of Brabant in particular. The report, which was rejected by Parliament’s Native Affairs Committee at the time, indicates that the Crown, after purporting to make all lands returned to Tauranga Maori inalienable, subsequently failed to enforce this policy for a number of years and only belatedly took action on a handful of cases.⁷¹ Had the Crown diligently administered this policy, more Tauranga hapu might have been able to retain land, or at least the rate of alienation would have been considerably slowed. Furthermore, despite the original agreement that only a quarter of the confiscated block at Tauranga would be retained by the Crown, as a result of the repurchase of returned land, less than a quarter of the block remained in Maori hands by 1908. In 1877, H T Clark warned that without Government protection Tauranga Maori would ‘inevitably pauperise’ themselves. The Native Land Court Act Amendment Act 1888 gave the court the authority to remove restrictions upon the application of a simple majority of the owners. In 1900, a return of the ‘Landless Maoris in the Waikato, Thames Valley, and Tauranga Districts who lost their Land by Confiscation’ included the names of several hundred Tauranga Maori.⁷²

68. AJHR, 1882, g-1, p 5

69. AJHR, 1883, g-4, p 5

70. O’Malley, p 74

71. Ibid, p 88

72. AJHR, 1900, g-1, pp 7–8, 13

3.6.7 The Sim commission and other twentieth-century developments

The Sim commission adopted the view that the confiscation was acceded to by Tauranga Maori and was not excessive. The commission's inquiries were limited in that they rejected petitions from Ngati Ranginui on the basis that the tribe's claims were covered in the settlement with Ngaiterangi, thereby perpetuating the belief that Ngati Ranginui were part of the Ngaiterangi tribe, when they were in fact distinct.⁷³

In 1975, a deputation from all the tribes of Tauranga approached the Government with claims, which were accepted in principle by the Government of the day. The Tauranga committee submitted a new petition in 1978, and following further petitioning and negotiation, the Government recognised the validity of the Tauranga claims, and the Tauranga Moana Maori Trust Board Act 1981 was passed. According to the preamble to the Act:

the Crown should pay and those descendants [of Tauranga Maori] should accept the sum of \$250,000 in full and final settlement of all claims of whatever nature arising out of the confiscation or other acquisition of any of the said land by the Crown.

Section 7 of the Act also recognised that Maori in Tauranga had not been engaged in rebellion.

According to Stokes, the establishment of the trust board has not resolved all the grievances over confiscation. Stokes says that many felt that the \$250,000 payment by the Government was a paltry sum for the loss of lands and the anguish of war, given that Tauranga Maori had requested \$2,000,000; some felt that it should have been refused and were critical of the fact that Tauranga Maori had not been consulted on the level of compensation or the terms of the settlement.⁷⁴ Further protest has followed the Act and claims have been lodged with the Waitangi Tribunal. O'Malley believes that fresh resentments were created by 'the manner in which the Crown had rammed through the 1981 Act in the face of obvious and widespread dissatisfaction with its contents on the part of Tauranga Maori'.⁷⁵ Given no option, Tauranga Maori accepted the settlement, at the same time insisting that it should not be considered full and final.

3.6.8 Purchases under the Native Land Acts

The purchase of most of the Te Arawa land around Te Puke, and the minimal reserves for Maori, reduced the already diminished Arawa rohe, including valuable coastal lands. In the eastern Bay of Plenty, purchases further reduced the Whakatohea land already diminished by confiscation. The main Treaty issue involved in land court purchases is whether the customary title should have been converted to a

73. O'Malley and Ward, p 91

74. O'Malley, p 220

75. Ibid, p 220

form of absolute ownership in which each individual named in a title could severally sell his or her interest.

3.7 Additional Reading

The following are recommended for additional reading:

Evelyn Stokes, 'Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands', report prepared for the Waitangi Tribunal, 1990;

Vincent O'Malley and Alan Ward, 'Draft Historical Report on Tauranga Moana Lands', Crown Congress Joint Working Party, June 1993; and

Vincent O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864–1981', report commissioned by the Crown Forestry Rental Trust, June 1995.

See also the submissions on the record of documents for the Eastern Bay of Plenty claim, Wai 46.