

National Overview

Figure 12: District 5 (Gisborne and the East Coast)

CHAPTER 5

GISBORNE AND THE EAST COAST

5.1 Principal Data

5.1.1 Estimated total land area for the district

The estimated total land area for district 5 (Gisborne and the East Coast) is 2,119,172 acres.

5.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 5 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 100 percent in 1860, 54 percent in 1890, 38 percent in 1910, and 21 percent in 1939 (or approximately 53.6 acres per head according to the 1936 census figures provided below).

5.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- purchases under the Native Land Acts (especially private purchases); and
- confiscation or cession in Poverty Bay.

5.1.4 Population

The population of district 5 was approximately 9000 to 10,000 in 1840 (estimated figure), 3526 in 1891 (estimated from census figures), and 8449 in 1936 (also estimated from census figures).

5.1.5 Main geographic features relevant to habitation and land use

The boundaries of this district run from a point just east of Cape Runaway south-west through the Raukumara and Huiarau Ranges before turning south-east between the Ruakituri and Hangaroa Rivers and out to the coast just north of the Mahia Peninsula. The Gisborne sub-district coastal boundary between Ngati Porou to the north and Rongowhakata, Aitanga-a-Mahaki, and Ngai Tamanuhiri to the south was near the mouth of the Turanganui River (at the present location of the port of Gisborne), but is more indeterminate in the high country.

This district is largely mountainous, with a number of rivers draining into the Pacific Ocean (including the Awatere, Waiapu, Uawa, Turanganui, Waipaoa, and Maraetaha Rivers). The coastline is dotted with bays, such as Hicks Bay, Tokomaru Bay, Tolaga Bay, and Turanganui a Kiwa (Poverty Bay). Maori settlement was located primarily on the coast and the small flood plains. The only substantial areas of flat-lying land surround the Waiapu, Uawa, and Waipaoa River valleys. The flat lands have become notable for dairy farming and, more recently, for horticulture and viticulture. The high country supports sheep and cattle farming as well as a growing forestry industry.

5.2 East Coast

5.2.1 Main tribal groupings

Although there are numerous notable ancestors of mana from whom Ngati Porou claim descent, they derive their name from Porourangi, through whom all the people of Tairāwhiti can link their whakapapa. It is argued that ‘Through intermarriage, raupatu, occupation and alliance the descendants of Porourangi, Ngati Porou, have continued to hold mana whenua from his [Porourangi’s] time until the present.’¹ The boundaries of Ngati Porou’s land, as laid down by the Native Land Court, run from Potikirua on the coastline between Cape Runaway and East Cape and Te Toka a Taiāu (a rock in the mouth of the Turanganui a Kiwa River, which was blasted away during Gisborne harbour works). The inland boundary is marked to the west by the Raukumara Range and to the south by the Waipaoa and Waimata Rivers, emerging via the Raparaparaririki Stream at Kaiti. Some of the Ngati Porou interests on the border of this region intersect with the interests of other iwi. For example, Te Aitanga-a-Mahaki have significant interests in the Mangatu blocks.² Furthermore, Te Whanau-a-Apanui, though centred around Torere in the eastern Bay of Plenty, had interests extending into the mountain ranges on the inland side of this district.

5.2.2 Principal modes of land alienation

A full research report is being written by Ngati Porou researchers under the umbrella of the Rangahaua Whānui programme. The complete report was not available as this report was concluded, and the data that follows is drawn largely from the initial scoping report prepared by the Ngati Porou team.

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

Captain William Stuart claimed to have purchased 500 acres near East Cape in 1825. While a grant was initially awarded, the transaction was later declared to be

1. ‘Exploratory Report’ (Wai 272 rod, doc a1), p 5

2. Ibid, pp 5–7

void on the ground of uncertainty. All other land claims in the Ngati Porou rohe (involving approximately 3300 acres) either lapsed or were disallowed.

(2) *Pre-1865 Crown purchases*

From 1846 to 1866, there was no Crown purchasing in the Ngati Porou rohe. In 1862, however, 110 acres were gifted to Resident Magistrate Baker at Waiapu for the purposes of a courthouse. While no land was sold in this period, Pakeha living in the area occupied some land under informal transactions negotiated on Maori terms.

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 5.

(4) *Confiscations*

There were no confiscations in this part of district 5.

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

(a) *Crown purchases, 1865–90:* The first sale of Ngati Porou lands took place on 2 September 1872, when 88 acres were purchased by the Crown at Awanui for £88. In September 1873, Ngati Porou accepted £5000 in lieu of 10,000 acres in the Patutahi block (situated in Poverty Bay, as discussed below) that had been promised to them in return for their loyalty to the Crown during Te Kooti's raids.

In 1876, the Crown purchased 20,000 acres at Arakihi. In 1877, 11 purchases were made on Mount Hikurangi and in the surrounding areas. In 1879, 44,000 acres of the Tauwhareparae block were also acquired. The blocks sold included Te Papatipu (19,000 acres), Aorangi Wai (7000 acres), Arawhawhati (3800 acres), Waitahaia (47,000 acres), and portions of Honokawa. In 1881, the Crown purchased Huiarua 1 (8000 acres). In 1884, the Crown purchased Pirauau (acreage unknown) and the northern block Pukeamaru 5.

(b) *Private purchases, 1865–90:* In 1877, Cooper purchased Waingaromia 2 (27,682 acres inland from Anaura). In 1881, five private purchasers acquired Waipaoa 2 (32,250 acres at Tutamoe). Other lands purchased by private interest in the 1870s and 1880s included Puketiti and Takapau, Pouawa, Aorangi Maunga, and Ruangarehu 1, which covered some 150,000 acres in all. These were mostly inland blocks situated in the southern Ngati Porou area, including large sections of the Raukumara Range. Also see below for a discussion of the New Zealand Settler Company purchases made during this time.

(c) *Crown purchasing, 1890–1910:* During the 1890s, the Crown turned its purchasing energies away from the largely inland blocks previously purchased towards land that Maori were either occupying or farming closer to the coast. Many blocks were purchased in whole or in part, such as around 7000 acres from the Pukeamaru blocks.

In 1894, Ngati Porou protest over Crown purchases and New Zealand Settler Company purchases led to some 170,000 acres being withdrawn and kept out of the court until 1902.

(d) *Post-1910*: With respect to post-1910 purchases, the East Coast fell within the Tairāwhiti Māori Land Board district, which also included the northern part of Gisborne. Annual returns of alienations through the land boards do not specify block names and an exhaustive search of all files would be necessary to establish which of the board's alienations fell within Ngati Porou territory, although by 1908, some 25,000 acres of land within Waiapu County had been vested in the Tairāwhiti Māori Land Board. The table of alienations for the Tairāwhiti district as a whole is set out in appendix viii of volume i.

In the late 1910s and early 1920s, the Crown acquired interests in numerous blocks, including Waipiro, Whareponga, Poroporo, Matarau, and Kaupeka a Hau-mia. Consolidation (the gathering of diverse interests into economic holdings) allowed the Crown to exchange its interests in these and other blocks for clear title to areas of land awarded to it under the consolidation scheme.³

(6) *Land taken for public purposes*

In this, as in other districts, land was taken for the purposes of public works. While it is not possible to provide an exhaustive list of these takings, preliminary research indicates that Whangaokena Island (East Cape Island) was taken in 1897 for the purposes of a lighthouse, as well as 330 acres proclaimed within the Mangahauini block in August 1940 for a road. It is unclear whether compensation was paid.

(7) *The New Zealand Settlement Company, the Carroll–Wi Pere Trust, and the East Coast Trust lands*

This section relates to the East Coast, Gisborne, and Wairoa (northern Hawke's Bay) districts. Several of the large blocks involved cross tribal boundaries and more detailed research on them would be necessary to determine which hapu were affected in each case.⁴

Between 1879 and 1882, Māori leaders and block committees made agreements and signed deeds relating to upwards of 400,000 acres of land, with W L Rees and Wi Pere to act as trustees or agents for the development and sale of the land for settlement. In 1882, Rees and Wi Pere formed the East Coast and Native Land Settlement Company (soon changed to the New Zealand Native Land Settlement Company) for the purpose. Māori who signed deeds conveying the land were often paid little or nothing immediately but received shares in the company, entitling them to two-thirds of net profits on the sale of the land. Such arrangements were

3. 'Exploratory Report', pp 32–33

4. The information summarised here is derived from K Orr-Nimmo, 'Report for the Crown Forestry Rental Trust on the East Coast Māori Trust', report commissioned by the Crown Forestry Rental Trust, 1996, and A D Ward, 'The History of the East Coast Māori Trust', MA thesis, Victoria University of Wellington, 1958.

subsequently interpreted by Justice Richmond in the Court of Appeal in 1884 as actual conveyances of title, not simply agency agreements. The deferred method of payment was not considered illegal. There is evidence that some of the conveyances to the company involved land that had not passed the Native Land Court or land from which the restrictions on title had not been duly removed. In short, the conveyances did not always conform with the land law and either did not in every case receive a trust commissioner's certificate under the Native Land Frauds Prevention Act 1870 or, if they did, should not have. Subdivisions in freehold tenure had been made in respect of between 125,000 and 130,000 acres by early 1883. Rees secured the signatures of the Maori to an agreement apportioning to various blocks the costs incurred thus far. These blocks included Pouawa, Kaiti, Waimata, and Makauri near Gisborne, Okahuatiu, and Tangihanga further inland, Mangatu 5 and 6 in the mountain chain, and several blocks on the Mahia Peninsula. Other blocks acquired by the company or affected by its dealings were Paremata near Tolaga Bay, Maungawaru north of Mangatu, Whangara near East Cape, Kaiparo, Motu 1, Mangaheia, Pakowhai, and Whataupoko.⁵

Between 1882 and 1888, the company sold about 20,000 acres of land around Tolaga Bay and Gisborne. But, because of economic depression and problems of title, sales then slowed and the company became heavily in debt to the Bank of New Zealand. Little if any payment was distributed to the former Maori owners of the blocks sold. Maori began petitioning about the loss of their land for no return. In 1888, various block committees met with Wi Pere, Rees, and the company directors and apportioned the liabilities of the company among the Waimata blocks, Mangaheia 1, Mangatu 5 and 6, Ohahuatiu 1 and 2, Motu 1, Tangihanga 1, Paremata, Pakowhai, Kaiparo, and the Mahia Peninsula blocks, and agreed to their sale to redeem the mortgage to the Bank of New Zealand. Rees and Wi Pere appear to have signed the deed on behalf of the committees.⁶

On 26 October 1891, the Estates Company of the Bank of New Zealand put the mortgaged blocks up for sale. Those sold included portions of the Waimata, Pouawa, Whataupoko, Te Hapara, Tangihanga, Matawhero, Kaiparo, Gisborne North, and Mangaheia blocks, totalling about 20,000 acres.

Wi Pere and others had meanwhile begun to press for Government intervention and the Native Affairs Committee in 1891 recommended some action, largely to protect Maori. No action was taken at that time, however, on their behalf. In 1892, a new agreement was signed, transferring the sold land and executing a mortgage of £58,000 over the remaining estate (including Rees's expenses and Carroll's and Wi Pere's fees). These blocks were parts of Whataupoko, Matawhero and Pakowhai, Mangaokura 1, Motu 1, Okahuatiu 2, and Mangatu 5 and 6 (the 'principal security' blocks). A number of blocks were conveyed exclusively to Wi Pere. Another long list of blocks, from Waiapu to Mahia, the trustees' title to which was stated as 'imperfect doubtful or bad, interest uncertain', were listed as 'specific security'

5. Orr-Nimmo, pp 15–32. For a map of all lands affected by the company's dealings, see AJHR, 1897, i-3a.

6. Orr-Nimmo, pp 49–50

blocks. The trustees undertook to complete the title of these and bring them in to support the mortgage.⁷

Meanwhile, the Atkinson Government, via the Native Land Courts Act Amendment Act 1889, had appointed commissioners to validate transactions that had infringed various requirements of the complex land legislation. Under the Liberal Government this led to the creation of a special court, the Validation Court. Many of the transactions of the settlement company and the mortgage arrangements in respect of the ‘specific security’ blocks by the Carroll–Wi Pere Trust came before the court and were usually approved. Voluntary agreements by Maori to their lands being included to support the mortgage to the estates company were brought to the court by Rees and Wi Pere. Block committees were usually involved and one or more of their number made additional trustees. Nevertheless, there is some doubt as to whether the owners were fully consulted and understood the implications of the arrangements. Maori objectors appeared in some early cases but their objections were generally not sustained.⁸ Under Judge Barton, 20,224 more acres were mortgaged and under Judge Gudgeon 152,980 acres. It appears that Gudgeon saw the process as ultimately likely to be beneficial to Maori, as the value of the blocks was believed to be much greater than the mortgage assigned to them.⁹

In 1897, the trustees made application to the Validation Court to bring under their authority a huge list of blocks allegedly involved with the settlement company.¹⁰ Many of these were in the Ngati Porou rohe and the young law graduate Apirana Ngata appeared on behalf of the Maori owners. Also in that year, a new judge of the Validation Court, Judge Batham, arrived. His own scepticism about sacrificing any more blocks to the trust’s mounting debt, and Ngata’s challenges on various legal points, stopped more blocks being brought in. In particular, many cases where the company had been dealing with land before it became subject to Native Land Court title lapsed.¹¹

Nevertheless, about 250,000 acres remained in the trust with a mortgage of £138,000, and again the bank proposed a forced sale. Since 1897, the Government and Parliament had been considering some form of intervention. The East Coast Native Trust Lands Act 1902 finally put an end to the Carroll–Wi Pere Trust and established a special statutory trust with complete control over the estate. In debate on the Bill, Hone Heke, a member of the House of Representatives, proposed that the State advance half a million pounds to redeem the mortgage to the bank and have the land farmed by Maori farmers under experienced advisers. This proposal, based on article 3, was not accepted.¹² The land remained firmly under the East Coast Trust for 50 years.

In 1904 and 1905, the trust board sold all or part of Paremata, Maraetaha, Whataupoko, Okahuatiu, Matawhero, Pakowhai, Tahora, Moutere, and Tawapata

7. Orr-Nimmo, p 82

8. See vol 2, ch 9, of this report; Orr-Nimmo, pp 60ff

9. Orr-Nimmo, p 101

10. The list is given by Orr-Nimmo, p 110, n 124

11. Orr-Nimmo, pp 114–115

12. Ibid, p 148

(34,939 acres altogether) and cleared the debt to the Bank of New Zealand. Some of the blocks sold had not previously been charged with the debt. Some 15,000 acres were leased and about 57,000 remained for development. Most of the land was successfully developed over the life of the trust.

The trust then began a complex process of internal accounting whereby blocks that were sold or considered to have borne too heavy a share of the redemption of the debt were regarded as ‘creditor blocks’ and those that had carried little of the burden were deemed ‘debtor blocks’. Efforts were made to even the load and continued until 1951, when the profits of the wool boom resulting from the Korean War created an opportunity to bring the trust to an end. Maori beneficial owners had been petitioning for much greater involvement in the trust or for handing back the land. The East Coast Trust Maori Council was formed in 1949, chaired by Mr Turi Carroll. The Mangatu Incorporation (relating to Mangatu blocks 1, 3, and 4) had been administered by the East Coast commissioner since 1917; it returned to the control of the owners in 1947. Most of the 17 sheep and cattle stations now under the trust were debt-free and running well.

In 1951, an agreement was reached within the trust to pay compensation to the owners, or their descendants, of blocks that had been sold to salvage the remainder of the Carroll–Wi Pere Trust lands. Payments were allocated for blocks sold after 1902.¹³ A further £3000 was allocated for parts of Whataupoko, sold between 1892 and 1902. Orr-Nimmo raises the question of whether land sold before 1892 (notably in the forced sale of 1891) should have been considered.

It was further agreed, through Mr Rongo Halbert, representing the Aitanga-a-Mahaki tribe, that that tribe take over Mangaotane station, on Mangatu 5 and 6, in consideration of their compensation award in blocks where they were principal owners (notably Mangatu 5 and 6, the Whataupoko blocks, Okahuatiu, and Motu 1). The determination of owners and the return of this land did not finally take place until 1974.¹⁴

In 1954, the East Coast Trust was wound up and 22 blocks, totalling about 107,000 acres, and being farmed as 15 stations, were returned to the beneficial owners.¹⁵

(8) *Native townships*

It appears that the major thrust for townships came from the Crown and settlers. In 1897, land at Te Puia (which encompassed the thermal springs) was set aside as a township at the Crown’s instigation. The taking of the land at Te Puia was largely

13. The blocks sold were: Motu 1 (£1703); Mangaokura 1 (£2594); Pakowhai (£16,302); Whataupoko d (£48); Okahuatiu (£21,287); Matawhero b or 5 (£293); Mangawaru 2 (£2495); Matawhero 1 (£1814); Mangawaru 3 (£3429); Mangawehi a1 (£304); Mangawehi 1b1c (£3211); Moutere 2 sub 1 (£263); Tawapata North 1a (£2187); Tawapata North 2 sub 1 (£2375); Maraetaha 2 sec 4 (£9603); Paremata (£14,627); and Mangatu 5 and 6 (£26,487), as listed in Orr-Nimmo, p 281.

14. Orr-Nimmo, pp 283, 335–343

15. These were: Mangaheia 2d; Mangapoike a, b, 2, 2a3, 2b, and 2d; Maraetaha 1d and 2; Pakowhai; Paremata 3, 4, 48, 64, 73, and 73a; Tahora 2c1 sec 3, 2c2 sec 2, and 2c3 sec 2; Tahora 2f2; Tawapata South 1; Te Kuri and Tangotete; and Whaitiri 2, as listed in Orr-Nimmo, pp 305–306.

compulsory. The owners' efforts to have land on the eastern side of the main road, including an eeling lagoon, excluded from the township were declined. Subsequently, the owners were consulted as to the location of their allotments.¹⁶

Other East Coast townships at Tuatini, Waipiro Bay, and Kawakawa (Te Araroa) were discussed by Surveyor-General Percy Smith, James Carroll, and the local owners in 1899. Some effort was made to respect existing cultivations and residences, and the township was declared. The layout of Te Araroa, however, took less account of the owners' wishes and encompassed many cultivations.¹⁷

Very few sections were taken up in Te Puia and owners received virtually no rent during the first 10 years of the twentieth century. One owner remarked in 1906 that the township was useless to its owners 'and to this fact the owners only are aware'. His suggestion was that the land be sold to the Crown and the Maori owners be given first option to buy it back so they could obtain a 'better title'.¹⁸ The Department of Lands and Survey and the Department of Tourist and Health Resorts (after 1908) both neglected Te Puia, which degenerated badly. Maori became interested in selling in the hope that the Government would invest more in the springs.

The 1910 Act also provided that (as in the Native Land Act 1909) a majority in value of a 'meeting of assembled owners' could approve an alienation (rather than the previous requirement of a deed of sale signed by the owners).

The sale of Te Puia, then under negotiation, was in fact completed under the 'assembled owners' provisions of the 1909 Act. At the meeting, representatives of 294 shares (40 percent of total shareholding) voted for sale, and 192 shares (26 percent) were opposed. The sale was thus legalised by the votes of a minority of the total shareholders.¹⁹

5.2.3 Outcomes for main tribes in the area

The heaviest period of land alienation for Ngati Porou was 1873 to 1900. Although exact figures for the amount of land alienated at this time are not available, figures are available from the Stout–Ngata commission for the northern portion of the district, which fell within Waiapu County. These figures indicate the total area of the county was 705,228 acres, of which 322,000 acres were acquired by private settlers and the Crown, 383,228 acres were owned by Maori or held in trust for them, and 113,025 acres were under lease to Europeans – some 60 percent in total.²⁰

16. Wai 272 rod, doc a1, p 7

17. Ibid, pp 8–14

18. Te Puia township file, ma-mlp, no 80, file 1910/3, NA Wellington (cited in Woodley, p 23)

19. Wai 272 rod, doc a1, p 17

20. AJHR, 1908, g-1, p 1

5.2.4 Examples of Treaty issues arising

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

There are numerous instances in Ngati Porou rohe where the vesting of land by the Native Land Court has led to protracted disputes within the iwi, raising questions as to whether the people awarded land by the court had the right to sell the land. In the case of Tauwharepare and Waingaromia 2 blocks, for example, allegations were made that the former block was passed through the court without the consent of many of the principal right-holders, while the latter block was awarded to a group of Maori who had expressed an interest in selling the land, despite the fact that their claim over the land was questionable.²¹

Ngati Porou claimants suggest that debt, resulting from survey and court costs, was a factor contributing to the sale of their land. Expenses were particularly onerous where title was disputed, as was the case with the Waipiro block, in which one of the parties to the dispute had to sell other land in order to cover expenses.

There is evidence that the distribution of payments to Maori were not supervised by the Crown, resulting in at least some of the money being misspent or misappropriated by officials or others involved. (There is evidence that Maori did not regard a sale as valid unless they had participated in the distribution of payments, as discussed in volume ii, chapter 1.)

In 1908, the Stout–Ngata commission noted that some Ngati Porou had questioned the wisdom of selling at the low prices offered by the Crown. While Maori land in the area had sold for between one and three shillings per acre, European land was selling at the same time at a rate of two to five shillings per acre.

For a further discussion of the policies of the Native Land Court, see volume ii, chapter 7.

(2) *Confiscations*

It appears that, while the East Coast Land Titles Investigation Act 1866 was not used directly to confiscate Ngati Porou land, the Act put pressure on the tribe to ‘voluntarily’ cede their lands to the Crown. In 1868, Ngati Porou petitioned Parliament objecting to the Act.²² According to one petition, the Government had assured them that land would not be confiscated from Ngati Porou, but had subsequently tried ‘coaxing, intimidation, and numerous other artifices’ to get them to give up their lands.²³ The Crown did not, however, accept the petitioners’ complaints and iwi were obliged to offer to cede certain lands. In October 1868, the Crown informed Ngati Porou that the area they had offered was too small. The following month, Te Kooti attacked Poverty Bay. Owing to Ngati Porou’s assistance to the Crown at this time, plans to confiscate Ngati Porou’s land were abandoned, as announced by McLean in 1870.²⁴ Lands were subsequently purchased by the Crown instead.

21. Wai 272 rod, doc a1, p 15

22. Petitions from East Coast natives, AJHR, 1868, a-16, pp 1–13

23. Wai 272 rod, doc a1, pp 10–11

24. J A Mackay, *Historic Poverty Bay and the East Coast, North Island, New Zealand*, p 306

(3) *Crown purchasing*

Initially, many coastal areas were leased to Pakeha settlers, in keeping with the general preference of Ngati Porou to lease rather than alienate the freehold of their lands. This included substantial areas such as the Pouawa (19,200 acres) and Whangara blocks (21,450 acres). From 1876 to 1893, the leases were also arranged further to the north. While it was the declared policy of the Crown with respect to Ngati Porou only to purchase that area of Ngati Porou lands deemed to be 'waste land',²⁵ and while this policy was largely adhered to by the Crown during the 1870s and 1880s, by the 1890s this policy was abandoned, provoking sustained protest from Ngati Porou. This resulted in all Papatipu lands (those set aside for Maori occupation) being withdrawn from the Native Land Court. Some 170,000 acres (mostly north of Waiapu) were kept out of the court until 1902. In 1902, the Seddon Government assured Ngati Porou that the Crown would not purchase in that area.²⁶ Ten years later, however, under the Reform Government, the purchase of individual interests by Crown agents resumed.

(4) *Reserves*

In the case of Tauwhareparae, Ngati Ira hapu requested reserves of 30,000 acres. They had, however, been awarded (according to the deed of sale) 10,250 acres reserved in the two blocks 'inalienably' and 'for the use of the vendors and their heirs for ever'.²⁷ In the event, the two reserves created (5125 acres each) were not inalienable, and large portions of them were sold in the 1880s to a private interest.

(5) *East Coast Trust lands*

The New Zealand Native Land Settlement Company was a private company. Its dealings in land became a matter of notoriety on the East Coast by the mid-1880s, however, and the Crown's responsibilities are at issue in a number of ways:

- (a) The company's acquisitions from Maori did not conform strictly to the requirements of law in many cases, yet they passed the scrutiny of the trust commissioners or were subsequently legalised by the Validation Court. In particular, many blocks were mortgaged to the Bank of New Zealand and subsequently sold. Although these may have involved a form of agreement with some of the Maori owners, doubts were cast on the adequacy of consultation, and it is significant that the practice of bringing more blocks in to support the mortgage ceased after Batham became judge and Ngata counsel for the Maori owners.
- (b) Although requested from 1891, the Government did not intervene to salvage the settlement company or the Carroll–Wi Pere Trust until 1902, when the debt had escalated and more land had to be sold (in 1904 and 1905) to salvage the remainder of the estate.

25. AJHR, 1908, g-1, p 16

26. Ibid

27. Deed of sale for Tauwhareparae, 3 May 1879, deed auc 1259

- (c) The form of intervention that was eventually taken in 1902 effectively shut Maori out from farming their own land or sharing in the management of the East Coast trust. Although ultimately very effective in redeeming the debt, developing the asset, and handing the land back to Maori in good order, (thanks in part to the wool boom), the trust was also paternalistic and reduced the beneficial owners' autonomy and opportunity for important management experience.

(6) *Post-1910 alienations*

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection. This was also true for the East Coast because, although a greater area of land remained in Maori hands than in most districts, much of it was steep and mountainous. Flat and fertile land was scarce in this region.

5.3 Gisborne

5.3.1 Main tribal groupings

The common marriage and extensive intermarriage of groups in the Gisborne area have created a complex tribal history. The Rangahaua Whanui Gisborne district report provides only a broad outline of the pre-1840 occupation of Poverty Bay, as summarised below.

The two waka primarily associated with Poverty Bay are Horoutu and Takitimu. These arrivals are thought to have assimilated with the people already living in Poverty Bay.²⁸ The three main tribal groups resulting were Te Aitanga-a-Mahaki, Rongowhakata, and Ngai Tamanuhiri. Intermarriage and the residual interests of other groups in the area make it difficult, as always, to comment definitively on the land rights of particular hapu in the area.

The migration and movement of various hapu within the region led to the evolution of larger tribal groupings in Poverty Bay by 1840. Struggles occurred among the direct descendants of Ruapani (descendants of Kiwa) and Kahungunu and involved all the people of the area, including Rongowhakata and Ngai Tahu (who later migrated south). Migrations of Kahungunu from the Gisborne area followed at around ad 1600 and ad 1630 as the result of further fighting.

28. Discussed in S Daly, *Poverty Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997, pp 3–7

About 1840, Te Aitanga-a-Mahaki were bordered to the north by the Waimata River (with interests beyond it); to the west by Arowhana; to the south-east (meeting Tuhoe interests) by the Huiarau Range and Maungapohatu; and to the south (with Rongowhakata) at Repongaere and Tangihana.²⁹

Rongowhakata met with Aitanga-a-Mahaki as described above, and also with Ngai Tamanuhiri at Muriwai. To the south and south-east, Rongowhakata interests met with those of Ngati Kahungunu, while to the west and south-west, at Te Reinga-Ruakituri, they met Ngati Kahungunu–Ngati Ruapani of Waikaremoana.³⁰

Ngai Tamanuhiri (formally known by the tribal name Ngai Tahupo) are of Kahungunu descent and also share connections with Ngai Tahu, prior to that iwi's migration south. At 1840, this group continued to occupy the Muriwai area and south to Paritu, including Te Kuri o Pawa (Young Nick's Head), neighbouring the interests of Rongowhakata and Ngati Kahungunu.

5.3.2 Principal modes of land alienation

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

Land transactions took place in the 1830s in the Gisborne area and they continued into the 1840s, despite the Crown's pre-emptive right under the Treaty. These transactions were not investigated by the first Land Claims Commission (Godfrey and Richmond).³¹ Some lapsed and by the 1850s others were being repudiated by Maori. Commissioner Bell could not settle any of the transactions in 1859. Some claims were reinvestigated by the Poverty Bay Commission in 1869, and grants were subsequently issued for several of these.

Roger Espie lodged two claims for 130 acres at Turanga, both of which were originally disallowed. In 1871, however, the Poverty Bay Commission awarded Espie 154 acres and issued a grant for land called Tutae-o-Rewanga.

Thomas Halbert made two claims on 1004 acres at Pouparae, which he purported to have purchased for £300 in goods in 1839. Bell disallowed these claims in 1859, but in 1871, grants were issued for 482 acres and 19 acres.³²

J W Harris made three claims: one for 150 acres; one for one acre by the Turanganui River; and one for two acres at Wai-o-ngaruawai (at the confluence of the Taruheru and Turanganui Rivers). Harris was granted 57 acres of land at Opou 3 on the banks of the Waipaoa River for the first claim,³³ and although Bell originally disallowed the other claims, a grant of just over two acres was issued for the land (to G E Read) in 1871.³⁴ Harris also claimed 150 acres (although other sources identify this as 250 acres) where he had established his whaling stations at Papawhariki, and a grant of 112 acres was made (to G E Read) in 1871.³⁵

29. Daly, p 13

30. Ibid, pp 14–15

31. W L Williams p 16 (cited in Daly, p 28)

32. Mackay, pp 141–142, Curmin's register, p 25 (cited in Daly, p 45)

33. olc 5/18 (cited in Daly, p 45); r15a, fol 375

34. Mackay, pp 139–140; Curmin's register, p 26; olc 5/18, return of claims settled since 1862 (cited in Daly, p 45)

Siân Daly notes that in 1869 the Poverty Bay Commission strenuously opposed a claim by Rhodes to a 300-acre block between Karaua Creek and the edge of Poverty Bay (plus 1½ acres at Muriwai), supposedly purchased in 1840. The commission awarded just 1 acre 2 roods 23 perches to Rhodes.³⁶

W H Wyllie claimed, and was awarded, 64 acres in 1871. Other grants in 1871 included 51 acres to R Poulgrain; 25 acres to A Dunlop; 17 acres to the mixed-race children of Goldsmith; five acres to Read; 185 acres plus an extra 36 acres to Thomas Uren; and a further 319 acres (although the old land claims appendix estimates this at 335 acres) to Read.

(2) *Crown purchases before 1865*

On 29 January 1857, following long negotiations, Resident Magistrate Herbert Wardell (on behalf of the Crown) secured the sale of 57 acres of land at Turangi for the magistrate's office, for which he paid £85.

Large areas in Poverty Bay were leased informally during the 1860s for sheep-runs. For example, the Kaiti block (4350 acres) was leased as early as 1856, and the Pouawa block (19,200 acres) was leased in 1865.

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 5.

(4) *Confiscations*

It was initially proposed, following the brief conflict in Poverty Bay in 1865, that land in the area be confiscated and military settlements be established in the 'rebel' district to bring tribes under British rule. The experience in other parts of New Zealand, where this method had proved costly and ineffective, encouraged further consideration of a new form of confiscation that would be 'less costly to the government and more palatable to Maori'.³⁷ McLean was soon considering taking the whole area and subsequently returning Crown-granted portions to 'friendly' Maori.³⁸

The East Coast Land Titles Investigation Act 1866 was introduced to carry out the function described above. It allowed the Native Land Court to determine the title to lands claimed by Maori or European in the area, whether or not this was desired by Maori claiming title to the land (s 3a), and to award certificates of title to those with interests in the land who had not been engaged in rebellion (s 3b). Most significant, however, was the provision allowing the court to investigate title on its own initiative, or upon application by the Crown, regardless of the wishes of Maori with an interest in the land.

In October 1867, the Act was amended and attempts were made to get chiefs to cede a single block of land. While this was unsuccessful, on 27 February 1868,

35. olc 2/7, Curnin's register, p 91; olc 5/18 (cited in Daly, p 45)

36. Mackay, p 141

37. Daly, p 61

38. Ibid

McLean secured for the Government the cession of 1000 acres for the purposes of establishing a township at Turanganui (later Gisborne), for which the Government agreed to pay £2000.

Raids upon both Europeans and Maori in Poverty Bay by Te Kooti and his supporters in November 1868 shocked European settlers and increased their desire for 'rebel' lands to be confiscated. It also encouraged Maori fearful of further attacks to cede their lands to the Crown in return for military protection. A deed of cession was signed in December 1868 by 279 chiefs from Te Aitanga-a-Mahaki, Rongowhakata, and Ngaitahupo for the whole of the Poverty Bay district (estimated to contain more than one million acres). The boundaries of the block were described as running along the sea coast from Turanganui to Paritu, inland to Reinga, along the Ruakituri River to its source, along the line of Maungapohatu Maungahaumi to Tatamoe, then to the sea by way of Pukahikatoa, Arakihi, Wakaroa, and Rakuraku to Turanganui. Claims lodged within three months for title to the lands would be considered by the Native Land Court, and valid claims would receive Crown grants. In addition, the Governor was able to award the lands of 'rebel' Maori to loyal Maori as compensation, should they be affected by blocks reserved for European and Maori military settlements.

The Poverty Bay Commission began hearing claims in June 1869. It was headed by Native Land Court judges John Rogan and Henry Monro. On the second day of the hearings, Rongowhakata and Te Aitanga-a-Mahaki agreed to cede three blocks of land to the Crown in exchange for the waiver of the Crown's claims to the rest of the land. Te Mahunga (approximately 15,000 acres), Patutahi (approximately 50,000 acres), and Te Arai (735 acres) were ceded, although there was confusion about how much of that was actual transferred (see below).

The commission sat from 29 June until 10 August 1869 and heard claims covering 101,000 acres of the block ceded in 1868. In 1869, the commission awarded a further 150,000 acres of land under joint tenancy (under which, on the death of an interest holder, the holder's interests pass to the other owners, not the heirs).

Blocks of land were returned to tribes by the commission in 1873 as follows: Aitanga a Mahaki initially received 400,000 acres, Ngaitahupo about 51,600 acres, and Rongowhakata 5000 acres. The final total of land returned to Maori from that originally confiscated was around 800,000 acres (although the validity of the tribal allocations of this land are not known, because customary title had not been investigated in Poverty Bay before the 1860s).

(5) *Purchases under the Native Lands Act*

(a) *Private purchases, 1865–90:* By 1869, only a very small area on the flat, fertile land of the flood plains and river mouths was claimed as having been purchased by Europeans. Leasing, however, which had often begun prior to 1865, was continuing. For example, the Whangara block (21,450 acres) was leased for £280 in the first year in 1867 and at an increasing rate for the next 15 years. The Maraetaha block of 20,000 acres was also leased from 1867, along with Te Arai (10,691 acres, part of which was later confiscated), Repongaere (9900 acres), Ngakaroa (12,360

acres), Pukepapa (11,000 acres), and Ruangarehu (3146 acres). Daly comments that all these leased lands would pass from leasehold into freehold once Maori title had been ascertained.³⁹ The lessees would approach individual right-holders and buy their shares, then making an application to the Native Land Court to have their interests separated out from those of the non-sellers.

G E Read was a prominent land speculator who, by 1876, had leased or purchased interests in 29 blocks. Read purchased many seaward blocks on Rongowhakatata lands along the plains by the early 1870s, as well as the Kaiti, Whataupoko, and Makauri blocks in the north of Gisborne, which he held under partial freehold and leasehold.⁴⁰

(b) *Crown purchases, 1865–90*: Most blocks of land in Poverty Bay came before the Native Land Court between 1873 and 1877, once the court had resumed its normal functions in 1873 following the confiscation of land in the district. Following the awards of the Poverty Bay Commission in 1873, speculators began buying up the interests of owners in the smaller blocks on the flood plains. The only Crown possessions in the area in the first half of the 1870s were the township block and the two ‘ceded’ areas of Patutahi and Muhunga.

Crown purchases in the following years were as follows: 162,354 acres in 1875; 6190 acres in 1876; 63,157 acres in 1877 (possibly including the Tauwharetoi, Whakaongaonga, Tuahu, and Hangaroa Matawai blocks).

Sittings of the court resumed in 1880, following a temporary suspension of its activities on the East Coast in 1877. Approximately 392,101 acres were purchased by the Crown in the East Coast–Poverty Bay region between 1879 and 1884, with 239,734 acres of that purchased in 1880. Another lull in Crown purchasing followed, lasting until approximately 1892.

The confused state of titles in the 1890s and the introduction of the Maori land councils under the 1900 legislation served to slow the pace of new Maori land sales in the Gisborne area before 1910, although many purchases under previous legislation were being ‘completed’.

(c) *Crown purchases, 1890–1930s*: A number of Gisborne blocks passed to the Government on subdivision in the 1890s, including Tarawera 1 (six acres) in 1894; Tauwharetoi 1b and c (totalling 801 acres) in 1897; Whakaongaonga 2c in 1896; Whakaongaonga 2d to 2j (1736 acres in total), awarded to the Crown in 1897; Waipaoa 1 and 2 (2911 acres each) in 1889; and part of Waingaromia 3a (536 acres) in 1889.

Up until the 1930s, subdivisions were made from earlier partitions. These small, individual holdings were often later consolidated under the Manutuke or Waiapu consolidation schemes. Blocks affected included the Poroporo block, which was subdivided in 1915 and eventually largely alienated; the Tarewa lands, which were first partitioned in 1894, with all but 19 acres subsequently alienated; the Pakirikiri

39. Ibid, p 122

40. Ibid, p 135. See pages 135 to 143 for more detail on these and other purchases by Read.

block (30 acres), which was subdivided and then largely purchased by the Crown. A similarly complex list of subdivisions, consolidations, and sales are evident in the files for the Pakarae, Papakorokoro, and Waihoa 1 and 2 blocks.

(d) *Post-1910 alienations:* Land was also vested in the Tairāwhiti Māori Land Council (established under the Māori Land Administration Act 1900). Only 1122 acres were voluntarily vested in 1904, with a further 85,185 acres compulsorily vested between 1906 and 1909 (following the Māori Land Settlement Act 1905). Approximately 2325 acres were vested from Cook County (which was approximately the same area as the Poverty Bay district).

(6) *Examples of land taken for public purposes*

In 1894, the Government allegedly acquired pieces of 16 blocks of Māori land in Gisborne, possibly as public works takings, although further research is required to determine details.⁴¹

There are many examples in the early twentieth century of public works takings from small remaining Māori sections of blocks. Compensation was paid for these takings. For example, the whole of the Waiohiora 2 block was also taken for railway purposes in 1900, and it was recorded that compensation was being assessed for the block. Whenuakura c was taken for roading and railways purposes in 1914 and compensation was paid: half to the lessee on the block and half to the owner. In 1915, sections 65 and 66 of the Patutahi block were taken under the Public Works Act for the East Coast Main Trunk Railway.

(7) *East Coast Trust lands*

A considerable amount of Māori land in Poverty Bay was affected by the activities of the New Zealand Settlement Company and its successors, the Carroll–Wi Pere Trust and the East Coast Trust. For a full discussion, see section 5.2.2(6).

The tables on the following page summarise the status of remaining Māori lands in Poverty Bay as determined by the Stout–Ngata commission in 1908. In 1951, the East Coast Trust directly affected an estimated 8000 Māori owners, who anticipated the return of their lands in an improved state from the trust. (The 108,664 acres of the Mangatu lands had also been brought under the control of the East Coast Commission in 1917, but were returned to their owners in a body corporate in 1947, with an elected committee employing farm managers.) When the East Coast Trust was wound up in 1953, a total of £59,505 was paid to the descendants of Māori owners in most blocks sold since 1902, principally the Pakowhai and Paremata blocks and about 110,000 acres (not including the Mangatu lands) were returned to incorporated Māori owners as substantially improved, valuable, and debt-free lands.⁴²

41. Oliver and Thompson, 1971, p 179 (cited in Daly, pp 175)

42. Orr-Nimmo, p 300

Category	Area
East Coast Trust lands	60,768 acres
Whangara	11,646 acres
Mangatu 1	47,726 acres
Lands vested in Maori land board	2325 acres
Approved by Maori land board	29,434 acres
Other leases (exclusive of Wi Pere Trust estate)	20,653 acres
Total area leased	172,552 acres

Lands under lease

Category	Area
East Coast Trust lands	33,786 acres
Whangara	67 acres
By the commission (schedule 7a)	23,999 acres
Total	58,464 acres

Lands set aside for Maori occupation

Category	Area
East Coast Trust lands (for lease or Maori occupation)	91,834 acres
Mangatu 1	32,020 acres
Total area	123,854 acres

Lands available for settlement

Category	Area
Lands under lease	172,552 acres
Lands set aside for Maori occupation	58,464 acres
Lands available for settlement	123,854 acres
Lands to be further considered and reported on	71,715 acres
Wi Pere Trust estate	38,168 acres
Total area of Maori land	464,753 acres
East Coast Trust lands not in Cook County	92,339 acres
Maori land of all classes in Cook County	372,414 acres

Summary table

5.3.3 Outcomes for principal tribes in the area

By 1876, the Tangihanga block and the Mangatu lands were the only substantial blocks of non-alienated Maori land remaining, owing to the sale and lease of land to the Crown and private interests. By 1881, the Crown owned about 720,000 acres of a total 1.9 million acres. Private European freehold at this time amounted to 530,750 acres and Maori land (largely north of Gisborne) amounted to 576,630 acres.

By the late 1890s, Maori had sold the freehold of most of the leased land and very little land remained to them, apart from the two large areas of the Mangatu and Mangapoike blocks. The rest was in reserves and other small subdivided areas scattered throughout the hill country and in some smaller blocks on the flats. Daly comments that the largest blocks still in Maori ownership by 1890 were under the administration of the Carroll–Wi Pere Trust and, later, the East Coast commissioner.⁴³

In 1908, Stout–Ngata reported that 946,600 acres of Cook County, estimated to contain 1,319,014 acres, had been acquired by the Crown, with the balance of 372,414 acres remaining to Maori, including those lands held in trust for them.⁴⁴

5.3.4 Examples of Treaty issues arising

(1) *Old land claims*

In 1859, Bell advised Domett to let the matter of old land claims drop, saying ‘I would leave these alone . . . and we may wink at any little irregularity provided the ghosts of these claims do visit us no more’.⁴⁵ These numerous ‘irregularities’ included the fact that most of the transactions were illegal (because they had occurred after the January 1840 proclamation), were not supported by written deeds, and the acreage awarded by Bell was in some instances well in excess of that originally claimed.

(2) *Confiscations*

(a) *Pre-confiscation issues:* McLean presented the Maori of Poverty Bay with an ultimatum on 13 November 1865 for siding with the Pai Marire following the entry of their emissaries into the district. He demanded that they should accept his terms for peace and should surrender their lands in payment for their ‘rebellion’ or have them confiscated. This amounted to treating the tribes of Poverty Bay as rebels before they had clearly become so, as well as placing them in the situation of losing their lands whether they agreed to the Government’s conditions or not.⁴⁶ The

43. Daly, p 188

44. ‘Native Land and Native Land Tenure: Interim Report of Native Land Commission, on Native Land in the Counties of Cook, Waiapu, Wairoa and Opotiki’, AJHR, 1908, g-3, p 1 (cited in Daly, p 248)

45. olc 4/21, lc 71/65, letter to Domett from Monro, Poverty Bay Compensation Commission, Auckland, marginal note by Bell, July 1871

46. Binney, p 48 (cited in Daly, p 59)

resulting siege and capture of their principal pa at Waerenga-a-Hika in November 1865 lasted only one week, but it had lasting consequences for Poverty Bay Maori.

In early 1866, with confiscations looming, Maori were encouraged by land speculators to sell their lands before the Government took them. Many Maori appeared willing to do so, and they also began negotiating informal leases of lands. The Government responded by advising Maori that ‘such proceedings are calculated to interfere with the suppression of rebellion on the East Coast and are hereby warned to abstain from carrying out such arrangements’.⁴⁷ Daly notes that ‘This notice could not have had any legal standing as the district had not been proclaimed under the Settlements Act and the Native Land Act 1865 still had operational standing there’. She argues that the Government ‘had a vested interest in preventing the Native Land Court from carrying out any business on the East Coast which might affect their acquisition, through confiscation, of the best land in the area’.⁴⁸ In the event, the activities of the Native Land Court in Poverty Bay were suspended, despite Chief Judge Fenton’s demand that the Government not interfere with the course of the law. During the court’s suspension, the East Coast Lands Titles Investigation Act 1866 was passed. This sequence of events, according to Daly, gives some weight to the proposition that the court was suspended in order to keep it from sitting until a law could be passed to give the Government power to use the court’s sway to vest in the Crown land of those deemed to be ‘rebels’.⁴⁹

(b) *East Coast Lands Titles Investigation Act 1866*: Under the East Coast Lands Titles Investigation Act 1866, the Native Land Court had become:

an instrument whereby Government would obtain very large tracts of land; thereby confiscating by a side-wind, in direct opposition to the instructions of the Imperial Government, and in spite of an asserted promise made by the Governor that no land should be taken.⁵⁰

Governor Grey had apparently made the promise in Poverty Bay early in 1866 when he visited the area.⁵¹ J C Richmond (the Native Minister) denied this, but he admitted that the Act was flawed in that it ‘attempted in an indirect manner to effect that which could only be treated as confiscation’.⁵²

Daly also notes that the Act made no provision for the setting aside of lands for military settlements, or for the transfer of confiscated lands to ‘loyal’ Maori, as earlier promised by Richmond.⁵³ During 1867, it became evident that ‘loyal’ and ‘rebel’ interests were peppered throughout the district and that ‘rebel’ and ‘loyal’ could be found within one family. This situation made the settlement of the area by

47. *Hawke’s Bay Herald*, 29 May 1866 (cited in Daly, p 62)

48. Daly, p 63

49. *Ibid*, p 64

50. H Carleton, Bay of Islands, 26 August 1868, NZPD, 1868, p 39 (cited in Daly, p 74)

51. 26 August 1868, NZPD, 1868, p 39 (cited in Daly, p 74)

52. 19 August 1868, NZPD, 1868, p 518 (cited in Daly, p 74)

53. O’Malley, p 58

non-Maori a costly and complex matter. Maori themselves were disinclined to assist, which made it virtually impossible for the process to continue.

Further problems arose when it was discovered that much of the land to which the Government sought access (including agricultural land and oil springs) was not within the boundaries of the Crown's control as set out in the 1866 Act. In February 1867, the Government amended the Act to include these lands. When Maori opposition to this extension of the potential land-taking under the Act became evident, it appeared that the Act would be unworkable.

In July 1867, Maori petitioned the Government, stating that they had not received notification of its intentions to take lands at the cessation of hostilities in 1865 and 1866 and, furthermore, that it had been two years since then and this notification had only just been made.⁵⁴ Maori continued to boycott the court as long as the East Coast Lands Titles Investigation Act was in force. Following a sitting by the court in March 1868, Maori again petitioned Parliament regarding the 328 men, women, and children who, in 1865 and 1866, had been taken to the Chatham Islands for a period of no more than 12 months but who had been kept there while arrangements were made for the taking of the land on the East Coast by the Government.⁵⁵ The petition stated that these prisoners had been on the Chatham Islands for two and a half years and that some had died. The petitioners felt that the punishment was severe, considering that no one had been murdered and that the disturbance in Poverty Bay had 'only lasted one week and ended for ever'.⁵⁶ Major Biggs (the resident magistrate) had, in fact, written to McLean in June 1867 advising that the return of the prisoners be delayed until difficulties encountered by the Government in securing the cession of certain Poverty Bay lands had been overcome.⁵⁷

(c) *The East Coast Act 1868*: The East Coast Act 1868 made provision for the Native Land Court to continue to use discretionary power in the division of the land of rebel Maori between loyalists and the Crown. Nevertheless, as Daly observes, under the provisions of the new Act, rebels were still to lose their lands entirely and the lands of loyal Maori were no more guaranteed than they had been under the earlier repealed legislation. The difference was, however, that the Government had stated its intentions to pursue 'voluntary' rather than compulsory cession of lands.⁵⁸ The Act was to remain in force until 1891, which theoretically allowed the Native Land Court to continue to exclude claimants on the basis of their being deemed 'rebels', although this provision was largely ignored.

(d) *The Poverty Bay Commission 1869*: There appears to be some confusion regarding the amount of land ceded by Rongowhakata and Te Aitanga-a-Mahaki in

54. 'Petitions Presented to the House of Representatives and Ordered to be Printed', (petition 9), AJHR, 1867, g-1, p 10 (cited in Daly, p 71)

55. Williams, p 49 (cited in Daly, p 61)

56. 'Petitions from East Coast Natives Relative to their Lands' (petition no 1), AJHR, 1868, a-16, pp 5-6

57. Biggs to McLean, 13 June 1867, 'Papers Relative to Prisoners and Guard at the Chatham Islands', AJHR 1868, a-15e, p 19; Binney, p 71 (both cited in Daly, p 77)

58. Daly, p 77

1868, with figures submitted by various parties ranging from 40,000 acres to 67,000 acres. Daly notes that this problem requires further exploration, and she suggests that, if the tribes were deliberately deceived over the amount of land to be taken, it is possible that Maori present when the commission announced the boundaries were not concerned about the acreage identified because they had been assured that excess lands would be returned to them once surveys had been conducted.⁵⁹

Furthermore, while it was supposed that all the land outside the three blocks ceded to the Crown would be returned to loyal Maori and that reserves would be set aside for 'rebels' who would become landless according to the East Coast Act 1868, neither of these things eventuated. Instead, loyal Maori were not compensated for their lands confiscated within the block, and rebel Maori remained in possession of their lands outside the confiscation block.

There are several issues arising from the method by which the Poverty Bay commission returned land and the nature of the title granted:

First, when the commission adjourned in 1869, about 80,000 acres remained to be returned to Maori. Regardless, the Native Land Court was scheduled for a sitting in November 1870, despite Chief Judge Fenton's concern that the court did not have jurisdiction over the lands ceded because these were no longer under native title. It was later commented that the court's actions in 1870 were 'null and void' and that objectors to the court's sitting at all were 'justified in defending themselves against the persistently illegal action of the Government'.⁶⁰ The claims heard by the court during this period were not revisited by the Poverty Bay Commission when it sat again in 1873. Instead, the Government passed the Poverty Bay Title Act 1874 to eliminate problems arising from the court's actions.

From 1872 onwards (once Crown grants had been issued for titles awarded by the Poverty Bay Commission), grantees showed enormous dissatisfaction over the awarding of title as joint tenants rather than tenants in common, since this meant that they could not hand the land on to their children. In addition, the real owners of blocks brought before the commission in 1869 had been advised by certain Government agents, present in Turanga at the time, to include as many names as possible on the title for their land to ensure they held on to the land. Maori had done so, assuming that the grants would then be awarded relative to the grantees' entitlements.⁶¹ The Crown, however, issued shares of equal value to all owners listed. Maori strongly objected to this policy, stating that:

we gave up all our lands for a time with full faith that the Government would perform their promise and return them: they have not done so, they have only returned us a portion of our possessions and that small right that they have given us we cannot leave to our children it is given back to us in a manner as to be almost useless to us – Is this justice?⁶²

59. Ibid, pp 74–75

60. *Poverty Bay Standard*, 15 February 1873

61. W H Tucker to Native Minister, 30 July 1872, ma 62/7 (RBD, vol 129, pp 49,833–49,834) (cited in Daly, p 95)

Apparently some Maori who had been added to the lists then sold the land, to which they had no customary right. It was subsequently recognised at an official level that Maori were ‘suffering from a substantial hardship’, although there was some debate about who was to blame for this occurrence. Despite this, the Government took no action to resolve the problem, preferring instead to partition the land upon the agreement of all joint tenants in equal shares. Maori were forced to secure their interests for their children by deed of conveyance in trust.⁶³

(e) *The Patutahi block*: The Patutahi block, which was originally ceded to the Crown by Rongowhaakata, Te Aitanga-a-Makahi, and Ngati Kohatu, was to be awarded to Ngati Porou and Ngati Kahungunu for their support for the Crown during Te Kooti’s raids (as discussed earlier). Ngati Kahungunu wanted to return the land to the traditional right-holders but the Crown would not allow this to happen. In November 1872, the Crown decided that Ngati Porou would be awarded 10,000 acres from the 57,000- to 60,000-acre block. Ngati Kahungunu agreed to accept money in lieu of their land, until they heard of Ngati Porou’s award. In the meantime, chiefs at Turanga were requesting that the land be given to them. A scramble for the lands ensued.

Further problems occurred once the block had been surveyed. Maori disputed both the boundaries given and the various estimates of the acreage offered. In September 1873, however, Ngati Porou agreed to give up their claims to Patutahi for £5000, and in November, Ngati Kahungunu received two payments also totalling £5000. ‘Loyal’ Maori at Turanga argued that they should also receive £5000 compensation. McLean, however, rejected this request on the basis that the people of Turanga ‘have hitherto not shown yourselves capable of managing your own affairs’, citing the example of their ready acceptance of the Pai Marire doctrine.⁶⁴

It also appears that 19,445 acres were added to the Patutahi block at the time of survey, without Maori consent and in breach of the 1869 agreement.⁶⁵ Te Aitanga-a-Mahaki and Rongawhakata claimed that they only agreed that the Crown retain 15,000 acres. The 1921 Native Lands Commission concluded that 20,337 acres was the balance of land the owners had been deprived of without their consent.⁶⁶ No recommendation was made for compensation, however, although the Government inserted section 33 into the Native Land Claims Adjustment Act 1922, authorising the Native Land Court to determine the compensation for the entitled interest holders in the Patutahi block. The beneficiaries, identified as those Rongowhakata who could prove occupation, requested £122,022 for the lands not returned. The Government rejected this proposal, and following lengthy negotiations, £38,000 was finally accepted by the beneficiaries in 1950.⁶⁷

62. RBD, vol 129, p 49,834 (cited in Daly, p 95)

63. Memo from Prendergast, 17 March 1873, hb 3/5, ‘Dissatisfaction of Poverty Bay Maori on Account of Tenure of Land Awarded by Poverty Bay Commission’ (RBD, vol 131, p 50,613) (cited in Daly, p 97)

64. AJHR, 1874, g-1, p 3

65. O’Malley, p 151

66. AJHR, 1921, sess 1, g-1, p 20

(f) *The Poverty Bay Commission 1873*: By 1873, the granting of large areas of land under joint tenancy (rather than tenants in common) had been acknowledged by various officials as an injustice to Maori. Despite this, no action was taken to remedy the situation at that time, or later. On 14 August 1873, Judge Munro acknowledged this injustice to a crowd of 300 Maori gathered before the commission. He asserted, however, that land must come before the commission in order for it to be restored to Maori.⁶⁸ Maori complained further that the blocks confiscated were in excess of the area agreed to in 1869. The following day, Maori refused to have their claims heard by the commission, and when disorder erupted, the courthouse was cleared and the doors locked. On 19 November 1873, the court resumed and Wi Pere requested the return of all land within the ceded area to a committee of Maori trustees, who would then allocate the lands to the appropriate parties. The commission agreed to return the remaining lands in whole blocks.⁶⁹ The court closed again on 24 November. Daly comments that further research is required to determine why Rongowhaka were awarded such a substantially smaller amount of land than other tribes (only 5000 acres), despite their relatively limited support for Pai Marire and general adhesion to the Crown during the wars.⁷⁰ O'Malley comments that the Government had lost interest in the return of lands in Poverty Bay after it had received the blocks it sought and completed negotiations with the loyalist tribes, Ngati Porou and Ngati Kahungunu.⁷¹

(3) *Post-1875 Crown purchases*

In order to compete with successful private buyers, the Government began mimicking their procedures in Poverty Bay after 1877, including making cash payments to certain Maori identified as having an interest in the land, prior to title to the land having been determined by the Native Land Court. In particular, Daly comments on the work of purchase officer Wilson, who engaged in prior payments.

(4) *Inalienable lands*

Daly provides examples of the removal of restrictions in Poverty Bay and notes that:

It seems, from the evidence, that many Maori leaders were keen to hold their land under restrictions as a way of preventing the sale of undivided shares by individuals. This still occurred, however, and applications for the removal of restrictions on subdivision were common, and always hotly disputed by non-sellers.

For a further discussion of restrictions on alienation, see volume ii, chapter 8. Daly also notes that:

67. H Nepia et al to Minister of Maori Affairs, 22 October 1950 (copy), ma1 5/3/189, vol 3, 1950–60 (RDB, vol 66, pp 25,478–25,479)

68. R de Z Hall, sec 15; O'Malley, p 150 (cited in Daly, p 106)

69. O'Malley, p 153

70. Daly, pp 108–109

71. O'Malley, p 155

the activities of the New Zealand Native Land Settlement Company and its aftermath must be seen as having had negative repercussions both in the short and long terms for Maori of Poverty Bay, as they resulted in much hardship over a number of decades, and the very serious loss of parts of the tribal estate.⁷²

Carroll's involvement while a Minister of the Crown in the loss of Maori lands closest to Gisborne through the mortgagee sale by the BNZ Estates Company involves a possible conflict of interest.

Land held in trust for Maori, according to figures released in 1908, amounted to 350,000 acres. Some Maori were already landless, and the management of the land remaining to Maori was, according to Daly, a continuing focus of attention and discontent among local Maori.⁷³ Owners of the Mangaheia and Paremata lands, for example, petitioned Parliament in 1909 over the mortgaging of their lands, and they asked for them to be removed from the trust's administration. Petitions were also made to Parliament by Maori owners who were critical of attempts to shut Maori out of farming their own land and of being left with too little to live on and cultivate themselves.⁷⁴ The hardship endured by Maori who had their lands administered under this scheme, or who found their lands implicated in the mortgage to the BNZ through no fault of their own, was particularly harsh for Maori in Poverty Bay who were desperate to hold on to their remaining lands, such as the Maraetaha and Whaitiri blocks. On the other hand, it must be recognised that the East Coast Trust redeemed the remaining land from debt (along with the Mangatu blocks) and returned the land debt-free and in good order to Maori after the war. The trust compensated with money and shares those owners whose lands were sold to reduce the mortgage.

(5) *The Validation Court*

Poverty Bay was one of the districts most affected by the operation of the Validation Court under the legislation of 1892 and 1893. The court was empowered to validate titles to land acquired from Maori that were technically in breach of the requirements of the very confused land law of the previous 25 years but were considered by the court to be acquired under equitable contracts. The technical breaches were in fact commonly neglect by the purchasers to comply with the provisions put in place to protect Maori from fraudulent or inequitable dealings, and the Validation Court in the period 1892 to 1908 frequently overrode Maori objections. It is in fact a very subjective judgement as to whether a breach of the law was merely technical or something more serious. Arguably, Maori should have been given the benefit of any doubt that existed. There is also some doubt as to whether the notification provisions regarding land before the Validation Court reached Maori owners or

72. Daly, p 289

73. Ibid, p 272

74. AJHR, 1906, i-3; AJHR, 1919, p 16 (cited in Daly, p 274)

enabled them to prepare adequately for the hearing. The enactment of validation legislation was a dubious proceeding on the part of the Crown in Parliament.

(6) *East Coast Trust lands*

See section 5.2.2(7) for a discussion on the East Coast Trust lands.

(7) *Public works takings*

Daly notes that:

It is clear . . . that town planning processes have had an adverse impact on Maori land, and there is evidence of a lack of adequate consultation and communication with Maori owners, as well as a lack of respect for their concerns about the possible usage of land taken . . . There is sufficient evidence to indicate that Maori in this area, as in other districts, have not been well-served by the public works legislation or the exercising of taking powers by the government and local bodies and this has been the cause of lasting bitterness amongst some Gisborne Maori.⁷⁵

A particular example of this pressure concerned Awapuni Lagoon, an important resource for Rongowhaka. For a further discussion of public works policy and law, see volume ii, chapter 11.

(8) *Post-1910 alienations*

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

5.4 Additional Reading

The following are recommended for additional reading:

Siân Daly, *Poverty Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997;

Vincent O'Malley, 'Report for the Crown Forestry Rental Trust on the East Coast Confiscations Legislation and its implementation', report commissioned by the Crown Forestry Rental Trust, 1994; and

75. Daly, pp 287–288

5.4

National Overview

Katherine Orr-Nimmo, 'Report for the Crown Forestry Rental Trust on the East Coast Maori Trust', report commissioned by the Crown Forestry Rental Trust, 1996.

Also see the submissions made by Ngati Porou on the Wai 272 record of documents (doc a1).