

CHAPTER 2

ALIENATION OF WELLINGTON–PORIRUA

2.1 THE NEW ZEALAND COMPANY TRANSACTIONS

The New Zealand Company's claim to the Cook Strait region derived from three deeds of sale, the first signed by Te Ati Awa at Te-Whanganui-a-Tara, the second by Ngati Toa at Kapiti, and the third by a combination of Te Ati Awa, Rangitane, and Ngati Apa at Queen Charlotte Sound. In the case of Port Nicholson, the most significant deed was that resulting from the company's initial dealings with Te Puni and Te Wharepouri of Pito-one and Ngauranga Pa, who became the major protagonists of land sale to the company. This deed conveyed to the company all the land from Sinclair Head to Cape Turakirae and inland to the Tararua Range. Included within that area were the islands of the harbour and part of the inland Porirua district.

Contemporary accounts of the transaction between the company and the vendors raise questions about the validity of the purchase. Shortly after the *Tory* had arrived in the Cook Strait region, where the directors had suggested the first settlement be established, Wakefield met Richard Barrett. Barrett persuaded Wakefield to go to Port Nicholson, where his wife's relatives were living, and accompanied the *Tory* as pilot, and interpreter. On arrival, on 20 September 1839, they were greeted by Te Puni and Te Wharepouri, who arranged discussion of the sale at their villages of Pito-one and Ngauranga. Both the deed and the reserve system of 'tenths' were supposedly explained by Barrett. Later inquiry demonstrated, however, that Barrett had difficulty comprehending the contents of the deed, was incapable of performing an adequate translation, and could not have explained the real meaning of the sale. George Clarke junior, sub-protector, who was appointed to safeguard Maori interests during the land claim hearings, later commented that 'in no single instance of the Company's purchases have they been explained fully. Had they been so, I think no purchase would have ever taken place'.¹

1. G Clarke jnr, 27 June 1844, *Letters to his Father, 1840–70*, Hocken Library (cited in J Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes 1839–52*, London, Oxford University Press, 1958, p 26)

The deed was signed on the 27 September, the day after the display and division of payment goods (guns and ammunition, iron pots, soap, axes, fish hooks, clothing, slates and pencils, looking glasses, beads, umbrellas, sealing wax, and jews' harps) into six lots for distribution. About half of the 16 signatories were members of the Pito-one Pa. Several important chiefs, including those of Te Aro, Pipitea, and Kumutoto Pa, took little part in the proceedings. Wakefield invited Reihana Reweti, a Maori missionary, to witness the transaction but he refused to sanction it.² Barrett also expressed doubts about the transaction, telling Wakefield that not all owners had been consulted. The company agent ignored this caution, insisting that Te Aro people were a 'slave' tribe who need not be considered, and that they would be later compensated.³ Despite evidence to the contrary, Wakefield maintained that he had effected the purchase of the whole of the Port Nicholson area and had the consent of all the principal chiefs of Te Ati Awa occupying the harbour area.

Two immediate reasons for the sale were given by the signatories. European arms and settlement would offer some protection against other tribes, especially Ngati Raukawa, with whom trouble was again brewing. When later questioned about the sale which he now admitted he had no right to effect, Te Puni summed up his immediate motivation: 'How could I help it when I saw so muskets and blankets before me?'⁴ Ballara points out that Te Wharepouri and Te Puni reaped great immediate benefit from the sale: 'At one stroke Te Wharepouri acquired 120 muskets and 21 kegs of powder.'⁵ In more general terms, they also wanted the wealth that European presence would bring and which had been previously monopolised by Ngati Toa, who controlled the major whaling station sites.

Underlying these apparently simple reasons were more complex political motivations deriving from the competition for control of land and resources. The act of sale was intended by Te Wharepouri and Te Puni to set the bounds of their mana over the harbour. There were three demarcation considerations here. 'Ngati Kahunungu' still contested the presence of Te Ati Awa. It seems likely that Te Puni and Te Wharepouri were also influenced by the increasingly strained relationship between their kin at Waikanae and Ngati Raukawa (supported by Ngati Toa), and wished to free themselves of Toa dominance in the Cook Strait region. Furthermore, they wanted to strengthen their position within the harbour itself, having recently quarrelled with their neighbours at Lambton Harbour (Te Aro and Pipitea Pa), who outnumbered them.⁶ The Ngati Tawhirakuri chiefs achieved these ends by unilaterally offering the harbour area to Colonel Wakefield as if it belonged incontestably to them.

2. Claim Wai 145 record of documents, doc A11, pp 31–32

3. P Burns, *Fatal Success: A History of the New Zealand Company*, Auckland, Heinemann Reed, 1989, p 116

4. N C Taylor (ed), *The Journal of Ensign Best, 1837–43*, Wellington, Government Printer, 1966, p 51

5. H A Ballara, 'Te Wharepouri', DNZB, Wellington, Allen Unwin and Department of Internal Affairs, 1990, vol 1, p 522

6. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, pp 5–6

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Ballara points out that the right of Te Puni and Te Wharepouri to sell was limited by the legitimate claims of other occupants within the bounds set by the deed – those of Taranaki and of Ngati Tama, who maintained a presence at Kaiwharawhara.⁷ Rivalry continued with the occupants of Te Aro Pa who had sold some of their land to the Wesleyan Mission a few months earlier, thus denying that their rights of occupation derived from Te Ati Awa. The latter retaliated – firstly by the sale to Wakefield without acknowledgment of other proprietary claims. When Wakefield expressed interest in the flat piece of land on which the Wesleyan chapel stood, Te Wharepouri told him that it was already included within the company’s purchase.⁸ Secondly, they divided up the sale goods in a manner which reflected their own supremacy among the Port Nicholson pa. When Te Aro people accepted the smallest portion of goods, Te Puni and Te Wharepouri were satisfied that Ngati Tawhirakuri dominance had been acknowledged.

The fact of sale was also used to delineate borders with Ngati Kahungunu to the east. The boundaries described by Te Wharepouri to Wakefield were confirmed by the agreement reached between the tribes occupying Port Nicholson and the peoples of Wairarapa. During peace negotiations, Peehi Tu-te-pakihi-rangi of Wairarapa characterised the new understanding:

I cannot occupy all the land. Yonder stands the great Tararua Range, let the main range be as a shoulder for us. The gulches that descend on the western side, for you to drink the waters thereof; the gullies that descend on the eastern side, I will drink of their waters. Remain here as neighbours for me henceforward.⁹

Accordingly, the Wairarapa was restored to its tangata whenua and its western boundaries set at the Tararua and Rimutaka Ranges. In exchange, ‘Ngati Kahungunu’ abandoned their claims to the west coast and Port Nicholson.¹⁰

7. H A Ballara, ‘Whanganui-a-Tara: Phases of Maori Occupation of Wellington Harbour c 1800–1840’, in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 33

8. P Burns, pp 116–117

9. D McGill, *Lower Hutt: The First Garden City*, Petone, GP Publications, 1991, p 22

10. Ballara, ‘Te Whanganui-a-Tara’, pp 32–34

2.2 THE KAPITI DEED

Soon after the first deed was signed, the *Tory* sailed to Kapiti in order to broaden the company's title by obtaining the rights of Ngati Toa to land on both sides of the strait. After several meetings extending over six days, a deed was signed by Te Rauparaha, Te Hiko, Te Rangihaeata, and eight other Ngati Toa chiefs. Te Rangihaeata was absent from Kapiti so goods (of a similar nature to those distributed at Whanganui-a-Tara) were set aside for him and on his arrival several days later, he added his mark to those of the others. The Kapiti deed purported to convey a vast territory to the New Zealand Company – all the land from 430 minutes south latitude in the South Island to an imaginary line at approximately 410 minutes south on the east coast – and listed localities within those wide parameters, as dictated by Te Rauparaha. The understanding held by Ngati Toa, and by company agents and employees of events on board the *Tory*, was widely divergent. Colonel Wakefield maintained that Te Rauparaha had intended to sell the sites he listed and that the deed had been fully explained to Ngati Toa. Captain Lewis, who had been resident in the area for some time, had told Ngati Toa that they were:

parting with all their land; that they would never get it back again, and that they would never receive any further payment than the one that they were just going to do. He also explained . . . the nature of the reserves made for them. They both perfectly understood him, and consented to the deed.

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Te Rauparaha, however, denied any intention of alienating the places listed on the deed except for Whakatu (Nelson) and Taitapu (Massacre Bay). This view was tacitly supported by the later testimony of John Brook, who had been on board the *Tory*: only the boundaries of Whakaatu and Taitapu had been specifically pointed out on the map.¹¹ Tonk argues that Te Rauparaha had taken the opportunity to have the extent of his interests recorded in the European deed. The act of Pakeha dealing with them and the goods offered by Wakefield represented a tangible recognition of Ngati Toa claims to dominance in the region. Sale was thus seen as a means of strengthening rather than as weakening their title.¹² In turn, this would seem to indicate that Maori saw a need to augment the traditional bases of their claims to land, by virtue of sale and the written deed.

Wakefield also attempted to deal with Te Ati Awa at Waikanae, but found a battle in progress off the coast. The earlier sale seems to have contributed to a resurgence of hostilities between Te Ati Awa and Ngati Raukawa between whom a demarcation dispute continued. Ngati Raukawa, occupying the exposed shore at Otaki, were eager to control the ground opposite the anchorage at Kapiti in order to benefit from European trade opportunities, and thus were pressing on Te Ati Awa at Waikanae.

It has been suggested, too, that Ngati Raukawa were also angered that Te Ati Awa had benefited from the sale of land which they (Ngati Raukawa) considered them to hold on sufferance.¹³ Burns describes Ngati Toa as ‘caught between their two allies’ and Ballara characterises Te Rauparaha as only reluctantly involved on the side of his Ngati Raukawa relatives. Tonk, on the other hand, argues that Te Rauparaha

11. Ballara, ‘Te Whanganui-a-Tara’, p 97

12. R V Tonk, ‘A Difficult and Complicated Question: The New Zealand Company’s Wellington, Port Nicholson, Claim’, in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 44

demonstrated his reaction to the sale of Te Whanganui-a-Tara by encouraging, or at least by permitting, the Ngati Raukawa attack.¹⁴

13. Ballara, 'Te Whanganui-a-Tara', p 31

14. Burns, p 118; Ballara, 'Te Whanganui-a-Tara', p 31; Tonk, p 44

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Te Ati Awa delegated Wiremu Kingi Te Rangitake and a few of the younger chiefs to accompany Wakefield to Queen Charlotte Sound. Some 30 chiefs signed a third deed for much the same territory as covered by the Kapiti deed.¹⁵ Again, goods were ‘distributed’, or rather, divided in a fight on the deck of the *Tory*. The estimated value of these payments varies widely – from £365 for those paid to Te Puni and Te Wharepouri, to less than £9000, which total included the later payments at Kapiti and Queen Charlotte Sound.¹⁶ In exchange, the company claimed possession of 20 million acres.

2.3 THE CREATION OF THE TENTHS

The New Zealand Company, responding to missionary and Colonial Office criticism, made provisions for Maori in the new economic and social order that would result from systematic colonisation. These were contained in their land purchase arrangements. The company directed Wakefield to promise in every contract that one-tenth of the territory ceded would be set aside as reserves to be held in trust for the benefit of the chief families of the tribe. The reserved areas were to be chosen by ballot and scattered throughout the settlement:

15. Burns, p 118

16. The lower sum is given by J Struthers in *Miramar Peninsula: A Historical and Social Study*, Trentham, Wright and Cramen, 1975, p 34; the higher by R L Jellicoe, in *The New Zealand Company's Native Reserves*, Wellington, Government Printer, 1930, p 18.

the intention of the Company is not to make reserves for the native owners in large blocks, as had been the common practice as to Indian reserves in North America, whereby settlement is impeded, and the savages are encouraged to continue savage, living apart from the civilised community, but in the same way, in the same allotments, and to the same effect, as if the reserved lands had been purchased from the Company on behalf of the natives.

Proximity to English settlers would also ensure that Maori participated in the increase in land value that would result from settlement. That Maori should share in prosperity which had not resulted from any contribution of labour or capital, was regarded as the real payment for their lands. Thus, in accordance with company instruction,¹⁷ the 1839 deed included an explicit commitment to establish reserves in consideration for the extinguishment of title:

William Wakefield, on behalf of the New Zealand Land Company . . . does hereby covenant, promise, and agree to and with the said chiefs, that a portion of land ceded by them, equal to one-tenth part of the whole, will be reserved by the . . . New Zealand Land Company . . . and held in trust for them for the future benefit of the said chiefs, their families, and heirs for ever.¹⁸

While Ngati Toa were not specifically promised ‘tenths’, Wakefield did make a pledge that a portion of the land ceded by them, suitable and sufficient for the residence and proper maintenance of the said chiefs, their tribes and families would be ‘reserved and held in trust’ by the company for their future benefit.¹⁹

The reserve arrangements were endorsed by the British Government in the November 1840 agreement which signalled the willingness of Lord John Russell, as new Secretary of State for the Colonies, to reverse the policy of his predecessors’

17. Instructions to Colonel Wakefield, ‘Appendix to Report from Select Committee on New Zealand’, app 2, BPP, vol 2, p 578

18. TCD, p 95

19. Second deed of purchase, 25 October 1839, ‘Appendix to Report from Select Committee on New Zealand’, app 2, BPP, vol 2, p 644

and recognise the company as an instrument of colonisation. Under article 13 of the agreement, it was:

understood that the company have entered into engagements for the reservation of certain lands for the benefit of the natives, it is agreed that, in respect of all the lands so to be granted to the company as aforesaid, reservations of such lands shall be made for the benefit of the natives by Her Majesty's Government, in fulfilment of and according to the tenor of such stimulations; the Government reserving to themselves, in respect of all other lands, to make such arrangements as to them shall seem just and expedient for the benefits of the natives.²⁰

From this point, it was considered that the 'tenths' vested in the Crown which was to take control of their management at a very early stage in their history.²¹

The company instituted its reserve scheme. In the ballot of 1100 one-acre sections, every eleventh one was selected on the Maori behalf by Captain Mein-Smith, the company surveyor-general. Although this was in apparent fulfilment of company obligations within the deed of sale, Commissioner Spain later found that the reserves were inadequate to Maori needs. Sections were chosen with little consideration for their cultivation and living requirements or for the complex social and economic ties that bound Maori to their land. In Wellington itself, 600 acres were in actual occupation by the Maori but only 100 acres were allocated to them, and these were well scattered about town.²² Of the nine pa in the Port Nicholson district, only three were reserved for Maori. In this sense, the occupants of Pipitea Pa were fortunate; their pa was chosen as a reserve, with other reserves close by on their former property. On the other hand, Gilmore points out that they were awarded only 2.3 percent of the 1500 acres traditionally claimed by them and they had not

20. Russell to Hobson, 10 March 1842, BPP, vol 3, p 87

21. 'Memorandum by Mr A Mackay on Origin of New Zealand Company's "Tenths" Native Reserves', AJHR, 1873, G-2B, pp 10, 17

22. Miller, p 49

even consented to the sale.²³ Petone and Te Aro Pa were also reserved but Tiakiwai was ‘wiped off the map’.²⁴ In the subsequent selection of ‘country sections’, the Maori were allocated approximately 4200 acres in 100-acre lots.²⁵ Many of these were located across country so hilly that they were impossible to cultivate. Others were selected on bare coastal hills with poor soils.²⁶ Pipitea missed out on country sections, as did Tiakiwai. Pito-one retained their gardens as well as their pa, but the lands of Kaiwharawhara, Ngauranga, and Waiwhetu were taken.²⁷

The idea of reservation, as conceived by the company, was also largely unintelligible to Maori, because it entailed movement onto lands traditionally occupied by another whanau. As Ward points out:

The difference between Maori and settler concepts, evident in the pre-1840 transactions, still remained. Notwithstanding the deeds . . . the resident Maori clearly had no intention of handing over both the ownership and control of this vast territory and putting themselves at the disposition of the Company’s officers.²⁸

2.4 MAORI REACTION TO SALE

Opposition to any sale soon surfaced along the shores of Whanganui-a-Tara in a variety of forms. Te Ropiha Moturoa (of Te Matehou) at Pipitea Pa objected that he had a superior claim to the Pipitea and Te Aro lands because his brother-in-law, Patukawenga of Ngati Mutunga, had given them to him six months before Te Wharepouri had even arrived in the harbour. He had refused to participate in the sale

23. N Gilmore, ‘Kei Pipitea Taku Kainga – Ko te Matehou te Ingoa o Taku Iwi: The New Zealand Company “Native Reserve” Scheme and Pipitea, 1839–1880’, MA thesis, La Trobe University, 1986, p 30

24. Burns, p 158

25. Jellicoe, p 30

26. Wakefield to Secretary, 13 May 1846, NZC 3/6 (cited in Miller, p 49).

27. Burns, p 209

28. A Ward, ‘A Report on the Historical Evidence: The Ngai Tahu Claim, Wai 27’ (claim Wai 27 record of documents, doc T1, p 75)

to the New Zealand Company and subsequently sold approximately four acres at Pipitea to Robert Tod in an assertion of his right to do so.²⁹

Reaction intensified when the company settlers moved from the initial flood-prone site near Te Puni's pa in the Lower Hutt to the Lambton Harbour. This occupation was immediately opposed by the inhabitants of Te Aro, Pipitea, Kumutoto, and Tiakiwai Pa, who interfered with the survey effort. They argued that the land had not been sold by them. Nor had it been paid for, the purchase goods being unfairly divided. Wakefield sent 20 blankets in an attempt to settle the claims but, according to Tonk, the recipients considered them to be either a gift, or as a payment to stop them from disrupting the survey.³⁰

The survey continued after a show of force. Roads and sections were staked out through the pa, over cultivations, and through burial grounds.³¹ The struggle between Maori and company settlers, and between the company and Crown, centred on these areas. Te Ati Awa had little interest in the reserves allocated to them in the company lottery and clung doggedly to their established villages and gardens. Thus, they continued to occupy the best lands, title to which colonisers now thought they possessed. A 'kind of slow tug-of-war commenced'.³² Three years into settlement, George Clarke junior, commented:

In the course of my visit to the different cultivations, I found that the white settlers did just what they liked, pulled down fences and drove the cattle on the potatoes. This is the systematic robbery by which the company's settlers deprived the natives of the plantations . . . and it requires my very utmost energies to keep the Europeans in check and the natives from adopting violent measures in self-defence.³³

29. Ballara, 'Te Whanganui-a-Tara', pp 32–34

30. *Ibid*, p 46

31. Select Committee on New Zealand, J W Child, 2 July 1884, BPP, vol 2, p 233

32. Miller, p 49

33. G Clarke jnr, 15 March 1843, *Letters to his Father, 1840–70*, Hocken Library (cited in Miller, p 68)

Ngati Toa also protested the right of Te Puni and Te Wharepouri to sell any land in the region. While they seem to have accepted the presence of Europeans along the harbour shore, Ngati Toa resisted encroachment on the Hutt Valley and the Porirua district. Te Rauparaha and Te Rangihaeata emphatically denied that these areas had been sold either by Te Ati Awa or themselves, but it was becoming difficult for them to restrain the activities of the increasingly numerous English settlers. Although he later admitted that the entire district from Porirua to Wanganui was unpurchased,³⁴ Wakefield was initially insistent that the company had bought the land and authorised a road to be cut through to the proposed Porirua settlement. Again Maori protest centred on the survey, which they disrupted by removing pegs, destroying bridges and surveyors' huts, and felling trees over the road. In the November dispatch of 1841, Hobson reported:

The natives of Kapiti, who claim the land at Parorua, speak out more boldly [than those of Port Nicholson], asserting that they will surrender their lands but with their lives; and they have already made a show of following up this determination, by interrupting the construction of a road through the disputed lands, and obstructing the communication between Wellington and Wanganui, by tapuing a river over which it was necessary to pass.³⁵

Governor Hobson asserted the Crown's right of constructing roads through the colony and informed Te Hiko that while he 'supported the natives in their just rights', he would 'as firmly maintain those of Her Majesty'. The Governor emphasised that road building was a 'measure intended for the benefit alike of the native and as well as the European population'.³⁶ The road and access up the coast remained an issue, Rangihaeata placing a tapu for settlers and their stock over an area intersecting the route to Wanganui.

34. Samuel Revans, 26 May 1841, *Letters to H S Chapman, 1835–42*, ATL (cited Miller, p 28)

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Trouble also broke out in the Hutt Valley. Te Rangihaeata interrupted the efforts of settlers to build four houses upon section 57 near the harbour on the Porirua Road early in 1842. According to Thomas Mason, the Pakeha whose cultivation in the Hutt brought to the surface the potential conflict there:

The settlers offered him [Te Rangihaeata] payment to let them alone, but he refused it, saying that Wakefield had not purchased this land, and that he did not want payment, and that the white settlers must remain at Port Nicholson.³⁷

When the settlers persisted, Rangihaeata ordered his people to pull down the house and remove the timber off the land. Clarke reported that:

everything was done with caution and system, and the whole was given to the owners, except one hatchet, which after a strict search could not be found, and for which, I understood, Rangiaiaata offered immediate payment.³⁸

2.5 THE SPAIN COMMISSION

35. Hobson to Secretary of State, 13 November 1841, BPP, vol 3, p 171

36. *Ibid*

37. T Mason, *Letters 1841–85*, ATL

38. George Clarke jnr, 13 December 1842, 'Appendix to Report from Select Committee on New Zealand', app 4, BPP, vol 2, p 124

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The resolution of conflicting land claims rested with the Spain commission. A more detailed discussion of Spain's investigations and findings may be found in work by R V Tonk, and submissions by Moore, Armstrong, and Stirling.³⁹

One of the first Crown priorities in 1840 was to clarify land title. Normanby's Instructions had directed that a commission be set up to investigate pre-annexation purchases. Gipps and Hobson issued proclamations to this effect in January 1840. The commissioners would report on the lands that British subjects had obtained, the payment made, and the fairness and legality of those transactions. On receiving their reports, the Lieutenant-Governor would decide which claims would be confirmed by issue of a Crown grant.⁴⁰

A separate commission was established to deal with the claim of the New Zealand Company to the Cook Strait region. Spain was appointed in January 1841 and, in common with the other commissioners, was instructed by Russell to be guided in his deliberations by 'the real justice and good conscience of the case without regard to the legal forms and solemnity'. He was directed that the object of his commission was primarily the 'prevention of future wrongs' rather than the 'redress of past injustices'.⁴¹ Spain was also to give effect to the agreement reached in November 1840, under which the Crown undertook to ensure that the company had sufficient land for settlement. A Crown grant was to be issued for four times as many acres as pounds spent by the company, an area calculated as being 111,000 acres in the Port Nicholson area.

39. D A Armstrong and B Stirling, 'A Summary History of the Wellington Tenths 1839-88' (claim Wai 145 record of documents, doc C1)

40. Tonk, p 35

41. Armstrong and Stirling, p 133

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In the opinion of Russell, Hobson, and Spain, such grant was contingent upon proof of fair purchase.⁴² The November 1840 agreement assumed that a valid sale had taken place, but when the commission began hearings in May 1842, it was soon revealed that the company's claim was shaky. The relationship between Crown and company officials deteriorated rapidly. As it became clear that Spain intended a detailed examination of the claim, Wakefield began a campaign of obstruction and delay which eventually undermined Maori confidence in the commission and the Government.⁴³

Spain carried on conscientiously over the next four months. Te Ati Awa as well as Pakeha witnesses were examined. Responsibility for production of witness fell largely on Clarke, who had to combine the duties of sub-protector and assistant to the commission – a task complicated by his less than cordial relations with the commissioner.⁴⁴ Te Ati Awa initially welcomed the opportunity to testify. Extensive testimony was taken. Evidence given in Maori was recorded in that language and also translated into English while disputed sites were sometimes visited by the court.⁴⁵

42. Ibid

43. Ibid, pp 147–148

44. G Clarke, *Notes on Early Life in New Zealand*, Hobart, J Walch and Son, 1903, p 47

45. Tonk, pp 48–49

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Almost all Maori witnesses disputed the company's claim, and by August 1842, it was clear that Spain would recommend a grant for only a portion of the company's claim to Port Nicholson, forcing Wakefield into a more conciliatory position. Referring to a private letter in which Hobson stated that the Government would sanction any equitable and unforced arrangement reached by the company to induce Maori to 'yield up possession of their habitations', Wakefield now offered to compensate those who had missed out on the initial payment, suggesting that the amount be decided by Spain and Halswell, the company's Protector of Aborigines.⁴⁶

Spain was prepared to adopt Wakefield's proposal, and urged Shortland to endorse it.⁴⁷ Spain accepted the evidence of Maori that land could not be alienated without the agreement of all members of the tribe – and that this had not been won – but believed that Maori were willing to carry through the sale. He saw this as giving him an opportunity to fulfil his dual obligations:

an accession to Colonel Wakefield's proposition would have enabled me to settle a most difficult question upon quiet and equitable grounds, having always in view, on the one hand, the carrying out strictly the agreement entered into between the Government at home and the New Zealand Company, and on the other hand, to do this in such a manner as strictly to fulfil every treaty made between the Crown and the aboriginal inhabitants, as well as every assurance of protection made to them by Governor Hobson as the representative of Her Majesty.⁴⁸

Spain feared that the development of the colony would be undermined if the claim was not settled soon:

It appeared to me, also, that any further delay was likely to have the effect of creating a disinclination on the part of the natives to cede to the Europeans any more land in the neighbourhood of Port Nicholson, arising from the knowledge they are daily acquiring in their intercourse with the settlers of the value of the land at that time as selling in the market, as well as of the enormous rents paid for that let; which would

46. Hobson to Wakefield, 5 September 1841, BPP, vol 5, p 105

47. Spain to Shortland, 2 August 1843, 'Appendix to Report from Select Committee on New Zealand', app 4, BPP, vol 2, encl 1, p 174

48. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 295

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naturally lead them to the conclusion, that it would be better for them not to sell but to let their land to the white people, which would have enabled them to live upon the rents without working, of which they are not over fond.⁴⁹

That fear of the consequences of increasing Maori knowledge of land values underlay Spain's reluctance to insist on a complete repurchase. He believed that Maori insistence on current market value for their lands would result in the collapse of the colony. In his opinion, any benefits to Maori from such a return of land would be far outweighed by the loss of the European presence amongst them.⁵⁰

49. Ibid, p 296

50. Ibid

Tonk argues that Spain, faced with established settlement and a hugely complex task of sorting out exactly which pieces of land the signatories of the 1839 deed had the right to sell, moved from the original mandate of deciding whether the purchase was fair and valid to determining what compensation should be paid to those who had not signed the deed or had been left out of the initial distribution of trade goods. The payment of that sum would correct the company's defective title. The Acting Governor, Shortland, endorsed the general proposal, directing that the amount to be paid was to be decided by Clarke and a company nominee. Shortland later recorded that he had explained the nature of the arrangements to the assembled 'chiefs of the district'. He had 'assured them that their interests would be most anxiously protected by the Government, and advised them to place the fullest reliance on the decision of Mr Clarke and Mr Spain.' According to Shortland, the chiefs had expressed themselves 'perfectly satisfied with what was proposed to be done', and had stated that their only 'wish was to be allowed to live peacefully with the Pakeha, and to cultivate the lands to which they were habituated; but that the boundaries of the land of the white man and of the Maori must be clearly defined'.⁵¹

Discussions were held as to the amount of compensation to be paid.⁵² When Maori made what were considered to be excessive demands, Clarke reached a figure on their behalf. He decided that £1050 should be paid to the occupants of Te Aro, Pipitea, and Kumutoto Pa for lands sold by the company to settlers – excluding the company reserves, pa themselves, cultivation, and burial grounds. Clarke considered this sum to be largely secondary; the real payment lay in the reserves and the creation of an endowment. He included the company's reserves because he believed

51. Shortland to Lord Stanley, 17 April 1843, 'Appendix to Report from Select Committee on New Zealand', app 2, BPP,

that this land had never been alienated and must remain in Maori ownership ‘in fulfilment of the company’s engagements with them’.⁵³ Wakefield rejected the demand, and an impasse having been reached, Spain decided to begin his investigation of west coast claims.⁵⁴

2.6 SPAIN’S INVESTIGATION OF THE WEST COAST CLAIMS: MANAWATU

In March 1843, Spain, accompanied by Clarke and Meurant, the commission’s new interpreter, travelled up the west coast to investigate New Zealand Company and private claims in that part of the country. Maori witnesses included members of Ngati Toa, Te Ati Awa based at Waikanae, and Ngati Raukawa. While this widening of the inquiry threw light on the relationships between the migrant tribes and doubt on the ability of any party to alienate large tracts of territory, questions of the rights of earlier occupants were not raised – nor did they come forward to testify.

After evidence was heard from several witnesses at Porirua as to different claims along the coast, the commission travelled to Wanganui, holding preliminary discussions at Waikanae, Otaki, Horowhenua, and Manawatu. Spain reported:

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On my journey from Port Nicholson to Wanganui, the natives of Manawatu, as I passed their river, expressed a very strong desire to meet and confer with me on the subject of the alleged sale of their lands there to Colonel Wakefield. I explained to them, through my interpreter, that I was on my way to Wanganui, to investigate claims there; that Colonel Wakefield had agreed to meet me there, and accompany me back to Port Nicholson, and that we would stop at Manawatu on our return, and examine their case. They appeared, however, so desirous of having a korero with me upon the subject, that I yielded to their wishes, and I now enclose minutes of what occurred at that meeting.⁵⁵

Returning south after the Wanganui sitting, Spain began his official investigation of the company's claim to land between the Rangitikei and Horowhenua Rivers to the Tararua Ranges. This claim derived from a transaction between Wakefield and a section of Ngati Raukawa chiefs in 1841 to 1842, rather than from any of the 1839 deeds. Te Whatanui, after discussions at the head of the Manawatu River and Otaki, had led a deputation of six chiefs to offer their land to the company. Wakefield treated Hobson's statement that the Government would sanction any equitable and unforced arrangement to induce Maori, living within limits that included the Manawatu, to yield up their habitations, as constituting permission to institute a fresh purchase.⁵⁶ Terms were discussed between a large gathering of Ngati Raukawa and company officials at Otaki in December 1841. Ngati Raukawa rejected the payment offered as inadequate, and Wakefield agreed that more goods should be sent from Wellington. Some 300 Ngati Raukawa from both sides of the Manawatu gathered to receive the payment in February 1842.

vol 2, pp 53–54

52. Armstrong and Stirling, pp 133–165

53. Ibid, p 15

54. Tonk, p 53

55. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BPP, vol 5, p 101

56. Ibid

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Goods for absentees were set aside, but subsequently ransacked, and only those reserved for the Otaki people were saved for distribution.⁵⁷

The evidence heard by Spain comprised admissions by Te Whatanui, Ahu Karama, and Taratoa that they had agreed to sell land at the Manawatu – referred to as Raumatanga by a number of witnesses – and denials of any participation in that transaction by others. It was clear that Taikoporua, a chief from the upper reaches, had neither consented to the alienation nor participated in the distribution of goods.⁵⁸

Spain believed that Wakefield had ‘altogether exceeded the permission granted to him by Hobson’, but that the arrangement reached in January 1843 whereby the company could pay compensation, enabled him to consider their Manawatu claim.⁵⁹ But when Wakefield, Spain, and Clarke later travelled up the coast in January 1844 in order to pay over £3000, Ngati Raukawa refused to accept payment. The commissioner blamed this apparent change of heart on Te Rauparaha’s presence.⁶⁰

57. *Ibid*, p 99

58. *Ibid*, p 101

59. *Ibid*

60. *Ibid*, p 102

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In Waikanae, the ability of Ngati Toa chiefs to sell land without the agreement of Te Ati Awa was stoutly denied. The principal chief, Reretawangawanga, stated that the signatories of the Kapiti deed were closely connected to Te Ati Awa and once had held authority over the Waikanae lands but no longer did so. Despite quarrels with Ngati Raukawa, Te Ati Awa had been in undisturbed possession of the area for 17 years.⁶¹ This statement was corroborated by Ketetakari who dated Te Ati Awa's complete independence from Te Rauparaha from the battle of Kuititanga.⁶²

2.7 SPAIN'S DECISION AT PORIRUA

At Porirua, where the commission sat for two weeks, Spain heard further evidence on the New Zealand Company's claim for lands there and at Nelson. It was the Kapiti deed that was largely under examination.⁶³ Spain came to the conclusion that, while Wakefield had intended this deed to be 'general and over-riding', embracing the rights of the principal chiefs, the company's claim to the Porirua district was based almost entirely upon that transaction. This being the case, Spain argued:

that document, which must, therefore, for the purposes of my present inquiry, be regarded merely as a purchase-deed of that district only, and the evidence adduced by

61. Spain commission, Reretawangawanga, 29 April 1843, OLC series 1/907, p 5, NA Wellington

62. Spain commission, Ketetakari, 29 April 1843, OLC series 1/907, pp 48, 50 NA Wellington

63. Spain commission, W Wakefield, 9 June 1842, OLC series 1/907, pp 131–133, NA Wellington

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the Company's agent in support of this claim, as well as that of the native parties to it, proves but little more than that the name of the district was included amongst many others mentioned in the description of the territory.⁶⁴

The testimony revealed serious inadequacies in the arrangements transacted at Kapiti. Te Rauparaha and Te Rangihaeata would admit only to the sale of Taitapu and Whakatu respectively. Their denial of any alienation in the Porirua district was corroborated both by other Ngati Toa witnesses and by their subsequent opposition to the company's claim. Spain thought the translation and explanation given to Ngati Toa chiefs had been deficient and given 'the positive disclaimer of every native witness as to the sale of Porirua', found that 'whatever may have been the . . . presumptions of the Company's agents at the time, no sale of that district was ever contemplated or supposed by the signing chiefs.' He, therefore, disallowed the company's claim:

All the circumstances detailed in the evidence quoted taken into consideration, with the stedfast [sic] opposition by the selling parties to any occupation of the district of Porirua, by the Company's settlers from the earliest attempt to locate them there, have induced me to decide against the Company's claim to that tract of land . . .⁶⁵

As a consequence, the purchase had to be renegotiated. But that transaction, in 1847, was deeply coloured by the intervening conflict between Ngati Toa and the Government in the Hutt Valley, and by the agenda of Governor Grey.

64. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 5 – Porirua', BPP, vol 5, p 95

65. *Ibid*, p 98

2.8 PRIVATE CLAIMS

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Private claims were also under investigation and Spain hoped to complete his investigation into these matters during the trip to Wanganui. Approximately 30 private claims were advertised for hearing by Spain – however, not all were pursued. Most concerned Kapiti and land at Porirua. Cases of interest include the awarding of a life interest only to John Bradshaw, for approximately three acres at Te Karaka Point, Porirua Harbour, on the grounds that although a deed of sale had been signed and goods of £17 received, the signatories had not intended a permanent alienation.⁶⁶ A similar award was made in the case Joseph Toms, a whaler, who claimed 40 acres at Titahi Bay. Ngati Toa admitted the sale of lands at Kapiti Island and Queen Charlotte Sounds to Toms. In the case of Titahi Bay, however, the evidence suggested that Nohorua had given Toms (his son-in-law) a life interest only, and had intended that the land should be inherited by his grandchildren. Spain granted 247 acres to the native reserves trustees which Toms could use during his lifetime, but which he could not sell, and which would go to his children on his death.⁶⁷ At Paremata, Toms was also granted just under five acres, including the area below the high-water mark, since this land had been bought as a whaling station. Goods to the value of £163 had been handed over and the sale was acknowledged by Ngati Toa.⁶⁸

In the case of Mana Island, Spain recommended a grant of 1872 acres should be issued to Henry Moreing, to whom two of the original purchasers (in 1832, for

66. R V Tonk, 'The First New Zealand Land Commissions, 1840–45', MA thesis, University of Canterbury, 1986, p 203

67. Ibid, p 204

68. Ibid

Wellington

£78 in goods) had transferred their interests. The Crown subsequently granted the whole of the island to Moreing on the understanding that if it contained more than the acreage awarded, the original grant would be surrendered and a new grant issued. However, on survey the area awarded was found to contain only 525 acres.⁶⁹

The Polynesian Company claimed to have purchased a large block of land at Porirua by a deed signed in October 1839 by Te Hiko, Rangi Hiroa, Te Rauparaha, and Te Rangihaeata in exchange for goods valued at some £200. A second, slightly larger, payment was made a year later, but the exact location and extent of the purchase remained undefined. Since the transaction and receipt of payments were admitted by Ngati Toa, Spain disregarded the shortcomings of the deed and recommended the award of land scrip to each shareholder.⁷⁰

69. Claim 553, Henry Moreing, Mana Island, MA series 91/24, NA Wellington

70. Tonk, 'Land Commission', pp 207–208

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In contrast, Te Rangihaeata and Te Rauparaha denied the sale of Kapiti, its station and rights to whale in adjacent waters, even though they admitted the receipt of £85 in cash and goods. While Spain accepted that the evidence of Tungia Hurumutu's daughter, Oriwia, supporting the claim of Couper, Holt, and Rhodes, he believed that it would not be possible to enforce the sale. A total of 688 acres on the opposite coast was thus awarded to the Sydney merchants, in addition to the 722 acres allowed in respect of their claim to all the lands between the Waikanae and Otaki Rivers. However, Te Ati Awa resident at Waikanae prevented the Kapiti award from being taken up.⁷¹

Private claims, concerning Port Nicholson lands, may be briefly mentioned here. These include the cases of Tod, Scott, Barker, and of Whitely, on behalf of the Wesleyan Missionary Society.

Despite the warnings of the company's representative that it claimed the whole area, in January 1840, Tod acquired two small pieces of land near Pipitea Pa from the non-signatories of the November 1839 deed. One claim comprised approximately one acre of partially-fenced land with beach frontage, sold by Te Ropiha for £12. Tod had acquired a further 2½ acres on the flat behind Pipitea Pa, the proceeds of the transaction being shared by Ropiha, Mangatuku, and Richard Davis, a Christian Maori who had been cultivating some of the land. Both sales were

71. *Ibid*, p 206

fully acknowledged by Ropiha, over the opposition of the company, and allowed by Spain.⁷²

In 1831, just over one acre of land at Kumutoto had been sold by Pomare, the Ngati Mutunga chief, to flax trader David Scott. A deed had been signed, payment had comprised four muskets and a 100-pound cask of powder, and the land had been fenced and built upon. Scott had removed from the area after the battle of Haowhenua. But when the trader returned in 1840, the sale was acknowledged by Wi Tako, who had settled Kumutoto on the departure of Ngati Mutunga for the Chatham Islands. The Te Ati Awa chief agreed to build a house to replace one that had been burnt down, re-erected the fence, and acted as a caretaker for Scott, for which he received a half-cask of gunpowder, a mare, and a foal. In court, both Wi Tako and Pomare admitted the sale, and again, Spain declared the purchase to be valid.⁷³

Thomas Barker claimed to have purchased two acres of beach front near Pipitea, also from Richard Davis, who had received the land from Ngake, a relative of his wife, and son of Patukawenga. Barker agreed to a payment of £70, paying a £10 deposit to Davis and some goods and 10 blankets in payment to Ngake. Although Ngake, Davis, and the people of Pipitea acknowledged the alienation,

72. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, p 18

73. *Ibid*, p 17

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Spain disallowed the claim because, in his opinion, it savoured of fraud. The deed was prepared with the knowledge that the company had formed a settlement at Port Nicholson. Although dated 12 November 1839, the deed had not been signed until April 1840, nor the full purchase price paid.⁷⁴

74. Tonk, 'Land Commissions', p 167

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The Wesleyan Missionary Society had given £2 worth of goods as a deposit for land at Te Aro by Te Awarahi and Ngatata. The goods were presented to Pomare, who was visiting, before being distributed among themselves. A chapel had been built on the land, but Whitely told Spain that the mission was prepared to withdraw its claim if one acre of land was confirmed to the Wesleyan Missionary Society. FitzRoy endorsed the proposal on Spain's recommendation.⁷⁵ Other sales include 40 to 60 acres to Henry Williams at Tiakiwai Pa on Haukawakawa Flat, in an effort on his part to ensure that Te Matchou retained some land.

In his assessment of the Port Nicholson private claims, Commissioner Spain drew attention to the difference in Maori testimony with regard to the company and non-company purchases:

In the former, with few exceptions, it goes to deny, or to only partially admit the sales, while in the latter it tends generally to admit the sale, and the receipt of consideration, and usually to describe clearly the boundaries of the land sold.⁷⁶

Gilmore makes the point that the sale of small areas such as this, in contrast to the sort of area claimed by the company, did not represent a threat to the Maori

75. *Ibid*, pp 167–168

76. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 305

occupants of the harbour and ‘was done with control and consideration to meet their own [Te Matehou] needs’.⁷⁷

2.9 THE QUESTION OF CULTIVATIONS

On his return to Wellington, on 23 May 1843, Spain reopened his inquiry into Port Nicholson claims. Wakefield continued to stall on the question of compensation, endangering the credibility of the commission and the Government. Events in the Wairau eventually forced him towards compromise – none the less, Wakefield attempted to include pa, cultivations, and urupa within the lands for which compensation would be paid. Spain was not prepared to give way on this point:

I could not, however, agree to their pahs, cultivations and burying-grounds being taken from them without their free consent, because it appeared clear, from the evidence, that they had never alienated them.

This arrangement might be met with the objection that some of their pahs, cultivations and burying grounds had been sold by the Company and that roads and streets had been laid out through and over them, in the plan of the town of Wellington; the answer to which would be, that the present inconvenience of such an arrangement to the Company or to the parties claiming under them, could form no tenable grounds of argument why an act of injustice should be committed against any of Her Majesty’s subjects, and more particularly the aboriginal inhabitants, who, from the darkness that had hitherto reigned among them, must require a greater degree of special care and protection of the Government (especially in a matter involving the retention or non-retention of their homes, gardens and burying grounds of their fathers) than the

77. Claim Wai 145 record of documents, doc A11, p 35

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Europeans, who are so much more capable of protecting their own interests, and who have voluntarily left their native lands to seek a home amongst the New Zealanders.⁷⁸

78. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 296

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Spain closed his court. Anxious to make secure the titles of settlers, and believing that Maori identified the commission and the Crown itself with resolution of the issue, Spain recommended that the Government pay Maori compensation and hold the debt against the company.⁷⁹

FitzRoy, newly appointed as Governor, reopened the negotiations with the company in early 1844. He, Spain, Clarke, Forsaith, and Wakefield met at the residence of Major Richmond, police magistrate and former land commissioner, on 20 January. The Governor reiterated the Crown's position that the payment of such compensation would not extinguish Maori title to pa and cultivations. But now that these were to be defined, such areas were seen exclusively in terms of actual occupation. FitzRoy considered the limits of pa to be 'the ground that is fenced around their native houses, including the ground in cultivation or occupation around the adjoining houses without the fence'. Cultivations were 'grounds in actual cultivation'. Falling within the definition of cultivation, and thus, to remain within Maori ownership, were any areas used for gardening by Maori after 1840.⁸⁰

In February, Clarke resubmitted his assessment of compensation, now at £1500, but Maori had yet to be persuaded to accept this sum. His proposed distribution of that amount was strongly criticised by Spain as including too much for Wi Tako of Kumutoto who had signed the deed, received a portion of the purchase goods, and who was, in the opinion of the commissioner, a man of 'no

79. *Ibid*, p 307

80. Minutes of the Conference held at Major Richmond's on Monday, 29 January 1844, BPP, vol 5, pp 18–19

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particular standing or rank amongst his countrymen'. Spain's opposition was, however, overruled by the Governor.⁸¹

81. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, pp 9–10

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A meeting was held at Spain's court, attended by the Governor, Spain, Richmond, Clarke, Forsaith, Wakefield, and the people of Te Aro, Kumutoto, Tiakiwai, and Pipitea, to present the arrangements that had been decided. FitzRoy assured Maori of the 'fullest justice', stressing the importance of a final resolution of the case.⁸² According to Tonk, the major concern was to induce Te Aro occupants, whose lands were essential to the development of the settlement, to accept Clarke's proposed compensation. There was a general unwillingness to allow Maori the benefit of the post-1840 rise in land value, on the grounds that such an increase resulted from European capital and labour. Maori were reluctant to accept an offer which they considered to be trifling, but finally agreed under a combination of implicit and explicit threats on the part of officials, including Spain, Clarke, and FitzRoy. Clarke told Maori that Te Aro was a conquered land, of 'small consequence to them', and that they had no alternative but to accept compensation because the lands had already been built upon and would not be returned. FitzRoy also pressured Te Aro occupants to accept £300 for a valuable area in the heart of the town by stressing the worthless nature of Maori land.⁸³ On Te Aro acceptance of £300, the smaller pa of Pipitea, Kumutoto, and Tiakiwai also gave in. Pipitea and Kumutoto received £200 each, and Tiakiwai £30.

82. *New Zealand Gazette* and *Wellington Spectator* (cited in Armstrong and Stirling, pp 165–177)

83. P Adams, *Fatal Necessity: British Intervention in New Zealand 1830–47*, Auckland, Auckland University Press, 1977, pp 191–192; N Gilmore, 'Kei Pipitea Taku Kainga – Ko te Matehou te Ingoa o Taku Ini: The New Zealand Company "Native Reserve" Scheme and Pipitea 1839–88', MA thesis, La Trobe University, 1986, p 42; Tonk, 'A Difficult and Complicated Question', pp 56–58; Armstrong and Stirling, pp 165–178

2.10 THE HUTT VALLEY

Clarke had also allocated £300 for Te Rauparaha and Te Rangihaeata for their interests in the Hutt. Spain objected to the inclusion of Ngati Toa in the payments, rejecting their claim as unsupported by occupation, but deferred to Clarke's judgment. Ngati Toa had accepted the presence of Pakeha at the Port Nicholson settlement but had never acknowledged the alienation of the Hutt. Te Rauparaha and others had made statements in the April 1843 hearing that he claimed the valley and had not sold it to the New Zealand Company.⁸⁴ When the Te Aro compensation meetings began, Te Rauparaha warned the Government, 'This was the cause of you and us getting wrong at Wairau, the foolishly paying to the wrong parties'. Spain and Clarke travelled to Porirua to try to reach a settlement, but Te Rauparaha refused payment. Spain suggested to Te Rauparaha that he was renegeing on an understanding reached at Waikanae. Te Rauparaha maintained that he thought that the payment would be for Port Nicholson – all the land south of the Rotokakahi Stream. The refusal of Te Rangihaeata – whose claim was acknowledged to be the stronger in the valley – to consent to the sale, also influenced Te Rauparaha in this decision.⁸⁵

On Spain's refusal to accept the Rotokakahi boundary, Te Rauparaha warned that Maori resident in the valley would refuse to recognise any sale that included

84. Tonk, 'Land Commissions', p 232

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land to the north of the stream. This was not understood by Spain and Clarke, neither of whom seem to have had a clear appreciation of the intricacies of tribal affairs in the valley. Although Spain had earlier recognised that no territory constituted ‘wildlands’ in the eyes of Maori, it was difficult for Europeans to see this heavily forested area as anything other than wasteland. Spain later wrote to Te Rauparaha:

Here is a vast country, whose scanty population is incapable of occupying the whole. In such a case it is the law of the natives of Europe that the inhabitants of such a country have no right to appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their settled habitation in those regions cannot be held a true and legal possession, and the natives of Europe too closely pent up at home, and finding land of which the natives stand in no particular need, and of which they make no actual and constant use, are lawfully entitled to take possession of it and settle it with colonies.⁸⁶

None the less, he argued, the British Government had ‘bargained fairly’, paying Maori ‘largely and liberally’ while setting aside reserves and securing their cultivations.

85. *Ibid*, p 234

86. Spain to Te Rauparaha, ‘Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson’, 31 March 1845, BPP, vol 5, encl 8, p 34

Wellington

In fact, the valley was a resource area for a number of iwi. Te Ati Awa had cultivated lands, extending up the valley for one and a half miles from the beach, but the northern part (from present Park Avenue) had been utilised during the 1830s by Ngati Rangatahi. Little is known about these people or their relationship to other migrating groups. They appear to have come, originally, from Otorohanga, and were related to Ngati Toa through Te Rauparaha's grandmother, Kimihia. They joined in the migrations from the north after the battle of Taraingahere, eventually occupying land north of Porirua Harbour, where they were based by the late 1830s. At some point – either during the initial southward migration, or during a retreat to the north after an attack by Ngati Kahungunu – they developed a relationship with people of the upper Whanganui River. Subsequent events in the Hutt would suggest, too, a close relationship with Ngati Tama. Ngati Rangatahi were granted rights of cultivation by Te Rauparaha for their assistance in the migratory struggle and in exchange for gifts of tribute. They had never lived permanently in the valley but had periodically visited it for birds, timber, and so on. Cultivations were maintained only for the duration of their visits.⁸⁷

Strengthening the misperception of the valley as 'unoccupied' was the fact that it was in a state of two-year abandonment at the time of the original sale, having been placed under tapu by a Ngati Toa chief (possibly Te Rangihaeata) offended at not receiving his share of tribute. An alternative contemporary explanation was that they had been driven out by Ngati Kahungunu. When sufficient recompense had been made by Ngati Rangatahi, they were able to resume their interests in the valley under the leadership of Kaparatehau. During 1841 to 1842, they began to bring the

87. R D Hanson, 'Extracts from a Letter to Captain FitzRoy', p 10 (cited in C Evans, 'Struggle for the Land in the Hutt

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land over which they had formerly exercised seasonal rights, under permanent cultivation, to supply crops for the burgeoning Port Nicholson market. They were joined in this venture by Taringa Kuri and Ngati Tama, under pressure at Kaiwharawhara from cattle trampling crops, and by some Whanganui kin.⁸⁸

Valley', MA thesis, Victoria University, 1965, p 3)

88. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832–52*, Wellington, Government Printer, 1968, p 224

Spain and Clarke thought that Ngati Toa acceptance of compensation would settle the matter because they saw the valley occupants as acting under the orders of Te Rauparaha and Te Rangihaeata in a calculated attempt to impede settlement and increase the compensation due to them. In Spain's eyes, Taringa Kuri was a troublemaker, while he classified Ngati Rangatahi as 'slaves' of Ngati Toa.⁸⁹ Although they would be given one year in which to harvest their crops, neither were included in compensation – because Ngati Rangatahi had been present when the Petone deed was signed and because Ngati Tama had received a portion of the purchase goods.⁹⁰ But, by this stage, the various cultivators of the valley considered themselves to have accumulated rights independent of Ngati Toa. They had exercised cultivation and resource rights in the up-river valley for some 10 years, and since their return had established a permanent pa and were quickly bringing the fertile soils of the valley into production to the extent that within five years, 100 acres were in cash crops.⁹¹ They had not received any share of the 1844 payments to Te Ati Awa and Ngati Toa, and it seems likely that Ngati Rangatahi, in particular, would resist any attempt to remove them from their occupation.

The commission returned to Wellington and continued to settle claims there. A further £30 was offered to both Ngauranga and Petone Pa. Te Puni at first refused to accept these sums. Tonk interprets this refusal as an indication of a continuing lack of Maori differentiation between a payment, compensation, and a sale. To Te Puni's way of thinking, if the original transaction was valid, no further payment was

89. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, p 15

90. P Ehrhardt, *Te Whanganui-a-Tara Customary Tenure, 1750–1850*, Waitangi Tribunal Research series, 1993, no 3, p 34

91. M K Watson and B R Patterson, 'The Growth and Subordination of the Maori Economy in the Wellington Region of New Zealand, 1840–52', *Pacific Viewpoint*, vol 26, no 3, 1985, p 525

necessary; if this was a second sale, he could not accept less than other chiefs without undermining the pre-eminence which he had claimed by his initiative in 1839. This money was placed in a bank for the future benefit of Te Puni's people.⁹² The Waiwhetu people also declined payment, arguing that they were entitled to more since they had missed out in the initial distribution of goods. Spain warned them that the land would be taken in any case and the money spent on their behalf by the Government. Left with no say in the disposal of their land, Waiwhetu accepted, with reluctance, £100 and a promise that reserves would be set aside for them.⁹³

The Hutt question remained unsettled, with Taringa Kuri beginning in March to cut an aukati, running from Rotakakahi Stream. But by April, most of the work of the commission in Port Nicholson was considered to be completed. Kaiwharawhara Pa had accepted £40, Waiariki £20, and Pakuao and Tikimaru £10 each. Oterango and Ohau also had been pressured into accepting £20, having been told that the amount would not be increased and the land would go to the Europeans whether they agreed or not.⁹⁴ No negotiations had been held with Ohariu inhabitants who were at the Rangitikei, deliberately it was suspected, since their chief was Taringa Kuri who was defying the Government in the Hutt Valley. Their consent was not regarded as essential, however, since the Ohariu land was not required for settlement⁹⁵ and the survey of the external boundary was commenced.

92. Tonk, 'A Difficult and Complicated Question', p 56

93. Tonk, 'Land Commissions', p 237; Armstrong and Stirling, p 203

94. Armstrong and Stirling, p 181

95. Tonk, 'A Difficult and Complicated Question', p 57

2.11 THE MANAWATU CLAIM

Towards the end of the month, Spain and Clarke made a second trip up the coast, to finalise compensation arrangements at Manawatu, Wanganui, and New Plymouth. They were accompanied by Wakefield, carrying £3000 in New Zealand Company funds to make immediate payments. But they now found strong opposition to sale along the coast and the money for Manawatu was refused. Spain blamed Te Rauparaha's influence. He was present at Otaki where Spain was told by a chief named Matui that payment would not be accepted by Ngati Raukawa – and spoke angrily against the sale at Ohau.⁹⁶ Taikaporua's opposition was, however, long-standing. Te Whatanui and Te Ahu Karama remained committed to the sale, but Taratoa was no longer willing to finalise the transaction and continued to oppose alienation of the Manawatu over the next 20 years. On refusal of payment by the majority of Ngati Raukawa, and since there was no deed or authority for the post-1840 purchase under which Spain could issue a grant, the company's claim failed except for a 100-acre block, 'Te Taniwa', at Horowhenua which Te Whatanui and Te Huri, acting on behalf of the other owners, transferred by deed to the company on 25 April 1844.⁹⁷

96. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BPP, vol 5, p 102

97. Deed of conveyance from Watanui to New Zealand Company, 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BPP, vol 5, encl 15, pp 108–109

Spain believed that it would not be possible to persuade those, such as Taikaporua, who had not received any of the purchase goods to accept compensation for their claim. But, since a partial sale had been effected, he recommended that the company be given a right of pre-emption to the lands between the Rangitikei and the Horowhenua Rivers.⁹⁸

2.12 THE GRANT AT PORT NICHOLSON

Spain had devoted many weeks to the investigation of the New Zealand Company's claim at Port Nicholson. In that time, he acted conscientiously, and genuinely endeavoured to withstand the pressures of the company and settlers to automatically endorse their claim. He and Clarke provided a forum for Maori complaint and made a genuine attempt to understand principles of Maori ownership. However, Spain did not question that Maori would benefit from the presence of Europeans and, although he acknowledged that the transaction had been neither fully understood nor endorsed, he did not seriously consider disallowing the purchase altogether. Instead, he attempted to find a compromise between Maori rights as owners and the needs of settlement, through the payment of compensation which would validate the transaction.

98. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BBP 5, p 104

Wellington

For their part, by 1845 the various Te Ati Awa and allied communities of the area accepted the presence of settlement, and that this would be to their ultimate benefit – a belief actively encouraged by Crown agents such as FitzRoy and Spain. They, too, were eager for the matter to be settled, but objected to the levels of payment being offered. Their expectations were not met. When some parties – the Te Aro, Waiwhetu, Oterango, and Ohaua groups – continued to refuse the proposed settlement, pressure was applied and their objections overridden. Maori were also promised repeatedly during negotiations, that they were guaranteed the possession of their pa, cultivations and burial sites. Those assurances soon came under threat.

Fitzroy was recalled on 30 April 1845. The following week Spain filed his final report on the company's claim, and in July FitzRoy issued a Crown grant for 71,900 acres at Port Nicholson, including the Hutt lands, on the basis of Spain's recommendations. Company reserves, burial grounds, pa, and cultivations as defined at Major Richmond's in early 1844, were specifically excepted from the grant. It remained unclear, however, exactly what land was to go to the company and what was to be retained by Maori. Some reserves had been let by administrators on long-term leases to Europeans. As migration pressures grew, Maori found the areas for their residence occupied. Reluctant, in any case, to move onto reserved 'tenths', they often continued living and cultivating sections belonging to absent white owners. The Hutt remained in dispute and the survey of boundaries had not been completed since the prerequisite of survey to grant, required under the Lands Claim Ordinances

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1840 and 1841, had been dropped in the interests of speeding up the process.⁹⁹ Nor was the land remaining to Te Ati Awa, although excluded from the company award, Crown granted. These areas, as a consequence, were not safe from encroachment.

This proved the case when the company rejected the grant deriving from Spain's awards because the quantity of land comprising Maori cultivations would exclude one-sixth to one-quarter of the developed part of Wellington. It was also protested that the extent of reserves had been fixed in the belief that 'the whole of the remainder was to be the Company's property'.¹⁰⁰ On these grounds, and over the question of awards to private purchasers (eg, Tod), the company requested that a new grant be executed. Pressured by Buller's attack on behalf of the company in the House of Commons, Lord Stanley offered the Government's assistance in securing their title to the lands comprised in the purchases:

With a view, therefore, to facilitate this object, Lord Stanley would (if the Company were to desire it) despatch forthwith to the colony a properly qualified person, whose duty it should be to give his best assistance to the Company in their selection of land, to aid in surveying the exterior boundaries of such selections, and to judge of the reasonableness of the terms of any purchase which the Company might make from the natives, with reference to the Company's right to reimbursement in land in respect of money's paid for such purchase.¹⁰¹

99. Tonk, 'Land Commissions', pp 78–81

100. Secretary of New Zealand Company to Gladstone, 23 February 1846 (cited in 'Report on Native Reserves in Wellington and Nelson under Control of Native Trustee', AJHR, 1929, G-1, pp 24–25)

101. Hope to Ingestre, 7 August 1845, 'Copy of Letter from Lord Ingestre to Lord Stanley on the 24th day of July and the Reply', BPP, vol 4, p 5

This offer was forwarded to Grey, who had been appointed Lieutenant-Governor in June 1845. In fact, Grey, who had already challenged FitzRoy's awards, unsuccessfully, on grounds of irregularity¹⁰² anticipated Stanley's instructions by annulling FitzRoy's grant. Grey took a similar position to the company's, that the internal boundaries had not been sufficiently defined. The description of cultivation was 'very vague', making it impossible to know what lands should be excluded from the grant.¹⁰³ But Grey argued too, that the company reserves were 'in some respects insufficient for their present wants, and ill-adapted for their existing notions'. He acknowledged that it would be necessary to secure to Maori, 'in addition to any reserves made for them by the New Zealand Company, their cultivations, as well as convenient blocks of land for the purpose of future cultivation in such localities as they may select themselves'.¹⁰⁴

102. Tonk, 'Land Commissions' p 303

103. Grey to McCleverty, 14 September 1846, and encl, BPP, vol 5, p 62

104. Ibid, p 63

2.13 CRISIS IN THE HUTT VALLEY

Colonel McCleverty was sent to assist in the adjustment of the New Zealand Company's claim in December 1845 but, by this stage, the situation had deteriorated badly in the Hutt Valley. The crisis had been developing throughout 1844 and 1845. Up to the end of 1844, officials, particularly Richmond, as Superintendent of the Southern District, had been attempting to resolve the question. But the thrust of negotiations had been directed solely towards persuading the Maori to vacate the valley. Richmond made it clear that while the Government would compensate the occupants for their crops, it would not recognise any claim to the land itself.¹⁰⁵ Te Rauparaha, seeking to cooperate with the Pakeha, had agreed to give up his claim. But he did so without Te Rangihaeata's concurrence, and his attempts to persuade the occupants to abandon the valley were ignored. Te Rangihaeata continued to support Ngati Rangatahi's claim, insisting that they be given the upper portion of the valley before he would accept the alienation of the rest (the larger, coastal portion) to the whites.

By March 1845, it appeared that Te Rangihaeata was willing to regard the matter as solely between Ngati Tama, Ngati Rangatahi, and the Government. He refused, however, to add his weight to efforts to dislodge them. He accepted

105. Moore, p 75

compensation but did not regard this as affecting the claims of Ngati Rangatahi.¹⁰⁶ That view was not shared by Pakeha. Wards suggests that throughout the escalation of conflict, Ngati Toa demonstrated a willingness for accommodation and that the conditions were ideal for arbitration.¹⁰⁷ But the actions of Te Rangihaeata and Te Rauparaha were often misinterpreted, while the question of Kaparatehau's rights and the future of his people were largely ignored. Both settlers and officials became frustrated by what seemed to them to be trickery and extortion. It was widely believed that lack of retaliation for Wairau had made Maori generally, and Ngati Toa in particular, confident that Pakeha were too weak to retaliate. There was mounting pressure for an armed resolution of the Hutt question. Even relatively level-headed men such as Spain and Hadfield believed that a sharp military lesson should be inflicted for moral effect and to convince Ngati Toa that resistance to British law would be futile.¹⁰⁸ But Governor FitzRoy, after his experience in the north, was reluctant to initiate a policy of military pacification and refused 'to enforce a sale of land, vi et armis'.¹⁰⁹ Although military support was promised in the event of attack, no troops would be sent in the meantime.

106. Wards, p 231

107. Grey to McCleverty , 14 September 1846, and encl, BPP, vol 5, p 62

108. Adams, p 227

109. FitzRoy to Spain, 3 June 1844, G 13/1 (cited in Wards, p 228)

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For their part, Te Ati Awa rejected the claims of others in the valley. Tensions continued to build and in April 1845, Te Puni, caught between two conflicting forces asked Richmond for Government protection and offered assistance in any fighting.¹¹⁰ Richmond refused the offer, but had decided that force would be necessary and began the construction of forts in both Wellington and the Hutt. In May 1845, Te Rangihaeata had moved with a 500 to 600 strong party to the Hutt, where they were joined by Te Mamuku, a Ngati Haua Te Rangi chief from the Wanganui River who wished to support the Whanganui Maori in the valley.¹¹¹ In August, Kaparatehau was threatening to cut a boundary line at Boulcott's farm which would 'dispossess' settlers in the upper valley.

110. Richmond to FitzRoy, 4 April 1845. NAM 10/2, pp 66–70 (cited in Wards, p 232)

111. Wards, pp 236–237

2.14 THE POLICY OF GOVERNOR GREY

In February 1846, Grey arrived in Wellington, armed with new instructions from the Crown and backed by troops, whose presence did little to allay the suspicions of Maori already sceptical of arrangements concerning their land. His attempts to negotiate the withdrawal from the valley were undermined by military dispositions and assessments of compensation at a level unlikely to be acceptable to Maori.¹¹² Grey believed that a display of military force would be sufficient to persuade Maori to vacate the valley. Negotiations should continue but resistance would be met by force.¹¹³ The Governor regarded Taringa Kuri as the principal ‘intruding chief’ and insisted that Ngati Tama show proper respect for the Government by leaving the valley, after which he would consider giving compensation for lost crops as a token of good faith, not as a recognition of their legal entitlement. No discussions were held with Kaparatehau. Grey then rejected Protector Kemp’s estimate of £1500 compensation, called for two further estimates – Police Magistrate St Hill suggested £207 10s, and Assistant Surveyor Fitzgerald £420 8s 9d – before finally settling on the figure of £371.¹¹⁴

112. *Ibid*, pp 242–245

113. *Ibid*, p 240

114. *Ibid*, p 242

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Maori had largely vacated the valley by 21 February 1846, but returned to warn off settlers who had immediately attempted to move in. Grey reacted with a demonstration of military power, moving troops up the valley where they occupied land just north of Boulcott's farm. Taringa Kuri kept his agreement with Grey, withdrawing from the valley, in exchange for land at Kaiwharawhara, agricultural tools, and goods worth £70 as compensation for crop loss, but the situation with Ngati Rangatahi remained unresolved. They were now beginning to suffer from the disruption to their cultivation. Kaparatehau stated that his people (numbering between 60 and 70 persons) were hungry and agreed to relinquish his claim if they were adequately compensated. Upon Grey's insistence that Ngati Rangatahi move before being compensated, and after much persuasion on the part of Reverend Taylor, Kaparatehau agreed to leave the valley. Upon their departure troops ransacked and burnt their homes, destroyed the chapel, and violated their urupa. Wards states that it can be presumed that this destruction took place on Grey's orders and that 'this hasty and ill-considered act put Grey irretrievably in the wrong'.¹¹⁵ Kaparatehau retaliated, raiding the property of those who had settled on land claimed by him (on the banks of the Hutt and Waiwhetu). Grey had drawn up a proclamation of martial law, in reaction to the ransacking, for issue on 2 March. He was initially dissuaded from this course by the Crown Prosecutor, who told him that this would be illegal because the Maori involved were entitled to resist in terms of the Crown grant. But when shots were exchanged at the military post at Boulcott's

115. *Ibid*, p 245

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farm on 3 March, Grey was provided with a justification for proclaiming martial law over the region south of Wainui.¹¹⁶

Grey's primary concern was the creation of an area of European dominance between Wellington and Wanganui.¹¹⁷ The Hutt conflict provided an opportunity for opening access to Porirua. Grey's first priority was to establish Paremata and Upper Hutt as frontier posts. Control of the Paremata inlet was the key not only to the defence of Wellington but also to future expansion northwards, because it enabled the domination of communications in the region. In order to supply the garrison, and with an eye to the fertile lands to the north, he gave instructions for the construction of a military road, upgrading the New Zealand Company's work on the track to Porirua. If possible, the road 'was to be carried as far north as Wainui, and within this limit every exertion was to be made to enforce British authority'.¹¹⁸ Despite his long-term efforts to obstruct the passage of the road, Te Rangihaeata refrained from attacking the troops working on it, and kept his promise not to actively oppose the Government. Wards argues that, in contrast, Grey's actions:

ran strictly counter to what the Maoris had been so solemnly promised. The land through which the new road was being driven, and the site of the garrison at Paremata, belonged not to the Crown, or to the Company, but to the Maori tribes.¹¹⁹

116. *Ibid*, p 246

117. Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 7

118. Wards, p 257

119. *Ibid*, pp 258–259

The same lack of adherence to principles of justice was demonstrated in the treatment of Te Rauparaha. According to Ruth Allan, Grey's imprisonment of the chief in July 1846 'on suspicion of complicity' in the fighting 'owed more to expediency than to strict observance of the letter of the law'.¹²⁰

2.15 THE FATE OF NGATI RANGATAHI

120. R M Allan, *Nelson: A History of Early Settlement*, Wellington, A H & A W Reed, 1965, p 306

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Over the course of 1846, the occupants of the valley were driven out. Te Ati Awa assisted the Government troops in the conflict. Wi Kingi, based at Waikanae, helped prevent more Whanganui joining their relatives in the Hutt. Te Puni's people attacked Te Rangihaeata from the Pauatahanui–Hutt trail and gave chase to north of Paekakariki after the final battle at the top of the Horokiwi Valley in August. Te Rangihaeata took refuge at Poroutawhao, while Kaparatehau and his people retreated to the Rangitikei River, where McLean reported them to be living in poverty, and on the sufferance, in the late 1840s. They were still there in 1870 when a reserve, Te Reu Reu, was created by McLean to accommodate Ngati Rangatahi and other groups whose title to the Rangitikei–Manawatu block had been denied by the court. It would appear that some Ngati Rangatahi attempted to return to the Hutt. According to Wards, Kaparatehau died there in 1850, and was buried on the very land from which he had been forced some four years earlier. A subsequent land court judgment denied any Ngati Rangatahi entitlement in the 'tenths' land, but implied that at least some members had participated in the McCleverty awards, then moved back onto Government-owned land in the valley before eventually departing the region for the Rangitikei River and Taumarunui regions. It is possible that some Ngati Rangatahi descendants were later (in the 1890s) included among the owners of Otari 5A on whakapapa presented by Ngati Tama.¹²¹

121. My thanks to Neville Gilmore for this information.

2.16 CHANGING PUBLIC POLICY

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The alacrity and firmness with which Grey could institute his imperial policy reflected the Colonial Office's increasing commitment to colonisation and hardening attitude to the rights of the Maori. The tenor of Grey's own instructions, issued in two separate dispatches from the Colonial Office in June 1845, left him far less restricted than had been his predecessors.¹²² In the general instructions of 13 June, Stanley directed Grey to uphold the Treaty 'honourably and scrupulously'. Adams argues, however, that the Crown was unable to administer the policy to which it was publicly committed. FitzRoy's inability to control the situation in the north and increasingly vociferous demands from New Zealand Company settlers that the British law protect them and punish Maori 'outrages', resulted in the Colonial Office taking a harder line towards Maori. This was most clearly demonstrated in a requirement for their absolute subjection to the law. In 1844, FitzRoy had been told to practise caution and patience, particularly as lack of military backing 'might forbid interference in cases where otherwise it might be advisable'.¹²³ In contrast, Grey 'would of necessity enforce that submission by the use of all the powers, civil and military' that were at his command.¹²⁴ His authority was substantially increased by the Colonial Office's commitment to sending sufficient troops to meet existing problems and a promise that they should be at Grey's disposal until peace was restored.¹²⁵

122. Wards, pp 257–258; Burns, p 286

123. Adams, p 226

124. Wards, p 173

125. *Ibid*

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The separate despatch of 27 June 1845 to Governor Grey indicated that this hardening military stance was accompanied by a declining respect for Maori rights of possession. Earlier instructions had emphasised the importance of Maori retaining sufficient land for their needs and of the Crown acquiring land for Maori endowment purposes. Stanley now suggested that the boundaries to all the lands owned by Maori ‘should be distinctly recognised and set forth under the sanction of the Sovereign authority, with a view of preventing future dissensions between the Native Tribes, or between the Natives and British settlers . . .’¹²⁶ Land which had not been brought within the European title system within a few years would then be at the Crown’s disposal as ‘unoccupied’ territory.

This policy was not put into effect, but its conception was indicative of the declining influence of humanitarianism and a move towards the principles on which the 1844 select committee recommendations rested. In 1846, Earl Grey, who was now Secretary of State for the Colonies, sent new instructions to Governor Grey, in which this more restrictive attitude was more firmly expressed. Earl Grey was of the view that:

From the moment that British dominion was proclaimed in New Zealand, all lands not actually occupied in the sense in which alone occupation can give right of

126. Stanley to Grey, separate instructions, 27 June 1845, G1/3 (cited in Wards, p 172)

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possession, ought to have been considered as the property of the Crown in its capacity of trustee for the whole community . . .¹²⁷

He recognised that a principle of Crown possession of ‘unoccupied’ lands would be difficult to enforce but directed Governor Grey to look upon this precept as the ‘foundation of the policy’ he was to pursue whenever possible.¹²⁸

127. Earl Grey to Governor Grey, 23 December 1846, BPP, vol 5, pp 68–69

128. *Ibid*, p 69

2.17 THE CROWN PURCHASE OF PORIRUA

Governor Grey, who had left Wellington immediately after issuing instructions for the construction of the stockaded road, returned in February 1847 to resolve the conflict between Ngati Toa and New Zealand Company settlers. This took the form of negotiating the purchase of the Porirua district. Not only was it considered desirable to place settlers on the sections which they had bought from the company, but the acquisition of the area was still seen by Grey as being vital to the security of Wellington and the settlement of the Kapiti Coast. In his despatch to Earl Grey, the Governor emphasised the strategic advantages of the purchase, ‘[I]n a military point of view, the possession of a great part of the Porirua district, and its occupation by British subjects, were necessary to secure . . . Wellington and its vicinity from hostile attacks . . .’¹²⁹

129. Governor Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 7

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The land acquired by Grey comprised the company's 270 sections of 100 acres each, in order to meet 'the specific claims of European settlers' and 'a very extensive block of country to meet the probable prospective requirements of the Government and settlers'.¹³⁰ McCleverty, who had been asked to judge the reasonableness of the price, valued the area at £2000. The purchase boundaries were only vaguely described within the deed as 'at the Kenepuru, running to Porirua, Pauatahanui, Horokiri, extending as far as Wainui, then the boundary takes a straight course inland to Pouawa, running quite as far as Pawakataka'.¹³¹ The accompanying map states that the eastern boundary was that determined by Commissioner Spain for the Port Nicholson district. The Crown grant, issued to the company on 27 January 1848, was for 68,896 acres.

The deed by which the disputed Porirua land was conveyed to the Governor was signed by eight Ngati Toa chiefs – Rawiri Kingi Puaha, Te Watarauhi Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Nopera Te Ngiha, Ropata Hurumutu, and Paraone Toangira. Puaha also signed on behalf of Te Waka Te Kotua and Tapui, both of whom were included in the subsequent payment. It may be doubted whether these signatories represented the full and willing consent of Ngati Toa to the alienation of this territory. The deed did not state that these individuals were acting on behalf of the tribe and they apparently neglected to distribute the 1847 payment further.¹³² Furthermore, the consent of neither Te

130. *Ibid*, p 8

131. Turton, *Deeds*, no 22, p 127

132. *Serrantes to Colonial Secretary*, 27 March 1848, *AJHR*, 1861, C-1, p 247

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Rauparaha, still in captivity, nor Te Rangihaeata, who was in hiding, was sought. A punitive attitude was alleged to have characterised Grey's conduct during the transaction. That this was the case was the more likely in that the negotiations for Porirua and Wairau were linked. According to a contemporary newspaper report, 'During the discussions [. . .] on the sale, the natives evinced considerable anxiety for the release of Te Rauparaha, but they were given distinctly to understand that he would not be liberated'.¹³³ George Clarke placed an adverse construction upon this refusal. He described the sale as a 'disreputable bargain':

Thompson, Rauparaha's nephew, remonstrated against the proceedings but by threats to retain Rauparaha withdrew his remonstrance, and when the Governor was told that the bargain was incomplete without the consent of Rangihaeata the Govr. said he was a rebel and would not treat with him.¹³⁴

133. *New Zealand Spectator*, 20 March 1847

134. G Clarke, 3 October 1848 (cited in J Rutherford, *Sir George Grey KCB, 1812–98: A Study in Colonial Government*, London, Cassell, 1961, pp 165–166)

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Clarke's perception may have been coloured by his critical attitude towards Grey. In any event, the imprisonment of Te Rauparaha and the military harassment of Te Rangihaeata meant that Ngati Toa were bereft of their traditional leadership during land negotiations. The past resistance to white occupation of his territory demonstrated by Te Rangihaeata in particular, would strongly suggest that he would have refused to countenance the alienation of Porirua. Further evidence of resistance to and dissatisfaction with the sale is to be found in an immediate attempt 'to repudiate the deed, and re-claim the greater part of the lands . . . including Takapu, Paua-tahanui, and half the Horokiri Valley' as soon as Grey departed for Wanganui. According to an account by Best, a settler who attempted to bring his stock on section 63 at Pauatahanui was ordered off by the commanding officer at the military post and threatened by McCleverty with prosecution under the Native Lands Ordinance. When Grey returned on 13 March, however, he 'at once put the settler on his land, and expressed his opinion of Ngati Toa in vigorous terms'.¹³⁵

The purchase arrangements combined apparently generous treatment with measures designed to keep Ngati Toa in submission to British authority. The settlers considered the purchase sum of £2000 recommended by McCleverty as exorbitant, although this represented a payment of something less than sevenpence per acre. This amount was to be paid in three instalments – the first sum of £1000 was paid on 1 April 1847, to 10 chiefs, eight of whom had signed the deed: Rawiri Kingi Puaha, Te Watarauhi Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Ropata Hurumutu, Nopera Te Ngiha, and Paroone Toangira. Te Waka Te Kotua and

135. H Fildes, 'Scrapbook on Porirua', MS Papers 1081, p 19, ATL

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Tapui, who had been absent at the time of signing, also received payment.¹³⁶ Two further instalments, of £500 each, were paid in 1848 and 1849. The division of the payment into annual instalments was promoted by Grey as both having ‘a powerful influence on the future advancement of the natives in civilisation’, progressively teaching them judicious habits of expenditure, and as giving the Government ‘an almost unlimited influence over a powerful and, hitherto, a very treacherous and dangerous tribe’.¹³⁷

Three large, contiguous blocks, extending from Arataura to Wainui and incorporating 16 of the country sections claimed by the company, were excluded from the sale. The exact acreage of this land is not known because these boundaries were not surveyed, and later records vary in their figures for individual blocks and for the total reserved area.¹³⁸ A tally of the acreages recorded in the Certificates of Title, subsequently issued, indicate that over 10,000 acres had been excepted from the 1847 alienation. Again, the reservation of this extent of territory appears, at first glance, to be a relatively generous measure. Richmond described the acreage as ‘ample’, explaining to Wakefield that this was necessary because the owners ‘were only willing upon these terms to alienate their lands’.¹³⁹ This figure represented 40 acres per head of Ngati Toa population, which Kemp estimated at some 250 in 1850.¹⁴⁰ The reserved area included Taupo Pa, an important focus of Ngati Toa activity, and part of the harbour, but critical positions ‘commanding the road and

136. Serrantes to Colonial Secretary, 27 March 1848, AJHR, 1861, C-1, p 247

137. Governor Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 8

138. The index to Turton’s Deeds states that 7000 acres were reserved.

139. Richmond to Wakefield, 23 March 1847, NZC 3/7, p 96, NA Wellington (cited in J Luiten, ‘Whanganui ki Porirua’, claim Wai 52 record of documents, doc A1, p 9)

140. H T Kemp, Report No 1: Port Nicholson District (including the Town of Wellington), *New Zealand Gazette (Province of New Munster)*, vol 3, no 16, 21 August 1850, p 72

anchorage, and thereby necessitating the presence of troops' were deliberately excluded.¹⁴¹

2.18 THE McCLEVERTY COMMISSION

McCleverty had been directed by Governor Grey to complete the exterior boundary survey of the New Zealand Company's lands at Port Nicholson and to ascertain what lands belonged to Maori under the definition of pa, cultivations, and sacred places. If these areas interfered with settlers' claims, he was to arrange for their purchase or exchange for other lands. Grey advised that 'it would be essential that every exchange of this kind should be one which is rather advantageous to the natives than otherwise'.¹⁴²

McCleverty found that of 639 acres under cultivation, 528 acres were on sections sold to Europeans. Although much blame for the confusion and for the tension between Maori and Pakeha was laid on the lack of boundary definition, the real crux of the issue lay in the fact that the cultivations were on the most desirable land in the area. This was in contrast to the reserves, which were largely unsuited to Maori needs. It was estimated by surveyors that less than half of the 4200 country

141. W Wakefield to Secretary of the New Zealand Company, 23 February 1847, New Zealand Company (NZC) series 3/7, no 23, NA Wellington

142. Grey to McCleverty, 14 September 1846, encl Grey to Gladstone, 14 September 1846, BPP, vol 5, p 63

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acres so designated were of useable land and McCleverty calculated that at least 1200 acres would have to be offered to the Maori to win their agreement to surrender the lands under cultivation. Since the Government did not own sufficient land suitable for this purpose in the Port Nicholson area, he proposed that land be awarded from existing company, Government, and public reserves.¹⁴³

By agreement of the Government, acting on behalf of the Native Trust, a number of sections were taken out of the company ‘tenths’ and awarded to individual hapu.¹⁴⁴ Jellicoe gives the figure of 44 town sections and 2868 country acres and describes the remaining sections as being drawn from the town belt and unsurveyed land. According to Heaphy, lands awarded to Maori were as follows: 2525 acres from the tenths, 12,205 acres from the company’s estate, 3495 acres from ‘disputed land’, and a further 959 acres from ‘doubtful territory’ at Waiariki and Tekamaru. Any discrepancy in these calculations derives from the absence of McCleverty’s schedules, showing the designations of land from which the reserves were drawn. Additionally, Governor Grey purchased another 406 acres at Hutt and Wainuiomata to supplement these areas.¹⁴⁵

143. Armstrong and Stirling, pp 259–263

144. ‘Memorandum by Mr A Mackay on Origin of New Zealand Company’s “Tenths” Native Reserves’, AJHR, 1873, G-2B, p 9

145. Ibid, p 25; C Heaphy, ‘Memo on the Wellington “Tenth”, Being Remarks of Mr A MacKay’s Paper’, 29 August 1873, Justice Department (J) series 1/1903/1024, p 25, NA Wellington (claim Wai 145 record of documents, doc

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On the whole, Maori gave up small but good sites near the harbour and settlement for larger, outlying blocks. The Crown defended the size of the substitutions on these grounds. Lieutenant-Governor Eyre quoted McCleverty to Wakefield, ‘The lands now relinquished by the natives are their very best, selected on account of soil aspect and vicinity to their homes, whilst the lands they receive . . . have not these advantages’.¹⁴⁶ Replacement lands were to be selected by Maori themselves, but whether this was directive was carried out is obscured by the lack of minutes or reports on the negotiations. There are indications, however, that this was not the case. McCleverty and Grey rejected the Maori request that they should be given lands within company subsidiaries larger than the 100 acres that were supposed to comprise the country sections. And although Maori expressed a wish to stay near the town, most of the land allocated to them were in outlying areas.¹⁴⁷ Within Wellington, Maori retained only three pa, 105 acres of the surveyed land that had been sold, and 219 acres of the town belt. Some valuable land was retained at Waiwhetu and the Hutt (some 100 acres of flat land and 200 acres of steep bush area). Relatively large acreages were awarded outside Port Nicholson. Much of this land lay in the Orongorongos and was unsuitable for cultivation, but was intended to serve as a hunting and gathering area.¹⁴⁸

In 1847, the Maori chiefs of the area entered into a third series of deeds, by which they agreed to give up the disputed cultivations ‘in exchange for certain other

146. Eyre to Wakefield, 25 November 1847, New Munster (NM) series 5/1/69, p 118, NA Wellington (claim Wai 145 record of documents, doc A43, p 307)

147. A Ward, et al, ‘CCJWP Historical Report on Wellington Lands’, p 61 (claim Wai 145 record of documents, doc A44)

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land'. The reasons for their acquiescence in McCleverty's exchanges is at issue between the claimants and the Crown. Gilmore argues that Te Ati Awa were willing to accept the exchanges for security of possession, because each hapu was being guaranteed land which traditionally belonged to it, and because the land awarded was of just a sufficient quality and quantity to meet their current needs.¹⁴⁹ It is the position of the Crown, however, that this acquiescence reflected genuine Maori acceptance of the essentially satisfactory nature of those arrangements.

The areas to which Maori claims were admitted and which were subsequently registered at the Wellington survey office were contained in the following deeds:

Deed number	Date	Area (acres roods perches)
Te Aro deed no 4	22 March 1847	526a 1r 31p. Their pa of 2a 1r 11p was also guaranteed
Te Aro deed no 7	7 October 1847	A further 50a

148. Armstrong and Stirling, pp 268–270

149. Claim Wai 145 record of documents, doc A11, p 56

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Waiwhetu deed no 5	30 August 1847	246a
Ngauranga deed no 6	4 October 1847	212a
Petone deed no 8	13 October 1847	6926a 37p
Ohariu and Makara, deed no 9	18 October 1847	2202a 24p
Pipitea deed no 10	1 November 1847	7436a
Kaiwharawhara deed no 11	undated	Three blocks containing 440a and their pa guaranteed at Kaiwharawhara and Tiakiwai

A new Crown grant for 209,372 acres was eventually issued to the company in 1848. The area reserved to Maori under McCleverty's awards totalled 18,926 acres 3 roods 31 perches, although there is some discrepancy in the figures quoted by sources. Mackay in his memorandum on the tenths gives the acreage granted as 209,247. Heaphy's estimate of reserved area was 18,226 acres in the original arbitration, which was later enlarged by Government purchase to 19,591 acres.¹⁵⁰ This arrangement was intended both to satisfy the terms of the November 1840 agreement and to complete the settlement between the company and Te Ati Awa initiated in 1839 and extended by Spain's 1844 recommendations. In Governor Grey's words the awards were devised 'to extinguish absolutely the native title to

150. 'Memorandum by Mr A Mackay on Origin of New Zealand Company's "Tenths" Native Reserves', AJHR, 1873, G-2B, p 9; C Heaphy, 'Memo on the Wellington "Tenth", Being Remarks of Mr A MacKay's Paper', 29 August 1873, Justice Department (J) series 1/1903/1024, p 25, NA Wellington (claim Wai 145 record of documents, doc A39, p 212)

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the tract purchased, but to reserve an adequate portion for the future wants of the natives'.¹⁵¹

151. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6, p 25

2.19 IMPACT ON WELFARE OF MAORI IN WELLINGTON

Initially, Maori took advantage of the opportunities offered by the increasing presence of Europeans and, in turn, made important contributions to the growth and welfare of Wellington. They cleared land, performed domestic duties, acted as guides and most significantly, provided much of the food for the new settlement in the early years. Maori dominated the market for pigs, potatoes, wheat, and seafood. They quickly adopted cash cropping, much of this activity being centred in the disputed Hutt Valley. In 1840, there were few permanent cultivations in the valley; by 1846, 102 acres were being farmed with a market value of £208 to £420. A year later, Maori were cultivating 528 acres of the district, over 80 percent of which was claimed by the New Zealand Company.¹⁵² From the late 1840s, Maori production declined while that of Europeans increased for most crops. This inversion coincided closely with the reallocation of Port Nicholson and Hutt reserves in the McCleverty exchanges. Crop acreage dropped by 74 percent as Maori gave up cultivation lands claimed by settlers.¹⁵³

The other form of sustainable income available to Maori, that from rental of land, was also largely denied to them. Watson and Patterson suggest that leasing lands was an option that fitted well with Maori usage:

152. M K Watson and B R Patterson, 'The Growth and Subordination of the Maori Economy in the Wellington Region of New Zealand, 1840–52', *Pacific Viewpoint*, vol 26, no 3, 1985, p 525

153. *Ibid*, p 534

Wellington

Although rent was a European concept, it was roughly similar to Maori notions of use rights, and was especially attractive as a novel means of validating tribal claims to land. The undisputed ability to collect tribute in the form of rent was seen as superior proof of ownership.¹⁵⁴

154. Ibid, p 525

Alienation of Wellington–Porirua

The town ‘tenths’ were the reserved lands most likely to realise a profit. Wards points out that in the early 1840s, a few Maori in Wellington, for example the Nga Puhi missionary, Rawiri Davis, ‘had begun to discover the monetary worth of “tenths” if they, not the Company could directly control them and recoup the added-value of the land themselves’.¹⁵⁵ Neither the company nor the Government were prepared, however, to management and income pass to Maori hands. The ‘tenths’ were poorly administered during crucial decades of adjustment – while the rent that was obtained, was largely devoted to administration. Areas awarded by McCleverty did come under hapu control, but country lands reserved to Maori were often poorly located, unsuited to pastoral activity, and unable to realise high rents.

Europeans frequently surveyed the district in the 1840s. While their figures should be approached with some caution, the broad outlines of the impact of land sale and white settlement on Maori may be traced. There appears to have been little immediate effect on Te Ati Awa population and residential patterns. They refused to vacate ‘occupied’ areas and it is estimated that in 1846, 600 to 700 Maori were still living within the township area.¹⁵⁶ But the transfer to settler ownership of cultivable land in the town vicinity eventually resulted in the departure of Maori. By 1857, only 63 Maori are recorded as still living in the town.¹⁵⁷

In theory, reserved sections were to be interspersed with European settlement so that Maori would enjoy the benefits of civilised contact and enhanced land value. On the other hand, the reserves as originally conceived were to support only the principal families and their children. There was no real intention that they

155. Ward, ‘The Ngai Tahu Claim’, pp 75–76

156. D Hamer, ‘Wellington on the Urban Frontier’, in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 231

157. Watson and Patterson, p 541

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would provide residential or farming properties for the tribe. Adams comments that, despite promises that Maori would be protected in their occupied and cultivated areas, the general thrust of official effort had been to remove Maori from the settlement.¹⁵⁸ That trend continued after McCleverty's exchanges. Earl Grey, for example, in 1849 instructed Governor Grey, to offer every assistance to efforts to remove Te Aro Pa from the town.¹⁵⁹ This was partly because reserved pa sites were valuable real estate, but Hamer comments that it was also 'assumed by the colonisers of Wellington . . . that, because towns were an advanced, distinctively European type of community, indigenous peoples did not belong to them'.¹⁶⁰ The efforts of officials such as Swainson and Rolleston protected town Maori during the 1860s, but the few who remained were exposed to these pressures in the following decade. The Native Reserves Commissioner's report of 1876 approved the sale of three subdivisions of Pipitea Pa, stating that 'for sanitary and other purposes it was desirable that these pa lands in the town should cease to be Native property'.¹⁶¹

158. Adams, pp 191–192

159. Earl Grey to Grey, 9 November 1849, BPP, vol 6, p 240

160. Hamer, p 229

161. 'Report of Commissioner of Native Reserves', AJHR, 1876, G-3, p 3

Alienation of Wellington–Porirua

The pattern of declining numbers within the town was repeated within the wider Wellington district. When settlers first arrived in Port Nicholson, there were some 800 Maori resident at the various pa and kainga of the harbour. By the end of the 1850s, Maori numbers had fallen by about 22 percent in Wellington district as a whole. In addition to the 60 or so town residents, 396 Maori are recorded as resident in the Lower Hutt and 124 in the Upper Hutt.¹⁶² It is not possible to say with precision what caused this decline, because of the absence of demographic detail, but it appears that a number of kainga were abandoned by their occupants, who migrated northwards. Approximately 200 Ngati Tama had left in the mid-1840s, and a few years later almost 600 Te Ati Awa people returned with Wiremu Kingi to Taranaki, where Grey had purchased reserves for them. Although many of these people were from Waikanae, they also included residents from Ohariu, Ohaua, and Oterongo.¹⁶³ In 1855, the residents of Waiariki, Oterongo, Ohaua, and Te Ika-a-maru ‘disposed of all the land reserved for them by Col McCleverty in 1847, to the Government and also moved northward’.¹⁶⁴

It is not possible to accurately assess the role of increased mortality and declining birth rates in this general population decline, but we do know that a number of Maori communities were devastated by a series of epidemics, of which more were recorded in the 1850s than in any other period. Watson and Patterson point out that the ratio of Maori children to adults was declining – most rapidly where there was a large European presence. The ratio was lowest in Wellington, and higher in areas such as Lower Hutt, with a moderate settler population. The highest

162. Watson and Patterson, p 540

163. Ibid

164. MacKay to Lewis, 14 April 1888, ‘Memorandum re Sitting of Native Land Court in Wellington’, Justice Department (J) series, 1/1903/1024, NA Wellington (claim Wai 145 record of documents, doc A39, pp 111–112)

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ratios occurred in districts like Upper Hutt, where there were relatively few Europeans.¹⁶⁵

165. Watson and Patterson, pp 540–541