

## CHAPTER 2

# **GOLDFIELD NEGOTIATIONS AND AGREEMENTS, 1850 TO 1880**

### **2.1 INTRODUCTION**

Law-makers in New Zealand tended to work from the assumption that the royal prerogative applied, gradually bringing in legislation to ensure Crown access to 'royal metals' as well as other minerals. As statutory powers expanded, the attitude to negotiations on the ground also changed. Whereas early agreements with Maori regarding mining for gold on their lands were in the nature of minor treaties which took some account of the existence of the Treaty of Waitangi, later consents tended to be more formalistically constructed, being conceptualised as a bargain for a right of access or easement. The terms of opening became less advantageous to Maori as their ability to withhold lands and negotiate satisfactory arrangements was undermined by increasingly aggressive Government tactics, backed by arguments of public interest and equal right under the law, and by expanded executive powers under mining legislation.

From the earliest years of the colony, settlers and Government were keen to develop its mineral potential. Various minerals – most particularly, copper and manganese – had been discovered in the islands of the Waitemata gulf in the late 1830s and early 1840s. A practical demonstration of the potential commercial value of subsurface properties was given by early mining ventures in the islands of Kawau, Great Barrier, Waiheke, and Pakihi although these operations, requiring little machinery and of short duration, far from prepared Maori for the later impact of gold discoveries. Nor, of course, did the discovery of copper and manganese raise issues of the Government's right since non-precious minerals were accepted as belonging to the owner of the soil, not to the Crown.

It is clear that Maori expected to be paid for sub-surface resources in the land, and in the early years of the colony, could demand further payment when Pakeha started to mine on land they had purchased. Edward Ashworth recorded an incident at a ship building station at the mouth of the 'Wangari River', where the schooner on which he was travelling, made anchor in order to pick up a cargo of manganese for Sydney. Work on loading was soon interrupted:

The owner had slept on shore and was already at work . . . when some distant canoes and an old whaleboat drew near. They landed near us and the chief . . . seized the hammers and sleeping furniture of the Europeans flung them into the boat untied the painter and moored the boat further from the shore. The dispute that followed this

act was held in English which language the chief understood ‘Why do you stop my work, I have bought this land and paid for it.’ ‘You buy de land you no buy de stones, de stones good to paint Maories faces when go to war.’ ‘If you come and take things on my land it is robbing me.’<sup>1</sup>

According to Ashworth, the Maori party then began to make camp, and to paint their faces with manganese stain. They refused an offer that they might take as much dye as they pleased, and to the indignation of the Europeans, insisted on a written promise of a cask of tobacco.

The transfer of subsurface resources was explicitly mentioned in some deeds signed by the Hauraki people holding rights in lands known to be rich in minerals. Translations expressed the concept of minerals by the word for ‘stones’. In 1845, Ngati Maru, for example, signed a deed conveying minerals as well as land on Waiheke to John Brigham: ‘E tino whakaae ana ano hoki matou kia tuku atu, kia hokoa atu ki a Hoani Pirikama. Ki ona uri i muri iho i a ia, me ona e pai ai, nga rakau katoa, nga wai, nga ana, nga kohatu o rongā, o raro raro ia nei i taua whenua’, translated as ‘We also fully consent to make over, and sell to John Briggam his heirs after him, and those he shall appoint, all woods, caves, stones, or metals, above, or below the surface of the said land’.<sup>2</sup> There could be little doubt that Maori quickly appreciated the opportunity for trade and profit. In negotiations to finalise the sale of Pakihi, which had been found to contain ‘ores and ochres’, Maori repudiated earlier payments as inadequate and saw the island as providing leverage in the settlement of other outstanding transactions now that its value in European eyes was appreciated. Mclean reported:

When the Natives connected with the said Island were collected, I informed them that His Excellency was about sanctioning the sale of that Island to Mr Tayler who would on completion of a further payment commence mining operations thereon, at the same time giving them to understand that as they had previously complained of you of not having received an equivalent payment for the Island that an additional payment would be now made. The Natives replied that the original payment received from Captain Herd was a double barreled gun for which they would willingly pay the Government two ship loads of manganese.<sup>3</sup>

## **2.2 THE COROMANDEL AGREEMENT, 1852**

Interest in mineral development ran high amongst the Auckland settler community where there were high expectations of gold discovery which, it was hoped, would prove a counter-attraction to California and New South Wales. The search for gold resulting in the first discovery on land still held under native title, in the Coromandel, in 1852, was thus actively promoted by community leaders. A gold discovery committee had been formed, offering a reward of £500 for the discovery

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1. Edward Ashworth, ‘Journals’, entry for 28 January 1844, MS 0103–0106, ATL  
2. See OLC 1/1216–1218, repro 1673  
3. McLean to Chief Protector, 1 July 1844, OLC 1/1216–1218, repro 1673

of payable quantities of gold. The Ring brothers, who had mining experience and who were well-known to local Maori, claimed the reward within the week.<sup>4</sup>

At this stage, no laws had been formulated with regard to the discovery of gold in the colony whether on native, Crown or Crown-granted land. The New Ulster Government had given some thought, however, to what its policy should be if gold should be discovered on land held by Maori. Wynyard recognised that Maori would have to be negotiated with, and their interests given some form of recognition:

In the event of the discovery leading to an available field, I instantly saw it is with the Natives of the Province (60,000 in number) the greatest prudence and circumspection will be required. As regards the white population (12,000 by last census) my course, I conceive as Lieutenant Governor is simple enough, but with Natives it will be necessary to make them thoroughly understand any proceedings and convince them I have on the part of the Government, their interests, their rights, and their welfare at heart, in all I may arrange.<sup>5</sup>

He took prompt action, assembling the Executive Council for their advice on how to best proceed. In the meantime, Nugent, the Native Secretary for New Ulster, was instructed to convince Maori of 'the necessity of relying on the Government for good order and tranquillity' and in order 'to reap the advantages they would otherwise fail to obtain from the thousands that would soon resort to New Zealand from all parts of the world'.<sup>6</sup> Accompanied by a special gold sub-committee composed of provincial council members, Nugent set sail for the Coromandel.<sup>7</sup> On arrival, the committee members went to the Kapanga site where they found favourable indications of a payable field.<sup>8</sup> Nugent, having identified Paora Te Putu as the principal right-holder in the area, proceeded to his settlement where he delivered Wynyard's address:

The white people will perhaps go down to search – but do not be alarmed, there is no harm in their searching – but they will not be allowed to carry much away with them until Regulations have been made by the Government.

As soon as it is known that gold has in truth been found on your land, I will come down, and we will hold a committee as to the best means of making the discovery available.

If no regulations are made, and the Natives are left to themselves, there will be nothing but confusion but if the Natives and the Government act together, all will be well.<sup>9</sup>

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4. The Ring brothers had first arrived in the Coromandel in the 1820s. They had conducted a milling operation there, with the consent of Horeta Te Taniwha, rangatira of Ngati Whanaunga. In 1848 they had left for the California goldfields.
  5. Wynyard to Grey, 25 October 1852, 'Inward Correspondence from Lieutenant Governor to Governor', dispatch 121, G 8/8
  6. Wynyard to Grey, 25 October 1852, 'Inward Correspondence from Lieutenant-Governor to Governor', dispatch 121, G 8/8; Wynyard to Nugent, 18 October 1852, encl A, 'Inward Correspondence from Lieutenant Governor to Governor', dispatch 121, G 8/8
  7. W C Daldy, James Mackay, John Williamson, John McFarlane, and Patrick Dignan comprised the sub-committee.
  8. Forsaith to Cockcraft, 23 October 1852, dispatch 121, encl F, G 8/8

In reply, Paora, called for consultation with Taraia, Katikati and other Hauraki chiefs. Wynyard's address was sent to them and a meeting called at Kikowhakarere, to discuss the matter.<sup>10</sup>

The minutes of the Executive Council indicate ambivalent, and ultimately, equivocal thinking with regard to the ownership of gold. It was agreed that the 'great object for the Government would be to endeavour to make the discovery available to both races' without destroying Maori confidence in the good faith of the Government or, on the other hand, completely abandoning the royal prerogative to minerals.<sup>11</sup> While the Executive Council saw the ownership of gold within the common law tradition, it acknowledged that any attempt to assert the Crown's prerogative over minerals would be resisted by Maori as in contravention of the guarantees of the Treaty of Waitangi:

Although the Crown is entitled to all gold wherever found in its natural state the Council is unanimously of the opinion that it would be inexpedient to attempt fully to enforce Her Majesty's Prerogative Rights in the case of gold found on Native land because it would be impossible to satisfy the owners of the particular land in question – or the Natives of New Zealand generally, that such a proceeding on the part of the Government is consistent with the terms of the Treaty of Waitangi which guarantees to them the undisturbed possession of their lands, estates &c . . .<sup>12</sup>

The political reality was that 'no proceeding could be taken by the Government which the Natives might deem to be an infringement of the Treaty' without arousing suspicion and anger amongst all Maori. The Executive Council was not willing, however, that Maori right-holders at Coromandel should manage the field themselves since this would mean the virtual abandonment of the Crown's prerogative, endanger the ability of Europeans to gain access to minerals, and result in the 'loss of a fair and certain means of providing for the increased expense which would be entailed upon the Colony in consequence of the discovery'.<sup>13</sup> It was resolved, therefore, that an arrangement should be made whereby the Government would manage the goldfield and Maori receive 'a fair proportion of the proceeds of the license fee to be imposed'. The figure suggested was one-third of a licensing fee of 30 shillings per month.

The Executive Council recommended a series of measures to establish the Government's jurisdiction. The first step was to determine the 'owners of the soil' according to Native law and usage and to enter their names on a register as either the owners of the land in question, or as trustees for the tribe. If they entered into an agreement to entrust the management of the goldfield to the Government, the Crown would 'acknowledge' them as such and would undertake 'to maintain their right as against hostile claimants and to put the law in force to prevent unauthorised persons' from working their lands.<sup>14</sup> The council contemplated a system of

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9. Nugent to Colonial Secretary, 23 October 1852, dispatch 121, encl E, G 8/8; Wynyard to Chiefs, 18 October 1852, dispatch 121, encl B, G 8/8

10. Nugent to Colonial Secretary, 23 October 1852, dispatch 121, encl E, G 8/8

11. 'Extract of Minutes of Executive Council', 19 October 1852, dispatch 121, encl D, G 8/8

12. *Ibid*

13. *Ibid*

administration which moved authority from Maori into Government hands, arguing that ‘with a view to regularity and the preservation of order’, all persons, whether Maori or European, should be required to hold a license issued by an officer appointed by the Government’.<sup>15</sup> A limited role was contemplated for Maori, in the regulation of the field. Registered owners would act as constables, helping to maintain order, preventing trespass and escorting prospecting parties.

Wynyard’s decision ‘only to permit gold digging to be carried on with the consent of the Native owners of the soil’, was approved by Governor Grey who recognised that Maori were ‘to desire some advantage from acquiescing in the search for gold’ and that any attempt to do otherwise would endanger the peace. On the other hand, he rejected the council’s proposal that Maori should receive a set portion of revenues generated by the field, arguing that Maori were incapable of handling the potentially large sums of money, liable to be ‘foolishly squandered’ or to provoke the envy of both Europeans and other Maori.<sup>16</sup> Grey’s preference was to pay Maori ‘owners of the soil’ a fixed sum for the opening, and to devote the one-third of revenues to an endowment for the construction of hospitals and schools, and for general purposes for the benefit of all.<sup>17</sup>

In the meantime, Wynyard had set sail for the Coromandel to seek permission from resident Maori for the further exploration of their lands. It was agreed that prospecting could take place along the ravines, but that if gold was found in any quantity, Maori would look to the Government for a more definite arrangement, protecting their property and rights.<sup>18</sup> During early November, a meeting was sought by both sides. The Government wished to ensure Maori cooperation in ‘establish[ing] some regulations for the good government of the gold diggings’.<sup>19</sup> Maori were divided in their stance on the question of allowing their lands to be mined, but were anxious, at the least, for mutually agreed arrangements to be established before the district was explored further.<sup>20</sup> A proclamation was gazetted on 10 November, prohibiting mining until agreement with Maori could be finalised and a system of regulation set in place. All gold procured without a licence would be seized and persons found possessing it, would be prosecuted. However, until such time as the licensing system was introduced, permission to explore for gold might be sought from the Colonial Secretary’s Office.<sup>21</sup>

An important meeting, extending over several days, took place between Coromandel Maori and Crown officials at Patapata, in late November. Present were Wynyard, Bishop Selwyn, Chief Justice William Martin, and on the Maori side – Ngati Whanaunga, Ngati Paoa, Patukirikiri, Te Matewaru of Ngati Tamatera who had rights at Tokatea, and Te Moananui, and Taraia representing those sections of

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14. Ibid

15. Ibid

16. Grey to Wynyard, 12 November 1852, dispatch 90

17. Ibid

18. Wynyard dispatch re discovery of gold, *New Ulster Gazette*, 30 October 1852

19. C W Ligar (Surveyor-General) to Lieutenant-Governor, 6 November 1852, *New Ulster Gazette*, 10 December 1852, p 182

20. Ligar to Colonial Secretary, 6 November 1852, G 8/8; ‘Lanfear to Heaphy’, 3 November 1852, dispatch 125, encl D, G 8/8; Wynyard to Grey, 13 November 1852, dispatch 127, G 8/8

21. *New Ulster Gazette*, 10 November 1852, p 163

Ngati Maru and Ngati Tamatera who held interests at Moehau and the western coast from Tikapa Moana to Kauaeranga. In his opening address, Wynyard emphasised the Crown's obligation to safeguard Maori in the security of their person and property:

I come to offer the protection of the Government to you the same as I would if the gold had been found on the land of the Europeans, to protect you from all and every annoyance, you might otherwise be exposed to from the strangers that may come here . . . and to preserve good right to your land and property, as subjects of the Queen.<sup>22</sup>

Maori discussion demonstrated a willingness to cooperate with the Government and to benefit from the discovery of gold within their territory, but they also acknowledged the threat that was posed to their ability to maintain charge over their lives and land. They wanted a limited opening only, and expected the Government to provide proper protection of lands they wished to be excluded from exploration. Complaining that prospectors had already transgressed the preliminary agreement, Hohepa Paraone of Ngati Whanaunga, advocated a gradual approach to the question:

We shall only give up Waiau to be worked. We shall look to the good of that and then give up other places. The Europeans went to Manaia and broke this rule which we have agreed upon. I told them to go back . . . This is the thing that we are averse to, the going of the Europeans without authority rather let them come and tell the owners of the land . . .<sup>23</sup>

He then defined both the extent of his agreement and his expectations of good Government:

Let not the European take the gold and me too . . . if we knew how to work the gold, we should reserve it for ourselves. The Europeans understand the working of it. Let them work it, what we promise is that if the agreement of the Government is just, we will accede to it. If the arrangement is not just we will not grant it . . .<sup>24</sup>

Pita Tarurua of Patukirikiri consented that the gold should be given to the Governor but on the condition that the land was to be held 'for ourselves and our children'. Tauroa Te Tawaroa affirmed this stance, 'All I am agreeable to, is that the gold should be worked. The land will not be given up to you. The gold only will be given up. You have already heard that you are to have the gold – but the land is for myself.'<sup>25</sup>

On 27 November 1852, an agreement was signed between Wynyard, and Ngati Whanaunga, Ngati Paoa and Patukirikiri. Although sketchy in details of administration, this compact attempted to provide for the needs of both races, allowing for the development of the resource in a manner which gave at least some

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22. Wynyard's address, encl in Wynyard to Grey, 25 November 1852, dispatch 128, G 8/8

23. 'Speeches Of Native Chiefs At A Meeting At Patupatu [sic] In Coromandel Relative To An Agreement For Working Gold On Their Lands Taken Literally 19, 20, 22 November 1852', dispatch 128, encl C, G8/8

24. Ibid

25. Ibid

recognition to Maori rights. It was first agreed that a uniform system for the regulation of all prospecting activities should apply from Moehau (Cape Colville) to Kauaeranga River (near present-day Thames). Only those portions belonging to the three signatory tribes, Ngati Whanaunga, Ngati Paoa and Patukirikiri, were to be opened to mining – an area calculated by Wynyard to cover only 17 square miles. Clause 8 emphasised that this was a leasing arrangement only, stating, ‘The property of the land to remain with the Native owners; and their villages and cultivations to be protected as much as possible’.

It was recognised that Maori had the right to work their own lands without payment although they had to register themselves to obtain a licence under sanction from the Government. A small role in the administration of the field was contemplated for Maori who would ‘undertake to assist the Government as much as possible’, by reporting all persons who were found digging without licence.<sup>26</sup> They also exerted a potential check on the system, attaching their signatures to the returns of licenced diggers, by which payments would be calculated.<sup>27</sup> Maori were directed ‘to register themselves, and point out their boundaries to the Government . . . the money paid to each body of owners so registered to bear the same proportion to the whole sum that their land does to the whole block’. Wynyard, influenced by Grey’s directive, was now unwilling that they should receive moneys on an ‘uncontrolled basis’ as this would ‘lead to idleness tending to vice and disease’ and reported that he had decided against the council’s recommendation of paying out a third of the licensing revenues since this sum would fluctuate and could not be spent judiciously by Maori.<sup>28</sup> Thus, in consideration for opening their lands, Maori right-holders would receive a fixed sum worked out at a ‘rate of £1 per square mile if under 500 diggers – if above that number and under one thousand, £1 10s per mile etc at an increased rate of 10 shillings per square mile’.<sup>29</sup> Wynyard acknowledged, however, that Maori would find such a payment ‘insignificant’ and too small a sum in relationship to the license fee revenues to be acceptable. He offered, therefore, a ‘further guarantee’ of a 2 shillings tax on every licence issued, ‘for the purpose of paying . . . and for rewarding the Native owners for their faith and confidence in the Government, as well as recompensing them for any damage, annoyance, or inconvenience they may experience from Europeans’. The provision was represented as a ‘just and correct measure’ that would place the Government . . . in a ‘parental position’, and induce others to also open their lands.<sup>30</sup>

Provisional regulations, modelled on mining ordinances in Victoria, were also issued by Wynyard on 27 November 1852. These permitted working of alluvial gold only. The importance of abiding by the regulations, and of respecting the bounds imposed by the agreement was stressed, since infractions would jeopardise future negotiations with those Marutuahu tribes who had withheld their lands. Mining licenses would cost £1 10s, had to be renewed on monthly application to the Gold Fields Commissioner, and would be effective from 1 December.<sup>31</sup> The

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26. ‘Agreement with Maori’, 20 November 1852, *New Ulster Gazette*, 26 November 1852, pp 166–167

27. See IA 1853/704, 1560, and 1774

28. Wynyard to Grey, 25 November 1852, dispatch 128, G8/8

29. *Ibid*

30. ‘Minute from Wynyard for the Executive Council’, 24 November 1852, dispatch 128, encl D, G 8/8

payment of the license fee was waived, however, until January 1853. In February, in response to pressure from the Auckland Reward Committee and the Coromandel mining population, he abolished it altogether, reporting to Grey that the Government could not ‘permanently enforce’ the fee ‘either advantageously for the Public good or in fairness to the diggers’.<sup>32</sup> Under the new regulations, fees were demanded only when a prospector sought to establish a claim.<sup>33</sup>

Government policy was developed with an eye to Te Mātewāru and the wider tribal grouping of Ngāti Tamatera, who declined to open their territory to mining. Paora Te Putu, the principal right-holder at Tokatea, regarded Grey with suspicion because of his earlier military response to Māori rejection of Government at Wellington and Whanganui. Nor was he satisfied with the terms of payment proposed by Wynyard, arguing that the entire licence fee should be handed over to Māori who would reimburse the Government for administrative expenses. ‘Paul’ was, however, prepared to tolerate the opening of a limited area by the other tribes and promised to review his position in light of the working of that arrangement.<sup>34</sup> The notorious Hauraki chief, Taraia, also decided to pursue a strategy of ‘wait and see’ with regard to the prospecting of his lands.<sup>35</sup> Those who refused to open their land expected the Crown to protect them in the undisturbed possession of their territory, and clause 9 of the Patapata agreement guaranteed that, ‘If any of the tribes of the peninsula decline this proposal, their land shall not be intruded upon till they consent.’<sup>36</sup> The Government did not, however, actually see this guarantee as safeguarding Māori from pressure to open their territory to mining, and acquiesced in secret prospecting on Te Mātewāru lands.

A number of finds outside the ‘Government district’, indicated that rich gold deposits existed on the eastern slopes of the Coromandel on territory in which Paora Te Putu held interests. Paora had agreed to a small extension of the field, in December, but this had involved only lands admitted to belong to Patukirikiri.<sup>37</sup> In an effort to win further cooperation, the Government moved from its original stance of not paying for the early diggings, and adopted Gold Commissioner Heaphy’s proposal that 2 shillings be paid to Te Mātewāru in compensation for each of the 51 diggers, who had worked their lands without permission, before the Patapata conference.<sup>38</sup> This sum was paid out, in March 1853, along with the first moneys to the signatory tribes, that amount being calculated on a monthly return of diggers, duly endorsed by the chiefs, and at the rate of £1 per annum per square mile on the 17 square miles that had been ceded.<sup>39</sup>

Heaphy reported that the successful termination of the first quarter payment, coupled with compensation to Te Mātewāru for the October and November digging

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31. Wynyard to Grey, 26 November 1852, dispatch 129, G 8/8

32. Wynyard to Grey, 4 February 1853, dispatch 148, G 8/9

33. *New Ulster Gazette*, 1 February 1853. See J R Haglund, ‘History of the Coromandel Goldfield, 1853–68’, MA thesis, University of Auckland, 1949, pp 10–11.

34. ‘Speeches of Native Chiefs at . . . Patupatu’, dispatch 128, encl C, G 8/8

35. Angela Ballara, *DBNZ*, vol 1, p 428

36. ‘Agreement with Māori’, 20 November 1852, *New Ulster Gazette*, 26 November 1852, p 167

37. Heaphy report, 14 December 1852, encl in dispatch 142, G 8/8

38. See Heaphy to Colonial Secretary, 19 March 1853, IA 1 1853/700

39. Wynyard memo, 29 March 1853, IA 1 1853/704

‘inclined the natives generally to re-open the discussion for the extension of the district’.<sup>40</sup> It is clear, however, that most of Ngati Tamatera were unimpressed by the Patapata arrangements. In discussions held later in the week, Paora proposed a system of payment which was more directly related to the anticipated value of the gold than one calculated primarily on acreage and population numbers. He argued that 4 shillings be paid for every digger working on the field, each month, and that the Government, in the event of a large amount of gold being found, should make additional payments, proportionate to the quantity obtained. According to Heaphy, this proposition had been supported by Taraia and the southern portions of Ngati Tamatera, when ‘Hoani Ngamu, a chief of considerable importance’ objected, demanding the payment of 30 shillings for every digger, thereby bringing negotiations to an end.<sup>41</sup>

Government efforts to extend the goldfield onto Tamatera lands were also rebuffed because of the behaviour of diggers who resented having to abide by limits dictated by Maori. The Government had promised to maintain control on the field but made limited response to trespass onto closed lands, partly because of the rudimentary state of its machinery of order, and partly because its underlying role was to open the area to European miners. Reconciling its obligations to Maori with efforts to satisfy miner demands was likely to prove difficult. Heaphy, as Gold Commissioner, reported that Maori resident in the area were complaining of miner conduct. Pita complained that he had been abused by a digger for threatening to stop up a path leading through plantations where his peach trees were suffering damage and fruit was being stolen. He demanded that the digger should be ‘punished by the English law, in preference to the tribe following the native custom’. Heaphy reported that he had arrested the miner – a step he had considered to be necessary, since other tribes in the area who had not yet made any mining concessions were watching with interest to see how Maori who had opened up their land were treated. Heaphy was subsequently prosecuted for false imprisonment, and on legal advice, made an out-of-court settlement. Although the Government compensated him because he had taken on his new duties as Gold Commissioner without an increase in salary, it warned him against repeating the action.<sup>42</sup>

Interest in the Coromandel field petered out by mid-1854, Maori registered owners receiving several more small payments in the interim, reflecting the limited numbers working the field. In June 1853, a total of £9 5s was paid out to Maori; in September, £16; £4 5s in March and June of 1854.<sup>43</sup> Little definite is known about the initial Coromandel yield. Estimates vary widely. Heaphy noted the difficulties in forming an exact picture since ‘very little credence [could] be placed on the reports of the diggers, so much do they vary in respect to whether they [were] told to a private or an official person, nor [was] it possible to obtain a fair estimate by seeing the men washing’.<sup>44</sup> He estimated, however, that 350 ounces of alluvial gold, with a value of between £1200 and £1500, was extracted by virtue of the

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40. Gold Commissioner report, 26 April 1853, IA 1 1853/1108

41. *Ibid*

42. Gold Commissioner report, 16 April 1853, IA 1 1853/1106

43. See IA 1 1853/1560 and 2196; IA 1 1854/1089 and 2000

44. Wynyard to Grey, 13 December 1852, dispatch 133, encl D, G 8/8

agreement. The *Thames Miners' Guide* set the figure at £11,000. Maori received some £50 for the opening of their Coromandel lands in the same period.<sup>45</sup>

### 2.3 MAORI AND GOLDMINING AT 1860

Many Maori responded with enthusiasm to the discovery that gold was valued by Pakeha. Grey was reluctant, ultimately, to accord Maori anything but a subsidiary role in the goldfield, but anticipated that the unearthing of gold at Coromandel would spark local Maori interest. He informed the Colonial Office:

It appears from the character of the Maories to be tolerably certain that if they once see the method in which gold diggings are worked and the character of the rocks which it is to be found associated with, they will then themselves soon examine considerable districts of country . . .<sup>46</sup>

Although European interest in the Coromandel field died down, Maori continued to prospect in the peninsula, and when gold was later discovered on Crown land at Nelson, Maori comprised an estimated third of the population employed at the alluvial workings.<sup>47</sup> Maori interest in diggings did not, however, translate into simple acquiescence in opening their land to mining exploration and development. In the 1850s, such agreement remained confined to only a small area at the Coromandel, and to tribes already well-disposed to Europeans. Ngati Tamatera and Ngati Maru, important right-holders in the Thames and its upper valley which were suspected to contain major gold deposits, remained opposed. Their objections centred, not on goldmining per se, but on allowing control of that activity into the hands of Europeans, and on the probability that such a concession would result in the entire loss of their lands.

A meeting of Ngati Maru and other Hauraki chiefs was held at Kauaeranga (Thames) in late 1857 when gold was found there, by Joseph Cook. The discussions were recorded and then sent to McLean, outlining their objections to Europeans being allowed access for mining. Some expressed fear of the social disruption that would result from the presence of a digger population but the major concern was the effect on their capacity to hold onto their territory. Riwai Te Kiore summed up the fears of most speakers, 'Friends, we may bid farewell to the land, inasmuch as gold has been discovered, the Europeans' great treasure'.<sup>48</sup> Only Eruera Te Ngahue was ready to give up supervision of the goldfield lands to the Crown, confident that the 'Government will not mismanage them, because it was they who gave us just laws. The Governor will not break his own laws'.<sup>49</sup>

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45. *The Thames Miner's Guide*, Auckland, 1868 (reprinted Christchurch, 1975), p 61

46. Grey to Pakington, 9 November 1852, 'Dispatches from Governor Grey', no 1, BPP Australia, 1852-53, vol 16, p 166

47. See discussion, p 20.

48. Chiefs of Hauraki to McLean, 27 November 1857, 'Papers relative to the Probability of Finding Gold at the Waikato and at the Thames', AJHR, 1863, D-8, p 3

49. Ibid

While the overwhelming majority of speakers wished to keep Europeans out, they were less united on the question of mining itself. Te Kapihaua Tuahurau argued that Maori had brought trouble on themselves by engaging in mining activity, and should have no more to do with the matter. Te Kapihaua's views were predicated on Maori ownership of gold, but he saw danger in their attempts to utilise a resource over which Europeans held technological hegemony:

Hearken, O Ngatimaru! You say do not allow the Pakeha to come and dig gold. Yes, that is right, but the Pakehas would not have come had you not dug the gold for yourselves. How are you to dig, and the Europeans and ourselves stay away? . . . better let all the gold you have obtained be brought, and cast in the waters, here . . . Then your words to keep away the Pakeha would be right; as it is, you drive off the Europeans and persist in digging yourselves. Who are you digging it for? . . . The greenstone is the only treasure of the Maoris; gold is the Pakeha's treasure. The only plan to keep away the Europeans is for the Maoris to cease digging. If the Maoris dig it, they do not know how to make it into money; and then not being able to make it into money themselves, they will say, – I will sell my gold to the Pakehas. Then the Europeans see it, they will ask – Where did this gold come from? . . . Then the Pakehas will flock thither . . .<sup>50</sup>

Others believed that Maori should exploit subsurface resources for themselves. Aperehama Te Reiroa summed up this position:

Friends, think of the land that descended to us from our ancestors. They died and left us their words, which were these – 'Farewell; hold fast to the land, however small it may be'. And now as gold has been discovered in our land, let us firmly retain it, as we have power over our own lands, lest the management of them be taken by the Europeans. Who made them chiefs over us? No we will ourselves be chiefs.<sup>51</sup>

In Hauraki, this intention was to become increasingly politicised, those wishing to retain control over the development of their lands, identifying with, and calling on the assistance of the King movement.

## **2.4 THE GOLD FIELDS ACT 1858**

The first major gold rushes in New Zealand took place at Otago and Canterbury on land which had already been purchased by the Government. Legislators drawing up the first statute for the management of goldfields in 1858, thus, did not take any direct cognisance of the question of goldmining on land still under native title. The Gold Fields Act 1858 stated, however, that it was 'lawful for the Governor from time to time by Proclamation to constitute and appoint any portion of the Colony, to be a "Gold Field" under the provisions of this Act, and the limits of such Gold Field from time to time to alter as occasion may require'. The intention of the statute was pragmatic rather than to assert the prerogative right. Indeed, legislators

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50. Ibid

51. Ibid

apparently saw the measure as potentially infringing upon the rights of the person of the Crown, it being stated that nothing in the Act should be ‘deemed to abridge or control the Perogative . . . of Her Majesty in respect of the Gold Mines and Gold-Fields of the Colony’. Although the Governor’s power would seem to encompass land under customary title, policy continued to demand negotiation with Maori right-holders before their lands were brought within the compass of goldfield legislation. In the following decade, further legislative definition also was considered necessary to deal with the transfer of control and management of such lands from Maori hands into those Government.

The Governor was empowered to proclaim goldfields under the 1858 Act so that a structure of management could be imposed on both auriferous lands and the body of men working them. A rudimentary system of regulation was established which was to remain at the core of goldfield operations but be greatly expanded over the next 50 years. Under the Gold Fields Act 1858, only duly authorised persons would be permitted to mine for gold within the bounds of the proclaimed field. That authorisation took the form of a ‘miner’s right’ issued annually, on payment of £1. Mining within a field without proper authority, and on lands belonging to private individuals without their permission were liable to a maximum fine of £5 for a first offence, and of £5 to £10 for a second. The Governor in Council could also issue, on payment of £5, annual licences for a maximum of 20 perches of land, ‘authorising the Holder to occupy Waste Lands of the Crown for the purpose of carrying on business upon any Gold Fields’, or leases for mining purposes with attendant water rights and easements, for a maximum of 15 years on payment of ‘rent or royalty for the same respectively’ The amount of that rent would be fixed by the Government. Section 39 provided for any future need to change the regulation of fields proclaimed under the Act:

In all cases where no provision, or no sufficient provision, is made by this Act, it shall be lawful for the Governor in Council, from time to time, for the purpose of facilitating or more effectually carrying into execution any of the objects thereof, to make and prescribe all such rules and regulations touching any of the matters intended to be hereby provided for . . .

This right had serious implications for Maori who allowed the Government to take over control over their lands for goldmining purposes because it meant that new rules effecting their rights could be introduced without any negotiation on the Government’s part. Further sections set up a warden’s court for the administration of justice on the field; to decide on breaches of mining legislation, complaints respecting boundaries and encroachments on claims, and questions pertaining to partnerships. Again, the creation of the semi-judicial officer of the warden, although the standard practice in goldfield administration, had important implications for Maori. Increasingly, the warden was to take on a dual function, interpreting and applying the mining legislation affecting Maori land, and acting as trustee for any revenues received by them, from the goldfield. The Gold Fields Act 1862, which repealed the 1858 statute, still made no provision for the inclusion of

customary land within a proclaimed goldfield, and was significant largely because it empowered the Governor to delegate powers to the Provincial Superintendents.

## **2.5 THE OPENING OF MAORI LAND TO GOLDMINING IN THE EARLY 1860s**

The 1858 Act was still in operation when gold was found on Maori land in Nelson, in early 1862. Taitapu, the area in question, was a block of 88,000 acres which had been excluded from the larger scale cession of rights to the South Island by Ngati Rarua, Ngati Tama, and Te Ati Awa, in 1855. The Golden Bay region was known to be rich in minerals and its purchase was considered to be of great advantage to the colony. The mineral wealth of the area was, however, a fact which the Government had been reluctant to convey to Maori. Major Richmond, the Superintendent of Nelson, carried out an inspection of coal and other mineral resources in the area north of Aorere at Golden Bay in 1851. The mineral wealth of the area (which became known as Pakawau block) convinced Richmond that he should purchase it immediately before Maori became aware of its value. He entered into negotiations with local Te Atiawa, rejecting their demand for £1000 on the grounds that the soil was poor and the land of limited use, and offered only £500 for the whole district, with the stipulation that the money was to settle the claims of all those persons connected with the district. Yet, as Phillipson points out, Richmond was eager to complete the purchase as soon as possible and had informed the Colonial Secretary:

With the prospect of such abundance of good coal and other valuable minerals in the district, I was the more anxious to acquire it for the Government at once, as the longer the purchase was delayed (it appears to me) the more difficult it would be of accomplishment, for I found the cupidity of the Natives had already been aroused by the reported value of minerals on their land, and if they were advised that it would be more to their interest to retain the ownership, the present opportunity might be lost of acquiring it.<sup>52</sup>

James Mackay, who was to be instrumental in many of the goldmining arrangements reached between the Crown and Maori, also recorded that:

These mineral lands had been completely sealed to the colonists prior to the purchase, as any attempt to ascertain their worth would, in all probability, have induced the natives to attach a value to the lands which would have precluded their sale.<sup>53</sup>

Later discussion will show that this sort of effort to obscure the real value of auriferous and mineral-rich lands characterised much of Government dealing with Maori right-holders. Similar actions on the part of Crown agents have been

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52. Richmond to Colonial Secretary, 21 May 1852, in Mackay, *Compendium of Official Documents Relative to Native Affairs in the South Island*, vol 1, Wellington, 1873, p 320 (cited in G Phillipson, p 107)

53. Mackay, *Compendium*, vol 2, p 6

condemned by the Waitangi Tribunal in the Ngai Tahu claim: ‘In offering to pay no more than a nominal price for land which had the potential for a very early substantial rise in value, the tribunal concluded that the Crown failed to act with the degree of good faith required of one Treaty partner to the other’.<sup>54</sup>

Taitapu was reserved from the extinguishment of Maori interests by the Waipounamu purchase, in order to provide an area ‘together with what they elsewhere possess, of sufficient extent for their present and future requirements’ for pastoral requirements. The wish of Maori to keep Taitapu reflected its important mahinga kai and other resources, especially pingao, kiekie, and flax. The reserved area was considered to be large, but was acceptable to officials such as McLean, because of its poor soil quality and its remoteness from European settlement.<sup>55</sup>

While the Government had pursued the Waipounamu Purchase, suspecting that the area was rich in minerals, the presence of gold in payable quantities at Golden Bay, was not confirmed until the discovery of the Aorere field in 1856. Interest was immediate amongst both races. Phillipson points out that labour rather than expensive technology and equipment was required for the exploitation of alluvial deposits, encouraging direct and immediate Maori engagement.

Salmon notes that whole Maori hapu worked claims, enabling them to undertake larger projects than were usually attempted by Europeans – for example, building earth dams to divert the river courses. In the rush to Parapara, Maori dominated the field for a time. Their numbers on the field gave them considerable strength on the Collingwood workings. At Anatoki River, there were many Maori amongst those first on the field. They then occupied claims temporarily abandoned by Pakeha, refusing to let them return from the Takaka camp, where they had been driven by ‘lack of food, incessant rain and the hostility of the Maoris’. Unoccupied claims they kept for their ‘brothers in Manawatu’. Eventually, however, the balance shifted. A few months later, 250 Pakeha miners had established themselves at Anatoki, outnumbering Maori by two to one.<sup>56</sup> By this stage, in 1857, some 1300 Europeans as opposed to 600 Maori were reported to be prospecting the valleys of the Collingwood, Parapara, and Aorere Rivers.<sup>57</sup>

Maori eventually discovered gold on their own land at Ngatuihi, in January 1862, immediately seeking the assistance of four Pakeha whom they persuaded to accompany them on a prospecting expedition. According to Mackay, the reports of the find sparked immediate excitement amongst miners at the declining Collingwood field, many expressing ‘their intention to proceed to Taitapu for the purpose of mining for gold on the Native lands . . . a “rush there.”’<sup>58</sup> Maori objected to the working of their land unless their prior agreement was gained, that assent being grounded in the demand that they receive the same sorts of revenues that went to the Crown on the Nelson field. Mackay as Assistant Native Secretary,

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54. *Ngai Tahu Report*, 1991, vol 1, p 125 (cited in G Phillipson, p 107)

55. Phillipson, *The Northern South Island* (pt 1), Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1995, p 200

56. J H M Salmon, *A History of Gold Mining in New Zealand*, Wellington, 1963, pp 36–37

57. Phillipson, p 201

58. Mackay to Native Secretary, 12 February 1862, in Mackay, *Compendium*, vol 1, p 321

intervened to ensure that order, and the Crown's right to regulate all transactions with regard to gold and Maori land, were maintained:

Seeing the probability of a serious misunderstanding arising if Europeans were permitted to occupy the native lands previous to some definite and binding arrangement being entered into with the owners thereof, I immediately issued notices cautioning Europeans from mining for gold within the district of Taitapu, and informing them that by occupying lands over which the Native title had not been extinguished they would render themselves liable for a penalty of any sum not exceeding £100 or less than £5.<sup>59</sup>

He then proceeded to Taitapu where he met with Riwai Turangapeke, Pirimona Matenga Te Aupouri and several other members of Ngati Rarua who expressed willingness that the block be opened to mining and presented him with a deed of agreement proposing that every person – European or Maori – should pay a licence fee of £1 per annum for working on their land. Mackay reported that he had found the proposal objectionable in some of its clauses, but faced with the immediate prospect of the land being rushed, and in order to prevent 'bad feeling and disputes between the two races, and for the preservation of order', had acceded to their demands and entered into formal agreement with them.<sup>60</sup>

This model reflected Maori expectations, based on their experience of the Collingwood fields which were alluvial in character, and already in decline. Phillipson points out that, 'This was very significant in terms of Maori expectations with regard to their own role in the process, their ability to control the use to which their land was put, and the length of time for which their land might be subject to mining operations'.<sup>61</sup> They anticipated little impact on the land, and short-term European intrusion, to which a system providing for annual renewal was well adapted. The prospect was one of almost immediate return to the conditions prior to the discovery of gold – the use of the land for traditional resources and pastoral purposes for their continuing sustenance. Ngati Rarua were, however, to be disappointed in this expectation, losing immediate control of the block, and of the complete freehold, over the next 20 years.

Under the deed of cession, signed by the two Ngati Rarua chiefs and Mackay, on 10 February 1862, permission was given for any person to live on the land, mine for gold, or cut timber for goldmining provided that they held a licence issued annually by a Government officer. Maori promised to protect miners, and to assist in the maintenance of the law. In return, the Government undertook to maintain law and order, and to collect and pay over to the two chiefs, £1 for every licence issued, for division amongst themselves, their relatives and any other owners of the block. This apparently straightforward relationship was, however, belied by the implications of the final clause which stated:

We also consent that the Governor, or those whom he shall appoint in that behalf, shall have power to make other rules or regulations for the 'Taitapu Gold Fields', if

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59. *Ibid*, p 322

60. *Ibid*

61. Phillipson, ch 10, p 3

he or they shall at any future time deem it necessary to bring into operation any such new rules or regulations.<sup>62</sup>

The agreement of other groups with possible interests at Taitapu – Ngati Tama and Te Atiawa – was not sought. Mackay informed the Government that the Ngati Tama claim was ‘supposed to be given up’ in exchange for Ngati Rarua having relinquished their interests at Wakapuaka, and that the other ‘owners’, a few members of Te Atiawa, were not resident in the area.<sup>63</sup> The Government ignored the potential for problems and quickly ratified Mackay’s actions, recording that, ‘It is with great satisfaction that the Government have learnt the willingness of the Natives to permit the peaceable pursuit of goldmining on their own land, and the promptitude with which you have met and provided for what might have been a great difficulty.’<sup>64</sup>

The South Island model of an annual payment for every person working on the field was, then, applied to the Hauraki area, where gold had been found again in late 1861. The system was acceptable to Maori because it implied that the land would return to them but less well-suited to the longer-term requirements of quartz mining. It will be seen in later discussion that the Government soon introduced longer term leases to give greater security to mining interest although Maori consent had been given initially in terms of an annual payment for persons working the field. Furthermore, the terms of agreements negotiated in the 1860s provided only for Maori to receive the annual fee paid by miners for their right to work a claim. The introduction of other mining entitlements in the form of leases, licensed holdings, and special claims, and the generation of fees for other uses of the field, for example residence, batter, and machine sites, was to create considerable confusion about what was due to Maori right-holders in the land.

The gold discoveries in Nelson, in 1857, and more especially, those in Otago in 1861, rekindled public and Auckland Provincial Government interest in the Hauraki area.<sup>65</sup> The Government promoted the development of the Coromandel field as an economic panacea for the province in a vision that assumed the extension of mining to areas where Maori had previously refused their consent. The Superintendent of Auckland, pointing to the dangers of population loss to the province, advocated greater Government intervention – the purchase of land from those Maori willing to sell and the negotiation of prospecting arrangements elsewhere. The Colonial Secretary assured the Superintendent, Williamson, that the subject was under consideration.<sup>66</sup> In the meantime, public pressure grew for greater Government intervention.<sup>67</sup> At a large public meeting, chaired by Heaphy, it was resolved that the Coromandel field should be opened immediately, and that the Government should extinguish native title to auriferous areas in the province. These resolutions were conveyed by deputation to Governor Grey.<sup>68</sup> The

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62. ‘Deed of Agreement’, 10 February 1862, in Mackay, *Compendium*, vol 1, pp 322–333

63. Mackay to Native Secretary, 12 February 1862, in Mackay, *Compendium*, vol 1, pp 321–322

64. Acting Native Secretary to Mackay, 5 March 1862, in Mackay, *Compendium*, vol 1, p 323

65. See Haglund, pp 21–23

66. Williamson to Colonial Secretary, 20 September 1861; Colonial Secretary to Williamson, 30 September 1861 (cited in *New Zealander*, 2 October 1861)

67. See Haglund, pp 24–26

Government responded on 14 October 1861. Preece was instructed to proceed with the purchase of lands in the Coromandel. McLean was to define inter-tribal boundaries clearly and ascertain the willingness of Maori to come to an arrangement whereby their land could be opened to mining without previous sale. Having determined the territorial boundaries of the various hapu inhabiting the area, McLean was then to draw a boundary across the peninsula, between Coromandel and Mercury Bay, to the north of which he was to gain immediate access for prospectors.<sup>69</sup>

The preferred option, always, was to acquire the freehold of auriferous lands, but the Government ‘attach[ed] such importance to a present arrangement being made for the exploration of the Gold Field believed to exist’ that McLean was to make this the ‘first object of his attention’ should he ‘find the Natives still resolved to keep their land’. Maori were to be given assurances that the arrangement contemplated by the Government would not involve the alienation of territory or the sanction of mining activity beyond that required for prospecting:

The Natives should be distinctly assured that such an arrangement would be independent of any question as to the sale of the land itself . . .

You will carefully explain to them that . . . the Government has no power to issue Licenses under the Gold Fields Act within Native Land, and that they need therefore be under no apprehension of any infraction of their rights.<sup>70</sup>

The Government also accepted that Maori should receive some compensation for their agreement to open up the Coromandel area to exploration and development. Fox instructed McLean to come to some fair arrangement with Maori, holding out an apparent prospect that they might be paid in proportion to the value of the gold taken.

Despite these pragmatic concessions on the part of the settler Government, policy was founded on a number of assumptions which undermined Maori control of their subsurface resources. They were seen as having little choice, ultimately, but to agree to full-scale mining, and were threatened with the consequences of disorder if they did not let the Government control the situation:

At the same time it will be your duty earnestly to advise them to consent placing the district under the supervision of Government, even if they should not be willing to sell any of the land. You should point out, that in the event of prospecting been [sic] really successful, and a large number of persons being consequently attracted to the district, it would be indispensable that police and other regulations should be established for the maintenance of order, and for the prevention of any collision between the races; that their own interests would therefore be best served agreeing on their part to any measures which should be found necessary for these objects being taken by the government; and that as a considerable expense might ultimately be found necessary, some source of revenue must accrue out of which the same could be defrayed.<sup>71</sup>

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68. *Daily Southern Cross*, 1 October 1861; *New Zealander*, 2, 5 October 1861

69. Fox to Mclean, 21 November 1861, *New Zealand Gazette*, 22 November 1861, p 300

70. *Ibid*

Crown royalties on gold were gathered in the form of a duty of 2s 6d per ounce levied on the exportation of gold. Fox indicated that Maori expected to receive those moneys but argued that the application of that revenue was limited by law, and that, it was ‘not possible therefore to make any appropriation of it towards such an arrangement as [was] contemplated with the Natives’.<sup>72</sup> Later administrations were to point to that early refusal to concede a right of Maori to revenues in direct relation to the value of their subsurface resources as proving that the Crown had also never conceded any native right to the gold itself.

Successive administrations also tended to assume that they could change arrangements once Maori consent to mining had been gained. This supposition underlay Fox’s instructions to McLean:

It appears to the Government that *for the present at least*, an equitable basis for that arrangement would be, that the Natives should receive out of other funds, for the permission of prospecting, a sum which should bear a proportion to the total amount of gold revenue collected in the district during a given period. You are authorised therefore to treat with them either on that basis, or (if you find that impracticable) then on the basis of a fixed annual payment, or as a last resort, of a sum for the present year so as to allow exploration to proceed without further delay. [Emphasis added.]<sup>73</sup>

McLean made an interim arrangement only. On 2 November 1861, a deed was signed by McLean and 39 signatories from Ngati Paoa, Ngati Whanaunga, and Ngati Patukirkiri who agreed to the immediate opening of lands from Waiiau to Moehau (Cape Colville) to prospecting. The terms for the regular working of that area were left, however, to be worked out with the Government ‘if gold should really be found in considerable quantities’. The signatories affirmed their continuing ownership of the land. As in the 1852 Patapata agreement, it was emphasised ‘that the title of the land remains to us; and will not be at all affected by this arrangement’.<sup>74</sup> While wishing to open their territory to development, Maori were clearly concerned to retain a measure of control of that process. McLean reported that they were willing to afford prospectors ‘every facility’ for exploration ‘if only, in the first instance, they gave notice to the Native proprietors of their intention to do so’.<sup>75</sup> That right was acknowledged within the terms of the agreement, it being stated that Europeans would be conducted by each tribe to its ‘own piece of land’, but in the event of a large influx of diggers, the Government agreed to ‘adopt measures to preserve order among the Europeans and Maories’.<sup>76</sup>

McLean emphasised the importance of respecting Government obligations of protection if the territory was to be successfully and peacefully opened to further development:

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71. Ibid, p 301

72. Ibid

73. Ibid

74. ‘2 November Agreement’, *New Zealand Gazette*, 22 November 1861, p 302

75. McLean to Minister for Native Affairs, 7 November 1861, *New Zealand Gazette*, 22 November 1861, p 301

76. ‘2 November Agreement’, *New Zealand Gazette*, 22 November 1861, p 302

*Goldfield Negotiations and Agreements, 1850 to 1880*

From the disposition evinced by the Natives, I am satisfied that as a body, they will not throw any serious obstacles in the way either of prospecting or working the Coromandel gold-fields, if they are treated with a just consideration for their prejudices and customs, and with an equitable recognition of their rights as proprietors of the soil. Care, however, should be taken that the opening of the gold-fields which they so readily granted may not involve them in difficulties with Europeans, in the event of a large influx of people to the diggings; and their co-operation with the Government should be fully reciprocated, by affording them ample security and protection against violence or ill-usage to which they might be exposed by sudden contact with strangers unacquainted with their language and habits.<sup>77</sup> In fact, the Government was able to afford little facility for the protection of Maori, and ultimately, preservation of peace depended on Maori willingness to compromise and to allow Europeans full access to the goldfield.

The Government reached its accommodation at Coromandel on the understanding that Paora's land at Koputauaki would be again excluded from the area that could be prospected, in accordance with his deathbed wish that the area be reserved for Maori diggers. McLean advised the Government that:

It should . . . be distinctly understood and notified to persons searching for gold, that the land known as Paora's claim, at Koputauaki, is not to be interfered with. These claims extend from a place near Rings mill to Koputauaki, and on to Umangawha, and thence to Arataonga on the east side of the range, where a portion of land has been given by Paora to the Ngati Porou tribe of the East Coast. These reservations will be pointed out to a surveyor at any time by the claimants, and it would be desirable to define the boundaries without delay.<sup>78</sup>

Miners and press immediately protested the limited terms of the agreement, and most especially, the exclusion of Paora's land which was suspected to contain the more valuable portion of the gold reef which outcropped at Coromandel.<sup>79</sup> Despite understandings reached in 1852, and reaffirmed 10 years later, the Crown worked to satisfy mining and settler demands by arranging for the opening of this land, against the known wishes of the right-holders in it. In February 1862, the Colonial Secretary (Fox), received a delegation of diggers, from Victoria, who wished to prospect in the Coromandel and requested assurances from the Government of their protection. In response, Fox showed them the agreement reached with Maori, and arranged an introductory meeting with some of the chiefs who were visiting Auckland. He also ordered H H Turton to accompany the diggers to the district where he was to 'facilitate the operations of the party and prevent misunderstandings with the Natives', with the assistance of sub-commissioner Preece.<sup>80</sup> As the Government's man-on-the-spot, Turton attempted to ensure that

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77. McLean to Minister for Native Affairs, 7 November 1861, *New Zealand Gazette*, 22 November 1861, p 302

78. McLean to Sewell, 14 November 1861, *New Zealand Gazette*, 22 November 1861, p 305

79. See 'Brackenbury to McLean', 9 November 1861, *New Zealand Gazette*, 22 November 1861. For criticism see *Daily Southern Cross*, 29 November 1861.

80. Fox to Superintendent of Auckland, 4 February 1862, Auckland provincial council papers, sess 14, NZ MS 595

Paora's reservation was respected, but worked continually towards bringing the block within mining operations. He warned that newly arrived diggers scorned the notice prohibiting working on Koputauaki, and argued that the peace of the district would be broken unless Paul's land was thrown open immediately.<sup>81</sup>

The question of the Coromandel field was also brought before the provincial council which recommended that the sum of £500 be placed on the supplementary estimates for the purpose of development. A resolution was passed, requesting the Government to either purchase the whole of the auriferous district from Cape Colville to Kauaeranga, or to renegotiate the terms reached with Maori to allow the area to be fully and freely worked by Europeans.<sup>82</sup> Sewell, acting for Fox, assured Williamson that the General Government was 'fully sensible of the importance of acquiring the land . . . or, if that be not possible, of having a definite agreement on the subject of prospecting', and reported that Grey was engaged with 'personal negotiation with the native owners of the land, in the hope of effecting satisfactory arrangement'.<sup>83</sup>

Towards the end of February 1862, only 30 diggers were reported to remain in the district. The provincial council intervened with the offer of £2000 for the discovery of an 'available goldfield' capable of affording three months' employment for 500 men at fair average wages. Under this impetus, a set of regulations was drawn up, signed by 46 diggers and assented to by H H Turton, as resident magistrate, on behalf of the Government. Increasing numbers of diggers began to arrive, and by early April, Turton estimated that there were some 248 diggers in the vicinity of Coromandel alone. Of these, 199 had arrived in the preceding week.<sup>84</sup>

As European numbers increased, so did pressure on Paora's land. Miners worked the land right to the boundary.<sup>85</sup> A shaft was sunk within a few feet of the reserved area and diggers began stealing across to the reserved area at night. In reaction, Te Matewaru began to patrol the boundary, under the leadership of Te Hira, Paora Te Putu's nephew, to whom his mana had passed.<sup>86</sup> Since Te Hira, a King supporter, advocated the retention of land and resources in Maori hands, officials began seeking the support of Paora's niece, Riria Karepe (also known as Lydia) who eventually accepted what she deemed to be the inevitable.<sup>87</sup> Te Hira, however, remained firm in his opposition. An offer by Fox of £10,000 for outright sale or a payment of 10 shillings per miner for permission to prospect the block for a month was refused.<sup>88</sup> There was wild talk of rushing the block, and early in June, Maori were reported to have performed the haka on the boundary of the closed land to indicate their determination to repel any attempt to force its opening.<sup>89</sup>

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81. Turton to Attorney-General, 27 and 30 June 1862, 'Coromandel Resident Magistrate's Outward Letterbook', BACL A 208/634

82. 'Votes And Proceedings Of The Auckland Provincial Council', vol 14, 1862, pp 62, 82-83; Haglund pp 36-37

83. Sewell to Superintendent, 4 March 1862. Auckland provincial council papers, sess 14, NZ MS 595

84. Haglund, p 40; Turton to Secretary for Crown Lands, 5 April 1862, BACL A 208/688

85. *Daily Southern Cross*, 8 April 1862 (cited Haglund, p 41)

86. *Daily Southern Cross*, 6 May 1862

87. See Turton to Secretary for Crown Lands, 5 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862-68, BACL A 208/688

88. Haglund, p 43

Governor Grey intervened directly, arriving unannounced at Coromandel on 4 June 1862. He informed Lydia that he wished Paul's land to be opened at once. Grey suggested that she arrange with Turton for the registration of the owners' names and field's interim working, until a final arrangement could be made, when compensation would be made for that occupancy.<sup>90</sup> The most pressing concern for Lydia's party, was to be paid for the gold which had been removed illegally by miners, during night forays onto the block.<sup>91</sup> Turton reported that he had eventually agreed to Riria's request for £100 on the condition that the reserved land at Tokatea was 'surrendered' immediately to the Government for mining purposes.<sup>92</sup> Turton thought that he had secured the agreement of 'all the chief parties', but support for the transfer of control of Tokatea was lukewarm. After consulting with other right-holders within her party, Lydia offered to open only a small piece of the reserved area. Turton declined to proceed and called for Grey to return.

Te Hira attempted to counter Grey's tactics by calling on the support of the King movement. A large meeting of Hauraki and Waikato people was held in the Piako from which all Europeans were excluded. On 18 June, Fox wrote privately to Grey that Te Hira had placed the district under the mana of the King despite missionary efforts at dissuasion.<sup>93</sup> Turton reported that it was the intention of the King party to 'work the gold for themselves and convert it into sovereigns at Waikato for the benefit of the Maori nation'.<sup>94</sup> Grey was enraged by what he saw as the 'evil deeds' of the King, writing a 'very angry letter' criticising him for his intervention at Hauraki. This was a provocative step, in the view of the King party, who replied that, 'if nobody had been harmed, it was idle to talk of punishing the King for his evil deeds'.<sup>95</sup>

Grey was determined that neither Te Hira nor the Maori King should be allowed to prevent access to the block and pushed ahead with the negotiations against the advice of his ministers.<sup>96</sup> Continuing with his strategy of 'divide and rule', he signed an agreement with one party of right-holders – Riria, Tareranui, Karaitiana and nine others – on 23 June 1862 whereby mining was permitted in return for a flat annual rent of £500, to commence from that date. Payment for two years' rent was to be made in advance and the Government agreed also to pay an additional £1 per annum for every miner in excess of 500 on the field. Maori were dissatisfied that the 1852 arrangement had previously been allowed to lapse without warning and the Government was now required to give a year's notice of its intention to terminate the agreement.

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89. Ibid, p 44

90. Turton to Secretary for Crown Lands, 21 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688

91. *Daily Southern Cross*, 6 May 1862 (cited Haglund, p 42)

92. Turton to Secretary for Crown Lands, 21 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688

93. Fox to Grey, 18 June 1862, Grey Collection, 'New Zealand Letters', GLNZ F 23 (2)

94. Turton to Secretary Crown Lands, 20 June 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688

95. J E Gorst, *The Maori King*, 2nd ed, London, 1864, 1959, p 298

96. Bell to Browne, 30 June 1862, Gore Browne MSS (cited in K Sinclair, *Origins of the Maori Wars*, p 249)

The announcement of this arrangement was received with approval by Pakeha, while Grey congratulated himself on narrowly averting a ‘serious collision between the two races’.<sup>97</sup> At a large public meeting in Auckland, chaired by Whitaker, Grey was praised for his success in arranging the ‘opening the Coromandel goldfield to European enterprise’.<sup>98</sup> The Government congratulated itself that it had proved, by the high price paid, that any suggestion that the colonists were determined to ‘rob the Maori of their gold’ was false.<sup>99</sup> Gorst argued, however, that Grey’s high-handed actions at Coromandel had helped convince King supporters that the Government meant war.<sup>100</sup> From this point onwards, the legitimacy of Te Hira’s title tended to be downgraded in the mind of officials by their conception of him as unduly influenced by the King. Te Hira, for his part, was faced with a *fait accompli* unless he was prepared to take up arms over the matter. Te Matewaru reached a temporary accommodation amongst themselves, although the split caused by Grey’s interference, continued to divide right-holders at Tokatea for many years. Te Hira, accompanied by some Waikato, arrived at Koputauaki on 28 June to protest the transaction. Turton reported that he appeared to be ‘very wrathful with Lydia’ and had threatened to write to ‘his friends at Tauranga and the Thames, to come and reside with him on the boundary’. It was suggested by Turton that Te Hira’s speech was partly dictated by the presence of Waikato, and that he eventually accepted £600 from Lydia, stating that ‘[i]n future the land [w]as to be considered as belonging to him and the gold to Riria’.<sup>101</sup>

Te Hira tried to argue, in the following month, that he had accepted the money as a penalty for the Government having ‘trampled under foot the Maori law – viz that the gold diggings of Coromandel should not be worked by European miners’. Turton, ignoring the complications of the transaction, rejected the assertion, arguing that ‘in law’ the money had been given in a straightforward recognition of his ‘joint proprietorship in the land’. He condemned Te Hira’s claim as an ‘afterthought’ prompted by greed, the ‘scheming suggestions’ of the Waikato, or, by Te Hira’s efforts to ‘protest against any occupation of this district which he [had] been instructed to make by the Piako runanga’ but only after he had secured a portion of the money.<sup>102</sup>

## **2.6 ADMINISTRATION OF EARLY GOLDFIELD AGREEMENTS**

At Taitapu, problems arose with the description of the reserves and the question of entitlement, reflecting defects in both the original deed, and the subsequent mining

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97. BPP, vol 13, p 155

98. *Daily Southern Cross*, 25 June 1862

99. Turton to Cochrane and Creighton, 20 June 1862, ‘Coromandel Commissioner of Crown Lands Outward Letterbook’, 1862–68, BACL A 208/688

100. Gorst, p 299

101. Turton to Secretary of Crown Lands, 1 July 1862, ‘Coromandel Commissioner of Crown Lands Outward Letterbook’, 1862–68, BACL A 208/688

102. Turton to Pollen, 13 August 1862, BACL A 608/288

agreement. Mackay had been aware of the dispute as to the correct customary owners, but arguing urgency, had chosen to deal with one set of right-holders only. In order to obtain an immediate opening, he had accepted not only Ngati Rarua's right to control the disposal of the subsurface resources of the reserve, but also, the receipt by the two signatory chiefs of the revenues for distribution. But once his immediate object had been obtained, Mackay refused to abide by the terms of the agreement, insisting that the rights of other iwi with interests in the area must be accommodated.

When approving the mining agreement, the Government had sent Mackay a copy of the original 1855 deed of sale and the map which had accompanied it. Mackay realised that the boundaries delineated on the map did not correspond to the description in the deed. He wrote to the Native Department to correct the mistake, sending his own sketch plan, showing the land claimed by Maori, and redrawing the boundaries in accordance with the deed's description, although this was admitted to be 'very vague'. Mackay requested that the Government give its approval for the boundaries as redrawn by himself, 'to prevent any misunderstanding arising with the Natives' in the event of the diggings being extended.<sup>103</sup> The Acting Native Secretary, Halse, gave Government approval for Mackay's boundaries in February 1863, although this did not end the confusion over the actual size of the reserve.<sup>104</sup> Nor was it clear which groups had been intended to have rights in the reserve. Mackay believed that the land belonged to those specific communities which had cultivated it in the recent past and which included, therefore, only small sub-groups of Ngati Tama and Te Atiawa.<sup>105</sup> Alexander Mackay, who took over responsibility for the administration of Taitapu in 1864, was of a different view; that, as the block had been set aside from a general sale by the Nelson hapu, it was 'a reserve set aside for all the Natives of the Ngatirarua, Ngatiawa and Ngatitama tribes, residing in Blind and Massacre Bays'.<sup>106</sup>

In April 1863, James Mackay reported that £93 had been collected in licence fees since February of the proceeding year. Of this sum, he had paid out only £19 10s to Maori, another £9 10s going to the Receiver of Land Revenue and £1 for printing costs. Mackay advised the Native Department, that he was using the balance as leverage to obtain a revision of the original agreement to accommodate non-signatory iwi whose claims had been ignored:

With reference to the balance in hand, £63, I have not considered it prudent to hand it over to Riwai Turangapeke and Pirimona Matenga, in accordance with the agreement entered into with them . . . as they are disposed to act unfairly towards the other claimants to the Taitapu Reserve, especially those of the Ngatitama and Ngatiawa Tribes.<sup>107</sup>

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103. Mackay to Native Secretary, 27 September 1862, in Mackay, *Compendium*, vol 2, pp 323–324

104. See Phillipson, p 204

105. See Phillipson on this point, p 205

106. A Mackay to Native Minister, 6 December 1865, in Mackay, *Compendium*, vol 1, p 310

107. Mackay to Native Secretary, 16 April 1863, in Mackay, *Compendium*, vol 2, p 324

A meeting of the claimants had been held over two days, at Collingwood, in September. Mackay reported six months later, that he had been unable to gain consent to his proposals for the division of money and land among the various groups, but as he had ‘publicly announced [his] intention of holding the money until they could agree as to the division of it, and [had] since adhered to the terms then laid down, they [were] beginning to feel a little more desire to have the question finally settled’.<sup>108</sup> The matter was finally arranged in July 1863. The integrity of the Government’s negotiation with Ngati Rarua was preserved, the claims of non-participating iwi being satisfied by a redistribution of land rather than gold revenues. After ‘many stormy arguments’, Mackay succeeded in winning agreement to an adjustment of the terms of the opening. Ngati Tama and Te Atiawa agreed to give up all claims to the moneys arising from goldmining licences, and to the block itself, except for their cultivations along the coast between Kaukauawai to Te Wahi Ngaki, an undefined portion of the area Ngati Tama had shared with Ngati Rarua at Paturau, and in the case of the Te Atiawa of Pariwhakaoho, in Golden Bay, their cultivations between Turimawiwi and Taumaro.<sup>109</sup> Agreements between the tribes were signed, and Mackay then paid out the balance of the money owing on the Taitapu field to three Ngati Rarua chiefs.

After renegotiating the Taitapu agreement, James Mackay administered the field until his departure, in early 1864, to Auckland, where he was to play an active role in opening the Thames. Alexander Mackay (his cousin), took over responsibility for the administration of the Taitapu revenues, in his capacity as Commissioner of Native Reserves and Warden of the West Wanganui Gold Field. Alexander Mackay wished to bring Taitapu under the formal control of the 1856 Native Reserves Act, so that revenues could be appropriated for general ‘native purposes’, but thought that ‘even then, the Natives chiefly interested in the land would expect the rent’.<sup>110</sup> Phillipson argues that his intention was ‘to share it [the gold field revenue] out among the wider Maori communities of Tasman and Golden Bay, in the belief that the reserve had been set aside for all of them’.<sup>111</sup> The Taitapu reserved lands were, however, governed by goldfield rather than reserve legislation. There is little information about the actual administration of the field in this early period. Mines Department was not set up until 1880, and as Phillipson points out, the *Appendices to the Journals of the House of Representatives* fails to:

provide details of the revenues paid to Maori . . . the extent of profit made by miners from alluvial gold, the relationship between the warden and the Maori owners, or the degree in which part of what must have been a very small revenue from licence fees was swallowed up by administration costs.<sup>112</sup>

The West Wanganui field was not, however, very successful, and the major gold resources still controlled by Maori were located on Hauraki lands.

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108. Ibid

109. Ibid, p 325

110. A Mackay to Native Minister, 6 December 1865, in Mackay, *Compendium*, vol 2, p 310

111. Phillipson, ch 10, p 9

112. Ibid

Coromandel was proclaimed to be a goldfield, under the Gold Fields Act 1858, on 28 June 1862. While the 1858 Act enabled the Governor 'from time to time, by Proclamation, to constitute and appoint any portion of the Colony to be a Gold Field' it did not actively contemplate the question of land still held under native title. In order to bring the area within the terms of the Act, the Coromandel field was, thus, defined as comprising:

All land, being Waste Lands of the Crown, situate within that part of the Coromandel Peninsula lying to the North of the line drawn from the mouth of the Waihou River on the West to the mouth of the Whitianga River on the East, thence following the Whenuakite River to its source, and thence by a straight line to the Haho point.<sup>113</sup>

An Order in Council setting out the regulations, issued by the Governor, pursuant to his authority under the 1858 Gold Fields Act, was also gazetted. These set out the requirements for miners' rights, the extent of ground that could be worked, and permitted the diversion of water-courses for mining purposes. This was accompanied by a notice from the Colonial Secretary's office stating that the penalties of the Native Land Purchase Ordinance which prevented the taking of minerals, along with any other use of lands under native title, would not apply in the district provided that a proper licence was held. Licences would be issued only to persons who held miners' rights.<sup>114</sup>

The proclaimed field encompassed lands still being worked under the interim November 1861 agreement and for which Maori right-holders had not yet received payment, as well as the Tokatea block. On 23 July 1862, a second arrangement was reached with Pita Taukaka (also known as Pita Taurua) of Patukirikiri, Kitahi Te Taniwha (son of Horeta) of Ngati Whanaunga and Patene Puhata of Ngati Paoa, patterned on the Taitapu model, whereby the Government would pay £1 per annum for every miner working their lands at Kapanga, Ngaurukehu and Matawai, in other words, the revenues collected by the Government for the miners' rights by which persons were authorised to work on the field.<sup>115</sup> There was, however, no real consensus between Maori and the Government about the terms of the agreement, the relationship that had been established between them by the fact of cession, or, of the principles under which the field was to operate.

Later inquiry into the 1862 goldfield agreements between Hauraki and the Government, revealed that little attention had been paid to how they would be administered. Responsibility for the issue of licences and miners' rights fell largely on the shoulders of Turton, and his successor, Lawlor, who performed the unpaid duties of goldfield warden in addition to those of Commissioner of Crown Lands, resident magistrate, and coroner. No mechanism was set up for the distribution of revenues among the various right-holders. Nor did the agreement state the date on which the July 1862 agreement was to come into effect, resulting in debate regarding the calculation of rents. In September 1863, a year after the opening of

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113. *New Zealand Gazette*, 28 June 1862, p 233

114. *Ibid*, p 234

115. Letter from Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E

the field, Pita Taraua requested that he be paid for Patukirikiri lands worked by diggers, urging that he had been the ‘first to throw open land, had done so without stipulation for payment and paved the way for negotiations with Paul’s people, that they had received payment and that though the late commissioner had talked of making some arrangements with regard to the diggers working on different native lands he had heard nothing further in the matter’.<sup>116</sup> A claim for revenues dating from 1861 when the diggers first began working the field was rejected by Lawlor who argued that Maori were entitled to payment only from the date of the signing of the actual cession.<sup>117</sup>

Maori at Coromandel found themselves in constant dispute with Turton over rents, bridges, landing sites, and the use of firewood. Turton generally assumed that the public good lay with the mining interest and refused to countenance Maori efforts to participate in the profits being generated by the field. Maori for their part, did not see themselves as prevented from seeking profits outside the £1 for every licence, which they had yet to be paid, and attempted to charge ground rent for tent sites, and for the removal of all timber. Turton complained, however, that Maori were making ‘extortionate’ demands. In his opinion, miners paid £1 per annum for mining, and ‘residence’ was implied in the ‘contract’. Maori should receive ground rent only from those buildings situated on land reserved to them. Turton also regarded the charges for timber as outside the terms of the agreement which he saw as excepting kauri only, from the free use of the diggers. He argued that otherwise, the Government had ‘entered into a very hard bargain indeed, and one which [he] fear[ed] the diggers [would] not long comply with’.<sup>118</sup>

Maori challenged the Government’s right to use land for public purposes without payment or against their wishes. They objected when whare (according to Turton, ‘old and forsaken’) were pulled down in order to give road access to ceded land, and argued about the width of the streets. They attempted to lease a part of the landing place, considered by Turton to be ‘absolutely required for public purposes’, to private parties, and challenged the Government’s right to build a bridge over the ford which would potentially interfere with their ability to navigate the Kapanga Creek. Turton reported that, ‘they say that only one bank belongs to us and that we may build half a bridge if we please’. To emphasise their point, Maori anchored their cutter across the ford, preventing timber from reaching Keven’s crushing mill and the site of the new court-house.

Turton dismissed the capacity of Maori to hold up these projects, partly because it was expected that they would benefit from the field, partly because it would create a dangerous challenge to European authority:

As to the native right to lease away the road or wharf now that the Gold Field is established . . . I deny it altogether; His Excellency declared at Waikato that he would not allow the acknowledged roads to be shut up then how much less here in a district where thousands of men will be located . . . the natives by agreeing to our occupation

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116. Lawlor to Native Minister, 1 September 1863, BACL A 608/634

117. See Lawlor to Native Secretary, 26 February 1864, BACL A 208/688

118. See Turton to Pollen, 28 August and 12 September 1862, BACL A 208/688; ‘Turton memo’, February 1863, BACL A 208/634

and working of the Gold Field necessarily give up the right of road to it . . . [and] right of all suitable landing places leading to them. I suppose that they are to derive a large revenue from the gold mines and yet interfere with the means . . . quite inconsistent with the question of property and would soon occasion the Government and diggers much embarrassment. By the same rule they might disallow or block up a road any where and at any time and thus the concession of such a principle would be a dangerous precedent . . .<sup>119</sup>

In the absence of a regulatory system, there is no reliable record of how many people worked the Coromandel field in the early 1860s. According to Haglund, 160 miner's licences were issued at the official opening of the field on 30 June 1862.<sup>120</sup> Turton's reports recorded that 261 men, only three of whom were unlicensed, were working the field in July. By September, Turton's figure had risen to 304.<sup>121</sup> Preece, however, put the numbers at a higher level.<sup>122</sup> The first signatories received no moneys for these persons until they were paid compensation, estimated by Mackay at £250, in 1864.

It was soon apparent that hopes of accessible alluvial deposits on Tokatea had been unfounded, and that quartz reef mining would be required. To ease the expense, companies or associations were formed, and eventually the Government would alter the regulation of the field to accommodate their requirements for long-term security of mining title. In the meantime, the December news of another strike in Otago enticed many diggers away. Proprietors of the more promising claims remained, however, and by September 'considerable quantities of rich quartz were being accumulated on many claims'.<sup>123</sup> Within a month of the arrival of crushing machinery on the field, gold, and quartz specimens to the value of £2005 had been exported to Auckland.<sup>124</sup> Confidence in the viability of the Coromandel field was badly shaken when Keven's Reef proved to be non-payable.<sup>125</sup> However, the better reefs and leaders lay along the Driving Creek.

Again, little can be said with certainty about the production of the Coromandel field in these years. From December to February the Golden Point Company forwarded 1001 ounces of gold to the Union Bank for export to Sydney, and in April, Robert Kelly, who also worked a claim in the area, arrived in Auckland with over 716 ounces.<sup>126</sup> It was estimated that from the opening of the goldfield to the end of May 1863, when the field was abandoned because of the threat of war, some £12,200 worth of gold had been taken from Driving Creek.<sup>127</sup>

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119. Turton to Pollen, 28 August 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688

120. Haglund, p 55

121. See Turton to Secretary of Crown Lands, 26 July, 19 August, and 12 September 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688

122. Preece's estimates have not been located. See Lawlor to Native Secretary, 26 February 1864, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688

123. Haglund, p 60

124. *New Zealander*, 4 October 1862 (cited in Haglund, p 60)

125. Haglund, p 65

126. *Daily Southern Cross*, 12 February, 23 April 1863 (cited in Haglund, p 68)

127. *Daily Southern Cross*, 3 June 1863 (cited in Haglund, p 71)

## **2.7 RENEGOTIATION OF THE COROMANDEL AGREEMENTS**

In early 1864, miners began to return to the Coromandel district. On 22 July 1864, Governor Grey utilised his powers under the Goldfields Act 1862, to remove any doubt as to their right to take up abandoned claims:

And whereas the Government have made certain promises or have undertaken obligations to protect the claims of companies or of individuals in the Coromandel Gold Field during the Maori Insurrection, and it is expedient to make additional regulations to authorise such protection . . .

Permission to retain a claim unworked may be granted by the Warden . . . if it shall appear to the Governor that such unworking shall be caused or shall have been caused in consequence of the Maori Insurrection . . .<sup>128</sup>

Maori right-holders had not yet received payment for mining undertaken in the Coromandel field in 1861 to 1863 and were now making ‘clamorous demands’.<sup>129</sup> The Government was anxious to satisfy its friends and to win consent to extension of the goldfield from groups previously hostile to allowing it control. Mackay was directed, therefore, to settle ‘outstanding questions relative to the occupation of Native lands [at Coromandel] for gold-mining purposes’.<sup>130</sup> A meeting was held on 6 October 1864. In the negotiations which followed, serious defects were revealed in the administration of McLean’s agreement, with little concurrence between the Government and Maori about its terms, and no record of how many men had been working the field. Pita Taukaka and Kitahi Te Taniwha argued that they had been promised the same terms as those pertaining in the 1852 Patapata agreement – a claim which was confirmed by Preece. They maintained that they should be paid from the date of their lands being opened to prospecting. Mackay resisted this interpretation, referring to the provision in the 2 November 1861 agreement whereby negotiations for payment were to be deferred until gold had been found in ‘payable quantities’.<sup>131</sup> Maori countered that they had not fully understood the implications of their agreement to this arrangement. Mackay was told, ‘This may be so; but we never supposed it would take upwards of eight months to try the land, or that we should have 500 diggers from Otakou to damage it.’ In that period, actual mining rather than mere prospecting had occurred, and they believed that ‘these men must have abstracted considerable quantities of gold’.<sup>132</sup>

Mackay concluded that, ‘the only course which appeared open was to endeavour to effect a compromise with the Natives, and to enter into a fresh arrangement for the future working of the field’.<sup>133</sup> Detailed negotiation followed, Mackay eventually agreeing to the payment of head-money, which was calculated for the period, November 1861 – July 1864. Mackay beat down Maori demands, arguing

128. Order in Council, 21 July 1864, ‘Return of Rules and Regulations Made Under The Gold Fields Act, 1862’, AJHR, 1864, C-4, p 14

129. ‘Letter Mackay to Native Minister’, 19 October 1864, AJHR, 1869, A-17, encl E, p 17

130. *Ibid*, p 16

131. *Ibid*, p 16

132. *Ibid*, p 17

133. *Ibid*, p 17

that in the absence of any means of ascertaining the numbers of miners on the field, 'the Natives would invariably have claimed more than their right'.<sup>134</sup> Pita Taukaka was thus compensated for loss of kauri but otherwise bargained down from his demand of £153 to £101. The request of Tanewha and Patene Puhatu for £150 each was similarly reduced to £75 each.<sup>135</sup> Mackay reported that this was a 'good price' for the Government:

With respect to the payments to Patene Puhata and Te Taniwha, I do not consider they have been too liberally dealt with. Their lands have been worked to a considerable extent, and they have made no complaint, and they have received no compensation for damage done to their timber.<sup>136</sup>

He argued that the payments were necessary in light of the failure of the Government to keep correct accounts, and in order to satisfy the demands of Maori for payment without further delay. Mackay emphasised further the 'very bad effect which any appearance of breach of faith would have on the Natives, and the probability of its preventing any future arrangement for the working of other gold-fields in the district'.<sup>137</sup>

The July 1861 agreement for Kapanga, Ngauruheku and Matawai was re-negotiated on the Taitapu model to prevent future dispute about miner numbers and head-money due. Tanewha Renata, Pita Taurua, Kapanga, Patene Puhata and four others signed an agreement on 11 October 1864 that these three blocks, except for 'pieces reserved for cultivation, burial grounds and sacred places', would be open to goldmining. Only those holding miners' rights would be permitted to work the field and permission had to be sought from the commissioner before a miner could move to a new locality. In consideration for their consent to mining, Maori owners were to receive £1 for every miner's right issued in the previous twelve months. This sum was to be paid on a specified date, each year that the agreement was in operation, and was 'to be apportioned amongst the owners of Kapanga, Ngauruheku and Matawai Blocks, in proportion to the number of goldminers who shall have been employed on each as shown by the "Gold Fields Register"'. The Government would pay a further sum of £1 and £2 respectively, for every business and publican licence issued for buildings erected on Maori land.<sup>138</sup> Mackay saw the great advantage of the new agreement as making the Government liable only for duly authorised persons. This would also give Maori a 'direct interest in assisting the police to prevent illegal mining', Mackay recommending that the Government adopt the system he had instituted in the South Island whereby Maori owners could be authorised to inspect miners' rights under the Gold Field Regulations.<sup>139</sup>

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134. 'Report by Mackay on the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, encl E, p 4

135. Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E, p 17

136. Ibid

137. Ibid

138. Kapanga agreement, 11 October 1864, AJHR, 1869, A-17, encl E-A, p 18

139. Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E, p 17

## **2.8 THE GOLD FIELDS ACT 1866 AND THE GOLD FIELDS ACT AMENDMENT ACT 1868**

In 1866, the Government made its first move to bring Maori-owned land directly within the ambit of mining legislation, but merely by altering the definition of ‘Crown lands’ to include areas ceded by Maori for mining purposes. ‘Crown lands’ was construed after the passage of the 1866 statute, to mean ‘not only Demesne lands of the Crown in New Zealand but also any other land whatever over which the Governor shall by lease agreement or otherwise have obtained power to authorise gold mining thereon’. The Act reiterated the powers established by previous legislation and enabled the Governor to issue ‘special claims’ for an area greater than that allowed by regulation in a standard mining claim, in order to overcome extraordinary difficulties in working the area, to compensate large capital expenditure, or encourage enterprise. Section 33 enabled the Governor to lease the surface of the goldfield for agricultural purposes with the ultimate right of purchase on the Governor’s proclamation. That provision was not, however, generally deemed to fully apply to Maori land which was specifically excluded from at least some aspects of its operation by later legislation. It was reiterated that nothing in the Act should be taken ‘abridge’ the royal right to precious metals.

Two years later, in response to the opening of the Thames (see below), fuller description was made of the parameters of Government power with reference to land under customary title: ‘An Act to regulate Mining for Gold on Native Land and for that power to extend and apply certain provisions of the Gold Fields Acts to Mining on such Lands and for other Purposes’. In the first instance, the intention was to strengthen the Government’s control over the administration of goldfield revenues. The General Government wanted the legal power to ‘stop what was necessary as a first charge out of the gold revenues’ in order to pay any rents which they had agreed to for lands leased from Maori.<sup>140</sup> This right was authorised under section 4 of the Act. The Act, under section 3, was also broadly intended to confirm the legality of proclamations of goldfields wherever the Governor had won Maori consent to mining operations because private parties had been challenging cession agreements, and negotiating new arrangements for ceded lands once they began passing through the Native Land Court. The Act stated:

It shall be lawful for the Governor if and whenever he shall have by lease agreement or otherwise by consent of the Native owners of any land over which the Native title has been extinguished . . . or not extinguished obtained power from such Native or other owners to authorize such entry for mining for gold . . . to include such land within any Gold Field . . .

Section 5 established regulation of prospecting on Maori lands outside the goldfield in order to ‘secure that we [the Government] should not be drawn into quarrels with the Native proprietors’.<sup>141</sup> Under section 8, the Governor in Council was given explicit authority to make, revoke or alter regulations for goldmining in

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140. NZPD, 1868, vol 1, pp 27–28

141. NZPD, 1868, vol 2, p 247. See s 5 Gold Fields Act Amendment Act 1868.

the case of lands upon which the Governor had obtained ‘power by lease agreement or consent of the Native owners thereof to authorize mining’, whether that area was still held under native title or a certificate of title issued under the Native Land Act.<sup>142</sup> A degree of legislative recognition also was given to Maori ability to control the use of the foreshore by section 9 which pointed to the Government’s need to negotiate with them for the opening of such lands to mining (This aspect of the statute will be discussed more fully in section 3.3.2).

## **2.9 THE HAURAKI GOLDFIELD CESSIONS, 1868 TO 1869**

Faced with the neutrality of most of the Marutuahu people during the war, and with their attention focused on the Waikato region, the Government forebore to confiscate Hauraki gold-bearing lands, although it should be noted that other lands in their rohe, including Miranda coal fields, were taken.<sup>143</sup> Government policy remained that of gaining full control of the goldfield at Thames, as part of its intensifying policy of regulation of the economic development of the colony.

The agent of that policy was James Mackay who had been ordered to the Auckland district in his capacity of Assistant Native Secretary. During his circuit of the Hauraki area in early 1864, taking oaths of allegiance and surrender of arms, Mackay reported the presence of gold at Ohinemuri and Kauaeranga, and in the following month, the Government also received word of the discovery of alluvial gold at Te Aroha. It was apparent that the fields to the south were richer than that of Coromandel but on speaking to resident Maori, Ngati Maru, about leasing their auriferous lands, Mackay found them ‘very determinedly opposed’ because of their fears of the consequences of a large influx of population.<sup>144</sup> He later reported that he had been ‘met invariably by the old arguments used by the Land League party’.<sup>145</sup> Mackay attempted to assure Maori of their fair treatment at the hands of the Government, calling on Nepia te Ngarara, a member of Ngati Raukawa who had reported the discovery at Ohinemuri, to reassure the others that Maori miners had received the same protection as European at Collingwood where he had mined previously.<sup>146</sup>

Fox directed Mackay, appointed as civil commissioner in May, to ‘use every exertion to make arrangements for the opening up’ of those lands for mining’.<sup>147</sup> At this stage, however, further exploration of the country was not possible because of its ‘disturbed’ state. Resistance to the Government continued to simmer, but the efforts of Ngati Maru to maintain their position of withholding their lands from European-controlled mining, slowly crumbled after the war. On the one hand, they had had ample demonstration of the power of the Government in its blockade of the

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142. Section 8 of the Gold Fields Act Amendment Act 1868

143. For fuller discussion of the negotiation of these agreements, see R Anderson’s historical overview report, Wai 100.

144. Mackay to Colonial Secretary, 22 April 1864, AJHR, 1869, A-17, encl D, p 16

145. ‘Report by Mackay on Thames Gold Fields’, 27 July 1869, AJHR, 1869, A-17, p 4

146. Letter from Mackay to Colonial Secretary, 22 April 1864, AJHR, 1864, A-17, encl D, p 16

147. ‘Report by Mackay on the Thames Gold Fields’, 27 July 1869, AJHR, 1869, A-17, p 4

gulf and bombardment of Whakatiwai, and on the other, of the benefits of cooperation with regard to mining, as the outstanding Hauraki complaints at Coromandel were settled. Ngati Maru unity had been fractured during the war; most remained neutral but were perceived by the Government to be sympathetic to the Waikato, while another section, led by Te Moananui and Taipari, were 'friendly' to the Crown.

The unsettled state of the upper Thames dictated caution, but there was mounting pressure for mining operations to be extended further into Hauraki lands. By the mid-1860s, the province was in depression, and the Provincial Government to whom responsibility for the management of the Hauraki goldfield district transferred under the Gold Fields Act 1867, was anxious for the chance to develop a new field.<sup>148</sup> Gold was reported to have been found at Puriri in February 1867. Later in the year, the Superintendent of the Province used the opportunity offered by the tangi for Wiremu Hoete and Patene Puhata, to promote Maori interest in the further opening of their lands to mining. In July 1867, Mackay finally managed to negotiate a very limited opening of Kauaeranga (Thames) with Taipari's people. Over the next two years, Mackay expanded on this beginning, progressively arranging for the opening of the western side of the Coromandel peninsula to mining, wooing neutrals and so-called 'friendlies', cajoling when the opportunity presented itself, but otherwise 'just working it quietly, putting in [his] wedges and letting them draw'.<sup>149</sup> Mackay divided the area into nine large blocks, reflecting general hapu divisions, arranging boundaries on the spot, and making verbal arrangements with those he deemed to be principal right-holders in each area, to the exclusion of King supporters such as Te Hira. During this time, Mackay signed two further preliminary deeds with Ngati Tamatera, Ngati Maru, and Ngati Whanaunga. The final deed of cession (known as Te Mamaku 2) was signed in March 1869 by 80 signatories of Ngati Maru and Ngati Whanaunga.

The territory covered by the 6 March 1868 deed went to the Omahu Stream where Te Hira declared an aukati against any further opening. The deed incorporated both the lands leased under the Kauaeranga Gold Fields Agreement, signed on 27 July 1867, and those for which Mackay had subsequently entered verbal arrangements. This area comprised almost the whole of the western divide of the Coromandel peninsula from Cape Coleville to Omahu Stream, excepting a few coastal flats and the northern bank of the Waihou River. The boundary extended from Te Mamaku in the north, eastwards 'by the boundary of the lands of Ngatitamatera' to the watershed of the ranges, and then south to Omahu Stream. It then ran towards the coast, skirting reserved land, southwards to Kararimata, and along Waiwhakarunga Stream to the sea, 'thence along the sea coast of Hauraki to the point of commencement at Te Mamaku'.<sup>150</sup> Maori leaders agreed that 'all lands' within described boundaries and 'excepting places occupied by Natives for residence, or used for cultivation or for burial grounds' would be open to all

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148. *New Zealand Gazette*, 15 October 1866

149. Mackay to Rolleston, 29 November 1867, Rolleston MSS (cited J Hutton, 'Troublesome Specimens: A Study of the Relationship between the Crown and the Tangata Whenua, of Hauraki, 1863-1869', MA thesis, University of Auckland, 1995, p 107)

150. 'Report by Mackay on the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 4

persons for mining. They consented on the behalf of themselves and their heirs to 'release (give over)' or 'tukua' to the Governor and his successors that land for goldmining purposes within the meaning of the Gold Fields Act 1866.

The Te Mamaku 2 agreement built on the earlier model established at Taitapu, setting out the respective entitlements of Maori and miner, and a rudimentary system of administering licensing revenues. The miners' rights were to be issued by an unspecified officer of the Government. Any person holding such a right was entitled to mine for gold, and to construct dams and water-races. Timber for firewood or mining purposes could be taken but a payment of 25 shillings would be made for each kauri felled, and an additional licence was required by those wished to cut timber for purposes other than mining. Ngati Whanaunga and Ngati Maru would be paid £1 for each right and licence issued, those amounts to be paid quarterly. If a miner moved his claim to land belonging to another tribe, Maori right-holders in the original site would be paid for the period up to the end of the year. Shortland (Thames) and any other township built in the area also would be 'left for the Natives', the Government undertaking to lease the land and pay over the rent on the same day as the revenues from miners' rights and timber. This agreement would hold for as long as the Governor required the land for mining or could be terminated by the Crown on six months' notice.<sup>151</sup> According to Mackay, 'The agreement was carefully read over twice, and explained to them before signing, and they perfectly understood its meaning.'<sup>152</sup>

The written cession was attended by other understandings. The Government again emphasised long-term advantage and partnership to Maori in opening their Thames lands to mining. Williamson, the Superintendent of Auckland Province, told Hauraki Maori at the tangi for Hoete and Puhata:

If we unite together in this way we shall have treasures and riches, become a great people, and have everything that the heart can desire . . . This requires co-operation, mutual aid and assistance . . . Your children will be benefited, our children will be benefited . . .<sup>153</sup>

Mackay, too, framed his negotiations in terms of ongoing benefit, suggesting that the presence of a digger population would give rise to market and trade opportunities, and later testified before the Native Affairs Committee on the question of Government use of sites, given by Maori for public purposes, that it was in this expectation that Ngati Maru had given their consent to the opening of Thames.<sup>154</sup>

On 16 April, the area which Maori had agreed to open for goldmining was proclaimed a goldfield, and the accompanying rules and regulations published in the *Auckland Provincial Gazette*. The area was initially brought under the Gold Fields Act 1866, but subsequently declared a goldfield district, and administered under the regulations established by the Gold Mining Districts Acts 1871 and 1873.

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151. Turton, deed 359, pp 466–469

152. 'Report by Mackay on Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 8

153. *Daily Southern Cross*, 5 June 1867 (cited in Hutton, p 104)

154. See petition no 395/1877, Le 1/1877/5

The most significant aspect of this legislative change was the introduction of new types of fees, largely related to workings on a quartz field. The question of Maori rights with reference to such usages and fees, not specifically provided for by the cession agreements, was to form an issue of contention between the Hauraki tribes, the Government, and the mining community. These will be discussed more fully in chapter three.

## **2.10 LATER EXTENSIONS OF THE GOLDFIELD DISTRICT, 1870 TO 1900**

In the 1870s, the Government retreated from the original models of negotiation and partnership that had characterised the conception, if not the application, of goldfield agreements between Maori and the Crown. Policy changed from the negotiation of agreements whereby Maori ceded the right to mine on their land, to the purchase of the land itself in order to obtain gold and other resources. At the same time, Maori ability to hold onto their lands was rapidly declining as a consequence of the Government's individual dealing, and the success of the great Ngati Tamatera chief, Te Hira in holding Omahu Stream as the boundary of Hauraki lands to be opened to mining was short-lived.<sup>155</sup> Between 1870 to 1875, a number of blocks outside the ceded district were guided through the land court system by Mackay, purchased on behalf of the Government, and proclaimed within the goldfield. Included here were the auriferous foreshore blocks which fell outside the original cession agreements at Thames. Omahu 1, Hikutaia 2 and 3, and Whangamata 1, 3, and 5 were also purchased, and brought within the compass of the Hauraki Gold Mining District in 1873.<sup>156</sup> As in the case of Nelson and Coromandel, the Government deliberately sought to obscure the full value of these lands from Maori during negotiations. When, for example, Thomas Boyle found gold at Hikutaia in 1872, thus proving that gold ran right through the Coromandel Ranges, Mackay requested that he 'keep the matter quiet as [he] was negotiating for the purchase of the land'.<sup>157</sup> Mackay also requested a party who had discovered a gold-bearing reef at Whangamata to stop prospecting as it would 'tend to make obstacles as to the acquirement of the district'.<sup>158</sup> In 1875, the boundaries of the field were again extended to incorporate further Crown purchases; Whenuakite, Purangi, Te Puia, Te Hoho, Te Karo 1 and 2, Tairua (except for a reserve of 1000 acres), Rangahau, Kapowai, Puketui, Wharekawa East 1 and 3, Whitipiroua, Tautahanga and 'that portion of the block known as Tapararahi, Korongo, and Takatakaia not before included within the Hauraki Gold Mining District'.<sup>159</sup>

At the same time, the Government began purchase operations on the west divide of the Coromandel Ranges within the goldfield lands which had been ceded in 1868 or 1869. At Thames, the Shortland township blocks numbering 1 through 32

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155. For more detailed discussion on gold field purchases see R Anderson, 'Historical Overview', Wai 100

156. *New Zealand Gazette*, 13 April 1873, p 21

157. See Mackay to Superintendent, 9 January 1873, AP 2/2 125/1873

158. Mackay to Eyre, 8 January 1873, AP 2/2 276/1873

159. *New Zealand Gazette*, 8 April 1875, p 237

comprised the Maori blocks of Karaka, Nokenoke A and B, Rangiriri A to L, Tapuae, Tapuae o Whakaruaki, Hangaruru, and Whakaharatau. These were put through the Native Land Court almost immediately after the final cession, in April 1869, and each awarded to one or two individuals largely from Ngati Maru and Ngati Whanaunga. The subsequent history of alienation of this area is not, however, yet known. In the goldfield, in general, ‘progress’ of Crown purchase was a little slower than in the adjoining lands which had not been subject to the cession prior to alienation. The predisposition of Crown agents was, however, to purchase these blocks outright, it being ‘the wish of the public . . . that the Government should acquire the freehold of the Gold Field whenever possible, and not private speculators’.<sup>160</sup> Thus, by 1885, the Government had purchased the majority of the area opened by cession agreement in 1868–69. Included here were Ahuroa, Hihi-Piraunui, Horete 1A, 3, and 4, Hotoritori, Iranga o Pirori 2, Kaipitopito (part of Waiotahi), Karaka North and South, Karioi 2 and 3, almost all of Mangakirikiri, Mangarehu, Manginahae, Ohuka, Opango, Owataroa, Owahao, Rapatikiato 1, Ruapekapeka North, Te Ipu o Moehau, Te Pohu, Te Wharau, Waiotahi, Waiu, Waiwhakaurunga, Waiwhariki, and all of Waikawau except for reserves.<sup>161</sup>

From 1868 to 1875, Mackay also worked consistently towards the opening of the goldfield lands at Ohinemuri (an estimated 132,000 acres), over which Te Hira was recognised to hold mana. In order to undermine Te Hira’s ability to withhold the area, Mackay scattered money ‘like maize to the fowls’.<sup>162</sup> He first made a payment of £500 as an advance on miners’ rights fees to ‘friendlies’ in 1868, and thereafter, many individual payments on Ohinemuri, although title to the block had not yet been decided by the Native Land Court. Such payments, amounting to over £15,000, frequently took the form of goods, orders on storekeepers being freely given, to be charged as advances against land purchases and then redeemed by promissory notes issued by Mackay, who would be then repaid by the Government.<sup>163</sup> As part of his strategy, Mackay encouraged elements among Ngati Tamatera to run up debt on their lands elsewhere in the peninsula (at Waikawau and Moehau), as a key to unlocking the more desired interior territory. The thrust of those purchase operations was later summarised by the Under-Secretary of the Native Department:

This move on the part of the Government seems obviously to have been an attempt to break down the opposition of the Natives by gradually purchasing interest by interest in the land and thus bring about by dealings with individuals that which could not be accomplished with the Natives in a body.<sup>164</sup>

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160. Wilkinson to Whitaker, 21 March 1881, MA-MLP 1898/119

161. See AJHR, 1876, G-10; 1878, G-4; 1879, C-4; 1881, C-6; 1882, C-4; 1883, C-3; 1884, C-2; 1885, G-6. For full discussion of these purchases, see D Alexander, ‘Hauraki Block Histories’, and R Anderson, ‘Historical Overview’, Wai 100

162. Rawiri Taiporutu at Te Paeroa meeting, 21 May 1882, MA 13/54A. See also Mackay to Gillies, 20 March 1872, AJHR, 1873, G-8, p 7; *Epitome*, C, pp 312–313.

163. ‘Statement of the Facts and Circumstances affecting the Ohinemuri block’, p 15, MA 13/35B

164. Under-Secretary to Solicitor General, 30 August 1937, MA 1 19/1/193. For a discussion of inquiry prompting this comment, see pp ?

It is more than ironic, then, that Mackay should throw the blame on Te Hira for failing to ‘manage his people better’ when he complained of the way in which the Government encouraged debt to accumulate on the goldfield lands.<sup>165</sup>

In the short-term, however, Mackay was unable to complete the transaction. Although opposition was conceptualised as ‘hau-hau’ inspired, it is clear that the wish to retain the area was also held by others with interests in it. Included here were chiefs, such as Te Moananui, who had formerly cooperated with the Government.<sup>166</sup> That opposition stemmed in part from their disappointment in the workings of the cession agreements at Thames, which will be discussed in the following section. Those within the tribe who continued to oppose sale to the Government attempted to forestall the complete loss of their territory, agreeing to the alienation of the freehold of Waikawau and Moehau but to only a cession of Ohinemuri.<sup>167</sup> In view of the continuing opposition, the Government decided to accept the cession which would bring the land under mining legislation rather than hold out for the complete acquisition, but by calling in debts, was able to impose far more stringent terms than in earlier negotiations. Despite Mackay’s practice, on occasion, of paying deposits on mining revenues, both he and the Government insisted that the payments for Ohinemuri had been for the complete freehold and that all moneys would have to be repaid. Under the terms of the cession Maori would, in theory, receive ‘all rents, royalties, moneys and fees . . . payable to the Receiver of Gold Fields Revenue’ but that money would be retained by the Government until the debt was wiped out. Maori also had to cede rights of mining over all minerals, including coal and kauri gum, and agree to the issue of agricultural as well as mining leases, in accordance with the regulations prescribed by the Gold Fields Act 1866.

Few companies were interested in investing in large-scale development until they had ‘greater security of title’ provided by Crown ownership of the freehold. At the same time, the Government had little interest in checking up on whether all persons required to hold miners’ rights were in compliance, and was later accused of negligence in this area. Although the Ohinemuri goldfield would become extremely valuable later in the decade, revenues were low in the first few years of its operation, while it remained in Maori ownership. Only £4317 had been generated in revenues, by 1881, these moneys being set off against the £15,000 debt when the freehold transferred to the Government.

Opponents of sale had reluctantly agreed to the mining cession on the understanding that the land would return to them, but the Government had no intention of allowing Maori to regain control of subsurface properties or retain freehold rights in Ohinemuri. It clearly considered the 1875 cession to be a temporary measure, taken only for the sake of convenience. Within two years, purchase of freehold interests in the block had resumed. In 1880 to 1881, 73,000 acres of the Ohinemuri goldfield block were brought before the land court and an area of 66,000 acres which included the soon to be valuable, Karangake and Waihi

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165. ‘Proceedings of Native Meeting Held at Thames on 11 and 12 December 1874’, WTL, MS 2520, p 25

166. Power to McLean, 15 April 1873, MS 1350 (vol 40)

167. For a more detailed discussion of Ohinemuri, see ‘Historical Overview’, Wai 100.

reefs, were awarded to the Crown. The portion not brought to court at this stage (comprising in large, Ohinemuri 20) remained subject to the cession agreement and was gradually acquired by the Government over the next 20 years.<sup>168</sup>

The declining respect of the Government for the rights of Maori to withhold their lands from mining development was demonstrated elsewhere within the Hauraki rohe. The extension of the goldmining district in March 1875 had included Pakararahi which remained in the ownership of Maori who had not fully consented to that opening.<sup>169</sup> Matiu Poono and Tautoru protested to the Superintendent of the Province, ‘The land is ours which has not been adjudicated upon. Therefore do not be led ignorantly into granting a lease of that land but let the applicant come to us the owners of the land.’<sup>170</sup> When the Government went ahead, W H Grace objected on behalf of Maori right-holders that they had ‘never ceded any rights or interests to the Government or any other party, or . . . dealt in any way with any one, either for lease or sale for any purpose whatever, neither have they been consulted in the matter.’ According to Grace, ‘one native only who claim[ed] a small interest in the Block, consented to the opening of the said land for goldmining purposes, and partly in consideration of sanction obtained, without the knowledge of other claimants, a one half promoter’s share.’ The objectors pointed to the contrast with earlier negotiations in which ‘the minutest details of agreement were entered into’ and apparently followed.<sup>171</sup> They attempted to prevent the issue of a mining claim over part of the block by objection before the goldfield warden. The warden refused, however, to rule on the matter. As warden he had simply to adjudicate as though the land was the property of the Crown, and the complaint, thus, fell outside his jurisdiction.

Mackay defended his – and the general government’s – actions with reference to Pakirarahi, from political attack by Sir George Grey, arguing that he had dealt with the major right-holders (Taipari of Ngati Maru, and Harata Patene and Nikorima Poutotara of Ngati Tamahanu), and that problems had arisen only because private parties had informed Maori of the value of the gold discovered on their land. In the view of the Government’s legal officer, Reid, the terms of the agreement were ‘not very clearly shown by the papers, although it may perhaps be assumed that the agreement was sufficient to make the lands “Crown lands” within the meaning . . . of the Gold Mining Districts Act 1873’.<sup>172</sup> There was, however, no written agreement, that arrangement being verbal only.<sup>173</sup>

Matiu Poono and others petitioned the House regarding the conduct of the opening. The Maori petitioners were not examined, but the evidence of Grace suggests that there were two concerns; who had right to deal with the block and to receive revenues from it, reflecting arguments about title and boundary which were yet to be decided by the land court, and what constituted a fair return on gold

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168. See D Alexander, Hauraki block report, Wai 100

169. See AP 2/51

170. Tautoru and Matiu Poono to Superintendent, 19 April 1875, 1875/1188, AP 2/51

171. W H Grace letter, 24 June 1875, 1777/1873, AP 2/51

172. Mackay to Colonial Secretary, January 1875; W S Reid to Colonial Secretary, 2 July 1875, 1875/1843, AP 2/51

173. See evidence of Mackay, Le 1 1875/12, app S, no 24, p 8

resources. At particular issue, in the cross-examination, was an alleged promise to Nikorima, made by a private company but with Mackay's endorsement, that he would receive shares in the mining claim, whether those shares had been intended for Nikorima alone, and whether the receipt of those shares was necessary to establish consent to the opening. In Grace's view, all the major right-holders in the block were entitled to a share equivalent to that given to Nikorima, and to 'thousands instead of hundreds', although in negotiations, as their agent, he had been prepared to settle for a far lesser figure if money was paid at once. In the view of the Government, Nikorima's shares had been intended for the whole of his party. The tone of McLean's questioning suggests, too, that this arrangement was seen as a concession to Maori who were otherwise adequately recompensed for the mining of their land, by the receipt of revenues from miners' rights and for the taking of timber:

Q: What benefit are these native receiving out of the field? Do they not receive the miners rights?

A: Yes; they will receive the rights. They have not received them yet. . . .

Q: Is not that a great inducement to opening land apart from the shares?

A: Yes. It would have been . . . if all had been treated alike . . . . That is the reason of the dispute.

Q: Do not these natives receive all the benefit of all the rights, fees for kauri trees, and timber licenses? Is not that a great inducement to the opening of the field?

A: It is, but sometimes they are obstinate, as for instance at Ohinemuri.<sup>174</sup>

The Native Affairs Committee rejected the petition, finding that a claim for compensation had not been established but recommending that the real owners be determined by the Native Land Court.

At Te Aroha, where gold was discovered on land promised as a reserve from sale, the Government 'negotiated' an opening, but was prepared to override Maori wishes and proceed without full consent. Wilkinson (the native agent) and Kenrick (the mining warden) in the late early 1880s, refused demands that the Government pay £1000 for the right to declare the land a goldfield, as 'extortionate', since Maori would 'get for themselves all the miners' rights fees, timber licenses, &c, as well as town rents'. Wilkinson, like his predecessor, Mackay, first sought the support of Taipari and other known Government-supporters who 'readily signed the agreement to open the field in so far as their blocks were concerned'. A reduced demand for £500 was then refused, and the reserved land opened, despite lack of complete Maori consent:

as it was now apparent that the bold but necessary stroke of opening the field, whether some of the Natives were willing or not, could be carried out without any real danger, it was decided to do so; and acting under the instructions from the Hon Mr Whitaker, arrangements were made for the opening, which took place by Proclamation, read by Mr Warden Kenrick from the prospectors' claim, on the 25th November last, much to the surprise and chagrin of some of the dissenting Natives; who, seeing that this was

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174. Evidence of Grace, Le 1 1875/12, appendix R, no 22, pp 25–26

the first time, for a number of years, that any policy (however necessary for the public good) at which they chose to express disapproval, should be forced upon them, seemed quite taken aback, and unable at first to realize the position.<sup>175</sup>

According to Wilkinson, the dissenters accepted the *fait accompli*, the majority signing the agreement and taking out miners' rights for themselves.

The declining power of Maori in the Hauraki region was reflected, not only in the coercion backing the Government's negotiating position, but also in the more restrictive terms of the cession at Te Aroha. In particular, the Government again ensured that it gained the right to mine for all minerals.<sup>176</sup> Wilkinson and Kenrick also excluded rents from long-term leases from the schedule of goldfield sources from which Maori were to receive revenues since this concession to Maori at Thames, in the early 1870s, had come under increasing attack from the county council to whom those moneys would have otherwise gone, under the Financial Arrangements Act 1876.<sup>177</sup> The issue of changes in the revenue entitlement of Maori at Thames will be discussed more fully in Section Three on statutory developments.

## **2.11 ADMINISTRATION OF 'NATIVE GOLD FIELD REVENUES', 1868 TO 1900**

In the first boom years of the Thames field, sizeable returns were generated by the township rents, kauri revenues, miners' rights and other fees generated by the field. In the period 1 August 1867 to 31 March 1881, Maori were assessed as entitled to receive £62,451 from the goldfield blocks in the Hauraki district, some £7000 of this amount going to pay off the debt on Ohinemuri. In that period, revenues had steadily declined. In the first three years of the field's operation, revenues amounted to over £25,000. Thereafter, returns fell off considerably. In the period 1 July 1870 to 30 June 1873, the amount generated had dropped to under £13,000. In following years, the annual return rarely topped £3000.<sup>178</sup> After 1880, revenues dropped even more precipitously, less than £27,000 being paid out to Maori for the whole of the district (Coromandel, Thames, Paeroa, Waihi and Te Aroha), in the period, 1881 to 1897.<sup>179</sup> The question of the equity of revenues received by Maori in comparison to value of the gold taken from their land, weighing in a factor for capital expenditure on the one hand, and of general benefit to the Auckland economy on the other. None the less, figures for the quantity and value of gold exported (for which the Government received a royalty of 2s 6d per ounce) show that the sums received by Maori comprised only a fraction of the general returns from the goldfield. In the period 1867 to 1880, exports of gold from the Hauraki goldfields totalled 1,271,083 ounces, with an estimated value of £4,680,077. From 1881 to 1897, 834,545

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175. Wilkinson to Gill, 28 May 1881, AJHR, 1881, G-8, p 10

176. AJHR, 1882, H-19, p 12

177. 'Report on the question of Miners' Rights . . .', NO 89/1255, J 1/96/1548

178. See 'Hauraki Gold Fields Native Revenue: Treasury Statement relative to . . .', MA 13/35C

179. AJHR, 1940, G-6A, app C

ounces, at a value of £3,280,957, were exported from the district.<sup>180</sup> Thus, while it is true that production of the field had dropped by some 30 percent over the period, Maori revenues had declined by nearly 60 percent. From 1895 onwards, the production of the fields located on Hauraki lands started to rise again, as the Waihi mine began to make good returns, but since this concerned Ohinemuri lands now owned by the Crown, Maori received no direct benefit from this development. In face of increasing administrative problems, payment of revenues to Maori practically ceased after 1897 until the 1930s when a final adjustment of accounts was made.

Hauraki groups expressed increasing dissatisfaction with the implementation and administration of the goldfield agreements. In 1876, the Assembly received two petitions from Hauraki chiefs about goldfield matters; one from Aperahama Te Reiroa about mismanagement, the other from Te Moananui, regarding the late payment of revenues. In the following year, W H Taipari, complaining about failed expectations of partnership, asked for the return of various sites in the Thames township which had been given to the Government for public purposes at the time of the initial agreement in 1867.<sup>181</sup> In 1881, Te Moananui petitioned twice more about the non-payment of miners' rights. Further petitions, in 1888, 1894, 1895, and 1896, objected to the impact of legislation on revenues due to Maori, and made complaint about the poor administration of Maori-owned blocks within the goldfield.

These complaints were generally explained away, by officials, as indicative of Maori greed, or their puzzlement at the decline of revenues when the gold on their land petered out. The growing disappointment with the goldfield arrangements may be seen, however, as deriving from a number of causes other than the decreasing profitability of the field in general. These included the channelling of goldfield returns into the hands of the few; the loss of revenues as freehold interests were alienated, and new fields brought into operation under tougher terms; failures in administrative responsibility; and unilateral changes in the organisation of the field, through legislation and gazetted regulation, which directly impinged on the moneys received by Maori. Pressure on Maori revenues increased as their interests were sacrificed in response to the declining proceeds of the field. At the same time, the administration of the field moved into the hands of mining officials who had declining knowledge of, or care for, the original understandings by which the land had been opened. Maori retention of goldfield lands and revenues also came under attack from local bodies to whom those moneys would have gone if they had been generated upon Crown land.

Responsibility for the administration of the revenues was taken, initially, by Mackay who worked in a wide variety of capacities during the first years of the operation of the Thames field, filling the position of warden, and acting with a considerable amount of autonomy. A miners' rights deposit account was opened in his name, with that of Pollen, and the revenues paid out on a quarterly basis. Much

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180. 'Table showing the Total Quantity and Value of Gold entered for Duty for Exportation', AJHR, 1897, sess 2, C-2, p 17; 1898, C-2, p 15

181. See Le 1/1877/5

of the goldfield land had not yet passed through the court, and as in the case of down payments for land, Mackay made independent and arbitrary judgments about where entitlement lay, relying on the information of a few chiefs whose interests he promoted. One of those chiefs, W H Taipari with whom Mackay went into business partnership, described how the two of them had decided on divisions within the blocks for revenue purposes: 'The owners had nothing to do with laying out the lines, but Mr Mackay and myself did it at the best of our knowledge.'<sup>182</sup>

Some sizeable revenues were generated in these boom years, but tended to flow from Mackay's hands into those of a few chiefs, with no guarantee that a fair portion would reach all those with interests in the area. A return, tabled in 1869, named thirty recipients of a total of over £10,000 paid out on the Thames field in the first two years of its operation. A total of £9000 of this sum had gone into the hands of only four chiefs, for distribution to others.<sup>183</sup> The subsequent apportionment of those sums fluctuated at their discretion, and as their circumstances permitted. Hoterene Taipari, for example, later indicated that in the first years of production on Te Hape and Karaka he had gradually brought in different tribal groups – his own people of Ngati Maru for the first two years, and then Ngati Te Aute, Ngati Kotinga, and Te Whakatohea. He was, however, far more reluctant to distribute gold field moneys when returns started to decline.<sup>184</sup> Puckey, native agent for Thames and Coromandel in the 1870s, reported that 'it was merely an act of grace' on the part of the two original owners of Waiiau, that any others were admitted into the block, from which they had 'had almost exclusive enjoyment of the proceeds for some years'.<sup>185</sup>

It is clear that the early divisions of revenues were not accepted by all. When Tokatea, arbitrarily opened by Grey in 1862, was brought through the court as Moehau no 4, 20 years later, it was awarded to more owners than had been in traditional receipt of the gold field rent. Following this judgment, Te Matewaru who had opposed the opening and missed out on the payments, demanded their share of the rents received from the Crown. The court stated that it had no power to make an order about monies received before title to the land had been decided but suggested that any rents being held by the Crown while title was settled should be distributed in proportions set by its finding.<sup>186</sup>

It is clear that the divisions made in those days were not accepted by all. The boundaries set by Mackay for the goldfield were challenged when the land was brought before the Native Land Court.<sup>187</sup> Puckey acknowledged that the Thames blocks were awarded to more owners than had received the revenues.<sup>188</sup> The blame for the inequable early division of revenues was, however, seen as lying solely with the Maori leaders, and used by Puckey to promote acceptance of the land court.

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182. Hauraki minute book 9, hearing for Hihi and Piraunui, 5 September 1872

183. 'Return of Revenue Received from Miners' rights at the Thames Gold Fields', 31 August 1869, in 'Hauraki Gold Fields Native Revenue: Treasury Statement relative to . . .', MA 13/35C

184. See evidence re Karaka 1, 2, and Te Hape, 26 August 1872, HMB 7, pp 123–124

185. Puckey to Under-Secretary of Native Department, 31 July 1880, MA 13/35c

186. Hauraki minute book 14, 21 January 1882, pp 160–161

187. See Hauraki minute book 9, 5 December 1872, pp 40–58

188. Puckey report, 31 July 1880, pp 3, 6, MA 13/35C

Puckey admitted that revenues on Opitomoko, Kuranui, and Moantaiari had been paid to only one or two owners, and stated:

I was aware there were other persons who ought to receive a portion, but their claims were in no way recognised by the principal owners. These persons, acting on my advice at length, had the land, in which they claimed to be interested, surveyed and adjudicated on by the Native Land Court and the extent of their interests defined.<sup>189</sup>

Kingites who were reluctant to attend the court, lost out almost completely. Keriwera, strong opponents to the alienation of land in the district, protesting in 1871 that they had received no portion of the goldfield moneys.<sup>190</sup>

Puckey took over responsibility for 'native gold field revenues' in 1869, operating the deposit account for the next 10 years. At first, Puckey followed Mackay's procedure, but in response to falling returns and changes in the system of regulation, he started dividing the annual total into four amounts so that the totals received by Maori would not fluctuate so widely.<sup>191</sup> If much of the profit of the early boom years of the Thames field had been channelled into the hands of a few, the remaining revenues were dribbled out, and dissipated among the many, to settle small debts. Maori, removed from any direct involvement in the operation of the goldfield accounts, were dismayed by the fall of their revenues as the boom died down, and had no assurance that the amounts being collected and paid out represented a correct accounting.<sup>192</sup> In 1876, Te Moananui and Taipari complained that fees at Thames were overdue. Pollen, in whose name the account continued to be jointly held, denied that any malpractice had taken place, or that moneys were being kept back. He stated before the Native Affairs Committee that Maori had not received any revenues in the last quarter because, previously, overpayments had been made through the misplaced 'kindness' of Puckey. Pollen blamed Maori profligacy for their distressed situation, argued that they had ample opportunity to inform themselves of the whole matter 'if they chose to take the trouble', and condemned Puckey's practice of making payments in advance so that Maori could meet their liabilities.<sup>193</sup> The Native Affairs Committee accepted that no wrongdoing had occurred, reporting that accounts had been kept regularly and that no unnecessary delay had taken place, but also recommending that the Government give full facility for an inspection of the books by a Maori appointee.<sup>194</sup>

Puckey defended his handling of the revenues against attack from the Treasury and Audit Departments, which criticised the system for its lack of accountability. He identified the problem as lying in the assessment of the various fees and rents owing on each block rather than in his own subsequent distribution of those amounts, and reported that the task of overseeing the Maori revenues had become increasingly difficult, as the administration of the field moved further and further

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189. *Ibid*

190. Power to McLean, 10 October 1871, MS 1347 (vol 37), p 177

191. Puckey report, 31 July 1880, MA 13/35C

192. Power to McLean, 15 April 1873, MS 1350 (vol 40)

193. 'Evidence of Pollen', 26 July 1876, Le 1 1876/7

194. AJHR, 1876, I-4, p 5

from the terms initially established in the cession. Puckey argued that the Receivers of Gold Revenue had become ‘callous’ to those original terms. At the same time, passage of the Mining District Act 1871, and the new regulations put in force, completely changed the manner in which revenues were assessed for the individual blocks which comprised the Hauraki Gold Mining District. According to Puckey, ‘There was no machinery for the transfer of Miners’ Rights and it became merely a matter of approximate allocation’.<sup>195</sup>

It is clear that corruptions developed in collection and distribution of revenues. As the goldfield began to decline, the Superintendent of the Province instructed McIlhone, the Inspector of Miners’ Rights at Thames, supposedly in place to look after Maori interests, to exercise his discretion in the collection of fees so as not to hold them up unduly.<sup>196</sup> Abuses in the administration of the 1870s were acknowledged by later officials. Kenrick and Wilkinson, who took over responsibility for the miners’ rights deposit account on Puckey’s dismissal in 1880, reported that:

much must be left to the discretion of the officers in the field – upon whose report the revenue is allocated. When taking over the allocation of this revenue I found the grossest abuse if this discretionary power had been permitted to grow up.<sup>197</sup>

A later receiver of the gold revenues also admitted that, under these arrangements, ‘many errors were made some owners not receiving what they were entitled to’.<sup>198</sup>

At Taitapu, once the Government achieved its object of gaining Maori consent to mining activity, it altered the regulation of the field at will. As at Thames, growing interest in quartz mining generated pressure for long-term leases rather than annual licences. Government officials acknowledged no obligation to consult with the Taitapu owners about the duly gazetted or enacted introduction of that system.

Mining activity revived at Taitapu in the 1870s, when quartz reefs were discovered, requiring, it was argued, greater security of title for investment in heavy machinery. Alexander Mackay initially refused to grant leases since the field was operating under an 1868 proclamation issued by the Superintendent of Nelson Province under the Gold Fields Act 1866, which included Taitapu in the Golden Bay Gold Fields. Mackay regarded the proclamation as *ultra vires* because the ‘property in question had not been ceded to the Crown’ and insisted that Taitapu be brought under the Gold Fields Act 1868.<sup>199</sup> He argued that the 1866 Act made no provision for the ‘issue of either miners’ rights or mineral leases to meet the special requirements of the case’ – in other words, continuing Maori ownership. Apparently, those special requirements did not encompass the need for Maori to be consulted about a modification of the basic presumption of the opening that the handing of control to Europeans would be of an essentially short term character. Mackay reported that a valuable field might be developed if the Government had

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195. ‘Puckey Report’, 31 July 1880, p 5, MA 13/35c

196. ‘Notes of Hauraki Goldfields Inquiry’, 6 March 1939, M8, MA 13/35c

197. Kenrick to Under-Secretary, 1 May 1884, MD 1 84/497

198. Jorlasse to Receiver General, 23 February 1898, T 1 40/71

199. A Mackay to Under-Secretary of Gold Fields, 2 August 1878, AJHR, 1878, H-4, p 25 (cited in Phillipson, p 209)

the power to offer secure leases and to create a better infrastructure of roads and services.<sup>200</sup> On 14 October 1873, the Government, acting on A Mackay's advice, proclaimed the West Wanganui Gold Field to be under the Gold Fields Act Amendment Act 1868 which gave specific authority to the Governor to bring Maori land within its jurisdiction in instances where owners had agreed to 'entry on such lands for mining for gold'. Section 3 of the Act stated that 'publication of any such Proclamation in the *New Zealand Gazette* shall be conclusive proof that the consent of the owners of the land . . . has been obtained'. The proclamation of 1873 stated that 'the consent of the Native owners of the land described in the Schedule hereto, authorizing entry thereon for the purpose of mining, has been obtained by the Governor as required by the . . . Act'. It is apparent, however, that the Government relied on the original 1862 compact rather than seeking new agreement to the arrangements being now contemplated.

Despite the discovery of a quartz reef and Government efforts to encourage its exploitation, the West Whanganui field did not prove the bonanza hoped for by Mackay. Alluvial mining continued to decline, and only one mining concern, the Golden Ridge Gold Mining Company, which was granted a lease of 15 acres for £16 per annum in 1875, operated with any success in the area. Phillipson remarks that 'West Whanganui produced significantly less revenue than other goldfields in the South Island or Hauraki'. He points out that, while little can be said with certainty regarding the equity of the returns received by Maori, 'it seems remarkable that gold was selling for £4 per ounce in 1877, a year in which the Taitapu field produced only £36 6s for its owners in rents, fees, and other gold-related revenue'.<sup>201</sup> The year of greatest return, 1884, when £91 19s was derived almost completely from the operation of six leases over a total of 87 acres, also saw the alienation of the freehold of the block to private parties. This sale was seen as removing the block from the jurisdiction of the 1868 Act since this was intended to apply only to Maori land.<sup>202</sup>

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200. A Mackay to Provincial Secretary, 20 November 1872; A Mackay to Superintendent of Nelson, 22 March 1873, 'Outward Letters of A Mackay', 1871–76, MA-MT-N/1/2 (cited in Phillipson, p 209)

201. Phillipson, p 210

202. For further discussion, see Phillipson, pp 212–216