

**Gisborne Harbour Board
And
The Development of Port Gisborne**

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September 2000

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Bibliography

Preface Tena koutou. My name is Steven Oliver. I am a New Zealander and I am descended from people from Cornwall and the Shetland Islands and England and Scotland and also from people from Norway. I graduated from the University of Auckland with a Bachelor of Arts degree in history in 1981. The following year I completed a Master of Arts degree in political studies with first class honours, from the same university. I have worked at the Dictionary New Zealand Biography as a writer of essays on Maori subjects and as a researcher and editor. I am now working as a contract historian.

Introduction

The Gisborne Harbour Board was established in 1882 by an act of Parliament which also endowed it with the foreshores of Gisborne township. In 1884 the Board was granted the Tuwhareparae land block by the government as a further endowment. It then embarked on a programme of harbour construction which, due to the failure of the first plan, was not completed until the late 1920s.

The development of the harbour involved much debate and controversy and considerable expense to the ratepayers of Gisborne. The harbour development also involved the taking of Maori owned land under public works legislation. In the taking of land from Maori the Gisborne Harbour Board may have, in its historical record, breached the conditions, or at least the spirit of the Treaty of Waitangi in several ways. These are that the Board may have failed to consult Maori adequately, that it may have taken Maori land when it could have taken European owned land, and that it kept land taken for harbour works after the land was no longer needed for that purpose. There is today land in the ownership of Port Gisborne Ltd, which is the Gisborne Harbour Board's successor company, which was taken for harbour works and is not now used for that purpose.

I have taken as an established that the lands around Gisborne harbour were occupied before European settlement by the tribes Te Aitanga-a-Hauiti, Te Aitanga-a-Mahaki and Rongowhakaata. From there I have described the process by which the lands around the harbour were acquired by the Crown and later by the Gisborne Harbour Board. The report also discusses the Tuwhareparae block and the claim to it under the offer back provision of the Public Works Act 1981 by Maori claimants, who are descendants of the Maori owners from whom the block was purchased.

This report was commissioned by the Crown Forest Rental Trust and is an overview of the Gisborne Harbour Board, its public works takings and its endowment block, Tuwhareparae. The report is not claimant specific.

Chapter One: Turanga and European contact

Captain Cook's arrival in Turanga, or Gisborne harbour, in Poverty Bay in 1769 was the beginning of contact between Maori and Europeans on a continuous basis. The earlier, seventeenth century visit of Abel Tasman to Golden Bay was an isolated event. Cook's visit was followed by other explorers, whalers, sealers, traders and missionaries. With European settlement came British rule. Poverty Bay was initially less effected by European contact than many other parts of New Zealand as trade developed slowly there and it was not a centre of European settlement until after the 1860s.

1.1 The land and the tribes of Turanga

Gisborne harbour is on the northern side of Poverty Bay where the Turanganui River enters the sea. To the north and east of Gisborne is hill country through which the Waimata River flows to join the Turanganui. To the west and south-west is a plain of the Matawhero district. The major river of the plain is the Waipaoa which reaches the sea near Manutuke towards the south of Poverty Bay. The other river of the plain is the Taruheru River which is a tributary of the Turanganui. The coast north of the harbour was originally lined with rocks, while to the south was the sand beach of Waikanae.

The Turanganui River originally formed an estuary at its entrance to the sea.¹ It was bordered by swampland and entry was difficult as the river mouth was partly blocked by a sand bar which could change position.² The shoreline to the east was lined with rocks and the rock called Te Toka-a-Taiau (or Taea) stood inside the river near its junction with the Waikanae stream. West of the river mouth was Waikanae Beach, which is a sand and shingle beach.

The area which is now Gisborne was known as Turanga and was inhabited by Maori belonging to three main groups. These were Te Aitanga-a-Mahaki, Rongowhakaata and Te Aitanga-a-Hauiti. Te Aitanga-a-Mahaki were to the west of Turanga but

¹ *Gisborne Herald*. 'Harbour development roused rugged debates in early years'. 7 Nov 1952 p9.

² *Brett's New Zealand and South Pacific Pilot and Nautical Almanac for 1884, 1885 and 1886* p85.

reached the sea at Waikanae, Rongowhakaata were south of Waikanae and Te Aitanga-a-Hauiti were east of the Turanganui River and to the north of Turanga. South of Rongowhakaata, at Waipaoa, was Ngai Tamanuhiri, a branch of Ngai Tahu which had remained on the East Coast. Titirangi, the ancient pa on Kaiti hill, was not inhabited at the time of Cook's arrival but villages stood below it.

The main tribal groups of Turanga were divided into hapu and the hapu did not always act as a united tribe. The Aitanga-a-Mahaki hapu which lived at its border with Rongowhakaata at Waiohiorore, or Waikanae Beach, was Te Whanau-a-Iwi. Its chief, Kahutia, on at least one occasion, fought against Te Aitanga-a-Mahaki and did so as an ally of Te Kani-a-Takirau, the leader of Te Aitanga-a-Hauiti.³

Kahutia's father had extended his authority east over the river to Kaiti. At other times Kaiti was the territory of Te Aitanga-a-Hauiti whose main centre was further north at Tolaga Bay. Turanga was a border area between three main tribes and the home of numerous hapu. The groups sometimes co-existed peacefully and there was considerable intermarriage, Kahutia's mother, for example, was of the Ngati Tawhiri hapu of Rongowhakaata. There could also be hostility between the tribes as was shown by the reluctance of Maori youths from the southern part of Poverty Bay, to be landed by Captain Cook in the north on the shore of the Turanganui River.

1.2 The arrival of Captain Cook

Captain Cook anchored in his ship the Endeavour off the river mouth near Tuamoto Island on 9 October 1769⁴ and made his first landing in New Zealand at an inlet in the rocks of Kaiti Beach later called the Boat Harbour. He found a Maori village north of the Waikanae stream and Uruhangege Pa was visible on Tuamotu. While Cook and others were at the village four Maori approached the boat which had been left with four young sailors. Two shots were fired above the Maoris' heads, the first caused them to stop, the second they ignored. A third shot killed one who had raised his spear at the boat's crew. His name was Te Maro and he was of the hapu Ngati Oneone.

³ Rongowhakaata Halbert, *Horouta*, p142

⁴ J.A. Mackay *Historic Poverty Bay and the East Coast, N.I. N.Z.* 2nd ed., Gisborne, 1966, map facing p33.

The following day Cook again landed and his party was approached by Maori. Topia (Tupaea), a man from Tahiti who was found to be able to speak with Maori, told Cook they were not friendly. The Maori attempted to plunder possessions from Cook and his men, especially arms, and when one Maori took a hanger, or short sword, he was shot. His name was Te Rakau. The Maori then retreated to the rock in the river named Te Toka-a-Taiau. When they returned for the body of Te Rakau three Maori were wounded by musket fire before they withdrew.

Cook attempted to make contact with the Maori for several days and, after moving to the southern part of the bay, abducted three young men from a canoe after killing several others. Cook regretted the killings but he was attempting to establish contact so as to supply his ship. During a confrontation across the Turanganui an uncle of one of the captives presented a green branch, which was probably an attempt at peace making. Although gifts were made to him by Cook trade could not be established. Cook gave the bay the name Poverty Bay as he was unable to obtain food there or fresh water. Both Cook and the naturalist Joseph Banks formed unfavourable opinions of the harbour. It was an unsheltered anchorage near rocks and beside a river inaccessible except for small boats and canoes.

1.3 *The flax trade*

As European trade for flax developed in Poverty Bay it was at first concentrated on the south-west shore of the bay where most of the Maori population lived, with the first trading taking place from ships off Wherowhero (Muruwai) .⁵ The first shore trader was probably J.W. Harris. He arrived at the Waipaoa River in May 1831 and moved to the western bank of the Turanganui River later that year to trade for flax. There, on 30 June, he purchased slightly more than an acre of land south of the boundary of Heipipi Pa from Paratene Turangi and Kahutia and others. The jetty and store he built there was the beginning of the development of the harbour of Turanga, which was later known as Gisborne harbour. Only schooners and cutters could cross the bar and reach Harris's wharf. Larger ships dropped anchor off the river mouth

⁵ Ibid p99.

with cargoes carried to and from them by small, flat-bottomed boats known as lighters. In 1838 Harris purchased a piece of land measuring 2 acres, 1 rood and 14 perches from Kahutia, north of Heipipi at the junction of the Turanganui and Taruheru rivers.

A wharf was built on the Kaiti or eastern side of the Turanganui River in 1852 when George Edward Read was invited by Hirini Te Kani, Rutene Te Eke and Pahora Pahoe, leaders of Te Aitanga-a-Hauiti, to build a jetty and a store there. Kahutia, the chief on the western side of the river, agreed to this development, although his brother Mahahi unsuccessfully tried to demand rent. Read held the site rent free for twenty one years. The land remained in Maori ownership as in 1876 he paid £60 for the previous three years' rent. Read also acquired the land Harris had purchased at the confluence of the Turanganui and Taruheru rivers and built another store and jetty there which became the centre of his business activities.

1.4 Early European settlement

Donald McLean, a land purchase commissioner, described Turanga in 1851 as a prosperous district with wheat cultivation, groves of peach trees and herds of cattle and pigs. The European population then numbered 44 adults and 60 children, including part-Maori children. The Europeans' main economic activity was trade with the Maori, especially for wheat.⁶ Trade had become difficult by 1851 as Maori had become aware of the value of their produce, possibly due to having been informed of it by the missionary T.S. Grace. High prices came to be demanded by Maori, not only for wheat and potatoes but also for grazing and in September 1851 the runanga decided to charge 2s 6d for each bucket of water supplied to visiting ships. At this time the Australian gold fields provided a market for produce, especially wheat, and Maori acquired their own schooners and cutters and traded directly to Auckland.

The first Crown land purchase in Poverty Bay was made in 1857 at Makaraka when the magistrate H.S. Wardell purchased 57 acres from Kahutia and his relatives. Kahutia subsequently led a repudiation movement the following year and wanted to

⁶ W.H. Oliver and Jane M. Thomson, *Challenge and response*, Gisborne, 1971

take back land held by traders and return their payments to them. Another Crown purchase was made at Port Awanui in 1862 but despite some European settlement Poverty Bay remained predominantly Maori in the 1860s.

1.5 The war on the East Coast

The New Zealand Wars began over the sale of the Waitara block in Taranaki in 1860. A truce made in 1861 ended in 1863 when Governor Grey ordered the reoccupation of the Tataraimaka block, which was Crown land in Taranaki being held by Maori until an agreement was reached over the Waitara block. The Crown was going to withdraw its claim to the Waitara block but first it reoccupied Tataraimaka. This led to an attack on British troops by Ngati Ruanui. As this was done with the encouragement of the Ngati Maniapoto chief Rewi Maniapoto the governor held the Maori King movement, of which Rewi was part, to be responsible.

War began in the Waikato in July 1863 when British forces advanced towards Ngaruawahia, King Tawhiao's capital. There was initially considerable support for the King movement on the East Coast. Support declined after warriors from the East Coast tribes trying to reach the Waikato were prevented from crossing the Rotorua area by Te Arawa and defeated at Te Kaokaoroa, near Matata, in April 1864. This defeat offset the influence of the Ngai Te Rangi victory over the British at Gate Pa in the same week, as did the earlier Maori defeats in the Waikato.

However in March 1865 representatives of the Paimarire or Hauhau movement came to the East Coast and to Poverty Bay. This was a religious and mystical movement which believed that God would return Aotearoa to Maori. It rejected Europeans, the Queen and the government and could take the form of armed opposition to the Crown. The missionary C.S. Volkner had been killed in Opotiki by the Hauhau before they came to Poverty Bay and in April Bishop William Williams left the mission station of Warenga-a-Hika and went to Napier. To counter the growing power of the Hauhau a British flag was raised on Waikanae beach by some members of Ngai Te Kete, a Rongowhakaata hapu. They were supported in this by the Ngati Porou chief Mokena

Kohere, a relation of their leader Paratene Turangi.⁷ Most of Rongowhakaata, including the chief Raharuhi Rukopo, became Hauhau although few were in arms against the government.⁸

In Waiapu warfare broke out between pro-government Ngati Porou and Hauhau. The Hauhau were from Taranaki and elsewhere and had been joined by some Ngati Porou. After being reinforced by a European military force raised in Hawkes Bay the Hauhau were defeated in Waiapu by October. By this time Hauhau in Poverty Bay had fortified a pa at Waerenga-a-Hika and were supported by most of Te Aitanga-a-Mahaki and Rongowhakaata.⁹ European and Ngati Porou soldiers were transferred from Waiapu to Poverty Bay and on 22 November 1865, after several days of fighting, Waerenga-a-Hika surrendered. Some Hauhau escaped, some were pardoned and 328, including women and children, were deported to the Chatham Islands.

⁷ Rarawa Kohere, 'Kohere, Mokena', in *The Dictionary of New Zealand Biography* (DNZB), Vol. One, 1769-1869,

⁸ R. de Z. Hall, 'Gisborne township, origins and beginnings' unpublished ms, Early settlement box, Gisborne Museum,

⁹ Mackay, p222

Chapter Two: The Crown acquisition of Turanga

Turanga remained in the 1860s one of the areas in New Zealand least affected by European settlement and British authority. Warfare in that decade opened the way for Crown land purchase as Maori who had had some involvement in opposition to the government were exposed to land confiscation and were politically divided from those who had been pro-government. The pro-government Maori were rewarded with land and were in favour of European settlement and a government presence to give security. From this division came the founding of the town of Gisborne. The issues raised in this section have been covered in greater detail by the Waitangi Tribunal reports 'The East Coast confiscation legislation and its implementation' and 'An entangled web. Te Aitanga-a-Mahaki land and politics, 1840-1873, and their aftermath' by Vincent O'Malley and 'Poverty Bay' by Sian Daly.

2.1 The East Coast Land Titles Investigation Act 1866

Section 5 of the New Zealand Settlement Act 1863 allowed the Crown to confiscate land belonging to Maori who were held to have been in rebellion against the Government. Under this Act areas where there had been anti-government activity were taken over by the Crown. Compensation was then made, in the form of land, to its friends. The government intended to apply confiscation to the East Coast to punish Maori who had opposed it, to reward pro-government Maori and to provide land for the military settlers from Hawkes Bay who had fought the Hauhau. Premier Stafford had disliked the effect of the New Zealand Settlement Act¹⁰ and in October Parliament passed the East Coast Lands Titles Investigation Act 1866. This enabled the investigation of the ownership of all lands on the East Coast and intended vesting the lands of anti-government, or former anti-government, Maori in the Crown.

Confiscation of land under the Act was intended against all Maori tribes as all had some members who had participated in the Hauhau movement and its activities on the East Coast. It was to include Ngati Porou whose leaders with their followers had defeated the Hauhau in Waiapu and then come south and fought for the government in

¹⁰ *New Zealand Parliamentary Debates* (NZPD), 1868, v.3, p155

Poverty Bay. The Act, however, contained a drafting error, as section 2 said the category of Maori who had not been involved in rebellion was to include persons who came within the descriptions in the fifth clause of the New Zealand Settlement Act 1863 when it should have said they were to be excluded. This meant that no action could be taken by the government when Judge Monro held the first sitting of the Native Land Court in Turanganui in July 1867.¹¹ The Act was corrected by an amendment in October 1867.

2.2 The first Turanganui purchase agreement

Following the passing of the East Coast Land Titles Investigation Act Amendment Act 1867, an agreement was reached on one side by the leaders of Rongowhakaata and Te Aitanga-a-Mahaki hapu Whanau-a-Iwi and on the other by Crown agents Donald McLean and Samuel Locke under which the Crown purchased the Turanganui 2 block.¹² When the Native Land Court sat in Turanga in March 1868 another Crown agent, Major R.N. Biggs, applied to the Court for an investigation of title to the block under section 3a of the East Coast Land Titles Investigation Act 1866. His reason for bringing the Crown's purchase of Turanganui 2 to the Court may have been an attempt to bring into operation the East Coast Land Titles Investigation Act 1866 and with it begin the confiscation of land on the East Coast.

Paratene Turangi (Pototi), Riperata Kahutia, Kateriana Kahutia and another Maori stated they had signed the deed of sale to the Queen.¹³ Judge Manning ruled the Court had no jurisdiction over Turanganui 2 firstly as it was not native land under the meaning of the Native Land Act 1865, and secondly as section 3a of the East Coast Land Titles Investigation Act 1866 referred to the land of subjects. The Queen, to whom the land had been sold, was not a subject¹⁴ (see document bank 1). Turanganui 2 consequently remained a Crown owned land block.

2.3 Negotiations towards a confiscation settlement

¹¹ Mackay p305

¹² Hall, unpublished manuscript and Mackay, p387

¹³ *Gisborne Minute Book*, 1, 10 March 1868, p33-4

¹⁴ *Ibid*, pp35-6

The government of Premier Stafford intended continuing with confiscation. He stated in Parliament in September 1868 that the government was under obligation to give its Maori allies some of the land of those who had caused trouble and bloodshed and that it reserved the right to place military settlers in some districts.¹⁵ The government had in 1865 promised land to the soldier settlers had recruited in Hawkes Bay and needed land for them. Some were settled at Marumaru near Wairoa where Ngati Kahungunu gave up 30,000 acres for the Hauhauism of some of their tribe. At Turanga it was more difficult to arrange a settlement and numerous proposals and counter-proposals were made. Despite several sittings the Native Land Court had, by September 1868, been unable to investigate land titles.

The East Coast Land Titles Investigation Act 1866 was more difficult for the government to implement than the confiscation provisions of the New Zealand Settlements Act 1863, as it required the identification of the land of anti-government, or former anti-government Maori. Government agents were aware of the difficulty of separating the lands of supporters and opponents of the government who belonged to the same tribal groups. Donald McLean suggested exchanging all government claims for several land blocks. Although this was not then acted on in Poverty Bay, in October 1868 Major R.N. Biggs went to Waiapu to settle the lands Ngati Porou were to give up to the Crown in a similar settlement. He informed Ngati Porou that the amount of land they were offering was insufficient and the matter was left unresolved.

2.4 Te Kooti and renewed warfare

In July 1868 some of the Hauhau who had been deported to the Chatham Islands escaped and landed at Whareongaonga. They were led by Te Kooti and their escape had probably been provoked by delays in their repatriation. They refused a government offer to disarm while their case was considered, rebuffed the available government troops' attempts to capture them and occupied Puketapu Pa. After receiving reinforcements Te Kooti attacked Matawhero, near Turanga, in November 1868. Major Biggs was killed along with 28 other Europeans. About 30 Maori were

¹⁵ NZPD, 1868 v.3, p155

also killed including the Rongowhakaata chief Paratene Turangi (Pototi) who had been involved in identifying Te Kooti as a Hauhau after the siege of Waerenga-a-Hika and sending him to the Chathams.

Te Kooti took 300 Maori as prisoners or conscripts and withdrew to Makaretu. Driven from there by Ngati Porou and other government troops he retreated to the fortress of Ngatapa. After defeating one assault Te Kooti abandoned Ngatapa after its water supply was captured by the Ngati Porou, their chief Ropata Wahawaha and by Captain T. Porter with a contingent of Te Arawa. Te Kooti escaped with his closest followers down the escarpment and abandoned the Maori he had brought from Poverty Bay. They were mostly Rongowhakaata and, of them, 120 male prisoners were shot after being taken captive by government troops. A large scale military operation of Ngati Kahungunu, Ngati Porou and European settler troops pursued Te Kooti into the Urewera mountains and eventually forced him to take refuge in the King Country.

2.5 The cessation deed of 18 December 1868

With the renewal of warfare the issue of land confiscation became easier for the government to settle as Poverty Bay Maori wanted government protection. The Native Minister, J.C. Richmond negotiated an agreement and on 18 December 1868 the leaders of Te Aitanga-a-Mahaki, Rongowhakaata and Ngaitahupo ceded all the lands of their tribes to the government. The agreement was signed by 279 chiefs¹⁶ at Turanganui and Muriwai, and on the understanding that land found by the Native Land Court to belong to Maori friendly to the government would be returned to them. Maori were to send their land claims to the government within three months of the deed's signing and they would be considered by a commission. The boundaries of the land ceded were from Paritu on the coast near Mahia to the Urewera mountains and back to the sea at Turanganui. The area contained an estimated 300,000 acres. Native title over this area was extinguished by a New Zealand Gazette notice of 13 February 1869.¹⁷

¹⁶ Vincent O'Malley 'Report for the Crown Forest Rental Trust on the East Coast confiscation legislation and its implementation', 1994, p118

¹⁷ *New Zealand Gazette*, 13 February 1869, p60

2.6 The Poverty Bay Crown Grants Commission

The Poverty Bay Crown Grants Commission was appointed by an order in council on 4 February 1869 and comprised the Native Land Court judges John Rogan and Henry Monro. The Commission was to determine land ownership within the boundaries of the cessation deed of 18 December 1868 and to decide the question of confiscation by excluding from Crown grants anti-government Maori.

The Commission opened in June 1869 and was informed by W.S. Atkinson, the magistrate and Crown agent who had replaced Biggs, that Te Aitanga-a-Mahaki and Rongowhakaata had agreed to give up three land blocks to the Crown for its confiscation claim, Muhunga, Patutahi and Te Arai. It was intended to divided these between the Crown and the Ngati Porou and Ngati Kahugunu who had fought for the Crown. The agreement of the owners was obtained, according to Wi Pere, after W.S. Atkinson, threatened that if their consent was withheld, government military forces would be withdrawn and the district abandoned to a return by Te Kooti.¹⁸ The Commission, in the first, or 1869 session adjudicated upon 101,000 acres of Maori land, which was left in Maori ownership and 1,200 acres which was found to have been purchased by Europeans. Among these was the land on which was later built the township of Gisborne.

After the Commission's 1873 session all the East Coast lands except Muhunga, Patutahi and Te Arai had been returned to Maori ownership. For its confiscation claim the Crown received 56,161 acres of land.¹⁹ There were subsequently complaints from Maori that the Crown had obtained more land in the blocks it gained than it was entitled to. Ngati Kahungunu and Ngati Porou received a monetary settlements.

¹⁸ Vincent O'Malley `An entangled web. *Te Aitanga-a-Mahaki land and politics, 1840-1873, and their aftermath*', Final draft, 1998, p357

¹⁹ Mackay, p309

Chapter Three: The port and the establishment of the Harbour Board

The town of Gisborne was founded as a river port and as the centre of European settlement in Poverty Bay. Some improvements were made to the harbour during the time the town was under the authority of the Auckland provincial government but the harbour became increasingly inadequate for a growing district dependent on sea-borne transport. Providing the means for harbour development, and deciding upon a plan for the harbour, became major concerns for the town and its leadership.

3.1 *Gisborne township*

The land block Turanganui 2 was known as the township site and became the town of Gisborne. The deed of sale for Turanganui 2 had been signed in March 1868²⁰ by Paratene Pototi (Turangi), his daughter-in-law Riparata Kahutia, her sister Kateraina and others. They asked for £20,000 but agreed to £2000 as it was possible for Locke to purchase land at Kaiti instead. No deposit was paid for the land and the original deed of sale was lost, probably in the burning of Biggs' house.

The Poverty Bay Crown Grants Commission began its investigation of land claims in June 1869 and dealt with a number of claims to small blocks of land purchased by Europeans from Maori at various times in the past. On 19 July 1869 the Commission awarded the block Turanganui 1 of 1 acre and 23 perches to John William Harris on the grounds of his original purchase.²¹

The Commission drew up a list of the Maori owners of Turanganui 2 on 6 August 1869.²² They were of Rongowhakaata and Te Aitanga-a-Mahaki and were now led by Riparata Kahutia as Paratene Turangi had been killed on the orders of Te Kooti. The list included Hirini Te Kani, Raharuhi Rukopo, the Ngati Porou chief Mokena Kohere (Pakura), a nephew of Te Kani a Takirau named Hori Kingi and Wi Pere.

²⁰ Gisborne Minute Book (GMB), 1, 10 March 1868, p33 and Mackay p387

²¹ *Poverty Bay Commission*, MA 62/1, B-8, National Archives, Wellington

Following the determination of the owners of the block they came to a new agreement to sell Turanganui 2 to the Crown. The agreement was made on 9 August 1869 with W.S. Atkinson. The township block consisted of 741 acres 2 roods and 3 perches and was bordered on the east by the Turanganui River, in the north by the Taruheru River and in the west by a line which became the Lytton Road. The block did not reach the sea as its southern boundary was the line of the Waikanae swamp.²³ The new settlement had a river frontage²⁴ and when land grants for Gisborne were gazetted, sections were reserved for a pilot station and a customs house.²⁵

3.2 Provincial administration

The Turanganui township site became the town of Gisborne. It was named after William Gisborne, the colonial secretary. Under the provincial system introduced by the New Zealand Constitution Act 1852 of the British Parliament the town of Gisborne, was in the Province of Auckland.²⁶ There was no provincial administration in the town apart from the resident magistrate. The town's first political institution was the Poverty Bay highways board. This was formed in 1870 and was the beginning of the town's local government. Gisborne had a population of over 500 Europeans by 1874 and up to 1873 the Provincial government had received over £10,000 from Poverty Bay in rates, township sales, custom revenue and other charges. The province had spent less than half that amount on the district and the discontented population were demanding their own province. Among the public works Poverty Bay needed, and which the Auckland provincial government was slow to provide, was the development of the port and harbour.

Harbours in New Zealand were initially under the authority of the Governor who had all the powers vested in the British Board of Trade by the Merchant Shipping Act 1854 and the Merchant Shipping Act Amendment Act 1862 of the British Parliament. In New Zealand provincial superintendents were made responsible for harbours in their provinces by the Marine Board Act, 1862. The provincial superintendents

²² Ibid, A-72

²³ Mackay *Historic Poverty Bay* p387.

²⁴ Daly, S. *Poverty Bay. Rangahaua Whanui District 5B*. Waitangi Tribunal, 1997

²⁵ *New Zealand Gazette* 1872 v.1 p231.

authority was extended the following year by the Marine Board Act 1863, which gave them the power to appoint harbour masters and pilots. This power was repealed by the Marine Act 1866, which left the provinces with the administration of wharves and the right to appoint inspectors. Harbour development in Gisborne was neglected by Auckland province, to which it belonged, until 1872 when Captain G.E. Read, who operated two private jetties on the Turanganui river, was given permission to operate a public wharf. This was on the site of Harris's wharf.²⁷

In November 1872 the Port of Poverty Bay was gazetted under the Customs Regulation Act 1858.²⁸ The port included the whole of Poverty Bay but its landing place for customs purposes was the public wharf at Gisborne. The superintendent of Auckland Province visited Gisborne in 1874, at the time of agitation for a separate province, and promised work would be done on the harbour and a pilot appointed. Following his visit a harbour master and pilot were appointed and the entrance at the river mouth was widened and deepened. Improvements were made to the port with the Waikanae stream trained, breastwork begun on the western side of the river, and the public wharf extended.

In April 1875 the general government's Department of Marine sent Captain Fairchild who arranged the blasting out of rocks from the river mouth.²⁹ The provincial government provided some money to continue rock blasting but six rocks remained in the entrance. The abolition of the provinces the following year benefited Gisborne as its harbour then came under the Department of Marine which moved decisively to clear the entrance of rocks. Blasting was completed in November 1877. Among the rocks removed in 1877 was Te Toka-a-Taiau, an important Maori site and tribal boundary marker which stood in the Turanganui River opposite the entrance to the Waikanae Stream. There is nothing to suggest Maori were consulted about its demolition.

3.3 Borough administration

²⁶ A.H. McLintock (ed), *An encyclopedia of New Zealand*, Vol. Two, p881

²⁷ Philip Whyte, *Gisborne's battle for a harbour*, Gisborne, 1984, photographs following p11

²⁸ *New Zealand Gazette* 1872 v.2 p868.

²⁹ Whyte, p17.

Gisborne became a borough on 12 May 1877³⁰ under the Municipal Corporations Act 1876. Sections 336 and 337 of the Act gave the council authority to construct wharves on the foreshore and to build protective works to prevent erosion. It was empowered to make bye-laws to regulate the use of the wharves it built and to fix tolls to be paid by users. The borough had ownership of wharves it constructed but it could not build on or take land which was not its property.

The Gisborne Borough Council acted as the port's harbour board from 1877. The borough had the harbour surveyed and repaired damage to the wharves from flooding in 1876. The Council planned a new wharf and in 1878 extended an existing one. There remained the need to provide shelter in the roadstead for vessels too large to enter the river. The harbour master Thomas Crisp and the borough engineer John Drummond each drew up plans for an outer harbour. An endowment of a land block was sought from government to finance the construction of a deep water harbour. It was hoped that Patutahi, one of the blocks gained by the Crown in settlement of the confiscation question, would be provided as an endowment. Instead Patutahi was sold by the government in 1878.

3.4 The 1877 Parliamentary bills

The first suggested plan for an outer harbour at Gisborne was designed by Thomas Crisp in 1877. He proposed forming an artificial harbour by building a sea wall along the reef which ran out into the sea from the river mouth and enclosing 200 acres of sea.³¹ The ratepayers of Gisborne voted in favour of raising a loan and it was hoped the government would grant a land block as an endowment as security for the loan. John Drummond put forward an alternative plan for a breakwater from Kaiti Beach.

Towards the end of 1877 two Bills were brought before Parliament to finance harbour development at Gisborne. The Bills would have vested the management of Gisborne harbour in the Cook County council and endowed it with the 50,000 acre

³⁰ *New Zealand Gazette* (NZG) 1877 v.1 p526

³¹ Mackay p408

government owned land block Waitahaia. Both Bills were brought by Captain Morris, the member for the East Coast, and one was passed by the House of Representatives. The Bill was defeated in the Legislative Council by Sir George Whitmore who doubted the need for development work. He was a runholder from north of Gisborne where wool was loaded on to ships standing off the coast by surf-boats from bays and beaches. The farmers of the outlying districts of the East Coast did not want to be rated to pay for harbour works at Gisborne which would be of little use to themselves.

The failure of Morris's Bill and its endowment plan meant harbour development could not go ahead. This left a growing township, dependent on shipping for its links to the outside world, with a harbour entrance which had a depth of three feet at low tide. Parliament was subsequently petitioned for public works by the Borough of Gisborne, Cook County and 389 electors and it was recommended the government act on the matter.

3.5 The Coode plan

Harbours were a matter of political importance in many parts of the country and the government arranged for a visit by the British engineer Sir John Coode. From 1879 he drew up plans for a number of New Zealand harbours, and in 1880 the government voted £1,500 for his expenses.³² At Gisborne he was against developing the river harbour as the bar was too shallow and there were difficulties with the a ledge of para or soft rock at the entrance. He proposed a viaduct breakwater from the rocks at the foot of Kaiti Hill outside the river mouth, leading to a deep-water harbour, composed of enclosing sea walls off the coast (see map 1). The sea walls were to form a horse-shoe shaped island off the coast and the connecting viaduct structure would allow silt and driftwood from the river to be carried out to sea. The proposed development was expected to cost £260,000.

3.6 The Gisborne Harbour Board Bill 1881

³² NZPD, Vol. 37, 10 August 1880, p208

The Coode plan was presented to Parliament in July 1881. At the same time Allan McDonald, the member of the House of Representatives for the East Coast, presented a Bill to Parliament to establish a harbour board at Gisborne with authority to raise a £100,000 loan for development work (document bank 2). The Bill proposed to endow the harbour board with both the Gisborne foreshore land and with the Tauwhareparae block which had recently been purchased by the Crown.³³ There was opposition in the House of Representatives both to the endowment of local bodies with Crown land blocks in general and to the particular endowment in the Bill. William Rolleston referred to Tauwhareparae as a block the government intended to open for settlement. The Premier, John Hall, declared his support for a harbour board at Gisborne, but added the use of Tauwhareparae as an endowment would not guarantee the promotion of settlement. The Bill went to the Legislative Chamber where, as in the House of Representatives, there was opposition to the endowment of Tauwhareparae and concern over the cost of the Coode plan, which exceeded the amount the board was to be authorised to borrow. The Legislative Chamber voted to defer the Bill to beyond the term of the Parliament which left the matter unresolved.

3.7 The Gisborne Harbour Board Act 1882

The following year McDonald again brought a Gisborne Harbour Board Bill before Parliament. This time the Bill only proposed endowing the harbour board with the Gisborne foreshore land and it did not mention borrowing powers. The Bill passed without opposition.

The Gisborne Harbour Board Act 1882 changed the name of the port to the Port of Gisborne and made the Gisborne Borough Council its harbour board (document bank 3). It was a special Act as required by the Harbours Act 1878, for the constituting of future harbour boards and for granting to them foreshore land. Section 6 of the 1882 Act gave the Board ownership of the foreshore land from the ocean at the river mouth

³³ Tony Walzl affidavit, 29 April 1998, in W.K. Smiler and others (plaintiffs) and the Port of Gisborne (defendant) in the High Court of New Zealand (Gisborne repository) p20

to Tuamotu Island, and the banks of the Waimata and Taruheru rivers as these are tidal.³⁴

The Act established the Gisborne Borough Council as the Gisborne Harbour Board. The harbour board was chaired by the mayor and decided to employ its own wharfinger, or wharf manager, rather than lease the public wharf. The Board planned to pull down and replace the wharf and considered inviting plans from persons prepared to build a breakwater. It decided to leave the matter of a breakwater until plans were received from the government.³⁵ The Board also wanted from government the grants for the Gisborne foreshore. In August 1883 it received a petition asking for a reduction in the wharf tariff on the landing of beer and consequently amended the bye-law to reduce the tariff by half. The Board had doubts about the plan of Sir John Coode and in December 1883 instructed its engineer to consider some adaptation of it. It wanted a harbour with the capacity to take coastal steamers and was preparing an alternative to the deep water harbour of the Coode plan.³⁶

The assets of the harbour board were described at its second meeting as the foreshore, the wharf and some other property.³⁷ The other property referred to included the reserve for a pilot station gazetted in 1872. It was section 14 on Harris Street³⁸ which became section 14 in Pitt Street. In 1916 the Pitt Street section was vested in the harbour board.³⁹

3.8 The Gisborne Harbour Board Empowering Act 1884

The Gisborne Harbour Board Empowering Act 1884, was passed to provide the Board with the resources needed to carry out major harbour works. It established a harbour district consisting of the borough of Gisborne and Cook County and a harbour board of nine members. The Act endowed the harbour board with the Tauwhareparae land block in addition to the Gisborne foreshore and gave the board the authority to raise a

³⁴ Whyte *Gisborne's battle for a harbour* p26 and *New Zealand Statutes* 1882 p892 schedule.

³⁵ Gisborne Harbour Board minute book 1, 17 October 1882, p10

³⁶ GHB minute book 1, 11 December 1883, p122

³⁷ *Poverty Bay Herald* 7 Oct 1882 p2

³⁸ PWD, W000, map 19049, National Archives

³⁹ M1 3/9/8, National Archives.

loan of £200,000 (document bank 4). The Act empowered the board to build an outer harbour similar to the plan proposed by Sir John Coode. The Board, however, did not proceed with an outer harbour, largely because of the cost, and decided to develop the river harbour instead.

3.9 The Gisborne Harbour Board's endowments

To provided them with revenue numerous public bodies and institutions received endowments of land from the government by act of Parliament in nineteenth and early twentieth century New Zealand. There was opposition in Parliament to endowment on the grounds that if one organisation was endowed with public lands then all would have a claim to similar endowment. Despite this many local authorities sought endowment from Parliament through Bills brought by their local member of the House of Representatives and thousands of acres of Crown purchased land went towards the endowment of local bodies. The Gisborne Harbour Board was endowed with the Gisborne foreshore land by the Act of 1882 and, by the 1884 Act, with the Tauwhareparae block.

Chapter Four: The foreshore endowment

Foreshore in English and New Zealand law is the land between the low tide and high tide marks.⁴⁰ As a resource it includes the fish swimming on it, the shellfish burrowing in it and the sand, shells, shingle and rock it is comprised of. Under English law the foreshore is Crown land and is held by the Crown for the benefit of all subjects. The foreshore in New Zealand has been treated as Crown land by successive governments although no Act of Parliament declares it to be Crown property. The question of the extinguishment of native or Maori title is involved which, it is accepted, 'can only be done by a deliberate Act authorised by law and unambiguously directed toward that end'.⁴¹ The question of the ownership of the foreshores in New Zealand is currently the subject of Treaty of Waitangi claims in Marlborough, Tauranga and Hauraki.

4.1 Crown ownership of the foreshores

There is a presumption of Crown ownership of the foreshore land of New Zealand by the Treaty of Waitangi as the Treaty made the common law of England apply in New Zealand and the foreshore is Crown property in English law.⁴² This argument was not accepted by the Court of Appeal in the Ninety Mile Beach case in 1957. The Court of Appeal thought this infringed the spirit of the Treaty. Other arguments have been advanced by the Crown to support its ownership of the foreshores. It has been suggested that the Crown obtained the foreshores by legislation relating to public reserves or harbours but no Act actually states that the Crown owns the foreshores or extinguishes the native title. It has also been suggested that ownership of the foreshores remains with the Crown if the Native Land Court's investigation of a block with foreshore boundaries did not stipulate that the foreshores were included in the block. This however does not explain how the Crown gained the foreshores in the first place and the Native Land Court at times accepted that Maori ownership extended not only to the foreshores but out to sea. The remaining ground for Crown ownership is that the Crown purchased some of the foreshore, which it did in the 1870s. Regardless of the basis in law the Crown in New Zealand has usually treated the foreshores as Crown property as they are in England. It can be argued that clause 1 of the Treaty of

⁴⁰ Boast, R.P. *The Foreshores*, p6

⁴¹ Ibid. p27 quoting Blanchard, J. in *Faulkner vs Tauranga District Court*

⁴² Richard P. Boast, *The Foreshore*, Wellington, 1996, p27

Waitangi extended British sovereignty to New Zealand and this included Crown ownership of the foreshores. Crown ownership of the seas surrounding New Zealand did not receive legislative validation until the passing of the Territorial Sea and Exclusive Economic Zone Act 1977. This validated Crown ownership of the seabed around the entrance to Gisborne harbour.

4.2 The Maori claim to the foreshores

Alternatively it is also held that as the second article of the Treaty guaranteed Maori possession of lands and fisheries the foreshore remained in Maori ownership. The foreshores were highly important fisheries with supplies of in-shore fish, such as flounder, and shellfish. At the Orakei hui in 1879, one of the hui that led to the Maori Parliament or Kotahitanga movement, control of the foreshore was a matter of great concern. The Ngati Whatua leader, Paora Tuhaere, said he did not know how the fisheries had been lost, with lands and forests an agreement was made regarding thrie sale or lease, with the fisheries they were inexplicably gone. Apihai Te Kawau considered the fish and pipis remained his property as he had never sold the sea. Other speakers complained of Europeans taking fish and shellfish without permission. One speaker asked how it happened that pipi banks and shellfish beds now belonged to the Crown although it was not know when the fisheries of the foreshores were taken.⁴³ The Crown had expropriated the foreshores without any declaration or discussion.

The Crown was concerned with ownership of the foreshore to give access to commerce and transport and possibly for defence. Maori where concerned with the seafood from the foreshore. The Crown's assertion of ownership of the foreshore, and therefore public access and food gathering by Europeans, dispossessed Maori of a highly valuable tribal asset.

4.3 The Gisborne foreshore before the Harbour Board

The Public Reserves Act, 1854, under section 2, gave the Governor the power to grant parts of the foreshore to the superintendents of provinces and, with the provincial

⁴³ *Report of the Waitangi Tribunal on the Manakau claim*, p67

governments' agreement, to other persons. The Harbours Act 1878 section 147 required a special Act of Parliament for the granting of foreshore land.

When Gisborne became a borough in 1877 the foreshore land was in Maori ownership⁴⁴. Section 30 of the Municipal Corporations Act 1876, under which Gisborne became a borough, contained provision for foreshore land to be given to a borough. J.A. Mackay says in Historic Poverty Bay that following the 1877 ratepayer vote in favour of raising a harbour development loan 'the project was held up in the hope the Government grant an endowment to enhance the security and that it would take over the foreshore rights from the natives'.⁴⁵ The government, however, refused that year to vest the foreshore in the borough. According to J.A. Mackay the foreshore land was considered to belong to Maori until the government took it for another purpose.

4.4 The granting of the foreshore to the Gisborne Harbour Board

The Gisborne Harbour Board Act 1882, which granted the Gisborne foreshore land to the Gisborne Harbour Board, was a special Act under the Harbours Act 1878, as was required for the granting of foreshore land. Foreshore land was given to harbour boards under various harbour Acts to give them control of harbour development and to provide an income from leasing land for wharves and warehouses. There was no consideration of Maori customary rights to the seashore or riverside in either the 1882 or 1884 Gisborne Harbour Board Acts, and no mention of Maori interests in debate in Parliament on the Bills. There does not seem to have been any protest against the measure by Gisborne Maori and no petitions were made against it to the Native Affairs Committee of Parliament. The lack of response from Gisborne Maori probably indicates that they were unaware of the Crown's claim to own the foreshore or that it had vested the foreshore in the Harbour Board. In debate on the 1881 Bill it was said that Gisborne Maori had expressed a willingness to contribute a land endowment themselves to the harbour board.⁴⁶ (document bank 5) There was no similar contact with Maori when the 1882 Act was passed and the earlier discussions had come to

⁴⁴ Mackay, p408

⁴⁵ Ibid p408

⁴⁶ G. McLean *New Zealand Parliamentary Debates* (NZPD), 1881, 31, p288 and 40, p464

nothing. As the Crown and local government had not yet exercised any rights over the affected areas of foreshore Gisborne Maori probably were unaware of the Crown's claim to ownership despite having taken some interest in Gisborne's effort to gain a harbour. The Crown, by 1882, was aware of Maori opposition to Crown ownership of the foreshore and in passing legislation to vest the foreshore in various local bodies without consulting local Maori was probably motivated by a wish to pre-empt opposition.

The Gisborne Harbour Board's foreshore included the seacoast of the Kaiti and the Waiohiharore blocks and part of the Awapuni block. The foreshore included the Turanganui River, the Taruheru River to the western side of Lytton Road, the Waikanae Stream to the Lowe Street footbridge, part of the Waimata River, and the Kaupuawhakapatu Creek, for 500 feet. To the foreshore along the rivers was added in 1920 a large area of sea bed surrounding the entrance to the harbour. This was vested in the Board by the Gisborne Harbour Board Amendment Act 1920 (see map 3).

4.5 The Gisborne Harbour Board's administration

Control of the foreshore could give the Board income from the fees it could charge for the loading or unloading of goods on the foreshore, which included the riverbanks of the town of Gisborne. Following the vesting of the foreshores in the Board in 1882 the Board wrote repeatedly to the government asking when the grants for the foreshore would be signed and sent to it. The Board considered it was 'unable to deal with the foreshore or exercise the powers of a harbour board until it was in possession of the grants'.⁴⁷ The Board also wrote to Captain Thomas Porter asking him to speak to the Minister of Marine about the matter and to its member of Parliament, Mr Allan McDonald. It wanted the revenue from the control of commerce which could be gained from the foreshore endowment. An example of the difficulties the Board faced securing its position is its long dispute with the shipping import and export company, Common, Shelton and Company.

⁴⁷ Gisborne Harbour Board minute book 1, 6 February 1883, p34

Part of the foreshore was being used prior to the Board's existence by Common, Shelton and Co. for its trading operations. Although the power to lease the foreshore was not mentioned in the 1882 Act, which only said the foreshore was granted for harbour purposes, the Board agreed in October 1882 to lease foreshore land to Common Shelton and Co. for a wharf.⁴⁸ and other buildings on the waterfront. The amount of rental, however, was not agreed to, and Common and Shelton claimed a right to compensation for their buildings on the foreshore. In May 1883 the agreement broke down when the company refused to accept the Board's terms. The company continued operating and in November 1883 the Board resolved to inform Common, Shelton and Co. that there would be a 20 pound penalty for each offence if it continued to load or land goods in defiance of the Board's bye-laws. Prosecution was being proceeded with in April 1884 when the grant of the foreshore was received.

Having received the grant the Board resolved that tenements encroaching on the foreshore should be valued and put up for public auction on 14 year leases. The Board also resolved that in every case where an application was received to lease part of the foreshore the part applied for would be put up for public auction. An agreement was reached with Common, Shelton and Co. in June whereby they received a 14 year lease, agreed to pay wharfage dues and could remove their wharf and buildings at the termination of the lease. It was agreed they would receive compensation of £1,275 in the event of their being out bid for their licence. Despite the agreement the Board instructed its solicitor in August to take legal proceedings against Common, Shelton and Co. to establish the Board's title to the foreshore occupied by them. The lease to the company remained unsigned in September but Common, Shelton and Co. came to accept the Board's control of the foreshore as it applied for a further lease in 1886⁴⁹ and later took a 21 year foreshore lease.⁵⁰

Section 13 of the Gisborne Harbour Board Empowering Act 1884 specifically authorised the leasing of the Board's endowments. But the Board continued to face some resistance to its control of the foreshore and in 1886 its wharfage fee was

⁴⁸ PBH, 11 October 1882, p2 and 3 January 1883, p2

⁴⁹ PBH, 24 November 1886, p2

⁵⁰ GHB minute book 2, 7 August 1889, p409

objected to by a Mr Crawford. The Board had no doubt it could enforce its fee⁵¹ and Mr Crawford was threatened with a summons for an outstanding amount. In March 1887 the Board decided to have the foreshore surveyed and then leased by public auction.

The Board received authority from the government to lease its endowments in November 1889 when it was made subject to the provisions of the Public Bodies' Powers Act, 1887 in the administration of its endowments.⁵² Section 14 of this Act permitted the leasing of foreshore land for boatyards and boat sheds, landing places, wharves, baths and bathhouses. The act limited leases to 21 years. In February 1890 the Board drew up terms for the leasing of the foreshores of the Taruheru River and in May leased the foreshore from the Taruheru bridge to the fire station to Common, Shelton and Co.⁵³ The Board, in the early years of the twentieth century had to balance requests to use the riverbanks for boat sheds, with a public concern for the area's scenic beauty.

In 1975 the Harbour Board agreed to transfer the foreshores of the rivers above the Gladstone Bridge to the Gisborne City Council. Conveying the foreshores enabled the Council to develop a marina and open space on the banks of the Taruheru and Waimata rivers. Developing the marina involved draining mudflats on the rivers' foreshores. The Board also transferred the beacon reserve at Awapuni to the Council and added part of the foreshore at Waikanae Beach to the Gisborne Domain. The Board received in exchange \$25,000.⁵⁴

⁵¹ PBH, 11 November 1886, p2

⁵² NZG, 28 November 1889, p1203

⁵³ PBH, 7 May 1890, p2

⁵⁴ Auckland Archives, BANF 5694 103a

Chapter Four: Tauwhareparae

The Tauwhareparae block is situated about 90 kilometres north of Gisborne and is inland from Tolaga Bay (see map 4). It was purchased by the Crown between 1874 and 1879 from Ngati Ira, Te Aitanga-a-Mahaki and Ngati Whakarara, a hapu of Te Aitanga-a-Hauiti.⁵⁵ Subsequently in 1884 the land was made an endowment to the Gisborne Harbour Board. The Board first leased the land to farmers and later farmed it directly. After the Board's successor organisation, Port Gisborne Ltd, decided to sell the endowment land, a claim was made by the descendants of the nineteenth century Maori owners for the land to be offered to them first under the 'offer back' provisions of the Public Works Act 1981. The resulting court cases centred on determining if the Crown's acquisition of Tauwhareparae was a public works taking. This required an examination of the block's history as does an understanding of the decision made by the High Court, which supported the applicants, and the decision of the Appeal Court which overturned the first decision.

5.1 *Ngati Ira*

Tauwhareparae and the area around it are recorded in Maori tradition as being inhabited by the Ngati Ira tribe. Ngati Ira may have incorporated earlier peoples but they are seen as the original people of the land with two eponymous ancestors, Irakaiputahi of the Horouta migration and Iramanawapiko.⁵⁶ They were once a numerous people but warfare with Te Aitanga-a-Hauiti, a related people, ousted them from most of their lands.⁵⁷ The fighting began over insults made by some Ngati Ira to two of the wives of Kahukuranui, son of Hauiti, at Pakaurangi Pa. The pa was then captured by Te Aitanga-a-Hauiti. A series of wars took place during which some Ngati Ira took refuge in the western mountains of Huiarua and others left the area. Some went to the Bay of Plenty, where they remain, and others went to Wairarapa and Te Whanganui-a-Tara (Wellington). The Ngati Ira remaining in their ancestral

⁵⁵ Tony Walzl affidavit 29 April 1998 in the matter of W.K. Smiler and others (plaintiffs) and the Port of Gisborne (defendant) in the High Court of New Zealand (Gisborne repository) p4 and David James Alexander affidavit (same case) 8 May 1998 p10.

⁵⁶ Rongo Halbert, *Horouta*, p144

⁵⁷ W.E. Gudgeon, 'The Maori tribes of the East Coast of New Zealand', *The Journal of the Polynesian Society*, vol.3, 1894, p216

land took part in years of warfare which included a period of peace in the mid-eighteenth century after a battle at Kawakawa on the Tauwhareparae block. They were subsequently attacked by Te Aowera, the leader of one of the groups which later formed Ngati Porou. Although defeated Ngati Ira retained some land by alliance with part of Te Aitanga-a-Hauiti⁵⁸, and by becoming tributary to it.

5.2 The Crown purchase of Tauwhareparae

The process of Crown acquisition of the block began on 7 October 1874 when John Alexander Wilson, the land purchase officer for the Bay of Plenty and the East Coast, received a message from Maori of Anauru that they wished to lease to the government land to the west of Mr Alexander Arthur's leasehold run which was known as the Tokomaru station.⁵⁹ He advanced £50 on the land and met Te Aitanga-a-Hauiti at Tolaga Bay on 16 October. There he negotiated for two other blocks, but the £50 he had paid was an advance for Tauwhareparae.⁶⁰ Wilson originally called the area Tauwhareparae was in Tokomaru West. The name changed during negotiations to Te Pua o Te Roku, a name from Maori tradition which could cover an area of 100,000 acres. Wilson's negotiations at Anauru began the lease of part of the Tauwhareparae block known as O Hine Te Ra Huanui. He also met the Ngati Porou and Te Aitanga-a-Hauiti chief Henare Potae and arranged to buy Te Pua o Te Roku,⁶¹ a block which retained the traditional name but was of 4,600 acres.

The region in which Tauwhareparae is was then unsurveyed and was little known, according to Wilson, even to Maori. He stated that at the start of negotiations only a few old men knew anything of the block. Later, in the Native Land Court, some Maori did recall living there in the past and others stated their parents had lived there. Tauwhareparae may have been little inhabited at the time, its inhabitants having moved to the coast at Uawa (Tolaga Bay) for trade or for security. Its boundaries and the areas they contained were imprecise. The name Tauwhareparae itself referred to different amounts of land. Wilson was concerned with beginning the process of

⁵⁸ Ibid, p219

⁵⁹ David Alexander affidavit, p6

⁶⁰ AJHR, 1877, G-5, Commission on Land Purchases in Poverty Bay, evidence of John Alexander Wilson, p25

Crown acquisition and with obtaining general agreements from Maori that would lead towards lease or purchase.

Henare Potae stated to the Native Land Court in 1876 that he was the chief of Te Aitanga-a-Hauiti and the principal owner of Tauwhareparae. He told the Court that although he had never been to the land block he had received produce from it. He said Ngati Ira had been placed there by his ancestor Ira to supply food and that they had done so for his ancestors. There was, he said, no one there before them⁶² (document bank 6). In evidence to the Commission on Land Purchases in Poverty Bay, also in 1876, Potae said that in October 1874, after paying money on lands that included Tauwhareparae, Wilson, with the consent of the chiefs, set out to explore the area.

The following year, on 27 January 1875, Wilson held a large meeting with Te Aitanga-a-Hauiti at Tolaga Bay at which he says he arranged to buy nearly all their land. He also met Ngati Ira and agreed to lease 40,000 acres of Tauwhareparae from them for £400 a year for a term of 40 years and to buy the neighbouring Huiarua block. On 30 January Wilson paid Henare Potae and two members of Ngati Ira, named Peka Marotiri and Pita Houao, a £500 advance on Tauwhareparae. He also paid £500 on Huiarua. In 1876 Henare Potae said these payments were made following the exploration of Tauwhareparae and the surrounding area.⁶³ Wilson reported that the meeting had only wanted to sell Huiarua but he had made a condition of the sale of Huiarua that Tauwhareparae be leased, as Tauwhareparae provided a link to Tokomaru and Anaru on the coast (see map 4).

In October 1875 Wilson arranged for the purchase of 5000 acres of Tauwhareparae from Hapurona Kawai and paid him £50 for his interest. In November 1875, according to Wilson, the agreement to lease Tauwhareparae was converted into an agreement to sell it, although a minority did not agree.⁶⁴ Over the following year further payments were made towards the sale of Tauwhareparae to Henare Potae,

⁶¹ Tony Walzl affidavit, p6

⁶² Waiapu Minute Book 1, 8 April 1876, p59

⁶³ AJHR, 1877, G-5, Henare Potae evidence to the Poverty Bay Land Purchase commission, 16 November 1876, p41

⁶⁴ Ibid, evidence of J.A. Wilson, p28

Moiha (Major) Ropata, Tamakitirangi, Wiremu Te Ruri and others. The people to whom he made advance payments in 1874 to 1876 were later mostly recognised as owners of Tauwhareparae by the Native Land Court.

In 1875 Wilson sought to have his arrangements recognised by a notice in the New Zealand Gazette under the Immigration and Public Works Act 1871 to signal the commencement of Crown purchase. There was, however, disagreement over the boundaries of land blocks in the area. Tauwhareparae and the Waingaromia No.2 block and Judge Rogan, of the Native Land Court, referred to Wilson as negotiating at Tolaga Bay with the opposition. After an argument at the Court between Rogan and Henare Potae a separation between the blocks was made.

Disputes between Rogan and Wilson led to the Commission on Land Purchases in Poverty Bay (document bank 7). The commissioners were Charles Brown, the under secretary of the Native Department and a magistrate, Joseph Giles. The Commission was to investigate misconduct by Rogan and negligence by Wilson. The charges against Rogan were dismissed and those against Wilson derived from the advance payments he had made to Maori towards the purchase of land before its ownership had been determined by the Native Land Court. The payments were not seen as illegal but rather it was alleged they had gone to the wrong Maori, or were a waste of money. The commission concluded that this could not be decided until the outcome of both the Native Land Court deliberations and negotiations with Maori were known.⁶⁵

Tauwhareparae was gazetted under the Immigration and Public Works Act, Amendment Act 1871, on 24 February 1876⁶⁶ (document bank 8). This Act made it illegal for any private purchases of Maori interests in the block to be made as Crown purchase negotiations had officially commenced. The Immigration and Public Works Act, Amendment Act 1871, enabled the government to enter into arrangements for the acquisition of land in the North Island for the purpose of building railways, developing coal mines, aiding the provision of water to gold fields and for settlement. Section 65 of the Act provided that land taken under the Act could be sold to settlers

⁶⁵ AJHR, 1877, G-5, report of commissioners, p14 and p16

⁶⁶ NZG, 24 February 1876, p137

to encourage immigration. With expenditure authorised under this Act a large number of land blocks in the North Island were purchased from Maori by the government and were subsequently sold for settlement.

Agreements to lease land from Maori did not take effect until ownership of the land had been determined by the Native Land Court. Money paid previously could then be deducted as rent paid in advance. Henare Potae had entered lease agreements with Wilson and in October 1875 Potae applied to the Native Land Court for the ownership titles to Tauwhareparae to be determined. In 1876 Wilson continued to make advance payments but these ceased after he was replaced by Thomas Porter. The Native Land Court determined Tauwhareparae to be of 57, 950 acres and in January 1878 notification was given that private purchase in the block was illegal under the Government Native Land Purchase Act 1877 as Crown purchase negotiations had commenced.

The negotiations were conducted by Richard Gill, the under secretary of the Land Purchase Department. In March 1879 he met Ngati Ira, one of the groups which owned the land. Ownership was, however, a matter of conflicting claims and dispute and the Native Land Court meeting of 26 March 1879 adjourned without taking evidence. A Maori committee chaired by Wi Pere of Te Aitanga-a-Mahaki was then set up to hear evidence on the ownership of Tauwhareparae. The committee took its findings to the Native Land Court in April where, following further disagreement, the Court reheard the evidence. On 21 April Judge Symonds recognised the mana of Henare Potae over the land as tribute had been paid to his ancestors but decided the majority of the block belonged to Ngati Ira. The Court then issued a memorial of ownership which declared the owners of Tauwhareparae to be the Ngati Awhia and Ngati Turoa hapu of Ngati Ira, the Ngati Whakarara hapu of Te Aitanga-a-Hauiti, and Te Whanau-a-Tamawa hapu of Te Aitanga-a-Mahaki⁶⁷ (document bank 9). The Court awarded 49,450 acres to Ngati Ira, 5,300 acres in the north-east of the block to Ngati Whakarara of Te Aitanga-a-Hauiti and 3,200 acres in the north-west to Te Aitanga-a-Mahaki.⁶⁸

⁶⁷ David Alexander affidavit, p10 and WMB, 4, pp256-263

⁶⁸ Alexander affidavit p9 and WMB, 5, p244

The memorial of ownership included people who had earlier accepted advance payments towards the purchase of Tauwhareparae. They were reminded of their agreement by Captain Porter at a meeting at Tolaga Bay in April 1879, although he conceded the original price was not binding. Such payments, made before the Native Land Court's memorial of ownership, were in fact void under section 87 of the Native Land Act 1873. The advances were, however, treated as binding and Maori seem to have thought they were. They, especially Ngati Ira, tried to get the block sub-divided so the government could take part of the block as settlement of its advances and the rest of the land could be kept by Maori. Ruka Te Aratapu wanted the land sub-divided so debts to the government could be recovered from the lands of those who had received payments. Wiremu Parata and other owners had not signed any agreements or received any payments. The Ngati Porou leader Tuta Nihoniho wanted sub-division so hapu without past agreements would be unaffected by debt and the agent for Ngati Ira, Te Whatahoro Jury, believed if sub-divided, the government's share, based on past advances, would be 21,000 acres. On 22 April 1879 when the government agent, Richard Gill, met the principal owners on he said the government would never accept a reduced part of Tauwhareparae but wanted the sale of the whole block. He agreed to a request by Tama Ki Te Rangi that no further advances would be made and added that he had recently refused several requests for advances.

In support of the sale of the land to the government Captain Porter said the sale would bring good roads and the area would be settled by Europeans. It was believed this would bring a general prosperity which Maori would share and was preferable to sale to private land speculators. William Rees, of the New Zealand Native Land Settlement Company however, informed Gill that Ngati Ira had little land left and wanted to sell 27,000 acres to the government and keep 30,000 acres as reserves. Negotiations centred on the price to be paid and the amount to be left as reserves. There were also some owners who did not wish to sell.

A large meeting of Ngati Ira and other Maori established a committee to negotiate the sale on 2 May 1879. The committee's conclusions were presented by Mohi Turei. The committee wanted new boundaries, with Ngati Ira receiving 57, 500 acres, and was

prepared to sell the block for 5s an acre with reserves of 8000 acres. The committee stated that only the portion of land owned by Ngati Whakarara was under the mana of Henare Potae.⁶⁹ Ngati Whakarara had resolved to sell its part of Tauwhareparae and it, and Te Aitanga-a-Mahaki, rejected any change to the boundaries arrived at by the Native Land Court.

The government offered 3s and 6d per acre with reserves of 10,000 acres.⁷⁰ No deductions were to be made for the advances made previously, which made the total payment around 4s and 6d and that the proposal was in accordance with section 87 of the Native Land Act, 1873. After an inconclusive meeting Rutene Ahumuku and Patara Rangi informed Captain Porter the terms offered by the government had been accepted by the owners. This meant the government's offer had been accepted by the owners who had attended the meeting. Some owners never agreed to sell and they were either not present or had left. In May 1879 following the agreement to sell Tauwhareparae three deeds of sale conveying the block to the Crown were drawn up.

The deed for Ngati Ira was signed on 3 May 1879 and sold to the government all the Ngati Ira part of the block, amounting to 49,450 acres, except for reserves of 5000 acres on the northern boundary and another reserve, also of 5000 acres, on the eastern boundary. Ngati Ira received £7000 or £70 for each grantee if they all signed. The agreement was signed by 89 valid signatures. Nine Ngati Ira people from the Native Land Court's memorial of ownership did not sign the agreement either then or at a later date.

Ngati Whakarara signed an agreement to sell its 5,300 acres, also on 3 May. All the grantees of Ngati Whakarara had signed the agreement by May 1880. They included Henare Potae and Hirini Te Kani⁷¹. The grantees received £927 10s or £36 for each owner. On 22 May 1879 Te Aitanga-a-Mahaki signed the deed selling their 3,200 acres for £640. All the grantees of Te Aitanga-a-Mahaki had signed the agreement by August 1879 and they received £25 each.⁷²

⁶⁹ Tony Walzl affidavit, p18

⁷⁰ Alexander affidavit, p14 and Walzl affidavit p19.

⁷¹ Walzl affidavit, p10

⁷² Alexander affidavit, p16

The agreements to sell by Ngati Whakarara and Te Aitanga-a-Mahaki were validated by the Trust Commissioner as required by the Native Land Frauds Prevention Act 1870. The Ngati Ira agreement was never validated, probably because some of the grantees had not signed. The agreement was left open for further signatures.

The reserves agreed to were surveyed by June 1880 and were each of 5,125 acres which included 125 acres for roading. The payment of the purchase money from the sale of Tauwhareparae was the subject of a petition to Parliament as the payments had not been distributed properly. The resulting inquiry by a Napier magistrate found that the money had been paid to the owners' agents, as agreed by the owners, and the Crown was not responsible for the withholding of money by the agents.

On 3 June 1881 the Native Land Court awarded 44,150 acres of the block to the Crown which left 13,800 acres as native reserves (document bank 10). Of this two reserves of 5000 acres each and an additional 250 acres were awarded to the sellers and a reserve of 3,550 acres was awarded to the Ngati Ira non-sellers.⁷³ The Court's award was made under section 6 of the Native Land Amendment Act, 1877⁷⁴ and was gazetted as land held in Crown freehold tenure on 16 June 1881⁷⁵ (document bank 11). Subsequently in August 1881 the Crown award was gazetted as waste land⁷⁶ as the land had been purchased from expenditure authorised by the Immigration and Public Works Act, 1870 (document bank 12). Expenditure authorised under this Act was used to purchase Maori land for settlement generally. The Act did not have a specific public works intention.

The Crown's purchase of Tauwhareparae was a contentious issue. There were claims from some Maori that the land had been sold by people who were not its owners and that some owners had not been recognised by the Native Land Court. The advance payments made by Wilson before the Native Land Court's memorial of ownership were used to put pressure on Maori to sell. The Crown's agents had refused to

⁷³ Waiapu Minute Book (WMB), 5, 3 June 1881, p244

⁷⁴ T. Walzl affidavit p5.

⁷⁵ *New Zealand Gazette* (NZG), 16 June 1881, p756 and p759

⁷⁶ NZG, 25 August 1881, pp1108-1110

consider accepting part of the block for the advance payments and had insisted on the sale of the whole block against the wishes of at least some of the owners. There was also a lack of concern over the landlessness for Ngati Ira which would result from the sale. The main controversy currently, however, is the result of the subsequent use of the Tauwhareparae land block as an endowment to provide an income for the Gisborne Harbour Board.

5.3 Tauwhareparae as a harbour endowment

The Tauwhareparae block was given to the Gisborne Harbour Board as an endowment by section 13 of the Gisborne Harbour Board Empowering Act, 1884.

Tauwhareparae was a remote block without road access when it was vested in the Board. In September 1885 the Board considered leasing the block but decided a general report on the natural divisions and resources of the block was needed before a decision could be made on its use. It was initially particularly interested in the block's reputed timber resources and a timber reserve was later established on the block.⁷⁷ In October 1885 a committee of board members was set up to consider specifications for dealing with the block.⁷⁸

In September 1886 the Board resolved to ask the government to build a road through Tauwhareparae and was informed in reply by the Surveyor General that no extension of the Ormond Waiapu road towards the block was then intended. In March 1887 the Board called for tenders for a report describing the block with a scheme for its subdivision into areas of 5000 acres. The resulting report was presented in June and showed the block's streams, natural divisions and soil qualities. It advised dividing the block into 23 sections.⁷⁹ The block was becoming less remote as a road from Tolaga Bay touched its southern boundary and it was in the centre of stations being developed by European settlers and landowners. The Board continued to press the government for improved road access and in June 1888 asked the government to build a road to the block from Tolaga Bay.

⁷⁷ GHB minute books 1, 5 May 1891, p467 and 8, 23 March 1925, p33

⁷⁸ GHB minute book 1, 13 October 1885, p293

⁷⁹ PBH, 24 June 1887, p2

The Gisborne Harbour Board Act 1884, Amendment Bill 1887, section 10 sought to give the Board the power to grant perpetual leases. Andrew Graham, the founding chairman of the Gisborne Harbour Board and now member of the House of Representatives for East Coast, said in support of the Bill that the power to grant perpetual leases was necessary as the block was rather inaccessible.⁸⁰ Although the block was not unusually remote the Board was competing to lease land with the government which was offering perpetual leases at one and a half pence per acre. The clause to allow the Board perpetual leasing was deleted from the 1887 Bill as some members could not see the need for it. The Board then voted to put in another Bill the following year a clause to allow it to sell the block. There was debate over this with the Board's lawyer claiming a clause to allow the Board to sell the block could not be done as Tauwhareparae was security for the Board's loan. A supporter of selling the block replied that the proceeds could be kept in the sinking fund set aside to repay the loan.

The amending Act of 1888 did not authorise the sale of the block and in February 1889 the Board again sought permission to let Tauwhareparae on the perpetual lease system. The Board resolved to lease the block soon and it was advertised later that month. Tauwhareparae was then described as half bush and half fern, well watered, with timber for building and fencing and on the line of a projected railway. It was offered in two blocks on the 30 year leases.⁸¹ The Board could offer the leases under clause 14 of the Gisborne Harbour Board Empowering Act, 1884.

Had the intention to lease the block in two sections been approved half the block would probably have been taken by Sir George Whitmore as he had earlier asked to lease lots eight to twenty three.⁸² But the leasing of the block in two sections was protested against by a petition of ratepayers, and in October the Board withdrew its intention to lease the block then, and set up a committee to consider the matter. The committee recommended a return to leasing the block in the twenty three sections of the 1887 report.

⁸⁰ NZPD, Vol. 59, 25 November 1887, p11

⁸¹ PBH, 4 May 1889, p2

⁸² PBH, 13 March 1889, p2

In November 1889 the Board asked the government for the power to deal with Tauwhareparae and its other endowments under the Public Bodies' Powers Act. This was granted the same month.⁸³ The Board's committee recommended leasing the block in twenty three sections for the twenty one year leases allowed under the Act. The committee held that compensation for improvements at the end of term of a lease should not exceed ten shillings per acre. The Board had received a number of applications for leases in Tauwhareparae by May 1890 and that month accepted three of them. By 1898 the Board was receiving £432 and 12s annual rent for Tauwhareparae.

The Tauwhareparae block was leased to runholders on 21 year leases from 1890. The Board encountered some difficulties with its tenants. There were cases of unpaid rent and of tenants failing to carry out bush felling and grassing as agreed to in their leases.⁸⁴ The Board continued to have problems leasing the block and sought to change its administration. The Gisborne Harbour Board Empowering Act, 1953 gave the Board authority to develop and farm the block itself. From 1955 it began to take over stations as the leases expired. The first to revert to the Board was the Puketawa Station⁸⁵. The Board was enabled to sell parts of the block by the Gisborne Harbour Board Empowering Act, 1973 and it then sold the Tuahu and Waiau stations. By 1984 all the leases had been taken into the Board's direct administration and it had sold 6,595 hectares (16,296 acres) of the block.⁸⁶

5.4 The 1989 attempted sale of Tauwhareparae and the consequent court cases

The Gisborne Harbour Board was replaced by Port Gisborne Ltd in 1989.⁸⁷ Port Gisborne attempted to sell the remaining 11,263 hectare (27,830 acre) of Tauwhareparae block by public tender in 1997.⁸⁸ The sale of Tauwhareparae was disputed by descendants of the original Maori owners who claimed that the land had been taken for a specific public work and was therefore subject to section 40 of the

⁸³ NZG, 28 November 1889, p1203

⁸⁴ GHB minute book 7, 25 July 1921, p212

⁸⁵ Whyte, *Gisborne's battle for a harbour*, p110

⁸⁶ Whyte, *Gisborne's battle for a harbour*, p104

⁸⁷ Port Gisborne annual report, 1993, p4

⁸⁸ New Zealand Herald, 28 April 1999, pA4

Public Works Act, 1981. Under this section land no longer being used for the public work purpose it was taken for must be offered for purchase back to the owner, or their successor, from whom it was taken before it could be sold to anyone else.⁸⁹ The descendants of the Maori owners are known as Nga Hapu o Tauwhareparae.

In June 1998 the High Court determined that section 40 of the Public Works Act, 1981 should apply to Tauwhareparae as this section states that the offer back provision is to apply where land is held for a public work. The High Court held that the time between the purchase of Tauwhareparae in 1879 and its endowment for a public work in 1884 was of no significance as it was only a temporary delay. In support of this the High Court noted that the Gisborne Harbour Board Bill, 1881 included endowment of the Harbour Board with the Tauwhareparae block. It was introduced to Parliament 39 days after the Native Land Court award of 3 June 1881 but was not passed into law. The inclusion of Tauwhareparae in the 1881 Bill may indicate its use for a public work purpose was at least contemplated around the time of its purchase. Although the block was not taken under public works provision, the combined effect of the subsequent endowment under the Gisborne Harbour Board Empowering Act, 1884 and the Public Works Act, 1981, section 2, which defines public work and local work, meant section 40 of the Public Works Act, 1981 should apply.⁹⁰

This was appealed against by Port Gisborne Ltd and the Court of Appeal ruled in April 1999 that Tauwhareparae was not taken in 1879 for public works and the offer back clause of the 1981 Act did not apply. The Court of Appeal ruled that in 1879 the Crown acquired Tauwhareparae for colonisation purposes and that Tauwhareparae was not at that time intended as an endowment for the Gisborne Harbour Board or for any other public work purpose.⁹¹ The Court held section 40 of the Public Works Act 1981, only applied to land taken for a public work as this involved compulsion and therefore, in fairness, required an offer back if the land later became surplus.⁹² The Appeal Court saw little significance in Tauwhareparae being included in the Gisborne

⁸⁹ Maori Law Review, June 1998, p4

⁹⁰ Ibid p4

⁹¹ David V. Williams 'Public Works takings and Treaty settlements' *The New Zealand Law Journal*, (NZLJ), July 1999, p262

Harbour Board Bill, 1881 and saw it as more significant that the block remained in Crown ownership until 1884.

The Appeal Court also raised the question of who would qualify under section 40 of the Public Works Act, 1981 as the successors of the original owners, as the offer back under the section applies only to the immediate beneficiaries of the original owners. The Appeal Court also noted that the owner before the Harbour Board was the Crown and not the original Maori owners. Following the Appeal Court decision the descendants of the Maori owners were considering an appeal to the Privy Council on the grounds given in the June 1998 High Court decision of Justice Laurenson.

5.5 The affidavits of Tony Walzl and David Alexander

In preparation for the Court hearing of 1998 the plaintiffs, W.K. Smiler and others, and the defendant, Port Gisborne Ltd, had affidavits prepared by Tony Walzl and David Alexander respectively. The account of the purchase of Tauwhareparae in this report is based largely on their affidavits. They agree on the details of the case, the point of contention between them is that Walzl claims the evidence suggests Tauwhareparae was purchased with the intention of using it to endow the Gisborne Harbour Board, while Alexander maintains it was like many other Maori owned land blocks at the time.

Alexander notes the opposition to endowment, both generally and specifically to that use of Tauwhareparae, in Parliament from 1877 to 1881, which is the period during which Tauwhareparae was being purchased. Tony Walzl, in his affidavit in reply, points to the support for endowment by the Julius Vogel and Harry Atkinson ministry in 1876 and to McDonald's statement that Atkinson promised him in late 1879 that land or its equivalent in money would be provided for the Gisborne Harbour Board.⁹³ This, Walzl believes, provides a continuity of ministerial support for endowment. The relevance of this support to the question of the intention or otherwise to acquire Tauwharparae is made by the statement in the Poverty Bay Herald 30 May 1883 that

⁹² Maori Law Review, April 1999, p5

⁹³ NZPD, Vol 40, 8 September 1881, p466

Captain Porter suggested this use for the block. He concludes that the key minister, Atkinson, Minister of Customs which included marine affairs, and Captain Porter, the key local official involved in the purchase of Tauwhareparae, intended to endow the Gisborne Harbour Board with Tauwhareparae which makes its acquisition a public works taking.

In reply Alexander says that William Rolleston, the minister of lands, not Atkinson, was the key minister, as the land had been transferred to the Crown Land Office by the gazette notice of August 1881, and that Porter's suggestion might not have been made until 1883, well after the purchase of Tauwhareparae. He also mentions that both Porter and Gill referred to the general settlement of the block during purchase negotiations, and that there is nothing to distinguish the purchase of Tauwhareparae from the other 925,000 acres purchased in the year to March 1882 (which includes the time of the Native Land Court's award of most of Tauwhareparae to the Crown).

The Crown's acquisition of Tauwhareparae was a purchase of native land rather than a public works taking. However it was subsequently used for a public works and this suggests a reform of the Public Works Act 1981, section 40, should be made to include such cases in the offer back provision.

5.6 The Ngati Porou claim to Tauwhareparae

In addition to declaring Ngati Ira, Ngati Whakarara and Te Aitanga-a-Mahaki as the owners of Tauwhareparae, the Native Land Court also admitted Ngati Hau and Ngati Porou as co-owners of the block. Ngati Hau and Ngati Porou had never occupied the land but the Court recognised their ancestral rights. Their share of the land was included in the 49,450 acres awarded to Ngati Ira.⁹⁴ On 3 May 1879, the date most of the Ngati Ira grantees signed their agreement to sell their part of Tauwhareparae, the Crown paid £180 to Ngati Tanekatohia, a hapu of Ngati Porou.⁹⁵ This was probably their share of the proceeds of the sale.

⁹⁴ Walzl affidavit, p25

⁹⁵ Alexander affidavit, p17

In addition to the Native Land Court's recognition of a Ngati Porou claim to a share of the land several leading Ngati Porou chiefs were among the owners of Tauwhareparae through their tribal affiliations. Henare Potae, a principal figure in the sale, was of both Ngati Ira and Ngati Whakarara.⁹⁶ Major Ropata Wahawaha of Te Aowera hapu of Ngati Porou was recognised as a principal owner,⁹⁷ and Tuta Nihoniho, a Ngati Porou government soldier, was involved in the Tauwhareparae negotiations. The Ngati Porou claim to Tauwhareparae recognised by the Native Land Court derives from Te Aowera, one of the leaders in the defeat of Ngati Ira.

There is also a Ngati Porou claim to Tauwhareparae from Te Awemapore Trust which questions the Native Land Court's decision on ownership. It claims the block was part of the much larger Kereruhuahua block and that Ngati Ira were entirely driven from it, or absorbed into other groups, by the year 1500 AD, and any claim Ngati Ira had was extinguished. It also rejects any claim from Te Aitanga-a-Mahaki as Mahaki was driven from the land by his brother Hauti, ancestor of Te Aitanga-a-Hauti, a hapu of Ngati Porou. Te Awemapore say Tauwhareparae claims should only be considered as part of the larger, traditional territory of Kereuhuahua and that the government purchased the land from, at least partly, people who were not the rightful owners.⁹⁸

⁹⁶ Walzl affidavit, p21

⁹⁷ David Alexander, second affidavit, p3

⁹⁸ Jennifer G. Connell letter 30 March 1998 re Ngati Porou Hikurangi Mt Claims Committee/Te Awemapore Trust - your clients claim Wai 703 Tauwhareparae land - Wereta Smiler

Chapter Six: Building the river harbour

The endowment of Tauwhareparae gave the Gisborne Harbour Board an asset which it used as security for a large loan raised in London for harbour works.⁹⁹ The ratepayers poll which authorised the Board to raise the loan had envisioned an outer harbour built to enclose part of the sea. Despite much controversy the harbour the Board built was a river harbour based on a breakwater built out to sea from the eastern, or Kaiti, side of the Turanganui river mouth. The building of the breakwater involved the taking of Maori land on the eastern side of the river mouth under public works legislation for a blockyard, a quarry and a tramway line linking them. The subsequent need to shelter the breakwater from a parallel sandbar required the building of a western seawall. The disastrous silting of the harbour in 1916 and 1917 led the Board to acquire land by the Awapuni lagoon as a possible site for a new harbour.

6.1 The new Gisborne Harbour Board

The Gisborne Harbour Board consisting of members of the Gisborne Borough Council ceased to exist on 9 February 1885. The new Gisborne Harbour Board held its first meeting on 19 February 1885. It had four elected members, two each from the borough and the county and three government nominees. The mayor of Gisborne, Cecil de Lautour and the chairman of Cook County, George Sunderland, were ex officio members.¹⁰⁰ The Board elected Andrew Graham, one of the government nominees, as chairman. The other government nominees were George Matthewson and William Sievwright. The borough had elected John Townley and Thomas Dickson and Cook County had elected John Sunderland and William Chambers.

A ratepayers poll in April overwhelmingly approved the raising of a loan for harbour development. The Board did not proceed with the Coode plan, although this, or a plan similar to it, was intended by the 1884 Act and had been approved by the ratepayers' poll. It adopted instead a plan from its engineer, John Thomson, to build a breakwater

⁹⁹ PBH, 29 February 1888, p2

¹⁰⁰ P. Whyte, p27.

from the eastern side of the river mouth with a seawall or groyne built from the western side. The breakwater and sea wall were intended to produce a cheaper harbour and one which would be of use during construction unlike the Coode scheme which was expensive, ambitious and of no use until in its final form as an offshore, artificial, hollow island. The government accepted the river scheme in place of an outer harbour.

Survey work for a breakwater was begun by July. The board needed to find a source of stone for the planned works and surveyed a number of sites, including Kaiti, land at Whataupoko owned by Percival Barker, a sheep farmer¹⁰¹ and property of a man named Grey. Barker's land was closer than Grey's and in November 1885 the Board was ready to conclude an agreement with Barker. Stone from a quarry on his land would have had to be carried by a railway across some private property at Whataupoko and across native land at Kaiti. Arrangements for this were needed with the owners and there was also the need to obtain land to be used as a construction blockyard.

6.2 The board meeting of 24 November 1885

The 24 November 1885 board meeting decided Mr Barker was asking too much for his property and ordered a new survey of Kaiti, the island of Tuamotu and adjacent areas. A member, Mr G.L. Sunderland, was concerned about seeking to use Kaiti as an alternative site for a quarry as it involved obtaining Maori land. He said 'if the Board asked the natives for anything they would open their mouths very wide',¹⁰² and added he based this on the experience of Cook County. The chairman said Kaiti was under a very complicated title but believed the board could take what it wanted under the Public Works Act. Mr Sunderland said the Maori were most extortionate if they saw the opportunity and that if the board wanted stone from native land it must take the land or have a very large demand made on them. Mr Townley said the board already had two chains of Kaiti beach front under deed but other members expressed doubt about the value of this deed which had been signed on 31 July 1875. The

¹⁰¹ Poverty Bay Herald 11 November 1885 p3

¹⁰² Ibid 25 November 1885 p2

chairman said there would be no difficulty about the beach but when they came to the island (Tuamotu) there would be great difficulty as there was an old burial ground there with a great many bones (document bank 13).

Mr Matthewson said the survey should go ahead and before the next meeting he would see the principal natives. The board's lawyer, Mr Delatour, advised against contacting the Maori owners as the Native Land Court was to decide the subdivision of Kaiti in December. After that they would know whom they were dealing with. He said the Maori should not be given the idea that there was something to be gained by withholding their agreement to the board obtaining the land it needed, although at a subsequent meeting he said the board would receive as much good will and fair consideration from Maori, as it would from Europeans.

6.3 The Kaiti beach front and the agreement of 1875

The borough, and the harbour board, claimed the right to quarry the length of Kaiti beach to a width of two chains above the high tide mark from Waikahua on the eastern side of the Turangani River mouth to Papawhariki point.¹⁰³ The basis of this claim was an agreement signed by the Crown and by Hirini Te Kani, Riparata Kahutia, Wi Pere and five others on 31 July 1875 (document bank 14). The quarry was to provide metal for the streets of Gisborne and possibly for future harbour works.¹⁰⁴ The deed was raised in the Native Land Court in December 1883 when Wi Pere and Riparata Kahutia claimed the deed they signed only gave the right to collect stones to one chain above the high tide mark (document 15). Judge Brookfield ruled that if the Maori claimants and the harbour board could reach a new agreement the deed could go to the Supreme Court to be set aside.

No agreement was reached and in 1885 Samuel Locke unsuccessfully asked the Minister of Lands to legislate to secure the right to use the beach front. He stated that Gisborne was about to borrow a large sum of money to build a breakwater and it was essential that undisputed title to the land be obtained.¹⁰⁵ The Chief Judge of the Native

¹⁰³ S. Locke letter 5 June 1877, National Archives MA-MLP 1 1888/48

¹⁰⁴ PBH, 5 Dec 1883

¹⁰⁵ S. Locke, NZPD, 1885, 51, p92

Land Court stated in December 1885 that in addition to the right to quarry, the deed gave the government the right to erect buildings as necessary for quarrying and for preparing rock for use and the right to access. The question of Crown rights in the land was ended when the Crown took the land for roading,¹⁰⁶ probably under the Native Land Court Act, 1886. The Gisborne Harbour Board's tramway to its quarry at Sponge Bay, opposite Taumotu Island, later ran along Kaiti beach on the same strip of land above the high tide mark that the Crown took for roading and had earlier been claimed for quarrying.

6.4 *The blockyard site*

The harbour board received government approval to proceed with the river scheme in January 1886 and needed to decide where to site the blockyard which was to be the centre of construction work. There were two possible sites, one involved reclaiming land from the rocks or papa reef along Kaiti Beach, which was land already held by the Board, either as foreshore or as the 2 chains it claimed under the 1875 agreement. The other was the site of Read's old store¹⁰⁷ at Kaiti on the eastern bank of the Turanganui River which was now Maori land. The Board decided to site the blockyard on the land Read had leased from Maori owners at Kaiti. At least one of these, Hirini Te Kani, the chief of Te Aitanga-a-Hauti, was still living in the area.

The blockyard was to be a work-yard and block-making ground with tramways and a workshop and cement sheds for making concrete blocks for the breakwater. It was thought the quickest and most satisfactory way to acquire the land needed would be through the Public Works Act. There was dissent from Mr Townley, who thought the Board had enough land of its own in the area for that purpose. He was probably referring to the land claimed under the 1875 agreement at Kaiti Beach, which was the alternative site for the blockyard. In March 1886 proceedings were begun to take the land at Kaiti under the Public Works Act.¹⁰⁸ It was believed by the Board that the Maori owners would be ready to accept compensation for the taking of their land for harbour purposes.

¹⁰⁶ MA-MLP 1 1888/48 letter of 8 March 1888

¹⁰⁷ PBH, 3 March 1886, p2

¹⁰⁸ PBH, 17 March 1886 p2

The *Poverty Bay Herald* of 28 April 1886 published a notice in English and Maori that a committee meeting was to be held to meet objectors to the board's taking a portion of Kaiti block and Kaiti No.1 under the Public Works Act, 1882, in connection with harbour works. A similar notice had been gazetted earlier.¹⁰⁹ This gave the area as 3 acres and 3 roods of Kaiti No.1, and 2 roods and 20 perches of Kaiti block. The blockyard site was on the Kaiti or east side of the Turanganui River opposite its confluence with the Waikanae Stream. An 1886 map of the site shows a Maori whare inside the boundary and another nearby at Maori Point.

The works committee reported in June that it had taken the necessary steps to take the land for a blockyard and other purposes under the Public Works Act. As part of the process they had met the native owners but had been unable to reach agreement with them on compensation. The committee had asked the Governor to take the land by proclamation and did not think the blockyard could proceed until this was issued.¹¹⁰ In early July the board was advised by the government that a proclamation on the blockyard land was to be made that week and that there had been two objections to taking the land under the Public Works Act, one from its Maori owners and the other from the New Zealand Native Land Company. This was a company set up by W.L. Rees and Wi Pere to develop Maori land by the voluntary association of Maori owners who would contribute their land in return for shares in the company. It was intended to then sell the land and return a fair price to the Maori former owners but the company went bankrupt.¹¹¹

The blockyard land was taken by proclamation in July 1886 under the Public Works Act, 1882¹¹² (document bank 16) The amount taken was 3 acres and 20 perches in Kaiti No.1 block and 2 roods and 20 perches in Kaiti, a total of 3 acres and 3 roods. A contract to build the blockyard was signed in September.

¹⁰⁹ NZG, 11 March 1886 p307

¹¹⁰ PBH, 23 June 1886 p2

¹¹¹ S. Daly 'Poverty Bay' p162 and p169

¹¹² NZG, 11 March 1886 p307 (intent) and 15 July 1886, p836

Compensation for the blockyard was disputed. When Edward Harris (Eruera Harete), one of the Maori owners, wrote in October 1886 refusing the board's offer for his land the board decided to continue with proceedings under the Public Works Act.¹¹³ In November W.H. Tucker, representing Riperata Kahutia, another owner, wrote saying she valued her land in the chosen site at £1,000.¹¹⁴ Captain Tucker had probably purchased the interests of some Maori owners in the site and was also acting for himself. In early 1887 an injunction to stop the harbour works was dismissed.¹¹⁵ The Board was informed in March 1888 that Captain Tucker had appointed Captain Winter as assessor in the blockyard claim.¹¹⁶ The case went to the Compensation Court which resulted in a settlement of Tucker's claim for the sum of £300.¹¹⁷ On the basis of that settlement the Board calculated Edward Harris's compensation to be £62 and 10s. Harris wanted £80 for his land but an agreement was reached with him under which he accepted the Board's offer.¹¹⁸

In 1890 Captain Tucker represented a group of Maori claiming compensation in but was advised by the board that they must first establish title.¹¹⁹ One of the Maori he was then representing was named Raniera (his surname may have been Teiroa). This claim suggests the Board complied with its legal requirements in compensation matters but these requirements were those of the Crown's legal system and did not fully reflect Maori customary ownership. The Board may have compensated the Maori owners but they were the owners from the Native Land Court decisions which may have been flawed and the Board did not investigate the justice of other claims any further.

After the breakwater was constructed the land was leased from 1896 to the Kaiti freezing works and was the site of its first buildings.¹²⁰ By 1898 the Board was receiving an annual rent of £190 from the freezing company.

¹¹³ PBH, 27 October 1886 p2

¹¹⁴ PBH, 16 February 1887 p2

¹¹⁵ GHB minute book 1, 15 February 1887, p78

¹¹⁶ GHB minute book 2, 13 March 1888, p190

¹¹⁷ PBH, 5 July 1889, p2

¹¹⁸ PBH, 5 July 1889 p2 and 12 February 1890 p2

¹¹⁹ PBH, 26 February 1890, p2

The land taken for the blockyard is today bordered by the east side of the Esplanade and on the north by Crawford Road.

6.5 The Native Land Court award of 13 September 1886

The Kaiti block was subdivided by the Native Land Court in 1886. In September that year Edward Harris (Eruera Harete) asked the Court that the land wanted for the blockyard be put in his name and that of Hirini Te Kani. He referred to a future division of the purchase money. On 13 September 1886 the Native Land Court awarded 2 roods and 20 perches in Kaiti block to Hirini Te Kani and Eruera Harete. This land was then conveyed to the Gisborne Harbour Board for the purpose of a blockyard¹²¹ (document bank 17). This piece of land is shown at the northern end of the proposed blockyard site on the PWD map 14011 (see map 6). The proclamation taking the land for purposes of harbour construction under the Public Works Act, 1882 had already been published in 15 July 1886.

The Court also awarded 3 acres, 3 roods and 14 perches to Hirini Te Kani and Edward Harris to convey to the Gisborne Harbour Board. This is shown on PWD map 14396 and is in Kaiti block to the east of Tuamotu Island and was intended for a quarry. It was taken for quarrying by clause 8 of the Gisborne Harbour Act 1884 Amendment Act 1887 and is listed in the second paragraph of the second schedule to the Act.

A third award of 13 September 1886 gave 2 acres and 32 perches to Eruera Harete, Te Haapu Huiaki (?) and Wi Pere to be held in trust as a site for a village. The award consisted of Kaiti sections 35 to 39 and 55, 62 and 174.¹²² Sections 35 to 39 were taken for harbour works in the late 1920s and section 174 was sold to the Gisborne Sheep Farmers Meat and Mercantile Company (Kaiti freezing works).

The Court also put 657 acres in the names of Hirini Te Kani and Eruera Harete to convey to the New Zealand Native Land Settlement Company. The land grant to the

¹²⁰ Whyte, p53

¹²¹ GMB 11, 13 September 1886, p106

¹²² Ibid, p110

company would have been to settle its claims on Kaiti block from money advanced to the owners.

6.6 *The tramway and the quarry*

Construction of a tramway from the quarry near Tuamotu Island to the blockyard site was approved by the Cook County Council in January 1886.¹²³ In February the harbour board received the agreement of the New Zealand Land Settlement Company to take the tram way through the Papawhariki block near Tuamotu. In March the board decided the island and Kaiti hill needed to be surveyed to bring them under the Public Works Act. Intention to take 3 acres, 3 roods and 17 perches in Kaiti block, 5 acres and 32 perches in Papawhariki and the 8 acre and 26 perches of Tuamotu Island for the purpose of making a tramway and quarry was gazetted on 22 May 1886.¹²⁴

The tramway from the blockyard site to the coast opposite Tuamotu Island was opened in December 1886. Quarrying by the Board was underway at Sponge Bay. An island known as Puakawai¹²⁵, or Papawhariki, between Tuamotu Island and the shore, was completely removed. Tuamotu Island was also quarried. The taking of the land it was on, and the quarry it provided transport for, was later validated by the Gisborne Harbour Board 1884 Amendment Act 1887.

6.7 *The Kaiti spring water supply*

In December 1886 the Maori owners represented by Captain W.H. Tucker declined to accept a rental of £13 per year for ten years for a water supply on the Kaiti block. The works committee in reporting this recommended taking the water supply under the Public Works Act. The water was needed to supply the steam locomotive. Negotiations with Maori owners continued and the issue of the water supply was not affected by the public works takings of the 1887 Amendment Act. An agreement was entered into under which the Board took water from the Kaiti spring for 5s per week. In January 1896 the Board received a letter from Tucker, trustee for the Maori

¹²³ Whyte, *Gisborne's battle for a harbour*, p35.

¹²⁴ NZG, 22 May 1886, p718

owners, asking for an increase in the rental to 10s a week. The Board offered 7s if a seven year lease was agreed to but in February agreed to pay 10s per week.¹²⁶

6.8 *The amendment act of 1887*

In a letter presented to the Gisborne Harbour Board at a meeting on 19 January 1887, the Board was informed by the under secretary of the Public Works Department that there was no power to take the Kaiti land wanted for the stone quarry and railway line to Tuamotu. The Board was told special authority would be required under the Railways Authorisation Act 1885, section 7. Also extended authority was required as land for a quarry was involved as well as railway land. The letter suggested the Board consult its member of Parliament.

The Board's lawyer reiterated that authority could be obtained through the Public Works Act, 1882 and the Harbours Act, 1878 but added that it was not unusual to gain authority for works after construction and that this was not contrary to clause 19 of the Public Works Act. The Board seems to have always assumed that it could take the land it needed under legislation of some sort and in February the Board's solicitor suggested that the Kaiti land be taken under a validating act.¹²⁷

The Gisborne Harbour Act 1884, Amendment Act 1887, validated both the departure from the plan for an outer harbour intended in the 1884 Act and the sinking fund established by the board with some of the loan it was entitled to raise. The validating legislation was opposed in Parliament and a clause was added to the Bill which limited the amount of the £200,000 loan the Board could spend to £65,000.

Clause 6 and schedule 1 of the Act validated the construction of the railway from the Turanganui River to Tuamotu Island and the quarry. Clause 8 validated the Board's quarrying and the second schedule defined the boundaries of the land required for this (document bank 18). These consisted of 3 roods and 13 perches near the blockyard in Kaiti, and the land for which an intention to take for harbour purposes had been

¹²⁵ Map, J.A. Mackay papers, box 5, Gisborne Museum

¹²⁶ GHB minute book 2, 31 January 1896, p221

gazetted on 22 May 1886. These were the island of Tuamotu and the land in Kaiti and Papawhariki blocks along the coast of Sponge Bay to the east of the island, shown in map 5.

The land from schedule 2 of the 1887 Act was taken by proclamation on 1 August 1889 for the purposes of Gisborne Harbour construction under the Public Works Act, 1882 and the Gisborne Harbour Act 1884 Amendment 1887¹²⁸ (document bank 19).

6.9 *The 1888 amendment act*

The spending limit imposed by section 10 of the 1887 Act left the Board with only £12,000 available and in February 1888 the Board voted to take steps to have the Act amended. The building of the breakwater caused a parallel sandbank to form beside it so that although it had reached what had been 14 or 15 feet of water the depth was only two or three feet which was less than it had been to start with.¹²⁹ In April the government appointed H.G. Higginson, a civil engineer, to inquire into the harbour works. Work stopped on the breakwater in August 1888 as the Board had run out of money. Following his report Higginson appeared at a committee of inquiry into a petition from settlers from north of Gisborne who were against further expenditure of the harbour works, as the plan now being followed would not build a deep water outer harbour and was of no use to them. Higginson recommended to the select committee that the break water be extended to 1,160 feet (380 metres). The select committee considered the work so far to be practically useless but agreed if the breakwater was extended to 1,160 feet it could be used by steamers and smaller vessels in ordinary weather.¹³⁰ The resulting Gisborne Harbour Board Act 1884, Amendment Act 1888 authorised the board to spend £40,000 of the loan money subject to the approval of a ratepayers poll. This was given in November and work resumed on the breakwater.

6.10 *The western sea wall*

¹²⁷ PBH, 25 November 1885, p2 and 16 February 1887, p3

¹²⁸ NZG 1886 v.2 p853

¹²⁹ Thomas Todd, *The history of the Gisborne Harbour Board : a tragedy*, p5, Gisborne, 1946

¹³⁰ Appendices to the Journals of the House of Representatives (AJHR) 1888 I-6 p1

The plan put forward by John Thomson in 1885, and accepted by the government, had included a groyne on the western side of the river entrance. This had not been built and the only harbour work on the western side was a small training wall.¹³¹ When the £40,000 ran out in 1890 the breakwater had reached 360 metres but the sand bank which accumulated beside it reduced the depth, which had been three metres, to only one metre. The reduced depth threatened entry to the river port and the report on the harbour works by the Marine Department engineer, C.Y. O'Connor, at the end of the year, concluded the breakwater had made the harbour worse. The sand bank, he found, was caused by the inward curl of the waves on the west side of the breakwater and by the increased current at the entrance to the river as the tide now entered from one side only. O'Connor advised the board to construct a sea wall or groyne on the western side of the Turanganui River to prevent the accumulation of sand beside the breakwater.¹³² The sea wall he proposed was to be built from the end of Custom House Street and was to be built 1,800 feet into the sea, curving towards the existing breakwater. This would result in south-easterly sea currents prevailing over westerly forces and prevent the sand from entering the harbour. Once the harbour was enclosed the river would scour the channel clear although some dredging would be necessary.

In March 1893 the Board discussed building a western wall but the meeting was adjourned without a decision due to opposition from a supporter of the outer harbour idea.¹³³ In August the Board decided to build a western wall¹³⁴ and adopted the plan of another harbour engineer, C. Napier Bell. A contract was made in October.

In November the Board discussed taking a few acres of Maori land at Waikanae Point and defined this area the following month as 3.4 acres.¹³⁵ The land the Board wanted at Waikanae was in the Waihiharore block. No proclamation of land takings at Waikanae was made in the 1890s. However the report of the commission of Robert Stout and Apirana Ngata in 1908 on native land in the counties of Cook, Waiapu, Wairoa and Opotiki mentions the Gisborne Harbour Board acquiring land at Waikanae in the Waihiharore block which had been taken by the government for

¹³¹ C.Y. O'Connor report, AJHR 1891 D-3 map 2

¹³² Whyte p40.

¹³³ PBH, 3 March 1893 p2

¹³⁴ PBH, 11 August 1893 p4

railway purposes in 1900. This may have been the land the Board had wanted some years earlier as it was adjacent to the harbour. The commission's report says the Board agreed to pay the Maori owners £550 compensation as part of an agreement which involved validation by Parliament. The validation was not done and the compensation was not paid.¹³⁶

The western wall, or groyne, was connected to Waikanae Point in August 1894¹³⁷ and was completed later that year. Its completion was too late to prevent damage to the breakwater which began to disintegrate in 1894 as the sandbags it was built on were eroded.

6.11 *The Waikanae Beach beacon reserve*

In April 1893 the government took 3 roods and 1 perch of Maori owned land in Waiohiorore No.1 block as a site for a navigation beacon and lights¹³⁸ (document bank 20). The land was a strip of land 50 links wide and was known as the beacon reserve. The owners were the 24 Maori named in the memorial of ownership in July 1875. They were Riparata Kahutia, Hoani Haraki and others.¹³⁹ No payment was made to the owners for the reserve as it was excluded from the certificate of title when the Waiohiorore block was subdivided.¹⁴⁰ The owners requested compensation but the Board was unable to pay any as the reserve was in Crown ownership and it could not pay compensation without title to the land. Consideration was given to transferring the land from the Crown to the Board by an Act of Parliament. In 1903 the Board's solicitor reported that the land the beacons had originally been on was still Maori land and was in the name of four Maori, two of whom were dead. The Board resolved to take the land under the Public Works Act although this does not appear to have been done.¹⁴¹

6.12 *Summary of land takings in this section*

¹³⁵ PBH, 17 November 1893 p2 and 1 December 1893 p3

¹³⁶ AJHR, 1908, G-iii, p8

¹³⁷ PBH, 3 August 1894 p2

¹³⁸ NZG, 27 April 1893 p527

¹³⁹ GMB, 1, 3 July 1875, p197 and p232

¹⁴⁰ Auckland Archives, BANF 5694 102c, District Surveyor letter 6 February 1904

The land taken by the Board in the nineteenth century amounted to 3 acres and 3 roods for the blockyard site on the river opposite Gisborne town in 1886, 17 acres and 35 perches (total) for the quarry at Sponge Bay and Taumotu Island in 1889 and the Waikanae beacon site of 3 roods and 1 perch in 1893. The blockyard site was later leased by the Board to the freezing works company for 190 pounds per year after compensation paid on it had amounted to 362 pounds 10s. The Gisborne Harbour Board took the land it needed entirely from Maori and did so by forced legislative acquisition. It did not consult with Gisborne Maori and acted in a highly prejudicial way towards them.

¹⁴¹ PBH, 24 September 1903, p3

Chapter Seven: The river harbour

From the late 1880s to 1916 a successful river harbour was in operation at Gisborne. Maori land taken in the process of building the breakwater remained in the possession of the Board and some additional Maori land on the western side of the river mouth was obtained as well. The disastrous silting of the harbour in 1916 and 1917 led the Board to consider alternative sites for its harbour and to acquire 5 acres of Maori land at one possible site, the Awapuni Lagoon. The harbour, however, remained at the Turanganui river mouth with a development plan being implemented to solve the problem of silting.

7.1 The completed river harbour

An amendment Act of 1896 enabled the board to raise money to continue repairs to the breakwater, extend the western wall and carry out blasting to deepen the harbour. The breakwater and western wall, combined with the effects of dredging and blasting, created a channel 16 feet deep and 120 feet wide.¹⁴² The harbour could berth coastal steamers and a steamer service operated between Napier, Gisborne and Auckland. Overseas ships still had to anchor offshore but for some years Gisborne operated a successful river harbour.

7.2 The Harbour Board Reserves

The Maori owned land vested in the Board by the Gisborne Harbour Act 1884, Amendment Act 1887 (see map 5) and taken by the New Zealand Gazette notice of 1 August 1889 became known as the Harbour Board Reserves.¹⁴³ Mr de Lautour wrote to the Board in March 1898 on behalf of the owners of Tuamotu Island and other reserves asking if the Board would be prepared to take steps to re-vest the reserves in the owners as the reserves were no longer wanted for the purpose for which they were taken. Quarrying for stone for the breakwater and other harbour construction purposes had stopped and the Maori owners wanted their land back. The Board made no

¹⁴² Gisborne Herald (GH) 7 November 1952 p9

¹⁴³ GHB minute book 3, 31 March 1898, p358

attempt to maintain a claim to the land and replied that it relinquished any right or title it may have had in the reserves. The names of the owners given on the map drawn up from the gazette notice of 1 August 1889 are Henare Te Kuni and others as owners of Tuamotu Island, Henry Harris and others as owners of the land taken in Kaiti block and G.E. Read's trustees for the land in Papawhariki block. Read left no direct heir and his complicated legacy took years to settle. Henare Harete (Henry Harris) is listed in the Gisborne Native Land Court minute book 11 (1886) p127 with Eruera Harete who was of Ngati Oneone and Te Aitanga-a-Mahaki. The harbour board reserves were not returned and in July 1903 the Board's solicitor informed the Board that the title deed to Tuamotu Island was expected in due course.¹⁴⁴

In 1924 the Board received a letter from Mr E. Hooper stating that the Native owners of Tuamotu Island had instructed him to apply to the Native Land Court for an assessment of compensation for the island. Hopper asked if the Board would apply to the Court. The Board replied to his letter that no trace could be found in its old balance sheets of any compensation payment having been made although such a payment might have been included in some main heading of expenditure and that it would not be applying to the Court.¹⁴⁵ Tuamotu Island, also known as Sponge Bay Island, was again used for quarrying by the Board in the late 1920s. The island, and the land on the coast opposite it taken by the gazette notice of 1 August 1889, is today the property of Port Gisborne Ltd¹⁴⁶ (document bank 21).

7.3 Waiohiharore No.2 block and the 1908 Stout-Ngata Commission

In the process of building the training wall on the western side of the harbour some land was reclaimed from the sea and after the wall's construction sand accumulated behind it. The question of ownership of the reclaimed land was brought to the Commission on Native Land in the counties of Cook, Waiapu, Wairoa and Opotiki of Robert Stout and Apirana Ngata in 1908. The Commission heard land had been taken by the government in the Waihiharore No. 2 block for railway purposes in 1900¹⁴⁷

¹⁴⁴ PBH, 30 July 1903, p3

¹⁴⁵ GHB minute book 8, p1

¹⁴⁶ Ngaire Wolter, Gisborne Land Information Office, letter of 31 March 2000

¹⁴⁷ NZG, 1900 v.1 p478

and when compensation claims were being heard for this land in the Native Land Court the question of ownership of land reclaimed from the sea was raised. The reclamation could have been caused by the harbour works carried out by the harbour board or by action of the sea. If the accretion was gradual the land would belong to the Maori owners of the adjacent block, if sudden it would belong to the Crown. An agreement to divide such land was reached by the Gisborne Harbour Board under which the Board received 6 acres and 3 perches of land reclaimed from the sea.¹⁴⁸ The Stout-Ngata commission thought there was no basis for the Board obtaining reclaimed land which should have belonged to either Maori or the Crown. This land has since been removed by harbour development and is now part of the harbour.

Under the agreement the Board also gained part of the land taken for railway purposes and the right to take 2 chains of land awarded to Maori. The Board agreed to pay the Maori owners £550 in compensation following validation by Parliament. The agreement and the grant the Board subsequently received from the government was criticised by the Stout-Ngata commission in 1908 as the arrangement was not validated and the Maori owners received no compensation¹⁴⁹ (document bank 22). The commission held there was no statutory authority for the grant and thought the land should be returned to Maori. The land north of Waiohiorore 2 and 1D, on the town side of the Waikanae Stream, was then owned by Riparata Kahutia.¹⁵⁰ The commission thought the Board was blocking access for Maori people from their land to the sea and had obtained a grant of the land from the Crown without giving Maori the opportunity to argue that the land had occurred by accretion and therefore belonged to them. The land in question, Waiohiorore 2, has since been removed by harbour development.

The agreement between the Maori owners of Waiohiorore and the Gisborne Harbour Board which later became a concern of the Stout-Ngata commission is referred to by a letter the Board received in 1904 from Mr H.C. Jackson. He suggested a procedure for vesting an agreed portion of land in the Board and clearing the way for the payment of the money the Board had agreed to pay Maori. Jackson informed the Board the

¹⁴⁸ AJHR 1908 G iii p17

¹⁴⁹ Ibid p8.

owners were forming a management committee and an incorporation. It was hoped a land transfer title would be issued to the corporate body and he suggested the Board's portion of the land be included in the title and later transferred to the Board.¹⁵¹ The Board agreed to this and instructed its solicitor to see that the transfer of the land to the Board was agreed to by Maori when the transaction was put through the Native Land Court. However it does not appear that the transaction went to the Court, possibly because the agreement required legislative action by Parliament, as referred to by the Stout-Ngata commission of 1908.

The Board's opinion of the matters referred to by the Stout-Ngata commission was that it had come to an agreement over the accretions with the Native owners but had inserted a clause requiring validation by Parliament to make it binding. The Board prepared a Bill and sent it to the member of Parliament, James Carroll, but Parliament would not pass the Bill as it regarded it as a dangerous precedent. The authorities in Wellington then issued a certificate of title to the Board for the accretions as it was satisfied they were caused suddenly and by the works the Board had carried out. The Board denied having obtained any Native land and said Robert Stout, the chief justice, had come to agree with them¹⁵² (document bank 23).

7.4 The 1912 Waiohiharore No.2 land taking

In 1912 the Board considered extending harbour works into the Waikanae Stream and decided to acquire slightly over 1 ¼ acres of land in the Waiohiharore block under the Public Works Act. Its intention to take 1 acre 1 rood and 4.5 perches of Waiohihirore No.2 block was gazetted in October.¹⁵³ The Native Land Court awarded compensation to the Maori owners of £1,275 in June 1917 and this was paid to the Court.¹⁵⁴

7.5 The Tuahine light house

¹⁵⁰ PWD, W000, map 19049, National Archives, Wellington

¹⁵¹ PBH, 28 July 1904, p3

¹⁵² PBH, 23 December 1907, p5

¹⁵³ NZG 1912 v.2 p2861

In 1901 the Gisborne Harbour Board decided to proceed with the construction of a lighthouse at Tuahine Point as there had been public demand for this for some years. Land for the lighthouse was donated by Mr William Cooper, a sheep farmer from Wainui, who held freehold title to the land. The lighthouse was opened in 1907 but following a fire was out of action until 1909. In the same year notice of the Board's intention to take two acres, three roods and 31 perches at Tuahine Point for a lighthouse and site was published in the New Zealand Gazette.¹⁵⁵ The purpose of taking this additional land may have been to provide a house for a lighthouse keeper.

7.6 The Kaiti leading light section

In 1916 the Board had published its intention to take 2.48 perches of Kaiti section 26 under the Public Works Act 1908, and to build on it a steel tower with leading lights for vessels entering the Turanganui River. The proclamation taking the land under the Public Works Act 1908, and the Harbours Act 1908, was published in September.¹⁵⁶ The land taken was lot 1 of Kaiti section 26 and was on Wainui Road near Hirini Street.¹⁵⁷ The lot belonged to Mr G. Matthewson and when in 1909 the site was found not to be required the Board decided to hand the property back to him.¹⁵⁸ The proclamation of September 1916 was revoked by a gazette notice of 4 May 1922 (document bank 24).

7.7 The silting crisis of 1916 and 1917

In the winter of 1916 heavy rain brought over 10 million cubic feet of silt down the tributaries of the Turanganui from hill country eroded by forest clearance. The port was closed by silting and the following year the channel was reduced to 4 to 5 feet.¹⁵⁹ The Board continued to operate the port but considered plans for a new harbour. Among the plans suggested were the building of a canal to divert the Waimata River across Kaiti to the Wainui Stream and locating the harbour at the Awapuni Lagoon.

¹⁵⁴ Gisborne Harbour Board 1917 annual report

¹⁵⁵ NZG, 1909 v.2 p3282

¹⁵⁶ NZG, 7 September 1916 p2953

¹⁵⁷ National Archives PWD, W000, map 40763

¹⁵⁸ GHB minutes, 29 May 1922, p291

¹⁵⁹ Gisborne Harbour Board annual report 1917

7.8 The Awapuni Lagoon

The Awapuni Lagoon is south of Gisborne near the Waipaoa River's entrance to the sea (see map 6). The lagoon was tidal and therefore part of the foreshore and as such treated as Crown Land. The lagoon was considered a possible site for a new harbour and in 1924 the Board took 5 acres of land from the Awapuni blocks 1J1, IG3, IG2, A1B and BI for harbour works under the Public Works Act 1908¹⁶⁰ (document bank 25). The land taken adjoined the lagoon and was Maori owned.¹⁶¹ It was situated on the north-east of the lagoon between the lagoon and Awapuni Road¹⁶² and could potentially have provided road access to a lagoon harbour from the town of Gisborne. In March 1925 the Board was informed that the Native Land Court had awarded the Maori owners £132 and 5s compensation for the 5 acres taken. The Board authorised payment for the compensation and for Court and witness fees¹⁶³.

In 1924 the Board had the lagoon surveyed for the purpose of having it vested in itself and applied to the District Land Register for title but was refused as no grounds were found for the Board's claim.¹⁶⁴ A Maori claim to ownership of the lagoon was heard in the Native Land Court in 1928. It was based on the lagoon having been fresh-water until the flood of 1876 when the river broke through to the sea and the lagoon became subject to spring tides. The Crown contended the lagoon was an arm of the sea and this was accepted by the Chief Judge. He ruled the lagoon to be tidal and that therefore there was insufficient evidence of sudden inundation to displace the Crown's title. A Maori petition to Parliament was considered.

Following the court case the Board's secretary was interviewed by the under-secretary of Lands and asked what the Board would do with the lagoon if it was vested in it. He replied that the Board wanted the lagoon in case the present harbour under construction was later found to be too small. The Board made a third attempt to obtain title to the lagoon in 1929. The chairman of the Board observed that the Marine

¹⁶⁰ NZG, August 1924 p2022

¹⁶¹ National Archives M4/1877 letter of 20 September 1926

¹⁶² Auckland Archives, BANF, 5694, 110b, map SO 4832

¹⁶³ GHB minute book 8, 23 March 1925, p33

Department would only support the Board's claim if the Board submitted a definite scheme of what it intended to do with it. He said some purpose might be served by acquiring the area and it might lighten the rates burden. The Board may have been seeking the lagoon as a source of revenue as in 1936 it wanted to turn the lagoon into farmland.

In 1951 most of the 5 acres by the lagoon that the Board obtained in 1924 were taken for a road and an airport.¹⁶⁵ The remaining 1 acre 3 roods and 11.1 perches was sold to the government in 1957.¹⁶⁶

7.9 Summary of land takings in this section

The Gisborne Harbour Board may have acquired Maori land in the Waiohingarore block after 1900. Some was land which had been taken earlier for railway purposes and other land involved a dispute over whether the land was from accretion or sudden emergence. The Stout-Ngata considered Maori had been treated unfairly in this matter.

In another area in 1912 the Board paid 1,275 pounds in compensation for 1 acre 1 rood and 4.5 perches of land by the Waikanae Stream.

¹⁶⁴ Ibid letter of 20 January 1927

¹⁶⁵ NZG, 1951 p260 and p261

¹⁶⁶ Auckland Archives BANF 5694 110b letter of 19 February 1957

Chapter Eight: The development of the harbour in the 1920s

The new harbour to replace the silted river harbour was planned as a combined inner and outer harbour with the river diverted west and separated from the harbour by a wall. The old river mouth became a coastal inlet from which was to be built the wharves and breakwaters of an outer harbour. The Board subsequently abandoned the outer works, which could have berthed ocean-going ships. The coastal inlet of the old river mouth was extended by excavating land at Kaiti to form a harbour basin separated from the river. This forms the present harbour. The harbour construction involved the taking of land at Kaiti which had been set aside as Maori reserve land and the removal of the meeting house of Te Poho-o-Rawiri which was built on it. The reserve land was taken by Act of Parliament in 1927 under which compensation was paid by the Board for the building of a new meeting house.

8.1 *The new harbour*

The Gisborne Harbour Board Act 1919, authorised the Board to borrow £1 million for harbour development provided the loan was approved by a rate payer poll. Following approval of the loan by a large majority of ratepayers the Board decided to adopt the plan put forward by Leslie H. Reynolds and build a combined inner and outer harbour. This involved diverting the Turanganui River west to Waikanae Beach by means of a new channel separated from the old river bed by a training wall down the centre of the river. The wall was to be extended to form an outer breakwater enclosing hundreds of acres of sea. Berths for overseas ships were to be built on what had been the western side of the river.

In November 1923 the Board voted to acquire land on the Kaiti side of the river for the purpose of extending the available berthage area in future years. It was then intending to alter its harbour plan by building only the inner part of the Reynolds plan.¹⁶⁷ The outer breakwater creating an outer harbour was not to be built and instead land was to be excavated at Kaiti to form a harbour basin for coastal

¹⁶⁷ GHB minute book 7, 28 April 1924, p463

shipping.¹⁶⁸ The Board intended taking for this, under the Public Works Act, the whole area between the river and Wainui Road.¹⁶⁹ The new plan was to make Kaiti the centre of the harbour instead of the dockyards facing the open sea of the Reynolds plan. The Board was, however, prevented from proceeding with the new plan by the government as the plan departed from that authorised by the 1919 Act and approved by the ratepayers. The approved plan was therefore continued with but land was acquired in the Kaiti area.

The diversion cut was begun in 1924. A construction yard, known as Coney Island, was set up on the Kaiti side of the river, near the wharf, to make pre-cast units for the training and diversion walls. The plan to separate the river from the harbour involved building a long diversion wall which, along with other work, required stone. To provide this the Board acquired a quarry in 1925 by purchasing Whareongaonga block B from its Maori owners for £3,000¹⁷⁰ (document bank 26). The block was south of Young Nicks Head and, although it provided some of the material needed, it failed as a quarry due to the lack of suitable stone. Rock from the old quarry at Sponge Bay was also used.

8.2 Kaiti basin land takings

To build the new harbour the Board began to acquire land in the Kaiti basin area (see map 7).

Land takings in Kaiti sections in 1924 and 1926

<u>Date</u>	<u>Section</u>	<u>Area</u>
10 Nov 1924	Kaiti 26-34, 58	2a.2r.11p
	Kaiti 38, 39, 52-57, parts of 35-37 and 48-51	2a.3r.25p
<u>Total</u>		<u>5a.1r.36p</u>
27 Nov 1924	Kaiti 32	0a.0r.06.3p

¹⁶⁸ P. Whyte, p78

¹⁶⁹ T. Todd, p14

¹⁷⁰ Gisborne Harbour Board annual report 1925

<u>Date</u>	<u>Section</u>	<u>Area</u>
	Kaiti 33	0a.0r.37p
	Kaiti 55	0a.1r.
	Kaiti 56 and 57	0a.2r.
	Kaiti 58	0a.0r.0.1p
<u>Total</u>		<u>0a.3r.43.4p</u>
Nov 1926	Kaiti 28-31	1a.2r.4.6p
	Kaiti 34	0a.0r.12p
	Kaiti 38,39 and pts35, 36 and 37	0a.3r.34p
	Kaiti 45	0a.1r.
	Kaiti 53	0a.1r.1p
	Kaiti pts50 and 51, 52	0a.2r.16p
	Kaiti 48, 49	0a.0r.16p
<u>Total</u>		<u>3a.3r.3.6p</u>

The land was taken under the Public Works Act 1908 (document bank 27 and 28).

8.3 Te Poho-o-Rawiri meeting house

The Board's acquisitions in Kaiti of 1924 and 1926 took parts of the sections 35 to 39 and 55 which had been vested by the Native Land Court as a site for a Maori village on 13 September 1886.¹⁷¹ Of the land taken at this time sections 56 and 57 were also Maori land. On 4 December 1925 the Native Land Court assessed compensation for section 55 at £580 on 4 December 1925. It had earlier assessed the compensation for sections 56 and 57 at £1,850.¹⁷² The sections 35 to 39 which had been set aside for a Maori village had become the site of a marae on which stood Te Poho-o-Rawiri meeting house. Hirini Te Kani was involved in its construction,¹⁷³ and a monument to him stood there.

¹⁷¹ GHB, 11, 13 September 1886, p110

¹⁷² GMB, 54, 4 December 1925, p141

¹⁷³ Turanganui-a-Kiwa Pipiwharauroa 1996 (28) pp8-9

In August 1927 the taking of sections 38 and 39 and parts of 35,36 and 37 under the Public Works Act 1908 in November 1926 was objected to in the Native Land Court by Gisborne Maori. The objection mentioned hardship and referred to the meeting house.¹⁷⁴ On 12 October the Board came to an agreement with the Tairāwhiti Maori Land Board, which acted for the beneficiaries of the trust under which the land was held. The beneficiaries were the owners of the land and some of them may have been the Gisborne Maori objecting to the sale in the Native Land Court. The Maori Land Board may have consulted the owners, and may have disregarded the objections of some owners, but as trustee it held the authority to come to an agreement with the Harbour Board. Under this agreement the taking of the marae was to be included in native land legislation.

8.4 The Native Land Amendment and Native Land Claims Adjustment Act 1927

The purchase by the Board of sections 35 and 39, and parts of sections 35, 36 and 37, amounting to 1 acre, 1 rood and 5 perches¹⁷⁵, was subsequently sanctioned by section 51 of the Native Land Amendment and Native Land Claims Adjustment Act 1927 (document bank 29). The powers vested in the Act took the village site, or native reserve, from Maori title and all trusts associated with it and vested it in the Gisborne Harbour Board. The Board held that the land was unsuitable as a native reserve due to harbour works being undertaken. As the Board was undertaking the harbour works its statement was entirely self-serving.

Section 51 of the 1927 Act was read in Maori at the Native Land Court on 25 January 1928 for the benefit of Maori who were present. Several spoke regretting the selling of the old historic marae¹⁷⁶ (document bank 30). The Board paid £10,000 to the Tairāwhiti District Maori Land Board for the reserve and was required to relocate the monument to Hirini Te Kani. The meeting house was rebuilt on Kaiti Hill.

¹⁷⁴ GMB, 5, 24 August 1927, p54

¹⁷⁵ Gisborne Harbour Board annual report 1928

¹⁷⁶ GMB, 56, 25 January 1928, p231

With the construction of the Kaiti basin harbour the road named the Esplanade was re-routed east across sections 35 to 39 (see map 8) which had formed the marae site. The parts of these sections which were not used for the re-routed road are on the western side of Hirini Street.

8.5 Compensation to non-Maori

All Maori land west of Hirini Street was then held by the Board. The land takings of the Board for the harbour construction in the mid-1920s also took land from Europeans and from companies. Thomas Lawless had sections 58 and 28 to 32 taken from him, Mrs Elizabeth Neal lost section 31, the Brights lost section 54 and Dorothy Burnard lost section 53. Their cottages were removed by the Board and sold. The company J.J. Niven and Company lost section 52 and parts of 50 and 51. The Gisborne Sheepfarmers Meat and Mercantile Company lost parts of sections 48 and 49.

The Compensation Court of 27 August 1927 awarded Thomas Lawless £11, 426 for his land. The Brights received 1,150 pounds and Elizabeth Neal received £150.¹⁷⁷ Mrs Burnard's claim was settled later as was the Gisborne Sheep Farmers' claim.

J.J. Niven and Company held discussions with the Tairāwhiti Māori Land Board. The company's claim for compensation for the land taken from it for harbour works was settled under section 51 of the Native Land Amendment and Native Land Claims Adjustment Act 1927 (part 2a). This empowered the Board to exchange any part of the Native village site vested in it. After improvements by the Board 2 roods and 16.5 perches of the village site was transferred to J.J. Niven in part settlement of its claim.¹⁷⁸

¹⁷⁷ GHB, 8, 26 September 1927, p274

¹⁷⁸ GT, 18 December 1928, clipping and GHB, 8, 27 February 1928, p304

The compensation awarded to Maori and Europeans appears to have been of an equal standard. The nearest equivalent to the £10,000 paid to Maori for sections 35 to 39 is the payment of £11,426 pounds paid to Mr Lawless for section 58 and sections 28 to 32. This is a similar payment for a similar amount of land when it is taken into account that some parts of sections 35, 36 and 37 had already been sold.

8.6 The completion of Gisborne Harbour

The river diversion was completed in 1927 and in February 1928 the Board abandoned construction of the outer harbour. Instead it constructed a silt free harbour basin at Kaiti separated from the river by the training wall. A wall, known as Butler's wall, was built from the end of the diversion wall towards the breakwater which enclosed a small area of offshore sea. The Kaiti basin harbour was completed in late 1931¹⁷⁹ After 2 million tons of spoil had been removed, a harbour had been constructed that was capable of handling most shipping operating on the New Zealand coast.¹⁸⁰

Lightening for the loading or unloading of large ships in the roadstead outside the harbour continued throughout the 1930s. Later large ships ceased to call at Gisborne for some years but in 1950 Gisborne was reinstated as an overseas port.¹⁸¹ Gisborne developed as a fishing port in the 1960s. In 1965, in preparation for an overseas wharf, a circle was dredged in the area enclosed by Butler's Wall with a diameter of 256 metres and a depth of nine metres. The overseas wharf, sited on the breakwater, was opened in 1967. The port became an export centre for kiwi fruit and pinus radiata logs and for the import of petroleum. A second overseas wharf was opened in 1997. A wharf for loading logs has been built from Kaiti Beach east of the breakwater.

In 1988 the Port Companies Act was passed which required all harbour boards to form public companies. The Gisborne Harbour Board was replaced by a port company called Port Gisborne Ltd in 1989.¹⁸²

¹⁷⁹ Whyte p89

¹⁸⁰ GH 7 November 1952 p9

¹⁸¹ *Towards the 21st century. Port Gisborne Ltd*, undated, Gisborne

¹⁸² *Port Gisborne Ltd, annual report, 1994*, p14

Chapter Nine: Consultation

The Gisborne Harbour Board was required by statutory legislation to gain the approval of the ratepayers of its harbour district to raise loans for the harbour and to embark upon development plans. There was no statutory requirement to gain Maori approval for its plans except that the ratepayers included some Maori. Maori were not consulted as a distinctive group or as the Treaty partner. The harbour was a major political issue in Gisborne in the late nineteenth and early twentieth centuries and the Board was involved in much controversy and debate but this was within the European community and had little or no involvement of Maori. What involvement there was of Maori was in the years leading up to the attainment of a harbour board and halted some time before its establishment.

9.1 The Board's divided district

The major issue dividing the Board and its district was over the development of an outer harbour against the development of a river harbour. This division involved the opposition of country areas of the harbour district to the development of a river harbour which was not deep enough to berth ships which traded directly to Britain. The country areas, and the county representatives on the Board, wanted a deep water outer harbour at Gisborne. The county representatives were opposed to being rated for any development as they had their own small ports and could lighter their produce out to 'home boats' themselves.

However consultation by the Gisborne Harbour Board with its community first took place in a climate of public enthusiasm for the Board and the projected harbour developments. The Gisborne Harbour Board Empowering Act 1884, clause 15, authorised the Board to borrow £200,000 provided the agreement of the ratepayers of the harbour district was obtained. The harbour district then consisted of the Borough of Gisborne and Cook County. After public meetings had been held the district voted by 998 to 5 in favour of the loan.¹⁸³

¹⁸³ NZG, 23 April 1885, p464

9.2 The controversy over the outer harbour

The proposal approved by the ratepayers was to build an outer harbour similar to the harbour plan designed by Sir John Coode. Having gained the ratepayers consent to raise a loan for this purpose the Board abandoned the outer harbour in favour of a river harbour. Its reasons for this were cost and utility and it had some public support. It also had the opposition of some ratepayers who were led by W.L. Rees. Rees called a public meeting to protest against the breakwater being built and to advocate harbour construction at Stoney Point. A committee was formed to protest the loss of an outer harbour specified in the 1884 Act. The Board ignored the agitation and also ignored a public meeting which voted in favour of a single contract to carry out the harbour works. The Board sought retrospective legislation for its revised plan and for the sinking fund it had used part of the loan for without legislative authorisation in 1887. Although referred to as the Illegal Validation Act the proposed legislation was supported by the vote of a lively public meeting.¹⁸⁴ The Board and its revised plan was validated by the Gisborne Harbour Board Act 1884, Amendment Act 1887.

The 1887 amendment imposed limits on the Board's spending as the Board was considered to have exceeded its powers. As the Board ran out of money another amendment was passed in 1888 to allow it to use £40,000 of the £200,000 loan subject to approval by the ratepayers. In October a meeting of ratepayers in favour of continuing the breakwater was called by Mr Graham, MHR. The meeting was well attended and set up a committee to 'work up some enthusiasm' for the proposed expenditure.¹⁸⁵ The main argument for going ahead with the harbour works, according to T.W. Porter, was that to stop would be to waste what had already been spent. He may have represented a wider disillusionment as although the resulting poll voted for the loan proposal by 600 to 30 the number of votes declined by 373.¹⁸⁶

There had been 10 candidates for the two positions the Borough of Gisborne elected to the Harbour Board in 1885. By the 1889 election only two candidates stood for the borough and there was only one candidate for the two Cook County positions. When a

¹⁸⁴ Poverty Bay Herald, 25 May 1887, p2

¹⁸⁵ PBH, 23 October 1888, p2

second county candidate was found the four were elected unopposed. Membership of the harbour board was described as 'a thankless position'.¹⁸⁷

9.3 The silting of the harbour

Following completion of the breakwater a parallel sea wall was built to prevent sand entering the harbour and eroding the breakwater. Ships entered the harbour through a narrow passage between the two piers. At the entrance to the passage a dangerous cross current was created. In 1905 the Board was approached by a delegation of shipping representatives and informed that conditions at the port were so dangerous it was questionable whether the port was workable. The waves struck the sea wall and recoiled against the breakwater. The Board reduced the cross current by extending the breakwater but this action caused silt to pile up again inside the harbour entrance as the cross current had been clearing it. The silt required dredging but expenditure on dredges was opposed by supporters on the Board of an outer harbour. There was a revival of support for an outer harbour and plans were drawn up for one. The Gisborne Harbour Board Empowering Act 1907, authorised the Board to borrow £400,000 to build an outer harbour subject to approval by a ratepayers poll. The poll was never held as supporters of the river harbour had a majority on the Board and the outer harbour was not proceeded with. Instead a new dredge was purchased.¹⁸⁸ At this time W.L. Rees, who was not a member of the Harbour Board, was chairing an organisation known as the Outer Harbour Committee.

In 1916 the harbour was clogged with tons of silt brought down by the rivers from deforested hill country. The following year the Board called for public suggestions on the harbour problem. It received 60 or 70 harbour schemes from the public.¹⁸⁹ Suggestions included harbour development at Awapuni Lagoon, Pah Hill and Waikanae Beach, and a scheme to divert the Waimata River by a canal to the sea across the Kaiti block. A report from the William Ferguson, an engineer, thought that the answer to Gisborne's transport problems was the eventual arrival of the railways.

¹⁸⁶ NZG, 6 December 1888, p1350

¹⁸⁷ PBH, 23 January 1889, p2

¹⁸⁸ Whyte, p60

¹⁸⁹ Sir Harry Barker, *Todays and yesterdays*, Gisborne, 1978

Dredging of the harbour managed to return it to a depth of 8 to 9 feet but flooding in 1918 filled it with silt again.

9.4 The Harbour conferences of 1918 and 1920

The Board called a conference to discuss the harbour problem in December 1918. The conference was in favour of the district borrowing £1 million for harbour development and appointed a commission to advise on a harbour plan. The resulting Gisborne Harbour Board Empowering Act 1919 authorised the Board to borrow this amount subject to a rate payers poll. The commissioners appointed by the conference presented a plan for an outer harbour estimated to cost £1,585,000 . A second conference was held in July 1920. This was attended by past and present Board members, representatives of the freezing works companies and town boards, and by farmers and residents. Sir James Carroll also attended the conference which was in favour of a cheaper, modified plan. Subsequently the Board adopted the plan designed by Reynolds and campaigned for the £million loan at meetings through-out the harbour district. During the campaign the Board's chairman promised the Board would only spend £750,000 of the loan. The poll on 9 August 1922 supported the loan by 2,187 to 816.¹⁹⁰

9.5 The Reynolds plan and its partial construction

The Reynolds plan involved diverting the Turanganui River west to Waikanae Beach by digging a new channel and building a diversion wall. This would separate the old river mouth and part of the river bed from the river. Breakwaters, including the old breakwater, were to form an outer harbour with wharves between the old river mouth and the diversion cut. The western sea wall was to be removed and a spacious, enclosed outer harbour constructed.

County members on the Board opposed building an outer harbour,¹⁹¹ and after the 1910 Amendment Act had a majority on the Board.¹⁹² They had traditionally

¹⁹⁰ NZG, 21 September 1922, p2651

¹⁹¹ Todd, p13

supported a deep water harbour at Gisborne but were determined to keep costs to below half a £million. The Board attempted to abandon the outer harbour in 1923 but was prevented by the government. The major step then taken towards the building of an outer harbour was the purchase of the Whareongaonga quarry to provide stone for the breakwaters to enclose it. However the outer breakwaters were not built as the quarry produced little useful stone and the inner harbour works took up much of the 760,000 pounds the Board was limited to. In 1927 the Board asked the engineer F.W. Furkert for advice. He advised them to develop the inner harbour. This involved excavating the Kaiti basin which was now separated from the river and had been made into a sea inlet.

Meetings of protest and indignation meetings were held as ratepayers realised they were only going to get an inner, coastal harbour. However the meetings had no effect and in February 1928 the Board formally abandoned by outer harbour part of the Reynolds' plan. The Board again ignored the resulting outcry and criticism of its handling of harbour development. The Board constructed a silt free coastal harbour by excavating the Kaiti basin. This involved taking the site of the Te Poho-o-Rawiri meeting house and marae.

9.6 Consultation with Maori

The first harbour work known to have affected local Maori was the demolition of the rock Te Toka-a-Taiau. This was done in 1877 and there is no evidence of consultation with Maori on the subject.

Consultation with Maori took place at some point before the Gisborne Harbour Board Bill 1881 was presented to Parliament. Little is known of the discussions but they involved the donation of land by Maori as an endowment to the proposed harbour board. The Bill was brought by the member for the East Coast, Allan McDonald, and he appears to have been involved in the discussions as George McLean criticised him in Parliament for not bringing the negotiations to a conclusion and embodying them
in

¹⁹² Whyte, p75

the Bill.¹⁹³ Negotiations with Gisborne Maori were also referred to in debate on the same Bill by Sir George Grey. He was in favour of passing the Bill so the experiment of getting a grant from Maori for a colonial work could be tried.¹⁹⁴ The Premier, John Hall, stated that if the government granted the foreshore at Gisborne as a harbour endowment Maori would give assistance in land. There was disagreement in Parliament over responsibility for the failure to act on the offer of a land contribution made by Gisborne Maori.

The holding of discussions for a Maori land grant suggest there was an early possibility of a partnership between Maori and European in the development of Gisborne harbour. A plan for a Maori harbour committee was part of this partnership. The Gisborne Harbour Board Bill 1881 was amended before its second reading to include a Maori committee as part of its constitution¹⁹⁵. The committee was to consist of 20 Maori landowners elected by a meeting of Maori landowners. They were to meet in Gisborne and appoint two of their members to the Gisborne Harbour Board. The proposed Maori committee was not included in the Act that established the Gisborne Harbour Board in 1882.

Once the Gisborne Harbour Board was established it used its authority to act unilaterally and made no attempt at partnership. The change in attitude from the early discussions to the later marginalisation of Maori by the Board may have been part of a Crown response to the rise in Maori politics of the Kotahitanga or Maori Parliament movement. As noted earlier the Orakei hui of 1879 had opposed the Crown's ownership of the foreshores. The movement grew through the 1880s and wanted a Maori Parliament to replace the Native Land Court and to give Maori their own government. This may have led to local body politicians ceasing to seek the involvement of Maori in local development works as this would involve questions of control over resources and the issue of sovereignty.

¹⁹³ NZPD, Vol. 39, 4 August 1881, pp288-9

¹⁹⁴ NZPD, Vol. 40, 8 September 1881, p464

¹⁹⁵ Affidavit of David James Alexander `W.K. Smiler and others plaintiffs and Port Gisborne Ltd, defendant, 8 May 1998

The Board does not appear to have consulted with Maori on its actions or over its land takings. The Board's meeting of 24 November 1885 shows there was a suspicion that consultation with Maori would lead to inflated demands in compensation for land taken and a belief this could be avoided by the use of the compulsory acquisition provision of the public works legislation. In the case of the quarrying land at Tuamotu Island, the Board's operations had begun before it had legislative authority in the 1887 Amendment Act to take the land. It is not clear whether the Maori owners had agreed to the taking of their land prior to the legislation. It does seem that, historically, the Board believed it could safely ignore Maori. A major issue which Maori ought to have been consulted on is the presence of burial sites on Tuamotu Island prior to the Board's quarrying there. It is known that the protection of these sites was important to local Maori of the time as the Board's chairman anticipated trouble over the issue at the meeting of 24 November 1885.

In the years after the 1887 Act the only opportunity given to Maori for consultation seems to have been after the Board had decided to take land and published its intention to do so in both English and Maori. This was the same procedure as applied to non-Maori and there is some record of objections from Maori owners. There is, however, no record of widespread Maori opposition to the Board's harbour development plans. The main debate was over the amount of compensation payment for land taken and also some claims for compensation from Maori who could not prove title to the land taken.

The taking of the land on which the meeting house Te Poho-o-Rawiri stood was done against the wishes of local Maori. Their objections are recorded in the minute book of the Native Land Court¹⁹⁶ but the hand writing of the report is almost illegible. However the objections had been made ineffectual by the section 51 of the Native Land Amendment and Native Claims Adjustment Act 1927 which had taken the land the previous month.

In conclusion there is little evidence of consultation with Maori by the Gisborne Harbour Board over the harbour works it embarked on or over the effect development

¹⁹⁶ GMB, 56, 27 January 1928, p231

would have on Maori. By contrast there was considerable consultation with Europeans. The lack of consultation with Maori was part of the marginalisation of Turanga Maori and part of their exclusion from both national and local governing structures.

Summary

The nineteenth century Gisborne Harbour Board showed a bias towards taking Maori land when alternatives were available. It chose Maori land at Kaiti for its blockyard when it could have built a blockyard on land reclaimed along the rocks at Kaiti Beach. The Board chose to take Tuamotu Island and the other lands of the harbour reserves for quarrying under public works legislation when it could have taken land at Whataupoko from Percival Barker under the same legislation. The Board used Tuamotu Island as a quarry although the island was known by the Board to contain burial sites.

The Board did not return land no longer needed for harbour purposes to its Maori owners. When the Kaiti blockyard site was no longer needed for harbour construction it was leased to the Kaiti freezing works. The lands known as the Harbour Board Reserve of Tuamotu Island and coastal areas near it, taken under the 1887 Amendment Act, are still in the possession of Port Gisborne Ltd. The failure to return Maori land which was no longer needed compares unfavourably with Kaiti section number 26 which was taken in 1916 for a harbour light and returned to its European owner when it was found that it was not needed.

The later harbour developments at the Kaiti Basin took Maori land designated for a village site. This was compensated for by the provisions of the 1927 Act but there remains land on Hirini Street, opposite the Maori Community Centre, which was once Maori reserve land.

APPENDIX 1

Maori Land acquired by the Gisborne Harbour Board.

- 1882 Gisborne foreshores taken under the Gisborne Harbour Board Act 1882.
- 1886 Kaiti blockyard land of 3 acres and 20 perches in Kaiti No.1 block and 2 roods and 20 perches taken under Public Works Act 1882 by New Zealand Gazette notice 1886 p836.
- 1889 Quarry land of 3 acres 3 roods and 17 perches in Kaiti, 5 acres and 32 perches in Papawhariki and Tuamotu Island of 8 acres and 26 perches. Taken under the Public Works Act 1882 and the Gisborne Harbour Act 1884 Amendment 1887 by New Zealand Gazette notice 1889 v.2 p853.
- 1893 Waikanae beacon site of 3 roods 1 perch taken under Public Works Act 1882 and Public Works Acts Amendment Act 1887.
- c1904 Waiohiharore No.2 - some Maori land acquired and referred to in AJHR 1908 G-iii.
- 1912 Intention to take 1 acre 1 rood and 4.5 perches in Waiohiharore No.2 under the Public Works Act 1908 published in the New Zealand Gazette 1912 v.2 p2861. Compensation of 1275 pounds awarded to Maori owners by Native Land Court in 1917.
- 1924 Awapuni block - 5 acres taken under Public Works Act 1908 by notice in New Zealand Gazette 1924 v.2 p2022.
- 1924 Kaiti - 2 acres 3 roods and 25 perches of sections 38,39,52 to 57 and parts 35 to 37 and 48 to 51 (some of these sections are Maori owned) taken under Public Works Act 1908 by notice in New Zealand Gazette 1924 v.3 p2706-7.
- 1924 Kaiti - section 55 of 1 rood taken under Public Works Act 1908 and amendments by notice New Zealand Gazette 1924 v.3 p2999.
- 1926 Kaiti - parts of sections 35 to 37 and whole of section 38 to 39 taken under Public Works Act 1908 and amendments by notice in New Zealand Gazette 1926 v.2 p2469.
- 1927 Kaiti - site of Te Poho-o-Rawiri of 1 acre 1 rood and 5 perches acquired under section 51 of Native Land Amendment and Native Land Claims Adjustment Act 1927 with compensation of 10,000 pounds to Maori.

Appendix II. Maps

1. Turanganui-a-Kiwa in 1769 - source: J.A. Mackay, *Historic Poverty Bay*, facing p33
2. The Coode plan - source: AJHR 1881 H-19
3. The Gisborne foreshores - source: National Archives , Wellington, file M27/6703
4. Tauwhareparae - source: AJHR 1877 G-5
5. The land takings of the 1887 amendment act - source: National Archives, Wellington, file PWD 14396
6. Te Awapuni, *Transactions of the New Zealand Institute*, vol XXI facing p394
7. The Kaiti sections 35 to 39 (marae site) - source: Port Gisborne Ltd map draw
8. The Esplanade diverted to the marae site - source: Port Gisborne Ltd map draw

BIBLIOGRAPHY

A. PRIMARY SOURCES

UNPUBLISHED

Gisborne Harbour Board annual reports, 1898-1930, Alexander Turnbull Library, Wellington

Gisborne Harbour Board land files (BANF) 1891-1987, Auckland National Archives, Auckland

Gisborne Harbour Board minute books, volumes 1-8, 1882-1928, Port Gisborne Ltd, Gisborne

Maori Land Court, Gisborne minute books 1-56 and Waiapu minute books 1-5

National Archives, Wellington, Marine Department M4/1877 and M27/6703

National Archives, Wellington, PWD 14011 (blockyard site map)

Port Gisborne Ltd annual reports

Poverty Bay Commission, MA 62/1, National Archives, Wellington

PUBLISHED

AJHR, 1877 G-5, 1888 D-5, 1888 I-6, 1891 D-3, 1908 G-iii

Gisborne Herald

Gisborne Times

New Zealand Herald

Poverty Bay Herald

New Zealand Gazette, 1872, 1881, 1885, 1886, 1888, 1889, 1893, 1900, 1901, 1909, 1912, 1916, 1922, 1923, 1924, 1926, 1972

New Zealand Parliamentary Debates 1868, 1881, 1887

New Zealand Statutes, 1870, 1873, 1877, 1882, 1884, 1887, 1888, 1889, 1890, 1905, 1907, 1910, 1913, 1919, 1920, 1922, 1927, 1929, 1951

B. SECONDARY SOURCES

PUBLISHED

Books

Barker, Sir Harry, *Todays and yesterdays*, Gisborne, 1978

Brett, H. (ed) *Brett's New Zealand and South Pacific almanac*, Auckland, 1886

Halbert, Rongo, *Horouta*, Auckland, 1999

Mackay, J.A. *Historic Poverty Bay and the East Coast, N.I., NZ*, Gisborne, 1966

McLintock, A.H. *An encyclopedia of New Zealand*, Wellington, 1966

Oliver, W.H. and Jane M. Thomson, *Challenge and response*, Gisborne, 1971

Ross, John O'C. *Pride in their ports*, Palmerston North, 1977

Todd, Thomas, *History of the Gisborne Harbour*, Gisborne, 1946

Whyte, Philip, *Gisborne's battle for a harbour*, Gisborne, 1984

Towards the 21st century. Port Gisborne Ltd, Gisborne, undated

Reports

Boast, R. P. *The Foreshores*, Waitangi Tribunal Rangahaua Whanui Series, 1996

Daly, S. *Poverty Bay*, Waitangi Tribunal Rangahaua Whanui Series, 1997

Marr, C. *Public works takings of Maori land 1840-1981*, Report for the Treaty of Waitangi Policy Unit, December, 1994

O'Malley, V. *An entangled web. Te Aitanga-a-Mahaki land politics, 1840-1873, and their aftermath*, Final draft, 1998

O'Malley, V. *The East Coast confiscation legislation and its implementation : a report for the Crown Forest Rental Trust*, February, 1994

Articles

Gudgeon, W.E. 'The Maori tribes of the East Coast of New Zealand', *Journal of the Polynesian Society*, Vol. 3, 1894

'Harbour development roused dogged debates in early years', *Gisborne Herald*, 7 November 1952, p7

Kohere, R. 'Mokena Kohere', *The Dictionary of New Zealand Biography*, vol 1, 1769 - 1869, W.H. Oliver (ed), Wellington, 1990

'Smiler and others v Port Gisborne Ltd', *Maori Law Review*, June 1998, pp4-5

'Port Gisborne Limited v Smiler', *Maori Law Review*, April 1995, p5

Sorrrenson, M.P.K. 'Maori and Pakeha', *The Oxford history of New Zealand*, W.H. Oliver (ed), 1981

'Te Poho-o-Rawiri a focal point of community life', *Pipiwaharauoa*, no. 28, January 1996, pp8-9

Whyte, Phillip, 'A port for Gisborne', *Historic Places in New Zealand*, December 1984, p26

Williams, David V. 'Public works takings and Treaty settlements', *New Zealand Law Journal*, July 1999, pp262

UNPUBLISHED

Alexander, David J. 'Affidavit. W.K. Smiler and others and Port of Gisborne Ltd, 8 May 1998', (Gisborne Repository) and reply to Tony Walzl

Halbert, Rongo, 'Titirangi', Gisborne Museum

Hall, R. de Z. 'Gisborne township, origins and beginnings', Gisborne Museum

Walzl, Tony, 'Affidavit in the matter of W.K. Smiler and other plaintiffs and Port of Gisborne Ltd defendant in the High Court of New Zealand, 29 April 1998', (Gisborne Repository) and reply to David J. Alexander

