

**In the Matter of the Treaty of  
Waitangi Act 1975**

**And**

**In the Matter of a claim by Mr  
Stanley Pardoe on behalf of  
Rongowhakaata iwi and its  
constituent hapu**

**(Wai 684)**

# **Rongowhakaata and the Native Land Court**

**1873 – 1900**

**The evidence of Fiona Small and Philip Cleaver**

**REPORT COMMISSIONED BY CROWN FORESTRY RENTAL TRUST  
October 2000**

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## **PREFACE**

### ***Authors' Qualifications and Experience***

Fiona Small graduated from Victoria University of Wellington with a First Class Honours degree in history in 1995. She worked at the Crown Forestry Rental Trust as a staff researcher and historian from December 1995 to October 2000. She has co-researched and written an overview report on the Maori Trustee; researched and written block history reports for Te Kao claimants in Wai 643 & Wai 292; and written and presented submissions to the Waitangi Tribunal on behalf of Ngati Whatua o Kaipara ki te Tonga (Wai 312) regarding twentieth century socio-economic issues and block histories.

Philip Cleaver graduated from Victoria University of Wellington with an MA in History in 1996. He has received several research commissions from the Waitangi Tribunal and Crown Forestry Rental Trust since February 1999. He has prepared block reports on Te Horete block (Hauraki), Tairua reserves (Hauraki), Kaiaua Township (Hauraki), Matahina block (Bay of Plenty/Urewera), and Castle Point block (Wairarapa). He has presented submissions to the Waitangi Tribunal in respect of his Hauraki research.

## **ACKNOWLEDGMENTS**

This report was commissioned by the Crown Forestry Rental Trust in respect of the Rongowhakaata Trust's Wai 684 claim. The primary focus is the impact of the Crown's policy of individualisation on Rongowhakaata's tribal estate and tribal cohesion between 1873 and 1900. An important theme in the report is the individualisation of not just the land but also the community, one result of which was a loss of collective knowledge and memory. I hope that this report, based mainly on the Crown's own records, goes some way to redressing that loss for Rongowhakaata in terms of their relationship with the Crown.

I wish to acknowledge the continued patience and assistance of Rongowhakaata in the preparation of this report. I especially wish to acknowledge their support and aroha during the disruption caused by the Crown Forestry Rental Trust restructuring and the extreme uncertainty and delay this created for both them and myself. I would also like to thank Philip Cleaver for stepping in to ably assist in co-authoring and completing this report. I likewise wish to acknowledge the work of Eileen Barrett in compiling the land statistics upon which the analysis is largely based.

Fiona Small  
27 October 2000

## INTRODUCTION

Just under half or 48 per cent (c.42, 586 acres) of Rongowhakaata’s core tribal estate was confiscated by the Crown in the aftermath of the East Coast wars.<sup>1</sup> That raupatu made the protection of Rongowhakaata’s remaining lands even more important. Despite that imperative between 1873 and 1900 the Crown created an environment which facilitated the alienation of a further 70 per cent of Rongowhakaata’s remaining tribal estate. This report addresses questions as to how, and more significantly why, this alienation occurred.

Firstly, it is necessary to clarify what is meant by the terms “core” and “shared” Rongowhakaata land blocks/tribal estate, which are used throughout this report.<sup>2</sup>

The blocks described as “core” Rongowhakaata blocks are those where, in the title investigations by the Poverty Bay Commission and Native Land Court, the owners are described as Rongowhakaata. They are not necessarily an accurate reflection of the actual ownership rights to land and may, in many cases, be a distortion of the real situation. Nor may this list be all-inclusive. It is however sufficiently comprehensive to reflect any significant patterns in terms of Rongowhakaata land alienation, which is the focus of this report.

The word “*core*” is used by the authors to describe lands that were awarded solely to Rongowhakaata grantees. Many were the *central* lands upon which Rongowhakaata hapu, on the whole, resided, cultivated and utilised for their livelihood. Such “core” lands were awarded, granted and/or returned to Rongowhakaata following the East Coast wars and so it is not presumed that the list covers the entire estate of Rongowhakaata in customary terms. But the list is comprehensive enough to reflect any significant patterns

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<sup>1</sup> By 1873 approximately 42,753 acres remained of “core” Rongowhakaata blocks. The confiscation figure of 42,586 is derived from deducting the acreage of Kaimoe (3546 acres), Arai Matawai (4214 acres) and Tapoto (400 acres) from the survey figure for Patutahi of 50,746 acres. See Vincent O’Malley’s, ‘An Entangled Web’: Te Aitanga-a-Mahaki Land and Politics, 1840–1873, and their Aftermath’, A Report commissioned by the Te Aitanga-a-Mahaki Claims Committee, October, 1998, pp510–513

<sup>2</sup> Refer to Methodology by Eileen Barrett in the Appendix of this report.

of Rongowhakaata land alienation, which is the focus of this report. [Refer to Appendix 7.2]

The blocks described as “shared” Rongowhakaata blocks are those where the documentation indicates that Rongowhakaata were on title awards together with other iwi and Crown actions concerning those blocks significantly affected Rongowhakaata e.g. Crown purchases. This list does not necessarily include *all* blocks in which Rongowhakaata were awarded title along with other iwi. And, as for “core” lands, these “shared” lands may have been a distortion of actual ownership rights – especially where individuals owners were excluded because they were seen as “rebel” or included because they were seen as “loyalist” and yet may not had have any real claim to the lands. The term “shared” blocks is mainly used in Chapter three, which discusses Crown purchases.

The underlying theme in this report is the contest for power and control between the Crown and Turanga Iwi. It was a contest begun with the East Coast Wars and continued thereafter through the imposition of Crown laws and a British system of tenure and authority. It was a contest that the Crown, by 1900, was to win.

The Government’s intention in prosecuting the East Coast wars had been to effect the final subjugation of Turanga Maori to British law and authority. In this, however, the Crown failed. Rongowhakaata hapu emerged from that war still capable of uniting as an iwi entity and continuing to resist the enforcement of any interest or authority distinct from their own. As the Government itself realised, the only means of preventing further Maori resistance was not by warfare but by systematically destroying the source of such resistance: tribal power, and the communal base of interests upon which that power depended. The key to breaking communal cohesion and control was the individualisation and alienation of Rongowhakaata’s most important economic, social and cultural asset – their land. This individualisation of the land and the people was to be achieved under the auspices of the Native Land Court, and through the Crown facilitating the acquisition of land by private settlers while itself prosecuting a programme of purchase.

Rongowhakaata’s attempt to manage both the damaging effects of individualisation and its relationship with the Crown is an equally important theme in this report. Through participation in the Repudiation and Kotahitanga Movements and the establishment of intra and inter-iwi komiti, Rongowhakaata sought an acknowledgment from the Crown of their right to be consulted in the process of governing and to have their interests protected. They offered, in return, their ongoing support in the exercise of the Crown’s authority. In effect, they asked for a form of partnership, in which the views, interests and authority of both parties were given equal acknowledgment and respect. This they were denied.

Rongowhakaata’s ongoing attempts to preserve their tribal authority and counter the detrimental affects of the policy of individualisation imposed by the Native Land Court is a further theme in this report. The iwi successfully resisted this imposition throughout much of the 1870s until the confluence of various political, economic and social factors eventually served to weaken tribal control and cohesion and render them vulnerable to the offers of purchase agents. By facilitating the acquisition of land by private individuals and itself undertaking an aggressive programme of purchase, the Crown succeeded in creating an environment that saw the alienation of around 70 per cent of remaining core Rongowhakaata land between 1873 and 1900. In spite of Rongowhakaata’s continued attempts to contain this process and deal with the consequences of ongoing partition and individualisation of an ever shrinking tribal estate, such attempts were ultimately also to prove futile [**Refer to Appendix: Charts 1 and 2**].

## **STRUCTURE**

Chapter 1 provides a descriptive background up to when Rongowhakaata individuals began selling land more frequently from the late 1870s. It examines the operation of the Native Land Court and Poverty Bay Commission in Turanganui and discusses Crown intentions. It also surveys Rongowhakaata’s persistent attempts to resist the imposition of the Native Land Acts and the detrimental effects of such Crown laws and authority through participation in the Repudiation Movement and komiti. It provides a context for the confluence of various political, social and economic factors that saw, from the late

1870s, a gradual weakening of communal control over land alienation while sales by individuals increased.

Chapter 2 analyses the Native Land Court system in Turanga and examines the system's effect on Rongowhakaata land with regard to title determination and land alienation. The key focus is the extent that the Native Land Court, as an agent of the Crown, protected legitimate claimants to remaining Rongowhakaata land. Chapter 2 examines the methods and tactics of private purchasers and the extent that the Crown fulfilled its protective responsibilities with respect to those purchases.

Chapter 3 analyses Crown purchases of “core” and “shared” Rongowhakaata lands in the Hangaroa district. It particularly focuses on the Crown purchase of the largest core block – Waihau – remaining in Rongowhakaata ownership. It examines the methods and operations of Crown land purchase agents and the role of the Native Land Court in facilitating these purchases. It addresses the question as to what extent the Crown and Native Land Court ensured that a sufficiency of Rongowhakaata lands remained to ensure the iwi had sufficient land for their future development.

Chapter 4 analyses the damaging and long-term effect of the Native Land Court process in terms of dismantling a tribal estate. This dismantling resulted from a combination of individualisation and bilinear succession. Chapter 4 also surveys the varying attempts made at this time to regain communal control through the establishment of the Pere/Rees Trusts and New Zealand Native Land Settlement Company and through subsequent participation in the Kotahitanga Movement.

The report ends with a summary of the main points outlined above and supported by the evidence.

## **1. CHAPTER 1      BACKGROUND**

This section provides a mainly descriptive discussion of the events that formed the backdrop to the purchases begun in the late 1870s. It examines the operation of the Native Land Court and Poverty Bay Commission in Turanganui and the Crown's intention in instituting the investigations. It also examines Rongowhakaata's continued attempts to resist the imposition of such Crown laws and authority through participation in the Repudiation movement and the activities of intra and inter-iwi komiti. This section ends with a discussion on why Rongowhakaata became increasingly vulnerable to land sales alongside the Government's determination to create an environment that facilitated these land sales.

### ***1.1    Government Policy following Confiscation and the Operation of the Native Land Court and Poverty Bay Commission***

Following the announcement of the Crown's intention to confiscate land from Turanga Maori for alleged 'acts of rebellion', the Crown granted the Native Land Court powers under the East Coast Land Titles Investigation Act 1866 to investigate title to land in the region without application from the owners and grant land to those Maori found to be 'loyalist' while confiscating the land of 'rebel' Maori. While identifying and punishing the 'rebellious' remained an ostensible purpose of the Act (though of less significance in practice), of greater consideration was the importance of ensuring that all land – whether owned by the 'loyal' or 'rebellious' – was returned in an individualised title. In the case of Rongowhakaata, the investigation and individualisation of land was to be achieved under the auspices of the Native Land Court and Poverty Bay Commission which began operations in the district in 1867. These bodies were to firstly determine title to land.

#### **1.1.1 Pakeha Interests in the Land**

The process of determining title and returning land was from the outset complicated by the interests previously acquired by private settlers. Prior to the East Coast Wars

Rongowhakaata had leased a number of blocks of land to Pakeha settlers from the Poverty Bay flats along the coastline and inland along the river; the benefits of ‘maintaining and entering into relationships with selected Pakeha’<sup>3</sup> being – as elsewhere – clearly perceived by the people. After the first East Coast war leasing also became a tactic, however, to protect lands from confiscation. There had been a flurry of leasing by Turanga Maori to private settlers immediately after the first East Coast war before the first sitting of the Poverty Bay Commission.

Leasing was seen by Turanga Maori as a way to deal with the uncertainty over which areas were to be taken by the Crown – the private lessees being seen as a buffer against the more valuable lands being confiscated. Around 100,000 acres had been leased in the period prior to the renewed warfare of 1868.<sup>4</sup> As O’Malley has commented, leasing was the best compromise for Turanga Maori trying to prevent land from being confiscated:

From the Maori perspective, selling land in order to prevent its impending confiscation must have seemed akin to cutting one’s nose off to spite the face. Certainly, they would receive some monetary compensation, in contrast to confiscation, but the net result – the loss of their lands forever – would remain. Leasehold, on the other hand, allowed them to retain the underlying title to their lands whilst also giving the settlers something of a vested interest in opposing its confiscation. It helped to buy them powerful allies.<sup>5</sup>

The uncertainty of even ‘kawana’ Rongowhakaata was shown in people such as Paratene Pototi (aka Turangi) of Ngai Tawhiri opting to lease their lands. In September 1866 Hirini Te Kani of Rongowhakaata and Te Aitanga-a-Hauiti advised McLean that the ‘Hapus which let and sold the land are Te Paratene’s People ...’.<sup>6</sup> As Paora Parau reported to McLean in 1866:

Turanga has gone astray – the Maoris have let the whole of it to the Pakehas it has all been let, up as far as Wahoarakitekuri [sic] – No distinction has been made in regard of land belonging to the Hauhaus – that is let.<sup>7</sup>

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<sup>3</sup> O’Malley, ‘An Entangled Web’, p66

<sup>4</sup> R H Trustcott, ‘Poverty Bay and Colonial Land Policy, 1865–1868’, History research essay, University of Auckland, 1976, p25 cited in O’Malley, ‘An Entangled Web’, p178

<sup>5</sup> O’Malley, ‘An Entangled Web’, p178

<sup>6</sup> H Te Kani to McLean, 4 September 1866, AGG-HB 2/1 cited in O’Malley, ‘An Entangled Web’, p179

<sup>7</sup> Parau to McLean, 27 August 1866, AGG-HB 2/1 cited in O’Malley, ‘An Entangled Web’, pp178–179

After the second East Coast war Maori were still using leasing as a tactic to protect land from confiscation – though this tactic was not always successful. In 1868 Rongowhakaata leased the 6500-acre Papatu block (which adjoined Patutahi block) as a sheep run to Edward Harris (aka Eruere Harete of Rongowhakaata, a “half-caste”). Rongowhakaata also leased part of Patutahi, Kauangaroa, to Harris around 1871/72 because they ‘became impressed with the idea that Govt did not intend to take possession of the block of land ... known as Patutahi Block’.<sup>8</sup> In other words Rongowhakaata did not expect Patutahi to be wholly confiscated—just the 5000 acres they had agreed to cede. Despite these leases and the fact that Rongowhakaata had already arranged the survey for both blocks, the Government included all of Kauangaroa and one third of Papatu in the raupatu. The Crown insisted that the blocks were situated, wholly or partly, in the confiscated area and denied any claim by Harris or Eru Takihi over the lands especially for the refund of survey costs (which in the case of Kauangaroa amounted to £110).

In contrast to the amount of lands being leased, little land had been sold. Up until 1868 Rongowhakaata had sold a mere 50 acres to the Crown (at a very good price for the vendors) in spite of Government Land Purchase Commissioner McLean’s overtures in 1851 for more land. The only other sale to the Crown was the site for Turanganui or Gisborne, which was sold in 1870 by Rongowhakaata and Te Aitanga a Mahaki.

What few sales had occurred in the region (later estimated to amount to 4000 acres) were to private individuals and often involved Pakeha who had married into Rongowhakaata and/or fathered Rongowhakaata children. One example is the Greene or Kirini family who were later awarded Rongowhakaata’s Te Arakari and Kaiariki (aka Pukarakanui) blocks under the wardship of their father, settler William Scott Greene.<sup>9</sup> Similarly, the Poverty Bay Commission granted Huiatoa to Robert Goldsmith a minor and “half caste”. Renata Te Rangi and others had gifted the land to Robert and his sister in 1854 and the grant was likewise made under the wardship of Robert’s father Charles George

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<sup>8</sup> Porter to Native Under Secretary, 30 June 1874, AD 103/4, pp91–92

<sup>9</sup> Poverty Bay Commission Grant Book, pp175, 177, 181

Goldsmith.<sup>10</sup> Leasing was thus the primary form of land alienation after the East Coast wars. This method enabled Turanga Maori communities to obtain revenue, (and hopefully protect their lands from confiscation), while still retaining ownership and control of their lands. The Native Land Court and Poverty Bay Commission were, however, to foster an environment where land sales by individual owners would become the main form of land alienation in later years.

### **1.1.2. The Native Land Court and Poverty Bay Commission**

The first Native Land Court sitting was held in 1867 but resulted in little more than the determination that an error had been made in the wording of the Act which allowed ‘rebels’ to be included in the definition of ‘natives not engaged in rebellion’. The second court sitting which took place in March of the following year proved to be equally unproductive. This was partly due to Judge Maning’s ruling that the Court did not have jurisdiction over the area because it had not been advertised in the manner required under section 5 of the Native Land Act 1867. There was also the compelling reason that ‘loyal’ Maori withdrew their claims saying they no longer trusted putting their lands under the Native Land Court because they had seen how it could be used as an instrument of confiscation.<sup>11</sup>

Many Turanga Maori viewed the Crown’s insistence on a land cession as unfair, especially in light of the deportation of ‘rebels’ (including a significant part of Ngati Maru) which they considered was punishment enough. The ‘loyal’ claimants had their cases withdrawn by their agent J W Preece on the grounds that they had no confidence in the Native Land Court when acting under the provisions of the East Coast Land Titles Investigation Act Amendment Act 1867.<sup>12</sup> They effectively boycotted the Native Land Court while such East Coast Acts were in force.<sup>13</sup> A petition was in turn sent to the

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<sup>10</sup> Poverty Bay Commission Minute Book, Award No.B10, pp183–184 & PBC Grant Book, p.193

<sup>11</sup> David Williams commentary on the East Coast Act 1868 in the *Maori Land Legislation Database, Crown Forestry Rental Trust 1995 Update*

<sup>12</sup> R De Z Hall, *Maori lands in Turanga, 1865-1873 with particular reference to the Poverty Bay Commission 1869 and 1873*, 1984, 7.1–9

<sup>13</sup> East Coast Act 1868 and V O’Malley, ‘Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and its Implementation’, February 1994, p 100

Crown by both Rongowhakaata and Te Aitanga a Mahaki concerning the unfairness of the East Coast Acts (Mahaki had also sent one after the first Native Land Court sitting). The Crown responded by repealing the East Coast Land Title Investigation Acts and passing a measure in 1868 providing for ‘rebel’ land to be returned and granted to ‘loyal’ Maori instead of becoming Crown land.

No cases in the Turanganui area were completed at either the first or second sittings even though several claimants had made application for title investigations. These claimants included ‘loyalist’ Rongowhakaata individuals such as Keita Wyllie (for Pukewhinau) and Wiremu Kirini (aka Greene for Te Arakari) for at least 13 blocks in 1867 and 1868. At the 1868 hearing Crown agent Biggs had objected to two Rongowhakaata claims (one being for Karaua block), on the basis that the Crown was already negotiating for one of the blocks and that the other was to be included in the cession to the Crown.<sup>14</sup>

It should be noted that these applications for investigation of title were made at a time of uncertainty over which areas would be confiscated. One probable motivation of claimants was to obtain some security of ownership over blocks such as Opou and Pakowhai for which leases had been negotiated with Pakeha. Another likely motivation was the pressure put on claimants by speculators such as George E Read who were anxious to ensure the individuals with whom they had made leasing and purchasing arrangements, such as for Ohinekura, would be put on the title.

The Government found using the Native Land Court to determine confiscated lands problematic and so instead decided to deal directly with surrendered ‘rebels’.<sup>15</sup> Alleged ‘rebels’ were in turn pressured to make cessions of land for confiscation. It is notable that James Wyllie, husband of Rongowhakaata woman Keita (or Kate), played an important part in shaping the cession agreement which followed and persuading Turanga Iwi that

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<sup>14</sup> Hall, 7.1 and 7.7

<sup>15</sup> Indeed the Crown had ensured that individual Maori could not call upon the Court by suspending the operation of the Native Land Court in the East Coast until a cession had been made under section 18 of the Native Lands Act 1866.

they should place all their lands at the disposal of the Crown.<sup>16</sup> On 18 December 1868 a deed of cession was finally signed by 279 “loyal” chiefs of Rongowhakaata, Te Aitanga a Mahaki and “the hapu” of Ngaitahupo. The deed delineated the boundary of the Turanganui-a-Kiwa lands ceded and gave ‘loyal’ chiefs three months to make a claim that would be adjudicated by a commission of Native Land Court judges. Valid claims would receive Crown grants, while land of equal value was also to be given in compensation to any ‘loyal’ Maori who lost land from the creation of such reserves.<sup>17</sup>

Following the Attorney General’s opinion that the Native Land Court had no jurisdiction over the region because the Native Land Acts could only be applied to *papatupu* or customary land, the Crown appointed a different tribunal though with the same Judges – Rogan and Monro. The Poverty Bay Commission was empowered by the Poverty Bay Grants Act of 1869 to determine ownership of ceded lands. At the hearings in 1869, the Commission decided upon several of the blocks for which applications had previously been made to the Native Land Court in 1867 and 1868.

The Poverty Bay Commission opened on 29 June 1869 to ‘an almost empty courthouse’ because of ‘an amicable arrangement being in progress to solve the problem of Government claims’, which was taking place outside the court.<sup>18</sup> Rongowhakaata rangatira Raharuhi Rukupo was named as one of those involved.<sup>19</sup> The next day the Commission was advised of the arrangement made with W A Graham, acting on behalf of Rongowhakaata and Te Aitanga-a-Mahaki, whereby Te Muhunga, Patutahi and Te Arai blocks would be permanently ceded to the Crown. The boundaries of these blocks were never specified, however, and were to become a deep source of grievance for Rongowhakaata.

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<sup>16</sup> O’Malley, ‘East Coast Confiscation’, p118

<sup>17</sup> O’Malley, ‘East Coast Confiscation’, p118

<sup>18</sup> Hall, 11.1. It is notable that on this day the Stafford Ministry resigned being replaced by the Fox Ministry. Thus on 29 June 1873 Donald McLean replaced James C Richmond as Native Minister.

<sup>19</sup> Hall, p11.1

The commission sat for a further 31 days, ending on 10 August 1869. It focussed on the return of lands for 75 Maori claims to land totaling 101,000 acres.<sup>20</sup> Forty-six core Rongowhakaata blocks comprising c.21,703 acres were heard by the commission. Eleven of these blocks comprising a total of c.1227 acres were awarded to Europeans. This meant that the balance of 20,476 acres was returned to Rongowhakaata in an individualised state with little or no restriction on alienation. This comprised approximately 22 per cent of remaining Rongowhakaata core land.<sup>21</sup>

O'Malley comments that a feature of the sitting was how few claims were contested between rival groups. He attributes the fast pace that blocks were heard at – few taking longer than half an hour – to the success of W. A. Graham (who represented Maori claimants including Rongowhakaata) settling any claimant disputes prior to hearing. For example Rongowhakaata and Ngai Tahupo disputed Maraetaha block (14,622 acres) and, through Graham's facilitation of an out-of-court settlement, one part of the block was awarded solely to Ngai Tahupo and residue (Te Kuri) went to both iwi.<sup>22</sup>

Another feature of the awards was the fact that Maori were generally not excluded on the basis of their status as rebels in 1865 (although it is possible that such exclusions had taken place when the lists of claimants were compiled).<sup>23</sup> For example, Crown representative W Atkinson did not object to the inclusion of Hoera Kapuaroa of Rongowhakaata and Mahaki in the list for Repongaere block even though Graham alleged that he was a rebel and Hoera had admitted that he was a hauhau in 1865.<sup>24</sup> There is also the case of Ngati Maru rangatira and Te Kooti supporter Anaru Matete who was able to present cases to the court and be included in ownership lists with apparent impunity. As Oliver and Thomson commented, military 'victory and defeat were to become rather meaningless terms as ex-loyalist suffered and ex-rebel prospered'.<sup>25</sup> Te

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<sup>20</sup> O'Malley, 'East Coast Confiscation', p128

<sup>21</sup> This figure was derived from dividing c.20, 476 acres (land that passed through the 1869 PBC with land remaining as at 1869 before the raupatu c.90, 143 acres.

<sup>22</sup> H A H Munro, 'Poverty Bay Notes', 9 July 1869 cited in O'Malley, 'East Coast Confiscation', pp128–129

<sup>23</sup> Rose, '1873 – 1890', p14–15

<sup>24</sup> O'Malley, 'East Coast Confiscation', p129–130

<sup>25</sup> Oliver & Thomson, p97

Kooti and other of his supporters, however, were excluded from being heard and were thus effectively dispossessed of their lands.<sup>26</sup>

A further feature of the Poverty Bay Commission was the award of “joint-tenancy” grants rather than “tenants-in-common”; an issue that was to prove a constant and enduring source of grievance for Turanga Maori. Under joint tenancy each grantee held an equal share in the land and, on the death of a grantee, the share would be divided equally amongst the surviving grantees rather than passing on to the deceased’s descendants. They also, and perhaps equally notably, held an equal right to dispose of or otherwise alienate that land as each saw fit. This issue, along with the amount of land confiscated and the awarding of land to ‘rebels’, were to become catalysts for ‘loyal’ as well as ‘rebel’ Rongowhakaata refusing to attend or participate in any further hearings (see below). The Poverty Bay Commission hearings adjourned *sine die* on 10 August 1869 with much land remaining unsurveyed and still not legally returned to its owners.

It seemed that East Coast Government agent Ormond and Native Minister McLean hoped that the Native Land Court would take up where the Commission had left off. McLean was especially keen for the Native Land Court to confirm title to Turanga land appropriated for ‘loyalist’ Ngati Porou and Ngati Kahungunu.<sup>27</sup> In 1870 McLean instructed Judge Rogan to hold a Native Land Court hearing but under the East Coast Act 1868 rather than the Native Land Acts.

The Native Land Court’s third sitting lasted only two weeks. The Court was adjourned on 8 December probably because of doubts about its jurisdiction over ceded lands. All but three applications for investigation of title were situated in the ceded area and so technically Native title had already been extinguished.<sup>28</sup> The Crown had been aware of this doubt and had instructed Colonial Under Secretary George Cooper, who represented the Attorney-General at the hearing, to waive all objections on the part of the Crown to

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<sup>26</sup> Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland, 1995 cited in Daly, p87

<sup>27</sup> O’Malley, ‘East Coast Confiscation’ pp145–146

<sup>28</sup> O’Malley, ‘East Coast Confiscation’, pp146–147

the Court adjudicating on titles to lands included in the cession of 1868 (other than those already granted under by the Poverty Bay Commission in 1869). As O'Malley comments, on the face of it, 'it would seem quite extraordinary that the Native Land Court could in all probability act *ultra vires* with the more or less open consent of the Government.'<sup>29</sup> Claimant (Meri Hare/Mary Hardy) Solicitor Joshua Cuff drew attention to the lack of statutory support for Native Land Court adjudication on ceded lands. The exact reason for the Court's subsequent adjournment is not given but the introduction of later validating legislation may be seen as a tacit acknowledgement of the Native Land Court's lack of jurisdiction at this time.

In contrast to the first and second Native Land Court sittings, cases concerning Turanganui land were completed at the 1870 hearing. Rongowhakaata claimants included Noko, wife of land speculator and storekeeper George Edward Read, Meri Hari and Rapata Whakapuhia. The 14 core Rongowhakaata blocks heard for which claimants requested restrictions on alienation (c.758 acres) were mainly situated near Manutuke.

The 1870 Native Land Court hearing continued on from the Poverty Bay Commission in one notable respect – the granting of title under joint tenancy. Colonial Under Secretary Cooper proved to be somewhat more zealous, however, than his Poverty Bay Commission counterpart Atkinson in excluding individuals who had allegedly been involved in either the 1865 or 1868 'rebellions'.<sup>30</sup> One example was Mere Hira's exclusion from the list of owners for Oariki block because she was said to be a "hauhau". The title investigation was adjourned and the block was not heard again until 1881.<sup>31</sup> Such exclusions, however, were negated by later gifts to "excluded" owners. This happened in the case of Hotuapaka block, from which Hira had also been excluded in 1870 but received a one-third share from Tamihana Te Ruatapu and Ema Poto as a gift two years later.<sup>32</sup>

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<sup>29</sup> O'Malley, 'East Coast Confiscation', pp146–147

<sup>30</sup> O'Malley, 'East Coast Confiscation', p146

<sup>31</sup> Gisborne Minute Book (GMB) 1 pp.154/155, 204/209, GMB 6 p.473, & GMB 7 pp.124/137, 148

<sup>32</sup> Deed of Conveyance no.6449, 4D/522

Doubts over the Native Land Court's jurisdiction in 1870 appeared justified as later legislation was passed to validate the 1870 awards in 1871 and 1874. The first measure was to enable sales that had occurred between the 1870 awards and issuing of Crown Grants to be legalised and the second provided for Maori grantees to have their titles ascertained through the Native Land Court even if native title had already been extinguished.<sup>33</sup> This method of legalising previously extra-legal awards and activities was to become common place in future Native land legislation and was often in response to what was happening on the East Coast.

The Native Land Court's lack of jurisdiction was also indirectly acknowledged by the reformation of the Poverty Bay Commission in August 1873. It had been two years since any Court or Commission had adjudicated on Maori land at Turanga. Settler demands for something to be done about the uncertain state of titles, which prevented them from securing legal title to lands they had leased or purchased from Maori, prompted the Crown to reintroduce the Native Land Court. Colonial Under Secretary Cooper recommended that the 1869 Deed of Cession be formally cancelled once the confiscated Patutahi block had been surveyed so that the balance of ceded land could return to its original status of 'Maori' land. This would then enable the Native Land Acts to be applied to the land concerned. Native Minister McLean decided, however, that it would be necessary for the Poverty Bay Commission to sit once again before the Native Land Court took over.<sup>34</sup>

The Poverty Bay Commission was therefore re-formed in August 1873, though the hearing was boycotted by Rongowhakaata (who by this time were demanding that remaining lands be returned without adjudication) and eventually suspended permanently.<sup>35</sup> Only one core Rongowhakaata block was heard at this final sitting but it was the largest – Waihau, comprising 13,800 acres, which was granted to 12 individuals.

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<sup>33</sup> The East Coast District Land Titles Validation Act 1871 and Poverty Bay Lands Titles Act, 1874

<sup>34</sup> O'Malley, 'East Coast Confiscation', pp149–150

<sup>35</sup> Instructions from Native Under Secretary Henry Tacy Clarke, RDB vol 129 pp 49553–68 cited in Rose, p25

Rongowhakaata’s remaining lands (along with that of other groups) were subsequently returned without adjudication.<sup>36</sup>

Though a complicated and at times litigious process, by 1873 the operation of the Court and Poverty Bay Commission did succeed in determining title to c.35, 034 acres or 73 per cent of Rongowhakaata’s remaining land.<sup>37</sup>

**Table 1: Rongowhakaata Land for which Title was Determined, 1869 – 1873**

| <b>Date of Hearing</b> | <b>Amount (acres)</b> |
|------------------------|-----------------------|
| 1869 (PBC)             | 20, 476               |
| 1870 (NLC)             | 758                   |
| 1873 (PBC)             | 13, 800               |
| <b><i>Total</i></b>    | <b><i>35, 034</i></b> |

It is perhaps no coincidence that private purchasers stepped up their activity at this time, or that Crown purchase agents entered the region in the following year and likewise began negotiations for the acquisition of land. But while the Government had succeeded in imposing its judicial system on Turanga Maori and dictating what form of tenure would be legally recognised and enforced, the alienations anticipated to follow from this process did not eventuate in the short term. Despite the increasing pressure of purchase agents and the fact that most of Rongowhakaata’s land was now held under an individual title, neither had yet broken the unity of the tribal collective. On the contrary, the pressure of purchase agents and operation of the Court and Commission merely galvanised the iwi into finding a means of not only dealing with the problems caused by the return and

<sup>36</sup> Other title investigations for blocks such as Okirau, Awapuni and Waikanae were adjourned because of the protests of Rongowhakaata. The case of Waihou was another example of how the tensions arising between ‘loyalists’ and ‘rebels’ during the East Coast wars were deepened and perpetuated through the work of the Poverty Bay Commission. Major Ropata and Rongowhakaata ‘loyalists’ such as Rapata Whakapuhia, Reihana te Kauhuki, and Karena Taniwha objected to the original list of grantees. The list was then changed so that it did not include any ‘hauhau’. The long-term effects of this decision can be seen in the complaints that were later made by the descendants of those who were struck out of the list of grantees. Petitions and letters were written in 1899, 1905, 1914, and 1923 to little avail. Refer to J 1 1899/1599, LE 1 1921/9 Box 53, MA 1 1922/25 in Document Bank.

<sup>37</sup> The percentage figure is derived from dividing the total area of land that was awarded to Rongowhakaata grantees between 1869 and 1873 (c.35, 034 acres) with the estimated total area remaining at 1873 (c.47,

individualisation of their land, but of ensuring that they retained sufficient collective control to protect that land from alienation. Part of this “means” was participation in the Repudiation Movement.

### ***1.2. The Repudiation Movement***

The Repudiation Movement that began in the 1870s originated in the Hawke’s Bay with the growing opposition being created by the operation of the Native Land Court and the process of individualisation and alienation that it facilitated. Repudiation promoter Henare Matua travelled the North Island seeking support for an end to the land sales and to the jurisdiction of the Court and Pakeha judges over Maori lands.<sup>38</sup> Matua also visited Wellington presenting petitions over land grievances to Parliament. *Te Wananga* became the published voice of the Movement between 1874 and 1878 aiming to spread the message to all iwi and thereby foster the unity later sought under Kotahitanga: ‘all the tribes of this island should unite’ said Matua, ‘... in a “bond of love”’.<sup>39</sup> Indeed the Kotahitanga Movement of the 1890s had its roots in the Repudiation Movement. Karaitiana Takamoana, who became MP for the East Coast was also associated with the Repudiation Movement. The Movement was further supported from 1872 by Hawke’s Bay landowner and political opponent of Native Minister McLean, Henry Russell, and his solicitor, John Sheehan.

An earlier version of the Movement first entered Turanganui in 1860, calling on Rongowhakaata (and other iwi) to unite with their Ngati Kahungunu kin under the banner of their common ancestor Kahungunu in support of the King.<sup>40</sup> Rongowhakaata had at that time refused, having little need to participate; Turanganui in 1860 being very much a Maori world in which Maori law, customs and authority remained pre-eminent. By 1873, however, much had changed. The Crown’s authority was now being fully felt throughout the region through the imposition of laws and systems of authority and tenure.

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367 acres). This estimated total excludes Patutahi (c.42, 580 acres). (NB: Only c.190 acres were sold between 1869 and 1873. This makes minimal difference to the percentage as at 1873.)

<sup>38</sup> O’Malley, *Agents*, p46

<sup>39</sup> C Orange, *The Treaty of Waitangi*, Wellington, 1987. Reprint Wellington, 1992, pp. 190-191 cited in Rose, ‘1873 – 1890’, p181

The desire to continue benefitting from Pakeha settlement and enterprise, combined with the increasing needs created by the disruption to their own economic enterprise, were also of consideration. Each factor gave a new importance and relevance to participation in the Repudiation Movement.

According to Rose, what the Turanga iwi sought from the Movement was what she frequently refers to as ‘autonomy’: the right to manage their land and devise their own laws with respect to it and their affairs generally. That objective, however, appears in fact to have only come later, and only when the iwi had first pursued a different course of action with Crown. The statements of the Movement’s leaders, and in particular their continued declarations of support for the Crown’s authority, indicate that Turanga Maori initially sought something different from the right to continue controlling their own affairs. As Rose herself notes, the Movement clearly intended to operate ‘within the existing political structure: with parliament’s sanction of their operations and under the authority of the Crown.’ Indeed what it sought through its petitions and constant calls for redress was not autonomy or self-government as such, but partnership, or a form of governance in which the views and authority of both parties were given equal recognition. The Repudiation Movement came to provide a voice or forum for demanding partnership with the Crown on behalf of Turanga Maori in the 1870s.

As early as July 1872 the influence of the Repudiation Movement was apparent in the Turanga district with Samuel Locke reporting that:

There is a desire springing up among the Natives to have local government, or District Runanga composed of their leading chiefs, elected by themselves with an officer of the Government as their chairman, to discuss their requirements and represent them to the Government.<sup>41</sup>

The evidence suggests that Rongowhakaata and other Turanga Maori became involved in a formal alliance with the Repudiation Movement in early 1873. In April Locke informed McLean that Poverty Bay Maori were ‘all troublesome about [the] land question’ and

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<sup>40</sup> O’Malley, ‘An Entangled Web’, p93

<sup>41</sup> ‘Officers in Native Districts’. AJHR, 1872, F–3a, p32

advised that Wi Pere was visiting Napier and intended to accompany Karaitiana to Wellington. Locke, though, was confident that matters would be resolved concluding that ‘natives here & at Poverty Bay are like ants with their nests disturbed as they will settle again bye & bye’.<sup>42</sup> Crown agents also reported in April 1873 that Karaitiana was visiting Poverty Bay ‘engaged on land business’ and was to attend a runanga at Pakirikiri (a Rongowhakaata Pa) a few weeks later. No Pakehas were to attend which suggested to Porter that the hui was likely to be of a political nature.<sup>43</sup>

Discussion at Pakirikiri centred not only on land transactions but on the grievances surrounding the forced cession of land and problems arising from the joint-tenancy grants issued by the Poverty Bay Commission. As Resident Magistrate Nesbitt annual reported on 12 June:

Great dissatisfaction is evidenced at the nature of land tenure, and much anxiety to have it altered. There is also a disposition lately apparent to repudiate former bargains in the disposal of their land. This tendency has, I think, originated in consequence of communications with Napier.<sup>44</sup>

In August 1873 Locke reported that Turanga Maori ‘appear to have been quite carried away for a time by Henare Matua and those with him’. According to Locke, this discontent was due to ‘the underhand working of Europeans’ in land transactions and also the unfairness of joint tenancy awards under the 1868 Act.<sup>45</sup>

Rongowhakaata’s continued and close connection to the Movement was perhaps most strikingly demonstrated with their protest at the August 1873 hearing of the Poverty Bay Commission which was led (at the invitation of Rukupo) by Matua. Three hundred Turanga Maori joined together to demand that the lands confiscated under the Deed of Cession in 1868 be returned. Prior to the opening of the Poverty Bay Commission Matua had also gained the support of Te Aitanga-a-Mahaki’s Wi Pere and Paora Te Apatu —a

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<sup>42</sup> Rose, ‘1873 – 1890’, p182

<sup>43</sup> MS-Copy-Micro-0535-026 and MS-Copy-Micro-0525-081, cited in Rose, ‘1873 – 1890’, p182

<sup>44</sup> AJHR, 1873 G1, p. 14, cited in Rose, ‘1873 – 1890’, p182

<sup>45</sup> MS-Copy-Micro-0535-068 cited in Rose, ‘1873 – 1890’, p181

Wairoa chief with links to Ngai Tahupo [Ngai Tamanuhiri] and Ngati Maru.<sup>46</sup> Such invitations, and the holding of Repudiation hui at their pa, suggest that Rongowhakaata not only participated in the Movement but indeed had a spearheading role in promoting it amongst Turanga Maori.

Matua left Turanga for Wellington in mid-August 1873 accompanied by Turanga Maori leaders such as Anaru Matete of Ngati Maru and Wi Pere of Te Aitanga a Mahaki. Rongowhakaata continued to boycott the Poverty Bay Commission hearings in 1873 and supported all of the petitions that Matua was taking to Wellington which were submitted to Parliament on 14 August 1873.<sup>47</sup> These petitions, which represented Maori from Hawke's Bay, Turanga, Wairoa, Taupo and Wairarapa, criticised the Native Land laws and the consequent operation of the Native Land Court. The first petition, signed by 300 Maori, stated that the Native Lands Alienation Commission had not fully investigated Maori complaints in Hawke's Bay requesting another commission to be formed.<sup>48</sup> Another petition (this time signed by 371 people) clearly outlined the problems and 'evils' caused by the Native Land Court process on Maori.

First. The lands are eaten up by money for survey, Court fees, grant fees, and payments to lawyers and interpreters, and other expenses, to such an extent that the balance which comes to us from the sale of our lands is very small.

Second. The names of few people are put in grants for large blocks of land, and no care is taken of the interests of the people owning the land but whose names are not in the grant; and thus the grantees are enabled to lease, encumber, and sell the land for their own benefit, without the knowledge and consent of the outsiders, and without sharing with them the money which the lease or sale of the land produces.

Third. That many people are put into grants whose interests in the land are not equal ... and the laws give no facilities for ascertaining the interests of the several grantees in cases where land has been leased to Europeans, so that after ... some of the grantees sell ... there is no clear way of finding out how much of the land belongs to the people who have not sold.

Fourth. That facilities are placed in the way of imprudent owners to dispose of the land without any regard being had to the remainder of the people.

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<sup>46</sup> Daly, pp105–106, cited in Rose, '1873 – 1890', p21

<sup>47</sup> Rose, '1873 – 1890', p185

<sup>48</sup> 'Petition of 300 Maoris of Hawke's Bay, Wairoa, Turanga and Taupo', AJHR (1873), J-6

Fifth. That sufficient care is not taken to secure to the Native owners the benefit of disinterested advice and explanation, when signing papers and deeds about their lands, and the persons from whom they receive explanations being the Europeans who are anxious that the deed should be signed.

Sixth. That no precaution is taken to see that the land is sold or let for a fair price; the Maoris being ignorant of the causes which give value to these lands, are drawn into leases and sales of these lands at prices very much below what the Europeans themselves would accept.

Seventh. When the names of children and married women are put into grants, the interpreters are allowed to go and obtain the[se] signatures ...

Eighth. That sufficient care is not taken to make proper reserves to be held for the use and benefit of the Maoris so that Maoris are now without any land whatever on which they may live and work.

Ninth. That the Europeans are allowed to go to the men whose names are in the grant one by one and make bargains with them, which are unknown to the other grantees, whereas all the grantees should be called together, and unless all consented the land should not be sold.<sup>49</sup>

The petitions outlined ‘the great evils and troubles which have come upon the Maori people by the Work of the Native Land Laws’. What was notable about them was not only the acuteness that the problems arising from the Court process had been determined but the underlying call for reciprocity or mutuality in treatment. As Rose states, Repudiationists ‘were not seeking to overturn the Crown’s authority ... Nor did the Movement seek to overturn the government, although they did want to modify it through increased Maori representation in parliament. The Repudiation Movement submitted both their grievances and suggestions for solutions to these grievances to government, asking for parliament’s sanction of their proposals.’<sup>50</sup> That objective was made explicit by the call for Parliament to:

do away with the bad laws now in force, and to place in their stead a good law which shall be capable of being understood, and under which the evil work of swallowing up lands by debts and drink and mortgages – of going to the grantees one by one, and not speaking to them all together – of leaving us in the hands of the lawyers and interpreters of the European purchasers, and all these other evils – may be put an end to.<sup>51</sup>

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<sup>49</sup> ‘Petition of 371 Maoris of Hawke’s Bay, Wairarapa, Wairoa, and Turnanganui, AJHR (1873), J–7

<sup>50</sup> Rose, ‘1873 – 1890’, p26

Another petition was presented to the Legislative Council on 1 October 1873 by Henare Matua and 29 others stating that they represented 1661 Maori ‘on the east side at this Island’ at Wairarapa, Heretaunga, Wairoa, Mahia, Turanga, Whangara and Uawa.<sup>52</sup> This called for Maori to be allowed to control their own lands and for the interference of the Crown through its Native Land laws to cease. The petitioners referred to the Crown promises made under the Treaty of Waitangi and Treaty of Kohimarama that Maori should have ‘the entire management of’ their affairs.

We may briefly state that we, the subscribed Natives express not only our own personal opinions but also those of our respective tribes. ...

We cannot ... concede to these laws regarding “Native lands” and “Native reserves and leases,” enacted by Parliament this Session, and we hope that they will not be carried into effect upon Maori land; but we trust you will permit our land to abide with us, for such was the Queen’s promise at the Treaty of Waitangi, in 1840. The same promise was made at the Treaty of Kohimarama, when it was openly declared by Governor Browne that we should have the entire management of our own lands, snow-crowned mountains, plains, hills, landing-places, and fishing-grounds. We do, in consequence, consider that these laws should not by any means interfere with the Maori lands.

Friend Mr. Speaker, we entreat you to leave our land peaceably in our own possession. We wish these laws to have no effect upon our lands. The Queen had certainly no desire to see the Maori people, her New Zealand subjects, live without estate. Should you ... sanction these laws, then our very existence will be crucified. ...

Friend, Mr. Speaker, our candid opinion is this: we ought to project laws for ourselves, inasmuch as you have been these last thirty-two years enacting laws for the Maori people, and grievances to the Maoris is the only result of your operations and your guidance.

We Maoris have therefore assembled here in Wellington, asking your permission to devise laws for ourselves ...<sup>53</sup>

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<sup>51</sup> ‘Petition of 371 Maoris of Hawke’s Bay, Wairarapa, Wairoa, and Turnanganui’, AJHR (1873), J-7

<sup>52</sup> Rose, ‘1873 – 1890’, p187

<sup>53</sup> AJLC, 1873, No 22, cited in Rose, ‘1873 – 1890’, p188

A further opportunity to petition the Crown was provided with the visit of the Superintendent of the Auckland Province, John Williamson, in February of the following year. Rutene Ahunuku of Rongowhakaata again outlined the concerns of Turanga Maori. As the *Poverty Bay Standard* reported, these subjects were:

1. The sale of lands which commenced in the year 1869. – The sales are not clear.
2. The mortgages. We do not understand those transactions.
3. The leases, will you put them straight?
4. The Road Boards. – Abolish them.
5. The Maori lands that have not yet been Crown Granted. – Stop the erection of fences and houses on them.
6. In the case of deceased grantees. – Let their interest descend to surviving relations.
7. Let your administration of the laws on this side of the province be clear.
8. Give us some money for the improvement of our roads.
9. The confiscated lands.<sup>54</sup>

A report from Porter elaborated on Ahunuku's objection to the Road Boards' unjust behaviour, noting that the latter challenged the Boards to 'take their roads equally through Pakeha lands as though Maori'. Ahunuku also referred to the arbitrary action of the Pound authorities who had taken his horse without any notice being given in Maori and then selling it—also without notice. Paora Kati (aka Kate) also referred to his own difficulties expressing hope that Williamson would be a 'new broom' that would be 'able to sweep all the dust away'.<sup>55</sup> Williamson replied that he would address those issues within his power and pass the others on to Native Minister McLean.

McLean, however, had already made his views very clear at a meeting held in 1873 at Turanga with Rongowhakaata, Te Aitanga a Mahaki and Ngai Tahupo. With regard to the return of remaining lands, Hoani Ruru again entreated that:

The land belonging to Rongowhakaata was taken by the Government for the crimes of the Hau Haus of Turanga, and but a small portion of that belonging to Te Aitanga a Mahaki; Ngaitahupo did not lose any land, Paora Te Apatu and others had made application for the adjudication of

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<sup>54</sup> *Poverty Bay Standard*, 17 February 1874 cited in Rose, *DB Volume 9*, pp5925–26

<sup>55</sup> Porter to Native Under Secretary, 16 February 1874, AD 103/2, pp551–556

lands within the “*rohae potae*”; Rongowhakaata did not, as their land had all been taken. I wish you to give me back a portion.<sup>56</sup>

McLean refused to make any further “concessions” concerning issues surrounding the forced cession, advising that the solution was to follow the example of ‘an increasing and prosperous community of Europeans’ rather than engage in any further ‘fruitless agitation’.<sup>57</sup> He was also totally unsympathetic to, and uninterested in, the possibility of recognising the chiefly authority of Turanga Maori:

You, the people of Turanga, have not hitherto shown yourselves capable of managing your own affairs, although you talk largely of your powers. You could not do it even when your old chiefs of authority were alive; and you have always evidenced a fickleness and a desire for change, without considering the consequences which would follow...

You have no chiefs to whom any attention is paid; and the old proverb holds good “Turanga tangata rite;” or, Chiefs and all are of equal standing at Turanga. The land question has been already satisfactorily settled by the Commission which has recently sat here and I am not prepared to make any further concessions in either land or money, as you may consider yourselves liberally treated. I told some of you lately in Wellington ... that you would not have met with so much consideration had you assumed a defiant attitude; and I tell you so again.<sup>58</sup>

In light of such a response, it is of no surprise that at a later Repudiationist hui held at Pakirikiri it was reported to McLean that nearly all who attended had signed a petition ‘to put you out’.<sup>59</sup> Ormond informed Locke in December 1874 that ‘I have lately heard much re “the Petition” and my impression is that it has been extensively signed throughout the District as well as at Poverty Bay’.<sup>60</sup>

The upcoming election for the East Coast Maori seat saw Repudiation leaders campaigning and nurturing their supporters in the Turanga area. On 12 July 1875 Locke reported that Karaitiana Takamoana was in the district ‘collecting information regarding

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<sup>56</sup> ‘Meeting held in Court House, Napier’, 29 November 1873, AJHR (1874), G-1, pp1-4

<sup>57</sup> Rose, ‘1873 – 1890’, pp189-190 and AJHR (1874), G-1, pp1-4

<sup>58</sup> AJHR (1874), G-1, pp1-4.

<sup>59</sup> MS-Copy-Micro-0535-081, in Rose, *DB Volume 8*, pp. 5309-5373, pp. 5362-5364.

land purchase questions'.<sup>61</sup> In February 1876 Porter reported that Wi Pere and 100 followers had come to town to vote for Karaitiana. Porter added that Mr Hardy, 'an avowed opponent' of McLean, directed them not to divulge who they were voting for. Hardy was married to a Rongowhakaata woman whose sister, 'Bette', was a claimant 'to the disputed land at Patutahi'.<sup>62</sup> Because of various electoral irregularities Karaitiana's subsequent election was not recognised by Parliament until several months later.

### ***1.3. Maintaining Internal Unity: the Power of the Collective and Komiti***

While the external process of presenting petitions and attending Repudiation hui continued, of equal importance to the Rongowhakaata tribal leadership was the necessity of containing internal divisions. These divisions had been partly created by the Crown-imposed process of title determination, and the individualistic views and interests that that process inevitably fostered and promoted. Indeed it was not only the Crown that the Rongowhakaata leadership had to contend with. They had to also look to their own people, and to above all maintaining the very unity upon which the tribe depended for its collective authority, and upon which the success or otherwise of their ongoing attempts to petition the Crown ultimately depended.

Underlying much of the pressures on both the community and individuals alike were the needs created by Rongowhakaata's declining socio-economic position; the consequence of both the disruptions caused by warfare, confiscation and the operation of the Court system, and Rongowhakaata's growing dependence on a cash-based Western capitalist economy. From the 1850s, Turanga Maori had successfully engaged with this economy and had become among the richest in the country as their district was transformed into a granary for the Auckland and Australian markets.<sup>63</sup> In the aftermath of the wars, increased European settlement in the Turanga region resulted in the full-scale introduction of the capitalist economy, with the exchange of goods and services becoming almost entirely

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<sup>60</sup> Ormond to Locke, 24 December 1874, MS-Copy-Micro-0535-068, cited in Rose, '1873-1890', p198 and in Rose, *DB Volume 8*, p5251

<sup>61</sup> MS-Copy-Micro-0535-068, in Rose, *DB Volume 8*, pp. 5239-5297, p. 5262.

<sup>62</sup> Porter to McLean, 3 February 1876, MS-Copy-Micro-0535-081, in Rose, '1873-1890', p210 cited in Rose, *DB Volume 8*, p5330

dominated by cash transactions and credit. With a decline in their trade, however, the principal source of cash and capital available to Turanga Maori was through the sale, lease and mortgage of their remaining land. Individuals who were in a situation of debt or who sought to prosper the position of themselves and their whanau not unnaturally looked to the sale of land; the persistent offers of Crown and private purchase agents providing a ready and all too tempting means of relief.

Keita Waere (aka Kate Wyllie later Gannon) was one individual who sought to take advantage of the many offers being made for land and who clearly held opposing views from the collective Rongowhakaata leadership. She marked Henare Matua's visit to Turanganui by publishing an open letter in the *Poverty Bay Standard* on 23 July 1873 warning her kinsmen such as Raharuhi Rukupo and other Turanga rangatira against Matua's unrealistic promises and 'evil works':

Friends—do not exalt evil works, rather seek to crush them, lift up the right only. By your invitation Henry Matua has come to this district, bearing with him his dangerous opinions, for the purpose of beguiling you. You expect Henry Matua to restore to you the lands you have fairly sold to the Europeans. ... Let me tell you, your land can never be restored through your being guided by the ideas of Henry Matua. You sold to the Europeans, now you would seek to act in bad faith. ... In my opinion you would do well to close your ears to his specious words, these can never bear fruit.<sup>64</sup>

At another hui at Pakirikiri soon after Matua's arrival in July 1873, Wyllie and the repudiation leader entered into a robust debate which clearly established their opposing positions. Wyllie flatly refused to recognise that Matua had any right to enquire into her affairs. Part of this debate was recorded in the *Poverty Bay Standard* which provides an insight into what was happening on the ground with individuals who wanted to sell their land. When asked how much she sold her interest in Te Kuri for, Wyllie replied:

I will not permit you to question me at all on the subject. Are you a Commissioner appointed by the Government to institute an enquiry? The land was mine and I sold it; it is no concern of yours what sum I may have received for it ...

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<sup>63</sup> O'Malley, 'An Entangled Web', p 53

[Matua continued] You ask if I am a Commissioner. I am not: but I am a Magistrate; and I know that the Court says that no individual grantee is at liberty to sell his or her interest until partition.

[Wyllie responded] I will sell my own interests whenever I choose, without asking the sanction of yourself or of anyone else. Your disapproval is of no consequence to me. I have sold my interest in many blocks of land, and received the value. I have no intention now of seeking to repudiate these sales.<sup>65</sup>

Wyllie was proud of her land dealings especially her ability to obtain good prices. When asked by Matua about her sale of her interests in Pakirkiri she replied:

I do not admit your right to question me; but as you seek to know, I will indulge you. I have sold the block with the exception of seven acres, and I shall now go back to Gisborne and sell that. I have got a good price for that land; I sold it for £20 an acre; that was not bad.

Wyllie also appeared to take an individualist view of her right to sell her share in tribal land and expressed wholehearted support for the Pakeha Court system in righting any wrongs:

[Henare Matua] You say these interests you disposed of belong to the Europeans, now; I tell you they are yours still.

[Keita Waera] Do not talk to me in this foolish strain. ... I have had to fight my own fight in European Courts against the European lawyers before to-day, with reference to land matters; and I feel myself quite able to cope with you to-day.

[Henare Matua] Very well, if you do not wish to get your own shares back again in cases where you have sold, your co-grantees will become entitled to all benefits you might claim.

[Keita Waera] ... I tell you, Henare Matua, that these people carried their land to the European and disposed of it, as they would have disposed of any other commodity. No doubt they received the prices stipulated, if they did not, it was their own fault; and besides, if wrongs have been committed the Courts of Law are yet open to them—these are at least pure; and from that source they can always obtain redress.<sup>66</sup>

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<sup>64</sup> *Poverty Bay Standard*, 23 July, 1873 in Rose, *DB Volume 9*, p5906c

<sup>65</sup> *Poverty Bay Standard*, 26 July 1873, in Rose *DB Volume 9*, pp5907–5908

<sup>66</sup> *Poverty Bay Standard*, 26 July 1873, in Rose *DB Volume 9*, pp5907–5908

Read provided a somewhat more alarmed report of the Repudiation hui to Native Minister McLean:

Henry Matua is here making enquiries into all Land Transactions never before have been such excitement in Poverty Bay he have [sic] two Secretarys [sic] at work taken down all transactions about Land sales Mortgages &c &c. The whole of the Natives are assembled at Lazarus's [Raharuhi Rukupo] Pah [Pakirikiri]. People who never visited any Runangas before old and young have all assembled he have [sic] promised them their Land Back. Mr and Mrs Wylie went over. You will see by the speeches in the Standard I send. Unless the natives can be assured that the land cannot be got back only through the ordinary Courts of Justice and allay the present excitement, something will happen that will break the peace before long. The foundation for all this was laid by granting the Hawke's Bay Commission.<sup>67</sup>

In a like attempt to assert the rights of the collective, Wylie was later prevented by the protests of her kinfolk from completing her claim for the Okirau Block to the Poverty Bay Commission. As the Commission minutes noted on 15 August 1873, Henare Matua advised:

the parties who owned both of the blocks named had placed them in his hands, and were not desirous or willing that their claims thereto should be heard and I give the Court due notice to that effect, lest trouble ensues, for I should not like to see a row in Court, let it be outside. ... by far the large majority were against any claims being heard.<sup>68</sup>

While Kate Wylie was determined to have Okirau heard, when she spoke 'a terrible noise and confusion took place' leading to attempts to clear the court of all but claimants. In spite of such efforts to clear the court, as Wylie gave evidence those present:

became more and more noisy until when the Claimant [Wylie] was asked who she would name to be in the Crown grant, when, as if by a preconcerted signal, a general shout and clamour took place, with shouts of "Tahae", "Whanako" (theft) arose from all parts of the Court.<sup>69</sup>

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<sup>67</sup> G E Read, Gisborne, 30 July 1873 to Native Minister McLean, MS-Copy-Micro-0535-082 cited in Rose, '1873 – 1890', p184, Rose, *DB Volume 8*, pp5394–5395.

<sup>68</sup> Poverty Bay Commission Minutes, 15 August 1873, MA 62/4 cited in O'Malley, 'An Entangled Web', p421

<sup>69</sup> Locke to Ormond, 28 August 1873, MA 62/7 cited in O'Malley, 'An Entangled Web', p421

The *Poverty Bay Standard* provided a more detailed account of what occurred indicating the extent to which Rongowhakaata protest had been organised and planned:

Mrs. Wyllie was under examination before the Court, and the Commissioners were advancing in a direction with reference as to who the other grantees were, when on a preconcerted signal from the crowd, the natives rose *en masse*, and amidst cries of *korero parau* and *kokiri, kokiri*, effectually put an end to all hope of further business. Captain Richardson and his small force were active in their endeavours to eject the more prominent among the rioters, and got a little rough usage. In the scuffle Sergeant Shirley's head came in contact with a square of glass, the sound of which breaking, added to the tumult outside, and gave rise to a suspicion that the Maoris really intended to carry out their threat, pretty freely expressed, of attacking the Court-house and despoiling the maps and property of the Commissioners. Captain Porter rendered good service and eventually the Court was cleared and the doors locked. Outside, however, the excitement became intense; and it is certainly only due to the fact of business being entirely suspended in the Court, that open hostilities did not break out.<sup>70</sup>

As O'Malley notes, another version of this disturbance given in Captain Porter's report to McLean indicated a greater degree of provocation:

The disturbance on that day would not have occurred had it not been for an unfortunate legal question being put. Judge Rogan with a view to compromise matters suggested it should be left to the majority of claimants to decide in each block whether they were to be investigated or not.

The very worst possible piece was selected to be brought on first. You will remember a house of Capt. Read's being two or three times dragged off a piece of land forcibly possessed by him. It was that piece [Okirau] which was called upon first (certainly neither of [the] commissioners or Mr. Locke knew anything about it) and Mrs Wyllie's evidence first heard, other claimants restraining their feelings wonderfully well while Mrs Wyllie was tracing her descent, but at the conclusion the question referred to was put *viz* whether Mrs Wyllie wanted a crown grant? to which she replied "yes at once". Upon this two woman [sic] screamed out a *tahae* &c. being under the impression her request was granted.

Then ensued the disturbance owing to the attempt of A C [Armed Constabulary] to expel the woman who [had] shout[ed]. [She or they] resisted, [and] all at once became confusion. I rushed round to the front door and prevented a rush to the rescue. In the height of the excitement Mr.

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<sup>70</sup> *Poverty Bay Standard*, 16 August 1873 cited in O'Malley, 'An Entangled Web', p422

Wyllie foolishly called out “Hauhau ma”. This would have caused further trouble had I not turned upon him myself.

It is my impression things would have gone on quietly had there not been so much inter-meddling by persons interested.<sup>71</sup>

The desire of Riperata Kahutia (who was also of Te Aitanga a Mahaki and Ngai Tahupo) for the Awapuni and Waikanae blocks to be heard by the Commission was likewise frustrated by Rongowhakaata claimants who objected to the lands being investigated.<sup>72</sup> As the *Poverty Bay Standard* reported, Riperata protested that it had been well understood by all concerned that the claims to these lands were to be heard at the present hearing, and that if the counter-claimants chose not to attend then that was their business but no fault of hers and the investigation should proceed regardless.<sup>73</sup> The Commissioners disagreed, ruling that they would not proceed in the absence of the Rongowhakaata people. Like Wyllie, Riperata Kahutia had to wait several years (till 1875) before she was able to have these blocks heard by the Native Land Court, and the failure of such attempts were indicative of the extent of unity and collective authority existent amongst Rongowhakaata at this time. Much of that unity was undoubtedly attributable to the work of local komiti, which not only provided a system of internal control but also a forum for interface with the Repudiation Movement and other iwi.

### **1.3.1. Intra-iwi komiti**

By 1873 a number of komiti had been formed among Turanga Maori to deal with the multitude (and growing number) of local issues created from the confiscation, the complications in title caused by the activities of private purchasers, and the broader issues associated with the entrance of Crown laws and institutions.<sup>74</sup> An example of a local Rongowhakaata komiti at work was seen in the public response of the Oweta komiti (and

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<sup>71</sup> Porter to McLean, 23 August 1873, McLean Papers, (f.510), cited in O'Malley, 'An Entangled Web', p426

<sup>72</sup> Poverty Bay Commission Minutes, 30 August 1873, MA 62/4 cited in O'Malley, 'An Entangled Web', p434

<sup>73</sup> *Poverty Bay Standard*, 3 September 1873 cited in O'Malley, 'An Entangled Web', p434

<sup>74</sup> Rose, '1873 – 1890', p181

others) to attempts by the trustees of Read's estate to negotiate directly with them instead of going to court. The *Poverty Bay Herald* reported upon the reply of the 'Native Committees of Oweta and other places in the district' to McFarlane, the trustee of Read's estate:

We will not take fright at your words as to the money being consumed in legal expenses by having our cases brought before the Courts of law.... We will not hearken to your wheedling talk. We have handed over to Mr Rees the management of our affairs in relation to all improper purchases made by the late Captain Read.<sup>75</sup>

Rongowhakaata and other Turanga Maori komiti also undertook the important role of maintaining regular communication with the Repudiation Movement. The close links between the Rongowhakaata komiti and the Movement were indicated by the fact that most of the recorded repudiation hui at Turanga were held at Pakirikiri. On 9 July 1874 Porter reported that:

In native matters here the latest is a communication from Henare Matua to the Komitis to unite and turakina you. There still exists a few among the natives here ready to assist and follow the counsels of Henare. ... A meeting is to be held on his advice.<sup>76</sup>

It was at this proposed meeting held at Pakirikiri or 'Big River' the next day that it was reported that nearly all had signed a Repudiationist petition to push McLean out of office. Porter added, 'The meeting was a secret one got up by the Komitis'.<sup>77</sup>

As well as hosting Repudiation hui, Rongowhakaata komiti representatives also attended such hui elsewhere. It seems likely, for instance, that Rongowhakaata komiti representatives were amongst those Turanga Maori who attended a Repudiation Movement hui at Waiohiki in March 1876, which drew 1200 Maori from 'nearly every settlement of the range of country lying south and east of a line drawn from Wanganui by Taupo to the East Cape'.<sup>78</sup> It was reported that 'all the great questions of the day from a

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<sup>75</sup> *Poverty Bay Herald*, 17 June 1878 and 21 June 1878

<sup>76</sup> Porter to McLean, 9 July 1874, MS-Copy-Micro-0535-081, cited in Rose, *DB Volume 8*, pp5362–5364

<sup>77</sup> MS-Copy-Micro-0535-081, in Rose, *DB Volume 8*, pp. 5309-5373, pp. 5362-5364.

<sup>78</sup> Rose, '1873-1890', pp210–211 citing *Te Wananga*, 1 April 1876 in Rose, *DB Volume 9*, p5947

Maori point of view were fully discussed’, including opposition to the present government and support for Sir George Grey’s opposition party. The existing Native Land Court process also continued to be a target:

Other very large questions, such as the abolition of the Native Lands Court, the stoppage of sales and mortgages, the taking of land for railways, roads and telegraph lines, the necessity for increasing the representation of the Maoris in the Assembly, [and] the doing away with the trade in spirits, were also discussed.<sup>79</sup>

The Rongowhakaata komiti were almost certainly also represented among the 50 Maori from Poverty Bay who attended the next major Repudiationist hui on 2 June 1876 at Pakowhai that was hosted by the Tamatea Komiti of Kahungunu. The close links between Rongowhakaata and the tipuna ‘Kahungunu’ make it very likely that Rongowhakaata representatives were among those described by *Te Wananga* as ‘Ngati Kahungunu from Te Wairoa and Turanga’.<sup>80</sup> It was also at this hui that calls were first made for what would later become the basis for a regional komiti forum. Indeed the continued and shared participation of Rongowhakaata and other Turanga iwi komiti in the Repudiation Movement had not only provided a structure that strengthened the internal unity of groups. It had also provided a basis for cultivating closer links between them. The formation of an inter iwi komiti in 1877 was the result.

### **1.3.2. Inter-iwi Komiti**

It was Henare Matua who opened the hui at Pakowhai by outlining the main issues to be discussed, having first declared the Movement’s ongoing ‘obedience to the Queen ... and our determination to ... obey her laws.’ These issues included a proposal to hold regular inter-iwi meetings from which petitions would be made to Parliament; allotting Maori seats according to the ratio of the population; and discussion of the many problems tied to Maori land alienation such as Government interference in private transactions and inadequate and ambiguous Maori land legislation. As Matua detailed:

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<sup>79</sup> *Te Wananga*, 1 April 1876, in Rose, *DB Volume 9*, p5947

<sup>80</sup> Ormond to McLean, 2 May 1876, MS-Copy-Micro-0535-029, cited in Rose, *DB Volume 8*, p5208 and *Te Wananga*, 22 June 1876, in Rose, *DB Volume 9*, pp5948–5950

We are of the opinion that the manner of purchasing land in accordance with the regulation now in force is evil, and the cause of much confusion, and that all land purchasing under such regulations should cease. That land should not be bought in unalienated districts. That not till a majority of the Maori people have consented, shall land be surveyed or put into the Native Lands Court or sold. And in all districts where the consent has not been given to the land being sold, in no case shall money be paid in advance for land... That Government officers shall not, without authority, or invitation from the majority of Natives go into Native districts, and annoy by requesting the Natives to put their lands through the Native Lands Court, and to sell them. Let the Natives use their own discretion as to the survey, or passing them through the Native Lands Court...

We think that the laws by which the Native Lands Court exercises its power, must be repealed, and that the Parliament of New Zealand enact a new law, one which is not marred by ambiguity or contradictions, and by which Maori lands can be fully investigated, and correctly settled. And that such new law shall empower the Adjudicators of the Native Lands Court to hold the same power as the Magistrates of the other Courts. And that the Government shall not have any control over such Adjudicators of the Native Lands Court.<sup>81</sup>

While the Repudiationists reiterated their opposition to the present Government saying ‘it has not done any good work for the Maori people’, they still looked to work within the Government’s own laws and structures to obtain redress: ‘Let the Parliament put this Government out of power.’

Rongowhakaata representatives (such as Paora Kate) also spoke in support of Wi Pere’s proposals regarding changes to the Maori electoral system, the possibility of holding an annual Maori assembly to ‘be submitted to the consideration of the tribes of New Zealand’, and that Maori seats be allotted according to the ratio of the population. They further noted:

if any Government officer dare to offer money as an advance for the purchase of any block of land, befor[e] the whole of the people shall have agreed to sell such block of land. Let such case be cast into the seal of silence to be lost forever, and who shall regret such an act.<sup>82</sup>

On a different issue, Tamihana Ruatapu also spoke saying that he had intended to establish two public houses upon his return home to make some money but ‘as these

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<sup>81</sup> *Te Wananga*, 22 June 1876 in Rose, *DB Volume 9*, pp5948–5950

chiefs and old men condemn drinking, I will not build those two houses, but cease all action in regard to them'.<sup>83</sup> The desire to preserve and protect the authority of the collective was – even in social matters – very clearly evident. So too was the ongoing determination to work with the Crown in effecting the changes they wanted, with the Pakowhai meeting concluding on 6 June 1876 with an agreement to continue acknowledging ‘the Queen as the Sovereign of New Zealand’ and to submit all of the issues discussed to parliament.<sup>84</sup>

The next major Repudiationist hui at Omaha in March 1877 was optimistic that this strategy could work and that the new Native Minister, Pollen, would pay more attention to their grievances than his predecessor, McLean. The chiefs accordingly again renewed their statement of loyalty to the Queen and her laws clearly hoping that the proposals detailed at the Pakowhai hui for changes to the Native Land Laws would be embodied in the new Native Lands Bill.<sup>85</sup>

Just over one month after the Repudiation hui at Omaha, Turanga Maori met on 27 and 28 April 1877 to discuss what to do about the desperate situation regarding their lands. Wi Pere was a major initiator of the hui, coinciding it with a feast celebrating the double wedding of his daughter and niece (Hana Waere aka Wyllie).<sup>86</sup> According to *Te Wananga*, around 500 Maori, including 20 from Te Arawa, and 40 Europeans, attended. Wi Pere addressed his Maori guests by outlining the issues that he had ‘been pondering in [his] heart’, such as his people returning ‘to the worship of the true God’, rebuilding churches, giving up excessive drinking, and the need to obtain a European-like education to ‘become industrious, so that we may possess property’.<sup>87</sup>

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<sup>82</sup> *Te Wananga*, 13 and 20 July 1876, cited in Rose, *DB Volume 9*, pp5957–59

<sup>83</sup> *Te Wananga*, 29 July 1876, cited in Rose, *DB Volume 9*, p5962

<sup>84</sup> Rose, ‘1873-1890’, p214, *Te Wananga*, 29 July 1876, cited in Rose, *DB Volume 9*, p5962

<sup>85</sup> Rose, ‘1873-1890’, p214, *Te Wananga*, 24 March 1877, in Rose, *DB Volume 9*, p5963

<sup>86</sup> *Te Wananga*, 9 June 1877, in Rose, *DB Volume 9*, pp5964–5969

<sup>87</sup> Rose, ‘1873-1890’, p215, *Te Wananga*, 9 June 1877, in Rose, *DB Volume 9*, pp5964–5969

Anaru Matete was present on the first day when Pere called for land sales to cease, proposing that a district komiti be formed to facilitate the economic and social development of Maori:

Let us cease to sell land. And do not let us persist in it, lest our children become like those who have not any parents to feed and help them. But let us keep that portion of land we now possess for our offspring, who may sell it, when they have as much knowledge as the Europeans. ... Let the people nominate a Committee to carry out the above suggestions. And let a Committee be put into power each succeeding year. So that we may find some line of action by which we shall have time to breath in the midst of the trouble which has come on us in the years past. ...

Cease to squander the good things which God has given to your ancestors. Now, O friends, the Europeans were strangers in the land, but they have become rich. And we, the owners, and children of the soil, have become poor, because of our stupidity. Now, let us follow in the path by which they are so full of knowledge.<sup>88</sup>

Matete expressed support for Pere's words and proposed that the hui continue on the next day when more Rongowhakaata were able to attend.

The next day Rongowhakaata representatives such as Matete, Tamihana Ruatapu, Hoani Ruru, Wiremu Kingi Te Paia and Hapi Kawae all expressed their support for Pere's suggestions and for a committee to be established to facilitate them. As Anaru Matete stated:

Mine is a word to you. Build the house called "Poho-o-Mahaki" (or repair it so that it can be used), and that it may also assist in helping the cause which you now speak about. My word in respect to religion is this: Be strong. By the centre part of a house will a house be held up. Even so, let the chiefs stand up as posts to uphold the people. Let the children of the chiefs be sent to school. It is right that the selling (of land) should cease now. As we, the old men, are going down to the hiding place (we are old men and cannot expect to live much longer). And o you men of low degree, you must enter into and work in this work. Look at the basket of nails and a hammer. By these a house can be built (put together). Let us have a committee.<sup>89</sup>

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<sup>88</sup> *Te Wananga*, 9 June 1877, in Rose, *DB Volume 9*, pp5964–5969

<sup>89</sup> *Te Wananga*, 9 June 1877, in Rose, *DB Volume 9*, p5968

Rongowhakaata leaders such as Tamihana Ruatapu keenly felt the importance of holding onto the remaining land as a base for his people's survival and future development:

O people, be strong, and build a house (of God), and when these things are done let us cease to sell land, but the land will be for you. I am going to the place of the unseen (covered up). Look at me, my head has become white. I am going to be covered up.<sup>90</sup>

The extent of the pressure that leaders such as Ruatapu were under as a result of the failure of existing customs to deal with the problems being faced by Turanga Maori was also implied in Pere's explanation as to why the komiti was formed:

the Maori Komiti (committee) set up in Turanga to investigate the problems amongst us, for at this particular time there are many more problems amongst our Maori people concerning their lands at Turanga. These problems are on the increase. The elders, the Rangatiras are confused and are seeking ways and means to rectify their concerns which may give relief to lighten the burden upon them....<sup>91</sup>

The Turanganui-a-Kiwa komiti, comprising representatives from Rongowhakaata, Te Aitanga-a-Mahaki and Ngai Tahupo, was accordingly formed at the Rongowhakaata kainga of Oweta three weeks later on 17 May 1877. Pere advised *Te Wananga* that the Komiti was formed 'to investigate and to hold an inquest into the problems and to set in place some rules and regulations pertaining to their lands and their administrations.'<sup>92</sup>

The Komiti made it clear to the general public what its role would be in terms of land affairs. On 29 June 1877 the following notice was published on the front page of the *Poverty Bay Herald*:

To Whom It May Concern

Take notice that a Native committee of twelve has been elected for the purpose of instituting an investigation into the alienation of land in this district, particularly those lands passed by the Commission under the Deed of Cession. Europeans who are occupying land, the titles to which are incomplete, will do well to perfect them as soon as may be.

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<sup>90</sup> *Te Wananga*, 9 June 1877, in Rose, *DB Volume 9*, p5969

<sup>91</sup> *Te Wananga*, 15 September 1877, Translation by Rutene Irwin, in Rose, *DB Volume 9*, pp5976–9

Wi Pere  
Chairman of the Committee<sup>93</sup>

The editor of the *Poverty Bay Herald* was impressed by the establishment of the Komiti and believed it would ‘prove of more than ephemeral existence’.<sup>94</sup> He appeared well aware of the need for the Komiti to help improve the condition of the people and of the desirability of the Crown to give it some recognition:

Some time has now elapsed since the organization of this [Komiti] and other Committees of a kindred nature in the district was first mooted. Their ostensible object at the outset was the promotion of the moral, social and religious condition of the Maori race in this part of the country, keeping a watchful eye meanwhile upon all questions affecting their lands. *With such a basis for their operations, it would not appear unreasonable to expect that the labors of these committees should meet with the approbation, to some extent, of the Government ...*

We would partly call the attention of the Government to this committee question. Unchecked and unheeded these committees may be productive of discord and litigation from end to end of the East Coast district, whereas, by the exercise of a moderate amount of care and watchfulness they might be guided into a healthy channel and become a powerful statement in ameliorating the condition of the Natives and of smoothing over the differences which so frequently arise between the two races.<sup>95</sup> [*emphasis added*]

At one level the Turanga Komiti could be seen as a continuation of the inter-iwi Turanganui-a-kiwa runanga that was formed in the late 1850s to deal with issues of settlement, economy and its relationship with the Crown. On another level, it differed from the runanga in that its structure was clearly an adaptation of a Pakeha committee or Court. As O’Malley suggests when referring to the Magistrates of the Wairarapa Committee, the deliberate use of the term ‘komiti’ symbolised more than a merely semantic change from the old-style ‘runanga’. Chiefs were nominated as magistrates with defined boundaries and power to issue summonses and fines.<sup>96</sup> Turanga was further

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<sup>92</sup> *Te Wananga*, 15 September 1877, Translation by Rutene Irwin, in Rose, *DB Volume 9*, pp5976–9

<sup>93</sup> *Poverty Bay Herald*, 29 June 1877

<sup>94</sup> *Poverty Bay Herald*, 10 July 1877

<sup>95</sup> *Poverty Bay Herald*, 10 July 1877

<sup>96</sup> O’Malley, *Agents*, p43

divided into three areas or ‘electorates’, namely Oweta, Muriwai and Waerenga-a-Hika, with three komiti members from each area to be elected via a ballot.

At the Komiti’s first sitting at Waerenga-a-Hika on 21 June Wi Pere was elected as chairman, Raniera Te Heuheu as his deputy, Hetekia Te Kani as Secretary, and Apora Paerata elected as ‘scribe –advertiser and journalist’.<sup>97</sup> An observer of the Komiti likewise indicated that it was effectively a parallel institution to the Pakeha Resident Magistrate and Native Land Courts, noting that “this Council... professes to deal, not only with land questions, but all other matters – both civil and criminal.”<sup>98</sup> Indeed several contemporary descriptions of the Turanga Komiti at work were to make such a connection.

In August 1877 the *Poverty Bay Herald* noted that the husband of a Maori woman who was found dead after picking up the proceeds of a land sale at Pakirikiri wanted a Maori komiti to investigate the matter, objecting to ‘the interference of the Pakeha’.<sup>99</sup> Another observer referred to the extent that the komiti regarded their criminal and civil jurisdiction. In May 1879 Resident Magistrate Gudgeon reported that:

For the last six months Committees elected by the Ngati Porou and Turanga tribes have assumed judicial powers in their districts and have fined offenders severely particularly in the very numerous cases of crim[inal] con[duct]. In the majority of cases these fines have been paid and absorbed by the Committees, but a few bolder spirits have refused where upon the judges have applied to me to enforce their judgments. I of course had to refuse and point out that to the best of my belief they had no jurisdiction from a legal point of view. One man only has differed from me and he assures me that by the Treaty of Kohimarama they have power to try cases of adultery and inflict any fine not exceeding (£18) eighteen pounds.<sup>100</sup>

One example of the Turanganui-a-Kiwa komiti working as an alternative institution to the Native Land Court was its title investigation of the Tarewauru Block in which Rongowhakaata hapu shared interests with Ngai Tamanuhiri. The komiti met at Pakirikiri

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<sup>97</sup> Rose, ‘1873-1890’, p217

<sup>98</sup> *Poverty Bay Herald*, 22, June 1877

<sup>99</sup> *Poverty Bay Herald*, 7 August 1877

<sup>100</sup> Gudgeon to Native Under Secretary, 21 May 1879, AD 103/9, pp617–628

in June 1877 to hear evidence from claimants and inspect the block, the survey of which had been arranged by Ropata Whakapuhia of Rongowhakaata. The komiti then arranged for their decision to be published in the *Poverty Bay Herald*, just as the Native Land Court decision's were published in the *Kahiti*.<sup>101</sup> In this case, however, it was Maori who determined title and made the decision rather than Pakeha. Indeed what decisions were made were done so with the tribe or hapu as a whole rather than individuals; a practice which effectively reinforced tribal cohesion. It was also likely to have been relatively cheaper for Maori to utilise than the Crown's version. As O'Malley states:

Allied with the goal of abolishing the Land Court and putting an end to land sales was (at the local level) that of providing an alternative method of determining titles and holding lands tribally. In fulfilling the latter goal the committees were implicitly also aiding the achievement of the former, since if tribal cohesion could be maintained, the Court could be boycotted, at least temporarily, while the existence of a popular, inexpensive and efficient alternative stood in marked contrast to the cumbersome, costly and widely despised Court.<sup>102</sup>

Yet as previously, Turanga Maori clearly did not view the work of the komiti to be in competition with its Crown equivalents but rather as complementing or at least proceeding in unison with them. Support for judgments was thus sought from Crown counterparts. As Resident Magistrate Gudgeon reported in his annual report of May 1879:

[the] Committees ... have assumed judicial powers ... and have fined offenders severely particularly in the very numerous cases of crim[inal] con[duct]. In the majority of cases these fines have been paid and absorbed by the Committees, but a few bolder spirits have refused *where upon the judges have applied to me to enforce their judgments*. I of course had to refuse and point out that to the best of my belief they had no jurisdiction from a legal point of view.<sup>103</sup> [*emphasis added*]

The komiti's willingness to cooperate with their Crown counterparts was further indicated in Porter's report that the 'Native Committees' had withdrawn their opposition

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<sup>101</sup> *Poverty Bay Herald*, 22 June 1877

<sup>102</sup> O'Malley, *Agents*, p47

<sup>103</sup> Gudgeon to Native Under Secretary, 21 May 1879, AD 103/9, pp617–628

to the Trig surveys in February 1878 after receiving a circular from Porter. They expected to raise the issue upon the next visit of Native Minister Sheehan.<sup>104</sup> Another example of their willingness to cooperate with the Crown was indicated in Gudgeon's statement that, 'As a rule I find these committees amenable to reason and easily managed'.

Such co-operation, and the very adoption of a structure analogous to a Pakeha institution, clearly signalled the ongoing willingness of Turanga Maori to participate in and support the laws and authority of the Crown. But the means of achieving that form of partnership or acceptance had now clearly shifted from demanding that the Crown work for them to now demanding Crown support as they worked for themselves. It was a response alike to both the magnitude of the problems then confronting them, and the Crown's continued refusal to listen to their petitions and effect the redress they demanded.

It is presumably no coincidence that the formation of this district komiti in 1877 was at a time of increased activity and confidence in the broader Repudiation Movement. In fact there seemed a sense that change as a whole was in the wind. In May 1877 Porter had advised the Native Under Secretary that Henare Tomoana and Henare Matua had visited the district with a petition calling for the suppression of the Native Land Court system and process. He also reported that:

Meetings have lately been held in various places in Poverty Bay and Waiapu districts at which resolutions inimical to Government were passed and a programme of grievances made out for submission to Parliament.<sup>105</sup>

The victory of Sir George Grey's party in the October 1877 election was a significant event for the Repudiationists and could only have spurred on further activity. It seems likely that Rongowhakaata would have participated in the Repudiationist hui held at Te Waiohiki on 15 November 1877 to celebrate the victory – an 'enthusiastic and befitting reception' being given for Premier Grey and Native Minister Sheehan, who was now Member of Parliament for Rodney and who had been closely associated with Matua as

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<sup>104</sup> Porter to Native Under Secretary, 9 February 1878, AD 103/8, p413

<sup>105</sup> Porter to Native Under Secretary, 17 May 1877, AD 103/7, in Rose, *DB Volume 1*, p46

legal counsel for the Hawke’s Bay Repudiation Movement. *Te Wananga* reported that approximately 500 Maori attended, naming Turanga as one of the settlements “well-represented” in the gathering.<sup>106</sup>

Underlying the celebration was the new feeling of optimism created by the high expectations that the Maori repudiationists had of their Pakeha supporters who had now obtained control of the government. Among other things, Turanga Maori expected major improvements in Maori land administration, especially concerning their participation and input into the decision-making process. Indeed they expected to finally realise their objective: for the Government to finally give their komiti official recognition and authority.

Such expectations were fed by the assurances of Premier Grey and Native Minister Sheehan upon their ‘friendly’ visit to Gisborne in January 1878. According to the *Poverty Bay Herald*, Sheehan advised Maori at Gisborne that ‘he was fully aware of the grievances under which the natives of the district labored’ and that his duty was to introduce ‘such a law as would prevent the evils suffered in the past’. Significantly, the report, which detailed Sheehan’s speech to Turanga Maori, reported him as advising that:

The fundamental principle of the proposed law, would be to place in the hands of the natives the bulk of the work of ascertaining and determining the title to land. The law will start by declaring that the Maori people are, and ought to be, the best judge to whom the land belongs.<sup>107</sup>

The report mentioned that ‘it will be remembered that the Hon. Gentleman told the natives he should return to Gisborne in about three weeks, and he advised them in the meantime to meet together and talk over the various subjects he had alluded to.’

Yet while Sheehan seemingly offered Turanga Maori the support expected of him, the newspaper account of Sheehan’s speech to Pakeha at Gisborne indicates much more of a focus on persuading Maori to put their land through the Native Land Court to facilitate settlement rather than Maori participation and control over the process. *Te Wananga*

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<sup>106</sup> *Te Wananga*, 29 December 1877 in Rose, ‘1873-1890’, p215

<sup>107</sup> *Poverty Bay Herald*, 11 January 1878

reported Sheehan advising a public meeting of Europeans that his government's aim was 'to encourage the Maori people to put their land through the Court, and to offer it on fair conditions to the European population who want to buy it'.<sup>108</sup> Based on the statements made directly to them by Ministers of the Crown, however, East Coast Maori next met at Tolaga Bay on 29 January 1878 with the expectation that their komiti were to receive official and legislative recognition.

The Tolaga Bay hui had been called by Henare Potae of Ngati Porou and an invitation extended to 'all people to attend within the boundaries of Paritu (Gisborne) to Wharekahika (East Coast)'.<sup>109</sup> Members of the Turanganui-a-Kiwa komiti including Chairman Wi Pere attended. Regional social welfare issues such as the detrimental effect of alcohol abuse in the area were high on the agenda. Wi Pere endorsed the call for more control over alcohol consumption, linking it to the other social and economic problems caused by the detrimental effect of the laws and existing Native Land Court process on land alienation. The underlying cause was the lack of Government support in the exercise of tribal control, which equated to what Wi Pere described as a lack control over their 'destiny':

I am trying to control our particular area with rules and regulations for their protection and to be advertising openly. I hold my allegiance to the Queen, and the goodwill thereof.

The objection I hold against the Crown:

1. her regulation over the control and selling of our lands.
2. the Maori Land Court.
3. Alcohol and other things.
4. I should not say these things, but, she should give us the rights to control our own destiny on things we do not agree with, with her endorsement to make it legal.<sup>110</sup>

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<sup>108</sup> *Te Wananga*, 30 March 1878 in Rose, *DB Volume 9*, pp5990–1

<sup>109</sup> *Te Wananga*, 16 February 1878, Translation by Rutene Irwin cited in Rose, *DB Volume 9*, pp5986–5989

<sup>110</sup> Rose, '1873-1890', p218, *Te Wananga*, 16 February 1878, Translation by Rutene Irwin in Rose, *DB Volume 9*, pp5986–5989

### ***A Regional Maori Parliament***

As Wi Pere and others recognised, official recognition was absolutely crucial to the success of the komiti and, in turn, the exercise of tribal control and authority. Of equal importance was the perceived need to establish a forum analagous to the Pakeha regional provinces: namely, a regional Maori parliament. As O'Malley states, the dissatisfaction with the paltry representation of Maori in parliament by the mid-1870s. The criticism of Maori representation by repudiationists such as Renata Kawepo made the concept of a regional Maori parliament involving regular inter-tribal meetings very popular among interested tribes.<sup>111</sup> In February 1878 Porter reported from Waiapu on plans for 'a large or general council ... to be established throughout the East Coast from Wairapapa to Tauranga[,] the district to be sub divided and a representative elected for each mustering of the council to be held half yearly'.<sup>112</sup> The *Poverty Bay Herald* provided a more detailed description of the intended 'miniature parliament':

At the large Maori meeting held at Tologa Bay this week, the natives decided to divide the county between Wairapapa and Tauranga into twelve districts. For each of the districts a representative will be chosen who will look after the interests of the particular locality he is elected to preside over.

These representatives will meet twice a year to discuss matters affecting the district. The places of meeting will be changed annually. The six districts in Cook County are divided as follows:

1. Mahia to Gisborne
2. Gisborne to Tologa Bay
3. Tologa Bay to Tokomaru
4. Tokomaru to Repoura
5. Repoura to East Cape
6. East Cape to Hicks Bay

This is the arrangement as at present made, but of course it is subject to the approval of the Wairarapa and Tauranga Committees. In short the scheme is nothing more nor less than a miniature parliament. At the same meeting it was decided to cancel all the existing leases in the district, and allow the present holders the chance of repurchasing, and in the event of them not doing so to offer the leases to the public.<sup>113</sup>

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<sup>111</sup> O'Malley, *Agents*, p49

<sup>112</sup> Porter to R J Gill, February 1878, AD 103/8, NA cited in O'Malley, *Agents*, p49, fn 139

<sup>113</sup> *Poverty Bay Herald*, 1 February 1878

Another report advised of ‘two large meetings’ of Maori at Tolaga Bay to consider land matters and to discuss the ‘remarks and suggestions’ made by Native Minister Sheehan on his recent visit in January 1878. The report continued that, as soon as the Tolaga Bay meetings were over, ‘the natives will muster in strong force here [Gisborne] with a similar object in view.’<sup>114</sup>

It appeared that a similar meeting was held in Gisborne around one month later which also discussed (amongst other things) the repudiation of land transactions. As the *Poverty Bay Herald* reported:

The Maoris assembled in large numbers in town yesterday with the object of arranging for a meeting to be held on the opposite side of the river on Wednesday. We are told...that their object is to decide on the repudiation of all the sales and leases made by them to Europeans where such a repudiation has a possibility of success.<sup>115</sup>

### **1.3.3. Government and Settler Views of Komiti**

The strong expectation of Turanga Maori at this time worried Crown agent Porter who knew that such hopes would not be met. On 8 February Porter informed Native Under Secretary Clarke on the increased activity of the komiti in his district and their ‘unreasonable’ and ‘impossible’ anticipation of what the government was going to do. He blamed East Coast Repudiationist MP Karaitiana Takamoana for misleading Maori:

The establishment of Committees throughout the district is becoming general but, as is to be expected from natives without any code to guide them, they are inclined to go beyond the limits of reason and to trespass upon the established laws....

The natives are unreasonable in their anticipation and expect impossibilities from the Government and I find that many statements as to stoppages of Trig Surveys, surrender of lands etc, announced in Runanga, are said to be upon the authority of the Honbl. Mr Sheehan, but on closer inquiry trace them to Karaitiana Takamoana who in his zealous support of the Government has led the

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<sup>114</sup> *Poverty Bay Herald*, 1 February 1878

<sup>115</sup> *Poverty Bay Herald*, 5 March 1878

people to expect more than can be accomplished. The various Committees in anticipation of the Hon Native Minister's expected visit prepared a number of matters for submission to Government.<sup>116</sup>

This commitment of the local and district komiti to repudiation and self-government was also a concern for local Pakeha, especially in light of the stoppages to trigonometrical surveys and current suspension of Native Land Court sittings. On 15 February 1878 the editor of the *Poverty Bay Herald* wrote:

Nothing practically has been done since June, though repeated applications have been made as to when another [Native Land] Court is likely to sit—everything remains in the dark. ... The “Repudiation Party” have their emissaries amongst the natives, and the Maori Committees are steadily working and gaining ground daily.<sup>117</sup>

Similarly, in two separate reports two months later, Porter warned Native Under Secretary Clark about the threat that the komiti posed to Crown authority. In April Porter reported upon:

the action of Native Committees in this district having assumed magisterial powers in trying cases of misdemeanors. Appeals have been made to me no later than yesterday. I pointed out that committee action was unlawful and am told that the Wairarapa Committee has been empowered by Govt. Is this true?<sup>118</sup>

A second report in May stated that:

The Native Committees established throughout this district ... have gone to unwarrantable lengths in their actions, assuming more than magisterial powers, issuing summonses, warrants, and summarily dealing with cases even out of the Resident Magistrate's power to deal with. The institution promises to undermine all constituted authority. From the first I took a stand against it and in Waiapu District have greatly checked its spread. In this, Poverty Bay district, I find it more difficult as they have been led to suppose it is a movement sanctioned by the Government.<sup>119</sup>

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<sup>116</sup> Porter to Native Under Secretary, 8 February 1878, AD 103/8, pp400–404 in Rose, *DB Volume 1*, pp50–53

<sup>117</sup> *Poverty Bay Herald*, 15 February 1878

<sup>118</sup> Porter to Native Under Secretary, 26 April 1878, AD 103/8 in Rose, *DB Volume 1*, pp49–58

<sup>119</sup> Porter to Native Under Secretary, 2 May 1878, AD 103/8 in Rose, *DB Volume 1*, pp49–58

From what Porter reported it seems that the East Coast Maori Member of Parliament, Karaitiana Takamoana, expected Sheehan to translate Repudiation policies into parliamentary policy, and Karaitiana's optimism had been passed on to his constituency.<sup>120</sup> Such an expectation had also been fed by what Maori interpreted as Crown assurances of self-government given on occasions such as the Kohimarama hui in 1860. As noted above, Porter's replacement, W Gudgeon, reported in May 1879 that one Maori had gone so far as to assure him that the komiti had jurisdiction to try cases of 'adultery' and 'inflict any fine not exceeding £18 under the 'treaty of Kohimarama'.<sup>121</sup>

Turanganui-a-Kiwa Chairman Wi Pere was also optimistic of the new Government's intentions for Maori problems. While promoting a new form of land administration for Turanga Maori lands which were to become known as the Rees-Pere Trusts (see below), he also reassured the people at a hui in Gisborne in April 1878:

All lands that are in any way confused, which the Government have dealt with, you and I can settle those with the new Government, as the new Government are inclined to look into all matters in which evil has been done to us by the old Governments.<sup>122</sup>

In June 1878 Pere was still optimistic that Sheehan's government was going to tailor new legislation in the interests of Maori and finally afford them the official authority they sought. In a letter to the *Te Wananga* editor dated 13 June 1878 Pere in turn urged Maori to hold onto their lands until 'such time as the new regulations come out to protect our lands', and advised of his scheme's intention to establish a market through which small allotments '20 acres – 40 acres – 50 acres – 100 acres' would be leased to Pakeha at a high rate of return.<sup>123</sup>

In his annual report of June 1878 Porter himself appeared to acknowledge the wisdom in giving some sort of official recognition to komiti, if for no other reason than as a means

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<sup>120</sup> Rose, '1873-1890', p220

<sup>121</sup> W Gudgeon to Native Under Secretary, 21 May 1879, AD 103/9, pp611–628

<sup>122</sup> *Te Wananga*, 15 June 1878, in Rose, *DB Volume 9*, pp5993–5994

<sup>123</sup> Rose, '1873-1890', p221, *Te Wananga*, 22 June 1878, Translation by Rutene Irwin, in Rose, *DB Volume 9*, pp5997–5998

of providing some control over them. Porter prefaced his report by noting the improved condition of Maori in his district as a result of the positive influence of the teetotaler Good Templar Movement on alcohol abuse. He then reported upon what was, from his point of view, the good and ‘bad’ influence of the komiti:

Another powerful lever in the change taking place is the general desire to institute some system of self-government; and committees or bodies somewhat analogous with the old runangas have been established, and have exerted a strong influence upon the state of the Natives, both in habits and in land matters. It would be wise to encourage, to a limited extent, this self-government in out-districts, particularly in connection with land disputes. The committees, as now formed, although evincing a laudable self-reliance, have threatened to become dangerous by the wrongful assumption of unauthorised powers.<sup>124</sup>

For the Government, however, there was and never had been any intention to support the exercise of such chiefly authority. What the Government sought was not equality in the exercise of authority. What it sought was dominion - and absolute dominion at that - and by May 1878 it was becoming clear that the expectations and hopes of Turanga Maori would not be met. As the *Poverty Bay Herald* reported at that time:

Some time since we mentioned that our Native friends on the East Coast had organised certain Committees. These Committees were intended by the Maoris to exercise the functions of local self-government. Summonses are issued by the Committees, trials take place, and the Native who is brought before them is tried and acquitted or convicted as the case may be. In cases of debt the Committees have issued summonses and given judgment in the same way as a duly constituted Court.

Some of the natives who have been defendants in these actions have taken exception to this commonwealth style of doing business, and accordingly applied to Captain Porter to know if the Committees had any legal status. Captain Porter very naturally replied in the negative, but some of the members disputed this, and stated that the Wairarapa Committee was recognised by the Government. This assertion was continually being made, so that at last Captain Porter telegraphed to the Government to ask if it was a fact that the Wairarapa Committee was admitted to be a legally constituted organization. *The Government replied in the negative, utterly ignoring any*

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<sup>124</sup> Porter to Native Under Secretary, 5 June 1878, AD 103/8, pp733–736 & AJHR, 1878, G–1, in Rose, *DB Volume 9*, p5643

*Committees*. Armed with this authority, Captain Porter is now in a position to prove to the natives that their Committees are acting illegally.<sup>125</sup> [emphasis added]

In light of such pronouncements – which were doubtless as unexpected as they were unwelcome - it is not surprising that, as Rose notes, Wi Pere’s pro-government views and those of the Turanganui-a-Kiwa began to change markedly over the last half of 1878. Pere had spent the month of July travelling around the district ‘collecting the concerns of the people’. In November he informed *Te Wananga* that he had spent some time ‘observing the work done by the Parliament pertaining to Maori and to also keep you informed of the Laws of the Maori Land Court that was created in Pakowhai’. As Pere’s statement in *Te Wananga* indicated, he had realised that Parliament was not interested in addressing Maori rights to land nor effecting the suggestions of the Repudiation hui at Pakowhai in 1876:

There were a lot of rules and regulations debated by the Government in the house pertaining to the benefits to the Maori people, some Bills were successful in the house, and others outside of the house. Some regulations set up were not so successful according to the Runanaga Arikiki which they put their boots to it, however the regulation with regards to alcohol was passed which gave me great joy. There are rules to mismanagement to the lands of the Maori [sic], which was not completed because of the differences of opinions in the house from various members and those who disputed the authority of our Tupuna... They set up ... these rules detrimental to the Maori rights ... bad rules which bring fear to the Maori people, but it is transcribed as a ruling.

This house does not agree that Maori should be part of its functions, we should have at least 20 in number, the reason for this figure is to have a voice to speak against those who object against our rights to our land.

My friend, you of this land let us unite against the selling of what is left of our lands, this message to be sent to the Parliament. What we have left to benefit ourselves, if we keep selling, we are doomed for this I must say that I have not as yet seen a person who has benefited successfully to the selling of their lands. I do not see a ship or a hotel, or a shop, or a steamer never. In my personal opinion let us retain our lands, the destiny of our lands will be in our control to help our needy, to help our poor, to help the destitutes, we have been living in ignorance, it is said that they

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<sup>125</sup> *Poverty Bay Herald*, 10 May 1878

are the academics who create the bylaws to suit themselves, thereby working our land to create wealth for them, land that we had given them...

My friend this house is like a lion, I have seen the powers of this house, the Government which quotes some of the benefits to the Maori, but these will not be put throughout until next year. What troubles me my friends, in my opinion, if things are not amended per our lands this year, then the Maori should cease being in the house, he should get out, then we can construct some method to save what is left of our lands, the retention of the balance which we have left, this for the benefit of our people, our Rangatira, our destitutes.<sup>126</sup>

The anti-Repudiationist newspaper *Te Waka Maori O Niu Tirani* which was being published in Gisborne at this time labeled Pere's comments as 'excessively absurd', suggesting that he was merely a tool of 'supporters of the Grey party'.<sup>127</sup> *Te Waka* identified Pere's comments with the Repudiation Movement which was also, by the end of 1878, 'struggling financially' and equally disillusioned by the government's failure to 'settle its grievances'. In fact the movement had begun to fade from the national scene, with *Te Wananga* itself folding in December 1878. Moves to establish the proposed 'miniature parliament' were likewise at an end. The strains being felt by the collective were also beginning to show in smaller ways, with Rongowhakaata individuals such as Paora Kati subscribing to *Te Waka Maori O Niu Tirani*; a subscription paid through the Crown official Porter.<sup>128</sup> The disappointment of Turanga Maori was also more directly shown at a hui at Pakowhai on 15 March 1879 at which Native Minister Sheehan was 'treated with but scant courtesy, and bluntly told that the fall of the present Ministry was a thing very much to be desired'.<sup>129</sup>

But while the national profile of the Repudiation Movement declined, Turanga inter- and intra-tribal komiti nonetheless continued. In March 1879 Rutene Ahunuku advertised the next sitting of the Turanganui-a-Kiwa Komiti or 'Committee of twelve' and the hapu komiti of 'Mahaki, Rongowhakaata and Ngaitahupo' which would be investigating the title to "Whakoau", a portion of Pipiwahakao, in which Rongowhakaata held interests with

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<sup>126</sup> Rose, '1873-1890', p 222 and *Te Wananga*, 30 November 1878. Translation by Rutene Irwin, in Rose, *DB Volume 9*, pp5999-6002

<sup>127</sup> *Te Waka Maori O Niu Tirani*, 21 December 1878

<sup>128</sup> Porter to Editor, "Waka Maori", Wellington, 11 April 1877, AD 103/6, p670

other iwi. The notice which had ‘been given by authority of the people’ warned any objectors not to ‘disregard’ it.<sup>130</sup> (Whakoau was advertised for investigation by the Native Land Court on 30 January 1882 but no extant record has yet been located.)<sup>131</sup>

The Komiti also continued to promote repudiation aims locally and regionally. In May 1879, for instance, the Komiti attended an election meeting to hear candidate Henare Tomoana of Napier who was largely responsible for establishing *Te Wananga*.<sup>132</sup> Repudiation matters were discussed and debated. Indeed Turanga Maori had already expressed support for Tomoana’s fellow candidate and Repudiation leader Henare Matua. *Te Waka Maori O Niu Tirani* reported that Anaru Matete replied to Tomoana’s address as follows:

[Matete] said that it was to be regretted that the support of the electors of that district had already been given to Henare Matua, another Hawke’s Bay candidate. He could now see that such being the case there was likely to be a division of the number of votes recorded, and that might result in the return of the Tauranga Arawa candidate. He would urge steps to be taken by the two Henares to avoid this by arranging between themselves which of the two should absolutely stand for election, the other retiring.<sup>133</sup>

The Komiti resolved that support for Matua would be transferred to Tomoana on condition that Matua willingly stood down so as to avoid splitting the vote. They advised Tomoana to see Matua armed with a komiti letter requesting that the two candidates ‘endeavour to arrange between themselves for the withdrawal of Henare Matua.’<sup>134</sup> In the event neither candidate withdrew and Matua came third in the election, which was won by Tomoana. *Te Waka Maori O Niu Tirani* reported that the meeting concluded with a debate between Wi Pere and W F Hale on Repudiation matters ‘in this district’.<sup>135</sup>

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<sup>129</sup> *Te Waka Maori O Niu Tirani*, 15 March 1879

<sup>130</sup> *Te Waka Maori O Niu Tirani*, 15 March 1879

<sup>131</sup> Panuitangi, ‘Ture Kooti Whenua Maori, 1880, 8 September 1881, Auckland

<sup>132</sup> O’Malley, *Agents*, p49

<sup>133</sup> *Te Waka Maori O Niu Tirani*, 24 May 1879

<sup>134</sup> *Te Waka Maori O Niu Tirani*, 24 May 1879

<sup>135</sup> *Te Waka Maori O Niu Tirani*, 24 May 1879

On June 1879 a report in the *Poverty Bay Herald* mentioned a hui at Pakirikiri where Wi Pere and others discussed their position on events at Waimate (Taranaki).<sup>136</sup> Indeed the continuing existence and effectiveness of the komiti in 1879 saw Resident Magistrate Gudgeon infer that it would be useful to legislate with regard to komiti powers to control them:

For the last six months Committees elected by the Ngati Porou and Turanga tribes have assumed judicial powers in their districts ... I have as yet found no difficulty in enforcing any judgment whether fine or imprisonment inflicted by me in my judicial capacity. At the same time I would respectfully submit that there is an element of danger and discontent in these committees unless their powers are restrained and defined by statute. As an instance I would state that a Maori told me that they would rather have their committee because the fines in that case were kept in the district and did not go to the government. ...<sup>137</sup>

A major reason for the continuation of the komiti in Turanga was likely the continuing poor state of Maori land tenure. As Crown official Gudgeon was to state in May 1879:

I regret to say in most cases the titles under which Europeans hold are radically bad and do not appear to be likely to improve as the Maories are too suspicious to allow a fair settlement and I believe will be satisfied with but little short of repudiation.<sup>138</sup>

Yet while the Komiti sought to continue its work, the failure of the Crown to provide them with even a limited official recognition meant their decisions could not be legally enforced. It was Crown constituted bodies whose primary focus was the transfer of Maori land to Pakeha and the imposition of Pakeha law that continued to have the power of legislative authority backed up by coercive force. Only when the Crown had obtained most of the Turanga land it desired and the Native Land Court had further whittled away at the remaining Maori land base was any sort of recognition to be given to the komiti. This came in the form of the Native Committees Act 1882 but, as with most Crown policies of its type, by then it was too little too late.

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<sup>136</sup> *Poverty Bay Herald*, 12 June 1879

<sup>137</sup> W Gudgeon to Native Under Secretary Clark, 21 May 1879, AD 103/9, pp611–628

<sup>138</sup> Gudgeon to Native Under Secretary, 21 May 1879, AD 103/9, pp617–628

### 1.3.4. Disillusionment

There can be little doubt that the failure of the Repudiation Movement and the lack of official power afforded komiti seriously impacted upon the confidence of the Turanga Maori leadership and communities in continuing to control (and contain) the problems confronting them. Having said that, the failure of both may not have so seriously undermined Rongowhakaata's tribal collective and leadership had it not coincided, in the later 1870s, with a number of additional factors.

The first was the disillusionment caused by the finalising of the confiscation boundaries. At the very time when the failure of the Government to fulfil its given promises regarding the Movement and komiti was beginning to be felt, Rongowhakaata were also finally being made aware of the extent (and particularly location) of the confiscation block. Almost five years after Patutahi was confiscated by the Crown, the land in 'lots' was finally advertised for public auction in April 1878 for the purposes of settlement.<sup>139</sup> The lot descriptions, showing the area covered, were published in the *Poverty Bay Herald* and were probably the first opportunity that Rongowhakaata had of seeing the real extent of what had been taken on the ground. What it revealed was that, while the Crown had taken some 41,000 acres more than Turanga Maori had agreed to cede, most of that 'extra' land had been taken from Rongowhakaata's tribal estate.<sup>140</sup>

Over three-quarters of the land confiscated was owned by Rongowhakaata, equating to just under half the iwi's core tribal estate as at 1873. The land included parts of the more fertile and heavily occupied river flats. Although a degree of the land taken was not first-class agricultural land nor occupied by Rongowhakaata, it was nonetheless a telling blow both in terms of removing a source of mahinga kai and – perhaps more importantly – in effecting what was a patently unfair and unjust act on the people which they had no means of resisting. Indeed the act served to underscore their relative powerlessness in the face of Crown authority, just as it was originally intended to.<sup>141</sup> The unexpected and

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<sup>139</sup> *Poverty Bay Herald*, 12 April 1878

<sup>140</sup> O'Malley, 'East Coast Confiscation', pp123–124

<sup>141</sup> It should be noted that the poorer economic position of Rongowhakaata in respect of the raupatu was seen in the Crown's later acknowledgement that the iwi needed to have part of the land taken returned

unjustified loss of so much tribal land clearly had a major psychological effect on the people, spawning many petitions and several deputations to the Crown.

In May 1878, for instance, a Rongowhakaata deputation waited upon the Native Minister at Auckland to protest against the sale of Patutahi specially the inclusion of land that was being leased for a sheep run. The land concerned was the 6500-acre Papatu block nearly a third of which overlapped with the boundaries of the Patutahi confiscated lands.<sup>142</sup> The Native Minister replied to their concerns ‘by wire’ stating that the land put up for auction was that included in the Deed of Cession.<sup>143</sup> There were nine further petitions concerning the confiscation of Turanga lands in 1878 alone, with Rongowhakaata leaders such as Hoani Ruru even travelling to Wellington to testify before the Native Affairs Committee.<sup>144</sup> None of the many prayers and petitions they made were successful, and the failure of each undoubtedly cemented a growing sense of powerlessness in the face of Crown intransigence.

The disillusionment caused by this and the failure of Repudiation and komiti to achieve any real change were in turn revealed in a loss of confidence in the tribal leadership and corresponding increase in support of Te Kooti. As Binney notes, Te Kooti’s Karakia was gaining ground once more in the Poverty Bay region in the late 1870s.<sup>145</sup> Some Rongowhakaata and other Turanga Maori had maintained links with Te Kooti and his followers who were residing at Te Kuiti. These visits contributed to rumors that Te Kooti was going to return to the district. Such a visit by several Ngati Kohatu from Te Reinga and Wairoa in June 1877 led to a general panic at Gisborne where upon a public meetings were held to discuss the defense of the town. Porter reported that both Pakeha and Maori relocated as a result of the rumors:

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because of the lack of remaining land in iwi ownership. This was recognised in the return of Arai Matawai aka the Waimata Native Reserve in 1877, though significantly the reserve was returned to 23 individual grantees instead of the 10 trustees that Rongowhakaata had elected to go on the title. As a result of later petitions the list of owners was increased to 642 in 1908. (By then the area had been reduced to 4136 acres). Refer to Gisborne Minute Books: Nos. 31–34, Appellate Court Minute Books 10–12, Block Files 47c, 52c, Correspondence File 8/3/13, MA-MLP 1 1886/404, MA-MLP 1 1908/530, J 1 1909/14

<sup>142</sup> O’Malley, ‘An Entangled Web’, p461

<sup>143</sup> *Poverty Bay Herald*, 8 May 1878

<sup>144</sup> O’Malley, ‘An Entangled Web’, p463

<sup>145</sup> Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland, 1995

Public meetings were afterwards held and a general panic ensued and numerous exaggerated reports spread about causing many to leave the district. The natives took the alarm from the Pakehas and abandoned their inland settlements without having a reason or cause for so doing but thinking the Europeans better informed than themselves.<sup>146</sup>

In January 1878 Porter reported of various rumours concerning Te Kooti commenting that ‘I don’t like general tone of natives, they are expecting impossibilities from Govt. a reaction will take place difficult to control.’<sup>147</sup> Porter also reported that Anaru Matete, and his sister who had married Arete Apatu (Ngati Kohatu from Wairoa) were planning to visit Te Kooti.<sup>148</sup> Three months later Porter received a request from Rongowhakaata and Wairoa rangatira Te Waru’s wife Horiana, asking for Te Waru (who had supported Te Kooti in the last war) to be allowed to visit them ‘to tangi’. Te Waru and his hapu were still living in exile in the Bay of Plenty. Porter recommended that permission be granted for the visit Rongowhakaata but not Wairoa.<sup>149</sup>

In June 1878 the *Poverty Bay Herald* reported on two large hui at Wairoa convened by Ngati Kohatu leaders Mere Karaka and Arete Apatu after visiting Te Kooti. The article noted that it was stated that all the Ngati Kohatu tribe of the Upper Wairoa were ‘hauhaus’ or ‘converts to Te Kooti’s karakia’. Many were former prisoners who had been held by Ngati Porou for two years after the last war.<sup>150</sup> A hui at Waerenga-a-Hika in August 1878 attended by Tamihana Ruatapu, Paora Kati and Hape Kiniha was held to discuss Te Kooti and the possible undesirable influence.<sup>151</sup> Indeed Maori concern over the growing adherence to Ringatu was behind a petition to parliament by Turanga Maori in 1881 which asked that ‘power may be given to men chosen by the people to prevent evil persons from coming into the district, and to prevent persons belonging to the district from going away to join the Hauhaus’.<sup>152</sup>

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<sup>146</sup> Porter to Native Under Secretary, 20 June 1877, AD 103/7 and *Poverty Bay Herald*, 26 June 1877

<sup>147</sup> Porter to Locke, 25 January 1878, AD 103/8, p375

<sup>148</sup> Porter to F F Ormond Resident Magistrate, Wairoa, 29 January 1878, AD103/8, pp383 & 385

<sup>149</sup> Porter to Native Minister Sheehan, Auckland, 9 April 1878, AD 103/8, p530

<sup>150</sup> *Poverty Bay Herald*, 28 June 1878

<sup>151</sup> Porter to Native Minister, 9 August 1878, AD 103/9, p117

Added to the pressures on both the collective and individuals alike were also the needs created by Rongowhakaata's declining socio-economic position; the consequence – as stated – of both the disruptions caused by warfare, confiscation and the operation of the Court system and Rongowhakaata's growing dependence on a cash-based Western capitalist economy. Indeed it appears that several large alienations which occurred from the later 1870s were less strategic sales intended to raise revenue but more a consequence of one of the main demands of a capitalist economy - the repayment of credit. As is explained below, it was common practice for Crown and private purchasers to use Maori indebtedness as a lever to acquire land.

By the late 1870s Rongowhakaata's tribal leadership and collective were thus seeking to contend with a number of internal and external pressures. Those pressures were, in the end, to prove too great. The unity of the people had withstood much of the initial impact of the wars and the exile and relocation that had followed. It had also withstood the constant overtures of (and temptations offered by) Crown and private purchase agents throughout the 1870s; the core Rongowhakaata landbase remaining substantially intact until 1877/8, despite the intrusions that had been made on the neighbouring lands of their relations. The disillusionment caused by the full impact of confiscation, the failure of the Repudiation Movement and komiti to regain tribal control of affairs, and an increasing debt accumulation and declining socio-economic position ultimately combined, however, to loosen that tribal cohesion and control. It was the loss of that control which in turn rendered Rongowhakaata vulnerable to the alienation of land, and it can be no coincidence that the purchases which resulted began in earnest in 1877/8.

The acquisitions that followed could never have been achieved, however, had not the Crown been intent on implementing its own programme of purchase in the region and facilitating the like acquisition of land by private parties. As stated, the purchase of land – and the fragmentation of the community and community title which it worked off and fostered – was from the outset intended to destroy the existing system of customary ownership and destabilise tribal structures. The intention was to break Rongowhakaata's

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<sup>152</sup> Petition No. 253 of 1881, Wi Pere and 31 others, AJHR, I-2, p16, in Rose, *DB Volume 9*, p5677

tribal power and end any collective or sustained form of resistance to British authority. The Government's intention in prosecuting the East Coast wars had been to effect the final subjugation of Turanga Maori to British law and authority. In this, however, the Crown failed, as the continuing attempts by Turanga Maori to assert their rangatiratanga throughout the 1870s fully indicated.

Warfare and confiscation did not break Rongowhakaata. They remained and emerged from it still in a position to unite in resisting the imposition of any interest or authority distinct from their own. As the Government itself realised, the only means of preventing further Maori resistance and securing 'lasting peace' was not by warfare but by systematically destroying the source of such resistance: tribal power. There can be little doubt that it was in part to achieve that objective that the Government consistently refused, throughout the 1870s, to provide any legislative or other support for the varying attempts made Turanga Maori to exercise their tribal authority. But it was the more surreptitious process of first individualising and then facilitating the purchase of land that was to finally secure the Government's objective. It succeeded where warfare had failed, though it did so at the cost of ensuring the economic and cultural impoverishment of Rongowhakaata as a tribal people

In short, it was the confluence of Rongowhakaata's increasing vulnerability with the Crown's ongoing determination to effect the alienation of the land that led to the purchases which followed.

## **2. CHAPTER 2: PRIVATE PURCHASES, 1873-1900**

### ***2.1 The extent of private land sales***

In the period from 1873 to 1900, private individuals purchased 21,570 acres from core Rongowhakaata blocks. This equated to 24 percent of the core land that had been held by Rongowhakaata prior to the Patutahi confiscation, or 46 percent of the core land that remained following the confiscation.<sup>153</sup> The number of private land purchase transactions in Rongowhakaata's core blocks as evidenced in the records of the Trust Commissioner, Native Land Court and Poverty Bay Commission began to increase significantly at the end of the 1870s. Chart 4, which is located in the Appendix, shows that (derived from the sources list above) between 1873 and 1877 there were 10 private land purchase transactions in Rongowhakaata's core blocks, while in 1878 and 1879 there were 12 such transactions. This rise preceded a dramatic increase in 1880 and 1881, when there were respectively 15 and 27 transactions. Between 1881 and 1900 the number of transactions fluctuated, with the highest number occurring in 1891, when there were 46 transactions. There was a period of low activity between 1887 and 1890, when there were only eight transactions, and again between 1895 and 1900, when there were only 13 transactions.<sup>154</sup> These numbers are seen as indicative of trends in individual sale transactions only.

At different times during the period under investigation, the activities of private purchasers were restricted by the introduction of certain laws. Although private purchasers were not afraid of operating outside the law, the above pattern of transactions suggests that their activities were affected by the particular legal restrictions that were introduced. The first such restriction was brought in under the Government Native Land Purchase Act 1877, which provided for private purchasers to effectively be shut-out of lands that were under Crown negotiation. Under the Native Land Administration Act

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<sup>153</sup> From 1873 to 1900 private individuals also purchased 38,528 acres from blocks in which Rongowhakaata possessed interests with other iwi. Therefore, in total, private individuals purchased 60,098 acres of land in which Rongowhakaata possessed an interest. This equated to 28 percent of Rongowhakaata's total land interests prior to the Patutahi confiscation, or 36 percent of the total land interests that remained following the confiscation.

<sup>154</sup> These figures are indicative only and are only based upon the records listed above. They indicate the trend of individual sale transactions between 1873 and 1900.

1886, private purchasers were prohibited from entering into direct negotiations with Maori. This was repealed with the passage of the Native Land Act 1888. The Native Land Court Act 1894 similarly prohibited private parties from entering into negotiations with Maori, although again this restriction did not last long.

## ***2.2 Methods of Private Purchasers***

The private purchase of Maori land was legalised with the Crown's waiver of pre-emption in the Native Land Act 1862. In their desire to acquire Maori land, private purchasers adopted a number of strategies, all of which focussed on accumulating the interests of individual owners. Competition for land increased significantly after the East Coast wars, and private purchasers were single-minded in their efforts to acquire Maori land. Oliver and Thomson state that:

Just as settlers and speculators had been at work before the state sent its commissioners and judges into the region at the end of the 1860s to preside over their activities, so they continued to work over the next few decades, with the law if they had to, outside the law if they could get away with it, and altering the law if they could manage it.<sup>155</sup>

One of the principal reasons why Rongowhakaata (and other Turanga Maori) held the Native Land Court and Poverty Bay Commission in such low esteem by 1873 was the extent to which they were perceived to condone the often unscrupulous tactics of private land purchasers. Crown agent Locke considered that the chief cause of the lack of Maori confidence in the Crown Courts was 'the underhand working of Europeans – against the govt., against each other, and without their being able to see it, against the safety and welfare of the District.'<sup>156</sup>

Private land transactions in the Turanga region were dominated by George Edward Read, who is mentioned throughout the following discussion on the methods employed by

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<sup>155</sup> WH Oliver and J Thomson, *Challenge and Response: A Study of the Development of the East Coast Region*, Gisborne, East Coast Development Research Association, 1971, p 101

private purchasers. Read obtained leaseholds and freeholds over a number of Rongowhakaata lands. He first visited Turanga in the 1840s as agent for speculator Captain Rhodes, and in 1845 he established stores at places such as Mawhai.<sup>157</sup> He returned to the district in 1852, establishing a store at Kaiti and initially specialising in trading Maori-cultivated wheat for illicit grog imported from Auckland.<sup>158</sup> Read married a Rongowhakaata woman known as Noko. Armed with significant capital from his trading enterprises, Read became involved in farming and land speculation. In 1878, after his death, the interests of his estate were so extensive that Crown official Gudgeon referred to the late Read as one ‘to whom it is notorious that all Poverty Bay were indebted’.<sup>159</sup>

### 2.2.1. Advances

When buying land, private purchasers focused on the interests of individual owners, picking off each owner separately. In cases where land had not been adjudicated upon by the Native Land Court, it was a common tactic to make cash ‘advances’ to individuals who might later be determined to have an interest in the land. The detrimental impact that this practice had on Turanga Maori is indicated in a call made by Porter for it to be stopped. In a letter written to the Native Under-Secretary on 16 May 1878, Porter asserted that:

It should be made a punishable offence to give or receive money by way of [?] of sale upon land the title to which had not been determined by the Court. Many evils and difficulties have arisen from this practice as those natives most anxious to obtain advance money are generally those who have a doubtful claim or title to the land.<sup>160</sup>

Under section 75 of the Native Lands Act 1865 and section 85 of the Native Land Act 1873, all dealings prior to the issue of the certificate of title or memorial of ownership

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<sup>156</sup> Locke to McLean, [25] August 1873, McLean Papers, (f.394), cited in O’Malley, ‘An Entangled Web’, p 425

<sup>157</sup> JA Mackay, *Historic Poverty Bay and the East Coast, N.I., N.Z.: A Centennial Memorial*, Gisborne, 1949, 4th impression 1982, pp 186-187

<sup>158</sup> Oliver and Thomson, p 53

<sup>159</sup> Gudgeon to Native Under Secretary, 15 March 1880, AD 103/10, p 153

<sup>160</sup> Porter to Native Under Secretary, 16 May 1878, AD 103/8, pp 678-683

were ‘absolutely void’, but not illegal, thus implicitly condoning the use of advances. David Williams comments that:

there was nothing to stop pre-investigation badgering of individual Maori by speculators. Such people were fully entitled to risk their money in dealings entered into prior to the Court’s ascertainment of owners if they wished to do so. If a certificate of title came to be issued to ‘their’ claimants - those they had transacted with - then they would in due course obtain a freehold title upon following the required procedures for sale and purchase. If not, then they had lost their ‘investment’. There was no shortage of such speculators.<sup>161</sup>

Dealings prior to adjudication were not made illegal and punishable until the passage of the Native Land Laws Amendment Act 1883, by which time they had already impacted upon Rongowhakaata’s tribal estate.

### **2.2.2. Debt**

It was not uncommon for private purchasers, especially Read, to acquire the land of Turanga Maori in satisfaction of unpaid debts. Creditors could apply to the Resident Magistrates Court and obtain a judgment for the debt and then move to the Native Land Court where a costly partition could be forced to secure payment in land. Oliver and Thomson claim that Read ‘most commonly acquired land by taking it as security for trading and store debts’.<sup>162</sup> In evidence given to the Trust Commissioner, Harata Poiwa of Rongowhakaata stated that ‘a good many of us went there [Read’s store] for goods.’<sup>163</sup> The tactics that Read employed to acquire land through debt are described by Rose:

Read used his position as a storekeeper to his advantage in acquiring land. He allowed Maori to run up accounts and, when their interests in land were defined, he called in the debt by demanding their land as payment. It did not matter to Read whether the person he was negotiating with was an owner, he merely wanted the land to be adjudicated upon. He was obviously confident that

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<sup>161</sup> David Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864-1909*, Wellington, Huia, 1999, pp 145-145

<sup>162</sup> Oliver and Thomson, p 121

<sup>163</sup> Trust Commissioner Minute Book 3, Case 345, DB, pp 2865–2866

whoever was awarded title would owe him money which he could demand in interests in land - as Porter stated, nearly everyone was indebted to Read.<sup>164</sup>

Read's dealings in the 19,200 acre Whataupoko block, in which Rongowhakaata and Te Aitanga-a-Mahaki both had interests, provide an example of how Read acquired land through debt. Murton comments that this was 'a perfect example of a shrewd storekeeper selling goods and lending money on the security of the land'.<sup>165</sup> Whataupoko was first leased in 1864 to W H Parker, but by 1869 Raharuhi Rukupo and several other owners were indebted to Read for £1817 10s and so mortgaged their land to Read as security. Read proceeded to buy up individual interests in Whataupoko, and by 1 May 1871 a deed was registered stating that he had bought the block for £734 plus the mortgage. (Parker had transferred his leasehold to Read in the same year.) One of those whose interests in Whataupoko had been acquired by Read through debt was Whanau-a-Taupara rangatira Henare Ruru. It seems that Ruru had been reluctant to alienate Whataupoko as suggested by his deathbed request that the reason for giving the land to Read i.e. debt should be made public at his funeral. *The Standard* on 5 March 1873 reported:

Two or the [sic] days before his [Henare Ruru] death, he sent for Wi Peri [sic] and other friends to whom he said, "I ask you to make a will, making over all my lands to my children, but you all know I have given Whata-u-poko to Read in payment of my debts," and requested the fact should be made known at his funeral.<sup>166</sup>

In 1869, the Te Ahipipi block was also mortgaged to Read by its Rongowhakaata owners, and eventually sold to him.<sup>167</sup>

The acquisition of land through debt occurred throughout the period under investigation. In 1891, for example, the Trust Commissioner certified a Supreme Court judgment authorising that certain land interests of Rapata Wakapuhia be sold to satisfy a debt of £140 7s 8d owed to Robert Watson. Among Wakapuhia's interests that were to be sold

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<sup>164</sup> Rose, '1873-1890', p 166-167

<sup>165</sup> Murton, 'Settlement in Poverty Bay', p 34

<sup>166</sup> *The Standard*, 5 March 1873, cited in Rose, '1873-1890', p 165

<sup>167</sup> Murton, 'Settlement in Poverty Bay', p 34

were those in Raeotokoraku, Te Kowhai, Whakaongaonga B, Kahukuratara, and Waiwhakaata blocks.<sup>168</sup>

In spite of efforts by creditors, not all Rongowhakaata who got into debt were forced to sell their land. On 26 June 1878, the *Poverty Bay Herald* reported upon the case of WT Best, who applied to the Resident Magistrates Court for a judgment summons against Paora Paru for £15. Best had previously got a judgment in October 1877 for the debt that ‘had been owing between three and four years’. The *Herald* was disappointed that Resident Magistrate Kenrick was not prepared to grant an order against Paora if it necessitated his land being sold to meet the debt. The *Herald* claimed that it was ‘a well known fact’ that Paru had land ‘which if sold, would pay the claims ten times over.’<sup>169</sup>

### 2.2.3. Leasing

Another common method employed by private purchasers was to first obtain the leasehold over a block of land, and to then proceed to purchase the interests of individual lessors. Indeed, lease covenants for Turanga Maori land often provided for the lessee to purchase the interests of individual lessors. For example, a draft leasing agreement for the Te Aitanga-a-Mahaki block Puhatikotiko contains a clause giving the lessee first option to purchase or become mortgagee for any portion of the block that any lessor wished to dispose of ‘at the lowest acceptable price.’<sup>170</sup> Daly comments that Maori who sold their interests in lands that were being leased often faced no immediate consequences:

The sale of one’s share in a block while it was under lease would not have immediately deprived one of the land, and many sellers were probably able to continue on much as before, while gaining some extra cash or paying off a debt in the meantime. The long-term effects of such sales would not become obvious for some years yet, when large areas were converted finally from leasehold to freehold.<sup>171</sup>

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<sup>168</sup> TCMB 7, p 225, 237, DB, p 3165, 3169

<sup>169</sup> *Poverty Bay Herald*, 26 June 1878

<sup>170</sup> Draft leasing agreement for lease of Puhatikotiko by Panapa Waihopi, Tucker Papers, 7/4, Gisborne Museum & Arts Centre

<sup>171</sup> Daly, p 144

The tactic of using leases as a lever to acquire land was employed to great effect by Read. For example, in 1870, he leased Kaiparo block from Epirita and others, and by 1875 had purchased several interests in the block. Read also obtained the leasehold of Te Apeka block from Hoaru Ruru and others in 1870, and in 1871 he purchased the interest of Tepora Waikato.<sup>172</sup> Other Rongowhakaata blocks over which Read obtained leaseholds included Karaua, Puketapu, Ruaohinetu, and Okirau.

There are also examples of Read leasing individual interests in blocks and then proceeding to purchase these interests. For example, Read leased Rutene Ahunuku's one-fifth interest in Te Ahimanawa 1 block before buying it and other interests in 1871 in exchange for a cow.<sup>173</sup> Read sometimes leased interests in blocks in which he had already purchased interests. For example, in 1869 he bought Hore Rarotonga's interest in Tara o Paea block, and in the following year he leased the interest of Hoani Ruru.<sup>174</sup>

#### **2.2.4. Coercive Tactics**

Private purchasers were not averse to employing coercive tactics to acquire the land of Rongowhakaata and other Turanga Maori. One such tactic involved the establishment of some form of occupancy, which was then used as a lever to acquire further interests in the land. The occupancy usually followed the purchase of an individual interest (or interests), or the advance of cash or goods. Read's use of such a method is recorded by Mackay:

An elderly witness told the Native Land Court that Read's method of getting a footing in a property was to offer the principal owner a small sum of money, or some clothes for his wife and children, for the right of occupation. If the gift was accepted, he would proceed to erect a fence or

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<sup>172</sup> Murton, 'Settlement in Poverty Bay', p 34

<sup>173</sup> MA 19/1, cited in Rose, '1873-1890', p 133 and Rose, DB Volume 4, p 2397-2400, 2406

<sup>174</sup> Murton, 'Settlement in Poverty Bay', p34

put some other improvements upon the land. Then he would set about to acquire the interests of the other owners.<sup>175</sup>

In some cases, Read used a ‘sledge-house’ to occupy land in which he had purchased interests. His use of this method on Okirau block was the subject of a report that Porter made to McLean in August 1873, in which mention was made of ‘a house of Capt. Read’s being two or three times dragged off a piece of land forcibly possessed by him’.<sup>176</sup> This method along with obtaining an alleged lease was also employed in an effort to remove the remaining owners off Pakirikiri block. In February 1873, Porter reported to McLean that:

When Pureura [or Purewa?] and his wife Ani Wa[a]ta were out here last year, Capt Read advanced some £13 to the latter who authorised him to put a house upon a piece of land across Big River [Pakirikiri], which she said was hers. Soon after her departure for the interior, Capt Read attempted to put a sledge house upon the land but was opposed by owners each time the attempt was made. Things were in that state when you last visited here, and the day of your interviewing the Natives, Capt Read took advantage of [it] to put the house back. It was however again removed.

Directly after this Read obtained 7 years lease of Rhodes land at Pakirikiri upon which the Native are residing. Seven (7) days notice was then given to the whole tribe to quit or forfeit all the Fences Food &c. This caused great consternation among them and they came in a body to me. I proceeded to remonstrate with Capt Read for using such unfair means of gaining his object. A row was nearly ensuing in consequence of an expression of Capt Read that he would Maunga te toto. I brought him to task for it before the Natives obtaining an apology.

The matter ended by the Pakirikiri people getting the owners of land to allow house to go back and pass land through the court. I to settle the matter paying for the bullocks drawing house back. Their dispute of right from the coercion used were they compelled to submit to their land being occupied and surveyed.<sup>177</sup>

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<sup>175</sup> Mackay, p 188, cited in Rose, ‘1873-1890’, p 165

<sup>176</sup> Porter to McLean, 23 August 1873, McLean Papers, (f.510), cited in O’Malley, ‘An Entangled Web’, p 426

<sup>177</sup> Porter to McLean, 10 February 1873, MS-Copy-Micro-0535-081, Rose, DB Volume 8, pp 5309-5313

Read continued to harass Rongowhakaata at Pakirikiri. Porter mentioned Read's occupation of the land in a report written to McLean in October 1874, in which he noted that Read 'warns Natives off to cultivate elsewhere, giving orders to destroy their fences or to fence them in'. Commenting on Read's practices, Porter stated that: 'I cannot agree with all Reads transactions in land matters'.<sup>178</sup>

Another of Read's unfair tactics was to run stock on Maori land that he hoped to acquire. Maori were required to be vigilant and take definitive steps to combat this practice. An example was when Read ran his sheep on Awapuni block, in which Rongowhakaata possessed an interest with other iwi. Read's illegal action caused Hirini Haereone to publish warning notices at least three times in November 1877, demanding Read to remove his sheep from Haereone's land at Awapuni as soon as possible.<sup>179</sup>

In some cases, Europeans used Maori land without consultation, assuming that they could do so. Porter refers to a case where 'the few European residents' across from Pakirikiri 'assisted by the Chairman of the Highway Board' applied to the Provincial Superintendent to have a Pound established on the Rongowhakaata block of Karaua/Pakirikiri. The Pound was erected and proclaimed by Gazette without Rongowhakaata being consulted or asked. Porter rightly pointed out that Paora Kati and his people had 'just cause' for complaining.<sup>180</sup> Action taken by Hirini Tipare and Hone Te Kani resulted in their being charged in November 1876 with 'breaking down the public Pound at Karawa [sic]'. The charges were dismissed by Resident Magistrate Nesbitt, who ruled that the Road Board had never acquired 'the right of property over the land on which the Pound was erected', and that Tipare and Te Kani 'were exercising their legal right' in removing the Pound.<sup>181</sup> The Crown proclamation had been totally unjustified in this case. Other illegal tactics were likewise dealt with by Rongowhakaata. In 1876, Porter passed on a message from Petera Honotapu to Major Richardson at Te Wairoa, which stated that the cutting of timber on Ahimanawa block should be stopped, and that

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<sup>178</sup> Porter to McLean, 20 October 1874, MS-Copy-Micro-0535-081, Rose, DB Volume 8, pp 5314-5316 DB Volume 8, pp 5309-5313

<sup>179</sup> *Poverty Bay Herald*, 2 November 1877

<sup>180</sup> Porter to HT Clarke, 10 October 1876, AD 103/6, p 37

in the future Honotapu should be consulted.<sup>182</sup> Honotapu appeared to be ensuring that Crown agents supported his land ownership rights.

### **2.2.5. Barter**

Some of Read's most unsavoury dealings were those that were marked by the presence of alcohol. Part of his unsuccessful claim to various interests in the 878 acre Matawhero B block involved alcohol. Riperata Kahutia advised trust commissioner Turton that the sellers had received alcohol as part of the payment. Read acknowledged this, admitting that he had an account with Riperata for 'goods supplied', which at the time totalled £232.18s 1d. Of this account, £8.10 was for spirits. Read stated that it would be reduced by £199 upon the transfer of Matawhero B. The transaction was not confirmed by trust commissioner Turton.<sup>183</sup> Another transaction that possibly involved alcohol was Read's acquisition of Hariata Wahapeka's interest in Wairau block. Wahapeka informed trust commissioner Booth that she had sold her interest to Read but had received 'spirits' instead of money.<sup>184</sup> This statement was denied by Wahapeka's husband, Apera Tiaki.

Read's use of forms of 'barter' other than alcohol were not necessarily considered 'illegal'. An example, which is mentioned above, was his acquisition of Te Ahimanawa No.1. The deed of conveyance was dated 22 December 1871 and it appears that a cow was used as payment instead of £11 cash. The sellers admitted the sale to trust commissioner Turton, but expressed their dissatisfaction with the cow's performance. Turton recorded Ruihi Tawhai, Kataraina Kapopaki and Rutene Ahunuku's evidence as follows:

They had received a cow from Capt Read instead of £11 in money. They all wanted the land back again as they were not satisfied with the cow though they themselves made the selection.

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<sup>181</sup> Judgment of 21 November 1876, cited in Porter, AD 103/6, p 191

<sup>182</sup> Porter to Major Richardson, 1876, AD 103/6, p 177

<sup>183</sup> MA 19/1, cited in Rose, '1873-1890', p 133 and Rose, DB Volume 4, pp 2397-2400, 2406

<sup>184</sup> TCMB 6 and 7, Case 1122, DB pp 3122-3126

Kataraina said it was not a good cow: Reutene complained of the cow being lazy; and Ruihi said it was two saucy to be managed.<sup>185</sup>

Turton confirmed the alienation and ‘expressed hope’ to the sellers that the cow would ‘improve in time to their liking.’

One form of barter that was illegal and of considerable concern to the Crown was the exchange for land for arms. An example of this occurred in 1875 when Gisborne Gunsmith Oscar Beyer offered a gun worth £25 to Rapata Whakapuhia as an advance on a piece of land at Te Arai. This land was Arai Matawai, which was also known as Waimata Native Reserve. According to Porter, Whakapuhia accepted the offer along with three other guns worth £5 to £7 each, ‘the payment for which was to be in land.’ Owing to this transaction breaching the Arms and Native Lands Frauds Prevention Acts, and because Arai Matawai was a reserve, Gisborne Military Adjutant Porter objected to the transaction. He advised Dr Nesbitt, the Resident Magistrate and ‘Frauds Commissioner’, and the transaction was not approved.<sup>186</sup>

#### **2.2.6. Use of Alcohol**

It appears that alcohol played a part in some of Read’s other transactions, not as part of the payment, but because some individuals signed deeds while under its influence. In evidence given to Trust Commissioner Booth, it was claimed that Harata Poiwi was drunk when in 1875 ‘she signed’ a transfer deed in favour of Read for her interests in the Wairau and Wharaurangi blocks. Her partner at the time, Henare Potae, testified that Harata was ‘partly drunk’, but not so drunk ‘as to fall about’, when he helped her sign the deed for Wairau at Read’s store on the waterfront. Harata was also in a drunken state when she signed the deed for Wharaurangi on board a ship at Tokomaru. Potae stated that: ‘She was worse on board ship because she felt the motion of the ship’. However, Harata testified that she had agreed to the sale, stating that: ‘Before I was drunk the [?]

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<sup>185</sup> MA 19/1, cited in Rose, ‘1873-1890’, p 133 and Rose, DB Volume 4, p 2397-2400, 2406

bargain was made. When I was drunk I was taken on board a ship, and pen put into my hand. Next morning when I was all right I was told what I had done and I said “Very well. It is done and I agreed.”<sup>187</sup> Potae claimed that when the Wharaurangi deed was signed he got ‘a couple of cases of gin’, while Harata got £10. He stated that he ‘got no money’ for Wairau, but instead received ‘an order on a storekeeper’, adding that Wairau was sold to provide food for a tangihanga. The store order was likely that known as Read’s scrip, which could only be redeemed at his store.<sup>188</sup> Other witnesses told the Trust Commissioner that there was no licensed interpreter on board the ship when Harata signed away her interest for Wharaurangi. Read was stated to have been present at the signing of the deeds, along with land speculators W A Tucker (who was to become agent for Riperata Kahutia), James Wyllie (husband of Rongowhakaata woman Keita Waere or Kate Wyllie), and Mr Hardy (husband of another Rongowhakaata woman, Mary Hardy or Mere Hari.)

### **2.2.7. Lengthy Negotiations**

A notable aspect of Read’s dealings was that they were carried out over a considerable period of time. They dated back to at least 1869, when official records of land transactions in the district began to be kept. His last dealings were in 1878, shortly before he died. The extent of Read’s interests throughout the district is indicated by the fact that he had acquired interests in 29 separate land blocks by 1876.<sup>189</sup> At the time of his death in 1878, Read possessed interests in 22 blocks (through lease or purchase), although all of these were either incomplete or insecure.<sup>190</sup>

One of the trustees of Read’s estate, John McFarlane, who was also MP for Waitemata, appears to have continued Read’s questionable practices. (Archdeacon William Leonard Williams was also a trustee in Read’s estate.) After Read had died in February 1878,

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<sup>186</sup> Porter to Collector, HM Customs, Gisborne, 26 June 1875; Porter to WE Gudgeon, Armed Constabulary, 6 July 1875; Porter to Dr Nesbitt, 19 July 1875; AD 103/4, pp 55, 103-104 and 136

<sup>187</sup> Trust Commissioner Minute Book 3, Case 345, DB, pp 2867–2868

<sup>188</sup> Surviving examples of this scrip are on display at the Gisborne Museum and Arts Centre.

<sup>189</sup> Murton, ‘Settlement in Poverty Bay’, p 33

McFarlane had sold land in which Read had only purchased the interests of two of the three owners. The third owner at the time of sale was a minor, and upon hearing of the sale consulted with Gisborne solicitor William Rees, who was also MP for Auckland City East. Rees was hired by Maori landowners who had suffered the misfortune of Read's involvement in their lands, and who were determined to get some of them back from his estate. Rees advised that the remaining owner still legally owned the unsold share, and following this the owner erected a house and fences on his piece of the land. However, the European who had bought the land from McFarlane drove the owner off and unsuccessfully tried to have him convicted (presumably for trespass) in the Resident Magistrates Court. This case was discussed by Rees and McFarlane in Parliament. Rees indicated that such cases and underhand methods were a cause of many grievances on the East Coast:

Here was the case of a Maori boy, living on land granted to him by the Crown, over which land his title was indisputable, driven off and thrashed, and then brought before the Resident Magistrate's Court, and the honourable member for Waitemata [McFarlane] says the Court disregarded its duty because it did not punish him. This is an absolute fact; but there are a dozen other facts of the same nature.

*I know that on the East Coast the statement I have made in relation to this is a cause of grievance which might be repeated in a thousand instances ... I myself wrote to the honorable member [McFarlane]... as trustee under the will of the late Captain Reed [sic], and offered to bring all these matters to an amicable settlement at the time. I wished on behalf of the Natives that they should not have to go to the law-courts. I felt that what was wanted was only equity and justice ... and that this ceaseless cause of quarrel might stop.<sup>191</sup> [emphasis added]*

Rongowhakaata, as well as Rees, made public reference to McFarlane's dubious tactics in regard to his dealings with Read's estate. In a notice published in local newspapers in June 1878, McFarlane attempted to use Williams' status as a religious leader to persuade aggrieved Maori landowners to discuss any disputes with Read's estate in 'an amicable

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<sup>190</sup> Rose, '1873-1890', p 164

<sup>191</sup> NZPD, 29 July 1879, Volume 31, pp 309-310, cited in Rose, '1873-1890', pp 168-169 and in Rose, '1873-1890', DB Volume 9, pp 5842-5844

manner in preference to going to court.’<sup>192</sup> In response to McFarlane’s notice, the ‘Native Committees of Oweta and other places in the district’ published the following statement in the *Poverty Bay Herald* in June 1878:

After we had placed all matters relating to our land unfairly bought by Read for grog and stores, into the hands of Mr. Rees, solicitor, forthwith appears your beguiling advertisement. We will not take fright at your words as to the money being consumed in legal expenses by having our cases brought before the Courts of law.... We will not hearken to your wheedling talk. We have handed over to Mr Rees the management of our affairs in relation to all improper purchases made by the late Captain Read.<sup>193</sup>

The Oweta Komiti claimed that when McFarlane attempted to manipulate them by using Williams’s name he did so without the latter’s knowledge:

Since the above was written we have heard that it was not with the Rev. Leo. Williams’s permission that his name was appended to the advertisement.... We ... suppose this to be another of the deceptive works of these people of Read – the signing of the Archdeacon’s name – to dupe us into going to them.<sup>194</sup>

### **2.2.8. Complexity of Private Negotiations**

The intense competition that existed between private purchasers in the Turanga region following the end of the wars often resulted in convoluted arrangements that were to cause future title problems. Murton claims that by 1877 ‘there were few blocks not being disputed by several different parities [sic]’, a situation that assisted in gaining Poverty Bay a reputation for ‘the notoriety of its land-sharks and speculators’.<sup>195</sup> One example of the effect of competition between purchasers was the complex transactions involving Whataupoko block. As noted above, Read had obtained 28 out of the 45 equal and undivided shares in Whataupoko by May 1871. Other purchasers, such as R R Curtis, also bought individual interests in the block. Read ended up selling all of his interests in

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<sup>192</sup> *Poverty Bay Herald*, 17 June 1878

<sup>193</sup> *Poverty Bay Herald*, 21 June 1878

<sup>194</sup> *Ibid*

<sup>195</sup> Murton, ‘Settlement in Poverty Bay’, p 42

Whataupoko to Curtis for £6000, which included the mortgage deed, the leasehold, and 1000 sheep. Curtis then immediately sold all his interests to Barker and McDonald, which meant that they then held 14,000 acres freehold and 2000 acres leasehold. Barker and McDonald then proceeded to purchase the remainder of the 45 shares, but titles to Whataupoko were not completed until 1885.<sup>196</sup> Another example of a block in which more than one European purchased interests was Kaiparo. Both Read and J C Harrison acquired interests in this block.<sup>197</sup> Such transactions laid the foundation for the confused state of legal land titles that afflicted the Turanga region for at least the next 30 years. Title difficulties in the East Coast region eventually led to the establishment of the Validation Court, which is discussed below.

The methods that were employed by Read and other private purchasers successfully saw them acquire a sizeable proportion of Rongowhakaata's tribal estate. The Native Land Court operated in a manner that effectively facilitated and legitimised the private purchase transactions, and it is this that is now examined.

### ***2.3 Role of the Native Land Court***

#### **2.3.1. Background**

The establishment of a Court to determine title to Maori land was provided for in the Native Lands Act 1862. However, the first hearings were not until 1864, and the Court system was not fully operational until after the passage of the Native Lands Act 1865. Presided over by a European judge, who was assisted by two Maori assessors, the Court determined customary title in order for it to be converted into European title. Following adjudication, the Court issued a certificate of title to the owners. Section 23 of the 1865 Act provided that a maximum of 10 owners could be named in blocks smaller than 5000 acres, although in practice this was enforced in all blocks regardless of their size. As Alan

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<sup>196</sup> Ibid, p 35

<sup>197</sup> Ibid, p 34

Ward has commented, this provision facilitated the alienation of land by making rangatira or other individuals absolute owners, thereby removing their obligation of trusteeship.<sup>198</sup>

Under Section 17 of the Native Lands Act 1867, the Court was required to record in a recital the names of all individuals with an interest in a block, or the names of the tribe or hapu. However, section 23 of the 1865 Act remained in force and therefore only ten owners could appear on the title. It is important to note that there was no limitation to the number of owners in the awards of the Poverty Bay Commission. The ten-owner rule ended with the passage of the Native Land Act 1873, which required that the names of all owners and their proportionate shares be listed on a memorial of ownership, thereby individualising title to Maori land to the furthestmost possible extreme.

The individualisation of title facilitated the peaceful and successful acquisition of Maori land through purchase. It enabled purchasers to acquire individual interests without any reference to communal structures of authority. Indeed, as argued in Chapter 1, it was an objective of the Court process to break down the communal basis of Maori society by ending communal authority over land. In a petition of 1873, repudiationist Rongowhakaata (and those of other iwi) described how individualisation of title facilitated alienation:

the Europeans are allowed to go to the men whose names are in the grant one by one and make bargains with them, which are unknown to the other grantees, whereas all the grantees should be called together, and unless all consented the land should not be sold.<sup>199</sup>

The Court determined the title of land after an application for an investigation of title had been lodged. Under section 21 of the 1865 Act, any Maori could apply to the Court requesting that a certificate of title be issued for land in which they and others claimed to have an interest. Section 34 of the 1873 Act, again provided that any Maori could apply to the Court to have their claim investigated. In cases where there were more than two claimants, at least three of the claimants were required to sign the application. Generally

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<sup>198</sup> Alan Ward, *National Overview Volume II: Waitangi Tribunal Rangahaua Whanui Series*, Wellington: GP Publications, 1997, pp 219-220, cited in Rose, '1873-1890', p 32

speaking, Maori who sought an investigation of title were divided into those who wished to sell, and those who wished to protect their ownership. In determining title, the Court had a responsibility to establish the rights of all claimants to the land in question. However, in practice, Chief Judge Fenton insisted that judgments be based only on the evidence that was presented to the Court. Commenting on this, Claudia Geiringer identifies that:

recognition of an interest in the land was contingent on appearing or being represented in Court. Such a system naturally worked in favour of land selling Maori, who obviously were more likely to instigate a claim than those who did not contemplate sale. Factors such as defective notification procedures and the long distances to travel probably deterred many other legitimate claimants from participating in the Court system.<sup>200</sup>

Purchasers who attempted to acquire land that had been adjudicated upon under the 1873 Act often faced the prospect of purchasing dozens, sometimes hundreds, of individual interests. The 1873 Act provided two avenues by which purchasers could complete their transactions. Firstly, in cases where *all* owners had signed a memorandum of transfer, section 61 provided that a Judge could endorse the memorial of ownership, certifying that a sale of the land had been completed. The Judge was then required to forward the memorial to the Governor with a recommendation that a Crown Grant be issued in the name of the purchaser. Secondly, under section 65, the interests of dissenting owners could be partitioned out upon application by the majority of owners.

As it was often difficult for purchasers to obtain the signatures of all owners, it was usually through partition that transactions were completed. However, the requirement that the subdivision be applied for by Maori owners posed a difficulty to purchasers. In the case of Crown purchases, this difficulty was circumvented with the passage of the Native Land Act Amendment Act 1877, which provided for Crown interests in a block to be determined by the Court upon application by the Native Minister. Private purchasers were eventually empowered to make applications for subdivision in 1882, when the Native Land Division Act was passed.

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<sup>199</sup> ‘Petition of 371 Maoris of Hawke’s Bay, Wairarapa, Wairoa, and Turnanganui, AJHR (1873), J-7

### 2.3.2. Determination of Title

It will be recalled that 46 of Rongowhakaata's core blocks passed through the Poverty Bay Commission. Excluding awards made to Europeans, this land had a total area of 34,276 acres, which constituted over 70 percent of the tribal estate that remained after the Patutahi confiscation. Between 1870 and 1900, the Native Land Court investigated the titles of 43 core Rongowhakaata blocks, which had a total area of 7324 acres. By the early 1880s, all but a few of the core blocks that had not been adjudicated upon by the Poverty Bay Commission had passed through the Court. In 1870, as noted in the previous chapter, the Court determined the titles of 14 blocks. These blocks had a total area of 758 acres.

The next core Rongowhakaata blocks to be adjudicated upon came before the Court in 1875, following the passage of the Poverty Bay Land Titles Act 1874. This Act gave the Court jurisdiction over the lands that had been returned by the Poverty Bay Commission without adjudication. The Act nullified the 1869 proclamation that had extinguished native title in the region. During 1875, 12 blocks with a total area of 750 acres passed through the Court. As discussed earlier, the Court did not sit in Gisborne between December 1877 and April 1879. Between 1880 and 1883, after the Court's operation had resumed, the titles of a further 10 core Rongowhakaata blocks were investigated. These blocks, which included the sizeable 4064-acre Papatu block, had a total area of 5722 acres. The remaining nineteenth century title investigations were carried out between 1889 and 1896, when six small blocks with a total area of 93 acres passed through the Court. By 1900, only a few small blocks remained as customary or papatupu land, including Auahi, Kaiupoko, and Kaupapa.

The above chronology of title investigations deals exclusively with Rongowhakaata's core blocks. Rongowhakaata were also involved in the title investigations of blocks in which they shared interests with other iwi. In 1877, for example, Rongowhakaata

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<sup>200</sup> Geiringer, 'Historical Background', p 73

participated in the lengthy hearings for the Tauwharetoi, Tuahu, and Whakaongaonga blocks.

Judge John Rogan presided over the Court almost exclusively until the temporary suspension of the Court's operations in December 1877. When it resumed sitting, no single Judge dominated the Court in Poverty Bay. There is some evidence to suggest that the title investigations of Rongowhakaata land that were presided over by Rogan and his successors were less than thorough. It seems that the process itself could militate against thoroughness because of the effect of lengthy hearings. In his reply to a circular on the Native Land Act 1873, which had been sent in October 1877, Porter implied that the large number of cases brought before the Court affected the quality of judgments:

Sittings of the court to investigate titles to lands should be held periodically in different districts not less than every four months as at present the number of cases brought before the Court are so numerous as to render the sittings wearisome to the Court and to the Natives attending, whereby cases are often hurriedly concluded.<sup>201</sup>

Judge Rogan worked very closely with District Officer Samuel Locke. The office of district officer was provided for in sections 21 to 32 of the Native Land Act 1873 Act. District officers were to assist in the Court process by preparing maps of their district showing the position of hapu and iwi at the time of the signing of the Treaty of Waitangi. Also, with the assistance of Assessors and 'reliable' chiefs, district officers were required to establish intertribal boundaries and determine the acreage of land held by various groups. These enquiries were to be recorded in a 'Local Reference Book' that was to be used by the Court in the course of investigations. The district officer also had a responsibility to ensure the reservation of sufficient land. Locke acted as district officer for the East Coast until about the end of 1877, after which time the position appears to have been left vacant.<sup>202</sup> Unlike other district officers, Locke seems to have carried out the duties of his office with some diligence, and there is evidence to suggest that a local

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<sup>201</sup> Porter to Native Under Secretary, 16 May 1878, AD 103/8, pp 678-683

<sup>202</sup> Rose, '1873-1890', p 141

reference book was compiled.<sup>203</sup> However, Locke’s relationship with Rogan was unorthodox, both often working together to convene out-of-Court meetings to settle disputes. Locke felt that land matters were best settled by ‘arbitration and amicable arrangement than by the letter of the law.’<sup>204</sup>

Repudiationist Rongowhakaata (and those of other iwi) outlined their dissatisfaction with the Native Land Court’s determination of title process as early as 1873. In what appears to be a criticism of the ten-owner rule, they claimed that:

The names of few people are put in grants for large blocks of land, and no care is taken of the interests of the people owning the land but whose names are not in the grant; and thus the grantees are enabled to lease, encumber, and sell the land for their own benefit, without the knowledge and consent of the outsiders, and without sharing with them the money which the lease or sale of the land produces. ...<sup>205</sup>

The incidence of rehearing provides a limited indication of the extent that Rongowhakaata were satisfied with the title investigations that were presided over by Rogan and his successors. The costs associated with rehearings probably ensured that they were applied for only in cases where there was extreme dissatisfaction with the Court’s findings. The title investigations of three of Rongowhakaata’s core blocks were reheard: Okirau (initial investigation in 1875, reheard in 1876), Ruaotaua (initial investigation in 1875, reheard in 1876 and 1890), and Otahu (initial investigation in 1889, reheard in 1890).

The complex circumstances that sometimes led to a rehearing were evident in the case of the Awapuni block, in which Rongowhakaata possessed interests with other iwi. As O’Malley notes, Awapuni ‘was not a typical block’ because of the access it provided to kaimoana and because it fell within a ‘border zone in which various hapu and iwi could claim overlapping interests.’<sup>206</sup> When Awapuni was first brought before the Native Land

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<sup>203</sup> Ibid, p 124

<sup>204</sup> MS-Copy-Micro-0535-068. *DB Volume 8*, pp. 5239-5297, pp. 5257-5267, cited in Rose, ‘1873 – 1890’, p 142

<sup>205</sup> ‘Petition of 371 Maoris of Hawke’s Bay, Wairarapa, Wairoa, and Turanganui’, AJHR (1873), J-7

<sup>206</sup> O’Malley, ‘An Entangled Web’, pp 443-444

Court in 1870, ownership was contested by Riperata Kahutia, Henare Turangi and Hape Kiniha. The case was not completed, and it resurfaced at the 1873 Poverty Bay Commission hearing. Effectively putting the case in the ‘too-hard basket’, the Commission did not allow it to proceed because it was ‘evident all the natives in the Bay had a claim to it’.<sup>207</sup> Awapuni came before the Native Land Court in 1875, but dissatisfaction with the award made by Rogan led to a rehearing in October 1877, which upheld the former decision. However, in May 1878, Porter supported the call for another rehearing of Awapuni, which had been made by the descendants of Paratene Pototi (or Turangi) on the basis of evidence given before the Resident Magistrate’s Court:

I am requested by the claimants[,] descendants of Paratene Pototi[,] to bring to the notice of Govt that material evidence bearing upon this was elicited on oath in the RM Court . . . when a reliable witness Wi Paraone admitted that Paratene Pototi owned the land [Awapuni]. From my personal knowledge and inquiries I believe the claimants have good grounds for a rehearing.<sup>208</sup>

It is clear that the Native Land Court had been unsuccessful in accurately establishing the interests of all who had a share in Awapuni block, as demonstrated by the several hearings, the rehearing, and its aftermath. O’Malley comments that the award of interests in a case such as Awapuni was never going to be an easy task for such a Crown agency, ‘given that hard and fast tribal boundaries were a product of the system of title adjudication introduced in 1865 rather than a reflection of Maori custom’.<sup>209</sup> A case such as Awapuni showed the inability of the Native Land Court and its Acts to deal adequately with more complex cases of Maori customary title.

Dissatisfaction with the Court’s award was also evident in the case of the core Rongowhakaata block Aohuna. When the title of this block was investigated in 1875, it was awarded to members of Ngai Te Kete and also Tamihana Ruatapu and others of Ngati Maru. The land was occupied by the Ngai Te Kete grantees, who did not accept

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<sup>207</sup> Poverty Bay Commission Minutes, 21 November 1873, MA 62/4, RDB, vol 129, p 49577, cited in O’Malley, ‘An Entangled Web’, p 444

<sup>208</sup> Porter to Native Under Secretary, 16 May 1878, AD 103/8, pp 671

<sup>209</sup> O’Malley, ‘An Entangled Web’, pp 444

that the Ngati Maru grantees had rights to the land, and they therefore refused to share occupation. On 10 April 1877, the *Poverty Bay Herald* reported that:

The Ngati Maru made several subsequent endeavours ... so that they might be allowed to re-occupy with Ngai Tekete, but up to the present time they have been unsuccessful, as Ngai Tekete declared that any attempt in that direction would result in bloodshed. Even after the decision of the Native Lands Court two years ago, not one of the Tamihana [Tamihana Ruatapu's] people took advantage of it. The land is still occupied and cultivated by the Ngai Te Kete alone.<sup>210</sup>

The case of Aohuna demonstrates the divisive effect of the Court process, which was most evident at the time of title investigation. Murton comments that the divisions that were established by the Poverty Bay Commission were: 'kept alive, and deepened, by the often bizarre and always unsettling activities surrounding the operation of the Native Land Court: "loyalist" opposed former Hauhau, whanau fought whanau, hapu opposed hapu.'<sup>211</sup>

In order to overcome flaws in the Court system and establish greater control of the process, the Turanga-a-Kiwa komiti representing Te Aitanga-a-Mahaki, Rongowhakaata, and Ngai Tahupo attempted to work as a parallel institution to the Native Land Court. In June 1877, the komiti conducted a title investigation of the Tarewareru Block, in which Rongowhakaata hapu shared interests in with Ngai Tamanuhiri. The komiti heard the evidence of the claimants at Pakirikiri, and then proceeded to inspect the block, the survey of which had been arranged by Rapata Whakapuhia of Rongowhakaata. The komiti then arranged for their decision to be published in the *Poverty Bay Herald*, similar to the Native Land Court's publication of decisions in the *Kahiti*. The decision was published as a letter to the editor:

Sir,

Would you kindly record in your newspaper, the Judgment of the Native Committees, in the matter of a block of land called Tarewaaruru [Tarewauru]. The adjudication of this block of land commenced on the 6th June 1877. The decision arrived at by the committee regarding this land

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<sup>210</sup> *Poverty Bay Herald*, 10 April 1877

<sup>211</sup> Murton, 'Report Summary Te Aitanga-a-Mahaki, 1860-1960', Draft, 1999, p 94

was given according to the ancestral right of the claimants and their proofs of occupation. The committee after considering carefully the Ngai Tahupo [Ngai Tamanuhiri] side of the question did not clearly see that Ngai Tahupo had any claim to this land, besides the witnesses examined on their side did not prove any occupation of the land. Their occupation appeared to be outside the map produced before the committee therefore, on that account the committee was not clear in seeing any right of Ngai Tahupo to the land. The following decision was then decided by the committee to Rapata and his friends.

This land is awarded to you (Rapata) and all your hapus under you. The grounds on which this committee base their decision in favour of Rapata are as follows:–

- (1). The various paha of Rapata that are on the land.
  - (2) The houses—the old sites of houses, and the remains of the blocks that are still existing.
  - (3) The old earth closets
  - (4) The stumps of Totara trees from which canoes have been made.
  - (5) The flax cultivations for making Whaitau which are still existing.
  - (6) The repositories for eel pots
  - (7) Thirty victims having fallen at the hands of Rapata's ancestors on the land.
  - (8) The battle field of Whetekai
  - (9) The corpses of the slain being buried on the land.
  - (10) The cultivations of Rapata's ancestors, and being under cultivation up to the present time.
- All the witnesses sent by the committee having seen the various signs beforementioned; the whole of this block of land is awarded to Rapata Whakapuhia and his hapus.

BY ORDER OF THE COUNCIL<sup>212</sup>

This alternative to the Native Land Court was crucially different in that it reinforced tribal cohesion by making awards to the tribe or hapu, not to a collection of individuals. It is also likely to have been considerable less expensive than the Native Land Court process.

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<sup>212</sup> *Poverty Bay Herald*, 22 June 1877

### **2.3.3. Temporary Suspension of the Court in Poverty Bay, December 1877 - April 1879**

The important role of the Court in facilitating the purchase of Maori land was indicated in the extent to which private purchasers were distressed when the Court did not sit in Gisborne for 18 months between December 1877 and April 1879. No official explanation for this unofficial suspension has been located, but it was probably the result of a number of factors. One important factor was the public dispute between Judge Rogan and Crown Purchase Officer James Wilson, which gave rise to an official enquiry.

Another factor was the increased pressure from Turanga Maori, especially those promoting the Repudiation movement, and there was also the change in Government to the Grey Ministry, which purported to support repudiation. It is likely, however, that the main factor was the desire of the Crown to complete its own purchase of land in the area. It was probably no coincidence that the Court stopped sitting at the same time that Crown pre-emption was virtually restored under the Government Native Land Purchases Act, which was effective from 1 December 1877.

The closure of the Court was very unpopular with leading Turanga Pakeha. In October 1877, a public meeting was held to discuss ‘the projected abolition of the local Lands Court and the Native Lands office’. This move was seen as a ‘gross injustice’ to Poverty Bay settlers, one which would ‘inevitably result in most serious and direct loss to the entire district’. A petition against this ‘iniquitous project’ was sent to the Native Minister and Chief Judge Fenton. Not surprisingly, the petition was drawn up by leading settlers and land speculators such as Major Pitt, Captain Tucker, J W Johnson, Dufaur, Skeet, Webb, and Smith. It is notable that Edward Harris, who was partly of Rongowhakaata descent, was also among the organisers. The organisers agreed to a proposal by Smith that it was ‘desirable that a Maori petition’ also be forwarded.<sup>213</sup> Robert Cooper, who was a major land speculator, went to great lengths and expense to organise Maori opposition

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<sup>213</sup> *Poverty Bay Herald*, 12 October 1877 and 16 October 1877

to the removal of the Native Land Court from Gisborne. Cooper had settled in Gisborne in 1872, and he received finance from Read. In October 1877, Porter reported that:

Cooper is getting together a number of Natives from Coast and other places on Thursday for purposes of discussing removal of Lands Court and no doubt has other motives as he is going to expense of sending steamers finding food etc. I do not think it would be at all judicious for any leading Government chief to countenance the meeting.<sup>214</sup>

The petitions of Pakeha against the Native Land Court leaving Gisborne proved futile. On 9 November 1877, all Court documents were transported to Auckland. The *Poverty Bay Herald* expressed concern at these events:

It is to be feared that the petitions addressed by the inhabitants of this district of both races to the Native Minister and to the Chief Judge of the Native Land Court, protesting against the summary suspension of judicial operations in this district, have altogether failed in their object. The Chief Judge appears to be resolved on shutting up the office regardless or ignorant of the consequences. The Native Minister appears either to be wholly indifferent on the subject or too fully occupied in his Parliamentary duties to examine into the merits of the case. . . . There can be no possible doubt but that every possible effort has been made to demonstrate to the Native Department the inevitable results which must follow so ill advised a step, for in addition to the petitions previously mentioned, various other appeals have been made to the Government on the subject.

The *Herald* pointed out the suspension left many titles in an uncertain state:

It would seem that at the present time the titles to numerous blocks of valuable land, embracing an area of considerably more than 100,000 acres, have been fully ascertained, all that would be requisite to complete the titles being the production of certified plans of the various blocks, when the orders for Crown Grants would at once be issued. This fact has been duly pointed out to the powers that be, coupled with the earnest request that Judge Rogan may be authorised to hold one or two further sittings of the Court, in order to dispose of all these cases but the suggestion has been wholly ignored as if the matter were one of very slight importance. It is quite on the cards that six months, or even a longer period of time, may elapse before another sitting of the Court is held in the district by Judge Symonds or some the visiting Judge. The consequences of such an uncalled-for delay must of necessity be most serious.

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<sup>214</sup> Porter to Locke, 22 October 187, AD 103/8, p1

A considerable portion of the land is already under negotiation for sale or purchase by Europeans, a still further proportion of it would be dealt with and utilised without delay if anything tangible in the shape of title could be ascertained.

The suspension of the Native Lands Court, however, can only result in putting a stop to all pending negotiations and in precluding all hope of fresh transactions, for there are very few who would be induced to deal for land, the completion of the title to which is a matter of the most perplexing uncertainty.<sup>215</sup>

Pakeha continued to be anxious over when the Native Land Court would again sit in Gisborne. In January 1878, ‘Messrs Lewis Bros’ from Auckland enquired of Porter as to when the Court would next sit. Porter replied that ‘no date has yet been fixed’, but he expected it would be sometime in February or March.<sup>216</sup> The *Herald* argued that uncertainty over the Court’s future would ensure that the cash-dependent Maori population would be forced to deal with speculators who purchased at a low price:

A great parade has ever been made of the desire of the Government to protect the rights of the innocent owners of the soil, but the means adopted for the carrying out of this line of policy are, to say the least, extremely original.

By placing every facility for the definition of his title within reach of the Maori, a fair market value is at once placed on his territory. By removing the local Courts and by rendering all future sittings a matter of uncertainty, he is precluded from disposing of his land in a legitimate manner, for the element of chance preponderates too strongly to meet the views of the bona fide settler – the man who is ready and willing to pay a fair value – provided only that he obtains a good title for this good money. The Maori must have cash, however, he has no alternative but to part with his heritage for whatever it will fetch, and he is thus forced into the hands of the speculator who will take the land for better or for worse and chance the title – provided that he gets it at his own price. The Native policy adopted by our rulers now-a-days is marvellous exceedingly.<sup>217</sup>

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<sup>215</sup> *Poverty Bay Herald*, 9 November 1877

<sup>216</sup> Porter to Messrs Lewis Bros, 11 January 1878, AD 103/8, p 309

### 2.3.4. Joint Tenancy

Under the Native Grantees Act 1873, tenancy-in-common theoretically replaced joint tenancy in the awards of the Poverty Bay Commission that had not been alienated by 1873. However, before the legislation was enforced, it was found that the provisions of the 1873 Act could be interpreted to mean that all land granted by the Commission should be changed from joint tenancy to tenancy-in-common. Therefore, if the Act was enforced, all transactions would become invalid. An 1876 Bill to rectify this was discharged by the House of Representatives, meaning that the issue was not resolved. The Court was unlikely to enforce the 1873 Act, given its potential to render invalid all transactions prior to 1873.<sup>218</sup>

Maori were strongly opposed to joint tenancy for two reasons. Firstly, they were opposed to the fact that the grantees of joint tenancy lands possessed equal shares. As Rose comments, joint share ownership contrasted markedly with the realities of customary land rights:

While the individualisation of title was in itself a distortion of Maori custom, the individualisation of land on an equal share basis represented a further distortion of customary rights. Under customary law, the extent to which an individual held a right to use the resources of the land varied depending on their relationship to that land.<sup>219</sup>

The equal size of individual shares under joint tenancy unquestionably facilitated alienation. It created the situation whereby those grantees who possessed the strongest links to a block, and so were less likely to sell, were allocated a proportion that was smaller than their rightful and customary interest. Conversely, those grantees with weaker links to the land, and so were more likely to sell, were allocated a proportion that was greater than they were customarily entitled. These grantees received the same-sized portion in the land as those who had greater customary rights and who were more likely

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<sup>217</sup> *Poverty Bay Herald*, 9 November 1877

<sup>218</sup> Rose, '1873-1890', pp 298-299

<sup>219</sup> *Ibid*, p 476

to reside upon the land and/or utilise it. Grantees with fewer links to the land were far more likely to sell especially if they did not reside upon the land..

Rongowhakaata and other repudiationist petitioners highlighted the unfairness of the imposition of equal shares in 1873. They said that:

many people are put into grants whose interests in the land are not equal ... and the laws give no facilities for ascertaining the interests of the several grantees in cases where land has been leased to Europeans, so that after ... some of the grantees sell ... there is no clear way of finding out how much of the land belongs to the people who have not sold.<sup>220</sup>

Maori were also opposed to joint tenancy because for many years succession to the interests of deceased grantees was not considered lawful in joint tenancy blocks. For example, in Te Kati block, the rightful successors of grantees Te Paea and Raharuhi Rukupo were unable to succeed. Moreover, Read, who had purchased the interest of Maraua Henihuirangi, was able to veto any conveyance to successors because of the joint tenancy status of the grant.<sup>221</sup> By 1880, the Supreme Court had found in favour of succession orders being granted in the case of joint tenancy lands.<sup>222</sup> As Rose notes, however, a question mark remained over succession to lands granted under joint tenancy.

Indeed, a 1901 petition by Ripeka Tiria and 9 others claimed that in 1883 the Court had refused to appoint successors to interests in the Opou and Okaunga blocks because they were held under joint tenancy as awards of the Poverty Bay Commission:

1<sup>st</sup>. This is a petition from us your petitioners which sheweth . . .

2<sup>nd</sup>. That Okaunga and Opou blocks were vested in certain persons as joint tenants in the year 1869, under the great Act for Poverty Bay, 1868-1869.

3<sup>rd</sup>. The names of the owners of the said blocks were duly put into the titles therefore.

4<sup>th</sup>. In the year 1877 one of the persons whose name was in the Crown Grants for the said land died.

5<sup>th</sup>. On the 20<sup>th</sup> day of May 1880 a successor was appointed . . .

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<sup>220</sup> 'Petition of 371 Maoris of Hawke's Bay, Wairarapa, Wairoa, and Turnanganui, AJHR (1873), J-7

<sup>221</sup> Porter to Native Minister, 19 January 1874, AD 103/2, p 493

<sup>222</sup> Rose, '1873-1890', p 300

6<sup>th</sup>. On the 11<sup>th</sup> day of July 1883, the person appointed to succeed the original deceased owner also died, and we your petitioners appeared before the Court and applied to be appointed successors to the aforesaid first successor, but the Court ruled that the share of the second deceased could not pass to us under the Act of 1869.

7<sup>th</sup>. In consequence of our being under the impression that the said great Act for Poverty Bay of the year 1869 had been repealed therefore your petitioners have lived in hopes right down to the present day.

8<sup>th</sup>. Because your petitioners are aware that your Hon House alone possesses the power to redress wrongs therefore we pray you to relieve us of this grievance.

9<sup>th</sup>. We also pray that your Hon House will thoroughly inquire into the grounds of our grievance or else appoint some competent tribunal to investigate these troubles.<sup>223</sup>

In September 1903, the Under-Secretary of the Native Land Purchase Department, Paul Sheridan, prepared a report on this petition.<sup>224</sup> Sheridan stated that joint tenants became tenants-in-common under the Native Grantees Act 1873, except in cases where the grantees had died prior to October 1873. He claimed that some of the grantees of Opou and Okaunga appeared to have died before this date, and that it was to one of these interests that the petitioners wished to succeed. Sheridan considered that, as the petitioners had little remaining land, ‘it would be a good thing to give the Native Land Court power to admit the heirs, if it sees fit.’ The Native Affairs Committee recommended that Sheridan’s suggestion be adopted.<sup>225</sup>

The matter did not finally come before the Court until 16 November 1915, when Judge Jones held an enquiry into the petition. In his report, Jones stated that there was nothing in the records *proving* that any of the grantees had died before October 1873, but there was certain evidence to suggest that this was indeed the case. Jones determined that succession could not be granted because of the precedent that this would set:

From an equitable point of view, it would seem the dead persons interests should be protected, out of so much as represents their shares, as went to the surviving grantees, but if a precedent were set

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<sup>223</sup> Translation of Petition of Ripeka Tiria and nine others, Petition 1901/1212, MA 1 1918/126, NA Wellington, DB, p 1071

<sup>224</sup> Sheridan, Report on Petition 1901/1212, MA 1 1918/126, NA Wellington, DB, p 1072

<sup>225</sup> Native Affairs Committee, Report on Petition 1901/1212, MA 1 1918/126, NA Wellington, DB, p 1069

in what in this case is a comparatively small matter, it would probably open the door to innumerable claims of a similar nature.<sup>226</sup>

This case is an example of how joint tenancy could disenfranchise rightful successors.

### 2.3.5. Completion of Purchases and the Validation Court

Very few transactions involving Rongowhakaata land had been legally confirmed before the Native Land Court was temporarily suspended at the end of 1877. Indeed, the evidence suggests that only one private transaction to a European had been confirmed by this time. [Refer Chart 5] It is notable, however, that by 1877 title to the majority of Rongowhakaata blocks (67 percent) had been adjudicated upon by either the Poverty Bay Commission or Native Land Court.<sup>227</sup> Murton states that, in the six months previous to the suspension of the Court, Rogan refused to complete subdivisions and individualisations of title.<sup>228</sup> In February 1878, the editor of the *Herald* wrote strongly about the problem of incomplete purchases, laying a large part of the blame on Judge Rogan:

The Native Land Court was sitting on and off between East Coast and Napier for upwards of two years and a half. The Judge who presided passed a good deal of land through the Court, but beyond enrolling a large number of owners, in some instances as many as 400 in one block, nothing else was done ... The Judge, who was withdrawn or removed last November, might have done great deal more than he did. The unhappy disagreement he had with one of the Land Purchase Commissioners has proved most unfortunate for those interested in the acquisition of land from the Maoris. During the last six months he was here but refused to go on with and complete blocks that had been commenced. We refer to Whataupoko, Matawhero and others, both of which might have been satisfactorily arranged had he shown anything like his usual activity.<sup>229</sup>

From 1880, a number of private transactions were concluded through partition. Charts 4 and 5, which are located in the Appendix, show that thousands of acres of Rongowhakaata land were awarded to private purchasers in partitions that were made

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<sup>226</sup> Judge Jones, Enquiry into petition 1901/1212, MA 1 1918/126, NA Wellington, DB, pp 1064-1065

<sup>227</sup> 73 out of 108 blocks had had title awarded by 1877.

<sup>228</sup> Murton, 'Settlement in Poverty Bay', p 43

from 1880. In spite of these partitions, some purchases remained incomplete by the end of the 1880s because of certain ‘technical’ obstacles. A number of judicial rulings had undermined the validity of many transactions in the Poverty Bay. Of particular importance was the Supreme Court’s ruling in the case of *Paraone v Matthews*, which was given in September 1888. This ruling suggested that the purchase of land prior to the subdivision of interests was invalid, contradicting the provision for such subdivision in the Native Land Division Act 1882.<sup>230</sup> In the aftermath of this and other findings, settler concern about the insecure state of many titles led to the introduction of validating legislation.

Initially, under the provisions of the Native Land Court Acts Amendment Act 1889, a commission of inquiry was established with the capacity to validate intended alienations that had been prevented because of ‘technical difficulties’. This commission, presided over by Worley Edwards (a lawyer) and John Ormsby (part Maori), was soon disposed of owing to its limited powers of validation. In Gisborne, the Edwards-Ormsby Commission heard only 14 of the 48 claims submitted to it.<sup>231</sup> The Liberal Government, which championed the cause of the small settler, was determined to address the matter of insecure titles. Under the Native Land (Validation of Titles) Act 1892, the Native Land Court was provided with powers of validation.

The Native Land Court’s inability to shoulder the additional workload of validation led to the formation of a separate Validation Court, which was established under the Native Land (Validation of Titles) Acts 1893. Section 10 of the 1893 Act detailed that a claimant requiring validation had to demonstrate that:

- the contract was one which, had it been made between Europeans over Crown-granted land, would have been enforceable in the Supreme Court;
- the transactions was not contrary to equity and good conscience;
- all parties fully understood the contract at the time;

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<sup>229</sup> *Poverty Bay Herald*, 15 February 1878

<sup>230</sup> Rose, ‘1873-1890’, pp 531-532

<sup>231</sup> Bryan Gilling, ‘The Validation Court: Crown, Judiciary and Maori Land 1888-1909, pp 30-31

- it was ‘a fair agreement or contract for a reasonably sufficient and lawful consideration at the time and under the circumstances in which it was made’.

The Court was not *required* to dismiss claims ‘tainted with actual fraud or improper dealing’.

It has been argued that protection for Maori was much diminished as a consequence of Validation legislation. Gilling comments that: ‘Provisions intended to prevent fraudulent or coercive dealings in Maori land were reduced to mere informalities.’<sup>232</sup> Gilling also notes that notification procedures and fees countered against effective Maori participation.<sup>233</sup> This weighted the system against Maori because, as Daly comments, the validation process ‘put the onus on Maori objectors to prove that transactions were not bona fide rather than on the European [sic] to prove that they were.’<sup>234</sup>

In accordance with the large number of incomplete and insecure titles in the Turanga region, the Gisborne Validation Court received a large number of applications. By June 1894, thirty-seven applications had been lodged with the Court. It has not been ascertained exactly how many claims concerning Rongowhakaata blocks were brought before the Gisborne Validation Court by private purchasers or their representatives. However, the number of validation claims concerning Rongowhakaata land does not appear to have been large. A case involving transactions in Te Kowhai 1 came before the Validation Court on 23 March 1896.<sup>235</sup> The Court awarded Allan McLean the interests of 32 of the owners of Te Kowhai 1, which amounted to an area of 132 acres. By the late 1890s, the Validation Court in Gisborne was dominated by applications for title completion of the landholdings of the Carroll-Pere Trust, which is discussed in Chapter 4.

### **2.3.6. Costs of the Court Process**

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<sup>232</sup> Ibid, p 57

<sup>233</sup> Ibid, p 110

<sup>234</sup> Daly, p 47

<sup>235</sup> TVCMB 4, pp 137-138

The costs involved in the Native Land Court system were a considerable financial burden to Maori. In addition to the expense of attending often lengthy hearings, there were also Court fees and survey costs. In some cases, legal representation was a further cost. The financial burden of the Court system unquestionably increased Maori levels of debt, and as noted above, debt was often satisfied through the sale of land. In some cases, the costs led owners to immediately alienate land, rather than become further indebted. In an 1873 petition, Rongowhakaata repudiationists (and those of other iwi) complained of the great burden of Court costs:

The lands are eaten up by money for survey, Court fees, grant fees, and payments to lawyers and interpreters, and other expenses, to such an extent that the balance which comes to us from the sale of our lands is very small.<sup>236</sup>

Attendance at Court sittings placed considerable economic strain on Maori. They commonly faced large food and accommodation expenses, and cultivations suffered while they were absent from their residences. As explained earlier, it was the policy of the Court to consider only the evidence that was brought before it and therefore counter-claimants who wanted their interests recognised had little option but to attend. Similarly, anyone who wished to contest an application for subdivision or succession was required to be present. The manner in which the Court heard cases ensured that Maori were often present for an unnecessarily long period of time. Notification was not given of the precise days and times that cases would be heard, and therefore Maori would usually arrive at the beginning of a sitting and then wait for the case or cases in which they were interested to be called. Oliver and Thomson detail how the cost of attending the Court in Gisborne impacted upon Maori:

In 1875 Maoris attending the court at Gisborne were reduced to begging for food. The mere expense of court attendance and the level of court fees forced Maoris to sell or mortgage the land they had come to protect. But if they did not wait around and pay the fees they were sure to lose their land to claimants who could afford to do so. In the 1870s and the early 1880s the Land Court sittings were the chief cause of the major dissipation of Maori resources.<sup>237</sup>

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<sup>236</sup> 'Petition of 371 Maoris of Hawke's Bay, Wairarapa, Wairoa, and Turnanganui, AJHR (1873), J-7

<sup>237</sup> Oliver and Thomson, p 175

In his annual report of May 1884, Resident Magistrate Booth described how recent Court sittings in Gisborne had affected Maori:

the sittings as at present held are indirectly the cause of immense loss in time and money to the Native applicants attending them . . . the Native owners of any given block are . . . spread over a large extent of country: for instance at this last sitting of the Land Court here many applicants came from distances ranging up to a hundred miles, and as the claims of these applicants would be affected by original claims, by subdivisional and succession claims, they were obliged to remain over nearly the whole sitting . . . Besides this loss of time and absence from their cultivations, there is the necessary cost for food, pasturing for horses, &c. During the sitting of the Court here there was little or no drunkenness, and yet the cost to each individual claimant under the circumstances I have mentioned must have been enormous. Many men, having been here for months, have been obliged to sell the land to which they had got a title, to pay expenses. The only remedy I can suggest . . . is that Courts should be held more frequently, and thus prevent an over-accumulation of work . . . in the present state of things claimants must attend at ruinous cost, or run the risk of being left out in the cold.<sup>238</sup>

While Rongowhakaata were not required to travel hundreds of miles to attend sittings in Gisborne, it is nevertheless clear that their attendance would have resulted in large costs. They would have had to meet the burden of hosting kin such as Kahungunu from Wairoa or Ruapane from Te-Reinga. In 1877, for example, Rongowhakaata hapu hosted their Wairoa kin for one of the largest Court hearings at Gisborne.<sup>239</sup>

Another burden of the Court system was the significant fees that were charged when cases were brought before the Court. An investigation of title cost the claimants a minimum of £1, with counter claimants also having to pay this sum. Parties to a title investigation that was not heard in one day were required to pay £1 for each extra day that the Court considered the case.<sup>240</sup> There were also fees for successions, partitions, and appeals. Commenting on all of these costs, the 1891 Native Land Laws Commission argued that:

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<sup>238</sup> *AJHR*, 1884 Sess II, G1, p 17, cited in Rose, '1873-1890', p 293

<sup>239</sup> Rogan memorandum, 1 October 1878, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5180

Its fees and charges are greatly in excess of what they are . . . Its demand for excessive daily fees is so imperious that Natives not able to pay are refused a hearing, and thus in many cases the real owners are compelled to stand by and see their land given to strangers.<sup>241</sup>

The Commission claimed that the fees for title adjudication were often as great as the value of land:

So heavy have the burdens become which the successive laws have placed upon the ascertainment of Native title that before the individual interests of Natives can become vested in them by order of the Court the whole value of the land is often expended.<sup>242</sup>

The Court system, particularly the complex legislation under which it operated, sometimes saw Maori engage legal representation, adding to the expenses that they faced. In some instances, Rongowhakaata became involved in costly litigation that ended with them taking cases to the Supreme Court. In 1891, for example, the Supreme Court considered a case involving Whakapuhia's interests in Te Kowhai, Whakaongaonga B, Kahukuratara, Waiwhakaata, and other blocks.<sup>243</sup> There were also cases concerning partitions, mortgages, and sales of core blocks such as Ahipipi, Aohuna, Hurimoana 1, Kaiparo, Kowhai, Mirimiri, Manutuke, Okirau F, Paokahu, Papatu, Te Poho, Puketapu, Rae o Tokorakau, Rakaukaka, Ruaotaua 4, and Umukapua.

Of all of the expenses that Maori encountered in the Court system, the greatest was probably the cost involved in having land surveyed. When Maori brought land before the Court for title investigation they were required to have had a survey of the block completed. Responsibility for the survey of the lands that were awarded by the Poverty Bay Commission similarly lay with Maori. Geiringer comments that the survey burden placed on Maori contrasted with government policy that insulated European settlers from survey costs. She notes that most government settlement schemes during the nineteenth

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<sup>240</sup> Williams, p 90

<sup>241</sup> Rees Commission, p. xi, cited in Geiringer, 'Historical Background', p91

<sup>242</sup> Rees Commission, p. xii, cited in Geiringer, 'Historical Background', p92

<sup>243</sup> TCMB 7, p 225, 237, DB, p 3165, 3169

century provided settlers with land that was already surveyed.<sup>244</sup> It is important to note that Maori also faced survey costs when land was partitioned.

As the area of land diminished through partition, survey costs therefore often became an increasingly large proportion of the value of the land. In saying this the smaller the block, the lower the charge for the survey, and so as a percentage of the value of the area being surveyed, survey costs probably stayed fairly constant for each block. However, a block with poor quality land would of course be worth less, so the survey costs for that block would be a proportionately greater burden compared to its land value. Also when subdivision occurred if previous survey costs for the parent block were still unpaid, then a proportion of those costs would fall on the new subdivision in addition to the new survey required for partition. This scenario could mean that a small subdivision might be loaded with very high survey costs overall. Each new survey of each new partition was an additional charge on a fixed resource *viz.* the original parent block, and in that sense survey costs became an increasingly large proportion of the value of the land. While giving evidence to the 1891 Native Land Laws Commission, Edward Harris claimed that: ‘In some cases the surveys of small subdivisional blocks cost more than the value of the land.’<sup>245</sup>

In the 1860s and early 1870s, owing to difficulties in securing payment, the Crown was reluctant to let its surveyors be employed by Maori.<sup>246</sup> Most surveys were therefore carried out by private surveyors to whom Maori usually became indebted because they did not possess large sums of ready cash. In 1867, the Inspector of Surveys described how Maori were exploited by this situation:

The Native land owner is . . . placed at very great disadvantage in getting his land surveyed: rarely possessing ready money, he is obliged to find some one to survey his land on credit, and so often pays double what it cost a European.<sup>247</sup>

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<sup>244</sup> Geiringer, ‘Historical Background’, p91

<sup>245</sup> Cited in Rose, ‘1873-1890’, p 13

<sup>246</sup> Geiringer, ‘Historical Background’, p, p91

<sup>247</sup> Mr Heale, "Report on Surveys under the Native Lands Act", AJHR, 1867, A-10B, p. 5, cited in Geiringer, ‘Historical Background’, p92

The surveyor was able to register a lien against the block, and the Native Lands Act 1867 provided that neither a Crown grant or certificate of title could be registered until the charge had been paid. Under the provisions of the Native Land Act 1873, Maori were able to apply for the cost of survey to be advanced by the Crown.

With few sources of revenue available to Maori, it was often necessary for them to sell land to meet the cost of survey. In order to ensure that Maori paid survey costs, the Crown made legal provision for land to be compulsorily alienated. However, it does not appear that between 1873 and 1900 any Rongowhakaata land was alienated in this manner. The following table shows the costs that were recorded to be owing for the survey of Rongowhakaata's core blocks.<sup>248</sup> The inability to immediately meet these costs indicates the financial burden that survey placed upon Rongowhakaata. **[Refer to Table 2]**

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<sup>248</sup> Data taken from PBC minute books, Gisborne NLC minute books, and MLC block order files

**Table 2: Costs recorded to be owing on core Rongowhakaata blocks**

| <b>Date of record</b> | <b>Block or Subdivision</b> | <b>Costs owed</b> |
|-----------------------|-----------------------------|-------------------|
| unknown               | Arai 2                      | £77 0s 0d         |
| unknown               | Kairourou 1                 | £3 3s 0d          |
| unknown               | Koru                        | £3 3s 0d          |
| unknown               | Poho                        | £3 5s 0d          |
| pre 6.7.1869          | Okaunga                     | £32 1s 0d         |
| 3.8.1869              | Huiatoua                    | £2 10s 0d         |
| 8.12.1870             | Hiwera                      | £2 10s 0d         |
| 8.12.1870             | Raeotokorakau               | £2 10s 0d         |
| 7.12.1872             | Puketapu                    | £5 18s 0d         |
| 30.8.1880             | Waiwhakaata                 | £32 9s 0d         |
| 20.10.1886            | Aohuna 1                    | £5 0s 0d          |
| 20.10.1886            | Whatatuna 5                 | £5 0s 0d          |
| 9.11.1886             | Whatatuna 8                 | £4 0s 0d          |
| 9.11.1886             | Whatatuna 10                | £4 0s 0d          |
| 10.12.1886            | Takopa 1A                   | £2 2s 0d          |
| 12.10.1887            | Tauowhiro B2                | £4 0s 0d          |
| 12.10.1887            | Tauowhiro C1                | £5 0s 0d          |
| 12.10.1887            | Tauowhiro C2                | £7 0s 0d          |
| 12.10.1887            | Waiwhakaata C               | £5 0s 0d          |
| 12.10.1887            | Waiwhakaata D               | £5 0s 0d          |
| 17.10.1890            | Ruaotaua 3                  | £1 10s 0d         |
| 17.10.1890            | Ruaotaua 6 & 6A             | £1 14s 0d         |
| 17.10.1890            | Ruaotaua 7                  | £9 10s 0d         |
| 22.4.1895             | Tauowhiro B2B               | £3 9s 0d          |
| 22.4.1895             | Waiwhakaata D2              | £6 19s 6d         |
| 8.8.1898              | Ruaohinetu 1A               | £6 16s 0d         |
| 23.1.1899             | Ruaohinetu 1B               | £6 16s 0d         |

### 2.3.7. The Court's Protective Role

It is necessary to establish the extent to which the Court protected Rongowhakaata from the excessive alienation of their lands. Crown policy makers and officials generally agreed that Maori should be left with some land for their present and future use. In the 1850s and early 1860s, Crown purchase agents had implemented this policy by creating reserves. The introduction of the Native Land Acts legalised the purchase of Maori land by private individuals who did not have to take the interests of the vendors into consideration. The creation of reserves to ensure that Maori were left with sufficient land became the responsibility of the Native Land Court, although Chief Judge Fenton was strongly opposed to the Court fulfilling a protective role. He claimed that it was not 'the duty of the Legislature to make people careful of their property by Act of Parliament, so long as their profligacy injures no one but themselves.'<sup>249</sup> Alan Ward argues that Fenton's attitude influenced the other judges of the Court.<sup>250</sup>

It is important to note that there appears to have been no provision for the titles issued under the Poverty Bay Grants Act to be encumbered with alienation restrictions. In 1873, when Te Aitanga-a-Mahaki rangatira Panapa Waihopi requested that Waikohu block be made inalienable, the Poverty Bay Commissioners replied that such a provision lay beyond their powers. However, they stated that they would forward a recommendation of inalienability to the government, but such a restriction was not imposed and by 1878 the block had been privately purchased by Crown agent Samuel Locke.<sup>251</sup> In an 1873 petition, Rongowhakaata repudiationists (and those of other iwi) stated that:

sufficient care is not taken to make proper reserves to be held for the use and benefit of the Maoris so that Maoris are now without any land whatever on which they may live and work.<sup>252</sup>

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<sup>249</sup> Fenton, "Report on the Working of "The Native Lands Act, 1865"", Op cit, p. 4.cited in Geiringer, 'Historical Background', p99

<sup>250</sup> A Ward, *A Show of Justice: Racial 'amalgamation' in nineteenth century New Zealand*, Auckland: University of Auckland Bindery, 1983 reprint, pp 255-256 cited by Rose, '1873 – 1890', p28

<sup>251</sup> Rose, '1873 – 1890', p26

<sup>252</sup> 'Petition of 371 Maoris of Hawke's Bay, Wairarapa, Wairoa, and Turnanganui, AJHR (1873), J-7

None of the core Rongowhakaata blocks that passed through the Poverty Bay Commission (which comprised over 70 of the remaining land) was restricted from alienation. The Native Land Court could impose restrictions on the Commission awarded land if it came before the Court for subdivision. This would invariably, however, be too late, as most subdivisions were made because a European had acquired interests in a block. There is only one example of the Court placing restrictions on Commission awarded land when it was subdivided. In 1883, the Court imposed restrictions on Ohinekura A and B, which had a total area of 10 acres 3 roods.

As with most aspects of the Native Land Court, its role in making land inalienable was defined and redefined in a succession of legislative changes. Under the 1865 Act, the judge was provided with the option of recommending that blocks be restricted from alienation. Section 20 of the Native Lands Act 1867 required that in every case the Court was to establish the propriety of imposing an alienation restriction. The Court's protective role was outlined in the preamble of the Native Land Act 1873, which expressed the desirability of:

assuring to the Natives without any doubt whatever a sufficiency of their land for their support and maintenance, as also for the purpose of establishing endowments for their permanent general benefit from out of such land.

However, the provisions in the 1873 Act concerning alienation restrictions were decidedly contradictory. Section 48 provided that an inalienability clause was to be appended to every memorial of ownership, but this was clearly undermined by section 49, which effectively stated that alienation restrictions would not be enforced:

Nothing however in the foregoing condition annexed to any memorial of ownership shall be deemed to preclude any sale of land comprised in such memorial where all the owners of such land agree to the sale thereof or to prevent any partition of such land in manner hereinafter provided if required.

As detailed earlier, the Native Land Act 1873 also provided for the appointment of district officers, one of whose duties was to reserve sufficient land for Maori in as many

blocks as deemed necessary. It was specified that the area of land reserved was not to be less than 50 acres for every man, woman and child. In defining a minimum acreage for each individual, this provision marked a new development in the consideration of what was a sufficient endowment for Maori.<sup>253</sup> However, given the weakness of the alienation restriction that was provided under the 1873 Act, there was no guarantee that reserves arranged by the district officer would remain in Maori ownership. In Locke's report of October 1877, he detailed that in Cook County he had arranged 25 reserves with a total area of 39,223 acres, all of which had passed through the Court in 1875.<sup>254</sup> Approximately 4373 acres of these reserves were Rongowhakaata core blocks (Ruaotaua and Arai Matawai), and approximately 7194 acres were from the Hangaroa lands in which Rongowhakaata had interests with other iwi. **[Refer to Chapter 3]**

Under Section 3 of the Native Land Act 1878, the judge could recommend to the Governor that alienation restrictions be imposed on land. Section 36 of the Native Land Court Act 1880 empowered the Court itself to impose restrictions. Removing restrictions on alienation was made easier by section 5 of the Native Land Act 1888. This provided that restrictions could be removed with the consent of only a majority of owners. Under section 52 of the Native Land Court Act 1894, the Court could remove restrictions if one third of the owners agreed and all owners had sufficient land left for their support.

It appears that Crown officials did not satisfactorily monitor the amount of inalienable land held by Rongowhakaata. This can be identified in apparent errors found in a list of inalienable lands that was prepared in 1886. Among the lands detailed to be inalienable in the Gisborne district, the list records the names and areas of 12 Rongowhakaata blocks.<sup>255</sup> The list did not include a number of blocks that were made inalienable. The mistakes in this list, and the general absence of a system of record-keeping that tracked the loss of tribal land, reflect that there was little concern for Rongowhakaata and other Maori retaining sufficient land.

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<sup>253</sup> Rose, '1873 – 1890', p 123

<sup>254</sup> AJLC, 1877, No 19, pp 4-5, Rose, *DB Volume 9*, 5796-5798

<sup>255</sup> AJHR, 1886, G-15, p 17

This same lack of concern can also be identified in the ease with which alienation restrictions could be, and were, removed. By 1900, restrictions had been partly or wholly removed from many of the blocks that had been made inalienable. However, in most cases, restrictions were removed after partition, and often a large part of the original area would remain inalienable. In the case of Ruaotaua, the reserve restrictions were removed from certain pieces upon subdivision in 1883, 1886, 1889, and 1890 as portions were alienated.<sup>256</sup> Restrictions were removed completely in the cases of Kahukuratara, Ohinekura A, Poho, Taomako, Tarewa, and Tauowhiro.

### **2.3.8. The Protective Role of the Trust Commissioner**

In addition to the protective provisions in the Native Land Acts for land to be made inalienable, the office of trust commissioner was established to protect Maori from ‘Improvident Dealings and Frauds’. Like alienation restrictions, however, the protection offered by the trust commissioners was limited.

District trust commissioners were appointed under the provisions of the Native Land Frauds Prevention Act 1870. The commissioners were to investigate the deeds negotiated by private purchasers. Section 4 stated that no alienation ‘shall be valid if such alienation shall be contrary to equity and good conscience’, while section 5 outlined the issues that trust commissioners were to consider:

It shall be the duty of the Trust Commissioner to ascertain as far as possible the circumstances attending every such alienation and especially to enquire whether the same is valid with the intent and meaning of the last clause and whether the parties to the transaction understand the effect thereof and also as to the nature of the consideration intended to be paid or given . . . and to satisfy that the consideration . . . has actually been paid or given and that sufficient land is left for the support of the Natives interested in such alienation.

The Act was an acknowledgement of the Crown’s responsibility to monitor private negotiations and, had it been properly enforced, could have provided an important check on the activities of private purchasers. Limitations in the enforcement of the Act were

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<sup>256</sup> Data obtained from Trust Commissioner and Maori Land Court Files.

evident from the beginning, as indicated by the instructions given to trust commissioners in 1871:

The Government wish you to understand that the object of the Native Land Fraud Prevention Act is not to throw difficulties in the way of *bona fide* transactions; on the contrary, to give every facility to their completion. As your proceedings are at present experimental, you have full authority to use a wide range of discretion as to the manner in which they are conducted.

Except in cases where you have reason to believe there is fraud or illegality, you should give the certificate as a matter of course.

Your inquiries need not, in ordinary cases, be too minute.<sup>257</sup>

The instructions also explained that the government desired to ‘work this Act at as little expense as possible’, which is evident in the employment of only a few part-time commissioners throughout the country. Even if the commissioners had desired to carry out comprehensive investigations, the time and resources available to them made such inquiries impossible. Grant Phillipson states that, as a result, ‘their investigations tended to be perfunctory and even sometimes negligent’.<sup>258</sup> Although the Native Land Frauds Prevention Act had specified that trust commissioners were to consider the sufficiency of remaining land, it appears that their enquiries focused almost exclusively on fraudulent dealings.<sup>259</sup> Recognition of the limitations of the trust commissioner system were evident in provisions contained in the 1873 Act, which required the Court also to make inquiries into transactions. However, this and other safeguards in the 1873 Act were generally not enforced.

The work of the trust commissioners who inquired into Poverty Bay transactions has been examined by Rose. The first commissioner for the Hawke’s Bay and Poverty Bay districts was Hanson Turton, who was employed from March 1871. Turton, who spent

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<sup>257</sup> AJLC, 1871, No. 97, p 162, cited in Rose, ‘1873-1890’, p 119

<sup>258</sup> G Phillipson “The Native Land Court and Direct Private Purchase, 1865-1873” in D Cowie *Rangahaua Whanui District 11B Hawke’s Bay* September 1996, pp 214-215, cited in Rose, ‘1873-1890’, p 120

<sup>259</sup> JE Murry, ‘Rangahaua Whanui National Theme L: Crown policy on Maori reserved lands, 1840-1865, and lands restricted from alienation, 1865-1900’, First Release, February 1997, p 32, cited in Rose, p 20

most his time dealing with Hawke's Bay transactions, investigated 11 cases in Poverty Bay between 23 September and 9 October 1871. Rose comments that the minutes of these inquiries suggest that Turton's investigations 'were generally quite cursory affairs'.<sup>260</sup> However, a certificate was not granted for one of these transactions on the grounds that alcohol formed part of the consideration. This case, which concerned Matawhero B, is detailed in the above discussion of the methods of private purchasers.

In February 1873, following calls by settlers for a local commissioner, Resident Magistrate Dr Nesbitt was appointed trust commissioner for the Poverty Bay district. In August 1873, Nesbitt provided brief summaries of the cases that he had considered between March 1873 and the end of June 1874.<sup>261</sup> He heard evidence concerning 77 deeds, which involved 44 blocks. Of the 77 deeds, 64 certificates were granted, 11 were held in abeyance, and 2 were refused. Nesbitt heard evidence on 161 days out of a potential 484, and he complained of the burden of his responsibilities: 'the business of the Trust Commissioner's Court in this district involves a large volume of responsibility, a great deal of troubles, the expenditure of much time and some pecuniary loss in obtaining assistance.'<sup>262</sup> Nesbitt asked to be relieved of his appointment at this time, but it appears that he changed his mind because he remained Poverty Bay's trust commissioner until the appointment of Kenrick in 1877. There are no extant minutes of the trust commissioner's office between August 1874 and December 1877. Rose claims that the minutes of Kenrick's work between December 1877 and the end of 1878 indicate that the office continued to operate with the same limitations it had experienced under Nesbitt.<sup>263</sup> She states that inquiries 'continued to be very cursory', with only a handful examined in any detail.

Between 1880 and early 1883, Matthew Price was employed as trust commissioner, an appointment that saw some changes to the office. Unlike Kenrick, Price took evidence from all who were party to a deed, and would not approve a transaction until all

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<sup>260</sup> Rose, '1873-1890', p 125

<sup>261</sup> Ibid, p 130

<sup>262</sup> Cited in Rose, '1873-1890', p 132

<sup>263</sup> Rose, '1873-1890', p 132

signatories had been before him. As a consequence of this approach, investigations into transactions could spread over many months.<sup>264</sup> It appears that Price may have refused a greater proportion of transactions than his predecessors. There are at least two examples of Price refusing to certify transactions involving core Rongowhakaata blocks. On 15 June 1881, the commissioner heard two applications made by Duncan Fraser, who had negotiated to purchase interests in Te Kowhai and Ruaotaua blocks.<sup>265</sup> A deed between Fraser and a number owners of Te Kowhai had been signed on 22 September 1877. Three of these owners made objections to Fraser’s application. Maaka Rangitawhai and Eru Takihi claimed that they had no remaining land, with Takihi stating that: ‘I and my hapu are living on sufferance at Oweta’. Anaru Ratapu objected on the grounds of not having received full payment. Price refused Fraser’s application for the interests of all three owners. As noted earlier, sufficiency of land was typically not investigated by trust commissioners. Fraser’s application for the Ruaotaua block concerned the purchase of the interests of Wi Kingi Te Apaapa and Ani Patene. Price struck-out this application because Ruaotaua was a reserve that could not be sold under the provisions of the Native Land Act 1873.

The level of protection provided by Price’s inquires proved to be only temporary. In March 1883, James Booth became trust commissioner. Rose claims that the Gisborne trust commissioner’s office then ‘reverted to its practice of making only cursory enquiries into transactions.’<sup>266</sup> Commenting on the investigations made by Booth from 1886 to 1889, Rose states that the ‘vast majority of deeds were certified ... without more than a brief consideration.’<sup>267</sup> Booth did not continue Price’s practice of interviewing all who were party to a deed. Instead, he relied strongly on statutory declarations as his means of ascertaining Maori agreement. Discussing this, Rose states that: ‘it seems probable that objections to particular transactions would be more likely to be revealed in the course of personal inquiry rather than through a form of declaration.’<sup>268</sup> In 1886, Wi Pere

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<sup>264</sup> Ibid, p 294

<sup>265</sup> TCMB 2, 13 June 1881, pp 100-106, DB, pp 2725-2730

<sup>266</sup> Rose, ‘1873-1890’, p 295

<sup>267</sup> Ibid, p 457

<sup>268</sup> Ibid, p 295

complained in parliament that trust commissioners ‘did not require those Natives [selling] to come forward and sign themselves.’<sup>269</sup>

James Booth held the position of trust commissioner until his death in 1900, the year before the demise of the office in Gisborne. Commenting on the investigations made by Booth from 1886 to 1889, Rose states that the ‘vast majority of deeds were certified ... without more than a brief consideration.’<sup>270</sup> She states that by 1890 Booth was ‘acting as little more than a rubber stamp for private transactions’, and that throughout the 1890s he continued to make ‘only cursory investigations into the transactions that came before him.’<sup>271</sup> Under the Native Land Court Act 1894, the trust commissioner’s office was disbanded and its responsibilities transferred to the Court. However, legislation introduced the following year enabled the trust commissioner to investigate transactions prior to 1894, and this explains why the office operated in Gisborne until 1901.

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<sup>269</sup> NZPD, Volume 52, p 493, cited in Rose, ‘1873-1890’, pp 456-457

<sup>270</sup> Ibid, p 457

<sup>271</sup> Rose, ‘1890-1970’, pp 74-75

### **3. CHAPTER 3: CROWN PURCHASES, 1873 – 1900**

From 1873 to 1900 the Crown undertook a programme of purchase that was to result in the transfer of a further 14 per cent of Rongowhakaata's remaining lands. These Crown purchases covered lands situated in the southern part of the rohe in the vicinity of the Hangaroa river known as the Hangaroa block, which was around 40 kilometres from the Gisborne township. Rongowhakaata hapu held interests in various blocks of the Hangaroa lands. These included Waihau (13,800 acres) in which all the grantees were from Rongowhakaata hapu, and Tauwharetoi (60,680 acres), Whakaongaonga (18,500 acres) and Tuahu (10,820 acres) in which Rongowhakaata hapu comprised some of the grantees. The Crown set about acquiring these lands in the 1870s and completed the acquisitions in the 1880s. By the 1890s the Crown had also acquired some of the remaining parts of these lands which had been reserved at the time of its initial purchases.

The reasons why Rongowhakaata increasingly sold land from the late 1870s have already been addressed in Chapters 1 and 2. Suffice to say here that, by the late 1870s, Rongowhakaata were struggling with both a deterioration in their socio-economic position and an increasing pressure on their collective leadership and traditional systems of control. By the late 1870s, both the unity of Rongowhakaata as a collective and its continued control over the process of alienation were finally breaking down. This was caused by increasing need combined with the Crown's refusal to allow for the continuation of tribal control. The break down occurred despite the many attempts that were made during the 1870s to maintain collectivity and withstand the pressure of Crown and private purchase agents. Individuals were in turn rendered increasingly vulnerable to the offers of Crown agents, and particularly to the methods employed by those agents in acquiring land.

As with private purchases, it was common practice for Crown agents to target and make advance payments to select individuals in order to obtain an initial foothold in the land. Added pressure was thereby placed on any dissenting owners to accept payments, with the result that little regard was often paid to the entitlement of the recipients to the land. In a number of instances securing a lease agreement was often also the first step towards

the eventual acquisition of the land. Included within the leases were inalienation clauses, prohibiting the owners from selling or otherwise dealing with private purchasers. The practice effectively protected the Crown from competition from private purchasers while at the same time enabling it to complete the purchase as the opportunity and appropriate terms arose.

Under the new legislation introduced in 1877 application could then be made to the Native Land Court to have the Crown's interest in any block declared. The Crown was thereby able to successively acquire land without obtaining the consent of all owners. The partitions that resulted only further disrupted the communal system of ownership and in turn laid the basis for the acquisition of remaining interests. Indeed the process as a whole had little to do with collective decision-making. On the contrary, and as with private purchases, it deliberately elevated the rights and interests of the individual over the community in order to enable individuals to sell what they wanted (and when) at the expense of communal authority and the community interest. Once the process got under way it fed upon itself, fuelling the destabilisation of the collective and thereby rendering it only more vulnerable to ongoing attempts of purchasers to acquire interests in the land. In short, the confluence of aggressive purchase methods with the growing disruption being caused to Rongowhakaata's communal ownership, leadership and very cohesiveness that resulted in the acquisitions which followed.

The purpose of this chapter is to examine the Crown purchases made in the period to 1900 with particular reference to the Crown's methods of purchase and its motivation in pursuing such acquisitions. What that analysis reveals is that the Crown paid little if any regard to its responsibility to protect Rongowhakaata's interests in pursuing such a programme of purchase. There were no checks made as to whether the sales were consistent with equity and good conscience. Little consideration was given to ensuring that the purchases were not detrimental to the interests or future well being of Rongowhakaata. On the contrary, not only did the purchases result in the alienation of a further 14 per cent of Rongowhakaata's tribal estate but they acted to further – along with

the acquisition of land by private individuals – the process of individualisation that began with the confiscation.

### ***3.1. Methods of Crown purchase Agents***

In the 1870s Native Minister McLean claimed that Maori received a better deal from the Crown than from private purchasers, especially in terms of process. In an 1873 debate over the Immigration and Public Works Bill McLean stated that:

Difficulties with the Natives were far more likely to be promoted by private individuals being permitted to enter into purchases of Native lands, than by the Government doing so. When the Government purchased land from the Natives, they took upon themselves certain responsibilities in regard to the peaceful settlement of the land acquired, which they always endeavoured to carry out faithfully, with the view of averting hostilities between the two races...<sup>272</sup>

Likewise in 1876 McLean argued that ‘Government purchases are regarded with more favor by the natives on account of the thorough & entire publicity which always attends the negotiations’.<sup>273</sup> This section examines whether in fact Rongowhakaata received a better deal from the Crown by measuring the methods of Crown purchasers against the statements of McLean.

The Crown agents and officials involved in the purchase of the Hangarua lands included District Officer Samuel Locke who was based in Napier. Richard D Maney, as farmer and land speculator, was commissioned by the Crown to purchase the Hangarua lands between 1874 and 1877. The Crown bought out his individual and undefined interests in the Hangarua lands including leaseholds. Josiah P Hamlin (Maney’s former solicitor) was the Crown’s Land Purchase officer responsible for the Hangarua lands between 1875 and 1877. Charles Ferris was also involved in the negotiations for Whakaongaonga. Ferris was an interpreter and had negotiated on behalf of Te Aitanga-a-Mahaki in respect of various purchases. Captain Thomas William Porter, who was the military adjutant and

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<sup>272</sup> NZPD, Vol 15, pp. 1241-1242, cited in Rose, ‘1873 – 1890’, p41

<sup>273</sup> *McLean Papers* MS-Copy-Micro-0535-13, Folder 37b cited in Rose, ‘1873 – 1890’, p44

Native Officer based at Gisborne, took over from Hamlin and Maney in 1877 completing the Hangaroa purchases in 1880. Crown Purchase Officers John Brooking and W J Wheeler were involved with the purchase of the Hangaroa reserves in the 1890s.

It is notable that Maney, Hamlin and Porter, while not on service to the Crown, were involved in purchasing lands within their district. It is likewise notable that Porter's wife, Herewaka Poata, sold various interests in the Hangaroa lands to private parties and the Crown. Petera Honatapu and his son, Pera Tamahikawa, had dealings with Porter, who with his business partner A W Croft, ran a land agency specialising in transactions for Native lands.<sup>274</sup>

### **3.1.1. Commission Agent Maney**

Before December 1877 private individuals who were paid on commission by the Crown often issued prepayments or advances. The introduction of a commission system indicated that 'the main thrust of Native Department policy was to encourage agents to purchase the most land for the least money and to reward them for such'<sup>275</sup>. Payment by commission automatically gave agents a greater incentive to focus on purchasing as much land as possible at the expense of ensuring that the land was suitable for settlement or that adequate reserves were set aside. As Geiringer argues, 'payment on commission was surely a clear signal to Crown agents to purchase as much land as possible, regardless of the needs either of the vendors or the Crown.'<sup>276</sup>

Maney was a logical choice already owning interests in both the Turanga and Wairoa districts namely the Ruakituri, Taramarama, and Hangaroa lands. Maney claimed that the principal owners of the Hangaroa lands totalling 185,000 acres were 'Rongowhakaata, Ngati Kahungunu, Ngati Kohatu and Tuhoe or Urewera'. (Maney said that the iwi and hapu principally interested in the Wairoa lands totalling 157,000 acres were Ngati Kahungunu and Urewera.)

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<sup>274</sup> Porter & Croft to Messrs Parnell and Boylan, 26 June 1882 and Porter & Croft to Messrs Parnell and Boylan, 24 June 1882, AD 103/18, p199, 203

<sup>275</sup> Geiringer, 'Historical Background', p61

Maney was also, unlike other private purchasers at Turanga, willing to cooperate with the Crown. In 1874 he wrote to Native Minister McLean outlining the conditions under which he would act as an agent for the Crown including his commission fee:

In reference to my disposal of my rights and interest in the Wairoa lands now leased by me from the natives. I am willing to do so upon the following terms, viz:

That the Government pay me at once the advances which I have made to the natives viz. Three Thousand Pounds, and when the lands are purchased from the natives, comprising (inclusive of those now held by me) about 350,000 acres, that I be paid for my improvements and good will at a fair price, to be assessed by two arbitrators one to be nominated by the Government and the other by myself.

In consideration of the terms being accepted, I undertake to facilitate the acquisition of these lands by the Government, and to do all that I can to attain this object. The sum of three thousands pounds to be a Matter of account between myself and the Government during negotiations pending between myself and the Natives.<sup>277</sup>

Maney had obtained his private interests through advances and leasing. Advances had been issued for undefined and uninvestigated interests with Maney stating that the ‘sum advanced could, fairly, be divided over the four blocks’. He added that application had been made to the Native Land Court for title to be investigated.<sup>278</sup> Under the agreement made with the Government on 18 November 1874, which confirmed Maney’s terms and conditions, the Crown agreed to refund Maney £3000 for his advances and forwarded the payment two days later.<sup>279</sup>

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<sup>276</sup> Geiringer, ‘Historical Background’, p61

<sup>277</sup> R D Maney, Napier to Native Minister Sir Donald McLean, 14 November 1874, MA-MLP 1 1881/373, DB 276–282

<sup>278</sup> ‘Articles of Agreement’ signed by Richard D Maney of Omahu, (sheepfarmer) and J D Ormond, Resident Magistrate on behalf of the Government, Napier, 18 November 1874, MA-MLP 1 1881/373, DB 270–275

<sup>279</sup> Treasury voucher No. 31799, 20 November 1874, MA-MLP 1 1881/373, DB 259

In addition Maney was already leasing Waihau. He had obtained a legal leasehold for 21 years from 2 May 1874 at £200 per annum.<sup>280</sup> Maney agreed to transfer his leasehold to the Crown provided the government pay for any improvements that he had effected and that he was allowed to keep his sheep on the Government lands for two years if they were not required for settlement.<sup>281</sup> Maney officially transferred his Waihau leasehold to the Crown on 20 June 1877 after a new Crown grant had been issued according to the amended award of the Poverty Bay Commission.

Maney set about earning his commission. A year later he produced three statements of 22 and 24 November 1875 signed by rangatira and iwi representatives such as Rakiroa, Rewi Tipuna, Karena Taniwha, Ripera Ngete, Te Ohuka, Hipoia Niania, Tamateariki, Maaka Topia, Tamihana Huata, Nikora Kiripaura and Areta Apatu. The signatories agreed to £1500 being a ‘first charge out of the proceeds of the sale’ of their blocks including Tauwharetoi, Whakaongaonga, Hangora-Matawai and Tuahu.<sup>282</sup> The statements signaled the start of direct Crown purchasing of interests in the Hangaroa lands. On the same day that two of the letters were signed, Karena Taniwha received an advance from Crown Purchase Officer Josiah P Hamlin of £300 as ‘a first payment on account of the purchase of Waihau block ... included in the agreement between Mr Maney and the Government.’<sup>283</sup>

In January 1876 Maney received a total of £2000 in ‘commission for assistance’ and in ‘consideration of the interests’ in various blocks under the agreement of 18 November 1874.<sup>284</sup> Of this sum, £623 5s 9d was paid as an advance on commission for the Hangaroa lands including Waihau ‘for the purpose of enabling natives to bring their claims before the Native Land Court [at] Poverty Bay’.<sup>285</sup>

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<sup>280</sup> ‘Articles of Agreement’ signed by Richard D Maney of Omahu, (sheepfarmer) and J D Ormond, Resident Magistrate on behalf of the Government, Napier, 18 November 1874, MA-MLP 1 1881/373

<sup>281</sup> ‘Articles of Agreement’ signed by Richard D Maney of Omahu, (sheepfarmer) and J D Ormond, Resident Magistrate on behalf of the Government, Napier, 18 November 1874, MA-MLP 1 1881/373

<sup>282</sup> Statement of Rakiroa and 12 others, witnessed by James Carroll, Wairoa, 22 November 1875 and Statements of Tamihana Huata and 5 others, Wairoa, and Tamihana and 29 others, 24 November 1875, MA-MLP 1 1881/373, DB 265–269

<sup>283</sup> Treasury Voucher 39812, 24 November 1875, MA 13/23, DB 488–490

<sup>284</sup> Treasury voucher No. 36509, 6 January 1876 and 11 January 1876, MA-MLP 1 1881/373, DB 258, 257

<sup>285</sup> Treasury voucher No. ?, 11 January 1876, MA-MLP 1 1881/373, DB 257

Significantly (and unlike fellow Crown commission agent James Wilson<sup>286</sup>) Maney's commission had a *maximum* ceiling of £6000, which he received in instalments as his contract was fulfilled. This equated to approximately 2 shillings per acre (£6000 for 342,120 acres) and militated against Maney acquiring any more land than what he originally agreed. Indeed the evidence suggests that Maney might have regretted this limit because he claimed that he actually lost money on the deal. On 27 October 1876 District Officer Locke advised the Native Minister that 'the final purchase of the land' had been 'much delayed' by the title investigation being put off till February 1877 and that in the meantime. 'Mr Maney and the Maories are put to great loss and expense through the delay'.<sup>287</sup> Maney asked that the balance of £1000 due to him be paid because of the great time and expense he had imparted in obtaining the lands on behalf of the Government:

As you are aware, the Native owners have agreed to sell the above lands [Tauwharetoi, Tuahu, Whakaongaonga, Waimata and Papuni] and have received large advances from myself and no opposition has been experienced in the matter.

I would observe, that I have devoted nearly all my time and a large amount of capital during the last twelve months for the purpose of acquiring the lands for the Government, and that as I have more than fulfilled my agreement and been so successful that I be paid my balance due... My commission of one penny per acre to stand over until the final completion.<sup>288</sup>

Maney was paid a further £500 in November 1876.<sup>289</sup> Six months later, Maney claimed that he had done all that was possible about the purchase of the lands and the rest was up to the Crown's own officer.

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<sup>286</sup> Wilson (appointed on 5 December 1873), who negotiated in both the Bay of Plenty and Poverty Bay regions received a daily allowance of £2 2s, the costs of passages by sea between the two areas and a commission of £1 for every acre leased and £2 for every acre purchased on behalf of the Crown, Rose, '1873 – 1890', p48

<sup>287</sup> District Officer Samuel Locke, Napier to Native Minister, 27 October 1876, MA-MLP 1 1881/373, DB 260–261

<sup>288</sup> R D Maney, Napier to District Officer S Locke, 20 October 1876, MA-MLP 1 1881/373, DB 262

<sup>289</sup> Minute of J D Ormond, [?] November 1876, on ND 76/5269, MA-MLP 1 1881/373, DB 256

As a result of the Native Land Court delays Maney had accrued a debt of £500 with Wellington businessman Mr Levy, to whom he requested the Native Land Purchase Department forward his last instalment. Indeed Maney claimed that he had probably lost money on the deal because of the ‘cash advances and large goods’ that he had supplied to owners, ‘a considerable part of which’ he did not expect to recover. Maney made this point to show that the ‘understanding’ had been ‘a very unprofitable one’ for him.<sup>290</sup> Hamlin and Porter took over from Maney in 1877.

The Crown acknowledged the inherent difficulties in the commission system by abolishing it under section 6 of that Government Native Land Purchase Act, which was effective from December 1877.

### *Debt*

As with private purchasers, Crown agents utilised the vulnerable economic and social position that Rongowhakaata were in by the late 1870s. One example is Crown Resident Magistrate Gudgeon’s exhortation in January 1879 for the government to take advantage of the economic hardship caused by the failure of crops in the Turanganui region (as reported by Gisborne resident and Land agent Porter) to complete its land purchases:

I have the honor to enclose letter from Captain Porter late land purchase officer on this coast. I would suggest that the Government favorably entertain his offer as I am convinced there would be no difficulty in completing most of these negotiations that have been entered into as the Maoris are in want of money consequent on the total failure of their crops.<sup>291</sup>

Taking advantage of such hardship had an additional spin off in furthering the process of wearing down existing collective resistance to land sales with Gudgeon adding:

I would also point out that the completion of these Deeds would have a *tendency to break up the already strong land league* in this Bay who are determined to stop all sales in the future and who will if not thwarted most certainly cause trouble.<sup>292</sup> [*emphasis added*]

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<sup>290</sup> R D Maney, Napier to District Officer S Locke, 24 June 1877, MA-MLP 1 1881/373, DB 254

<sup>291</sup> W S Gudgeon, Resident Magistrate to Native Under Secretary, 17 January 1879, AD 103/9, pp431–432

Such hardship continued with Gudgeon reporting in May 1879 that the ‘Wairoa and Poverty Bay tribes compare favourably with their northern neighbours in the matter of sobriety, but to what extent *the scarcity of money* may affect them, I find it difficult to say.’<sup>293</sup>

An indication that the sellers of the Hangaroa lands were under financial stress was their reported difficulty with the delay in the title investigations which in turn deferred when they would receive the balance of money owed by the Crown for the lands. On 27 October 1876, District Officer Locke advised the Native Minister that ‘the final purchase of the [Hangaroa] lands’ had been ‘much delayed’ by the title investigation being put off till February 1877 and that in the meantime, ‘Mr Maney and the Maories are put to great loss and expense through the delay’.<sup>294</sup>

Crown agents took advantage of such economic and social vulnerability through payment procedures such as advances and incremental payments, purchasing clauses, and other methods to acquire land.

### *Payment procedures*

#### **3.1.2. Advances**

In competition with private parties, Crown agents advanced money on land prior to title adjudication. The practice of prepayment ‘opened up a massive potential to prejudice the rights of Maori vendors and made a mockery of the very safeguards which the Crown had itself initiated through the Land Court system.’<sup>295</sup> Rongowhakaata rangatira Paora Kate abhorred the practice of advances by Crown agents. He stated in 1876 that:

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<sup>292</sup> W S Gudgeon, Resident Magistrate to Native Under Secretary, 17 January 1879, AD 103/9, pp431–432

<sup>293</sup> W S Gudgeon, Resident Magistrate to Native Under Secretary, 21 May 1879, AD 103/9, pp617–628

<sup>294</sup> District Officer Samuel Locke, Napier to Native Minister, 27 October 1876, MA-MLP 1 1881/373, DB 260–261

<sup>295</sup> Geiringer, ‘Historical Background’, p42

if any Government officer dare to offer money as an advance for the purchase of any block of land, befor[e] the whole of the people shall have agreed to sell such block of land. Let such case be cast into the seal of silence to be lost forever, and who shall regret such an act.<sup>296</sup>

This practice successfully played upon the vulnerable economic and social position of Rongowhakaata in respect of the Hangaroa lands, in which the repayment of debt was a primary motive behind selling. This is indicated in Maaka Topia's letter of January 1878, which mentioned his brother Rakiroa, 'I am informing you I have sold one piece of land. Tuahu by name to pay for Rakiroa's debts.'<sup>297</sup>

That debt was a factor in the sale of lands to the Crown was also indicated in Rapata Whakapuhia's letter to Ormond over the sale of Tauwharetoi:

We have suffered at the hands of the Ngatikohatu and Ngatikahunganga on consequence of the debts owing by them, the greater part of the money received for the Tauwharetoi block being retained by them, very little coming to us.<sup>298</sup>

Advances to selected individuals were extremely effective in exploiting existing divisions, to which the Crown's inconsistent treatment of "loyalist" and "rebel" Rongowhakaata in the aftermath of the East Coast wars had largely contributed.

The Crown exploited the intra and inter hapu tensions as revealed in letters of 1874 from people such as Rewi Tipuna and Mere Karaka and others, who were based at Turanga. They were (according to Porter) willing to sell their interests in the Hangaroa blocks to the Crown but were 'rather jealous of Ngatikohatu having taken the initiative in offering.'<sup>299</sup> Such tensions were also evidenced in the tussle amongst Turanga and Wairoa

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<sup>296</sup> *Te Wananga*, 13 and 20 July 1876, cited in Rose, *DB Volume 9*, pp5957–59

<sup>297</sup> Maaka Topia, Whakato to Native Minister Sheehan, 7 January 1878, MA-MLP 1 1902/12, DB 1049

<sup>298</sup> Rapata Whakapuhia et al to Ormond, Napier, 28 April 1877, MA-MLP 1 1902/12, in P Berghan, 'Block Research Narratives of the Wairoa, Rangahaua Whanui District 11C 1865 – 1930, A Resource Document for Wairoa District Treaty Issues', Supporting Papers, Vol.11, p.5113

<sup>299</sup> Rewi Tipuna, Turanga to Kawanatanga, Poneke, 27 Hune 1874, Mere Karaka and 25 others to Kapene Poata, 15 Hune 1874, Porter, Gisborne to Native Under Secretary, 14 July 1874, MA-MLP 1 1902/12, DB 1056–1060

hapu over where the hearing for the Hangaroa lands would be held, as described by Judge Rogan in response to an application for a rehearing:

The blocks were first advertised to be heard at the Wairoa and the maps were nothing more than mere Maori sketches. I refused to investigate the title until proper surveys were made as the land was claimed by two tribes ... The Gisborne Natives came forward in Court and argued for the cases to be adj[ourne]d to Gisborne, to be heard the following year; the Turanga Natives undertaking to provide food, which they did.

The Wairoa Chiefs repeatedly urged the Gov[ernment] to adjourn the hearing back again to Wairoa and the questions occupied the parties for 12 months at last the Wairoa people had to give way. Even Chiefs from Uriwera [sic] attended this Court and it is nonsense for any Native in that part of the country to say he did not know about the sitting. It was attended by one of the largest gatherings of Natives in Gisborne.<sup>300</sup>

The continuing tension between those tagged as ‘loyalist’ and ‘hauhau’ was seen in the request by Tamihana Huata, Hapimana Tinapawa [?], Ihakaka Haeata and Kerei te Ota to Locke for the Crown to ‘show kindness’ over the Hangaroa lands which they claimed were being sold by hauhau:

These are the reasons we ask you. At the beginning of the trouble at this place, the Wairoa, we were the only ones that retained the land and upheld the peace. When the Hauhau’s returned, the land was given back to them to live upon, and now they have turned round and are selling it, they never gave the slightest thought of us. Thus it is that we ask for some kind of remuneration [sic] though it were even a sixpence it would be satisfactory.<sup>301</sup>

This request for extra money on top of the purchase price was refused but it indicated the complex nature of land disputes over the Hangaroa lands that had been exacerbated by the activities of Crown agents.

In the case of Whakaongaonga the Crown played upon the divisions between hapu and individuals, which its own actions had created. This is implied by Whakapuhia’s above

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<sup>300</sup> Rogan memorandum, 1 October 1878, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5180

comment that his hapu had ‘suffered at the hands’ of other hapu because the Crown agents had paid more money to the latter.<sup>302</sup>

The acceptance of pre-payments by individuals presented other owners not subject to the initial negotiations with a virtual *fait accompli* forcing the latter to either sell their interests as well or obtain an expensive subdivision. Whakapuhia’s comments in June 1877 clearly expressed how advances to individual owners were made at the expense of the hapu community. Whakapuhia sent an open letter to *Te Wananga*:

We also wish to inform you about the Whakaongaonga block of land, which the Government officers wish us to sell to them also. But we the sole tribes who own it do not agree to sell it. There were three Europeans who have been to [see us] – the Government are one, one came from Napier, and Mr Maney was one. Petera and Hape went to him that he might purchase the land. But they two have not any real claim in the land, as I, Rapata, am the person through whom they have any claim to that land. They have also gone to Napier to try and sell that land but we do not agree with their desire (to sell) as there is not any other land on which we and our offspring can live but that land only.

The Government officer who has come to ask us to sell that land is called Charles Ferris, but we did not agree to sell it to him, as we have not been dealt with by the Government in a way that we expected, in the Tauwharetoi block, yet they still come to us to purchase these blocks also. This (their again asking to purchase our land) may be, that we are again to be the losers as we sold these blocks already gone for next to nothing per acre.

We are the sub tribes who are the real owners of this land called Whakaongaonga, as we are the descendants of Hikakai Mokopuna, also of Turi. ... But I am the senior claimant, and Petera and Rakiroa Hape claim through me. But Rakiroa may perhaps be the owner through whom Hape has a claim. But I cannot write all (the history of these claims). But the committee of *Te Wananga*, and the Maori Member for the Eastern Maori Electoral District, and Mr. Sheehan, Solicitor can give the above to the Editor of *Te Wananga* so that it may be published. ...

Let this be printed at once in Maori and English language so that all may see it in these islands.<sup>303</sup>

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<sup>301</sup> Tamihana Huata, Hapimana Tinapawa [?], Ihakaka Haeata and Kerei te Ota to Locke, 4 December 1877, MA-MLP 1 1902/12, DB 1041–1043

<sup>302</sup> Rapata Whakapuhia et al to Ormond, Napier, 28 April 1877, MA-MLP 1 1902/12, in Berghan, Supporting Papers, Vol.11, p.5113

The legislature supported Crown prepayments for Maori land. Unlike advances from private parties, which under section 75 of the Native Lands Act 1865 were declared to be “absolutely void” (but not illegal), Crown advances on lands prior to Court adjudication had legal recognition under Section 42 of the Immigration and Public Works Amendment Act 1871. A major advantage for Crown agents was that the 1871 Act excluded private interests from dealing with the land for up to two years following the announcement of Crown negotiations in the *New Zealand Gazette*. As Rose notes, although this provision was restricted in theory to lands being purchased for the purpose of gold mining, special settlements or railway construction it was in fact commonly employed by the Crown to legally advance payments on land.<sup>304</sup>

The definition of “special settlements” was sufficiently vague to enable its application in a wide number of circumstances including the Crown purchase of the Hangaroa blocks. The Waste Lands Board did set apart 5000 acres of Whakaongaonga block for development under the Homestead system. It was, however, unsuccessful because of the unsuitability of the land for close settlement.<sup>305</sup>

In the case of the Hangaroa blocks the imposition of section 42 of the Immigration and Public Works Act effectively negated competition from private parties. Section 42 was imposed before title investigations for all but one block. The exception was Rongowhakaata block Waihau (13,800 acres) which had been investigated by the Poverty Bay Commission in 1873. In March 1876 Under Secretary for Native Lands Clarke ordered that Waihau and the other ‘Hangaroa blocks’ be proclaimed under section 42.<sup>306</sup>

The proclamation enabled the Crown to continue negotiating for the Hangaroa blocks without worrying about competition from other buyers giving it time to continue issuing advances while arranging for surveys and title investigations for Tauwharetoi,

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<sup>303</sup> Rapata Wakapuhia to *Te Wananga*, 9 June 1877, cited in Rose, *DB Volume 9*, pp5970–5971

<sup>304</sup> Rose, ‘1873 – 1890’, p42

<sup>305</sup> Murton. ‘Settlement in Poverty Bay’, p127

Whakaongaonga, Tuahu and Waihau. Upon obtaining the lease of Waihau from Maney, the Crown found that, like many Turanga blocks, there were problems with the title even though the block had already been adjudicated upon by the Poverty Bay Commission in November 1873. A Crown Grant for Waihau had still not been issued or the lease registered by the time of the transfer because ‘the map was incomplete’.<sup>307</sup>

The legislature supported Crown pre-payments of Maori land again through an amendment to the Native Land Act in 1877. Section 6 enabled the Native Minister to apply to the Native Land Court to have individual interests in a block determined and vested in the Crown. In effect the Crown no longer had to secure a unanimous agreement from all the owners before it could complete a purchase. It could legally obtain title to the portion of the land it was assessed to have purchased and enforce a subdivision.

Another Act in the same year extended the Crown position in respect of competition from private parties. Section 2 of the Government Native Land Purchases Act 1877 (effective from 1 December 1877) provided protection of Crown interests in sales under negotiation by preventing other parties legally negotiating for the same land. This Act was introduced by the (allegedly) pro-repudiationist Grey Ministry. As *Te Waka Maori O Niu Tirani* pointed out, Crown monopoly over Maori land purchase was restored:

Again do we see any indications of the Government retiring from the field as land purchasers, and leaving private persons to be the chief operators in the purchase of Native Lands? No; on the contrary, we see an Act brought down by the Native Minister which will give the Government a monopoly of all the Native Lands in the country.<sup>308</sup>

*Te Waka* also pointed to the deficient notification of lands proclaimed under the Act. The schedule of proclaimed lands was not even made available in Maori:

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<sup>306</sup> H T Clarke, Wellington to Samuel Locke, Gisborne, 18 March 1876, MA 13/23, DB 491 and Gazette Notice No. 9 of 24 January 1877[?] and P Sheridan to H T Clarke, 18 March 1876, MA 13/23, DB 493

<sup>307</sup> Locke, Napier to Native Under Secretary, 17 February 1876, DB 494 and Memo of H A H Munro, 19 December 1876, MA 13/23, DB 464

<sup>308</sup> *Te Waka Maori O Niu Tirani*, 28 December 1878

And this can, and has been, done without the knowledge of the real owners of the land; for we find that such notifications have not been published in the Maori language, although Mr. Sheehan talks about the Government policy of a face-to-face policy, that they would do nothing in secret, and that everything was to be open to the light of day.<sup>309</sup>

It seemed that in Turanganui, Crown pre-emption was restored for its own interests i.e. so that it could negate competition from private purchasers and acquire the land itself. It does not appear that pre-emption was introduced out of concern over the impact of private purchasers on the land holdings of Rongowhakaata. As David Williams has commented:

Given the nature of Crown purchasing policies, it is evident that the use of Crown pre-emption in the post –1870 period was not intended as a protection of Maori interests. Rather, pre-emption was used as a protection of Crown interests in purchasing, vis-à-vis private purchasers in competition for some of the more fertile land blocks.<sup>310</sup>

The effect of such legislation and its complementary nature in respect of advances is seen in Crown attempts to force Maaka Topia, who had received advances, to sign a deed of sale for his interests in the Hangaroa lands. The Crown, annoyed with Topia's demands for more money before signing, pointed out that it had implemented legislation to prevent people such as himself from being able to negotiate with other parties. Native Under Secretary Clarke instructed officials on the reply to Topia:

Write to Maaka Topia. Say that the Chief Judge of the Native Land Court has forwarded their letter here. That the Government are very sorry to hear this the very parties making this charge have received money from the Government Agent who explained all amounts of expense that have been advanced and this they were satisfied. But when called upon to sign the Deed they refused unless they got more money than was agreed upon. *Tell them that the Government will hold them to their bargain and having taken steps to prevent any one else stepping in by "panuing" the block in the Government Gazette.*<sup>311</sup> [emphasis added]

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<sup>309</sup> *Te Waka Maori O Niu Tirani*, 28 December 1878

<sup>310</sup> David Williams, 'Te Kooti Tango Whenua', *The Native Land Court 1864 – 1909*, Wellington, 1999, p219

By making prepayments Crown agents thus effectively bound Maori to sell before they had established either who actually owned the land, or what the land was worth, or even the boundaries or size of the land in question.<sup>312</sup> Indeed in 1878 *Te Waka* also highlighted the unfairness of Crown advances to individuals pointing out that one lone transaction tied the hands of other owners, who automatically lost control over the alienation of their land:

By advancing a sum of money, however small, to any worthless fellow who may put forward a claim to a block of land, the Government may publish a notice in the Gazette, that they are in negotiation for such land, the effect of which notification shall, so says the Act, as against all persons other than the aboriginal owners of such land, be equivalent to a notice that the Native title over the said land has been extinguished—thus effectually preventing the rightful owners from leasing or dealing with their own property as they may think fit.<sup>313</sup>

This is typified in the case of the Hangaroa lands. By the time Maori had signed valid deeds of sale, they had received substantial down payments. For example an advance for Waihau was first issued in November 1875 but a valid deed was not signed until June 1877. For Tauwharetoi £3000 out of the £7000 total price had already been advanced before the title investigation.<sup>314</sup> In all cases (except Waihau) initial negotiation and payment took place both before the Crown surveyed the land and before the Native Land Court had adjudicated ownership of the blocks.

As Geiringer argues, the practice of making payments prior to adjudication of title also undermined the validity of the Native Land Court system, which the Crown had established in order to ascertain and define ownership rights to customary Maori land.<sup>315</sup> The evidence suggests that Maney, Hamlin and Porter were not too concerned with initiating a process to establish the rightful owners of the land. Their main concern being that people to whom they had advanced money were among the grantees. They often relied on leading sellers such as Petera Honotapu to arrange who was to go on Memorials

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<sup>311</sup> Minute of Native Under Secretary Henry Tacy Clarke, ? December 1877, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5219

<sup>312</sup> Geiringer, 'Historical Background', p43

<sup>313</sup> *Te Waka Maori O Niu Tirani*, 28 December 1878

<sup>314</sup> Locke, Napier to Native Under Secretary Gill, 13 March 1877, MA-MLP 1 1902/12, cited in Berghan.

<sup>315</sup> Geiringer, 'Historical Background', pp44–45

of Ownership such as in the case of Tauwharetoi.<sup>316</sup> This led to rightful owners missing out while others who did not have rights were included. For example Hoani Matiaha applied for a rehearing for Tauwharetoi, Whakaongaonga and Hangaroa Matawai because he had missed out on being included in the judgment.<sup>317</sup>

Maaka Topia protested at the inclusion of individuals in ownership lists who had no rights to the land. He claimed that such individuals were included because Crown agents had issued them with advances and so it was necessary for them to be legalised as grantees.<sup>318</sup> Rapata Whakapuhia protested at Crown recognition of Petera Honotapa and Hape's right to sell Whakaongaonga in which he claimed they held little or no interest, 'But they two have not any real claim in the land, as I, Rapata, am the person through whom they have any claim to that land.'

The lack of proper consultation with all owners was also shown in later objections to the sale of various Hangaroa blocks. According to Maney there had been no opposition to him issuing advances. In November 1875 he had obtained written acknowledgement from vendors that they had received advances for the Hangaroa lands.<sup>319</sup> In October 1876 he advised District Officer Locke that:

As you are aware, the Native owners have agreed to sell the above lands [Tauwharetoi, Tuahu, Whakaongaonga, Waimata and Papuni] and have received large advances from myself and *no opposition has been experienced in the matter.*<sup>320</sup> [emphasis added]

These vendors, though, were those mainly based at Wairoa and did not necessarily represent hapu who were based at Turanga. This is indicated in Rapata Whakapuhia's letter printed in *Te Wananga* in April 1877. This letter provides an indication of the

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<sup>316</sup> Gisborne Minute Book 3, 2 February 1877, DB 2

<sup>317</sup> Hoani Matiaha, Turanganui to Chief Judge Fenton, 12 July 1877, Tauwharetoi Block Order File 1042, DB 74–75

<sup>318</sup> Minutes of Porter's meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>319</sup> Statement of Rakiroa and 12 others, witnessed by James Carroll, Wairoa, 22 November 1875 and Statements of Tamihana Huata and 5 others, Wairoa, and Tamihana and 29 others, 24 November 1875, MA-MLP 1 1881/373, DB 265–269

<sup>320</sup> R D Maney, Napier to District Officer S Locke, 20 October 1876, MA-MLP 1 1881/373, DB 262

extent that Whakapuhia and his people did not want to sell Whakaongaonga to the Crown. Whakapuhia was clearly amazed that the Crown was still chasing them to sell Whakaongaonga after their bad experience with Tauwharetoi. Whakapuhia writing from Oweta on behalf of his hapu Ngai Tane and Ngai Turi said:

This is to inform you how we are intimidated by the action taken by the Government officers. We, in this instance, wish to speak of the block of land called Tauwharetoi, which has been bought (by the Government) but not paid for per acre, but it was paid for regardless of quantity, and was bought as in the days of old like the purchase made by Colonel Wakefield at Wellington, and like Captain Symonds at Auckland, and like the purchases made by the Land Purchase Commission all over there [sic] two islands.

When we asked to be paid for (our land) the purchasers rose up and, even like , they flashed red with rage. We were very importunate to have our land (paid for by the acre), but they (the land purchasers) put the monoy [sic] payment in a lump sum, that was £5000, and after we had talked and waited for one month £1000 more cash was added to the £5000, which made £6000 for 66,660 acres of land, but out of this land there were 4000 acres reserved for the (Maori) children, so that we received the sum of £6000 for 62,660 acres of land. The officers who purchased this block were Mr. Locke and Mr. Hamlin, and these are the officers who intimidated us, hence we say the name given to the Government by the Wananga is true, viz., the bungling purchasers. But we say they ought to be called the intimidating purchasers.

Maaka Topia also outlined the blocks he was prepared to sell and those he was not. In January 1878 he wrote to Native Minister Sheehan stating that:

I am informing you I have sold one piece of land. Tuahu by name to pay for Rakiroa's debts. If you hear I have sold Tauwharetoi or Whakaongaonga; that talk is murder have nothing to do with it. Myself and friends will not sell those blocks. They are to be for us and our children.<sup>321</sup>

The persistent opposition of “dissentient” owners to Government purchases saw Porter report that ‘I find that the opposition to Govt. [sic] purchases is greater than ever.’<sup>322</sup> No doubt Porter's comment was based on the continuing objections of rangatira such as Maaka Topia. For example in April 1878 in response to Native Under Secretary Clarke's

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<sup>321</sup> Maaka Topia, Whakato to Native Minister Sheehan, 7 January 1878, MA-MLP 1 1902/12, DB 1049

<sup>322</sup> Porter to Native Under Secretary, 21 February 1878, AD 103/8, p456

reply insisting that as Topia had received advances for the Hangaroa lands he must sign the deed of cession, Topia pointed out that he had agreed to sell Tauwharetoi but not necessarily his other lands.

With respect to my words to you. These actions are oppressive, you have not seen me face to face. We have agreed that Tuawharetoi shall be sold, know, that Tauwharetoi is my property as well as Whakaongaonga and Hangaroa Matawai and other lands.<sup>323</sup>

Topia reiterated his opposition to the sale of all the Hangaroa blocks at a meeting with owners unwilling to sell. Porter had arranged this meeting in a last ditch attempt to solve the impasse and obtain the rest of the signatures necessary for the lands to pass to the Crown. (The amount required to complete the purchases was £1426 6s 8s as at July 1879.)<sup>324</sup> Porter telegraphed Gill on 5 January 1880 to advise:

Returned last night from half way to Reinga on finding Ngatikohata had come to Poverty [Bay] grass cutting. I visited Maako Topia's camp and have called a meeting at Kaiparo tonight at which Wi Pere will attend. I am not hopeful of a settlement, as Maaka seemed very stubborn on Wednesday. I will leave by steamer for Wairoa via Napier and shall personally see every grantee unsigned so as to finally report.<sup>325</sup>

The only insight into this meeting is Porter's own record. According to Porter, he first addressed the meeting stating that the Tauwharetoi, Tuahu, Hangaroa-Matawai and Whakaongaonga blocks had been under purchase by the Government for a long time but that the deeds were still incomplete. Porter explained that he did not know the cause of the delay and had been directed by the Government to find out. He outlined how the Crown had the power to request the Native Land Court to define the interests that it had purchased to date and to set aside the interests of those who had not sold:

If the decision is not to sell, an application will be made to [the] Native Land Court to define the interests acquired by the Crown in these blocks which will be cut out. I intend this matter to be definitely settled tonight. Maaka Topia who is the principal objector is present, I desire him now

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<sup>323</sup> Maaka Topia to Clarke, 30 April 1878, MA-MLP 1 1902/12, cited in Berghan.

<sup>324</sup> 'Monies required to complete purchase of Inland Wairoa Blocks', MA-MLP 1 1902/12, DB 1007–1015

<sup>325</sup> Porter to Gill, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5095

to state his views and we will try to propose an arrangement whereby the purchase of these blocks can be closed.<sup>326</sup>

A list of unsigned grantees was read out with Porter commenting that ‘some of these are in Napier but as many are here I wish [them] to say what their objection is to the completion of the purchase’. Neta Hekeheke spoke first highlighting her fear for that the younger generation was being disenfranchised from ownership of the land:

I do not wish to sell and never will. At the time that these blocks passed the Court and the tribe sold I stood out and refused to sell. My objection was that the children were struck out of the Grant. I know those that struck them out[.] They went up stairs in the Hotel[.] We went up and tried to get into the room but one of us was struck in the face by Donohue. I afterwards saw them outside the Hotel. I said to them I object to this fraudulent way of dealing, what right have you to strike out our children. I then said on account of what you have done I will never sell to the Government. Some of the children were inserted in reserves set apart for them others were excluded altogether[.] We were deceived by our own head man and also by the Pakehas, and I then determined never to sell.<sup>327</sup>

Topia reminded Porter that he had applied three times for a rehearing and confirmed Hekeheke’s claims about children being struck out. He then outlined his other objections:

my third is that Tauwharetoi is claimed by the descendants of 2 ancestors[.] It was awarded by the Court to the descendants of one. I complained to the Court of this. I am descended from both ancestors my mother from Ngaherehere and my father from Tutaki.

Another cause of objection is when I heard that the people were receiving money from the Government on account of this land. I wrote to Mr Ormond to stop them. Mr Locke wrote to me I have his letter now, saying that it should be as I requested. When the Court sat I heard that Petera had received money. I went to Mr Locke who told me he had given money to Petera and Rakiroa on the conditions that it was to be distributed among the whole tribe. I then showed him his letter. I said to him you take no notice of me now but you will find out that I am a person to be

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<sup>326</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>327</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

considered in this matter. I then reiterated my request that he would give no more money. I am determined never to sell.

With regard to the reserves for the children. The officers of the Government cut 2000 acres out of my portion of the land and put the children in to it excluding some of mine. If another Court is held I will not attend. I applied for a Court but it was not granted. I have the letters I received from Chief Judge Fenton relative hereto. The object of my application was that my portion might be defined and that some who had no claim might be expelled.<sup>328</sup>

Porter and Wi Pere (also eager to resolve the impasse) acknowledged Topia's injustice but focussed on working towards settlement so that the Crown purchase could go ahead. Both men appeared to have seen Topia's demands for recognition and redress as essentially futile in the context of the Crown's greater power. For example Porter stated that:

Maaka ... is a very stubborn man but there is some truth in what he says. I can not find fault with him but would advise him to try and make some arrangement with the Government by which he might be compensated for the injustice of which he complains.<sup>329</sup>

Wi Pere stated:

I quite concur in all that Maaka has said: but I would advise him to come to some settlement of the matter now. If the Court sits and he does not attend a portion will be awarded to him which, do what he will, he will not be able to alter.<sup>330</sup>

Pere recommended that Topia endeavour to settle the matter with the Government as he had himself done over the purchase of Waikohu Matawai where the Crown agreed to return a portion of the block in return for his cooperation. Pere added that if Topia put such a request and that it was refused by the government then Topia could 'fall back upon the Court.' Topia's reply indicated his dissatisfaction with the Crown and the Court:

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<sup>328</sup> Minutes of Porter's meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>329</sup> Minutes of Porter's meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>330</sup> Minutes of Porter's meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

I can not alter my determination. I will not say that the matter will end here as the Government will open the matter to me again. I will not refuse to discuss the matter when asked to do so but I will always say the same thing. I will not let the Court settle it, neither will I say do not speak of it to me again, let the Government adopt its own course.

It seemed that Porter's persistence nearly wore down the resistance of Topia and Hekeheke. Porter said that the day after the Kaiparo meeting Topia and Watikina met with him to 'propose some basis of settlement' but it was cut short because he had to go to Auckland.<sup>331</sup> In the end Topia remained firm in his opposition. His and the interests of other "dissentients" along with some reserves were cut out of the blocks and the remainder granted to the Crown.

These examples indicate the extent that the Crown dealt with individuals at the expense of the community. Crown agents were not interested in facilitating collective decision making, as they were intent on undermining any existing communal authority. This is implied in Native Land Purchase Under Secretary Gill's statement that Porter deserved credit for completing the outstanding Hangaroa purchase *and* 'breaking up the isolation of Hekeheke and Maaka Topia'.<sup>332</sup>

The practice of advances to selected individuals at different times also made it well nigh impossible for anyone to keep track of how much had been paid and when. In February 1877 Petera Honatapu and Rapata Whakapuhia had (unsuccessfully) asked to see the 'deed of lease of Tauwharetoi and accounts of all moneys paid on that land'.<sup>333</sup> In the same month Maaka Topia advised Chief Judge Fenton of his dissatisfaction with the failure of Crown agents to supply him with documentation of how much had been paid, and when, for Tauwharetoi.<sup>334</sup> The lack of sale data created great frustration among owners.

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<sup>331</sup> Porter to Under Secretary, 22 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>332</sup> Gill to Native Minister, 2 February 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5078

<sup>333</sup> Gisborne Minute Book 3, 14 February 1877, DB 565

<sup>334</sup> Maaka Topia and others, Te Reinga to Chief Judge Fenton, 30 [sic] February 1877, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5135

Whakapuhia's, Topia's, and Hekeheke's statements point to confusion amongst and between individuals and hapu as to *which* of the Hangaroa lands were to be purchased by the Crown. Topia's statements imply that as far as he was concerned only Tuahu and Tauwharetoi were being sold. Whakapuhia clearly did not expect Whakaongaonga to be purchased. Such confusion was created by Crown purchase agents seemingly treating the lands as one whole block in terms of negotiations and also focusing on those individuals such as Petera Honotapu who appeared willing to sell all the lands.

The nature of the advance system combined with individualisation saw even Crown agents, such as Hamlin, struggling to keep track of what had been paid and to whom. Hamlin had to employ the services of an accountant in order to sort out payments and this still was not enough. Hamlin and Locke's response to Head Office queries over the hiring of an accountant highlighted the virtually insuperable complexities that arose out of pre-payment to individuals for undefined shares. Hamlin forwarded a memorandum to Locke outlining his reasons for hiring the accountant:

There is this to be said the complications in the accounts arose through no fault of mine. Advances were made by officers of the Native Department with I presume the sanction of the Native Minister which I had to take over and it was owing to that, in a great measure that I was forced to ask for assistance. You know very well how difficult it is to negotiate with natives and at the same time unravel a difficult state of accounts.<sup>335</sup>

Locke in turn supported Hamlin's assertions that the 'claims in these Hangaroa blocks were in a most complicated state'. This situation arose:

through the number of grantees admitted, the large amount of advances that had been made before the land passed the Court and through the very onerous position the land purchase officer is left in through the Court not in any way defining the extent of the several interests of the grantees ...<sup>336</sup>

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<sup>335</sup> Hamlin to Locke, ? December 1877, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5219

<sup>336</sup> Memorandum from Locke, Napier, 26 December 1877, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5225

Upon completion of the purchase three years later, Gill found that he could not follow Hamlin's accounts:

The payments made by Mr Hamlin on the Tauwharetoi, Tuahu, Hangaroa Matawai and Whakaongaonga blocks run so into one another that it is impossible without Hamlin here to give you the exact amounts paid on each of the blocks.<sup>337</sup>

A significant policy change occurred from the mid-1880s when Crown Land Purchase officers were instructed not to make advances on land that had not yet been adjudicated upon by the Native Land Court.<sup>338</sup> It was not until 1883 that the legislature finally made dealings prior to title adjudication illegal and punishable.<sup>339</sup> By that time, however, the Crown had completed many of its purchases of large blocks such as Waihau.

### **3.1.3. Incremental payments – Crown purchase of Waihau**

As with private purchasers, Crown agents also made incremental payments. This can be seen in the case of Waihau, which was estimated to cost around £3000. Payments were made to those listed as lessors on Maney's leasehold. As noted above, the first payment for the Crown purchase of Waihau was £300 made to lessor and grantee Karena Taniwha (and others of Wairoa) on 24 November 1875.<sup>340</sup> (It appears also that a separate amount of £85 was paid for rental around this time.<sup>341</sup>)

The deed of sale, even if forwarded, would have been invalid. Karena was not listed as a grantee on the Poverty Bay Commission awards even though he was listed as a lessor on the leasehold. This discovery by Native Under Secretary H T Clarke caused a minor panic until it was clear that a clerical error had been made in the list of grantees for

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<sup>337</sup> Gill to Porter, 13 May 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11

<sup>338</sup> On 13 July 1880 Porter was informed by the Under-Secretary of the Land Purchase Department, Gill that "It is now a rule that no advances of money can be made on blocks that the N.L.Court has not issued a final order for". MA-MLP 1 1896/120, Rose, *DB Volume 6*, pp. 3705-3869, p. 3850, Rose, '1873 – 1890', p290

<sup>339</sup> Geiringer, 'Historical Background', pp44, 48

<sup>340</sup> Locke to Native Office, Napier, 12 June 1876 and Copy of Treasury Voucher No. 39812 of 24 November 1875, DB 488-490

<sup>341</sup> Gill to Samuel Locke, Napier, 31 August 1876, MA 13/23, DB 458

Waihau.<sup>342</sup> It turned out that the error caused the people who had been labelled as ‘hauhau’ to be included in the award while most of those who were adjudged ‘loyalist’ were excluded. Further advances and negotiations were suspended until the confusion was sorted out.<sup>343</sup>

In the interim the Waihau lessors demanded that overdue rent of £300 (1½ years to 2 May 1876) be paid.<sup>344</sup> In May 1876 Resident Magistrate Ormond confirmed that the amount was owed but it was not paid straightaway because the Crown was waiting for the title to be corrected and signed by Rogan and Munro (former Poverty Bay Commissioners).<sup>345</sup> That such delay was a major inconvenience for the grantees is implied by Hamlin telegraphing the Native Under Secretary in August 1876 asking when he could expect to receive the £300 voucher to pay the Waihau rent which was three months overdue.<sup>346</sup> The rental was paid one month later.<sup>347</sup>

The award and title were finally “corrected” in January 1877. The acreage was reduced from 15,120 to 13,800—a result of the survey. The grantee ‘tribe’ was changed from ‘Rongowhakaata’ to ‘Ngati Hinehika’.<sup>348</sup> (The Crown grant listing the second lot of grantees was issued on 11 May 1877 and antevested to the 24 November 1873.) Table 3 shows the old and new grantees:

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<sup>342</sup> H T Clarke, Native Under Secretary to Locke, 18 March 1876, MA 13/23, DB 490

<sup>343</sup> Locke, Napier to Native Under Secretary, Wellington, 13 April 1876, DB 483–484

<sup>344</sup> J P Hamlin, Napier to Judge Halse, Wellington, 11 May 1876, MA 13/23, DB 477

<sup>345</sup> J D Ormond, Napier to H Halse, Wellington, 12 May 1876, MA 13/23, DB 475

<sup>346</sup> J P Hamlin, Napier to Native Under Secretary, 30 August 1876, MA 13/23, DB 460

<sup>347</sup> Locke, Napier to Gill, 2 September 1876, and approval by Native Minister Donald McLean, MA 13/23, DB 457

<sup>348</sup> Henry A H Monro to Native Under Secretary, 10 January 1877, MA 13/23, DB 445, 510

**Table 3. Change of Grantees for Waihau Block, 1873 – 1877**

|                                    |    |   |
|------------------------------------|----|---|
| The list of grantees changed from: |    |   |
| 1. Riperata Ngete                  | to | 1. Ripara Ngete                                   |
| 2. Te Ohuka                        |    | 2. Pateriki Kopu                                  |
| 3. Rapeti Hiranaki                 |    | 3. Karena Taniwha                                 |
| 4. Nopera te Kura                  |    | 4. Pera Tamahikawai                               |
| 5. Te Kahui                        |    | 5. Powha (with consent of her husband Paora Kate) |
| 6. Pehimana Riaka                  |    | 6. Meriana Kotia                                  |
| 7. Rawiri Takai                    |    | 7. Rapata Whakapuhia                              |
| 8. Ani Waaka                       |    | 8. Matiha te Aouri                                |
| 9. Petera te Honotapu              |    | 9. Petera te Honotapu                             |
| 10. Neta Hekeheke                  |    | 10. Te Teira Taratu                               |
| 11. Wiremu Waiharakeke             |    | 11. Hirini te Kani                                |
|                                    |    | 12. Rutene Kaiwara                                |

This title “correction” and the payment of the rent arrears appeared to have facilitated further individual grantee transactions. In September Locke telegraphed Gill reporting that Hamlin was purchasing block shares of Waihau at £170 each. Locke asked if he could ‘go on advancing’ out of the money held to complete the purchase of another block (Rotokakaranga).<sup>349</sup> This implies that further payments may have been made in late 1876 but no confirmation has been located. Indeed Native Land Purchase Under Secretary Gill’s record of payments for Waihau, based on deeds of sale received from Hamlin, shows that signatures for those grantees paid £170 were not obtained until March and November 1877. Gill’s record also shows that Karena’s signature for a payment of £322 (paid on 24 November 1875) was not obtained until June 1877.<sup>350</sup> Indeed a valid deeds of sale could not have been drafted until the Poverty Bay Commission award had been amended to reflect the lessors and vendors.

<sup>349</sup> S Locke, Napier to R Gill, Wellington, 1 October 1876, MA 13/23, DB 454

<sup>350</sup> Gill, Record of ‘Waihau Block’, 5 October 1879 and Hamlin, Napier to R J Gill, Under Secretary, Native Land Purchase, 18 July 1879, MA 13/23, DB 401, 424

The corrected award paved the way for deeds of sale to be signed. Gill's record of signatures and payments to 5 October 1879 is noted in Table 4.<sup>351</sup> The signatures of nine grantees were obtained between March 1877 and January 1878:

**Table 4: Date Waihau grantees signed Deed of sale to Crown and Amounts paid**

| <i>DATE</i>                    | <i>GRANTEE</i>                                      | <i>AMOUNT (£)</i>       |
|--------------------------------|---|-------------------------|
| 23 March 1877                  | Riperata Ngete                                      | 170                     |
| 23 March 1877                  | Powha   | 170                     |
| 23 March 1877                  | Rutene Kiwara                                       | 170                     |
| 26 June 1877                   | Karena Taniwha                                      | 332                     |
| 16 July 1877                   | Rapata Whakapuhia                                   | 200                     |
| 6 October 1877                 | Matiaha Te Aouri                                    | 200                     |
| 6 October 1877                 | Hirini te Kani                                      | 200                     |
| 2 November 1877                | Pateriki Kopu                                       | 170                     |
| 10 January 1878                | Te Teira Taratu signed by Retene Ahunuku successor. | 200                     |
| Subtotal of purchases          |   | 1812                    |
| Rent and expenses              |   | 739 0 10                |
| <b><i>Subtotal to 1878</i></b> |   | <b><i>2551 0 10</i></b> |

Three grantees had still not sold by 1879.<sup>352</sup> The outstanding interests were those of Meriana Koti, Petera Honotapu and Pera Tamahikawai.<sup>353</sup> After several years of hard bargaining by Petera Honotapu and sorting out the succession to Meriana Koti, three further payments were made with the last being settled on 20 May 1880. Table 5 lists these payments and dates.

**Table 5. Payment date for Crown purchase of rest of Waihau Block, 1880**

| <i>DATE</i>   | <i>NAME</i>                                       | <i>AMOUNT (£)</i> |
|---------------|---|-------------------|
| 11 March 1880 | Pera Tamahikawai                                  | 200               |
| 11 March 1880 | Petera Te Honotapu                                | 300               |
| 20 May 1880   | Meriana Kotia (dec'd) succeeded by Riperata Ngete | 250               |

<sup>351</sup> Gill, Record of 'Waihau Block', 5 October 1879, MA 13/23, DB 401 and Hamlin, Napier to R J Gill, Under Secretary, Native Land Purchase, 18 July 1879, DB 424

<sup>352</sup> The expiry of section 42 of the Immigration and Public Works Amendment Act 1871, though, was not a problem because Crown pre-emption had been virtually restored under section 2 of the Government Native Land Purchases Act 1877.

<sup>353</sup> J P Hamlin, Napier to R J Gill, Under Secretary Native Land Purchase, Wellington, 18 July 1879, MA 13/23, DB 422

It is useful at this point to examine the detail of how the Crown obtained the outstanding interests for Waihau to show the complex nature of land titles at Turanga which was exacerbated by joint tenancy and the system of succession. There were at least three succession problems that held up the Crown's legal acquisition of Waihau.

Grantee Meriana Koti had died before selling and the Crown was anxious for a successor to be appointed and approached to sell the interest.<sup>354</sup> It was not until September 1880 that co-grantee Riparata Ngete was appointed as successor to Meriana by Judge Halse in the Native Land Court. This delay held up the Crown's proclamation over the Hangaroa blocks.

There had been doubt as to whether successors could be appointed as Waihau had originally been granted under the Poverty Bay Grants Act 1869, which awarded title in joint tenancy. This uncertainty caused succession to Mereana in Waihau and other blocks to be adjourned pending reference to the Supreme Court 'as to whether [the] deceased was a joint tenant or tenant in common.'<sup>355</sup> The judgment ruled that as no grantees had died or any part of the block been alienated until after the passing of the Native Grantees Act 1873, then the latter Act applied—changing the status to tenancy-in-common which provided for succession. This was another example of the difficulties for Rongowhakaata resulting from the cumbersome and confusing state of titles caused by the multitude of legislation concerning Maori land tenure on the East Coast.<sup>356</sup>

Porter's anxiety over what Riparata might demand while awaiting to be appointed successor for Mereana's interests, caused him to recommend that she be encouraged to sign a document accepting half of the agreed payment and for the balance to be paid upon the issue of the succession order.<sup>357</sup> Gill instructed Porter to 'make a small advance' to Riparata as successor to Mereana while obtaining a deed of sale of her 'present or

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<sup>354</sup> Gill, Wellington to Hamlin, 25 July 1879, MA 13/23, DB 421

<sup>355</sup> A McKay, Chief Clerk, Native Land Court, Auckland to Gill, Wellington, 2 September 1879, MA 13/23, DB 416

<sup>356</sup> Refer to various letter in MA 13/23

expected interest' in Waihau.<sup>358</sup> Riperata was finally declared successor to Mereana in April 1880 and received £250 for her interest and £33 6s 8d for two years rent arrears.<sup>359</sup> At the time of payment, however, Porter reported that the arrangement was 'nearly frustrated' as Riperata, upon realising her position, 'would not come to settlement'.<sup>360</sup> The succession was registered in November 1880.

Hori Niania and Maaka Topia claimed that there was still a balance due for grantee Pateriki Kopu and requested Gill to provide them with the deed proving that Kopu had sold his interest in Waihau.<sup>361</sup> Gill forwarded the deed to Porter to be viewed by Niania and Topia on 24 July 1880.<sup>362</sup>

There was also a question over the transfer of Rutene Ahunuku's interest. Ahunuku had inherited grantee Te Teira Taratu's interest after the latter had died in 1876. Interpreter G Skipworth confirmed in January 1881 that he had witnessed Ahunuku's execution of the deed to the Crown.<sup>363</sup> Indeed Skipworth forwarded an account (£1 1s or one guinea) for his interpretation of the deed, which had occurred in January 1878. Gill refused to pay the account commenting that Skipworth should have been paid at the time of signing.<sup>364</sup>

There were further holdups seemingly because Trust Commissioner approval was still to be obtained for transfers that were supposed to have occurred in 1877 and 1878. In September 1880 Gill forwarded the memorandum of transfer of the interest of Pateriki Kopu (deceased) to Trust Commissioner Price for approval under the Native Lands Fraud Prevention Act 1870. Gill advised Price that it was necessary to check with his Auckland counterpart Colonel Haultain because the attesting witnesses resided there.<sup>365</sup> The Crown was extremely anxious for such encumbrances to be dealt with because its proclamation over the block had to be withheld. Gill advised Porter that 'a large proclamation is being

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<sup>357</sup> Porter to Gill, 19 March 1880, MA 13/23

<sup>358</sup> Gill to Porter, 2 April 1880, MA 13/23

<sup>359</sup> Gill to Native Minister Bryce, 19 May 1880, MA 13/23

<sup>360</sup> Porter to Gill, 21 May 1880, MA 13/23

<sup>361</sup> Porter to Gill, 26 May 1880 and Hori Niania and Maaka Topia, Whakato to Gill, 3 June 1880, MA 13/23

<sup>362</sup> Gill to Porter, 24 July 1880, MA 13/23

<sup>363</sup> Porter to Gill, 11 January 1881, MA 13/23

<sup>364</sup> Gill to Porter, 18 January 1881, MA 13/23

<sup>365</sup> Gill to Trust Commissioner Matthew Price, Gisborne, 24 September 1880, MA 13/23

held over' until Pateriki Kopu's deed was certified'.<sup>366</sup> On 5 January 1881 Trust Commissioner Price informed Porter that he was still unable to issue a certificate as he had not yet heard from Haultain.<sup>367</sup> Price was finally able to issue a certificate on 22 January 1881.<sup>368</sup>

There was another delay when in March 1881 the Napier Land Registrar J Baltham advised Gill that Ahunuku's succession to Te Teira Taratu's interests had not been registered on the certificate of title and so could not legally be transferred to the Crown.<sup>369</sup> Gill arranged for payment of the registration fee (£6) and the transfer was registered.<sup>370</sup> These examples show how its own legislative measures could inhibit Crown actions.

The incremental nature of these payments for Waihou militated against sellers being able to accumulate much capital. There were, however, some individuals who were in a position to profit from sales such as Petera te Honotapu and his son Pera. Petera Honotapu and his son, Pera, labelled 'obdurate' and 'dissentients' by Crown Officer Porter held out for more money and for a piece to be reserved for them. (The reason for the latter was that they had planned to sell the piece to William Greene for more than what the Crown was paying.) Honotapu was aware that the Crown had presumed to treat the undefined interests as equal shares thus paying equal sums to the grantees. He insisted that his higher status be recognised and demanded a greater proportion of land to be reserved for him. Porter advised Gill in September 1879 after meeting with the three owners in September 1879 that:

Pera Tamahikawai to sell out his interest for £225. Ripera Ngete on same terms but to be paid £100 on account pending order of Native Land Court appointing her successor. Petera Honotapu instead of a monetary payment to receive his proportionate share of the Blcok in land 1150 acres. Petera requires 1500 acres as being a large owner is entitled to more than equal proportion.<sup>371</sup>

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<sup>366</sup> Gill to Porter, 28 December 1880, MA 13/23, DB 364

<sup>367</sup> Matthew Price, Trust Commissioner, Gisborne to Porter, 5 January 1881, MA 13/23

<sup>368</sup> Price to Gill, 22 January 1881 MA 13/23

<sup>369</sup> District Land Registrar Baltham, Napier to Gill, 22 March 1881, MA 13/23

<sup>370</sup> Resident Magistrate Preece, Napier to Gill, 14 April 1881, MA 13/23

<sup>371</sup> Porter to Gill, 17 September 1879, MA 13/23

Porter recommended that these terms be accepted otherwise ‘it may be long ere a settlement can be come to’. It seems that Honotapu sensed the Crown’s eagerness to complete the purchase. He made further demands in January 1880. He asked for a 1000-acre reserve (500 acres each for Pera and himself) plus monetary payments of £300 for himself, £200 for Pera and £300 for Riperata Ngete or same terms as Pera if she wanted land.<sup>372</sup>

Porter continued to allocate proportions of land equally and assessed the ‘actual proportionate interest of each grantee’ as 1150 acres. It seems Honotapu had got his higher status recognised by a higher monetary payment. Porter assured Gill that the portion he proposed to cut off as a reserve was ‘by no means the best part of the block being rough and hilly’.<sup>373</sup>

The various legislative changes that had occurred over the length of time it had taken for the Crown to secure Honotapu and Pera’s interests nearly prevented the transfer being approved by the Trust Commissioner. Upon advising he had obtained Honotapu and Pera’s signatures, Porter advised Gill that he had ‘met with some difficulty’ in obtaining the Trust Commissioners certificate ‘owing to points of law’ and that ‘had the number of vendors been greater’, he would ‘not have obtained the certificate at all’.<sup>374</sup> A Certificate of Title for all of Waihau except 1000 acres was finally awarded to the Crown on 13 April 1881. Waihau had been the largest block remaining in sole Rongowhakaata ownership.

Incremental purchase of individual undefined interests by Crown purchase officers was still happening in the 1890s with people such as Crown agent W J Wheeler preferring to pick individuals off. Wheeler bought parts of the Tauwharetoi and Whakaongaonga blocks. In 1896 he espoused his preference for individual dealings:

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<sup>372</sup> Porter to Gill, 23 January 1880, MA 13/23

<sup>373</sup> Porter to Gill, 23 January 1880, MA 13/23

<sup>374</sup> Land Purchase Officer T W Porter, Gisborne to Under Secretary, Land Purchase Gill, Wellington, 23 March 1880, MA-MLP 1 1880/234

The owners ... must be dealt with individually, as the majority of them, if assembled in public meeting, would be filled with righteous indignation, of the thought of parting with their birthright for a mess of pottage; but within 24 hours, the same persons would gladly sell, if they could do so unobserved by their fellows.<sup>375</sup>

As Rose comments ‘whereas Crown purchases of the 1870s and 1880s had at least paid lip service to the concept of dealing with owners on a tribal basis, no such allowance was made in the 1890s. The Crown openly sought to acquire a maximum interest in the land through closed dealings with individual owners.’<sup>376</sup>

In no case of Crown purchase did sellers receive all the purchase money at once. Much of the purchase price was received in advances or incrementally as negotiations extended over a number of years. Moreover the costs associated with obtaining a Crown grant such as survey costs, Native Land Court fees and the cost of attendance at hearings, represented a considerable charge against the purchase money received. Advances, individualisation of title and incremental payments all facilitated the Crown’s acquisition of Waihau and the other Hangaroa lands.

#### **3.1.4. Use of leases**

Like private purchasers the Crown adopted the method of using leases as levers to acquire land. As Turanga Maori wished to retain ownership while obtaining revenue from their lands, leasing was the preferred alienation. This desire combined with the expensive and difficult process of obtaining legal title saw much land still being leased up until the late 1870s. The Crown, however, was more interested in the absolute alienation of Maori land and extinguishing native title. Indeed, leasing Maori land was viewed by the Crown as a step towards purchase rather than a desirable end in itself.<sup>377</sup>

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<sup>375</sup> AD 103/17, cited in Rose, ‘1890 – 1970’, p 137, *DB Volume 1*, p. 114.

<sup>376</sup> Rose, ‘1890 – 1970’, p137

<sup>377</sup> Rose, ‘1873 – 1890’, p 61

As with private purchasers the Crown negotiated for the insertion of ‘purchasing clauses’ in the lease covenant. Maney was to receive commission of 1 penny per acre for the completion of every lease ‘containing a purchasing clause’ and every conveyance to the Government up to a maximum of £3000.

### 3.1.5. Other methods

As with private purchasers the evidence also indicates that more unsavoury tactics were employed by Crown agents to complete purchases, such as holding negotiations behind closed doors and the use of violence against any objectors. Neta Hekeheke spoke of her experience of such tactics when one of her party was ‘struck in the face’ after trying to enter the hotel room where purchase negotiations for the Hangaroa lands were being held.<sup>378</sup> As noted above Whakapuhia also referred to the intimidatory tactics of Hamlin and Locke in respect of getting people at Oweta to sign the deed of sale for Tauwharetoi. Whakapuhia described the purchasers as rising up like ‘Kahukura’ and flashing ‘red with rage’.<sup>379</sup>

Such complaints indicate a notable lack of transparency in sale negotiations with Crown agents. They contradict McLean’s statement that ‘Government purchases are regarded with more favor by the natives on account of the thorough & entire publicity which always attends the negotiations’.<sup>380</sup>

Crown agents also employed Maori “agents” to help persuade others to sell interests in the Hangaroa lands. It appeared that Hamlin utilised the services of Edward T Harris (aka Eruere Harete of Rongowhakaata), a seller of Tauwharetoi to assist in the completion of the purchase. This is indicated in Harris’s letter to Locke requesting payment of a commission fee for his ‘influence’ in obtaining over 20 signatures:

It you will recollect I was to receive a commission of one hundred and twenty five pounds (£125) and was, besides signing the Deed the same as the others, to use my influence in getting the

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<sup>378</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>379</sup> Rapata Wakapuhia to *Te Wananga*, 9 June 1877, cited in Rose, *DB Volume 9*, pp5970–5971

<sup>380</sup> *McLean Papers* MS-Copy-Micro-0535-13, Folder 37b cited by Rose, ‘1873 – 1890’, p43

signature of some twenty three or twenty four Natives to the Deed. It was explained by me that I would have to pay these people an extra sum to sign and this I was to do out of the money I was to receive.

I drew forty (£40) from you, which together with twenty pounds (£20) out of my own pocket has gone to those who have signed. There now remains but two who have not signed, nor do I see any hope of getting them to do so, having therefore done all that I could in the matter I certainly expect to receive the balance (£85) still unpaid.

I should therefore be very much obliged if you will kindly explain the matter to Mr Gill more especially as he does not appear to have any memo upon the subject.<sup>381</sup>

The last sentence indicates that the Native Department had not sanctioned Harris's employment. Locke supported Harris's claim to Under Secretary Gill:

I consider the sum here named by Mr Harris to be due to him and should be paid. Mr Harris rendered Mr F P Hamlin great service in obtaining signatures to the Tauwharetoi and Hangaroa blocks under purchase for Government and I have always understood an agreement for payment was made as stated.<sup>382</sup>

Even though commission for Harris was approved for his assistance in the purchase of other blocks (through Porter), none was approved in respect of Tauwharetoi because there was no acceptable proof. Gill minuted Porter about Locke's statement concerning Tauwharetoi:

Mr Locke says: "I have always understood an agreement for payments was made as stated".

Has Mr Harris this agreement if so he should forward it. It is hard to know who is the responsible person that dealt for these lands. Mr Maney, Mr Hamlin and Mr Harris all claim compensation for purchasing.<sup>383</sup>

Harris's second appeal for payment revealed more about his role. Harris said that his bonus agreement was 'made verbally' at Gisborne with Locke and Hamlin on 2 April

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<sup>381</sup> Harris to Locke, 20 June 1879, MA-MLP 1 1881/2, Berghan, Supporting Papers, Vol.9, p.3482

<sup>382</sup> Locke to Gill, 14 October 1879, MA-MLP 1 1881/2

<sup>383</sup> Gill to Porter, 9 December 1879, MA-MLP 1 1881/2, Berghan, Supporting Papers, Vol.9, p.3483

1877. Locke was said to be in charge of Land Purchase operations with Hamlin acting as agent for the Tauwharetoi block:

The owners of Tauwharetoi comprised three hapus, viz. Ngatikohatu, Ngai Te Ngaherehere and Ngai Tane. My name is in the Memorial of Ownership and was classed with Ngai Tane. I objected to be so classed at the time. Of this hapu, twenty three refused to sign. As I refused to sign or influence the other dissentients the agreement referred to was made, viz.: That I was to sign the conveyance and draw the amounts as shown for a Ngaitane's share and to receive one hundred and twenty five pounds more on the understanding that I was to influence the others of Ngaitane to sign.

Next day I drew forty pounds on account and adding twenty pounds of my own, I got twenty [signatures] in a short time and at the present moment there remains but one of Ngaitane to sign.

Having been an owner in the block I can hardly be classed with Messrs Hamlin and Maney as claiming compensation for purchasing.<sup>384</sup>

It is not known if Harris ever received his commission in respect of Tauwharetoi, but his statements clearly show that Crown agents were prepared to pay willing sellers to aid their cause. One can only imagine the pressure put on undecided owners by their peers, such as Harris, encouraging them to sell.

Similarly Porter advised that in settling the outstanding Hangaroa purchases he was 'compelled to use the Chiefs who had signed in getting the case closed'.<sup>385</sup> In September 1879 Porter advised that Nikora Kiripaura, 'an influential man', a 'large owner' and who provided Hamlin 'invaluable assistance' received £50 for 'services rendered'.<sup>386</sup> Indeed Porter was scolded by Gill for paying Nikora in small sums such as £3 and £2 at a time. In April 1880 Wiremu Waiharakeke aka Wiremu Nuhaka said that the same agreement

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<sup>384</sup> Memo from Harris, c. February 1880, MA-MLP 1 1881/2, Berghan, Supporting Papers, Vol.9, p.3484

<sup>385</sup> Porter to Native Under Secretary, 7 September 1880, MA-MLP 1 1881/88, Berghan, Supporting Papers, Vol.9, p.3518

<sup>386</sup> Nikora Kiripaura, Turanganui to Kawanatanga, 6 Hepetema 1879, Porter to Under Secretary, 11 September 1879, MA-MLP 1 1902/12, DB 957-962, Gill to Porter, 12 September 1879, MA-MLP 1 1902/12

with Nikora had been made with him and asked for payment.<sup>387</sup> In August 1880 he wrote to Gill offering his services, upon the advice of Porter, in return for £100:

I write to you with respect to the one hundred pounds because Captain Porter says that I should be paid for acting on behalf of the Government, that is why I ask that that money be paid to me and then I will act for the Government with regard to Whakaongaonga. Topia is raising serious complications in respect of these lands, if you are willing that I should act, write.<sup>388</sup>

Nuhaka's offer was declined but he was thanked by Gill:

The Government cannot consent to this payment, more money has already been paid for these lands than the original agreement stipulated. Your action in assisting Captain Porter is deserving of praise, and the Hon. the Native Minister desires me to thank you for what you have done.<sup>389</sup>

It seemed that many 'agents' were involved in the sale of the Hangaroa lands. Gill's frustration (see above) at all the different people claiming commission for the Hangaroa lands implied that the Crown itself appeared confused as to who was dealing on its behalf. The payments to influential Maori sellers in return for encouraging others to sell raise questions over transparency and also equity with initially reluctant sellers receiving extra money over those who were prepared to sell at the price offered. The payment of extra money on top of the original price also occurred in the purchases for Tuahu.<sup>390</sup> After Rongowhakaata and other iwi experiencing such tactics it is not surprising that notes, prepared for McLean's 1876 Land Purchase statement, described the area under Hamlin's operations as a 'difficult case ... Very bad feeling among Natives.'<sup>391</sup>

The employment of such methods by Crown purchase agents certainly countered the claims made by Native Minister McLean cited above. Indeed these agents represented the most politically and financially powerful buyer that Maori could deal with. This power was strengthened by legislation and control of Native Land Court. The evidence suggests

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<sup>387</sup> Wiremu Waiharakeke to Gill, 1 April 1880, MA-MLP 1 1902/12, DB 935

<sup>388</sup> Wiremu Nuhaka, Turanganui to Gill, 4 August 1880, MA-MLP 1 1902/12, DB 932

<sup>389</sup> Draft of Gill to Wiremu Nuhaka, 18 October 1880, MA-MLP 1 1902/12, DB 929

<sup>390</sup> Porter, Gisborne to Under Secretary, 23 January 1880 and Gill to Native Minister, 11 February 1880, MA-MLP 1 1902/12, DB 975-979

<sup>391</sup> MS-Copy-Micro-0535-013 cited by Rose, '1873 – 1890', p73, *DB Volume 8*, pp. 5149-5160, p. 5153.

that far from getting better treatment from Crown purchasers, Maori were even worse off in terms of price (see below).

Indeed the words of Rongowhakaata and other petitioning iwi in 1873 sum up the objection to the activities of Crown agents, especially the practice of pre-payment to individuals without knowledge of the tribal authority:

We are of the opinion that the manner of purchasing land in accordance with the regulation now in force is evil, and the cause of much confusion, and that all land purchasing under such regulations should cease. That land should not be bought in unalienated districts. That not till a majority of the Maori people have consented, shall land be surveyed or put into the Native Lands Court or sold. And in all districts where the consent has not been given to the land being sold, in no case shall money be paid in advance for land... *That Government officers shall not, without authority, or invitation from the majority of Natives go into Native districts, and annoy by requesting the Natives to put their lands through the Native Lands Court, and to sell them.* Let the Natives use their own discretion as to the survey, or passing them through the Native Lands Court...<sup>392</sup>  
*[emphasis added]*

### ***3.2. Native Land Court Role in Crown Purchases***

The evidence suggests that the Native Land Court was willing to validate whatever the Crown did in terms of purchase. As noted above, legislation enabled it to validate Crown purchases where not all owners had been consulted. Indeed Judge Halse appeared to be very keen to facilitate the completion of the Crown purchase of Hangaroa lands by allowing the evidence to be presented in only four days. As Porter commented:

I beg to acknowledge the very great assistance and patient hearing given by Judge Halse to all the claims advanced and the justice of the awards made as an evidence of which no complaint has been made and a number of dissentient grantees have since been to me to sell their interests ...

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<sup>392</sup> *Te Wananga*, 22 June 1876 in Rose, *DB Volume 9*, pp5948–5950

I may mention that I was compelled by probable closing of the Court to pass all these blocks within four days. The disposal of so many old outstanding claims is a matter for congratulations and a pleasant relief to me.<sup>393</sup>

There was little inquiry about the extent that ownership had been investigated by Crown agents. As noted above, the practice of issuing advances prior to adjudication of title undermined the validity of the Native Land Court system. It is no surprise that in the case of Tauwharetoi, Whakaongaonga, Tuahu and Hangaroa Matawai Crown agents had indeed preempted important and complex ownership issues, complicated by the continually open sore of ‘rebel’ versus ‘loyalist’. Native Land Court Judges did not query such activities.

The denial of rehearings reflected the Native Land Court’s reluctance to check that Crown agents had made adequate investigations into ownership. On 4 April 1877 Maaka Topia, Te Ohuka Topia, Karaitiana Tamihana and one other requested a rehearing from Chief Judge Fenton for Tauwharetoi referring to the unfair dominance of other hapu:

This is another work from us to you about our land Tauwharetoi. We are very much distressed about the proceedings of the Te Hemana (Mr Hamlin?) Government officer, and others who are interested in that land. ... However, the Court has seen that we are interested in it on the two sides viz: that of Ngaherehere and that of Tutaki. However, the money accruing to Tutaki’s descendants has been stolen by Te Rakiroa and others. Te Hemana would not listen to what we had to say, but he did so to some persons who stated that they alone were to have the money accruing to Tutaki, and our mothers from Ngaherehere and therefore we are distressed. This is an application from us to have Tauwharetoi again heard at some future sitting.<sup>394</sup>

The Native Land Court even refused a request for a rehearing when it was clear that a person had been included in a deed of sale, but not the memorial of ownership. On 12 July Hoani Matiaha wrote to Chief Judge Fenton requesting a rehearing for Hangaroa blocks because he had not been included in the memorial of ownership. He was initially unaware of the date of hearing and when he did find out, adjudication on ownership lists

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<sup>393</sup> Porter to Native Under Secretary, 7 September 1880, MA-MLP 1 1881/88, Berghan, Supporting Papers, Vol.9, p.3518

<sup>394</sup> Maaka Topia and others, Turanga to Fenton, 4 April 1877, Tauwharetoi Block Order File 1042, DB 73

had already been made. Significantly Matiaha pointed out that his name was on a deed of sale:

This is a petition of mine to have Tauwharetoi, Hangaroa Matawai and Te Whakaongaonga reheard. I applied to you on the 6<sup>th</sup> April 1877 for a rehearing and received your reply on the 1<sup>st</sup> May. I appeared in Court on the authority of that letter but it was ineffectual as the adjudication had been quite finished. The reason I was absent from the Court was that I was engaged in cultivating potatoes in the bush. I went to the bush on the 29<sup>th</sup> January 1877, and when I had done with my potatoes, I returned home. On my arrival I heard that the lands referred to were being adjudicated upon and at once proceeded to the Court. Judgment was given on the day of my arrival and therefore I applied to you on the 6<sup>th</sup> of April last. What was said about those lands formerly, or rather that which I heard about them was that we had sold them to Government and that they had paid us £300, which we spent and that my name was in the documents ceding them to the Government at that time when we still held possession of those lands. ... I have cultivated on that land and my ancestor's marks are on it.<sup>395</sup>

At least one other request from Matiaha for a rehearing was declined. This was after Matiaha's case had been referred to Judge Rogan, Tamati Te Rangi and Wi Pere. Chief Judge Fenton's reason for declining the application was an indictment on the Native Land Court's ability to ensure that all rightful owners could be included on a title. Fenton advised the Native Minister that the presiding Judge Rogan was 'very decidedly against a rehearing' and added that the Court could 'never be certain' that all claimants were notified of a hearing:

no doubt, if rehearings are granted on such grounds, no case will ever be finally determined. It may be true that Hoani did not know of the Court in time. It is impossible to prove the contrary; and, whatever I do, I can never be certain that all claimants are warned, for no one knows who they are, or where they may spring; so it is a necessity that such grounds of rehearing should be rarely admitted.<sup>396</sup>

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<sup>395</sup> Hoani Matiaha, Turanganui to Chief Judge Fenton, 12 July 1877, Tauwharetoi Block Order File 1042, DB 74-75

<sup>396</sup> Fenton to Native Minister, 2 October 1878, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5179

It did not seem to occur to Fenton that one solution might be to let the Maori community, who would know all who might be entitled, determine ownership. Other requests for rehearings from people such as Peti Moreti were similarly declined.<sup>397</sup>

Fenton, though, did concede that if Matiaha's story was true then 'whilst the application [for a rehearing] is refused, the Resident Purchase Agent should see Hoani and if satisfied of the justness of his claim, pay him some share of the purchase money'.<sup>398</sup> After checking with 'disinterested natives', Native Under Secretary Gill was satisfied with Matiaha's claim and money was forwarded in June 1879.<sup>399</sup>

Although the Native Land Court process caused a three year delay in completing ownership orders because of the objections of remaining owners to sale, the Court did not appear to question the propriety of Crown purchase activity especially in how shares were determined. It did not question Porter or Gill's assumption that all shares of sellers and "dissentients" were equal even though objectors claimed that they had greater relative rights. This was in spite of the fact that all the blocks except Waihau were investigated under the Native Land Acts 1873 that recognised relative rights to land depending on use, occupancy, status etc. The Court also seemed to ignore the fact Honotapu was paid more money by the Crown in implicit recognition of his greater rights to Waihau.

The Court also seemed to ignore the protests of rangatira such as Maaka Topia who claimed greater rights to certain blocks and so expected to be paid more money. This is indicated in Porter's description of his success in completing the purchases:

I need not remind you of the number of years many of these transactions that have been open nor of the many difficulties and complications etc. so long retarding a completion, particularly with

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<sup>397</sup> Rogan to Fenton, 21 August 1878 and Fenton to Native Minister, 27 August 1878, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5197

<sup>398</sup> Fenton to Native Minister, 2 October 1878, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5179

<sup>399</sup> Native Under Secretary Gill to Native Minister, 4 June 1879, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5176 and statement of 'Monies required to complete purchase of Inland Wairoa Blocks', MA-MLP 1 1902/12, DB 1007-1015

reference to the Motu, Waikohumatawai, Tauwharetoi, Tuahu, Hangaroa Matawai and Whakaongaonga blocks ... The basis upon which these cases were closed I deem equitable to both Government and Native owners as well be seen by the details of the awards as reported under each block.

In cases of dissentients or unsigned I went in to Court upon equal interests, allowing all the signed and unsigned to be equal, thus claiming on behalf of Government the aggregate acreage of all the signed, and intimating willingness to allow the unsigned in the same proportion, *but when larger interests or claims were set up, I made them prove rights and not in one single case did I have to cede anything over and above the equal proportionate share.*

The claims were heard under the 6<sup>th</sup> Section of the Native Land Act Amendment Act 1877, which in this case has been found to work satisfactorily and is a speedy and very effectual means of closing transactions as against unreasonable and obstructive dissentients who so invariably dissent for the purpose of obtaining higher payments or greater shares than entitled to.<sup>400</sup> [*emphasis added*]

By not questioning the assumption of “equal shares”, the Native Land Court failed to check whether the Crown was claiming the correct size of land. Gill had advised Porter to use ‘equal shares as the basis for defining the Crown interests in the Hangaroa lands because Hamlin’s accounts were *unclear*. This is no indication that the Native Land Court queried the equity of such a calculation, which may have meant that extra land over and above what Maori sold was taken.

There was no investigation of whether purchases were fair and equitable. The Court also did not question evidence that suggested rightful owners missed out on money due to them. In April 1877 Whakapuhia had complained to Ormond about how individuals from other iwi had been favoured with advances to the detriment of his people. Similarly Maaka Topia stated that he had been advised that an advance for the Hangaroa lands had been given ‘to Petera and Rakiroa on the conditions that it was to be distributed among the whole tribe’. He claimed that there was no such distribution.<sup>401</sup>

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<sup>400</sup> Porter to Native Under Secretary, 7 September 1880, MA-MLP 1 1881/88, Berghan, Supporting Papers, Vol.9, p.3518

<sup>401</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

The Native Land Court also appeared to ignore Maaka Topia's attempt to have the subdivision cases for the Hangaroa blocks reheard. In September 1880 Topia and ten others advised Native Minister Rolleston that they had received a reply to their request for a rehearing but 'do not know where the investigation is to be held'.<sup>402</sup> Crown officials were not concerned about Topia's complaint advising Native Minister Bryce that:

Maaka Topia has from the first protested against the Native Land Court's decision regarding these lands. He is an obstinate Maori of the old school claiming the lands himself. The Court has determined the interest of Her Majesty in the five blocks named. He has no real cause of complaint. The letter I submit should be filed without answer.<sup>403</sup>

The letter was filed away without response.

One year later Maaka wrote again to parliament complaining about the refusal of the Native Land Court to hear his case even though it had been put in the *Kahiti*. Maaka's petition outlined the trouble he had had to go through in order to get his claims heard and recognised by the Crown and the Court. Indeed they were once again ignored by both:

Do give your careful consideration to the unsatisfactory state of affairs in connection with the Tauwharetoi, Whakaongaonga and Hangaroa Matawai Blocks about which there is much trouble which commenced with the first survey continuing on to the time when the titles thereto were investigated on the 1<sup>st</sup> of February 1877. We made many applications to the Chief Judge for a rehearing of those lands, and received Kahitis notifying that those lands would be adjudicated on at Turanganui on the 5<sup>th</sup> of May 1880.

Well! We went there and the judge declined to hear the case. We were a month and a half at Turanganui waiting for the hearing (of the cases) and suffered for want of food as did our horses. We have heard that a surveyor came to again survey these lands, well we will not consent to the survey being made because we have made many application for the investigation of the title to those lands, and there are many persons who have not sold (their interests in) those lands.<sup>404</sup>

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<sup>402</sup> Maaka Topia and ten others, Te Reinga to Premier Rolleston, 29 September 1880, MA-MLP 1902/12, DB 917

<sup>403</sup> Native Under Secretary Gill to Native Minister Bryce 15 December 1880, MA-MLP 1902/12, DB 916

<sup>404</sup> Maaka Topia and 8 others to the Great assembly of the Government, 20 September 1881, MA-MLP 1902/12, DB 903

This failure by the Native Land Court to protect remaining Rongowhakaata land was compounded by its inaction over the adequacy of reserves from the Crown purchases and then its confirmation of Crown purchases of the reserves themselves. For example the Court's response to concerns of people such as Ngata Hekeheke, Hori Niania, and Maaka Topia over the lack of Hangaroa land left for future generations was inadequate. At no time did the Court question the Crown's propriety in purchasing lands such as Waihau when the Crown officials had already acknowledged in 1875 that Rongowhakaata had few remaining lands and returned part of Patutahi (in 1877) in recognition of this fact. In the case of Tauwharetoi the Native Land Court advised the Crown to reserve 1000 acres for those who had sold but, as detailed below, a few years later confirmed further Crown purchases of much of these reserves.

The Native Land Court was itself subject to governmental control. The Crown was able to suspend Court operations when it suited. This was seen in the 'suspension' of Native Land Court sittings at Gisborne between December 1877 and May 1879 when the Crown was trying to complete its outstanding purchases. There was a specific legislative provision i.e. section 6 of the Native Land Act 1873 which enabled the government to suspend the Native Lands Acts in certain districts but no evidence has been located that this was officially applied at Gisborne. This unofficial suspension combined with the Acts restoring Crown pre-emption demonstrated the Crown's control over the Court. Indeed Rongowhakaata and other petitioning iwi appeared to recognise the degree of control that the Crown had over the Native Land Court. This is implied by their request in 1873 to be able to hold their own Native Lands Court *without* any Crown interference:

We think that the laws by which the Native Lands Court exercises its power, must be repealed, and that the Parliament of New Zealand enact a new law, one which is not marred by ambiguity or contradictions, and by which Maori lands can be fully investigated, and correctly settled. And that such [a] new law shall empower the Adjudicators of the Native Lands Court to hold the same power as the Magistrates of the other Courts. *And that the Government shall not have any control over such Adjudicators of the Native Lands Court.*<sup>405</sup> [emphasis added]

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<sup>405</sup> *Te Wananga*, 22 June 1876 in Rose, *DB Volume 9*, pp5948–5950

### ***3.3. Adequate Payment and Fair Price***

The Crown held a number of advantages over their private competitors including a considerable fund of money to finance their operations.<sup>406</sup> As noted above a chief advantage was the introduction of legislative provisions which excluded private competition when it suited the Crown to do so. Such provisions precluded sellers from the benefits of price competition.

Indeed in the Turanganui region the Crown was desperate to cut private purchasers from land transactions because they were providing undesirable competition and raising Maori expectations concerning prices. Interestingly Locke reported that Maney's 'agent' was 'endeavouring to induce Natives to demand 4/- & 5/- an acre for the remainder of the Hangaroa blocks.'<sup>407</sup> Such speculation probably sparked Locke's telegram to Native Land purchase Under Secretary advising that there was 'great competition for Whakaongaonga block' and that 6/- an acre was being offered for Hangaroa. (Locke's request to be able to offer 4/- per acre for the block was subsequently granted.)<sup>408</sup> In the same month Robert Jones Irvine and Co. wrote to the 'Native Lands Department' asking if Whakaongaonga still remained 'under reserve from operation of Land Act' as it was interested in purchasing.<sup>409</sup>

The Government's preparedness to increase its offer per acre may be seen as a case where on one level Maori indirectly benefited from competition. As stated above, the Crown, however, was to flex its legislative muscle over such speculators negating any direct benefit from competition that Maori might have received.

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<sup>406</sup> Rose, '1873 – 1890', p41

<sup>407</sup> Locke, Napier to Native Under Secretary Gill, 9 April 1877, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5126

<sup>408</sup> Locke to Under Secretary Gill, 16 April 1877 and Ormond to Clarke, 17 April 1877, MA-MLP 1 1902/12, DB 1054–1055

<sup>409</sup> Robjohns, Irvine & Co., Napier to Under Secretary, Native Lands Department, 14 April 1877, Draft of Gill to Robjohns, Irvine & Co., 20 April 1877DB 1052–1053. The company had been leasing (contiguous) Arai Matawai since at least 1877. It was informed that the Government 'was engaged in purchasing the block'.

Ongoing speculation made Crown officials extremely nervous with Porter reporting on 24 November 1877:

Natives in from Coast today, Gannon acting for Mr Mackay is offering five shillings and sixpence per acre for lands contiguous to incomplete Govt. [sic] purchases neg. [sic] for at two shillings and two and six. Ferris acting for Rhodes first started the price by giving 5/6 for lands. This action will considerably prejudice all incomplete Govt. transactions throughout the districts.<sup>410</sup>

Three days later Porter was more blatant on the need to stop private purchasing for the sake of Crown interests:

Circumstances have since occurred that render it imperative that immediate legislation or other action should be taken to preserve Govt. interests as the high prices for lands is spreading like wild fire among the natives and its effects already felt and I am fully assured that to complete transactions Govt. must give at least three times as much the amount per acre above that originally fixed or the large sums outstanding must be wasted.<sup>411</sup>

As already discussed, advances hindered the operation of the “free-market” in determining price for land because once an individual had accepted a “deposit” they were bound to sell to the Crown. This practice weakened Rongowhakaata’s negotiation power and raises the question to what extent were Rongowhakaata able to receive a fair price for their lands.<sup>412</sup>

This question applied to Tauwharetoi. A press report of March 1877 noted that the price for Tauwharetoi ‘verges upon £6000’ which had to be divided amongst 122 people, more than half of which had assented to the ‘terms of sale’.<sup>413</sup> Over two days Mr Hamlin distributed money to those owners who had signed the deed of sale. According to the report those who had signed did so in front of the Trust Commissioner Nesbitt. Significantly the report indicated that there were several owners at settlements such as

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<sup>410</sup> Porter to Native Under Secretary, 24 November 1877, AD 103/8, p128

<sup>411</sup> Porter to Native Under Secretary, 27 November 1877, AD 103/8, p140

<sup>412</sup> Geiringer, ‘Historical Background to Muriwhenua’, p44

<sup>413</sup> *Poverty Bay Herald*, 30 March 1877

Oweta who were holding out for more money but that Hamlin was persuading individual “non-sellers” to submit:

Yesterday Mr Hamlin proceeded with Dr. Nesbitt to Oweta, and other of the Native settlements, where the natives who were holding out for a longer [sic] price and refused to sign, are, one by one, submitting to the terms of purchase.<sup>414</sup>

As noted above such tactics were tantamount to intimidation.

The practice of making down payments before fixing a final purchase price, as mentioned above, made it difficult for Maori to keep track of what had been paid and to whom. This in turn inhibited their ability to negotiate prices. In February 1877 Maaka Topia advised Chief Judge Fenton of his dissatisfaction at the attempts of Crown agents to fix the price by issuing advances based on a rate he was not happy with:

This is to inform you about our land Tauwharetoi, which has been adjudicated upon and a Crown Grant issued to us for it. Some of us have sold it, and others of us are unwilling to sell. We have frequently applied to an officer of the Gov [sic] viz Mr Hamlin, that he would give us the documents showing the money that the Government have [sic] paid to us or to others. But that Pakeha has caused great confusion. We have sent a letter to Mr Ormond and to Mr Locke that they should retain the Government money, and not give it to those persons who apply for it (in payment) for land respecting which our word has not been heard. But Mr Hamlin paid the money to some of the persons. Our names are in Tauwharetoi and we will not sell unless the price is increased and then we will sell.<sup>415</sup>

Out of desperation to complete the Waihou purchase, which was holding up a proclamation covering all of the blocks in the vicinity, the Crown agreed to pay the remaining three owners at a rate higher than it had paid to the other owners. This concession merely highlighted the unfair position of those who had agreed to sell earlier. As Gill recommended to Native Minister Bryce who gave his approval in February 1880:

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<sup>414</sup> *Poverty Bay Herald*, 30 March 1877

<sup>415</sup> Maaka Topia and others, Te Reinga to Chief Judge Fenton, 30 [sic] February 1877, MA-MLP 1 1902/12

Nine have sold their interests to the Crown, a proportionate rent is still paid to the other three. Two of the unsold grantees are very obstinate. The terms upon which they agree to sell namely a reserve for them of one thousand acres and a payment of five hundred pounds, the money *although greater than other grantees have been paid*, is not excessive and I recommend it for approval and settlement of the purchase. ... These payments will be equal to five shillings and ten pence per acre on 12,800 acres.<sup>416</sup> [*emphasis added*]

The increase amounted to ten pence more per acre than what the other nine grantees had received.<sup>417</sup>

Indeed, the Crown was prepared to increase the price again in the hope of obtaining Honotapu's share of the reserve. Gill, although annoyed by the 'vexatious' delays, instructed Porter to see if Honotapu could be induced to 'sanction Pera' receiving cash in lieu of his interest in the reserve 'say in all three hundred pounds'.<sup>418</sup> Porter failed to get Honotapu to agree to Pera's share being wholly in cash but he was successful in obtaining their signatures agreeing to transfer their interests to the Crown. It seems that Honotapu and Pera may have regretted agreeing to the terms approved by Bryce. Porter reported that he had difficulty in obtaining their signatures as upon signing they asked for the reserved area to be extended and relocated to a better part of the block and for more money. Porter suggested that these efforts were a result of the owners being informed that their interests were worth £3000. In spite of Petera and Pera's attempts Porter was able to close the deal at the price agreed to.

The unfairness of this situation was shown when Porter blocked the attempt by descendants of three Waihau grantees, who had sold in 1877, to obtain succession orders in the hope of getting proportionately more money. As stated above, Porter asked Gill to confirm that all other interests had been sold to Crown so that he could get the three other succession cases 'struck out'.<sup>419</sup> Overall the lack of transparency in these transactions raises serious doubts as to whether *all* sellers received a fair price in return for the land that was taken.

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<sup>416</sup> Gill to Native Minister Bryce, 10 February 1880, MA 13/23

<sup>417</sup> Gill, 'Memo showing payment allocations for Waihau', 10 February 1880, MA 13/23

<sup>418</sup> Gill to Porter, 26 February 1880, MA 13/23

It is significant that prior to 1905 there was no legislative recognition for fixing a minimum price for Maori land.<sup>420</sup> As evidenced above this state of affairs saw owners not being paid adequate or fair prices. This situation was facilitated by individualisation. As the Native Lands Commission was to later comment:

Theoretically the Crown does not buy unless the owners are willing to sell. But the experience of half a century shows —(1) that in the absence of competition produced by restrictive legislation, and in the face of encumbrances due to litigation and survey costs, circumstances are created which practically compel the Maori people to sell at any price; (2) that the individualisation of titles to the extent of ascertaining and defining the share of each individual owner in a tribal block owned by a large number gives to each owner the right of bargaining with the Crown and selling his interest; it gives scope to secret dealing, and *practically renders impossible concerted action on the part of a tribe or hapu in the consideration of the fairness or otherwise of the price offered, or in the consideration of the advisability of parting at all with the tribal lands.*<sup>421</sup> [*emphasis added*]

Furthermore, at the time of the Crown purchases there was in fact no legal provision for the creation of inalienable reserves.

### ***3.4. Creation of reserves***

From 1862, the Native Land Court had the responsibility for ensuring adequate reserves remained. Crown officials acknowledged at least in theory that Maori should be left with something especially from Crown purchases. Native Minister McLean in 1876 implicitly acknowledged the Crown's responsibility to ensure that Maori retained sufficient land when he said that Crown purchase of Maori land was desirable 'as long as sufficient inalienable reserves are made for their support, and [that] this should always be a fundamental part of a system, [so] there will be no fear of their being injured.'<sup>422</sup> Yet the alienation statistics clearly show that Rongowhakaata's tribal estate was severely 'injured' with 14 per cent going as a result of Crown purchase (on top of the 48 per cent

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<sup>419</sup> Porter to Gill, 21 May 1880, MA 13/23

<sup>420</sup> Stout/Ngata: AJHR (1907), G-1C, p8

<sup>421</sup> Stout/Ngata: AJHR (1907), G-1C, p8

that had already been lost in the raupatu). As Rose points out, the rhetoric over Crown purchase did not reflect the reality of the process of alienation.<sup>423</sup>

As mentioned above under the Native Land Act 1873 Act the Crown appointed district officers who were required to ensure that sufficient land, with a minimum of 50 acres for every man, woman and child was reserved. District Officer Locke was involved in all of the Crown purchases arranging for certain areas to be set aside for the benefit of minors and non-sellers and old people. In February 1877, the Native Land Court ruled that the memorials of ownership for Tauwharetoi, Whakaongaonga, Tuahu and Hangaroa Matawai would be held over until reserves had been surveyed:

The court has allowed the orders for Memorial of Ownership to stand over until reserves within them had been surveyed for those of the owners who were minors. This course was deemed necessary as the District Officer (Mr Locke) on behalf of the Government and the owners (already ascertained by the Court as per judgment given) had entered into negotiations for the sale to the Government of the said block and which if treated otherwise could not be done; for these reasons an application was secured by the Court from all the interested parties to allow the said blocks to remain in this position.<sup>424</sup>

The evidence suggests that rangatira such as Rapata Whakapuhia had Whakaongaonga investigated in order to secure title and so that it could be made a legal reserve. At the title investigation Whakapuhia outlined the importance of Whakaongaonga to his people.

I live at Turanga. I know this land. I ordered the survey ... I claim over the whole block. ... I claim it through my ancestor Hinekorako and Tame. They lived at Te Reinga and Te Wairoa. The 40 claimants whose names I have given are all descendants of this ancestor. ... I do not know of any other tribes using or having lived on this land. I have seen Ngaitahu [sic] living just outside the boundary of this Block. I have lived at a place called Kaiwahine within this block and also at a place outside the boundary. I have also lived at a place called Okahu in the centre of the block when I was very young. The whole of Ngaitane is here living there. There [was] about 400 people, they have decreased greatly since. There has never been any dispute about this land.<sup>425</sup>

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<sup>422</sup> *McLean Papers* MS-Copy-Micro-0535-13, Folder 37b cited by Rose, '1873 – 1890', p43

<sup>423</sup> Rose, '1873 – 1890', pp39 – 40

<sup>424</sup> Gisborne Minute Book 3, 9 February 1877, p359, DB 30

<sup>425</sup> Gisborne Minute Book 3, 15 February 1877, pp242–245, DB 568–571

Nikora also gave evidence reflecting how Whakaongaonga was an important papakainga and like many areas, occupation was affected by the relocation of Maori as a result of the East Coast wars:

I live at Turanganui. Ngatitane and Ngai Turi are my hapus. I claim the whole block. ... I went onto the land when I was young. I was shown all over the land and its history made known to me. I lived two years at Kaikoura. There were a great number of people living there at the time. ... Ngaitane and Ngai Turi were the only hapus there, they are present in Court. They are occupying the land at present by gathering food on the land but no one actually living on it; it was left at the time of the Hauhau trouble.<sup>426</sup>

Whakapuhia's desire for Whakaongaonga to be reserved was indicated in his public letter of 1877 where he profusely objected to the block being purchased by the Crown. Its retention was necessary for the future wellbeing of his hapu's descendants, 'there is not any other land on which we and our offspring can live but that land only.'<sup>427</sup>

Initially District Officer Locke appeared to acknowledge that Whakaongaonga was to be reserved and applied at the title investigation for Whakaongaonga to be protected under section 24 of the Native Land Act 1873. The court minutes note that Locke's application was explained to the claimants and they were informed that it would be reserved accordingly.<sup>428</sup> After the final judgment was announced 9 March 1877 the request for the land to be made inalienable was made again. Incredibly this request was vetoed by Locke who advised the Court that the Crown held a lien over Whakaongaonga and that no reservation order was to be made until he had 'arranged with the owners'.<sup>429</sup> A press report of March 1877 noted that the memorials of ownerships for Tauwharetoi, Whakaongaonga, Tuahu and Hangaroa Matawai were being 'withheld until an arrangement' whereby the rights of minors could be confined to certain reserves to avoid

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<sup>426</sup> Gisborne Minute Book 3, 15 February 1877, p253, DB 574

<sup>427</sup> Rapata Wakapuhia to *Te Wananga*, 9 June 1877, Rose, *DB Volume 9*, pp5970–5971

<sup>428</sup> Gisborne Minute Book 3, 15 February 1877, DB 571. NB: The minutes record that Locke's application was made under section 34 of the 'Act of 1873. A perusal of the Acts in that year indicates that he was referring to the Native Land Act 1873 and must have meant section "24" because "34" applied to procedural matters only where as "24" was concerned with reserves.

<sup>429</sup> Gisborne Minute Book 3, 9 March 1877, p347, DB 605

complication in the alienation of the land.<sup>430</sup> Such arrangements were to take another three years.

As a result of inadequate enquires by Crown officials it is notable that minors had been left off the ownership lists for the reserves. This is seen in the protests of some of the “dissentient” owners such as Neta Hekeheke and even sellers.<sup>431</sup> Vendor Hori Niania told Porter:

You heard what the woman [Hekeheke ] said about the children it is quite correct. There were reserves made for the children, but some were not included. Those whose children were put in sold those whose were not, kept their land for their children. This is the cause of the difficulty. I sold because I thought the area set apart would be enough for the children. I have since found out my mistake. There were about 60 children excluded whose parents were put in.<sup>432</sup>

When reserves for all the Hangaroa blocks were finally awarded in 1880, it is significant that they were returned in an individualised state and some with outstanding survey liens. For example in the case of Tauwharetoi the remaining lands were awarded as follows:

**Table 6: Outstanding Survey Liens for Tauwharetoi, 1895**

| <i>Block No.</i> | <i>Area</i> | <i>No of owners</i> | <i>Survey Lien</i> |
|------------------|-------------|---------------------|--------------------|
| 1                | 990         | 57                  |                    |
| 2                | 3036        | 43                  | £151 16s           |
| 3A               | 1352        | 1                   | £38 12s 1d         |
| 3B               | 2705        | 6                   | £81 14s 3d         |
| 4                | 1000        | 123                 | £29 12s 8d         |

The Native Land Court adjudged that 1000 acres of Tauwharetoi should be reserved. Crown purchase officer Porter noted that the ‘concession of 1000 acres was by the Court

<sup>430</sup> *Poverty Bay Herald*, 20 March 1877

<sup>431</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

<sup>432</sup> Minutes of Porter’s meeting at Kaiparo, 5 January 1880, MA-MLP 1 1902/12, Berghan, Supporting Papers, Vol.11, p.5081

deemed judicious'.<sup>433</sup> This was an example of the court implementing its protective duties but the fact that the piece was returned in individual title merely laid the foundation for it to be vulnerable to alienation later on.<sup>434</sup> The Crown was to purchase parts of Tauwharetoi 1, 2, 3 and 4 in the 1890s. Indeed Porter's wife Herewaka Poata had acquired the interests of three owners in 1883 and onsold them to the Crown.<sup>435</sup> Overall by 1900 the Crown had acquired a further 17% (c.1578 acres) of the remaining Tauwharetoi land in Maori ownership (c.9083 acres) after purchasing the bulk of the block (50,389 acres) in 1877.

In the case of Whakaongaonga where Maori had wanted *all* of the block (18,500 acres) to be protected just over 6000 acres was set aside. All pieces were returned individualised and inalienability restrictions were easily removed when private and Crown purchasers acquired most of them in subsequent years. Some individuals such as Petera Honotapu, who had 30 acres of Whakaongaonga reserved especially for him profited considerably from selling his "reserve". In 1889 he advised the Court that he was approached to sell his land, which had alienability restrictions, and he consented. Honotapu received £1 per acre for the block whereas the purchaser (Williamson) had bought the surrounding land from the Government at only 5/- per acre.<sup>436</sup> By 1900 the Crown had purchased 44% (c. 2719 acres) of the Whakaongaonga land that was still in Maori ownership (c.6141 acres) after its original purchase in 1877 of 12,418 acres.

As noted above a reserve with alienation restrictions was created from Waihau. It was perhaps a cruel irony that this was a case where the owners (Petera Honotapu and his son Pera) did not want the land protected from alienation because they had arranged to sell it at a higher price (than what the Crown had paid for the rest of the block). Honotapu claimed that he had plenty of other lands and wanted to use the proceeds from the sale of the Waihau reserve to develop them.

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<sup>433</sup> Porter, Gisborne to Native Under Secretary, 7 September 1880, MA-MLP 1 1881/88, Berghan, Supporting Papers, Vol.9, p.3518

<sup>434</sup> Memorial of Ownership of 28 August 1880, Tauwharetoi Block Order File 1042, DB 82

<sup>435</sup> Lewis to Porter, July 1889, MA-MLP 1 1902/12, and Gisborne Minute Book 21, 25 November 1890, Berghan, Supporting Papers, Vol.11, p.4981

<sup>436</sup> Gisborne Minute Book 15, 4 November 1889, pp7-8, DB 641-642

Much to Honotapu's chagrin and expense the Crown set aside the 1000 acres with alienability restrictions. It was unaware that soon after the piece was cut off, Honotapu and Pera had sold it to William Scott Greene (Wiremu Kirini) for £750. The grantees were unaware that restrictions had been imposed. Indeed at the time of sale to Green the grantee's solicitor Hugh Finn had checked with Land Purchase Commissioner Porter that they were entitled to a 'Grant of the land in fee simple without restrictions.' Honotapu and Pera pointed out that they did not live near or reside upon the land and wanted to use the sale proceeds to improve their other lands 'in the ordinary way of farmers'. Indeed the grantees stated that they were possessed of 'or were interested in several large blocks of land' in the district.<sup>437</sup>

In support of Honotapu and Pera's petition to the Governor in March 1882 Porter confirmed that a Crown grant of 1000 acres free of encumbrances was part of the arrangement in exchange for the rest of their interests in Waihau. Porter said that he was not aware the piece had been made a reserve with restrictions.<sup>438</sup> The acting Governor endorsed the transfer to Greene on 24 July 1882.<sup>439</sup>

After expending a total of £109 8s 6d to get the restrictions removed – including travelling to Wellington to lobby Native Minister Bryce and employing a solicitor – Honotapu and Pera requested the government to reimburse their expenses. They argued that they would never have incurred such expenses if the Crown had not imposed restrictions, to which they had never agreed. The request was refused on the basis that it was not necessary for the grantees to have gone through their solicitor to have restrictions removed and that the Crown was not to blame for such an unnecessary expense.<sup>440</sup>

The fact that Native Under Secretary T W Lewis pointed out that Honotapu could have avoided the expense of using his solicitor and travelling to Wellington to get the

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<sup>437</sup> Petition of Petera Honotapu and Pera Tamahukawai to Governor Gordon, 3 March 1882, MA 13/23

<sup>438</sup> Statement of Thomas W Porter, 3 March 1882, MA 13/23

<sup>439</sup> Memo of 21 July 1882, MA 13/23

<sup>440</sup> Native Under Secretary T W Lewis to Native Minister Bryce, 7 September 1882 and Native Minister Bryce to T W Lewis, 8 September 1882, MA 13/23

restrictions removed by merely writing to the Native Minister indicated how ineffective the restrictions were in the first place.

On one level the placing of legal restrictions may be seen as positive in terms of protecting the remaining piece of Waihau from permanent alienation but earlier events had indicated that protection was not a priority of the Crown.<sup>441</sup> The Crown had tried to acquire Pera's share of the piece by offering more money.<sup>442</sup>

This example also showed how a tribal estate could not be adequately protected in a system that awarded land titles to individuals with the power to permanently alienate land. This was why later petitions in 1899, 1905, 1914 by the descendants of owners who had been excluded from ownership for the return of 3000 acres of Waihau (including the lakes) were futile. (These and other petitions of 1921 and 1924 also called for the ownership to be reinvestigated.)<sup>443</sup>

It is also interesting to note the comparative ease in obtaining a removal of restrictions in contrast to those who had to have land partitioned to protect it from alienation. This was another example that the Maori land system imposed by the Crown was designed to facilitate alienation – not protection. Moreover the return of reserves in an individualised state merely facilitated their future acquisition. This was seen in the Crown's own purchase of some of the 'reserved' land in the 1890s.

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<sup>441</sup> Crown Grant to Petera Honotapu and Pera Tamahikiwai under Government Native Land Purchases Act 1877 and Amendment Act 1878 which authorised Governor to issue Crown Grants for Native reserves made under land purchase agreements. As a result of the Waste Lands Administration Act 1876 confiscated lands and land purchased from Maori were under the control of Waste Lands Boards. In order to grant reserves that had been promised to Maori Section 5 of the Volunteers and Others Act 1877 was necessary.

<sup>442</sup> Gill to Porter, 26 February 1880, MA 13/23

<sup>443</sup> Petition of Hemi te Ua and others, 7 November 1899, J 1 1899/1599, Petition of Waata Kunaiti and 20 others, No. 595/05, Arahi [sic] Kunaiti to Apirana Ngata, 20 October 1909, Arani Kunaiti to Native Minister Herries, 2 March 1914, Petition of Pare Mekerapata (Parataniwha McRoberts) March 1921, MA 1 1922/25 and Le1 1921/9 Box 53

### 3.4.1. Arai Matawai

The inadequate provision of reserves in respect of Waihau is significant in that the Crown had already explicitly acknowledged the lack of land remaining in Rongowhakaata ownership after the raupatu. In 1874 Rongowhakaata had applied to McLean for part of Patutahi to be returned to them because it had been given for the use of accommodating troops but had never been used for that purpose. Porter supported the request and reminded McLean of it when the Native Minister revisited Gisborne in March 1875. Porter recommended a piece of ‘little value’ but ‘suitable for a Native reserve’ because Rongowhakaata had no land left in the area:

The piece of land here referred to is a portion of the extra land given to make up the area of the Government Blocks, which is still deficient some 6000 acres. If the application is to be favourably considered, I should recommend the land being returned as inalienable by sale or lease as *the tribe of Rongowhakaata have not any left upon which they can reside.*

The land itself is of little value, being principally hills and its is only along the banks of the Waimata stream [that] patches of land are suitable for cultivation. It is, however, a piece suitable for a Native reserve.<sup>444</sup>

The latter statement raises the question as to how Rongowhakaata were expected to reside on a piece of land where only *patches* were suitable for cultivation. Porter identified the claimants for the reserve as:

Rongowhakaata Tribe

Sub tribes

Huia Te Hau  
 Ngau ai Te Rangi  
 Te Awe Awe  
 Puki Rehi  
 Mokara

Chiefs

Pitu Ngungu  
 Maata Rarenga  
 Rapata Whakapuhia  
 Pitu Ngungu  
 Pitu Ngungu

These people were to be trustees but as noted below because of the desire to individualise as much Maori land as possible the Government insisted that only individual grantees could go on the title.

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<sup>444</sup> Gisborne Military Adjutant Porter to Sir D M McLean, 13 March 1875, AD 103/3, p574

Crown officials such as Porter did act to protect the reserve. Later events saw the Crown frown upon the behaviour of certain Rongowhakaata individuals who were prepared to alienate parts of the reserve. By 1876 Porter was regretting even the granting of the Arai Matawai reserve to Rongowhakaata because of the ‘illegal dealing that had taken place in connection with it’. Indeed one such case of ‘illegal dealings’ was probably the alleged sale of part of Arai Matawai by Ropata Whakapukia to Gunsmith Oscar Beyer in return for four guns. Neither Porter nor Resident Magistrate and Land Fraud Commissioner Nesbitt approved the alleged transaction.<sup>445</sup>

Indeed Porter considered the grant a ‘concession on the part of the government’ and had he ‘foreseen the difficulty that has arisen’ he ‘would not have recommended it’.<sup>446</sup> He urged that the land be brought before the Native Land Court so that it could be declared a reserve under the Native Land Act. Porter was keen to ensure that the land was given protection but on Crown terms as he considered that the Government had ‘the right to dictate in the matter’.

Porter was very concerned that the land meant to be reserved for Turanga Maori was under threat. In April 1878 he exhorted the Native Under Secretary to ensure that provisions to protect these reserves were enacted to avoid Maori being left landless:

I have the honour to call your attention to the necessity of at once issuing some instructions relative to the several blocks of land in this district which have been surveyed for the purpose of being reserved to natives under Sections 24, 25 and 26 of the Native Land Act 1873.

I acting for Mr Locke, District Officer, was chiefly instrumental in setting these lands aside. I now find that attempts are being made to acquire them and specious arguments are used to prevent them being reserved. I am strenuously opposed to this action, as it is absolutely necessary to make some such provisions to guard against the natives being left without land to live upon.<sup>447</sup>

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<sup>445</sup> Porter to Collector, HM Customs, Gisborne, 26 June 1875, Porter to Cub Inspector W E Gudgeon, Armed Constabulary, Ormond, 6 July 1875 and Porter to Dr Nesbitt, R M, Frauds Commissioner, 19 July 1875, AD 103/4, pp55, 103–104 and 136.

<sup>446</sup> Porter to H T Clarke, Wellington, 25 July 1876, AD 103/5, p456

<sup>447</sup> Porter to Native Under Secretary, 10 April 1878, AD 103/8, p537

Arai Matawai of 4214 acres and Tapoto of 400 acres were proclaimed as reserves by proclamation in 1877. Tapoto was granted solely to Kate Wyllie and the proclamation legalised her holding which she had sold to land speculators in 1875. Arai Matawai was granted to 23 grantees. It has been continually leased and still exists today. It is now a Maori incorporation and is the largest remaining block in Rongowhakaata ownership. Arai Matawai was a case where the Crown did employ legislative protections to good effect and individuals did not overrule those owners who did not wish to alienate the reserve. The creation of the reserve was explicit Crown recognition that Rongowhakaata did not have a sufficient amount of remaining land as early as the 1870s.

In this context the fact that the Crown acquired just under half of the remaining Whakaongaonga reserves in which Rongowhakaata held interests with other iwi is similarly significant. The Crown's own officials had in the 1880s acknowledged that the people had already lost too much land. In response to Porter's advice of an offer by Anaru Ratapu to sell Whakaongaonga 2h (110a 2r 25p) to the Crown for £50, Native Land Purchase official Sheridan advised Under Secretary Lewis that:

I am afraid that already the Natives have parted with too much of their lands. This 110 acres appears to have been intended as a reserve. All surrounding lands have I think been purchased by Europeans.<sup>448</sup>

Lewis in turn advised Native Minister Bryce that:

I do not think it is desirable to purchase so small an area of land which is probably a reserve made for Native occupation unless Major Porter is assured that the owners have sufficient other land and that it is not greatly to their interest to retain this small section.<sup>449</sup>

Such comments and acknowledgements by Crown officials are extremely significant in view of the Crown obligation to ensure sufficient land was reserved for Maori. Within the system of land alienation set up by the Crown such inalienable reserves were the only ongoing provision made for Rongowhakaata. Yet the socio-economic and political forces

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<sup>448</sup> Sheridan to Lewis, 26 October 1886, MA-MLP 1 1902/12, DB 892

<sup>449</sup> T W Lewis to Native Minister, 27 October 1886, MA-MLP 1 1902/12, DB 892

in favour of land alienation were so strong that, as evidenced above, the Crown still purchased more of the Hangaroa lands in the 1890s, in spite of the recognition that the owners did not have enough remaining lands. It is notable that prior to 1905 there was no legal obligation on the part of the Crown to ensure that Maori sellers had sufficient other lands for their maintenance.<sup>450</sup>

**Table 7. Crown Purchases 1873 – 1900**

| <b>Year</b> | <b>Block name</b> | <b>Area Purchased (acres)</b> |
|-------------|-------------------|-------------------------------|
| 1877        | Pt Waihau         | 10,350                        |
| 1878        | Pt Tauwharetoi    | 50,389                        |
| 1878        | Pt Whakaongaonga  | 12,418                        |
| 1879        | Pt Tuahu          | 9252                          |
| 1880        | Pt Waihau         | 2450                          |
| 1893        | Pt Tauwharetoi    | 209                           |
| 1894        | Pt Tauwharetoi    | 35                            |
| 1894        | Pt Whakaongaonga  | 1750                          |
| 1896        | Pt Tauwharetoi    | 613                           |
| 1897        | Pt Tauwharetoi    | 398                           |
| 1897        | Pt Tauwharetoi    | 323                           |
| 1897        | Pt Whakaongaonga  | 903                           |
| 1897        | Pt Whakaongaonga  | 66                            |

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<sup>450</sup> Stout/Ngata (1908) G1c, p8

## 4. CHAPTER 4: CONSEQUENCES

This chapter analyses the damaging and long-term effect of the Native Land Court process in terms of dismantling a tribal estate. This dismantling resulted from a combination of individualisation and bilinear succession. An important attempt to regain communal control was the establishment of the Pere/Rees Trusts, their subsequent manifestations and participation in the Kotahitanga Movement.

### *4.1. Long-term effects of Native Land Court process: Dismantling the Tribal Estate*

The detrimental long-term impact of the Native Land Court process resulted not only in the alienation of land but in the consequent splitting up of what land remained into separate and scattered blocks. Owners interests in that land were likewise also scattered. The Native Land Court succession policy, which distorted Maori custom and even ignored the British custom of primogeniture, only served to further exacerbate the effect of imposing an individual tenure onto a communal system of land ownership by increasing multiple ownership of what scattered remnants remained.

The Native Land Act 1865 directed the Native Land Court to ascertain who, according to law, *as nearly as it can be reconciled with Native custom*, ought to succeed intestate Maori. In his precedent-setting Papakura Judgment of 1867 Chief Judge Francis Dart Fenton ruled that the inheritance of intestate Maori should be divided amongst the children equally as tenants in common.<sup>451</sup> This policy was contrary to Maori custom where rights to land were based on a combination of inheritance, occupation and identification with a community.<sup>452</sup>

Fenton's approach was that 'English law shall regulate the succession of real estate among the Maoris, except in a case where a strict adherence to English rules of law

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<sup>451</sup> F D Fenton (ed), *Important Judgments Delivered in the Compensation Court and Native Land Court 1866–1879*, Auckland 1879, reprint edition, Christchurch, 1994, pp19–20 cited in Dr Byran Gilling, 'The Native Land Court and Maori Custom relating to Succession', October 1997, Wai 401, pp14–15

<sup>452</sup> A. Ward, *A Show of Justice*, pp. 186/187 cited in Geiringer, 'Historical Background', pp86–87

would be very repugnant to Native ideas and customs.’<sup>453</sup> Fenton’s approach was also dominated by his strong social agenda for Maori, which included extinguishing tribal interests. Fenton had heavily influenced (if not actually drafted) the 1865 Act. His statement that Maori customs should be overthrown so as to advance colonial governance was a clear indication of the Crown’s intention to alter Maori society through the imposition of English custom by way of the Native Land Court. Fenton said:

Instead of subordinating English tenures to Maori customs, it will be the duty of the Court, in administering this Act [Native Land Act 1865] to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudices.<sup>454</sup>

In the Papakura case Fenton saw no reason to interfere with ordinary law except that he did not think conferring the entire estate on a single heir-at-law was consistent with ‘Native ideas of justice or Maori custom’. Thus Fenton conferred the entire estate on the three children. Gilling comments that the Papakura judgment created the ‘clear precedent that Maori custom, whatever it was in any given situation, was to be almost entirely set aside in favour of an English legal solution.’<sup>455</sup> Gilling argues that this ‘English solution’ was to further the individualism inherent in the Native Land Acts ‘setting aside any tribal claims Maori custom might have imposed—had a piece of communally-owned land been hereditary in the first place’. Moreover, Fenton’s use of what he thought was Maori custom was selective. In this case its application suited the purposes of furthering individualisation:

Maori custom was permitted to ameliorate that individualistic ethos only to the extent that all of the deceased[’s] children, not just one, could inherit. The Native Land Court was thus on a mission not to preserve Maori custom, but to introduce as rapidly as it could get away with, English tenure and rules of descent.<sup>456</sup>

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<sup>453</sup> Gilling, ‘Native Land Court and Maori custom’, p14

<sup>454</sup> Fenton cited by Gilling, ‘Native Land Court and Maori custom’, p15

<sup>455</sup> Gilling, ‘Native Land Court and Maori custom’, p15

<sup>456</sup> Gilling, ‘Native Land Court and Maori custom’, p16

Fenton's use of British custom was similarly selective. He considered that the rule of primogeniture (the oldest son inheriting the entire estate) was not in line with Maori custom, seeming to ignore the fact that such a principle had been developed in recognition of the importance for land not to become fragmented in a society where land was the most important asset.<sup>457</sup> Later legislation extended the Native Land Court's powers and jurisdiction over Maori succession including cases where a will had been left. (Significantly from 1876 the Supreme Court was to refer to the Native Land Court on matters of Maori custom such as succession.)

The ongoing process of partition and individualisation effectively destroyed Rongowhakaata's remaining landbase by dividing the land into smaller and smaller blocks. At the same time, the imposition of bilinear succession would have resulted in the increasing fragmentation of owner's interests within those blocks. While the blocks became scattered and smaller in acreage, the policy of succession would have thus ensured that the number of owners interested in those blocks not only increased but also that the interests became scattered. In short, by 1900 Rongowhakaata's tribal estate had been in large measure dismantled. It was now comprised of scattered remnants, the majority of which were less than 50 acres, and it is likely that the interests of owners would have likewise been increasingly scattered throughout those blocks.

The case of Rauotaua block demonstrates the land fragmentation process. Table 8 shows that one block in 1876, via the process of individualisation, partition and alienation, was split into 16 smaller blocks by 1900.

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<sup>457</sup> Geiringer, 'Historical Background', p87

**Table 8: Partition of Ruaotaua Block, 1876 – 1900**

| DATE OF ORDER  | BLOCK NO. | A   | R | P  | NO. OF OWNERS |
|--|-----------|-----|---|----|---------------|
| 1.3.1876   | Ruaotaua  | 137 | 2 | 0  | 60            |
| 17.10.1883   | 1         | 2   | 2 | 24 | 1             |
|  | 2         | 2   | 1 | 0  | 1             |
|  | Residue   | 130 | 2 | 9  | 68            |
| 1.10.1886  | 3         | 6   | 3 | 0  | 3             |
|  | 4         | 11  | 1 | 0  | 5             |
|  | 5         | 4   | 2 | 1  | 2             |
|  | 6         | 29  | 1 | 0  | 13            |
|  | 7         | 42  | 3 | 0  | 23            |
|  | 8         | 31  | 2 | 9  | 24            |
|  | 9         | 4   | 2 | 0  | 2             |
| 23.2.1889  | 8A        | 4   | 2 | 0  | 6             |
|  | 8B        | 6   | 3 | 0  | 7             |
|  | 8C        | 2   | 1 | 0  | 16            |
|  | 8D        | 6   | 2 | 7  | 3             |
|  | 8E        | 12  | 1 | 0  | 8             |
| 26.8.1890  | 8D*       | 6   | 0 | 0  | 3             |
|  | 8E*       | 10  | 3 | 25 | 8             |
| 24.7.1894  | 6A        | 2   | 0 | 0  | ?             |
|  | 7A        | 2   | 1 | 0  | 1             |
|  | 7B        | 2   | 1 | 0  | 1             |
|  | 7C        | 39  | 0 | 0  | 22            |
| 10.9.1900  | 7C1       | 8   | 1 | 4  | 9             |
|  | 7C2       | 29  | 1 | 0  | 13            |
| #Rehearing. Problems with erosion by Waipaoa River. Boundaries redrawn.<br>[GMB 19 pp.225-233] |           |     |   |    |               |

The extent that title could be fragmented is indicated in the case of Arai Matawai which in 1877 originally comprised of 12 “grantees” but by 1908 there were 642.

This process of land and title fragmentation would have only accelerated with each succeeding generation. It in turn laid the basis for the dilemmas of the next century: namely, the growing problems faced by Rongowhakaata in terms of access to blocks and their inability to manage and develop what were increasingly uneconomic land holdings in terms of tribal development. A hint of what was to result from the Native Land Court process may be seen in Crown agent Porter’s statement in May 1878 that in his district ‘blocks of land have been effectively locked up owing to the number of owners admitted,

there being in several cases 430 owners to blocks of less than 3000 acres in extent.’<sup>458</sup>  
The deleterious impact the process had in terms of land management and development was also later acknowledged by Commissioner of Crown Lands, F Broderick:

The great bar to practical settlement is the partition of the land ... This has the effect of allocating perfectly useless sections of land to each Native or group of Natives. Many of these are several miles long and only a few chains wide. The mere survey of them costs more than the land is worth, and the Natives cannot let or sell them for anything like the price that their share of the block should produce. This provides the chance for the Native land speculator, who, having secured a narrow strip or two across nice blocks and thus spoilt them for anyone else, can gradually acquire the intervening areas at a price depreciated below its true value and afterwards sells the block at a goodwill.

It is pretty well known that such options are secured even before the individualisation, and I venture to say that this unpractical subdivision is the fundamental cause of nearly all the evils attendant on the Settlement of Native land. The result is the Native owns an area of land of such a shape and generally without access that it is nearly valueless to him either for sale or settlement. The cost of its survey in many cases equals its value, and no one could afford to fence it or work it by itself even when surveyed. Hence the Native feels aggrieved and considers he is cheated by the surveyor and by the person who buys his land at its depreciated value.

The purchaser wanting to buy, is offered a block, but finds he has to treat with a number of different owners, some of whom will sell, and others will not ... Then comes the Native agent, and he and the Natives trick each other in numerous little ways for years until he has acquired a sufficient number of interests to compel the other owners to sell out or to submit to be cut off by survey and fencing.

During the 19<sup>th</sup> century Rongowhakaata attempted to deal with this relentless dismantling of their tribal estate through a variety of mechanisms; perhaps the most notable being through the establishment of trusts.

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<sup>458</sup> Porter to Native Under Secretary, 16 May 1878, AD 103/8, pp678–683

## ***4.2. Turanga Maori Attempts to Regain Control***

### **4.2.1. Pere/Rees Trust Lands**

In the late 1870s, Wi Pere and William Rees (who in April 1878 had been appointed solicitor for Turanga Maori) established trusts over lands belonging to Rongowhakaata and other Turanga Maori.<sup>459</sup> The creation of these trusts was a strategy to deal with the damaging consequences of individualised title. They were intended to prevent the unregulated sale of individual interests and the title difficulties that resulted from this. Land was brought under Pere and Rees' trusteeship upon the owners signing a deed to that effect. The hapu with interests in the block would then elect a committee that Pere and Rees would be obliged to consult with before entering into any transactions. In 1897, Pere discussed the trusts at a Validation Court hearing, stating that: 'A great many trust deeds were executed by the Maori conveying their land to Trustees. The Trust deeds were opposed by Europeans who stated that under them the Maoris would not be able to sell their lands.'<sup>460</sup> In 1879, Rees attempted to publicise that the scheme would benefit both European and Maori. He reasoned that:

Once the Maoris had obtained a Crown grant of their land from the Native Land Court and the Court had recognised the vesting of it in the trustees, transferres [sic] to settlers would be easily effected. The East Coast would be speedily opened to settlers and Maori owners would secure a fair price for their land. Litigation and fraud would be minimized by this simple system and harmony between the Maori and Pakeha would be improved.<sup>461</sup>

In addition to shared blocks such as Whataupoko, four Rongowhakaata core blocks were involved in Pere and Rees' trust scheme: Ahipipi, Whakawhitira, Pakowhai and Kaiparo. In the cases of the Ahipipi and Whakawhitira blocks, the interests of only a few owners were successfully brought under Pere and Rees' trusteeship. Deeds of trust were signed

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<sup>459</sup> Rose, '1873-1890', p 383

<sup>460</sup> Cited in *ibid*, p 3684

<sup>461</sup> A Ward, 'The East Coast Maori Trust', MA (History) thesis, 1958, pp 17-18, cited in Rose, '1873-1890', p 385

by owners of these blocks on 13 and 14 January 1879.<sup>462</sup> In September 1893, Pere and Rees conveyed to CA Brown the interests in Ahipipi and Whakawhitira that they held in trust.<sup>463</sup> Under the same deed, interests in Wairau were also conveyed to Brown. About 8 acres of Ahipipi was conveyed to Brown, and about 23 acres of Whakawhitira.

A deed signed on 11 February 1879 also brought the sizeable Pakowhai block (4950 acres) under the trusteeship of Rees and Pere.<sup>464</sup> The trust commissioner on 15 May 1879 certified this deed.<sup>465</sup> In February 1879 the creation of a trust over the Kaiparo block was enthusiastically reported in the *Poverty Bay Standard*: ‘the Deeds of Kaiparo Block had been concluded on Monday last by Mr Rees and Wi Pere, the Trustees for the Grantees in the said block’. The 431 acre Kaiparo block had been awarded to 33 grantees by the Poverty Bay Commission in 1869. The *Standard* claimed that, as a consequence of Pere and Rees’ activities, ‘the whole of the difficulties in connection with the Kaiparo Block are finally adjusted, by the original lease and mortgage being extinguished.’<sup>466</sup>

Under Pere and Rees’ arrangement, 160 acres of the block was transferred to AC Arthur, who had acquired the interests of an 1869 leasee who had claimed to have the freehold of part of the block.<sup>467</sup> Arthur and another European were permitted to lease further land from the owners, and a disputed mortgage and lease were wiped out.<sup>468</sup> One of the owners, Wi Paraone, appears to have not wanted his interest included in the trust. Paraone defined his 14-acre interest when he signed a deed gifting the land to his sister Mere Ratapu.<sup>469</sup> The area of Kaiparo block brought under Pere and Rees’ trusteeship appears to have been about 254 acres.

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<sup>462</sup> Ahipipi: TCMB 9, pp 298-299, DB 6, pp 3305-3306; TC's Register of Cases 634-1067, pp.111-112, DB 4, pp 111-112. Whakawhitira: TCMB 6, pp 219-220, DB 6, pp 3163-3164; TCMB 7, pp 2, 17, 32, DB 6, pp 3120, 3127, 3134; TCMB 8, pp 312, 364, DB 6, pp 3276, 3283.

<sup>463</sup> TCMB 9, pp 296-297, 333, DB 6, pp 3303-3304, p 3324

<sup>464</sup> Orr-Nimmo, p 21

<sup>465</sup> TCMB 1 pp.106, 113, DB 5, pp 2559, 2562

<sup>466</sup> Cited in Katherine W Orr-Nimmo, ‘Report for the Crown Forestry Rental Trust on the East Coast Maori Trust’, February 1997, p 20

<sup>467</sup> Orr-Nimmo, p 20; TCMB 1, pp 124, 127

<sup>468</sup> Orr-Nimmo, p 20

<sup>469</sup> File note on Kairourou block order file; TCMB 1, pp 135, 142

In 1891, Raniera Turoa, the husband of one of the owners Kaiparo block, explained how the owners had been induced to hand their land over to Pere and Rees. He stated that Rees had described the mortgage over the block to be ‘in effect, illegal (rotten), because of the food, flour, spirits which had been advanced to the Natives.’ Rees had stated that the owners would suffer if the land was left in their hands, and he argued that if the land was handed over to himself and Pere for subdivision, sale, and leasing ‘the money would flow into our pockets like water running out of a bucket.’<sup>470</sup> Turoa detailed that after Pere and Rees had become trustees of Kaiparo block, the committee agreed to a proposal to lease a further 60 acres, and also that a mortgage be raised on the block to fund the building of a bridge from Gisborne to the Whataupoko block.

Rees was a Member of the House of Representatives and in 1880 he sought legal ratification of the trusts through the introduction of the East Coast Native Lands Settlement Bill. Rees explained the proposed legislation in the following way:

‘The East Coast Settlement Bill’, if it becomes law, will enable all Native owners of land in the district, including infants and married women, to sign for each block a deed of trust, vesting in trustees, chosen by the Native owners themselves, the whole property in the land conveyed. These trustees will be aided by a Committee, also chosen by the Maori owners of the lands to be affected; and these trustees and committees, like the directors and managers of a Joint Stock Company, will have full power, but subject to strict supervision and control, to deal with the subject matter of their trust: to cut up, to lease, to sell, to part, and to divide the lands.<sup>471</sup>

Rees claimed that the vesting of lands ‘Between the Wairoa River and the East Cape’ would facilitate large-scale settlement, and he stated that interest in the scheme had been expressed from Belfast.<sup>472</sup> A number of petitions in favour of Rees’ Bill were submitted by Turanga Maori in 1880. Commenting on a petition signed by Pere and 165 others, Rose states that it ‘placed a greater emphasis on the retention of land by Maori.’<sup>473</sup>

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<sup>470</sup> Cited in Orr-Nimmo, pp 20-21

<sup>471</sup> Cited in *ibid*, p 28

<sup>472</sup> Rose, ‘1873-1890’, p 387

<sup>473</sup> *Ibid*, p 389

Parliament did not pass Rees' Bill. Ward attributes this to a growing suspicion of Pere's and Rees's control over Maori land on the East Coast, and to the fact that the scheme stood in opposition to current Maori land policy.<sup>474</sup> The Pere-Rees' trust was rendered legally invalid early in 1881 when the Native Land Court judges Heale and O'Brien ruled that Te Aitanga-a-Hauiti's Pouawa block could not be vested in anyone other than the owners. Rees' took the case to the Supreme Court, but the decision was upheld.<sup>475</sup>

#### **4.2.2. New Zealand Native Land Settlement Company and its demise, 1881 – 1891**

Orr-Nimmo quotes Rees's response to a question asked by Maori after the Pouawa decision: 'What shall we do now?' I said, 'Form a company of Natives and Europeans; let the Europeans put in money and the natives put in land'<sup>476</sup> The objectives of the Settlement Company were detailed in an abridged prospectus published in the *Poverty Bay Herald* on 5 July 1881:

The object of the Company is the Voluntary Association of the owners of Native Lands with European Capitalists, for the purpose of promoting settlement on the lands on the East Coast . . .

This is intended to be attained by the Native Owners contributing blocks of land at original or unimproved values, receiving paid-up shares in the Company for the same; the European Shareholders contributing capital to be called up in fixed amounts as may be found requisite for conducting the operations of the Company.

It is intended that the capital raised should be employed in defraying expenses of management, completing titles, effecting surveys and subdivision into farm and township lots, opening means of access, conducting sale and leasing of lands, promoting the formation of Special Settlement parties from England and elsewhere, making advances to settlers on security, and generally in utilising the lands and property vested in the Company to the best advantage.<sup>477</sup>

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<sup>474</sup> Ward (1958), p 19, cited in Rose, '1873-1890', pp 389-390

<sup>475</sup> Rose, '1873-1890', p 390

<sup>476</sup> Cited in Orr-Nimmo, p 29

<sup>477</sup> Cited in Orr-Nimmo, pp 30-31

Maori who assigned land to the Company would receive most of their payment in shares. Responsibility for surveys, subdivisions, and organising leases and sales was to lie with the Company. After alienations had been effected, Maori would receive 2/3 of the profits, with the remaining 1/3 going to the European capitalists. Directors included prominent locals, capitalists, Members of Parliament, and Maori chiefs Wi Pere, Henare Potae, and Major Ropata.<sup>478</sup> Rose notes that although the Settlement Company retained many of the intentions of the earlier trusts, control over the land was removed further away from the owners. In spite of this change, however, Maori remained supportive of the scheme, and in 1882 and 1883 large allocations of land were awarded to the Company by the Native Land Court.

The land of three Rongowhakaata core blocks became holdings of the New Zealand Native Land Settlement Company: part Kaiparo (253 acres 3 roods 8 perches), Pakowhai (4950 acres), and part Matawhero B (665 acres). The portion of Kaiparo block that had been passed in trust to Pere and Rees was transferred to the Settlement Company in two portions, through deeds signed by Pere and Rees in December 1880 and January 1883.<sup>479</sup> Pere and Rees also signed a deed in favour of the Settlement Company for Pakowhai block in January 1883.<sup>480</sup>

It appears that the owners of Pakowhai for whom Pere and Rees were acting as trustees may not have been consulted before the block was conveyed to the Settlement Company. While giving evidence to the Native Affairs Committee in 1890, when an inquiry was held into a petition concerning grievances over Pere and Rees' dealings in Pakowhai and other Muriwai land, Hemi Waaka stated that: 'The Committee do not understand how the company obtained possession of Pakowhai, because we never signed any transfer of it to the company.'<sup>481</sup> It has not been established when the 665 acres of Matawhero B passed

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<sup>478</sup> Rose, p 393

<sup>479</sup> TCMB 1, pp 358-360, 362, DB 5, pp 2640-2642, 2644; TCMB 2, pp 570, 573, DB 5, pp 2851, 2853

<sup>480</sup> TCMB 2, pp 571, 573, DB 5, pp 2852-2853

<sup>481</sup> Cited in Orr-Nimmo, pp 21-22

into the hands of the Settlement Company. However, it appears that the Company purchased at least 160 acres of the block from the trustees of Read's estate.<sup>482</sup>

From 1883, after a promising beginning, the financial position of the New Zealand Native Land Settlement Company began to deteriorate, and the position of Maori within the Company also became increasingly marginalised. The directorship of the Company became dominated by capitalists from Auckland, and Wi Pere remained as the only representative of the East Coast and Maori.<sup>483</sup> A shift towards a more speculative focus was hardened in 1884 when the Supreme Court decided that the Company's acquisition of Paremata block was 'truly a sale'. Orr-Nimmo considers that, in making this decision, the judiciary viewed the Company as a land purchasing company, not an agency company working between Maori landowners and European settlers.<sup>484</sup> Rose states that, by the mid 1880s:

The structure of the New Zealand Native Land Settlement Company ... bore little resemblance to the original concept espoused by Pere and Rees in their promotion of trusts in the late 1870s. The New Zealand Native Land Settlement Company was no longer a means through which Te Aitanga-a-Mahaki could deal with their lands on their own terms.<sup>485</sup>

Operating in the context of the Depression, the financial difficulties of the Company worsened as demand for land and its value decreased. Also, the Company's lands were mortgaged to the Bank of New Zealand. An 1886 schedule of properties suggests that the Company had managed to sell about 800 acres in Whataupoko and 300 acres in Matawhero B.<sup>486</sup> In September 1886, Riperata Kahutia withdrew her Kaiti interests from the Company, an action that reflected the growing Maori dissatisfaction with the Company, which had indebted land without passing on any profits. Maori were also

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<sup>482</sup> Solicitors for Coleman and Clarke to Native Land Court, Gisborne, 13 December 1883, Correspondence File 8/13/182, MLC Gisborne

<sup>483</sup> Rose, '1873-1890', p 397

<sup>484</sup> Orr-Nimmo, pp 40-42

<sup>485</sup> Rose, '1873-1890', p 398

<sup>486</sup> Ibid, pp 398-399

unhappy at the emphasis on sales rather than leases.<sup>487</sup> The dire financial position that the Company was in by 1888 has been described by Ward:

The one-quarter million acres of land which were the Company's sole assets were all unsaleable. They bore an accumulating burden of debts from rates, taxes, and above all, from the interest charges levied on the Company's mortgages to the Bank of New Zealand.

Ward notes that when the Company wound-up in 1888 'the Pakehas were left with a loss of about £40,000 and the Maoris with mortgaged land and worthless scrip'.<sup>488</sup>

Before the Settlement Company's operations ended, Pere and Rees' moved to establish trusteeship over lands vested in the Company. On 23 May 1888 a deed was signed by Pere and Rees and the committees for a number of blocks including Pakowhai.<sup>489</sup> Under the terms of this deed, Pere and Rees were authorised to act on behalf of the owners, with responsibility to arrange sale to enable repayment of the mortgage. Orr-Nimmo notes that the land that could be sold extended beyond that of the committees who were party to the deed. It included, for instance, Kaiparo block, which was to be sold in 1891.<sup>490</sup> In July, a second agreement was made between Pere and Rees and the block committees who had handed them control. These committees agreed to assume the Settlement Company's mortgage, enabling it to voluntarily liquidate.<sup>491</sup> The mortgage on these blocks amounted to £135,000. As part of the agreement, the Bank of New Zealand agreed to delay foreclosure for three years.

Pere and Rees travelled to Britain in July 1888, unsuccessfully attempting to find settlers for the lands. In 1890, with debt continuing to mount as foreclosure grew nearer, Rees offered to sell the Pakowhai and Paremata blocks to the government. Although this offer was considered by the government, a decision was eventually made against such a

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<sup>487</sup> Ibid, p 400

<sup>488</sup> Ward (1958), pp 38-39, cited in Rose, '1873-1890', p 403-404

<sup>489</sup> Orr-Nimmo, p 52

<sup>490</sup> Ibid

<sup>491</sup> Rose, '1873-1890', p 404

purchase.<sup>492</sup> In April 1890, with foreclosure looming large, *The New Zealand Herald* reported that there was:

an indescribable state of confusion. The company is in liquidation, the natives who gave up their land have never touched any money, and some of them have not even got the scrip which they were supposed to get, while over most of the land the Bank of New Zealand holds a lien. What has become of the money actually raised by the sale of shares, or of blocks of land - for some money was sold for cash - nobody seems just at present to know. . . . A great deal has gone in salaries and other expenses, but whoever got the money the natives assert they never had any. The patrimony is gone, and they have no means of living; meanwhile interest charges go on piling up the amount due to the Bank, and the only way out of the difficulty seems to be for the Government to step in.<sup>493</sup>

In 1890, Hemi Waaka and 30 others petitioned the government with regard to Pere and Rees' actions in connection to Pakowhai block and other Muriwai lands. In the following year, the government received two petitions concerning the Settlement Company from shareholders. In 1891, these petitions were considered by the Native Affairs Committee, which was clearly concerned about the situation. In September 1891, it reported that:

it is absolutely necessary that the Government . . . should, in the interests of the Natives and others who have just and equitable rights, step in and take, or assist in taking, some action by which relief can be given to the injured parties. . . .

power should be given to the government to take over these lands on behalf of the Maori owners, on terms to be arranged between the Government, the Maoris, and the assets company; the land to be taken at a valuation to be made under the Public Works Act, additional security to be given to the Government, not only over the claims above mentioned, but also over the Native land to be agreed upon between the government and the Maori interested.<sup>494</sup>

Orr-Nimmo states that the government ignored these recommendations, which were made at a very late stage of the session.

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<sup>492</sup> Ibid, p 405

<sup>493</sup> Cited in Orr-Nimmo, p 56

<sup>494</sup> Cited in Orr-Nimmo, p 58

Earlier in 1891, after default of the mortgage payment, the Bank of New Zealand Estates Company decided to foreclose. On 26 October 1891 the mortgaged land was put up for sale. The sale proceeded despite the efforts of solicitors Rees and Day, with 39,000 acres being sold by auction for £59,448.<sup>495</sup> The Kaiparo land was one of the blocks that were sold. At an enquiry held into the East Coast Maori Trust in 1941, Meri Kingi, the heir to Marau Whaipata, one of the grantees in the block, gave evidence about the loss of Kaiparo. Born in 1878, Kingi had lived on the land until she and others were forced to leave by the Estates Company:

We did not go immediately, but when the stock was bought on to the place by the Company we tried to drive it off, but were unsuccessful. In our attempts to drive the cattle and stock off we came up against the drovers.<sup>496</sup>

After being forced off the land, Kingi went with her grandmother to live in Mangatuku, where she had remained, although she possessed no interest in the land. Another witness at the 1941 enquiry was Tangi Matua Mirina, granddaughter of Epina Hokeke, another of the grantees. She also recalled efforts to remove stock from the land, and claimed that her grandfather ‘died in sorrow over the loss of this property’. Commenting on the evidence given to the 1941 enquiry, Orr-Nimmo states that it is ‘clear that the loss of Kaiparo caused tremendous distress which was vividly remembered half a century later.’<sup>497</sup> A continuing grievance over the sale of Kaiparo is evident in the 1945 petition of Te Rauna Hape and 29 others of Wairoa.<sup>498</sup> This petition (discussed below) requested compensation from the East Coast Trust for the loss of the Kaiparo and Okahuatiu blocks.

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<sup>495</sup> Rose, ‘1890-1970’, pp 150

<sup>496</sup> Cited in Orr-Nimmo, p 59

<sup>497</sup> Orr-Nimmo, p 59

<sup>498</sup> Petition No. 71/1945, Te Rauna Hape and 29 Others, MA 1 26/7/31, DB 3, p 1194

### 4.2.3. The Carroll-Pere Trusts and the establishment of the East Coast Maori Trust

On the day that the trust lands were auctioned, further sales were prevented by an agreement that was reached between the Estates Company and Pere, Rees, and Carroll. It was agreed that Carroll and Pere would act as trustees over the remaining land and be responsible for paying off the remaining debt.<sup>499</sup> A series of meetings were then held between Pere, Rees, and Carroll and the owners of the lands involved. All except the owners of Paremata block agreed to the arrangement, and on 17 February 1892 a formal agreement was executed. The Estate Company's claim was for £53,834. Lands with complete titles were subject to a mortgage of £58,331, which allowed £4500 to be paid to Rees and Pere for expenses they had incurred as trustees. Carroll and Pere agreed to finalise the incomplete titles and manage the existing farming operations on the estate.<sup>500</sup>

Blocks with complete titles (including part of Pakowhai and parts of Matawhero B) were to be known as the principal security blocks, being subject to the principal sum due to the estates Company. Blocks with incomplete titles were to become subject to the mortgage once their titles were completed, and were known as specific security blocks. The completion of titles of specific security blocks was largely carried out through the Validation Court. Extensive areas of additional land were brought into the Trust's estate through the Validation Court.<sup>501</sup>

The Carroll-Pere Trust became increasingly indebted as the decade progressed, and by mid-1897 the original debt had increased to £95,778. In order to become productive, the trust lands required considerable expenditure on development and subdivision. However, the only source of capital was the Estates Company, and therefore all expenditure required the Company's approval. Commenting on the extent of the Estate Company's

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<sup>499</sup> Rose, '1890-1970', p 151

<sup>500</sup> Ibid, p 152

<sup>501</sup> Ibid, p 153

control, Rose notes that it managed the lands upon which title was complete (rather than the trustees), and received any income from these lands.<sup>502</sup>

The trustees sought government intervention, and in 1896 a Bill was submitted proposing that the lands be vested in a board headed by a government official. This Bill failed, but in 1898 a second Bill was introduced, which proposed the establishment of a corporate trust empowered to develop the land using borrowed money. The Bill was supported by local Maori and Pakeha, but was rejected by the Native Affairs Committee because it was felt that the mortgage should be satisfied through the sale of land.<sup>503</sup>

In 1902, the government finally intervened after a planned mortgagee sale had been delayed by Court action. Orr-Nimmo suggests that this intervention may largely have been due to concern for the interests of the Bank of New Zealand.<sup>504</sup> A Board was established consisting of three Pakeha businessmen into which the Trust lands would be vested. There was little support for Maori continuing to be in control of the lands. Under the provisions of the East Coast Native Trust Lands Act 1902, the Board was not required to be accountable to the owners of the land in question. The Board was authorised to sell, lease, or mortgage the lands.<sup>505</sup>

In 1904, the Board made its first sales in order to raise revenue for the discharge of the debt to the Bank of New Zealand. Included among the land that was sold was the Matawhero B holding, and almost all of Pakowhai block. This occurred at an auction held on 25 February 1904. The Matawhero B land (33 acres) was sold for £361, and the Pokowhai land (4638 acres) for £27,253.<sup>506</sup> The sale of the Pakowhai land left a residue of 475 acres. (The size of the block appears to have been redefined in the late 1890s from 4950 acres to 5113 acres.) This land was returned to a corporate body of owners in November 1954.<sup>507</sup>

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<sup>502</sup> Ibid, p 154

<sup>503</sup> Ibid, p 155

<sup>504</sup> Orr-Nimmo, p 149

<sup>505</sup> Rose, '1890-1970', p 156

<sup>506</sup> Orr-Nimmo, pp 158-159; AJHR, 1908, G-3, p 8

<sup>507</sup> Orr Nimmo, pp309–310

#### 4.2.4. The question of compensation: Kaiparo and Pakowhai

In 1941, as mentioned earlier, an enquiry was held into the East Coast Maori Trust. One of the matters that was investigated was the alienation of certain trust lands, and whether compensation should be paid. The enquiry was set-up by Minister of Maori Affairs, F Langstone, and was conducted by a committee that included Apirana Ngata, GP Shepherd (Chief Judge of the Native Land Court), and JS Jessep (East Coast Trust Commissioner). In May 1941, the Committee heard evidence in Gisborne concerning Kaiparo.<sup>508</sup> Owing to ‘sharp differences’ concerning the East Coast Maori Trust, the Committee did not prepare a report.<sup>509</sup> Recommendations were, however, made by both Jessep and Shephard. As to the issue of the alienated lands, Jessep stated that:

Some evidence was placed before the Committee with a view to proving that certain blocks were sold and loss and deprivation suffered by the former owners of these lands, which were sold in order to save other lands, but no substantial evidence evidence in that direction was given. At this late date, I am of the opinion that the re-opening of this question were better left alone and that the loss should lie where it fell. An attempt to right past wrongs would possibly lead to the creation of greater ones ...<sup>510</sup>

Shepard was similarly opposed to the payment of compensation.<sup>511</sup>

In 1945, however, the issue of compensation was again raised when Te Rauna Hape and 29 others of Wairoa petitioned for compensation for the sale Kaiparo and Okahuatiu blocks.<sup>512</sup> On 9 November 1945, the Under-Secretary of the Department of Maori Affairs advised that Kaiparo and Okahuatiu blocks were only two of many that were sold, and that the issue of compensation would need to be dealt with before the dissolution of the

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<sup>508</sup> Report of proceedings of committee appointed by the Honourable Native Minister to inquire into certain matters and questions affecting the East Coast trust lands, MA 13/33a, DB, pp 1213-1217

<sup>509</sup> Ngata to Under-Secretary, Department of Maori Affairs, 21 April 1950, MA 1 26/7/31, DB, p 1180

<sup>510</sup> Extract of report by Jessep, cited in Under-Secretary, Department of Maori Affairs to Ngata, 14 June, 1950, MA 1 26/7/31, DB, p 1178

<sup>511</sup> Extract of report by Shepherd, with Under-Secretary, Department of Maori Affairs to Pere, 23 February 1949, MA 1 26/7/31, DB, pp 1185-1188

<sup>512</sup> Petition No. 71/1945, Te Rauna Hape and 29 Others, MA 1 26/7/31, DB, p 1194

East Coast Maori Trust.<sup>513</sup> In its report on the petition, issued on 21 November 1945, the Maori Affairs Committee recommended that the matter should be referred to the Government for consideration.<sup>514</sup>

This recommendation does not seem to have generated any immediate response. However, the issue of compensation for Kaiparo arose again in September 1948, when Mafeking Pere made representations on the issue to Minister of Maori Affairs, Peter Fraser.<sup>515</sup> Pere explained that: ‘Kaiparo block was sold to help salvage the present East Coast Trust lands and the owners of the block are not included in the present Trust. Their interests were lost in the salvage operations.’ He claimed that the members of the 1941 enquiry had recommended that compensation be paid, and had mentioned the sum of £1500. This was denied by Shepherd, who was present at the representation, and this denial was accepted by Fraser. However, in a letter written to the Under-Secretary of the Department of Maori Affairs in April 1950, Ngata recalled that the committee of inquiry had decided in favour of compensation: ‘After a review of all claims we were prepared to recommend the rejection of all but the above [Kaiparo] block and it was thought that the sum of £1500 would be reasonable.’<sup>516</sup> On 8 February 1950, the Under-Secretary wrote to Jessep about the payment of £1500 compensation for the sale of Kaiparo.<sup>517</sup> In his response, Jessep contradicted Ngata, claiming that the 1941 committee of inquiry had found that:

there was definite evidence that this block [Kaiparo] had suffered no more injustice than any other block in the East Coast Trust. One thing is certain that, if compensation is paid with regard to this block, it will raise similar question regarding all other Blocks which were sold from the Trust.<sup>518</sup>

The East Coast Maori Trust Council, an advisory body to the East Coast Commissioner, was established under the provisions of the Maori Purposes Act 1949.<sup>519</sup> The Council was

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<sup>513</sup> Under-Secretary, Department of Maori Affairs, to Clerk, Maori Affairs Committee, 9 November 1945, MA 1 26/7/31, DB, p 1201

<sup>514</sup> Report on Petition No. 71/1945, 21 November 1945, MA 1 26/7/31, DB, p 1199

<sup>515</sup> Notes of representations made to Minister of Maori Affairs, 15 September 1948, MA 1 26/7/31, DB, p 1189

<sup>516</sup> Ngata to Under-Secretary, Department of Maori Affairs, 21 April 1950, MA 1 26/7/31, DB, p 1180

<sup>517</sup> Under-Secretary, Department of Maori Affairs, to Jessep, 8 February 1950, MA 1 26/7/31, DB, p 1183

made up of representatives of the East Coast Maori Trust block committees. After extensive negotiations between the Council, the Commissioner, the Minister for Maori Affairs, and the Maori Affairs Department, it was decided that certain questions requiring resolution would be put before the Supreme Court. The most important issue was the payment of compensation to those whose land had been sold.<sup>520</sup> The various parties appeared before the Supreme Court on 10 September 1951. After hearing a narrative of the history of the Trust lands, the judge indicated that counsel should confer. Following discussions, the Council arrived at a settlement agreement, one ‘with which the Pakowhai ... representatives were happy’.<sup>521</sup> It was unanimously agreed that:

all blocks of land which suffered the sale after 17<sup>th</sup> February, 1892, of the whole or portion of the block the proceeds of which sale were applied towards payment of the debt of trust, and which have not been refunded to the vendors wholly or in part, but if in part to the extent only to which they have not been refunded, be compensated . . . to the extent of twenty shillings in the pound for capital provided only, without interest.<sup>522</sup>

Cleary, the counsel representing the Maori Trustee, explained that there were three reasons why he supported the position that compensation should not be paid for the lands that were sold before 1892:

First. The people whose lands were sold in 1891 are to a large measure identified in their descendants with the people who will benefit from the present proposals;

Second. So far as I am aware no claim has ever been advanced by or on behalf of those people whose lands were sold in 1891. It was a matter which arose during the considerations of counsel when addressing their minds to the question that might arise before this Court;

Third. The 1892 agreement, certainly in law and to a large measure in fact, represented the close of one chapter and the opening of another in the history of these lands.<sup>523</sup>

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<sup>518</sup> Jessep to Under-Secretary, Department of Maori Affairs, 15 February 1950, MA 1 26/7/31, DB, p 1182

<sup>519</sup> Orr-Nimmo, p 271-274

<sup>520</sup> Ibid, p 14

<sup>521</sup> Ibid, p 283

<sup>522</sup> Cited in Orr-Nimmo, p 283

<sup>523</sup> Cited in Orr-Nimmo, p 284

Compensation for Pakowhai was calculated to be £16,302 1s 1d. The settlement agreement was validated with the passage of the Maori Purposes Act 1951. The compensation claim for Pakowhai was settled in 1958. It was determined that compensation would be paid to the applicants, who had been named the owners of the land by the Court in September 1951, on the basis of a 1915 list. The Appellate Court upheld this decision when it was appealed, and Wharengaio Pohatu and 12 others unsuccessfully petitioned Parliament to have their names included.<sup>524</sup> When the East Coast Maori Trust Council had made its offer of compensation during the 1951 court case, the offer was made for ‘blocks’. The legislation specified, however, that compensation be paid to ‘persons’.<sup>525</sup>

Before the passage of the 1951 Act, concerns were raised about the issue of compensation for lands sold prior to the 1892 agreement. On 4 October 1951, at a meeting of the East Coast Maori Trust Council, Gambrill (counsel for the Commissioner) was questioned on the matter. It was recorded that he:

answered S. Christy’s query regarding any other future possible claims, and gave a brief outline of history of Trust in order to ascertain the Trust’s moral obligations. . . .

He also gave Mr Christy a brief outline of Kaiparo Compensation Claim, and stated that it would not be wise to admit other claims prior to 1892 as it would mean reopening the whole case.<sup>526</sup>

The Minister and Cleary both felt concern about the issue. In Cleary’s case, this concern appears to have arisen upon learning of the petition regarding the Kaiparo block. He stated that it had been his understanding that:

no active claim had ever been put forward on behalf of any of the people whose lands were sold before 1892. I now understand from the Maori Trustee, however, that this may not have been correct because at one stage there was a Petition to Parliament on behalf of the Owners of the Kaiparo block.<sup>527</sup>

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<sup>524</sup> Orr-Nimmo, pp 330–331

<sup>525</sup> Orr-Nimmo, p19

<sup>526</sup> Cited in Orr-Nimmo, p 287

<sup>527</sup> Cited in Orr-nimmo, p 289

To allay their concerns, Gambrill obtained a statement from Rongo Halbert and Kingi Keiha, two knowledgeable local men who were not members of the East Coast Maori Trust Council. It was their opinion that:

a majority (if not all) of the persons who would be entitled to share in these blocks if title came for determination now would be persons who are still interested either in trust estates under administration by the Commissioner or in the compensation moneys payable in respect of Lands sold by the Trustees or by the Board or the Commissioner after 1892.<sup>528</sup>

Gambrill informed Cleary that he agreed with three reasons he had put forward for compensation not being paid for the pre-1892 sales. As to Kaiparo, Gambrill stated that he:

had searched for evidence of any claim in that connection, but there is no record in the Court records here of any such petition. The reason prompting the search was that I was informed that the late Sir Apirana Ngata had once remarked that if any compensation were granted then the Kaiparo Block should be included. I thought perhaps that there may have been some grounds entitling that block to consideration which may have had a general application to all blocks sold pre 1892. I could find none, and can see no distinction between Kaiparo and any other block which was sold. But no doubt Sir Apirana Ngata's remark encouraged the making of the Petition. It would be of interest to read a copy of the petition and to know its authors and its fate.

But compensation if granted would not be the concern of the Crown. It could come only from the blocks remaining and, in my view, only on the basis of one common whole transaction, involving all.<sup>529</sup>

Land was brought under the trusteeship of Pere and Rees in the late 1870s as a strategy to circumvent the consequences of individualisation. However, this attempt to protect East Coast lands ironically proved to be a disastrous failure, and in many cases land was alienated in a process that was beyond the control of the owners. This is clearly illustrated in the fate of the Rongowhakaata lands that were involved. Part of Kaiparo block (254 acres) was one of the Settlement Company lands that was sold in 1891 when the Estates Company foreclosed. In 1904, almost all of Pakowhai block (4638 acres) was sold to

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<sup>528</sup> Cited in Orr-Nimmo, p 289

<sup>529</sup> Cited in Orr-Nimmo, p 288

reduce the debt on the East Coast Maori Trust lands. Part of Marawhero B was also sold at this time. Settler politicians did not assist in the Pere - Rees' trusts becoming a viable scheme, and refused to pass the East Coast Settlement Bill. Also, the government made no effort to intervene prior to the forced sale of the Settlement Company lands. In 1945 the owners of Kaiparo unsuccessfully petitioned the government for compensation, and were later excluded from the settlement that was reached in 1951, which applied only to lands sold after the agreement negotiated by Carroll and Pere in 1892. It is notable that the owners of Pakowhai block were awarded only £16,302 compared to the £27,253 that was paid when the land was sold in 1904.

The trusts and Company had started out as enterprises primarily aimed at benefiting East Coast Maori and other local investors. As with the komiti, the fundamental reason for the failure of the Pere/Rees Trusts and the New Zealand Native Land Settlement Company was the refusal of the Crown to support such initiatives.

### ***4.3. Kotahitanga***

With the failure of the Pere/Rees trusts and like attempts to contain the ongoing fragmentation of title, the process continued unabated. Rongowhakaata were thus again in the position of having to address the detrimental effects of the relentless Native Land Court process. There had been a fleeting attempt by the Crown to address Maori calls for participation in decision-making over their lands in the Native Committee Act 1883. Rongowhakaata komiti had also continued to liaise with other iwi at the regional level while hosting hui with Government agents, such as that attended by Premier Balance in February 1885.<sup>530</sup> Balance sought to promote his Native Land Disposition Bill which he believed would meet the Maori demand to deal with land through block committees.<sup>531</sup> At another hui on the proposed Bill in 1886 Maori explained their desire to replace the Native Land Court with Maori committees.<sup>532</sup> Edward Harris of Rongowhakaata stated that, 'I cannot say that I approve of your proposed Bill, but I am prepared to accept any

<sup>530</sup> AJHR, 1885, G1, pp. 66-67, Rose, '1873 – 1890', pp 39–40, in Rose, *DB Volume 9*, pp5704-5

<sup>531</sup> AJHR, 1885, G1, pp. 77-78, Rose, '1873 – 1890', pp 39–40, in Rose, *DB Volume 9*, pp. 5716-7

<sup>532</sup> AJHR, 1886, G2, pp. 1-6, Rose, '1873 – 1890', pp 39–40, in Rose, *DB Volume 9*, pp. 5722-7

measure which will meet the wishes of the people. Where I cannot get the whole loaf I shall take half a one'. The consequent Native Land Administration Act 1886 did not, however, provide for Maori to have full control over their lands. It was not utilised by Maori and was repealed soon after in 1888.

By the 1890s the time was ripe for another attempt at establishing an alternative decision-making structure which could implement policies more suitable and appropriate to Maori development, especially in terms of managing existing lands. It was this time attempted through the formation of the national Kotahitanga (Unity) Parliament, which sat yearly between 1892 and 1902. Rongowhakaata, as with many other iwi and hapu, participated in Kotahitanga. This is most clearly evidenced by the staging of 1894 Parliament at Pakirikiri. Rose notes evidence that at least 20,000 Maori had signed the Kotahitanga deed by 1895 – approximately half the total Maori population at the time.<sup>533</sup>

As in the 1870s with the Turanganui-a-kiwa's participation in broader regional structures, the Kotahitanga Parliament was a similar attempt by Maori to exert some influence over political decisions concerning their affairs especially in relation to the management and alienation of lands. The Kotahitanga Parliaments and committees likewise aimed for the abolition of the Native Land Court and encouraged regional boycotts of Native Land Court hearings while lobbying the Crown for recognition of their own committees to decide on Maori affairs. Similar to the komiti, the Kotahitanga movement also sought to work alongside the Crown rather than against it. This is seen in the comments made by the Kotahitanga premier, Hamiora Mangakahia, in 1892. He noted that 52 years of government had not resulted in any advantage or benefit to Maori, as evidenced by the loss of three quarters of their land:

We, the sub-tribes of the Maori race have rapidly descended into misfortune, and our lands. Thus we the Maori people really consider that we should unify and that the work for that unity should proceed under the authority of the Treaty of Waitangi and Section 71. These were the Laws produced for us, for the Maori people, in the past.

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<sup>533</sup> Rose, '1890 – 1970', p34

*Let us now return to the ways agreed upon by the two sides for us, for the Maori race. This is the very reason for my saying that our work is not an unauthorised act or out of arrogance to the fine race of Pakeha, but that we are working within {our} rights ... It is [our] great desire that all the sub-tribes join in also and the chiefs of Aotearoa and Te Waipounamu who have not come to this sitting of the Treaty, so that the Unity remains for the whole group, all the Chiefs together with one opinion, and by that means the strength and justice of this work will increase.<sup>534</sup> [emphasis added]*

Mangakahia also commented on the need for Maori to participate in the laws made concerning their affairs:

The making of laws for all the lands of the Maori people by the Government of the New Zealand Colony must cease ... [we] have now arrived at the twenty-seventh year in which the Maori Land Court has sat, and for twenty-seven years to the New Zealand Parliament has made laws for the lands of the Maori people. And we see in all the years now past that the faults in those laws have increased. Those laws have been eating away at our lands... If we, the Maori people, take on the making of laws for ourselves and our land, we will not suffer nor will our remaining lands.<sup>535</sup>

The development of Maori laws over Maori land was considered central to Kotahitanga.

A Kotahitanga-sponsored boycott of Native Land Court hearings in 1895 was temporarily successful but, as Rose notes, could not be ‘sustained indefinitely while the Native Land Court remained the only legal means of dealing with lands.’<sup>536</sup> It only took one individual to apply to the Native Land Court and other owners would have to attend to protect their interests.

The Kotahitanga also sought to present various Bills to the Pakeha Parliament. For example, in 1894 the Turanga Kotahitanga Upper House representative Wi Pere, who was elected as a Maori member of the New Zealand Parliament, submitted a Native Lands Administration Bill enabling block committees to manage Maori land alongside Maori Lands Boards (a concept that had been proposed by the Native Lands Commission

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<sup>534</sup> “Maori Parliament of New Zealand. First sitting Held at Te Waipatu, June 14, 1892” (Draft Translation), pp. 24–25, cited by Rose, ‘1890 – 1970’, p37, *DB Volume 14*, pp. 9466–9467

<sup>535</sup> “Maori Parliament of New Zealand. First sitting Held at Te Waipatu, June 14, 1892” (Draft Translation), pp. 46–49, cited by Rose, ‘1890 – 1970’, p37, *DB Volume 14*, pp. 9488–9491

of 1891). Pere’s Bill was unsuccessful in the New Zealand Parliament but its influence may be seen in the later Maori Land Administration Act 1900. As Rose opines, Pere’s aims were moderate in that ‘he sought to establish Maori control over the process of alienation and to enable Maori to develop lands they retained.’<sup>537</sup>

Kotahitanga was established in the context of Liberal Government policies which restored Crown pre-emption to enable the large-scale Crown purchase to facilitate the goal of closer settlement.<sup>538</sup> As Rose notes, the acquisition of Maori land was a necessary facet of this policy and the Liberals were not interested in altering a system that had proved so effective in ensuring the alienation of Maori land.<sup>539</sup> Indeed aside from a brief period of Crown pre-emption to secure their own acquisition of Maori land, the Liberals also sought to improve the efficiency of the Native Land Court process in facilitating alienation of Maori to private purchasers. One aspect was the establishment of a separate land title validation court to relieve the Native Land Court of this extra burden (Refer to Chapter 2).

In 1897 Pere also presented a Kotahitanga petition to the Queen calling for the permanent reservation of all land remaining in Maori ownership. The effect of this may be seen in the cessation in 1899 of the Crown’s purchasing programme, though this was after the Crown had acquired most of the land it wanted. Brooking notes that, ‘Liberal Maori land policy was clearly about much more than economic gain and racial prejudice; it was also concerned with completing the process of colonisation and of extending Pakeha power and dominance.’<sup>540</sup> The result was that between 1892 and 1899 the Crown spent £775,000 acquiring a further 2,729,000 acres of Maori land.<sup>541</sup> As Rose points out, this wholesale purchase of much of the land remaining in Maori ownership was a source of considerable pride on the Liberal’s part, with Premier Seddon commenting in 1894 that they would

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<sup>536</sup> Rose, ‘1890 – 1970’, p47

<sup>537</sup> Rose, ‘1890 – 1970’, p41

<sup>538</sup> Brooking, ‘Use it or Lose it. Unravelling the Land Debate in Late Nineteenth-Century New Zealand’, *NZJH*, Volume 30 No. 2, October 1996, pp. 141-162, cited in Rose, ‘1890 – 1970’, p31

<sup>539</sup> Rose, ‘1890 – 1970’, p17

<sup>540</sup> Brooking (1992), pp90–91 cited in Rose, ‘1890 – 1970’, p32

<sup>541</sup> Brooking (1992), pp 82–83 cited in Rose, ‘1890 – 1970’, p32

‘break the annual record for Maori land purchase’.<sup>542</sup> In this political context the fact that the Liberal Government did not purchase any more Rongowhakaata land is more of an indication of the lack of land remaining in the iwi’s ownership rather than a conscious decision by the Crown not to purchase it.

#### ***4.4. The Position of Rongowhakaata at the turn of the century***

By 1900 only c.12, 997 or 14 per cent of Rongowhakaata’s tribal estate in 1873 remained, demonstrating the failure of all attempts to abate the alienation and individualisation process imposed by the Crown. Furthermore, what remained of the dismantled tribal estate was also increasingly scattered as were the interests of an increasing number of owners.

While the socio-economic and other consequences of these factors fall outside the scope of this report, it is notable that the evidence suggests that the land remaining was of reasonable quality and could provide a means of subsistence for whanau and individuals, especially when supplemented by income from wage-work. In 1896, for instance, Maori in Cook county were noted ‘as a rule’ as being ‘very comfortably off’, with most males making ‘good wages’ working on farms, bushfelling, sheep-shearing, and grass-seed cutting’.<sup>543</sup> But while the land remaining could provide for the needs of whanau and individuals, it could no longer provide a basis for sustaining the iwi as a whole. Indeed the loss of land and fragmentation of remaining tribal interests had individualised the community as effectively as it had individualised the land itself. It is this virtual destruction of Rongowhakaata’s tribal collective that is what Rongowhakaata are, and have been, trying to reverse for the last century.

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<sup>542</sup> Brooking (1992), pp. 82-83 cited in Rose, ‘1890 – 1970’, p33–34

<sup>543</sup> AJHR (1896), H-13B, p6

## **6. SUMMARY**

The Government's intention in prosecuting the East Coast wars had been to effect the final subjugation of Turanga Maori to British law and authority. In this, however, the Crown failed as the continuing attempts by Turanga Maori to assert their rangatiratanga throughout the 1870s indicated. Warfare and confiscation did not break Rongowhakaata. They remained and emerged in a position to unite in resisting the imposition of any interest or authority distinct from their own.

As the Government itself realised, the only means of preventing further Maori resistance and securing 'lasting peace' was not by warfare but by systematically destroying the source of such resistance: tribal power. The purchase of land – and the fragmentation of the community and community title which it worked off and fostered – was intended to secure 'lasting peace' by destroying the existing system of customary ownership and destabilising tribal structures to break Rongowhakaata's tribal power. The destruction of effective communal resistance was to be achieved under the auspices of the Native Land Court and Poverty Bay Commission, which began operations in the district in 1867.

Throughout the 1870s Turanga Maori resisted the imposition of the Court process and consistently appealed to the Government for redress and change through participation in the Repudiation Movement and the establishment of inter- and intra-tribal komiti. What they sought, initially, was a form of governance in which the views and authority of both parties were given equal recognition. The Crown's steadfast refusal to recognise Maori views and authority, combined with the growing social and economic problems arising from the operation of the Native Land Court and acquisition of land, eventually led to the establishment of iwi komiti. These komiti which sought the right to manage their land and devise their own laws with respect to land and their affairs generally. The Crown, however, again refused to provide the legislative and other support required to give effect to the work of the komiti. What the Government sought was not equality in the exercise of authority. What it sought was dominion - and absolute dominion at that.

The failure of Rongowhakaata's attempts to regain some power combined with the pressures created from the raupatu and a deterioration in their socio-economic position undermined both the confidence and unity of the iwi as a collective, and its ability to control and contain the process of alienation. Rongowhakaata were in turn rendered increasingly vulnerable to the offers of Crown and private purchase agents, and particularly to the methods employed by those agents in seeking to acquire land.

Throughout the 1870s and 1880s both Crown and private purchase agents sought to work directly off the poverty and debts of many owners by making advance payments to select individuals in order to obtain an initial foothold in the land. Added pressure was placed on any dissenting owners to accept payments, with the result that often little regard was paid to the entitlement of the sellers of the land. In a number of instances securing a lease agreement was often also the first step towards the eventual acquisition of the land. This acquisition was greatly assisted by inalienation clauses prohibiting the owners from selling or otherwise dealing with private purchasers.

Under legislation introduced in 1877 (for Crown purchase) and 1879 (for private purchase) application could then be made to the Native Land Court to have the purchaser's interest in any block determined. The purchaser was thereby able to successively acquire land without obtaining the consent of all owners, while the partitions that resulted only further disrupted the communal system of ownership and in turn laid the basis for the acquisition of remaining interests. Both Crown and private purchasers employed intimidatory tactics to acquire land. The costs of the Native Land Court process itself facilitated alienation. The process as a whole had little to do with collective decision-making. It deliberately elevated the rights and interests of the individual over the community in order to enable individuals to sell at the expense of communal authority and the community interest.

In facilitating the purchase of land by private individuals and itself prosecuting a programme of purchase, the Crown paid little if any regard to its responsibility to protect Rongowhakaata's interests. There were no checks made as to whether the sales were

consistent with equity and good conscience, and little consideration was given to ensuring that they were not detrimental to the interests or future wellbeing of Rongowhakaata.

In spite of the ongoing efforts of Rongowhakaata and other Turanga iwi to reassert control over their land and the process of alienation in the 1880s and 1890s through the establishment of trusts, companies, petitions to Parliament and participation in Kotahitanga, proved in vain. The process of individualisation (and alienation) continued at pace, and by the turn of the century Rongowhakaata were left with just under 13,000 acres of their core tribal estate.

What land remained was also individualised and scattered to the point where, while it could provide a subsistence living for individual whanau, it could no longer sustain Rongowhakaata as an iwi. The communal base of interests upon which the community depended for its collective unity, productivity and identity had been effectively destroyed, and the community individualised nearly as effectively as the land itself. The dominion and 'lasting peace' the Crown had sought had been achieved, but at the cost of the economic and social impoverishment of Rongowhakaata *as a tribal people*.

## 7. APPENDIX

- **Methodology** by Eileen Barret
  
- **Core Rongowhakaata Blocks as at 1873**
  
- **Chart 1:** Total Estimated Land Alienation, 1873 – 1900 of Rongowhakaata Core Blocks
  
- **Chart 2:** Total Estimated Land Alienation of Rongowhakaata Core Blocks Excluding the Raupatu, 1873 - 1900
  
- **Chart 3:** Approximate area of partitions awarded to private purchasers from Rongowhakaata core blocks, 1873 – 1900
  
- **Chart 4:** Land-buying activity in core Rongowhakaata blocks, 1873 – 1900: Approximate number of individual sale transactions per year
  
- **Chart 5:** Pattern of land purchases, compared with pattern of Trust Commission or Native Land Court confirmations of purchases, for Rongowhakaata core blocks, 1873 – 1900

## ***7.1. Methodology by Eileen Barrett***

### *Sources*

The information used to produce these charts was largely extracted from

- Land Court Minute books and files
- Poverty Bay Commission records
- Trust Commissioners' records

Given the time constraints it was not possible to make a systematic check of Certificates of Title and other records held by LINZ.

### **Definitions**

The blocks described as “core” Rongowhakaata blocks are those where, in the title investigations by the Poverty Bay Commission and Native Land Court, the owners are described as Rongowhakaata. They are not necessarily an accurate reflection of the actual ownership rights to land and may, in many cases, be a distortion of the real situation. Nor may this list be all-inclusive. It is, however, sufficiently comprehensive to reflect any significant patterns in terms of Rongowhakaata land alienation, which is the focus of this report.

### **Data**

Considerable effort was expended to ensure the accuracy of figures entered, with background information being recorded for each transaction to try to ensure a correct match where different details were obtained from different documents.

- Hard data for individual transactions was then transferred to a spreadsheet, to generate graphs.
- A separate table was made for partitions awarded to Europeans.
- The two tables were compared to distinguish any areas that had been alienated by individual transactions but not been included in partitions awarded to Europeans. Such areas were then included in the alienation total. These composite figures were used to produce Charts 1 and 2.

- It should be noted that the figures are conservative because those individual transactions for which no area could be determined were given a zero value in preference to a ‘guesstimate’.

Private purchasers were deemed to be European if they had European names and if no evidence was found of them being ‘half caste’. (A list of just under 20 people described as half-caste was established and used for reference.) Land purchased by ‘half castes’ was not included in the alienation figures unless and until they onsold it to Europeans. As regards land in which W. L. Rees and Wi Pere became involved, blocks or part-blocks held by the Pere-Rees Trust have not been included in the alienation figures. Interests acquired by the New Zealand Native Land Settlement Company, however, have been included – the rationale being that, at this point, control of those interests was increasingly removed from the owners.

Because of time restraints, statistics on mortgages, leases, and land taken for roading have not been analysed. This is largely owing to the type of information gleaned from the documents consulted, which contained too little hard data on these particular issues to enable any meaningful conclusions to be drawn. Had more time been available, it may have been possible to build up a more comprehensive body of data from additional sources.

Eileen Barrett  
10 September 2000

**7.2. Core Rongowhakaata Blocks as at 1873**

| <b>Block name</b>                                 | <b>Area</b>   | <b>Area (decimal)</b> |
|---|---------------|-----------------------|
| Ahaaha  | 20a 0r 30p    | 20.02                 |
| Ahimanawa   | 11a 0r 0p     | 11.00                 |
| Ahipakura   | 179a 3r 0p    | 179.75                |
| Ahipipi   | 47a 3r 0p     | 47.75                 |
| Aohuna  | 98a 1r 15p    | 98.34                 |
| Apeka   | 17a 3r 0p     | 17.75                 |
| Arai  | 10,366a 0r 0p | 10,366.00             |
| Arai Matawai (Part of Patutahi. Returned in 1877) | 4,214a 0r 0p  |                       |
| Arakari   | 3a 2r 39p     | 3.74                  |
| Auahi   | 19a 2r 0p     | 19.50                 |
| Auahituroa  | 23a 0r 0p     | 23.00                 |
| Hahaenga  | 22a 1r 0p     | 22.25                 |
| Hiwera  | 3a 1r 3p      | 3.27                  |
| Hotuapaka   | 17a 3r 10p    | 17.81                 |
| Huiatoa   | 17a 1r 13p    | 17.33                 |
| Hurimoana   | 19a 0r 35p    | 19.22                 |
| Ikatuapa  | 2a 2r 2.6p    | 2.52                  |
| Kaha  | 56a 3r 8p     | 56.80                 |
| Kahukuratara                                      | 17a 0r 0p     | 17.00                 |
| Kaiparo   | 431a 0r 0p    | 431.00                |
| Kaiupoko  | 7a 1r 18p     | 7.36                  |
| Kati  | 66a 1r 23p    | 66.39                 |
| Kaupapa   | 12a 1r 14p    | 12.34                 |
| Kohanga Karearea                                  | 152a 0r 0p    | 152.00                |
| Kowhai  | 286a 0r 0p    | 286.00                |
| Kupenga   | 43a?          | 43.00                 |
| Manutuke  | 19a 0r 22p    | 19.14                 |
| Matawhero B or 5                                  | 730a 0r 0p    | 730.00                |
| Mirimiri  | 90a 0r 0p     | 90.00                 |

| <b>Block name</b> | <b>Area</b>  | <b>Area (decimal)</b> |
|-------------------|--------------|-----------------------|
| Moeturori         | 16a 1r 11p   | 16.32                 |
| Ngawaierua        | 29a 3r 12p   | 29.83                 |
| Oariki            | 93a 3r 16p   | 93.98                 |
| Ohinekura         | 91a 0r 0p    | 91.00                 |
| Okaunga           | 312a 0r 2p   | 312.01                |
| Okirau            | 55a 0r 0p    | 55.00                 |
| Opou              | 120a 1r 37p  | 120.48                |
| Orahiri           | 3a 3r 18p    | 3.75                  |
| Orakaiapu         | 2a 0r 33p    | 2.21                  |
| Otahu             | 7a 3r 0p     | 7.75                  |
| Oweta             | 153a 0r 2p   | 153.01                |
| Paiakaiwai        | 5a 2r 34p    | 5.71                  |
| Pakirikiri        | 30a 0r 0p    | 30.00                 |
| Pakowhai          | 4950         | 4,950.00              |
| Paokahu           | 615a 0r 0p   | 615.00                |
| Papa              | 14a 3r 0p    | 14.75                 |
| Papatu            | 4,064a 0r 0p | 4,064.00              |
| Paria             | c.93a?       | 93.00                 |
| Poho              | 34a 1r 0p    | 34.25                 |
| Pokiongawaka      | c.22a?       | 22.00                 |
| Poroporo          | 108a 0r 0p   | 108.00                |
| Poukokonga        | 29a 2r 0p    | 29.50                 |
| Poutai            | 23a 1r 24p   | 23.40                 |
| Pouriuri          | 72a 3r 0p    | 72.75                 |
| Pukarakanui       | c.13a?       | 13.00                 |
| Puketapu          | 127a 2r 0p   | 127.50                |
| Pukewhinau        | 74a 0r 0p    | 74.00                 |
| Raeotokorakau     | 2a 0r 20p    | 2.13                  |
| Rahui             | 475a 0r 0p   | 475.00                |
| Rakaukaka         | 1563         | 1,563.00              |
| Rakauwerewere     | 8a 1r 16p    | 8.35                  |
| Reanga            | 14a 0r 24p   | 14.15                 |

| <b>Block name</b>                           | <b>Area</b>   | <b>Area (decimal)</b> |
|---|---------------|-----------------------|
| Ruaohinetu                                  | 303a 0r 0p    | 303.00                |
| Ruaotaua                                    | 159a 0r 6p    | 159.04                |
| Takopa                                      | 36a 1r 37p    | 36.48                 |
| Taomako                                     | 24a 0r 0p     | 24.00                 |
| Tapoto (Part of Patutahi. Returned in 1877) | 400           |                       |
| Taramokai (inc. Otaramokai)                 | 24a 0r 36p    | 24.23                 |
| Tara o Paea                                 | 14a 2r 16p    | 14.60                 |
| Tarewa                                      | 68a 1r 24p    | 68.40                 |
| Taringamotuhia                              | 4a 0r 16p     | 4.10                  |
| Taumataoterangi                             | 172a 3r 8p    | 172.80                |
| Tauowhiro                                   | 468a 0r 0p    | 468.00                |
| Tauparapara                                 | 2a 0r 2p      | 2.01                  |
| Tauranga                                    | 5a 2r 23p     | 5.64                  |
| Tawhao                                      | 31a 1r 5p     | 31.28                 |
| Toitekainga                                 | 12a 3r 18p    | 12.86                 |
| Turanga o te Whetuiapiti                    | 9a 3r 7.5p    | 9.80                  |
| Tutoko                                      | 64a 0r 0p     | 64.00                 |
| Umukapua                                    | 18a 0r 21p    | 18.13                 |
| Upoko o te Ika                              | 7a 1r 28p     | 7.43                  |
| Waiari                                      | 114a 2r 0p    | 114.50                |
| Waihau                                      | 13,800a 0r 0p | 13,800.00             |
| Waihoru                                     | 55a 2r 11p    | 55.57                 |
| Wainui                                      | 91a 1r 38p    | 91.49                 |
| Wairau                                      | 241a 1r 1p    | 241.26                |
| Waiwhakaata                                 | 276a 0r 0p    | 276.00                |
| Whakahaungahuru                             | 4a 1r 23p     | 4.39                  |
| Whakaruaroa                                 | 20a 2r 21p    | 20.63                 |
| Whakato                                     | 2a 0r 9p      | 2.06                  |
| Whakawhitira                                | c.43a?        | 43.00                 |
| Wharaurangi                                 | 147a 0r 0p    | 147.00                |
| Whatatuna                                   | 521a 0r 0p    | 521.00                |

| <b>Block name</b> | <b>Area</b>   | <b>Area (decimal)</b> |
|-------------------|---------------|-----------------------|
| Whenuahou         | 5a 2r 35p     | 5.72                  |
| <b>Sub Total</b>  | <b>Total:</b> | <b>42,753.52</b>      |
| <i>Patutahi</i>   |               | <i>47,200.00</i>      |
| <i>Total</i>      |               | <i>89953.52</i>       |

### **7.3. *Charts***

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