

The Taranaki Report - Kaupapa Tuatahi

CHAPTER 2

FIRST PURCHASES

I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it . . . All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land. I am very sad because of this word. Why is it? You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.

Wiremu Kingi to Governor Browne, April 1859

The compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres.

Justice Richardson, Court of Appeal, 1987

2.1 PARTNERSHIP AND AUTONOMY

Graphically arising from the Taranaki claims is a question of the relationship between governments and indigenes. What status do they have in relation to each other, what are their respective interests and spheres, and what protocols are needed between them to ensure good order, harmony, and peace? The nature of that relationship was most at issue in the Taranaki wars and in the land dealings that led to them. It is a concern to this day, being the subject of current protests concerning 'Maori sovereignty'.

Because of the centrality of this issue to past and present contentions, we open this chapter with some comments on it. The instinct of peoples for autonomy explains a consistent Maori perception of both the events and the prejudice now seen to exist. It also informs our statutory duty, when considering proven claims, to recommend the action required 'to compensate for or remove the prejudice, or to prevent other persons from being similarly affected in the future'.

The execution of the Treaty of Waitangi is evidence itself that the need for protocols between the Government and Maori had been foreseen. Before anything could be done, it was necessary for the Crown to at least acknowledge that Maori had prior

inhabitant status. That status was not changed by the recognition given to a new form of governance.

The broad nature of the anticipated relationship may be determined from the Treaty's texts, associated Crown documents, and the record of Maori opinion before, during, and after the Treaty signings. From expert opinion on that material, and though he considered that the Treaty should be seen 'as an embryo rather than a fully developed and integrated set of ideas', the president of the Court of Appeal considered, in a landmark decision of 1987, that 'the Treaty signified a partnership between races'. President Cooke added that the answer to the case then before the court had to be found within that concept of partnership. We consider that it is within that same concept that the Taranaki claims must now be viewed.

Other members of the five-member court in that case expressed much the same view, emphasising it was the spirit of the Treaty that counted most, not its specific terms. Justice Richardson, the current president of that court, added:

There is, however, one paramount principle which I have suggested emerges from consideration of the Treaty in its historical setting: that the compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres. That is I think reflected both in the nature of the Treaty and in its terms.

It was a compact through which the Crown sought from the indigenous people legitimacy for its acquisition of government over New Zealand. Inevitably there would be some conflicts of interest. There would be some circumstances where satisfying the concerns and aspirations of one party could injure the other. If the Treaty was to be taken seriously by both parties each would have to act in good faith and reasonably towards the other.

We have been struck by the coincidence between this current perception of partnership and good faith and the view of Maori leaders at the time. The predominant Maori view, as we see it, was that there was a place for Pakeha, provided Maori authority was also acknowledged. Nor was this expectation of respect couched in unreasonable or demanding terms. On the eve of the New Zealand wars of the 1860s, for example, as the Government was preparing to attack him, the Te Atiawa leader, Wiremu Kingi, wrote simply to the Governor:

You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.

Later, when a military commander presented an ultimatum, a virtual declaration of war alleging Kingi was in rebellion, Kingi replied:

Friend, Colonel Murray, salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen but we consider we have not. [He then went on to explain his position and concluded:] This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and

Maories. Listen, my love is this, put a stop to your proceedings, that your love of the Europeans and the Maories may be true.

There is small evidence of Maori belligerence in this case, but, none the less, there was a firm expectation that Maori authority would be respected and reasonable dialogue maintained.

Twenty years later, when the war had come and gone, the leadership, as represented by Te Whiti, still maintained the same position: there was a place for Pakeha and a place for Maori but Maori authority had to be recognised and dialogue between Maori and the Government had to be maintained. Te Whiti and Kingi, in turn, were adherents of the Kingitanga, the movement under the Maori King, where the relationship between the separate authorities of the colonisers and Maori was exemplified in the symbolic depiction of 'the [Maori] King on his piece; the Queen on her piece, God over both; and Love binding them to each other'.

The symbols were seen by the Governor as a challenge to the Queen's authority, but it is difficult to comprehend that that was ever intended. The symbols are similar to those now used on our current coat of arms.

For Maori, their struggle for autonomy, as evidenced in the New Zealand wars, is not past history. It is part of a continuum that has endured to this day. The desire for autonomy has continued to the present day in policies of the Kingitanga, Ringatu, the Repudiation movement, Te Whiti, Tohu, the Kotahitanga, Rua, Ratana, Maori parliamentarians, the New Zealand Maori Council, Te Hahi Mihingare, iwi runanga, the Maori Congress, and others. It is a record matched only by the Government's opposition and its determination to impose instead an ascendancy, though cloaked under other names such as amalgamation, assimilation, majoritarian democracy, or one nation.

Yet New Zealanders as a whole appear unaware of the cause of today's tensions or the history behind them. We are prone to observe the ethnic dispute in Bosnia or the tribal conflict in Rwanda without seeing the Bosnia and Rwanda in our own present and past.

In modern times, overseas countries have seen the indigenous component of a symbiotic relationship with the Government under the rubric of 'aboriginal autonomy'. Also called 'aboriginal self-government', it equates with 'tino rangatiratanga' and 'mana motuhake'.

Without examining detail, it may also be considered that, in recent times, the underlying issue of aboriginal autonomy has been addressed more thoroughly in places other than our own. Support for this view may be found in the position in the United States of America and developments in Canada and Australia. These suggest the recognition of aboriginal autonomy is not in fact a barrier to national unity but an aid. They go further to recognise that conciliation requires a process of empowerment, not suppression.

Some official opinions suggest the lack of a comprehensive definition of 'aboriginal autonomy' is actually appropriate at this stage: that it is better to focus on the problem

and the options for relief than to argue word prescriptions too soon. Broadly, however, we understand 'aboriginal autonomy' to describe the right of indigenes to constitutional status as first peoples, and their rights to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government.

The autonomy approach posits two presumptions that seem to us to be true:

that autonomy is the inherent right of all peoples in their native countries; and

on the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties.

In terms of the Treaty of Waitangi, in our view, from the day it was proclaimed, sovereignty was constrained in New Zealand by the need to respect Maori authority (or 'tino rangatiratanga', to use the Treaty's term).

State responsibility, not absolute power, is the more necessary prerequisite to governance in this context. So also is State responsibility of increasing importance in the current global environment, where international norms carry the objectives of world security, free trade, and peace. Thus, it is more apparent today that the legal paradigm of State sovereignty had necessarily to change when different peoples met and one colonised the lands of another, but at least it can be said that both Government authority and Maori authority were recognised in the Maori text of the Treaty of Waitangi.

The matter has new significance in the current climate of the International Decade of Indigenous Peoples and its focus on the associated Draft Declaration on the Rights of Indigenous Peoples, with its acknowledgement of autonomy. At this time, too, as inter-State tensions ease, ethnic conflict may be seen as taking pre-eminence in global concerns for peace. It is thus of concern that the decade has barely been acknowledged in New Zealand, the draft declaration is hardly known here, and policies for the conciliation of peoples in New Zealand are comparatively undeveloped.

The historical record seems to us to be clear that this right of autonomy was assumed by Maori (though those words were not used). This was seen by them not as a likely cause of conflict but as the natural foundation for peace; and that is not surprising, considering their world view. Maori protocols in meeting, as used to this day, are honed to the punctilious recognition of the authority of others, call for a fulsome display of respect, and insist on strict speaking orders to promote dialogue. The value of such an order for the maintenance of peace is not diminished by the extent of warfare that in fact prevailed; rather, the warlike conditions gave rise to it.

We have introduced this matter at length because of its place in an understanding of the Maori position in Taranaki history. The need to respect other peoples is clearer today than formerly, and we more readily appreciate now that the conciliation of subjugated peoples requires a process of re-empowerment. Our colonial forebears, however, sought mainly to impose their own will. The single thread that most illuminates the historical fabric of Maori and Pakeha contact in Taranaki for over 150

years has been the determination of Maori to maintain their own autonomy and status and official attempts to constrain that determination. One sought peace by dialogue on equal terms, the other, by domination or by removing Maori altogether.

The disparity between the opinions of the Treaty proponents on the one hand and colonial officials on the other is painfully apparent in the Taranaki case. The changed position was obvious from the earliest arrangements for the acquisition of land and the resolution of disputes. It was presumed that the arrangements would be made entirely by the Government on its terms, that the Government alone could determine the justice of disputes, and that Maori authority should be tolerated only until it could, in fact, be suppressed.

2.2 ISSUES

The first item of claim relates to the Government's claim to have purchased 75,370 acres in nine blocks extending out from New Plymouth, between 1844 and 1859, comprising some of the most valuable Taranaki land. These purchases, and attempts to conclude others, led to the war and confiscations.

As we see it, the first and most important question, as indicated in the preceding discussion, is whether the process was fairly settled and agreed between the Government and the appropriate Maori.

The second, and secondary, question is whether, even accepting the process used, the purchases were otherwise consistent with the principles of the Treaty of Waitangi. On that aspect of the case, the following observations summarise previous Tribunal opinion.

In the English text, the Treaty articles guaranteed to Maori the full, exclusive, and undisturbed possession of their lands for so long as they wished to retain them. The Maori text was clearer in guaranteeing to Maori the full authority of their lands. This clarified that Maori would not only possess their own land but decide and determine the laws affecting them; for example, the forms of tenure and management.

The articles also conferred on the Crown a pre-emptive right in buying - a privilege that carried a concomitant duty to protect Maori interests when so doing. Further promises of protection are found in the Treaty's preamble, the record of the Treaty discussion (including Lieutenant-Governor Hobson's address at Waitangi on 6 February 1840) and Lord Normanby's accompanying instructions, which prescribed, among other things, 'fair and equal contracts' and the assurance of adequate Maori reserves. It is pertinent to ask:

- whether adequate endowments were secured for the future support and development of the hapu;
- whether customary ownership and decision-making were respected; and
- whether fiduciary responsibilities were maintained for Maori protection (this includes such matters as whether the consideration was adequate, the associated conditions appropriate, and the arrangements fully understood).

2.3 BACKGROUND

While not wishing to write a definitive history, some perspective of the background events is needed to deal with the claims in issue. In this instance, the purchases cannot be considered without reference to the preceding events by which they were conditioned. Below is an overview of the relevant events, as we see them, followed by a more detailed examination of some aspects.

2.3.1 Tribal war, dispersal, and absentees

For a millennium or more, the iwi of Taranaki occupied the length of the Taranaki coast. In broad terms, the coast was cleared for cultivations, while the interior bush was largely intact, as illustrated in figure 2. The iwi were descendants both of those there 'from before time' and of subsequent Pacific migrants. Like all Maori hapu, however, they also had a history of mobility and, accordingly, have ancestral connections throughout the country.

For some decades before European contact, however, there was intermittent warfare with iwi from north Auckland to Waikato. This warfare escalated and intensified with the advent of muskets to the north, giving their foe an unc customary edge. Some devastating battles resulted, and a series of movements out of Taranaki between 1821 and 1834 followed. Some Maori were taken to Waikato as prisoners of war, but the greater number went to Cook Strait in pursuit of guns and goods from whalers and traders. The majority were still absent from Taranaki when the first Europeans arrived.

2.3.2 The New Zealand Company: the 'null and void' acquisition of north Taranaki

The New Zealand Company was a private enterprise established in Britain and having for its business the profitable colonisation of New Zealand; generally, by buying land cheaply and selling it well. In August 1839, Colonel William Wakefield, a land purchase agent for the company, arrived in Cook Strait. He had been dispatched from London in May, soon after the company learnt that Britain intended to intervene in New Zealand, negotiate a cession of sovereignty, and prohibit private purchases of Maori land. The company sought to acquire land before any prohibition took effect, and accordingly, Colonel Wakefield had cause to act with haste. The intention that future private purchases be excluded was specified in Lord Normanby's instructions to Hobson on 14 August 1839.

From here, events assume a quixotic character. In October 1839, after other acquisitions were purportedly made for the company around Wellington, Wakefield claimed he had acquired some 20 million acres (comprising about one-third of New Zealand) from certain Taranaki and other Maori in Wellington. The area extended from Aotea Harbour near Waikato in the north to the Hurinui River in the South Island.

There was clearly no reality to the transaction and the company later abandoned any claim under it. For convenience, we will call it the 'New Zealand central transaction'

to distinguish it from others. It took in the whole of Taranaki and many other districts besides.

Also during 1839, increasing numbers of Maori returned to Taranaki, either from Cook Strait or, following their release from captivity, from Waikato.

As had been forewarned, on 14 January 1840, while New Zealand was a dependency of New South Wales, Governor Gipps issued a proclamation that any alleged purchase of Maori land by private interests after that date would be absolutely null and void and would be neither confirmed nor in any way recognised by the Crown. On 30 January 1840, on his arrival in New Zealand, Lieutenant-Governor Hobson issued a further proclamation to the same effect.

In addition, on 6 February 1840, the Treaty of Waitangi was signed. This asserted the Crown's pre-emptive right to purchase Maori land. In terms of Lord Normanby's instructions, the Crown's Treaty right of pre-emption carried a concomitant duty to protect Maori interests, a duty that Governor Hobson sought to fulfil by appointing a Protector of Aborigines to conduct land purchases and ensure proper terms.

Notwithstanding that Taranaki was included in the New Zealand central transaction, and notwithstanding the Treaty or the proclamations that had issued, of which he appears to have been aware, Colonel Wakefield arranged the completion of two further purchase deeds at New Plymouth from certain Maori living there. These were given effect to on 15 February 1840.

Like Wakefield's previous transactions, those completed at New Plymouth were accompanied by the delivery of an assortment of guns, blankets, and other chattels. The first, called the 'Nga Motu deed' after certain islands near New Plymouth, extended beyond New Plymouth to embrace all the coastal lands of north Taranaki. These were lands that over generations had been cleared for villages and cultivations by numerous independent hapu. Also included in the deed was Waitara, a major Maori settlement area, which was seen by Maori and Pakeha alike as the most valuable of the coastal lands.

Although the total area in the Nga Motu deed was uncertain, it was obviously large. It is approximately delineated in figure 5, which also shows the estimated bushline at 1840.

The second deed, for the sale of lands in central Taranaki, was also for a large area of uncertain size. The land lay immediately south of New Plymouth and is also shown in figure 5.

Map 5: New Zealand Company purchases

The transactions promised to reserve to Maori vendors one-tenth of all land purchased, the clause in the Nga Motu deed reading:

A portion equal to one tenth of the land ceded by them will be reserved by . . . the New Zealand Company . . . and held in trust by them for the future benefit of the said chiefs their families, tribes and successors forever.

The company considered that these reserves would greatly increase in value with the settlement of the balance by industrious colonists and would have greater long-term value than the payments made on the deeds.

The Treaty of Waitangi was affirmed at Wellington soon after. The Reverend Henry Williams obtained 34 signatures at Port Nicholson on 29 April 1840, 27 at Queen Charlotte Sound on 4 and 5 May, 13 on Rangitoto Island on 11 May, and 20 at Waikanae on 16 May. The signatories included Wiremu Kingi Te Rangitake (signing as Wite) and his father Te Rere-Ta-Whangawhanga. The former was to be prominent in the Taranaki wars.

2.3.3 Arrangements to examine the company's claim to acquisitions

During the debate on the Treaty at Waitangi, Lieutenant-Governor Hobson had promised that private purchases before the Treaty would be examined and 'lands unjustly held would be returned'. Soon after, in August 1840, the New South Wales Legislature enacted the New Zealand Land Claims Ordinance (re-enacted in New Zealand as the Land Claims Ordinance 1841). Under the ordinance, the Governor was to appoint commissioners to examine claims to the previous purchase of land. In practice, when Maori affirmed a purchase, the commissioners were to recommend a land grant to the Governor. The area of the grant was dependent on the price paid and assumed land values and was limited to a maximum of 2560 acres, but the Governor had the discretion to grant more. The sliding scale envisaged land grants at one acre for every sixpence worth of goods given between 1815 and 1824, rising to between four and eight shillings per acre in 1839. The goods were to be valued at three times their Sydney prices.

Despite the ordinance, a special arrangement was proposed for the New Zealand Company. This was probably because of the company's special position, its large investment, its extensive claims to the acquisition of land, and the fact it had already on-sold sections in England. The company also had political influence through its distinguished directorship, with five of its directors being members of the British Parliament. Accordingly, by an agreement of November 1840, the company renounced its claims to massive areas in return for four acres for every pound it had spent on colonisation, to be taken from the lands in any deed. This arrangement was made law by an amendment to the ordinance in 1842, but as shall be seen later, the 1842 ordinance was disallowed by the British Government on 6 September 1843.

In any event, it must be presumed, however, that the New Zealand Company's arrangement was not seen to apply to the Nga Motu deed. Under clause 5, the agreement applied only to land acquired before Hobson's arrival, and Hobson had already arrived when the deed was signed. The ordinance also presumed the same, referring to transactions up to December 1839. None the less, in New Zealand a claim to Taranaki was filed on behalf of the company.

On 20 January 1841, William Spain was appointed Land Claims Commissioner to examine the company's Wellington claims, but owing to disputes between the Governor and the company, some time elapsed before he could assume his duties. He was later authorised to investigate any Taranaki claims.

2.3.4 Company assumes title though claims not proven; Maori protest

Although the New Zealand Company's purchase had not been proven; was null and void in terms of the proclamations; was contrary to the pre-emption clause in the Treaty; and was excluded from the special arrangement between the company and the British Government:

- (a) In January 1841, the company surveyor began to survey the Taranaki lands. New Plymouth was laid out over 550 acres, and suburban and rural sections were proposed along the coast to beyond the Waitara River. The plans covered about 68,500 acres, being the whole of the cleared, coastal lands from New Plymouth to beyond Waitara.
- (b) Sections had been sold or promised in England before settlers came to New Zealand.
- (c) In March 1841, the first immigrants were introduced. By 1843, there were over 1000, and as they arrived, they presumed to occupy allotments throughout the coast to beyond Waitara.

Almost immediately, Maori interrupted survey work and disputed the settlers' rights to land much beyond New Plymouth, forcing the settlers to retreat to the New Plymouth area.

In September 1841, Governor Hobson proposed to implement the New Zealand Company's agreement by allowing it an exclusive right to buy specified lands at Wellington, Whanganui, and Taranaki, suggesting for Taranaki a right to buy some 50,000 acres extending 10 miles north of New Plymouth along the coast and eight miles inland. When the company complained that this excluded Waitara, the Governor extended the area to four miles north of the Waitara River. The proposal was not pursued, however, because the company claimed it had already purchased the lands concerned and should simply receive four acres for every pound spent.

The Governor and Spain both agreed the company would first need to show that its purchases were valid. The need for a hearing was clarified in the 1842 amendment to the ordinance. None the less, when hearings began in Wellington in May 1842, Wakefield delayed proceedings further while pressure was maintained on the Colonial Secretary in England to dispense with the inquiries into the purchases. The company was ultimately unsuccessful.

Meanwhile, Maori were disputing the settlers' entitlements. In July 1842, a party drove off settlers who had taken up land north of the Waitara River. In 1843, there was a further confrontation when 100 men, women, and children sat in the surveyors' path. There were various other challenges south of Waitara as different hapu asserted their right to the land.

2.3.5 Commission's recommendation to grant lands declined

Owing to the delays caused in Wellington, Spain did not commence the Taranaki inquiries until May 1844. The company then withdrew the New Zealand central and Taranaki central claims, leaving only the Nga Motu transaction under review. The

claim was opposed by Maori. It was one contention that the Nga Motu deed had not been signed by the numerous Taranaki absentees.

In June 1844, however, the commission found the absentees had no interests, upheld the transaction, and recommended to the Governor an award of 60,500 acres (being the area then surveyed and comprising most of the Te Atiawa land), reserving one-tenth for Maori.

There was an immediate Maori protest. A party formed to drive out the settlers, and the Sub-Protector of Aborigines found it necessary to head it off with assurances that the Governor would favourably review the position.

Governor FitzRoy, who had replaced Hobson by then, disagreed with the position concerning absentees and declined to accept the recommendations. This gave relief to Maori but caused settlers to threaten a recourse to arms.

2.3.6 Maori seek to limit settler expansion; Government moves to buy

The eventual outcome was that Maori agreed to transfer the FitzRoy block at New Plymouth on the basis that the settlers would expand no further. None the less, the New Zealand Company continued to introduce more settlers, with promises of land for each, and to maintain pressure on the Governor to buy more land. A new government in England was more sympathetic, and when Governor Grey was appointed in 1845, he had instructions on the matter and resolved to recover for settlers the area the Land Claims Commission had proposed. In 1847, three years after the FitzRoy sale, the Governor convened a meeting at New Plymouth with Te Atiawa leaders of both Wellington and Taranaki. Adopting a 'high tone' with them,

Map 6: Crown 'purchases' between 1847 and 1860

he confidently expected they would succumb to his demands. Instead, the leadership opposed further sales and affirmed the earlier position that the settlers should not advance further along the coast than the FitzRoy block boundaries. The main opposition was from the leading rangatira, Wiremu Kingi. At that time, he was living with his people near Wellington, but at the meeting, he announced his intention to return to his home at Waitara.

The Governor's response was to reject the opinion of the leadership and to talk to those at a lesser level, from whom he then purported to acquire five blocks, amounting in all to over 27,000 acres, during 1847 and 1848.

2.3.7 Wiremu Kingi returns; continuing purchases despite warfare

This spate of land buying was interrupted when Wiremu Kingi returned to Waitara in 1848. Though advances were made, no sales were finalised thereafter for five years. Then, despite intense opposition, the Government purported to have acquired a further two blocks by deeds of 1853 and 1854 for 30,500 acres. During this time and later, there was open warfare between selling and anti-selling factions, but nevertheless, after a further five years the Government purported to have acquired a further 14,000 acres by a deed of 1859.

At this point, the Government assumed it had recovered most of the land between New Plymouth and Waitara, save Waitara itself. More particularly, as a result of its aggressive purchasing policy, the Government claimed to have acquired 75,378 acres in nine purchases over 15 years, all despite a continual opposition so large that it erupted into fighting between sellers and non-sellers. The so-called purchases are summarised in the table over and are depicted in figure 6. The principal groupings of Te Atiawa hapu are shown in figure 7.

The purchases extended either side of New Plymouth and were all lands that had been included in the New Zealand Company's deeds for either northern or central Taranaki.

2.4 ANALYSIS

Aspects of the foregoing discussion are now examined in more detail.

2.4.1 Initial conflict and issues of authority

The following records our opinions on Maori constraint and on the issues of authority that were not addressed.

Tension was evident in Taranaki from the arrival of the first settlers in 1841, when Maori disrupted surveys and relocated settlers closer to New Plymouth. The remarkable feature, however, was the Maori restraint. Though Maori were angered by settler occupations beyond New Plymouth, and though they were the majority and were well supplied with arms from Cook Strait, they did not resort to violence. Settlers were forced from their makeshift homes and their improvements were sometimes destroyed, but there were no assaults or injuries to persons. Nor was there

Block name and tribal district	Number of Maori signatories and reserves	Turton deed number	Date	Size (acres)	Price
FitzRoy and (Te Atiawa) goods	83 signatories 19 reserves (326 acres)	2	28 November 1844	3500	£50
Tataraimaka (£150 (Taranaki hapu))	20 signatories no reserves	6	11 May 1847	4000	
Omata (£400 (Taranaki hapu))	66 signatories 2 reserves (381 acres)	7	30 August 1847	12,000	
Grey (£380)	28	8	11 October	9770	

(Te Atiawa)	signatories 4 reserves (1187 acres)	1847		
Cooke's cattle Farm (Te Atiawa)	11 signatories 1 reserve (5 acres)	1848	9 25 November	100
Bell £200 (Te Atiawa)	76 signatories 1 reserve (165 acres)	1848	10 29 November	1500
Waiwhakaiho £1200 (Te Atiawa)	315 signatories 17 reserves (2663 acres)		- 24 August 1853	16,500
Hua £3000 (Te Atiawa)	129 signatories 4 reserves (250 acres)		15 3 March 1854	14,000
Tarurutangi (Te Atiawa)	162 signatories 1 reserve (10 acres)		- 25 February 1859	14,000 Not stated; later given as £1400

Note: Some areas given have been adjusted to accord with later surveys. The prices are those in the deeds. Some additional payments were made to persons left out of the original purchases.

Summary of the Government's nine 'purchases' between 1844 and 1859

any interference with those living at New Plymouth, where the local people might have been seen to have agreed to a settlement. The impression is that Maori were not opposed to settlement as such and would not interfere with such arrangements as the Nga Motu people might have made, but it was another matter for settlers to spread beyond the area where the Nga Motu people had authority without prior agreement with the affected hapu.

It is also apparent that Maori expected benefits from a European settlement nearby and, unless pressed, would not drive the settlers away. Accordingly, opposition was constrained and protest was passive, as with the sit-in of some 100 persons to force an end to surveys. This passive protest was to be a feature of Taranaki Maori responses. It enabled them to demonstrate both their grievance and their desire for peace.

That, then, describes the immediate cause of the trouble in North Taranaki: settlers were coming into the district before their rights to land had been properly agreed.

Indeed, the company was selling land in England before a title in New Zealand had been obtained.

The Government, however, would not address the more fundamental issue: the need for dialogue with the Maori leadership. Though traders and missionaries had recognised Maori authority for 20 years, the colonists were not willing to do the same.

Instead, the Governor established a Pakeha commission to resolve matters in a Pakeha way. When that failed, the Government settled upon a programme of buying land, when again, from a Maori perspective, the process was Pakeha, the arrangements would be effected on Pakeha terms, and disputes would be resolved by Pakeha persons. In our view, what was most needed were regular meetings with the Maori leadership to agree upon terms for European settlement and a process for giving over land and adjusting disputes. There was no real respect for Maori authority and dialogue, and in our view, that was the main cause of conflict.

2.4.2 Abandonment and absentees

Here, we challenge the Land Claims Commission's view that those who were absent from the land had abandoned all right to it. Elsewhere (see sec 2.4.5), we also challenge the view that this was an issue that the Government, through the commission, could decide.

The settler response was that, apart from those at Nga Motu, Maori had deserted the land or did not really own it, owing to conquest by Waikato. One cannot be sure of the precise position today, but settler depictions of a large area north of New Plymouth as totally deserted were self-serving and probably exaggerated. Subsequent evidence from Donald McLean (later to be Sir Donald) showed that Waitara was in fact inhabited at that time, and if that was so, there is a likelihood that there were other small communities in the area as well. It further appears there was no single exodus to Cook Strait; rather, there were several migrations over time, with some people travelling back and forth.

It is unnecessary, however, to come to a finite conclusion on the facts. Even assuming that, through war, every man, woman, and child left northern Taranaki for Cook Strait in search of guns and left in one exodus, it did not mean that they had deserted the land. Maori tribes were not fixed in one place, as they are seen to be today. It was not unusual for groups to leave a district for another to regain strength and to return later, even after generations, to re-establish themselves in their homeland. As we see it, the land in question had been Te Atiawa land for centuries. It was still their land when they were absent, and it remained their land unless they indicated an intended abandonment or until another took and maintained adverse possession for some length of time (and no one did).

Map 7: Ta Te Atiawa

The opinion that Maori lost land rights by not keeping their fires on the land, a concept called ahi ka, was interpreted wrongly to serve colonial ends. It is only natural that ahi ka was evidence of ownership, but the absence of fires did not mean

the land was abandoned or no one owned it. In Maori law, every part of the country was spoken for by someone, fires or no fires.

Paradoxically, the view that the absentees had abandoned their land rights was promoted by English migrants, who never presumed for one moment that on emigrating they had abandoned ownership or inheritance rights in England.

For Maori, as much as for Pakeha, absence was not proof of non-ownership and was evidence of no more than absence. For Maori, as much as for Pakeha, the fact that lands that were once held were now vacant did not mean no one owned them; it was merely proof that no one had taken possession adverse to whoever held the valid title. Keeping one's fires on the land was helpful, but not essential. It was only one item of evidence of ownership and was not the prerequisite for it. English law was no different: land may be owned though it is vacant. Land may also be owned by someone other than the person in possession. We consider that Maori law was clear and substantially similar to that of the English: abandonment, if not manifestly expressed, could be presumed only by exceptional circumstances, such as long-term adverse possession without objection.

In this case, however, there were some Maori in the district when the deed was signed, including those at Nga Motu, who appear to have been mainly the Ngati Te Whiti hapu of Te Atiawa. The question is then whether or not they claimed for themselves to the exclusion of their relatives in Cook Strait and, if they did, whether they could in fact have excluded them. Doubtless, they could not have stopped their numerous relatives from returning in this instance, even if they had wished to. Had time so passed to the extent that those in Taranaki had become the more powerful unit, the question would then be whether they would admit their increasingly remote relatives if the latter sought admission. One might presume that in that circumstance the answer would be 'no', but in the tribal dynamics of last century, it was more usual to admit others than to exclude them, in order that the hapu would be stronger.

Accordingly, although Maori were still returning to northern Taranaki when the first settlers arrived in 1841, and indeed most were still in Cook Strait at that time, this is not a case where Maori and Pakeha were in competition for the same vacant land. It is clear that Te Atiawa owned the land and the settlers did not. The land had not been taken from Te Atiawa by conquest, nor had it been sold. Even assuming the small group at Nga Motu understood the transaction as a sale, which we think was unlikely, their possessory interests did not extend beyond the immediate New Plymouth locality. To the extent that those at Nga Motu included persons of several hapu, they were but a fraction of the total number with an interest in the district. At best, they were as keepers of the land for the people but not the holders of the title.

The absentee issue was important and was to surface time and time again when Taranaki land matters were decided. The official position was never clear; absentees were recognised when it suited but excluded when it did not. We are of the opinion that none of the absentees can be presumed to have abandoned land interests at the relevant time. We are of the view that the interests of the affected hapu, whether or not most of the hapu were living in Taranaki or elsewhere at the time, had not been extinguished by the pretended purchase of the New Zealand Company.

2.4.3. The coastal strip: hapu interests

Central to understanding the conflict was the physical fact that the vast lands of Taranaki comprised dense, near impenetrable bush, save for expansive clearings along a coastal strip. Generations of Maori had cleared these lands for their villages and cultivations. An illustration of the Taranaki clearances and bushline, as estimated by an early ethnographer, is given in figure 5.

The settlers' habitual contention that there was ample land for all (because the whole of Taranaki was held by a few) fudged two issues. The first was that the settlers would take no land other than that which Maori had cleared and would not tackle the bush, while Maori would not forgo their ancestral improvements, homes, and sacred sites. The second was that Maori were not simply Maori; they were divided into separate hapu holding different areas. The lands sought by the New Zealand Company would have left some hapu landless.

Obviously, some better arrangement was required. The settlers' contention merely highlighted the need for dialogue so that the areas that might be given over for Europeans could be agreed. A settler expansion inland from the New Plymouth coast might have been acceptable to Maori. While making settlement more difficult, it might still have been feasible. Given the Maori ownership, as protected by the Treaty of Waitangi, however, and given that Maori would relinquish no more of the coast but would give of the plains in the interior, it seems to us the settlers really had no other choice.

2.4.4 The Nga Motu deed

The Nga Motu deed did not validly convey anything. It postdated two proclamations that simply made it invalid. It also followed that the deed was contrary to the Treaty of Waitangi. The purchase had properly to be made by the Government, which in turn had the responsibility to protect Maori interests. For this purpose, the Governor had required all purchases to be made through the Protector of Aborigines, but this transaction passed without the benefit of his advice. Before the Land Claims Commission, the protector was to oppose the Nga Motu transaction, but he was overruled. Had the Treaty been followed, the protector, not the commission, would have had the say.

In any event, the transaction was lacking in reality. It was impossible for a small group then living at one extremity of the block to have had sufficient right, title, and interest to convey the vast territory concerned. From our own knowledge of customary interests, the assumption that such a group could hold title to the whole is patently absurd. As at 1839, the owners were mainly the absentees.

Further, the Maori parties cannot be presumed to have understood the transaction in the terms of the deed. It is likely they did not. It is well known now that not only was the sale of land unknown to Maori but it invoked concepts antithetical to their world view. On the other hand, the incorporation of migrants into local communities was well known, being practised throughout the Pacific. The practice was readily applied to Europeans for the services they could contribute to the group. Maori, like others,

sought arrangements to secure Pakeha, but these arrangements were to strengthen the tribe, not to sell the land.

There is good cause to consider that such an arrangement was in the people's minds at the time. The Nga Motu transaction was effected for the company by the trader Richard Barrett. Some years previously, before transferring to Wellington, Barrett had lived with the Ngati Te Whiti people of Nga Motu. He had traded with them, been incorporated into their community, and been provided with land and a wife of distinguished rank. In turn, he had introduced trade goods and had provided defence, using the cannon from his ship successfully to defend the local people during an attack by Waikato tribes. Ngati Te Whiti had cause to trust him and to welcome his return. It is unlikely they saw anything in the transaction other than that Barrett would bring more Pakeha to live with them.

The company's records suggest its officials had some inkling that Maori did not see such deeds as sales in Western terms. After the deed for the Wellington lands was signed, E J Wakefield reported on Maori amazement when numerous of the company's settlers arrived, concluding that 'their minds had evidently not been of sufficient capacity to realise the idea of such numbers'. He recorded Te Wharepouri as stating he had not expected so many white people:

I thought you would have nine or 10 [Pakeha] . . . I thought that I could get one placed at each pa, as a White man to barter with the people and keep us well supplied with arms and clothing; and that I should be able to keep these white men under my hand and regulate their trade myself. But I see that each ship holds 200, and I believe, now, that you have more coming. They are all well armed; and they are strong of heart, for they have begun to build their houses without talking. They will be too strong for us; my heart is dark. Remain here with your people; I will go with mine to Taranaki.

The Maori objective in signing the deed, to secure a Pakeha presence for protection from enemies, was also foreseen. Colonel Wakefield recorded:

The natives here [Cook Strait], some of them ancient possessors of Taranake, are very desirous that I should become the purchaser of that district, in order that they may return to their native place without fear of the Waikato tribes.

He also noted that Maori:

betrayed a notion that the sale would not affect their interests, . . . [or] prevent them retaining possession of any parts they chose or even of reselling them . . .

In our view, the Nga Motu deed was void. It was also inconsistent with the Treaty. The vendors did not own that which was conveyed and if they had there would probably have been an insufficient meeting of minds to justify a conveyance. The land description was also uncertain: it could be read as transferring the land as far as the Whanganui River.

2.4.5 Land Claims Commission and absentees

This section concerns the confirmation of the Nga Motu deed by the Land Claims Commission on the ground that the only owners were those remaining at Nga Motu, the rest having lost all interests by departing the district. Earlier, we considered that the absentees were the main owners (see sec 2.4.2). Here, however, we are mainly concerned with the right of the commission to have determined that matter at all.

The land was Te Atiawa land. That fact was ascertainable and was known. Though most Te Atiawa were in the vicinity of Cook Strait, it was not impracticable to assemble the leadership to discuss the land, and in fact Governor Grey was to do that in 1847. It was not, therefore, impracticable to seek an arrangement concerning European settlement. A satisfactory arrangement may have been achievable, considering the goodwill between the Taranaki leadership and the settlers in Wellington. Instead, the Government proceeded to appoint a commission to determine the issue. The primary difficulty with the commission is not the content of its decision, which is questionable in itself, but that a decision was made at all. Had Maori authority been respected, as the Treaty required, the matter would have been discussed between the Te Atiawa leadership and the Government. The company's claim would then have been affirmed, set aside, or adjusted, as had been decided.

The commission process denied Maori the right to decide matters that were entirely within their authority to determine and reduced their status from partners to supplicants. The result was the remarkable spectacle of an English lawyer deciding who of Te Atiawa had land rights according to Te Atiawa custom, with Te Atiawa making submissions, when the matter was most within the competence of Te Atiawa to determine and it was their God-given right to decide. This was the start of a presumption that English lawyers could determine Maori land rights, though they showed no appreciation of the complex tenurial patterns that existed and the intersecting use rights, which were overlaid by hapu political authority and other iwi claims. The consequences have been both a presumption that Pakeha solutions may be had for Maori problems and distortions of Maori law.

In our view, it is not an answer that Governor Hobson may have contemplated a commission of inquiry to adjudicate on disputes when he was speaking at Waitangi. Dialogue was needed first to determine whether any dispute existed at all. The biggest loss caused by this pretentious commission process was the opportunity for Maori and the Government to agree upon a policy for European settlement in north Taranaki.

In any event, this large question about the title of the absentees was dressed-up nonsense. It was a convenient construct for settlers to claim the land as vacant and eliminate any objectors. To support the settlers' case, arguments were contrived that were no more than a manipulation of custom, as we discussed earlier. In reality, the matter was simple. If Te Atiawa had ceased to have interests, that could only have been because they had abandoned the land, and because that depends on intent, the best way to determine whether Te Atiawa had abandoned the land was to ask them. That did not require a commission. It was clear that Te Atiawa did not agree they had abandoned the land and accordingly the Government had no alternative but to talk with them. It is also clear that the commission should have done no more than seek affirmation of the sale and, if it were not generally agreed, refer the matter to the Government to renegotiate.

The commission's approach involved a total distortion of Maori practice and methodology. In any event, Maori interests were predominantly communal, and any individual interests were held by virtue of the predominant interest of the group. It was clear that the various hapu of Te Atiawa owned the land in question. Precisely who owned what within Te Atiawa was Te Atiawa's own business. If Maori authority were to be respected, as the Treaty required, outsiders could hope to treat only with the leadership, for which purpose a collective meeting would be required.

2.4.6 Land Claims Commission: other matters

The Land Claims Commission did not examine its jurisdiction to consider the New Zealand Company's claim. The transaction was 'absolutely null and void' in terms of the preceding proclamations and this defect does not appear to have been cured by the Land Claims Ordinance 1841. The preamble, section 3, and Schedule B (which provides for purchases only to December 1839) compel the view that transactions made after the 1840 proclamations were not within the commission's authority to review.

Nor did the commission discharge its duty to consider the equity of the transactions and especially whether the purchase price, a bagatelle of goods from looking-glasses to sealing-wax, was adequate. The opinion that the price was irrelevant because the real gains were 'civilisation' and the added value over time of the reserves was not sustainable when 'civilising benefits' were not specified as part of the contract, or were not quantified in terms of medical or teaching services or the like, and when the Government's policy on reserves was unclear.

The commission was entitled to rely upon clause 13 of the agreement between the Government and the New Zealand Company, which promised that reserves would be respected, and to note that the Nga Motu deed provided for 10 percent of the land to be reserved for Maori. No inquiry was made, however, as to whether 10 percent was adequate for Te Atiawa's needs, having regard not only to quantum but to the reserves' location and condition; nor did the Government have policies in place to protect those reserves in order to guarantee that the 'added value' to Te Atiawa would be achieved over time.

The commission's report does not show how the 60,500 acres were related to colonisation expenditures, as the ordinances required. It appears to have been assumed that approximately 60,000 acres of the company's maximum entitlement of 160,000 acres (as referred to in clause 6 of the agreement between the Government and the New Zealand Company) would be met by land from Taranaki. It is difficult not to gain the impression from the documentation that the commission entered upon its inquiry with the intention of achieving that result.

The commission did not satisfy itself that the sellers understood the deed. It recorded that 'every fair opportunity' had been afforded them to do so, but that is not the same as finding that they did. The evidence before the commission showed Maori either had not heard the deed read and translated or did not regard it as important. Upon reading the deed ourselves, we wonder how anyone of that time, Maori or Pakeha, could have made sense of it. It is difficult to comprehend even in Western terms.

The commission did not satisfy itself that Maori were willing to affirm the transaction before it. On the evidence, not only did they not affirm the transaction but they opposed it, but their evidence was simply discounted as 'prevaricating', 'dishonest', or 'an invention'.

The commission did not adequately consider whether all in the area at the time had been consulted and had agreed. One witness, called by the Sub-Protector of Aborigines, claimed that he and others living at Waitara had not been consulted. He was dismissed, however, both as a 'wilful inventor' and because he was a former 'slave'.

The commission did not consider the improbability that a small section of people living at the southern end of this vast territory could be presumed to have title to the whole of it. The commission (as with others involved in Maori land management) was clearly unaware of the web of use rights, associational interests, and social obligations that characterised customary Maori land tenure.

We can find no evidence that any other claims were notified and were properly before the commission at the time, but we note that in the course of the inquiry the commission in fact disposed of claims made orally by Richard Barrett and the Wesleyan Mission, and it recommended grants to Barrett and the mission from areas designated as Maori reserves. Barrett was also the agent for the company in effecting the north Taranaki deed. According to Barrett's evidence, Maori understood the transaction as a sale. In the commission's findings, he told 'the plain, honest truth', although when a Mr Forsaith expressed a contrary opinion on the Maori understanding, Forsaith was cautioned by the commission to adhere strictly to his role as interpreter. Maori were not tested as to their understanding, because they were 'untruthful'.

The commission considered that those taken captive had lost their land rights through conquest, but there was no evidence that any conquest had enured to alter the incidence of customary rights distribution, save possibly to admit of a Waikato interest.(b) Waikato in fact claimed an interest for which, in a separate arrangement, Te Wherowhero was paid a sum by Governor Hobson.

In view of the settlers' continuing support for the commission's 'award' once it had been 'overturned' by the Governor, the point also needs to be made that it was not an award at all but a recommendation and the decision was the Governor's to make. In our opinion, the Governor's decision was demonstrably correct. Support for his conclusion at the time came from Lord Stanley, the Secretary for War and Colonies.

Most especially, however, it is doubtful the commission had legal authority to recommend a grant of 60,500 acres in any event. We need not determine the matter with any finality because the commission's recommendation was not approved by the Governor; and we should not do so in this case because the issue may need to be finally resolved on other claims like that of Wellington Tenth's. Some comment is needed, however, for the reason above that 'Spain's award' was regularly pointed to as deserving and proper and has been so described even to this day. The point is that, at all times when the commission was sitting in Taranaki, the 1842 ordinance, providing for the New Zealand Company's arrangement, was void and of no effect because it

had been disallowed in Britain. The 1841 ordinance alone applied, by which the commission was limited to an award based upon the value of the goods paid (which the commission did not bother to assess) or 2560 acres, whichever was the larger. It appears to us at this stage that the commission was simply acting outside its legal authority, and had the Governor accepted the recommendation and issued a Crown grant in terms of *Queen v Clarke* (1849-51) NZPCC 516, 520, the grant would have been voidable.

2.4.7 First purchase: the FitzRoy block arrangement

The first so-called purchase, in November 1844, was of the FitzRoy block, which centred on New Plymouth. In its terms, it was a deed of cession. In reality, it had more of the character of a treaty. It was effected in a climate of tension brought on by the absence of dialogue and by the continual arrival of settlers, despite the known defect in the company's title. After the first colonists came in 1841, a further five shiploads arrived in the next two years, bringing the settler population to over 1000.

Tension mounted after the commission announced its opinion on the New Zealand Company's claim. It did not have the function of publicly promulgating a decision in that way, in our view, but had properly to announce no more than that it was reporting to the Governor for a decision to be made. In any event, as a result of the commission's premature announcement at the end of its hearing, the Sub-Protector of Aborigines claimed he had found it necessary to head off a Maori party that had formed to drive out settlers with assurances that the Governor would favourably review the position.

When the Governor declined the commission's recommendations, on the ground that he was bound to recognise the interests of the absentees, the settlers were equally bellicose, suggesting the use of force as a necessary remedy. That was the situation when McLean was sent to assist in the purchase of a much smaller block around New Plymouth.

Accordingly, the FitzRoy block 'purchase' was not a purchase in the ordinary sense, in our view, but a political settlement based on the reality that there were already settlers on the land, who had to be either accepted or driven out. As we said, although on its face the deed was a land sale, the record of prior discussion discloses something more akin to a treaty, because Maori also imposed two significant conditions. The first was that settlers still outside the FitzRoy block would be brought back into it (and the deed was not executed until certain settlers had shifted) and the second was that the settlers would expand no further.

In our view, it is regrettable that the FitzRoy block arrangement was drawn up as a land sale, when what Maori were seeking, and quite properly so, was an agreed policy for settlement. The importance of treating with Maori on a matter of policy was not foreseen. The Government's concern was to extinguish Maori interests through land buying, but it had properly to secure Maori interests in policy agreements before land transactions could peacefully proceed.

In any event, however, the FitzRoy transaction maintained the peace and there were to be no more sales for another three years. The area was sufficient to satisfy the

company's commitments to the settlers, with some surplus. The only problem was that the company continued to bring more settlers in.

Examining the transaction in more detail, we note that:

- (a) Prior to the FitzRoy block purchase, the Government permitted settlers to occupy the block, though the company's right to it had not been proven at the time (and was later rejected). The Government placed no constraint on the company in introducing further settlers, Maori ownership was not settled beforehand, and the sellers may not have been the true owners. Of those likely to have been owners, there was opposition from certain of Ngati Te Whiti, Huatoki, and Puketapu hapu. As Pohorama of Ngati Te Whiti is said to have put it:

The land belongs to me, I will not part with it. Some time ago I was foolish and [would] have sold it, but now that I know the value of it I will not. I don't want to part with my lands to be made a slave of by the Europeans.

- Certain absentees had interests but were not present and did not agree, while the 'sellers' appear to have included Te Atiawa representatives without a land interest but with an interest in limiting further settler expansion. They appear to have seen themselves as executing something other than a sale.
- (b) As to the terms of the deed:
 - (i) the acreage was not specified;
 - (ii) the agreement contemplated the subsequent execution of 'a proper deed of cession' (none was executed);
 - (iii) the consideration appears to have been below fair value. The Land Claims Ordinance 1841 provided for purchasers to receive an acre for every four to eight shillings paid to Maori for purchases immediately before 1840; that is, before sovereignty was proclaimed and Crown grants could be given. A varying rate applied according to the class of land. The FitzRoy block was of the highest category. (Maori in fact sought a larger sale price);
 - (iv) the reserves were not all that were asked for (but were those that the Government allowed as reasonable); and
 - (v) the reserves provided (326 acres in all) appear to have been inadequate. There is some evidence that 20 extended families were immediately affected: see doc A1(a), p 217. Although Maori extended families are much larger than European nuclear families, assuming them to have been the same and based upon the average allotments taken up by European families, a reserve of 1000 acres at bare minimum would have been needed to provide any parity of treatment.

2.4.8 Waiver of pre-emption

Concurrent with the rejection of the Land Claims Commission's report and the acquisition of the FitzRoy block, the Governor sought to ease the settlers' situation by waiving the Crown's right to pre-empt the purchase of north Taranaki land in favour of the New Zealand Company. This was not an abandonment of the Crown's

responsibility; Crown officers still assumed the responsibility for buying and company agents were appointed as salaried Crown officers to assist.

Although a purchase was still required, the policy none the less prejudiced Maori because it reinforced settler beliefs that the company had a right to the whole area, that its acquisition could be only a matter of time, and that the problem was only that further 'compensation' was payable to some persons. Similarly, Maori may then have felt that resistance to the loss of their land would be more difficult, if not useless.

2.4.9 Developing conflict; arrival of Grey

Prospects for conflict increased with Grey's appointment as Governor in 1845, replacing FitzRoy. Grey could broach no authority but his own and he sought to subjugate Maori to his will by whatever strategy was necessary, from patronage to force, because in his view Maori 'regard the Europeans, as in every respect, in their power'.

The pressure continued for more land. The New Zealand Company required a large land base and a regular influx of settlers to maintain profitability, and settlers continued to arrive with the expectation of land. In England and New Zealand, the company and the settlers continued to petition for the recovery of the company's 'purchase' of 60,500 acres, and there was sympathy for the company following a change in the British Government in the mid-1840s.

For his part, the Governor would not dampen settler expectations or stem the flow of immigrants, despite Maori opposition to sales. On the contrary, the Governor was instructed to recover 'Spain's award' and to 'deal firmly' with Maori, which he proceeded to do. He took charge of Taranaki purchase operations, and finding the Protectorate Department inconvenient for rapid land acquisition, he abolished it in 1846. Thereafter there was no independent body to assess the Crown's performance of its protective responsibilities. McLean ceased to be Sub-Protector of Aborigines and was made Inspector of Police, with additional instructions to recover 'Spain's award', if possible. McLean, with a force of 10 constables and one sergeant, was now enjoined under the Armed Constabulary system not to protect Maori but to control them.

Similarly, new practices and policies characterised purchase operations, which were effected by private treaty, not public meetings as previously, and there is less record of Maori discussion. The practice of reserving tenths also ceased. Since, in previous discussions it had been assumed that reserves would be given, Maori may have expected them even if they were not written into the deeds. The allocation of reserves, however, was left to the discretion of individual Crown purchase agents. In addition, although practice varied and a regular policy is not easy to determine, from here on the presumption was clear that the company's purchase had been valid and, accordingly, Maori objections to a further 'sale' could be overridden if need be. On the basis of the previous 'sale', the Governor directed that Maori should be paid, on average, less than 1s 6d per acre. Finally, the vendors came to be described in the deed as selling not only for themselves but for their absent relatives, thus covering everybody, whether they knew it or not.

In 1847, Governor Grey went to Taranaki, accompanied from Wellington by the influential Te Atiawa chiefs Te Puni, Wi Tako, and Wiremu Kingi, who had all sold land there. Grey hoped they would influence local Te Atiawa to do the same but his plan misfired. Adopting what he called a 'high tone', Grey managed to alienate them all. Poharama of Ngati Te Whiti, who had led resistance to the FitzRoy block sale, threatened not to sell any more land and was duly castigated by Grey. Those at Wellington responded by adopting the same position. Wi Tako and Te Puni claimed payment for the FitzRoy block (and eventually received it), and Kingi supported the earlier tribal decision and 'would not, upon any terms, permit the Europeans to move beyond the [FitzRoy] block of 3,500 acres'. Kingi then announced his intention to resettle his people on their customary lands at Waitara, adding that no sale could be concluded there without his sanction and presence because many were absent and all, 'however low in rank', had an interest in the land. Kingi also rejected the Governor's proposal that he be settled in a model village on the north bank of the river. The Wesleyan missionary, H H Turton, wrote after a conversation with Grey:

[Kingi] told the Governor at once, that he did not need his assistance, that he could erect his Pa himself, and moreover he would built it *where* he pleased and *when* he pleased, without asking permission from anyone . . . Governor Grey was much annoyed at this impudent speech of Kingi's, and replied immediately, 'Tell him, that I say he is to remain at Waikanae, and that I will place him under guard; and that if he dares to remove to Waitara without my permission, I will send the steamer after him, and destroy all his canoes . . .' [Emphasis in original.]

Because the leadership would not part with land beyond the FitzRoy block, the Governor left it to McLean to buy from whomever he could. He wrote:

the most ample reserves for their present and future wants should be marked off for the resident natives, as well as for those who were likely to return to Taranaki; but that the remaining portion of . . . that district, should be resumed by the Crown, and for the use of Europeans.

He gave further instructions that, when reserves had been made for 'the several tribes . . . amply sufficient for their present and future wants', the rest should be 'resumed' for the European population, when a decision would be made on 'what price shall be paid to the Natives for it' - a price, Grey added, that should average less than 1s 6d per acre.

Though the logical basis for this line of thought is elusive at best, the Governor clearly intended that the area the company claimed was to be deemed to have been validly acquired, subject only to making reserves and paying compensation. Accordingly, he instructed McLean:

Those natives who refuse to assent to this arrangement, must distinctly understand that the Government do not admit that they are the true owners of the land they have recently thought proper to occupy.

In future dealings with Te Atiawa, the Governor called upon them not so much to sell as to abandon their 'pretensions'.

2.4.10 Second 'purchases', 1847-48

Contrary to the Maori condition on the FitzRoy sale in 1844 (as affirmed by the leaders at the 1847 meeting) that 'FitzRoy's arrangements [were] to remain and no more land [was] to be sold', the Government treated behind the leadership to buy from individuals.

The first two acquisitions, the Tataraimaka and Omata blocks, may not have constituted a breach of the FitzRoy arrangement because they were south-west of New Plymouth and belonged to a separate group of hapu called Taranaki. These lands had been included in the New Zealand Company's abandoned transaction for Taranaki central. The third transaction, the Grey block purchase, being on the other boundary, contradicted the FitzRoy agreement but it at least expanded into the interior. The remaining two, however, Cooke's Farm and the Bell block, took in further portions of the disputed coast.

The Tataraimaka block of 4000 acres to the immediate south-west of New Plymouth was acquired from 20 persons of the hapu called Taranaki for £150, according to the deed, but it appears £210 was paid. There is no minute or report of any discussion. It is also noted that:

- (a) There is no record of any inquiry as to the need for reserves and no reserves were provided.
- (b) The purchase price of just over one shilling per acre was less than reasonable. This was productive coastal land. Although the Governor had set a maximum of 1s 6d per acre for land in north Taranaki, on the basis of his misinformed view that the land had already been acquired, this block lay outside the north Taranaki 'purchase' and accordingly, even in the Governor's terms, there was no basis for the reduction.
- (c) There is no record of an inquiry as to whether the 20 vendors were the true and only owners and, if they were only some of the owners, whether the proceeds were properly distributed to all others entitled.

The Omata block of 12,000 acres, situated immediately west of the Grey block, was acquired three months later from 66 persons of the Taranaki hapu for £400. In this case, McLean diarised that the sale had been given 'the utmost publicity' and followed a public meeting when over 30 speakers in succession had stood to agree. However:

- (a) There is no record of an inquiry as to reserves. No reserves were provided for in the deed, but two reserves totalling 381 acres were given later.
- (b) Although the land was outside the north Taranaki 'purchase', the purchase price was eightpence per acre.

Two months later, Mangorei, later called the Grey block, comprising 9778 acres to the immediate south of the FitzRoy block, was sold for £380 by 28 Maori, apparently of Ngati Te Whiti. It was the first inroad into Te Atiawa territory since the FitzRoy sale but was inland.

We note that:

- (a) The ownership, including the rights of absentees, was not settled beforehand. Although McLean asserted that he had widely sought objectors, it appears to us there were indeed objectors and their objections had been made known at the meeting with the Governor in February. There were also disputes when the block came to be surveyed.
- (b) After allowing for reserves, the purchase price was just over ninepence per acre.
- (c) The purchase price was paid in instalments, but not all the instalments were paid to the 28 vendors. When absentees in Wellington made claims, part of the purchase price was paid to them, pursuant to a second deed, signed at Wellington in April 1848.
- (d) The 28 vendors received four reserves totalling 1187 acres (originally given as 910 acres in the deed). This was more generous than previously but carried an ominous incentive to sell. Because pre-sale titles were uncertain, and because reserves were only for sellers, selling was the only way to secure a clear and guaranteed title for part of the land, and non-sellers would receive nothing. There is evidence that larger reserves were sought but were rejected as 'extravagant'.

Two more purchases, effected shortly after Kingi's return, were pursuant to preceding negotiations. The first resulted from the allocation of a farm to John Cooke, who was living with a sister of the pre-eminent Wi Tako, then resident in Wellington. Others disputed Cooke's presence, but eventually the New Zealand Company's agent, F D Bell, acting as a Crown agent, was able to complete a deed with 11 persons.

Some aspects may be briefly noted. There is no evidence that the customary title was settled and agreed to by all and some evidence that it was subject to a complex dispute. The deed gave no acreage, but the area was later surveyed at 100 acres. No reserves were specified, but a five-acre reserve was later provided. Finally, the sale was for cattle, not cash, cattle being a scarce and valued commodity at this time and often preferred to money.

The second transaction for Mangati, known later as the Bell block, followed lengthy and unsatisfactory negotiations between Bell and members of the Puketapu hapu of Te Atiawa. It appears payments were made to different factions when it was not clear they had agreed to sell. We note that:

- (a) Although 76 persons eventually signed a deed, the hapu was in fact divided over the sale. There was considerable opposition, but equally, Bell publicly declared his 'determination to get it'. Owing to the extent of opposition, however, it was necessary to defer the settler occupations.
- The apparent technique had been to effect an agreement with those who would sell, then pay 'compensation' to others over time but without admitting that they ever had title in the first instance.
- (b) The sellers in fact sought a larger sum than the £200 stated in the deed (2s 8d per acre), but they gave in when stock was offered instead. Part of the purchase price was retained on account of the ownership dispute, however, and was not paid until four years later, in 1852. By then, the disputants had to accept the amount offered or they would receive nothing. They were 'full of scorn' for the size of the payments but were anxious to develop their own

farms, and they made it clear that they sought 'cattle, horses, carts, threshing machines, indeed every conceivable article of farming implements'.

- (c) The deed provided for a reserve of unspecified size for the sellers, which was later surveyed at 165 acres.

The acquisitions of 1847 and 1848 did much to relieve the settlers' demands for land, but few were willing to occupy the bush-covered parts when there was a prospect of obtaining the open country at Waitara, which was the ancestral land of Wiremu Kingi and others.

2.4.11 Kingi returns

While the above purchases were being made, and following his undertaking to the Governor at the meeting in 1847, Wiremu Kingi prepared for the migration of his people back to Waitara. Many groups had returned at various times, or were to do so later, but the heke of Wiremu Kingi in 1848 is the best known, owing partly to the Governor's opposition and the consequential close recording of Kingi's movements and partly to Kingi's own renown and large following. Because Kingi's return was significant for later events, some observations are appropriate.

Kingi had a record of supporting settlers. He had previously assisted the Governor's campaigns following fighting in Wairau and the Hutt Valley. He enjoyed the close confidence of the Otaki missionary Octavius Hadfield, and demonstrated a Christian disposition. He was, none the less, a fighting chief and would tolerate no diminution of his own authority. First seen by Pakeha as 'loyal' and 'friendly', he came to be branded as 'coarse-minded' and a 'rebel'. The same fate would await many others.

Kingi's return was not entirely a reaction to the Governor because it had long been contemplated. He claimed he would have returned earlier but was busy protecting Wellington settlers from the attacks of other tribes. He had written of his intention to return with his father as early as 1845.

Though it was his lawful right to return, for the company's claim had been rejected, the Governor attempted to prevent him. On 5 March 1847, Grey and McLean proposed to stop the party en route and seize the waka. In April, the Governor threatened to confiscate or dismantle nine waka that Kingi had assembled. In March 1848, on the eve of Kingi's departure, Grey sent McLean and a party of Taranaki Maori to encourage Kingi to give up all claims to land south of the Waitara River. When Ihaia Te Kirikumara spoke of his intention to sell those lands, Kingi made it clear he would not give them up. According to McLean, he responded:

My fathers and friends why treat me in this manner . . . now that I am in the canoe to leave here, you sell the land to which I was returning from under my feet: My land! my land! . . . I will not give up my land till I am first dragged by the hair and put in gaol!

The migration of 587 men, women, and children from Waikanae to Waitara took seven months between March and November 1848. Some travelled by waka, others drove stock before them along the coast. On their arrival, Kingi occupied the south bank of the Waitara River (where the town of Waitara stands today), returning to the

cultivations and three-pa complex of his forebears. Once there, some may have dispersed, because members of several hapu were included in his following. Kingi established his people in agricultural pursuits and supplied a settler market; his followers also obtained money from labouring on settler farms and they developed substantial cultivations and pastoral units of their own. G S Cooper commented on the large and annually increasing cultivations of this section of Te Atiawa ('the richest of all the neighbouring tribes') and their substantial crops of wheat, oats, maize, and potatoes. He estimated that during 1853 they sold over £2800 worth of produce to the two largest local exporting firms, and it was estimated that this figure would rise to nearly £5000 in 1854. It was considered that 'Ngatiawa' (who numbered about 1000) owned 150 horses, 250 to 300 head of cattle, 40 carts, 35 ploughshares, 20 pairs of harrows, and three winnowing machines. They had not built any flour mills because 'it pays them better to sell their wheat in the English market'. The developing Maori expertise alarmed settlers, the *Taranaki Herald* reporting that Te Atiawa 'are everyday getting more sensible of the value of available land, and will consequently be more difficult to bargain with'. There is, however, no reason to consider that Kingi's desire was other than to maintain and develop good relations and to trade with the settlers.

2.4.12 Third 'purchases', 1853-54, and warfare

In 1848, following Kingi's return, the Maori and Pakeha populations from New Plymouth to Waitara are thought to have been about the same, approximately 1100 each. The Pakeha population was expanding, however, as settlers continued to arrive, and by 1858 it was 2652. Thus, settler pressure to 'recover their land' continued unabated. Maori intransigence remained as before. Their opposition was ostentatiously announced in 1849 by the erection of a carved pole 40 feet tall on the north bank of the Waiwhakaiho River, which was to mark the outer limit of settler expansion along the coast. This traditional form of pouwhenua to delineate an aukati, or a line that was war to cross, could have such serious consequences that one was to be erected only after an extensive tribal agreement. We think it was a better indication of the tribal position than the disparate signatures on a deed.

Of further indicative significance were Maori reactions to the Governor. The Governor's meeting with Maori in 1850 'nearly terminated in a disturbance' and he was physically prevented from visiting Pukerangiora in the Waitara area when he and his entourage were turned back.

None the less, and although no sales were finalised for five years after Kingi's return, down payments to individuals were continually made to sow the seeds for sales. In 1853 and 1854, deeds were completed purporting to convey the Waiwhakaiho and Hua blocks respectively. The general opposition to sales was such, however, that the mandate of those purporting to sell and the integrity of the sale process as a whole can hardly be sustained.

Significant tactics were involved. No hapu accord being practicable, persons were dealt with privately and secretly, and payments were made to secure cooperation. Unpublicised payments were much resented, but the rumour of them provoked others to sell in return. There were also those willing to sell others' land in order to keep their own, and the Maori response was sometimes to insist that the whole should then be sold. Thus, Poharama wrote to the Governor:

We do not consider it fair that the natives of 'Te Hua' should have the selling of our land, while at the same time they are carefully reserving their own portions; therefore we are determined that Te Hua should be included within the sale of the land, over which, in reality, they have no voice.

McLean had left Taranaki in September 1852 and land purchase operations had passed to G Cooper. By then, Crown agents had more money to buy land, and through the provincial councils established in 1853, the settlers could exert more pressure on them. Cooper, in particular, pressed influential hapu members to accept down payments in the expectation of a chain reaction. It appears a variety of motives for selling then became apparent. Some, it seems, sought to increase their standing with Europeans, some sought to prove their right or authority, while a few sought to sell the land of others as utu for some previous slight or wrong. Strangest of all to Western ears were sales to 'whakahe' one's own people (to put all the hapu at risk on account of some injury or slight to the seller). Whatever the motive, offers to sell land were accepted and sealed with a payment so that the remainder of the hapu were forced into the transaction irrespective of their opinion. The process was to intensify internal Maori fighting and cause bloodshed.

In August 1853, Cooper claimed to have finalised the Waiwhakaiho purchase. The record is unsatisfactory on several counts. The deed did not give the area of the land sold or locate the reserves promised within it; yet this was the largest of all the pre-war purchases, being assessed later at 16,500 acres. The deed itself escaped official recording and it could be that it was not originally seen as a complete transaction. Only a copy of the deed, found among McLean's papers, now survives. The reserves were purportedly delineated on an associated map, but the map cannot be located and there is no record of who sold. The copy deed does not recite the vendors' names but advises only that the deed was signed by 115 people.

The purchase price is unclear. It appears Cooper had hoped to pay by instalments but was eventually forced to pay £1200 as a lump sum. This was the figure stated in the deed, but there also appear to have been prior advances that were not included in that sum. As for advance payments made to separate groups, McLean hoped they would arouse 'petty jealousies', which would work 'most opportunely'. After allowing for the reserves as later surveyed, the sale price, based on that stated in the deed, was just over 1s 5d an acre. By that time, the Governor had lowered the on-sale price to settlers to 10 shillings per acre. The reserves, when actually surveyed, were more generous than usual, being 2663 acres, or 16 percent of the sale area. This may have been because of the number of protests.

Some claimed to have been left out of the transaction and McLean, living in Wellington at the time, was obliged to make another payment of £400 to the absentees living there. Others remained staunch opponents to the sale, among them Te Whare, the son of the renowned Te Puni of Wellington. Te Whare led a return expedition in 1853 to occupy the coastal part of the Waiwhakaiho block. He and his followers, who were said to have signed an accompanying paper but to have then refused to accept a share of the payment, built a pa on the land and proceeded to spread their cultivations over 500 acres. Cooper described them as being as 'obstinate as mules', and he later reported that they were 'successfully withholding' settlement of about 1200 acres. Te Whare and his group prevented settler occupation of the most valuable parts of the

land until after the war in 1860. Finally, inter-tribal fighting broke out. Rawiri Waiaua probably put his finger on the problem when he wrote of the importance of gaining the consent of all.

Contemporaneously, Cooper and McLean were involved in a variety of purchase proposals and making preliminary payments to extend Crown purchases to Waitara. Delays were, however, causing much settler frustration. Soon afterwards, in 1854, the 14,000-acre Hua block deed was executed. Although it was signed by 129 Maori, McLean wrote of the difficulties in buying the land owing to the 'decided minority of Natives in favour of a sale'. It appears those opposed to a sale were left out, including the Ngati Tu hapu, which claimed interests there.

In this case, another strategy was developed: a proposal for re-purchase. Maori were paid £2000 of the £3000 purchase price, the balance being held to buy back surveyed sections at 10 shillings per acre. The Maori gain was the receipt of secure titles previously in dispute, but the Government gained the bigger advantage, because non-sellers had to join in or miss out on the section allocations. It also meant partitioning Maori into individually held allotments, reordering them according to the settlers' social structure. McLean had high hopes for this policy of re-purchasing. He thought it would:

lead without much difficulty to the purchase of the whole of the Native Lands in this Province, and to the adoption by the natives of exchanging their extensive tracts of country at present lying waste and unproductive for a moderate consideration, which will be chiefly expended by them in repurchasing land from the Crown.

Instead, however, hostilities broke out over who might receive sections. In the end, Maori obtained 1800 acres in over 1000 allotments. It was small change for the 14,000 acres given over for £2000.

The sale of 14,000 acres, less the reserves (surveyed later at 250 acres), worked out at a price of just over 2s 10d per acre, more than previously but much lower than the 10 shilling per acre buy-back rate for the same land, which had been improved only by being surveyed. In addition, if the arrangement gave surer title for uncertain ones, they were not necessarily just titles that would end all dispute. They did not resolve whether the right people had sold or who was properly entitled to sections. This uncertainty of ownership arose not from the Maori dispute but from the Government's practice of treating with sellers without allowing for a prior agreement on ownership and boundaries.

2.4.13 Hostilities

Contradicting suggestions that Te Atiawa freely and willingly sold most of their land is the record of armed conflict between selling and non-selling factions and the extent of fighting to stop it. If most Maori were not opposed to selling, which seems to be inferred, at the very least there was concerted opposition. How, then, could the land have been sold except that the Government was buying from sellers as though they alone were entitled, creating a situation where one had to be in or receive nothing?

The reasons for selling, amply developed in Dr Ann Parsonson's report, appear to have been rooted in local politics and custom. The main cause, it seems, was that certain returned war captives, customarily seen to have lost status, sought to reinstate their pre-eminence through sales. Selling land was thought to prove their competence to do so and thus affirmed their status. It also curried favour with the Government, which might support them in their position. The non-sellers were generally the Cook Strait rangatira who had retained their liberty.

So long as some would sell, however, the Government was inclined to recognise them as the true owners. Though officials were keen to attract offers to sell from those with substantial followings, the system lent itself to favouring sellers and this favouritism automatically engendered disputes and jealousies, causing internal war.

2.4.14 Last 'purchase', 1859

After the sale of the Hua block, Maori offers to sell, Government offers to buy, and private payments or 'presents' to sellers continued to be made for lands now extending into the Waitara catchment area. None the less, no formal deed could be completed for a further five years owing to inter-tribal fighting, which had assumed such proportions by 1855 that 400 Imperial troops were stationed in Taranaki for the settlers' protection.

Despite this turmoil, the acquisition of the Tarurutangi block was claimed by R Parris, the new Inspector of Police and District Land Purchase Commissioner. Parris was a former trader, however, and as the resident magistrate observed, it was doubtful that he could act impartially because various Maori owed him some £500 to £600.

It appears the troubles began when Ngati Tu, wrongly excluded from the sale of the Hua block, offered the front portion of the Tarurutangi block in retaliation and Rawiri Waiaua, stung by the destruction of his crops as part of that dispute, reacted by offering the whole block. Waiaua was prominent in the district and his death with five relatives in a consequent skirmish led to further fighting among the various groups, exacerbated by the Crown agent's offers of cash. Eventually, in 1859, a deed was produced with 162 signatures. It may be noted, however, that no acreage was given in the deed and the boundaries were unclear. (On survey, the area was given as 14,000 acres.) In addition, no purchase price was stated (this was possibly because payments had previously been drip-fed to individuals). Nor were any reserves prescribed, although 10 acres were later set aside (representing 0.07 percent of the land alienated).

More importantly, however, Maori interests were hotly contested and there was never an agreement on ownership. Under this process, such matters were left to the Government to decide or, more particularly, to the purchase agent; in this case, the former trader. It will be seen that, after the wars, this same agent was to act simultaneously as a purchaser for the Government and for himself.

2.4.15 Outcome and process

By the various means described above, nearly all Te Atiawa lands south of Waitara were claimed by the Government by 1859. With the addition of purchases to the south

of New Plymouth, approximately 75,378 acres were claimed to have been acquired, more than that originally proposed by the Land Claims Commission but not quite the same land, because Waitara itself remained held by Wiremu Kingi.

As mentioned above, the whole was acquired by a process that was not agreed. It is further evident from the correspondence of Wiremu Kingi that Maori assumed the process would be mutually decided. Kingi wrote to both the Governor and McLean, warning them of the consequences of the process they were adopting and reminding them that the process had to be settled on both sides. More particularly, he wrote for 'our Runanga', advising that lands as far as Mokau were reserved from sale:

The boundary of the land which is given for ourselves is at Mokau. These lands will not be given by us into the Governor's and your hands, lest we resemble the seabirds which perch upon a rock, when the tide flows the rock is covered by the sea, and the birds take flight, for they have no resting place . . . My word is not a new word, it is an old one . . . You, Mr McLean, are aware of that word of mine when you first came here and saw me, you heard the same word from me, 'I will not give the land to you'.

I have therefore written to the Governor and you to tell you of the Runanga of this new year, which is for withholding the land because some of the Maories still desire to sell land, which causes the approach of death; it is said that I am the cause, but it is not so, it is the men who persist; they have heard, yet they still persist. If you hear of any one desiring to sell land within these boundaries which we have here pointed out to you, do not pay any attention to it, because that land selling system is not approved of.

2.4.16 Reserves

To complete our consideration of the amount of land acquired from the various Te Atiawa hapu (the whole of the lands of most of them), it is necessary to review what happened to the reserves, bearing in mind that only 4987 acres, or 6.6 percent of the land, had been reserved for Maori in the first instance. The reserves were not to be reserved for Maori 'forever', as originally promised. Instead, the administration of the reserves is a pitiful story.

Some hapu received no reserves at all. Moreover, not only was the siting and extent of the reserves determined mainly by officials, but until 1976, officials, not Maori, were to administer most of them. By the end of that long period of over a century of official control, 90 percent of the reserves had been alienated. Today, only 480 acres remain, representing 9.6 percent of the original reserve area and 0.6 percent of the lands 'sold'.

Some years elapsed before the Maori beneficial owners of many blocks were determined, and the beneficiaries were sometimes a mere handful of those who, as sellers, had been promised lands.

Reserves in the FitzRoy block in the vicinity of New Plymouth were used for public purposes, even before Maori beneficial ownership was determined. They were used for reservoirs, schools, hospitals, military establishments, prisons, scenic reserves, and, inexplicably, to meet establishment costs incurred by the New Zealand

Company. Today, all that remains of the FitzRoy block reserves is a one-eighteenth share, equating to one acre in a scenic reserve and a quarter-acre burial ground.

By 1900, 27 percent of the reserves had been alienated. In the succeeding years to 1930, 32 percent passed to the Crown and 22 percent to private interests, mainly lessees, and 7 percent was taken for public works. During this time, many of the reserves were statutorily held by officials with powers to sell or lease.

With the continued sale or leasing of reserves by officials, Maori beneficiaries also endeavoured to sell by direct treaty for better prices. They had no legal authority to do so but those sales were then validated by special legislation.

Of the 480 acres that survive, most are either sacred sites or subject to perpetual leases to Pakeha, arranged many years ago by officials.

2.5 CONCLUSIONS

By way of a summary, we consider that:

- (a) The failure to negotiate with the Te Atiawa leadership for a settlement policy and land sharing process was denigrating of Te Atiawa tribal authority and contrary to the principles of the Treaty of Waitangi, by which that authority was to be respected. The prejudice to Te Atiawa was the loss of most of their land by processes that were not agreed on and over which they had no control and the relegation of Te Atiawa status from that of equals to that of supplicants. In the result, none of the acquisitions of land in north Taranaki can be seen as having been acquired consistently with the Treaty.
- (b) The same applied to the various hapu of central Taranaki in respect of the lands acquired there.
- (c) The determination of Maori customary rights by the Land Claims Commission was contrary to the Treaty of Waitangi for the same reason. The commission's opinions were also wrong.
- (d) In the absence of previously agreed protocols, not only was the process of acquiring Maori land contrary to the Treaty of Waitangi but the acquisitions were contrary to the principles of the Treaty in that they were not fair and equal contracts in their own terms and were made without any protective arrangements.
- As sales, each of the transactions failed to satisfy one or more of certain minimum criteria relating to the prior determination of ownership, the determination of Maori consensus by Maori process, fairness of terms, certainty of subject-matter and consideration, and mutuality of understanding.
- (e) The purchasing of interests by private treaty when titles were not generally agreed was also contrary to the Treaty of Waitangi and prejudicial to Maori in that it was the cause of war between Maori and, later, between Maori and the Government.
- (f) The practices and policies adopted by the Crown for the acquisition of land were inconsistent with the principles of the Treaty of Waitangi in that they proceeded from the Crown's desire to obtain a certain area on a wrongful presumption of some moral right, with the result that the practices were overly

pressured and unfair, and the steps necessary to protect Maori interests were not maintained.

- (g) Contrary to Treaty principles and the promises of governors, no or inadequate reserves were set aside for the support and future development of hapu. There is evidence that the Crown was aware of, but was not disposed to heed, the warnings of its own officials that, if proper allowance were made for all hapu, there would be little land left to buy, except in the bush, and that large block purchases of the type in fact effected would threaten the facility of Maori to maintain themselves and their institutions.
- (h) Such reserves as were provided were not secured to the hapu for their own use, established under hapu administration, or protected against alienation, and instead they were alienated as the direct or indirect consequence of Crown action.
- (i) The Crown's purchase policies and practices, especially the lack of public, tribal hui and the use of advance payments, secret payments, and instalments, were the direct or indirect cause of, or exacerbated, internecine Maori warfare and divisiveness, leading to the loss of lives and the undermining of traditional authority. The manufacture or exacerbation of local enmity and the compromising of traditional authority were part of intentional policies to foster sales and secure possession.
- (j) Undue pressure and the prospect of conflagration also arose from the Crown's failure to dampen settler expectations of ready access to Maori lands or to stem the flow of immigrants, despite their uncertain right to the land and the known Maori opposition.
- (k) Inherent in the Crown's policies and practices was an assumption that individual ownership should replace communal tenure, without inquiry as to Maori preferences or alternatives in tenurial reform but with the underlying expectation that Maori would thereby be amalgamated with Pakeha and controlled.
- (l) As a direct result of the Crown action and policies complained of, Maori were severely prejudiced by land loss, loss of life, and the depreciation of traditional mechanisms for the maintenance of authority and the resolution of disputes.

The primary trouble, however, was the Government's refusal to respect Maori authority by treating with Maori as the equals that they were. From the outset, governors would not meet with the Maori leadership to agree upon the terms on which north Taranaki might be settled. Such was required by the Treaty, in our view. It was also plain good manners and common sense to treat with the leaders of a place before entering on it.

No feat of comprehension was required to ascertain whose tribal land it was and where the leaders could be found. As time would amply show with regard to other places, the formalising of tribal authorities, if that was required, was not impractical either. But the Government would not consider such options. It chose instead to elevate the sham of a ridiculous piece of paper, presented to a small community with no affinity to its concepts and purporting to sell that which they could not possibly have controlled.

The problem compounded over time. There was no basis for the Government to purchase land when it liked, where it liked, and from those whom it chose, when the process as a whole had not been agreed with the Maori leadership. The process, chosen unilaterally, ensured that matters would be determined by British practices, on British terms, and by British persons, with Maori under British control. It allowed and encouraged manipulation, with devastating results in war. The Government could determine all matters: the price, who could sell, and whether a sale was effected. Being a judge in its own cause, the Government unsurprisingly found itself in the right. This was not a valid exercise of the Government in terms of the Treaty of Waitangi, but the assumption of a licence to destroy.

A most regrettable aspect is that an evident Maori willingness to receive settlers was soured. Even after they had good cause to reconsider their opinion of them, respect for the settlers' rights in New Plymouth were maintained and protest against settlers was constrained. Yet every opportunity to develop mutually acceptable arrangements appears to have been rejected or ignored. The settlers occupied the New Plymouth coast and their expansion into the interior may have caused few concerns. In addition, lease options were possible. Some leases between Maori and settlers were arranged, but the leasing of Maori land was then forbidden. Leases already effected were declared null and void and thereafter penalties were imposed on settlers who sought them.

A further regrettable aspect is the clear evidence of economic growth and development Maori experienced from supplying settler markets when they had their own land and the opportunity to develop their full potential that Maori were denied by the acquisition of that land.

A further outcome was one of cultural labelling, which created the mind-set for the wars to come and obscured a Pakeha understanding of the Maori vision. Maori were simply 'coarse' or 'hostile', unless they were disposed to sell, in which case they were 'friendly'. In fact, on the evidence, Maori were keen to negotiate trade and living arrangements and, generally, were hostile not to Pakeha but to the attitude they perceived.

The Government thus destroyed the opportunities for trade and development between races, for Maori to share equitably in the benefits of colonisation, and for Maori to participate in the development of the country as equals and on their own terms.

More specifically, we consider that the circumstances surrounding the alienation of lands before the wars were such that, in assessing the steps necessary to remove the prejudice today, no distinction should be made between the lands said to have been sold prior to the wars and the lands confiscated as a result of those wars.