

THE
MOHAKA KIAHURIRI
REPORT

THE
MOHAKA KI AHURIRI
REPORT

WAI 201

WAITANGI TRIBUNAL REPORT 2004



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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JOHN TUREI

1919 – 2003

*Te tai ra te tai ra
E pari ana ki hea
E pari ana ki te kauheke
Kaumatua
He tipua*

*E te Pou Matua, Te Ahikaiata
e Hone*

*Neke atu i te tau to wehenga atu i a matou
Anei ra te kaupapa i timatahia e koe i roto i nga tau kua mahue ake nei
Anei ra kua oti*

*I wahia ai nga korero a te iwi i Tangoio
I whakakapingia i te Taiwhenua o Te Whanganui a Orotu
He ara nui, kake ake ki nga hiwi o Tatarakina ki Maungaharuru tae noa ki te akau i Tangitu
Awhio atu hoki i nga wai rere o Mohaka me Tutakuri
E ki ana he pukenga wai, he pukenga tangata
Kati e Ta, e te rangatira anei ra matou e raungaite nei
E moe ra i to moenga roa
Koutou te hunga kua okioki
Koutou te hunga kua wahangu
Otira koutou te hunga kua kite i te kororiatanga o te Karaiti
Ka huri*

Respected elder
Te Ahikaiata, Hone
It is now more than a year since you left us
Finally, here is the task that you started in the years that have passed by
It is finally completed
The people opened their case at Tangoio
It was concluded at Te Taiwhenua o Te Whanganui a Orotu
It was a major undertaking, reaching above to the ridges of Tataraakina to Maungaharuru and
extending to the shoreline at Tangitu
It encompassed the flowing rivers of Mohaka and Tutaekuri
It is said where there is a confluence of waters there is a confluence of people
Sir, the respected one, we remain bereft of your presence
Sleep the everlasting sleep
With those who also rest
With those who are also silent
With those who have experienced the glory of Christ
Turn away

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ABBREVIATIONS

AJHR	<i>Appendix to the Journal of the House of Representatives</i>
app	appendix
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
ch	chapter
DNZB	<i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
ed	edition, editor
fig	figure
fol	folio
HCNZ	Housing Corporation of New Zealand
inc	incorporated
JHR	<i>Journal of the House of Representatives</i>
ltd	limited
MA	Maori Affairs file series
MOW	Ministry of Works
MS	manuscript
n	note
NA	National Archives
ND	Native Department file series
NZBC	New Zealand Broadcasting Corporation
NZED	New Zealand Electricity Department
NZLR	<i>New Zealand Law Reports</i>
NZPCC	<i>New Zealand Privy Council Cases</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
pl	plate
RDB	<i>Raupatu Document Bank</i> (139 vols, Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections
vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers
Unless otherwise stated, footnote references to claims, papers,
and documents are to the record of inquiry, which is reproduced
in the appendix.

ACKNOWLEDGEMENTS

The Mohaka ki Ahuriri Tribunal would like to thank a number of staff who assisted us both during the hearing of the claims and in the writing of this report. They included Turei Thompson and Peter Barton (claims administration), Dean Cowie, Georgina Roberts, and Richard Moorsom (research and claims facilitation), Paul Hamer (report writing), Miranda Johnson (report-writing assistance and reference checking), Max Oulton (mapping), and Dominic Hurley (editing and production).

The Honourable Parekura Horomia
Minister of Māori Affairs
Parliament Buildings
WELLINGTON



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

11 May 2004

Te Minita Māori

Tēnā koe e te rangatira e noho mai nā i runga i tēnā taumata whakahirahira, e whakatutuki nei i ngā kaupapa me ngā moemoea a te iwi Māori. Tēnā hoki koe e whai ake ana i ngā tapuwae o te hunga rongonui i mua atu i a koe. Ara hoki ko Ta Te Rangihiroa, Ta Maui Pomare, Ta Timi Kara, te matua i a Ta Apirana Ngata me ngā mea o muri ake nei i a Matiu Rata, a Koro Wetere me etahi atu.

He mihi he tangi ano hoki ki te hunga kua mene atu ki te po otirā kua huri atu ki tua o te arai. Haere atu rā, haere atu rā, e moe i te moenga roa. Kati kā hoki mai ki a tātou o te ao tangata e takoto nei i roto i te ao hurihuri – tēnā tātou katoa.

I te timatanga i tipu ake te purongo nei i ngā tonono a ngā uri o ngā hapū o te rohe mai i Mohaka ki te rahi ki Ahuriri ki te tonga. No muri tata mai i whakatakotoria ano hoki etahi atu iwi o ratou ake tonono i mua i te aroaro o te Taraipiunara.

We present to you our report on the 20 claims grouped and heard together as the Mohaka ki Ahuriri district inquiry. The claims were brought on behalf of a number of hapū and whānau within an area from the Tutaekuri River to the south, Hawke Bay to the east, the Waiau River to the north, and the mountain ranges or the old Hawke's Bay provincial boundary to the west.

The claims relate to Māori land in two broad ways:

- ▶ first, they relate to land loss through pre-1865 Crown purchase, the operation from 1865 of the Native Land Court, the 1867 confiscation and later Crown purchasing (mainly conducted from 1910 to 1930); and
- ▶ secondly, they relate to the barriers to the use and enjoyment of lands retained in Māori ownership, including title disruption, the lack of development opportunities, the fragmentation and multiple ownership of tiny parcels, and the lack of access.

More particularly, amongst the claims there were several key matters we had to resolve. These included:

- ▶ The status of the first land transactions with the Crown in the district in 1851, which the claimants asserted to be akin to 'treaties'.

- ▶ Whether a supposed 'rebellion' justified the military engagements in 1866 and the confiscation in 1867.
- ▶ The propriety of the Crown's handling of both the 'return' of certain lands after the confiscation and the title disputes which followed for over 80 years.
- ▶ The point at which the Crown should have stopped purchasing Māori land and put its effort into helping develop the remaining Māori land base; and
- ▶ Whether there is a link between poverty and landlessness.

We have made findings on all these and other matters at the ends of the relevant chapters.

Overall, we have identified serious breaches of the principles of the Treaty of Waitangi by the Crown in the loss of Māori land in our inquiry district. We have also found that the Crown acted in clear breach of the Treaty in its treatment of the remaining Māori land base. We have also made the point that by far the bulk of that surviving base (some 125,000 acres out of a total of roughly 800,000) remains in Māori ownership principally because it was viewed by the Crown as too rugged and unproductive to bother purchasing.

We have recommended that the Crown and the claimants negotiate settlements of the claims. We have accordingly made some suggestions as to the appropriate groups for the Crown to deal with. Finally, we note that Crown counsel made a number of concessions in our inquiry of failings by the Crown to live up to the standards envisaged in the Treaty. We trust that this conciliatory approach is carried forward by the Crown in the settlement negotiations.

Before we were able to complete this report, the Tribunal lost its respected kaumātua and long-standing member Sir John Turei. Sir John made an invaluable contribution to this Tribunal during its many hearings, and we are truly grateful for his insight and wisdom on the issues involving tikanga Māori. We deeply regret that he passed away before our task was complete.

Heoi anō, nāku na



W W Isaac

Deputy Chief Judge

EXECUTIVE SUMMARY

INTRODUCTION

The Mohaka ki Ahuriri inquiry was the Waitangi Tribunal's first district casebook inquiry. In other words, it was the first time a group of claims within a particular region were grouped together for hearing, with all essential claimant evidence being assembled into a casebook of reports before the hearings commenced. We heard the claims over approximately three years from November 1996 to February 2000 and have been formulating our report since then. This report is the first to be produced under the casebook system. It also marks the conclusion of the Mohaka ki Ahuriri inquiry after our earlier *Napier Hospital and Health Services Report* of 2001.

We report here on 20 claims in Hawke's Bay concerning lands approximately bounded by the Tutaekuri River to the south, Hawke Bay to the east, the Waiau River to the north, and (mainly) the mountain ranges or the old Hawke's Bay provincial boundary to the west. The claimants are predominantly hapu of Ngati Kahungunu, although some identify more or equally with Ngati Tuwharetoa or have links to Tuhoe. The inquiry name derives from Ahuriri, the Maori name for the area around Napier, and Mohaka, both a locality in the north of the district and the river that flows from the Kaimanawa Range to the sea and bounds numerous land blocks in our inquiry. The claims fell into three approximate geographical subdivisions:

- ▶ To the north is the traditional tribal territory of Ngati Pahauwera, which comprises a number of blocks. This was the subject of the Ngati Pahauwera comprehensive claim (Wai 119), as well as a whanau claim (Wai 731) and a cross-claim by Ngai Tane (Wai 436).
- ▶ In the centre is the Mohaka-Waikare confiscation district. This was the subject of a pan-hapu claim covering the entire confiscation district (Wai 299), a hapu claim with respect to two specific blocks (Wai 216), and a significant number of whanau claims.
- ▶ To the south is the Ahuriri block, which was purchased by the Crown in 1851. This was also the subject of a pan-hapu claim (Wai 400). To the immediate south of the Ahuriri block (but in part also overlapping it) was a hapu claim to land at Waiohiki (Wai 168).

Despite this apparently convenient segmentation, we are not in a position to report fully on all of the historical grievances of the groups that appeared before us. This was inevitable, since under tikanga Maori, tribal and hapu areas of interest overlapped, and it was impossible to create inquiry boundaries that did not bisect the interests of one group or another. By this, we particularly refer to the hapu that filed a claim relating to the large Ahuriri transaction, which forms the southern boundary of our district. That claim needs to be considered against a context of subsequent land losses by the same hapu in the Heretaunga district to the

EXECUTIVE SUMMARY

immediate south. However, in the case of Ngati Pahauwera, to the north, we have reported fully on their claims, and we have also reported on the key historical grievances of the inland Ngati Hineuru (whose interests nevertheless cross into other Tribunal inquiry districts).

The inquiry district comprises some 800,000 acres, and Maori today retain approximately 125,000 acres. Yet, they have lost all but the mountainous hinterland that Crown purchase official Donald McLean rated ‘rugged and unproductive’ and ‘of very little value’. Of the better land in our inquiry district, close to the settlement of Napier (which was established in 1851), they retain very little indeed. In short, we have identified serious breaches of Treaty principles by the Crown in the alienation of land in Mohaka ki Ahuriri from Maori customary ownership. Those principles most regularly breached include the duty of active protection, the duty to act reasonably and in good faith, the principle of reciprocity, the duty of consultation, the principle of options, the Maori right to development, the principle of equity, and the principle of equal treatment. These principles and their relevance to the claims we inquired into are detailed in chapter 2.

In general, all the claims in this inquiry focused upon land loss, and the major issues that we considered related to the following:

- ▶ pre-1865 Crown purchases under the Crown’s pre-emptive right;
- ▶ land alienations to the Crown and private purchasers after the introduction of the Native Land Court in 1865;
- ▶ the military engagements in 1866, the Crown’s confiscation of land in 1867, and the ‘return’ of the majority of the confiscated blocks in 1870;
- ▶ problems besetting the remaining Maori land base from the late nineteenth century: title disputes, lack of development opportunities, and renewed and intensive Crown land purchasing; and
- ▶ the twentieth-century impact of land loss: environmental and socioeconomic issues.

We proceed now to summarise the key events and our findings on them under these heads. We stress, however, that the findings summaries given here should not be treated as a substitute for the full exposition of findings found at the end of each chapter.

PRE-1865 CROWN PURCHASES

Only four Hawke’s Bay rangatira signed the Treaty of Waitangi, and during the 1840s Maori of the district had practically no interaction with the Crown. The purchasing of Hawke’s Bay land became an object of Crown policy during the latter 1840s, however, because of circumstances in the Wairarapa – the lack of available land in Wellington had seen settlers venture over the dividing range to informally lease runs from Maori for their flocks. This worked against the Crown’s object of buying Maori land cheaply and on-selling it to settlers at a profit to finance the development of the colony. Squatting also defied the monopoly right to treat for

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Maori land guaranteed the Crown under the Treaty. Crown officials attempted to threaten or entice Wairarapa Maori to sell, but since the rentals the chiefs received from the squatters were more generous, they refused to do so. Buying land in Hawke's Bay, therefore, was seen by the Crown as vital both to prevent the spread of the squatting system northward as well as to break it in the Wairarapa by providing alternative and more secure runs for the squatters.

Hawke's Bay Maori, for their part, were equally keen to sell land to the Crown in order to acquire the anticipated benefits of Pakeha settlement. In 1851, therefore, Donald McLean managed to acquire three large tracts for the Crown at Waipukurau (south of our district), Ahuriri, and Mohaka. These transactions were, if not treaties in their own right, certainly major compacts between the Crown and the Maori vendors. This was especially so because they represented the first significant political engagements by Hawke's Bay Maori with the Crown, with hundreds attending hui and signing the deeds, and because the Crown gave assurances to Ahuriri Maori, in particular, of the collateral benefits of selling. McLean reported that he had assured the vendors that the town established at Napier would include public reservations for a market place, a hospital, and the like, and Governor George Grey later recalled that he had instructed that it be impressed upon Maori that 'money was not really the true payment at all'.

In respect of the Ahuriri purchase, which was sealed with the signing of the deed on 17 November 1851, the Ahuriri claimants argued that McLean's promises made the transaction akin to a treaty, and they dubbed it the 'Treaty of Ahuriri'. They maintained that, if the promises of collateral advantages were not fulfilled, this treaty would be breached and the Maori vendors would have the right to repudiate the transaction. They similarly argued that the transaction was an example of the traditional practice of *tukuwhenua*, with Ahuriri Maori retaining rights in the land to the extent that, if the benefits of the *tuku* did not continue to flow to them, they could reclaim the land from the Crown. The Crown opposed these arguments yet found some common ground with the claimants by agreeing that the transaction was a 'stepping stone' for Maori into the modern world and no ordinary 'arm's length' agreement. For our part, we have found that:

- ▶ Maori had legitimate expectations of collateral advantages yet had accepted that the land was going from them permanently. They put their faith in the Crown's assurances and gambled on a positive future.
- ▶ The Crown could not guarantee Ahuriri Maori prosperity, but the spirit of this compact is a yardstick (alongside the Treaty of Waitangi itself) by which to measure later Crown actions towards them.

Unfortunately, the placement of our inquiry boundary has meant that a full analysis of later Crown actions towards Ahuriri Maori has been beyond us. What we have been able to be categorical about, however, are the matters raised by the claimants concerning the negotiation and terms of the Ahuriri transaction, and in these we have found a number of inadequacies that reflect poorly on the Crown and seem to have fallen short of the standards

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McLean had previously set in the Wanganui and Rangitikei transactions. Thus, with respect to the Ahuriri transaction, we have found that the Crown breached the principles of the Treaty in the following ways:

- ▶ The Crown acted in bad faith in its approach to the purchase negotiations by determining to pay no more than the lowest amount Maori would accept for the land.
- ▶ McLean went further than this and merely named a low price from which he would not budge.
- ▶ McLean pressured Maori into parting with certain lands they clearly did not wish to sell.
- ▶ The Crown reserved an inadequate amount of land from the transaction for Maori use and failed to protect Maori in their ownership of this remnant.
- ▶ Certain hapu holding rights in the block either were not adequately consulted about the purchase or, in the case of Ngati Hineuru, were simply presented with the purchase as a fait accompli.

In a deed signed on 5 December 1851, the Mohaka block to the north was also purchased. We believe that Mohaka was a similar political compact to Ahuriri, although we have noted that, since there was no prospect of a town at Mohaka, the Crown's assurances of collateral advantages were less pronounced. We have nevertheless found that:

- ▶ The Crown's future conduct towards Ngati Pahauwera can be judged by the spirit of this compact (as well as by the Treaty's guarantees), given Ngati Pahauwera's enthusiasm to make land available for settlement and the Crown's insistence that advantages would flow to them. Also, as Crown counsel conceded, the Crown carried obligations to Ngati Pahauwera regardless of how the transaction is viewed.

The terms of the Mohaka transaction were also subject to similar claims to those made by the Ahuriri claimants. We have found that:

- ▶ The Mohaka purchase price was low and there was no opportunity for Maori to negotiate over the price. Again, McLean took advantage of the sellers' desire for Pakeha settlement to force them into accepting a low sum.
- ▶ As with Ahuriri, there was a similar paucity of reserves. The lack of reserves on the block later disadvantaged Ngati Pahauwera when, after clustering at the mouth of the Mohaka River for security, they needed room to expand.
- ▶ The one small reserve that was set aside was purchased by the Crown from a small number of chiefs when a settler disputed its use with local Maori. It seems that the sellers were probably not even those who were involved in the dispute. Crown counsel conceded that the Crown's behaviour in this matter fell short of the standards envisaged in the Treaty.

The Mohaka transaction is an example of the long-standing nature of many Maori grievances. In a series of petitions in 1891, 1898, 1899, 1925, and 1946, Maori appealed to Parliament about the low purchase price, the non-participation of certain right-holders in the transaction, and the lack of provision of promised reserves. The filing of the Wai 119 claim by Ngati

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Pahauwera in 1990 can be seen as a continuation of 100 years of protest. While there were some inaccuracies in the earlier petitions, such history of protest is common and belies the arguments of those who perceive recently lodged claims as a modern ‘grievance industry’.

After these 1851 transactions, Crown officials, including McLean, conducted a series of essentially clandestine land purchases with certain key chiefs such as Tareha and Te Hapuku. The unpopularity of these dealings, and the tendency of Te Hapuku to try to sell lands to which he had dubious claims, led to conflict amongst Ngati Kahungunu at Pakiaka south of Napier in 1857 and caused a general deceleration in the pace of land selling. This occurred at the same time as feeling against land selling was increasing in other parts of the colony, culminating in the establishment of the Kingitanga in 1858. The Crown continued to buy land up to the early 1860s, but it did so at a lesser rate, picking up blocks in our inquiry district north of Napier such as Arapaoanui and Moeangiangi and making advance payments on others.

The wars of the 1860s at first had a limited impact on Hawke’s Bay, but by 1863 schisms between ‘loyal’ and Kingite Maori were burgeoning in the north of the district. Seeking to create a buffer zone between the pro-Government Ngati Kahungunu and those of Tuhoe and Tairawhiti who had sided with the King, McLean negotiated the purchase of several blocks around Wairoa and Mahia in 1864 and 1865. Amongst these was the Waihua block, the sale of which was undoubtedly designed to confirm Ngati Pahauwera’s loyalty to the Crown. The claimants argued that this loyalty – which was further exemplified by Ngati Pahauwera’s participation in the pursuit of Te Kooti after his escape from the Chatham Islands in 1868 – was not reciprocated. They pointed, for example, to the lack of reserves in the Waihua block as well as the Crown’s wrongful inclusion of 1152 acres in the purchase due to an inadequate survey (a matter which, when brought to the Crown’s attention by Ngati Pahauwera in the 1880s, was not redressed). They also claimed that the Crown had left their villages undefended while their men were in the field against Te Kooti, an action which allowed Te Kooti to raid Mohaka in search of ammunition and kill 60 people.

With respect to the Waihua transaction, therefore, we have found that:

- ▶ The transaction was more than a simple transfer of land, being designed to demonstrate Ngati Pahauwera’s loyalty to the Crown in a period of instability.
- ▶ The Crown’s failure to make amends for the wrongful acquisition of 1152 acres in the transaction was inexcusable, and steps can and should now be taken by the Crown to rectify the matter.
- ▶ The Crown’s survey of the Waihua block also significantly underestimated the block’s acreage at the same time as McLean was assuring the vendors that the sum the Crown would pay would reflect the size the block was found to be upon proper survey. The purchase price may thus have been too low.
- ▶ The Crown should have taken care to reserve areas out of the block for Ngati Pahauwera use.

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On the related matter of Te Kooti's attack, we have found that:

- ▶ The Crown took inadequate precautions to safeguard the Ngati Pahauwera community at Mohaka from attack, and its provision to the devastated community after the raid was grudging.

We should add that Crown counsel made some concessions with respect to the 1152 acres and the raid on Mohaka. Furthermore, like the Mohaka purchase, the Waihua transaction was the subject of petitions in 1899, 1920, 1940, and 1945. The Wai 119 claim of 1990 thus merely continued in this vein.

THE OPERATION OF THE NATIVE LAND COURT

In 1865, the Native Land Court system first came into operation in Hawke's Bay and ushered in a revolution in Maori land tenure. The legislation, which ended Crown pre-emption, provided for no more than 10 owners to be placed on the title to blocks, but it did not require those individuals to act as trustees for the wider body of right-holders in the land. Instead, the owners had full powers of alienation. Such owners were often ensnared in debt by unscrupulous Pakeha, or had made prior arrangements to sell and applied for an investigation of ownership by the court in order to get into the title and transfer the land. The system was of course open to numerous abuses, and many Maori were left disinherited. We have discussed three examples of this in particular, at Petane, Te Pahou, and Waitanoa, but the 10-owner issue did not have as significant an impact in our inquiry district as it did in the Heretaunga area to the south. This was for two reasons. First, the passage of Ngati Pahauwera lands through the court in 1868 was carefully controlled by the leading chief, Paora Rerepu, and occurred under the 1867 amendment to the Native Lands Act 1865. Thus, all the individuals or hapu with interests in the land were recorded on the back of the titles (in addition to the 10 named owners), and most of the lands were leased for 21 years only. The listing of hapu in this way was not provided for in the legislation, but the broader class of right-holders was none the less noted, even if they had no direct rights of ownership. Secondly, the entire district between the Ahuriri and Mohaka transactions was confiscated in 1867 and taken beyond the operation of the court.

In sum, we have found that:

- ▶ the native land legislation in general imposed a revolution in Maori land tenure that seriously destabilised customary Maori society;
- ▶ section 23 of the Native Lands Act 1865, which provided for awards of title to 10 or fewer owners, was in particular violation of Maori rights under the Treaty; and
- ▶ some of the worst effects of the legislation were ameliorated by the 1867 amendment Act, but this still made no provision for the form of tribal title sought by Ngati Pahauwera.

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MILITARY ENGAGEMENTS, CONFISCATION, AND THE 'RETURN OF LAND'

The confiscation is the key issue in our inquiry district. Its origins go back, perhaps, to the Crown's apparent willingness in the Ahuriri transaction in 1851 and subsequently to deal only with a coterie of coastal Ngati Kahungunu chiefs (led by Tareha) over land matters, including land clearly within the territory of Ngati Hineuru. Further, as war spread through the North Island in the 1860s, followers of Te Ua Haumene's Pai Marire faith multiplied. They included Tawhiao, the Maori King, and many individuals within Ngati Hineuru. In the climate of the day (and particularly after the murder by Pai Marire adherents of the missionary Carl Sylvius Völkner at Opotiki), Ngati Hineuru's persistent sense of grievance about their treatment on land issues was all too easily construed as rebellious and warlike behaviour. Baseless rumours began to fly that an attack on coastal Ngati Kahungunu and the Pakeha town of Napier was imminent. Some, such as the run-holder George Whitmore, who had been losing stock to sheep stealing, and several coastal chiefs, favoured a pre-emptive attack on the Pai Marire community, which was based in Ngati Hineuru territory. But, when the main body of Pai Marire followers moved down from the hills to the coast in September 1866, they did so at the invitation of McLean, who requested that they meet with him to resolve their differences.

What followed was an unnecessary descent into bloodshed. The Pai Marire party remained at Petane for some time before moving to the kainga at Omarunui, at the invitation of its chief, Paroa Kaiwhata, whose people evacuated to Tareha's Pa Whakairo. A series of messages were exchanged between the Pai Marire prophet, Panapa, and McLean, who would not meet face-to-face and seems not to have understood what Panapa was trying to tell him. In the meantime, the Ngati Kahungunu chiefs were itching for a fight. Rather than restrain them, McLean used their help to surround Omarunui with an overwhelming force in the early hours of 12 October 1866 and demand Panapa's surrender at dawn. When it was not forthcoming, he ordered the attack. In this one-sided contest against an unfortified position, the outcome was inevitable: over 20 of the Pai Marire followers were killed, a similar number were wounded, over 70 were taken prisoner (of these, the largest proportion – but still fewer than half – were Ngati Hineuru), and only four people escaped. The prisoners were eventually transported to the Chathams. The attack was followed up with a punitive raid on Ngati Hineuru settlements by a Government force led by Whitmore that included 200 Ngati Kahungunu.

At the same time as the occupants of Omarunui were attacked, a 25-strong group under the leadership of the Ngati Hineuru chief Te Rangihiroa was ambushed near Petane by Major Fraser as they made their way to the coast. Presumably, they had responded to McLean's insistence that Te Rangihiroa needed to be present at Omarunui so that McLean could be certain that the intentions of the Pai Marire party were peaceful. As at Omarunui, those surrounded at Petane were called upon to surrender. When they refused, they were attacked, and 12 were killed, including Te Rangihiroa. Later, based largely on 'confessions' that the Reverend Samuel Williams extracted from the prisoners taken at Omarunui, the two attacks were claimed to

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have nipped in the bud a two-pronged attack on the town of Napier. The Omarunui fight was justified to the British Government in this way, and thus the rationale for confiscation was created.

The claimants argued that no state of ‘rebellion’ existed which could have merited either the attacks at Omarunui and Petane or the confiscation of the Mohaka–Waikare district. The Crown countered that the Pai Marire parties constituted a real threat to the peace and security of the district and the Crown was reasonable in its response. We have found that:

- ▶ There was much more that the Crown could have done to keep the peace, and there was no excuse for the Crown joining with one group of Maori to attack another that had displayed no hostile intent. Neither did the existence of rumours constitute a reasonable foundation for taking such military action.
- ▶ There was insufficient inquiry made for the Governor to be ‘satisfied’ – as required by the New Zealand Settlements Act 1863, under which the confiscation was made – that a group of Maori had been in ‘rebellion’. Certainly, the lands of many who were not ‘rebels’ in any sense were swept up in the confiscation.
- ▶ For our part, we do not believe that any ‘rebellion’ could be said to have taken place.
- ▶ The New Zealand Settlements Act also required that confiscated land be used as sites for military settlement and that a compensation court sit to consider the claims of ‘loyal’ Maori whose lands were taken. Neither of these requirements ever came to pass. We thus find it difficult to see on what basis the Crown kept a number of blocks out of the confiscation, other than one or two previous downpayments.

Eventually, in 1870, the lands not retained by the Crown were ‘returned’ to Maori ownership under an agreement made with Tareha and the other leading coastal chiefs. The prime beneficiary of this arrangement was Tareha himself, who gained sole title to the large Kaiwaka block and was named as an owner in seven other blocks. In Ngati Hineuru territory, the Tataraka block was mainly awarded to Ngati Hineuru, but the large Tarawera block was predominantly awarded to their coastal rivals, Ngati Kahutapere (including Tareha). Ngati Hineuru seem to have been deprived of further lands at this time by the passage of the Pakaututu block through the Native Land Court in 1869. It should not have passed the court since it was included in the confiscation, but no doubt the Crown allowed it to proceed to title investigation because it was being claimed by Tareha and his allies. Ngati Hineuru were probably unaware of the court sitting in Napier. In any case, they were seen at the time as unsundered rebels and would not have been in any position to appear to protect their interests.

We have thus found that:

- ▶ The Crown’s ‘return’ of land was in breach of Treaty principles in that it was neither returned in large part to the customary right-holders nor returned in total under customary Maori title.

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- ▶ The Crown failed to honour its promises that it would bear the cost of surveying the returned blocks and that the blocks would be made inalienable.
- ▶ The Crown colluded with its Ngati Kahungunu allies in the passage of the Pakaututu block through the Native Land Court.

In these and other events we have just narrated, two figures loom above all others: Donald McLean and Tareha Te Moananui. McLean was the leading Government official in Hawke's Bay: purchase agent, provincial superintendent, run-holder, and, later, member of Parliament and Native Minister. His role was paramount in the purchase and confiscation of Maori land and in the fight at Omarunui. Tareha was the leading Hawke's Bay chief of the same period – he was a land-seller in 1851 and, on a number of occasions after that, a Government ally, a regular recipient of Native Land Court awards of title, an eager participant on the Government's side at Omarunui and in the campaign against Te Kooti, the major beneficiary (other than the Crown itself) of the Crown's division of the confiscated lands, and a fellow member of Parliament. These two men were establishment figures of enormous influence who left their mark emphatically upon the history of Hawke's Bay. The alliance between the two is a good example of the Crown aligning with certain influential chiefs to achieve its objectives, and – conversely – of Maori siding with the Crown to further their own ends. Those who habitually seem to have suffered as a consequence of this alliance – in the Ahuriri transaction, the engagements at Omarunui and Petane and the subsequent punitive expedition, the confiscation, the Native Land Court's award of title to Pakaututu, and the 'return' of confiscated land in 1870 – were Ngati Hineuru. It is also instructive to note that Tareha's direct descendants amongst Ngati Parau today question whether there has really been much benefit to them from this alliance, as we relate in chapter 15. They see themselves in no better position than any other Maori in Hawke's Bay.

Those most disadvantaged by the return of the confiscated blocks in 1870 pressed for title investigations so that the true customary right-holders could be identified. This struggle was particularly fought out over Kaiwaka after Tareha's death in 1880. Rather than bequeath the land to those with customary rights, to whom he had been paying some of the rental income, Tareha left the block in his will to his immediate family, who were not so minded to share the rentals. A legal battle ensued which went as far as the Privy Council, with the Tareha family's argument that no trust was intended when Tareha was inserted as the sole owner of the block prevailing. Eventually, the block was either sold to the Crown (who opened it for selection by Pakeha farmers rather than used it to satisfy the claims of those with customary rights) or had passed to the Pakeha husband of the late Airini Donnelly (Tareha's grand-niece and one of his heirs). We have found that:

- ▶ In its confiscation of Kaiwaka and its total alienation of the block from those with customary rights, as well as in its failure to provide redress, the Crown was guilty of serious breaches of the principles of the Treaty.

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PROBLEMS BESETTING REMAINING MAORI LANDOWNERS: DEVELOPMENT, CROWN PURCHASING, AND TITLE DISRUPTION

After 1870, the bulk of the returned Mohaka–Waikare blocks were leased by their Maori owners. Ngati Pahauwera did likewise with the lands they put through the Native Land Court in 1868, but they sold their more rugged interior blocks (amounting to over 70,000 acres), which passed through the court in the 1870s and early 1880s. Around 1890, the first of the 21-year leases over the returned and Ngati Pahauwera blocks were nearing termination. Many of the leases over the previously confiscated blocks were simply extended, but Ngati Pahauwera took the opportunity to resume occupation of their remaining land – comprising approximately 60,000 acres – and try to farm it themselves. Disputes over title occasioned by the manner in which that title had been awarded in 1868, however, coupled with the death of Paora Rerepu and the loss of his unifying influence, led to a protracted series of costly and divisive reinvestigations of title. It was not until 1910 that all these disputes were resolved and Ngati Pahauwera were able to face the future. Crown counsel argued that the disagreements stemmed from a rejection of tribal title and a desire to acquire individual holdings. We have found, however, that:

- ▶ The disputes affecting the Ngati Pahauwera blocks were the inevitable result of the existence of an imposed and foreign system of land tenure and a compressed land base.

In 1907, Robert Stout and Apirana Ngata recommended to the Government that Ngati Pahauwera lands be retained in Maori ownership and that Government assistance be provided to develop them. Indeed, after the leases expired in 1890 (and even before, since lessees tended to allow their properties to run down towards the end of the lease periods) the blocks had deteriorated to the extent that parts were overrun by rabbits and blackberry. Ngati Pahauwera simply had little or no access to capital for land development. State-funded development assistance was available to farmers with individual freehold titles from 1894 on, but few Maori fell into this category.

We have found that:

- ▶ The effective denial of development assistance to Maori landowners from 1894, when it was available to individual (normally Pakeha) landowners, to 1930, when Ngata's schemes began, represents a failure to treat Maori equitably, as required by article 3 of the Treaty.

Maori landowners of the seaward Mohaka–Waikare blocks were also, at this time, attempting to find ways of developing and farming their own land. Rather than heed Stout and Ngata's advice, however, the Crown embarked on a vigorous land-buying programme from 1910 in both the seaward returned blocks and the lands retained by Ngati Pahauwera. It is not altogether clear what the Government's motivation was, other than to acquire land along the route of the proposed Napier to Gisborne railway line or to provide lands for the settlement of soldiers returning from the First World War. Certainly, there was some pressure from the local Pakeha farming community at Wairoa for the Crown to acquire Maori land at Mohaka,

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because they saw that as the best means of dealing with the infestation of weeds and pests. The Crown's purchasing at Mohaka also gained a momentum of its own when the Crown decided to consolidate its scattered and partial interests in the northern (and less blackberry-plagued) portion of the Mohaka block (with the Crown buying more and more land to improve its position before the exchanges took place). Overall, however, we have found that:

- ▶ In large part, the Crown bought up so much Maori land in this period because of an entrenched mindset that saw Maori as having the potential to be little more than rural labourers or bare subsistence farmers. This belief dictated that their lands be acquired and farmed by Pakeha.

Between about 1910 and 1930, therefore, the Crown (and some private buyers) acquired well over half of Ngati Pahauwera's remaining lands, while the Crown alone all but obliterated Maori land holdings in the nine seaward returned blocks (excluding Kaiwaka). We have found that:

- ▶ This was not simply a case of 'willing buyer, willing seller', because some of the Crown purchase methods were simply coercive.

For example, when the Crown acquired an interest in a particular block, under section 363 of the Native Land Act 1909 it would usually annually prohibit alienations (including leases) to anyone other than itself. The block's owners were not even able to lease the land to one of their own number and were effectively starved of income. Sales became inevitable. Furthermore, the legislation of the day allowed a Crown purchase to proceed despite the absence of the majority of shareholders at a meeting of owners called to consider the Crown's offer. If those at the meeting who supported the offer to sell held a greater share in the block than those present who opposed, the sale was confirmed. In fact, the only quorum requirement under the legislation was for five owners or their representatives to be present. Thus, an offer to purchase could theoretically be accepted with no actual owners present at all.

Crown counsel conceded that there came a time when the Crown should have ceased its purchasing activity and instead fostered the viability of rural Maori communities and the development of the remaining Maori land. We have found that:

- ▶ The point at which Crown purchasing should have ceased was certainly, in the case of the lands at Mohaka, the publication of the Stout–Ngata report in 1907 at the very latest. We see no reason why the returned seaward blocks should have been any different.

Moreover, those returned blocks were theoretically subject to a promise in the 1870 agreement that they would be made inalienable. The Crown obviously did not consider itself bound by this.

In 1930 – 36 years after the State advances legislation first provided for development assistance to individual landowners – the Crown, under Ngata as Native Minister, at last instigated a programme for the development of the remaining Maori land holdings. In the seaward Mohaka–Waikare blocks, there was insufficient Maori land remaining to warrant a development scheme, and the development of the mountainous inland blocks does not seem

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to have been contemplated, but three schemes were established at Mohaka. With respect to these schemes, we have found that:

- ▶ The Mohaka schemes were genuine if belated attempts to assist Maori to make use of their lands, but in practice they were poorly administered. The intensive farming or marginal hill country was unsustainable, and unit holders could not overcome the development debt with which they were burdened. It is little wonder that the schemes eventually failed.

In the meantime, the leases over the inland returned blocks, Tarawera and Tatarakaia, had expired in 1916. By this time, too, Ngati Hineuru leader Hape Nikora had twice petitioned Parliament seeking the overturn of the existing titles to the blocks and an investigation of customary rights. Ngati Hineuru had been living on 500 acres at Te Haroto that the Government had retained out of the confiscation for Ngati Tuwharetoa chief Paora Hapi, who had fought with the Crown against Te Kooti. Hapi's people had not taken up residence on the land, however, and Ngati Hineuru had a well-established village there by 1900. They eventually received title to the land in 1911. At the same time as Nikora was petitioning Parliament, others were also calling for a new investigation of the title. They included the Ngati Kahutapere owners of the Tarawera block, who only wanted the court to ascertain their relative interests. After further petitions were received, the matter was eventually considered in 1920 by Judge Gilfedder of the Native Land Court, whose error-ridden judgment named only four individuals who he concluded had been wrongly omitted from the Tarawera and Tatarakaia titles. Most importantly, however, Gilfedder also made the error of stating that Tarawera and Tatarakaia had not been part of the Mohaka–Waikare confiscation. Thus, in 1924, when Hape Nikora petitioned Parliament once again, Gilfedder's error paved the way for legislation overturning the 1870 lists and providing for a court investigation of ownership on the basis of customary law – the very thing denied the customary right-holders of Kaiwaka.

Chief Judge Robert Jones first considered the Tarawera block in 1925, and he concluded that Ngati Kahutapere had no rightful claim to the land. Despite this, he still awarded them a third of the block, since they had by then been in the title for 55 years. Subsequent Ngati Kahutapere protests led to some adjustments being made in 1929, but the net effect remained the same: the Ngati Kahutapere interests in the block were severely reduced and the Ngati Hineuru share was greatly increased. In 1923, before this all occurred, some absentee Ngati Kahutapere owners (in particular, the Tareha family) had sold some 9500 acres of Tarawera to the Crown. The Crown gave no consideration to using this land to compensate owners displaced by the revised titles. In 1927, Jones also severely reduced the Ngati Kahutapere share of Tatarakaia.

Further petitions from those whose shares had been disrupted or altered in the 1920s led to a new inquiry into Tarawera in 1939, this time headed by Judges Browne and Carr. Browne and Carr were critical of the Legislature for reopening the issue of the block's title, and they recommended that the final 1929 partitions be cancelled. Their proposed solution was for the

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Crown-purchased land in the Tarawera block to be given to the descendants of the original grantees who had not already sold, with the balance of the block to go to those found by the court in 1925 and 1929 to be entitled. The Government probably saw no reason why its own land should be used in settling the matter, however, and the recommendations were not implemented. The matter was next considered by a royal commission in 1951, which recommended that the pre-1924 owners be fully reinstated and that those about to be ousted be offered monetary compensation or be allowed to remain on reduced holdings if they had been in physical occupation of the land. (The latter course applied to very few, since Ngati Hineuru had been living not on the Tarawera block but at Te Haroto.) Legislation was thus passed in 1952 directing the Native Land Court to prepare new ownership lists, and this was done that year under Judge Whitehead.

At no point in this long-running saga was the Crown prepared to use its own land to resolve the matter. We have found that:

- ▶ In 1924, the Crown ignored the basic maxim that two wrongs do not make a right by allowing more than 50 years of occupation and use on the basis of Crown-granted titles to be overturned. When Judges Browne and Carr recommended a new solution that used available Crown land, their report was shelved. Finally, the Crown allowed a further wrong to be perpetrated by accepting the recommendations of the royal commission in 1951, which saw those temporarily returned to the titles ousted themselves.

Crown counsel conceded that the issue of entitlements to Tarawera and Tatarakaia was ‘poorly handled’ by the Crown and represented a failure ‘to satisfy the Treaty’s promise of order’. It also fundamentally disrupted and unsettled the Ngati Hineuru community at Te Haroto. We should note that there was similar wrangling over the ownership of Te Matai, an inland block neighbouring Pakaututu that was partially included in the confiscation. Te Matai passed through the Native Land Court in 1879, but disputes over its status and ownership were not resolved until 1952. Crown counsel conceded that this tenurial uncertainty reflected ‘badly on the Crown’. When the block’s title was finally resolved, its use by its owners remained most difficult, however, since it had no legal access to it. This matter has still not been resolved. We have found that:

- ▶ The Crown should facilitate satisfactory access to Te Matai for the block’s owners as soon as possible.

TWENTIETH-CENTURY ENVIRONMENTAL AND SOCIOECONOMIC ISSUES

We conclude our report with two chapters on the general environmental and socioeconomic impacts on Maori across Mohaka ki Ahuriri. We have found, for example, that:

- ▶ The Crown was tardy to take action to ameliorate the damaging environmental effects of the slash and burn methods of the European pastoralists. A result of this erosion

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for Maori was the eutrophication of their prized Lake Tutira and the destruction of its eel fishery, and the pollution of coastal reefs at Tangoio and other places. The Maori community at Tangoio was devastated by a 1938 flood, an event that doubtless gave some impetus to the Crown's belated introduction of water and soil conservation legislation in 1941.

In socioeconomic terms, we have considered the issue of a link between poverty and landlessness, given the poor health, housing, and general welfare of Maori in our inquiry district in the twentieth century (and still today, in many places). As noted above, we have found that:

- ▶ A mindset prevailed that saw Maori eking out only a subsistence rural lifestyle, supplemented by employment as wage labourers. To that extent, the Crown made no concerted effort to ensure that Maori were left with sufficient land to participate in pastoral farming alongside Pakeha, for example, and it provided development assistance for their remaining lands some 30 years later than it should have. Where Maori holdings diminished so much that even subsistence agriculture became difficult, there was certainly a link between poverty and landlessness.
- ▶ Furthermore, where Maori retained areas of land, it was usually infertile and mountainous, was blighted by disputes over title, or was practically unusable, given the multiple ownership of scattered fragments.

In sum, Mohaka ki Ahuriri Maori simply never had the opportunities to derive full benefit from the developing Hawke's Bay economy.

SPECIFIC CLAIMS

We have also examined several specific claims. These include the loss of various lands out of the Waiohiki reserve near Napier and the construction in the 1970s of a high-voltage power line across the Tarawera and Tataraka blocks. We have found that:

- ▶ The Crown failed to protect the Waiohiki reserve from alienation, as had been requested by its owners.
- ▶ The Crown failed to consult with or adequately compensate the owners of the lands burdened with the transmission line. Now that these rugged lands finally have value for growing pine trees, the protection strip beneath the lines represents a significant lost economic opportunity.

We also found substance to several whanau claims concerning Tarawera and Tataraka lands and to one claim concerning lands at Mohaka, but we consider that these should be seen as case studies for the wider class of claimants and should not be redressed in their own right. In addition, we found that a claim concerning public works acquisitions in the Tarawera township had already been settled by the Crown in 1995 and that a claim by a group

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called Ngai Tane that they have separate historical identity and grievances from Ngati Pahauwera was not well founded.

CLAIM SETTLEMENT

Finally, we have made some recommendations about the settlement of the claims. We have recommended that the Crown and claimants negotiate, and we have put forward some suggestions as to how the Crown might identify the 'large natural groups' (as per its settlement policy) in our inquiry to conclude settlements with. We have identified Ngati Pahauwera as deserving of separate consideration, along with either Ngati Hineuru alone or all confiscation claimants together. We have suggested that the Ahuriri hapu also settle independently of the other groups in our inquiry, although we have noted that common sense requires that such a settlement be on the basis of their claims in the Heretaunga district as well. As we conclude, we note the Crown's several admissions of breaches of the principles of the Treaty, and trust that a similar spirit of reconciliation will characterise the negotiations.

