

CHAPTER 4

THE WAR IN TAURANGA

4.1 INTRODUCTION

In this chapter, we examine the battles at Pukehinahina and Te Ranga in 1864. First, we situate them in their political and military context before describing the engagements themselves. Next, we examine claimant and Crown submissions and discuss the legal issue of rebellion, and then we conclude the chapter with our findings. The consequences of the fighting will be recounted in subsequent chapters.

For both sides, the battles were a continuation of what had gone before, notably in the Waikato, as we have discussed in chapter 3. Though Maori who resisted the imperial troops in the Waikato were fighting for their King, they usually made their last stand on their tribal territory: the central Waikato tribes at Meremere and Rangiriri and Ngati Maniapoto at Orakau. So too did Tauranga Maori: at Pukehinahina and Te Ranga. But, as we noted earlier, there were volunteers from elsewhere at the various engagements in the Waikato, including some from Tauranga. Indeed, the impractical defensive position at Orakau was possibly chosen at the insistence of Tuhoe volunteers rather than by the Ngati Maniapoto chiefs.¹ When the first imperial troops landed at Tauranga in January 1864, Tauranga Maori still in the Waikato hurried home to make what they believed would be their last stand for their land. As we explain below, they in turn were to be supported by volunteers from outside the Tauranga district.

The war that was progressing around the central North Island clearly was supported by most colonists – though that support was stronger in the North Island than in the South – and by their representatives in Parliament. But the Governor, who had responsibilities to Maori as well as to Pakeha, and to the Colonial Office in London as well as to the colonial Ministers, was necessarily more equivocal. So too was General Cameron, who, with his officers and men, was fighting a war on the farthest frontier of the empire. It was a war, moreover, that began to create resentment among the imperial forces once they became aware of the pressures for confiscation that were in large part driving the conflict, and the valour of

1. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), pp166–168

their Maori foes, who were fighting in defence of their land.² Though the Governor, the general, and the Ministers were all agents of the Crown, their aims and ambitions were often in conflict, and the resulting squabbles distorted both the conduct of the war and the introduction of confiscation and other policies. Responsibility for the war fell under the broad ambit of native affairs, which was then being transferred gradually from the imperial to the local colonial government, and to a Native Minister in place of the Governor. Since we consider that the Tauranga military campaign and the associated confiscation were profoundly affected by the manoeuvres over responsibility for native affairs, we now provide a brief outline of the main stages of this complicated and tortuous process.

4.2 RESPONSIBILITY FOR NATIVE AFFAIRS

We are indebted to two historians, Professors James Rutherford and Brian Dalton, for their scholarly examination of the topic.³ Our discussion here is based largely on their works.

Taking responsibility for native affairs was just one aspect of the development of responsible government. After 1840, New Zealand was initially a Crown colony, with a Governor, instructed by the Secretary of State for the Colonies, who was not obliged to take the advice of any locally nominated or elected representatives. This situation changed with the introduction of the New Zealand Constitution Act 1852, which provided for a quasi-federal system of representative government, with elected superintendents and provincial councils and a bicameral General Assembly with an elected House of Representatives and an appointed Legislative Council. Though the provinces had control of a range of matters relating to settlement, authority for the purchase of Maori land and other aspects of native affairs remained with the Governor and Parliament.

When the first House of Representatives was elected in 1854, the members demanded responsible government; in other words, they wanted the Governor to choose a Ministry that could command the support of a majority of the General Assembly. There was nothing in the Constitution Act on the formation of a Ministry or its responsibilities, though it was presumed that the Ministers would be chosen from the General Assembly, as per the practice of the British Parliament and as per the constitutional reforms recently introduced in the Canadian and Australian colonies. Governor Browne asked the Secretary of State for advice, and in 1856 he was instructed to introduce responsible government for domestic affairs, except for native matters. For the latter, he was to continue to take the advice of the Secretary of State, who was in turn advised by the Colonial Office. At first, Browne had some difficulty

2. Brian J Dalton, *War and Politics in New Zealand, 1855–1870* (Sydney: Sydney University Press, 1967), p 187; James Rutherford, *Sir George Grey, 1812–1898: A Study in Colonial Government* (London: Cassell and Company Ltd, 1961), pp 522–526, 530–532, 562–563

3. Rutherford, chs 33–36; Dalton, pp 138–259

forming a stable administration, but in 1856 Edward Stafford formed a Ministry that was to remain in office until after the outbreak of the Taranaki war in 1860. That Ministry eventually resigned in July 1861, largely because of the military stalemate that had emerged in Taranaki. Meanwhile, the colonial politicians had begun pressing for control of native affairs. In 1858, Browne allowed a Native Minister to be appointed, but he did not concede full responsibility of the portfolio to him. This system of dual responsibility encouraged conflict between the Governor and his Ministers and resulted in ineffective native administration.

This was the situation when war broke out in Waitara in 1860 – a war which the colonial politicians were quick to blame Governor Browne and his officials for. As a result, instead of trying to wrest control of native affairs from the Governor, the Ministers now tried to avoid that responsibility – and with it the cost of the imperial troops, who were needed in increasing numbers. In turn, the Secretary of State, the Duke of Newcastle, attempted to transfer responsibility for native affairs to the colonial Ministry in 1861. He also replaced Browne with Sir George Grey, who had distinguished himself in his first governorship of New Zealand and, in the years following, as governor of the Cape Colony. During his first term in New Zealand, Grey had been an autocratic colonial governor. He had neither the temperament nor the inclination to abide by the wishes of responsible Ministers. As both Rutherford and Dalton frequently detail, Grey's two governorships in New Zealand were characterised by deviousness and dishonesty. But he was skilled at doctoring his dispatches and appealing to high principles to justify his actions.⁴ Though Grey ostensibly surrendered the responsibility for native affairs to his Ministers in 1861, he retained important residual authority, including the overall command of the imperial troops. He used this authority to the utmost and thus remained an important agent of the Crown.

Also important, and increasingly so, were the colonial politicians who from time to time held ministerial office and so acted on behalf of the Crown. In the small world of New Zealand provincial and colonial politics, a tiny group of politicians shared and exchanged ministerial office. Some did not separate their private interests, including the acquisition of Maori land, from the public interest.⁵ Frederick Whitaker and Thomas Russell, who were prominent members of several Ministries, were also partners in Whitaker and Russell, Auckland's leading law firm, which derived much of its income from land conveyancing. Grey became deeply suspicious that the pair were seeking to further their private interests under the cover of a grand confiscation plan which would take in Tauranga, along with most of the Waikato.⁶ Confiscation also seemed to offer a solution to the dilemma of paying for the imperial troops, since any confiscated land not used for military settlers could be sold to defray the costs of the war.

4. Dalton, pp 202–205; Rutherford, pp 284–285, 555–559

5. Document L3, pp 3–6

6. Rutherford, pp 513, 638

In July 1861, the Stafford Ministry was defeated. The politicians who had condemned Browne for his actions over Waitara formed a new Ministry, led by William Fox and with Walter Mantell as Minister for Native Affairs. Fox introduced a 'peace policy' and promised 'self government' for native districts, where Maori would govern themselves through local runanga under the guidance of Pakeha magistrates and civil commissioners. As we discussed in the previous chapter, Grey inherited this system when he returned to New Zealand late in 1861 and developed it further. On the issue of responsible government, Grey told his predecessor that, although he 'intended to transfer all power to his Ministers', he would take care to see that they acted only 'as he pleased'.⁷ He offered Fox's Ministry responsibility for native affairs but ignored the Ministers' condition that they would accept responsibility only if they did not have to pay for the imperial troops. In May 1862, the Duke of Newcastle formally accepted Grey's transfer of native affairs but demanded payment for the troops. Fox was unwilling to accept this and resigned in August. The new Ministry, headed by Alfred Domett but dominated by Whitaker and Russell, also refused to accept responsibility for the payment of the troops. They soon developed a new policy that they hoped would meet the costs of war.

Although Grey and his Ministers continued to advocate peace, they were preparing for war. Grey's support for the 'new institutions' in Maori districts, including the Waikato, was compromised by his other actions, which showed that he had little intention of allowing Maori real authority or rangatiratanga. Grey cancelled Browne's promise to reassemble the Kohimarama conference, explaining that it was not 'wise to call a number of semi-barbarous Natives together to frame a Constitution for themselves'.⁸ As for the King movement, Grey visited Taupari on the lower Waikato in December 1861, where he told the King's representatives that he would never attack the Waikato without good cause. Grey also told them, however, that the King movement was bad, that the King should be given up, that he would work with all chiefs who would help him, and that he would look upon each chief as a king of his tribe. He told them he would have 'twenty kings in New Zealand before long, and those kings who work with me shall be wealthy kings, and the kings of wealthy people'.⁹ Grey then announced that he was about to build a road from Auckland to the banks of the Waikato River.

Back in Auckland, Grey ordered the troops to construct a road through the Hunua Ranges to Pokeno, near the King's aukati at Mangatawhiri. Grey also tried to erect forts further up the Waikato River. A year later, he returned to the Waikato and told supporters of the King that, although he would not fight against their King with the sword, he would 'dig around him till he falls of his own accord'.¹⁰ However, there could be little doubt by this time that Grey

7. Browne, 17 September 1864 (as quoted in Rutherford, p 456)

8. Grey to Duke of Newcastle, 30 November 1861, AJHR, 1862, sec 2, no 14 (as quoted in Dalton, p 145)

9. John Gorst, *The Maori King; Or the Story of our Quarrel with the Natives of New Zealand*, edited by Keith Sinclair (Auckland: Pauls Book Arcade, 1959), pp 148, 141

10. *Ibid*, pp 185–186, 208

intended to invade the Waikato. In a memorandum of 24 June 1863, Domett accepted responsibility for a plan previously outlined by Grey under which military posts would be established along the Waikato as far as Ngaruawahia and the land of any resisting Kingitanga would be confiscated.¹¹ This plan was embodied in Grey's backdated proclamation, issued on 14 July 1863, after General Cameron's forces had crossed the aukati.

As Cameron's army advanced into the Waikato, the confiscation policy was taken up by the Domett Ministry with 'a greedy enthusiasm', as Sinclair put it.¹² While Grey had in mind a limited confiscation, his Ministers had concocted a grand plan to confiscate vast areas of the North Island. Domett's memorandum on roads and military settlements, dated 5 October 1863, revealed plans to construct over 1000 miles of arterial roads through the island and to locate 20,000 military settlers on the frontiers of the confiscated land. Discussing the proposal to place some of these settlers in the province of Auckland, the Domett Ministry proposed a frontier line 'from Raglan [Whaingaroa], on the West Coast, to Tauranga on the East'. Half of the settlers were to be located on 500,000 acres of land along this line. In the words of the memorandum, the frontier would run 'irregularly'; it would take in the fertile land of the Waipa Valley and extend only a 'branch' down to Tauranga. This proposal took in the best fertile flat country of the Waikato, together with the natural harbour at Tauranga, while avoiding the densely wooded hill country of the Kaimais. The Ministry hoped to finance the confiscation with an imperial loan of £4 million, to be repaid from the sale of confiscated land not needed for military settlers.¹³ Rutherford described Domett's memorandum as 'an indiscretion which disclosed prematurely too much of what ministers had in mind'.¹⁴ Domett had also made another indiscretion: he had decided not to proceed with the purchase of the disputed Waitara block. As Rutherford put it, 'Whitaker and Russell disapproved of Domett's surrender of Waitara, and now that it was war they wanted to get rid of their puppet and assume direction of affairs themselves'.¹⁵

On 30 October 1863, Domett resigned and a new Ministry was formed with Whitaker as Prime Minister and Attorney-General, Fox as Native Minister, Russell as Minister of Colonial Defence, and Reader Wood as Colonial Treasurer. Three of the five-member Ministry – Whitaker, Russell, and Wood – were Aucklanders. They were intent on opening the Waikato and the lands beyond for colonisation. The Whitaker Ministry accepted responsibility for native affairs and proposed to pay for it by raising an imperial loan secured against confiscated land. The confiscation policy was formalised by Whitaker, who personally drafted the New Zealand Settlements Act 1863 and the Suppression of Rebellion Act 1863. When Wood introduced the accompanying Loans Bill to Parliament in November, he said

11. Dalton, pp 175–176

12. Keith Sinclair, *A History of New Zealand* (Middlesex: Penguin Books, 1959), p 138

13. Alfred Domett, 'Memorandum on Roads and Military Settlements in the Northern Island of New Zealand', 5 October 1863, AJHR, 1863, A-8A, pp 3, 7 (as quoted in Rutherford, pp 493–494)

14. Rutherford, p 494

15. *Ibid*, p 495

that four million acres would be confiscated in the Waikato and Bay of Plenty and that this land would be secured by an arc of military settlements running from Raglan on the west coast to Tauranga on the east.¹⁶ The confiscation legislation was accepted in principle by the Duke of Newcastle in November 1863 on the assumption that the Ministry was now accepting responsibility for native affairs and the payment of the imperial troops. Confiscation would apparently now pay for the war.

At this time, Cameron was turning the King's forces in the Waikato with victories at Mere-mere and Rangiriri. As we mentioned, Cameron soon took the King's capital at Ngaruawahia without a fight. The question then arose as to whether the war and confiscation would stop there or would advance into the fertile Waikato–Waipa Plain. Grey wanted to limit the war and confiscation, but Whitaker and Fox 'had their eyes on the rich lands of the Rangiaowhia district,' which was within their planned confiscation line from Raglan to Tauranga. As Rutherford explained, Whitaker's 'belligerence was further demonstrated in January 1864, when he urged the military occupation of Tauranga', which Fox regarded as 'the harbour of Waikato'.¹⁷ The war continued, advancing to Orakau in the Waikato and to Te Ranga in Tauranga, thus paving the way for Whitaker's grand confiscation. As Dalton put it: 'Nothing now stood in the way of confiscating the necessary land and establishing military settlements – nothing, that is, except relations between Grey and his Ministers.'¹⁸

Grey was by then so suspicious of Whitaker's intentions that he refused to sign an Order in Council that Whitaker had drafted providing for the confiscation of land north of the Raglan–Tauranga line.¹⁹ Grey's resistance was strengthened by the arrival in June 1864 of a dispatch from the new Secretary of State for the Colonies, Edward Cardwell, instructing him to withhold the approval of a confiscation until he was satisfied that it was 'just and moderate'.²⁰ A supplementary dispatch advised Grey that he could ignore the advice of his Ministers over the issue. Cardwell was now saying that 'double government' would have to continue so long as imperial troops remained in the country.²¹ The row continued until 24 November 1864, when Whitaker and his Ministry resigned.

The incoming Ministry was led by Frederick Weld and contained no Aucklanders. It was known as the 'self-reliant Ministry' because Weld finally accepted the logic of Cardwell's dispatch: that the colony must pay for imperial troops or allow them to return home and rely on its own forces. At the end of November, Weld's Ministry introduced resolutions calling for the withdrawal of imperial troops. With this concession, Grey accepted that enough land had to be confiscated to meet commitments to military settlers. He conceded to Weld almost as

16. Dalton, p181

17. Fox, 'War in New Zealand 121', in Sewell, journal, 13 February 1864 (as quoted in Rutherford, pp 502–503)

18. Dalton, p188

19. Orders in Council are a kind of lawmaking instrument, just as Acts of Parliament are. Orders in Council, however, are issued only by the Monarch, or her representative, acting on the advice of an Executive Council.

20. Edward Cardwell, 26 April 1868, AJHR, 1864, E-2, app, p 20 (as quoted in Rutherford, p 511)

21. Dalton, pp 195–197, 201

much confiscation as he had refused Whitaker. The most important difference was that the confiscation in Tauranga was separated from that in the Waikato. Grey signed the proclamation confiscating over a million acres of land in the Waikato on 17 December 1864, though he delayed signing the Tauranga proclamation for another five months – until 18 May 1865. We discuss this in detail in chapters 5 and 6.

The long controversy over the responsibility for native affairs was almost over. But not quite: so long as a single regiment of imperial troops remained in New Zealand and engaged in warfare against Maori, Grey could seek to control those soldiers (as he would during the campaign in southern Taranaki). Indeed, it could be said that responsible government in native affairs was not fully conceded until 1867, when the last regiment left and Grey himself was recalled. These later wrangles, however, did not affect Tauranga, and we need not be concerned with them.

4.3 THE MILITARY OCCUPATION OF TE PAPA

The military occupation of Tauranga followed several months of unease among the European residents arising from the involvement of local Maori in the Waikato war. According to Crown witness Dr John Battersby, European settlers began to leave Tauranga in August 1863, and the CMS station at Te Papa was evacuated after ‘a threat was received from Wiremu Tamihana’. This so-called threat was contained in a letter of 26 July 1863 from Tamihana to Alfred Brown (by then the archdeacon) that has been variously interpreted. Battersby did not use the original but quoted from the missionary Charles Baker’s version of it, to the effect that Tamihana had threatened to make a ‘general sweep’ and that ‘the defenceless should fare alike with those who defend[ed] themselves’.²² A translation of Tamihana’s original letter to Brown is printed in the *Appendix to the Journal of the House of Representatives* as an enclosure in a dispatch from Grey to the Duke of Newcastle. It consists mainly of criticism of Grey’s handling of events in Taranaki and the Waikato. As a consequence of ‘these wrongs’, Tamihana wrote, he had ‘consented to attack the whole Town [of Auckland]’. In this attack, he added, ‘the unarmed people will not be left’.²³ Nowhere in the letter did Tamihana threaten to make a ‘general sweep’, or mention Tauranga, or threaten Pakeha there.

Whatever the threat in Tauranga in July 1863, the prospects for peace improved towards the end of the year. Late in December, Brown returned to his mission station at Te Papa. From there, he reported directly to Grey, sometimes enclosing ‘native letters’ and cautioning Grey against reading too much into them on the actual levels of support among Tauranga Maori

22. Baker to CMS, 29 August 1863, 9 MS1839, ATL (doc M9, p 71)

23. Thompson (Tamihana) to Brown, July 26 1863; Grey to Duke of Newcastle, 8 August 1863, encl 4, AJHR, 1863, E-3A, p7

for the Kingitanga in the Waikato war.²⁴ Grey also received information from his officials, including Smith, the civil commissioner, and local traders such as John Faulkner, who left, and Daniel Sellars, who appears to have remained. However, according to Battersby, most of the European settlers were soon to leave.²⁵

In January 1864, Cameron decided to send a military expedition to Tauranga, not to seize more land but to disrupt any movement of food, ammunition, or fighters to the Waikato.²⁶ Cameron and Whitaker also hoped that a military expedition to Tauranga would act as a diversion from the war, that would draw part of the Maori fighting force out of the Waikato.²⁷ According to Edward Shortland, the under-secretary of the Native Department, the decision to send a force to Tauranga was made at Cameron's request at a meeting between Grey and his Ministers on 18 January.²⁸ Cameron's plan was eagerly endorsed by Whitaker, who did indeed want to seize more land. In a memorandum to Grey of 19 January 1864, Whitaker described Tauranga as 'the route for all the disaffected Natives from the East Coast to go to and return from the war in Waikato'. He asserted that: 'All the Natives on the west side of the harbour are decided enemies – have been to the war – are there now – or are preparing to go.' To punish them, Whitaker wanted the military to seize all crops on the western side of the harbour and to prevent communication across it, though not to go to the eastern side at all, lest the troops disturb those Tauranga Maori deemed to have remained loyal. Now that it had become 'publicly known that an expedition [to Tauranga] is in contemplation', Whitaker added, the force should be sent at once since any delay would 'be considered proof of weakness, and encourage the enemy'. Whitaker wrote that a vessel had already been sent to Tauranga to evacuate Brown and other Pakeha. It was therefore necessary to send the force in quickly in order to occupy the mission station (which could provide accommodation for 500 troops) before it was destroyed by local Maori.²⁹ Though other Pakeha may have left, Brown himself remained at his mission station when the troops arrived and stayed there throughout the Tauranga war.

Grey's response to Whitaker's memorandum reflected the tension between the Governor and his Ministers. 'Ministers having expressed . . . their clear conclusion . . . that the expedition should go to Tauranga . . . without any delay,' Grey wrote, 'the Governor feels that under the present form of Government he ought to issue the necessary orders for its departure'. Grey added that he had 'yielded to the opinion of Ministers with some reluctance'. Moreover, he thought that the expedition should proceed only on the understanding that

24. W H Gifford, *A Centennial History of Tauranga* (publisher unknown, 1940), pp 218–219; doc M9, pp 72–73

25. Document M9, p 73

26. *Ibid*, pp 74–75

27. Whitaker stated in January 1864 that 'The General is of the opinion that, in a Military point of view, he would derive considerable advantage from the diversion': Whitaker, Memorandum by Ministers as to Sending an Expedition to Tauranga', 19 January 1864, AJHR, 1864, E-2, p 7.

28. Shortland to Smith, 22 February 1864, AJHR, 1864, E-2, pp 14–15 (doc M9, p 75)

29. Whitaker, 'Memorandum . . . as to Sending an Expedition to Tauranga', 19 January 1864, AJHR, 1864, E-2, p 7



Fig 3: Tauranga, circa 1864. From the right, the cemetery (with Mauao in the background), Monmouth redoubt, residence of Captain Sellars (of steamer *Tauranga*), Tauranga, school, field headquarters, Durham redoubt. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (F-22640-½).

it was 'of a temporary character, and that it can at any moment be withdrawn if the safety of the Southern Settlements or any other urgent cause [renders] such a course desirable'.³⁰ Whitaker wasted no time in drafting instructions for Colonel Carey, who was to command the expedition. Carey was instructed to occupy the mission station and to refrain from interfering with Maori east of the harbour unless instructed to, but he was to take possession of crops and cattle belonging to Maori on the western side.³¹ These instructions became another matter of dispute between Grey and Whitaker.

Immediately the Governor had issued his approval, Cameron sent Carey and 600 troops to Tauranga aboard the HMS *Miranda*. Acting on Whitaker's explicit instructions, Carey entered the harbour at dawn on 21 January 1864 and took possession of the CMS station.³² The mission buildings, including the chapel, schoolhouse, and two houses (but excluding Brown's house) were commandeered for use as a headquarters and officer accommodation, while the majority of the troops were housed in bell-tents in the mission grounds.³³ Two earth redoubts were rapidly constructed adjacent to the mission: the Monmouth redoubt overlooking the eastern side of the peninsula and the Durham redoubt on the ridge at the beginning of the road leading inland (see fig 3).

30. Grey, 'Memorandum Concurring in the Proposed Expedition', 19 January 1864, AJHR, 1864, E-2, p 8

31. Whitaker, 'Memorandum . . . as to Instructions to be Given to Tauranga Expedition', 19 January 1864, AJHR, 1864, E-2, p 8

32. Ibid

33. Document A2, p 47

The arrival of the troops caused some alarm, and not merely among Maori. Within 24 hours of the British landing, Civil Commissioner Smith was informed by Carey of his instruction to seize the crops and cattle of Maori on the western shores of the harbour. Smith told Carey that this action would injure ‘many innocent persons’ and that it would ‘increase the number of the disaffected’, ‘precipitate hostilities’, and ‘induce other tribes to take up arms who might otherwise remain quiet’.³⁴ Smith believed that to divide Tauranga Maori into two factions along an east–west divide was unduly simplistic. Indeed, he was so alarmed about the proposal that he sent circular letters around the district assuring Maori that the object of the expedition was ‘to act as a check on the movement of Waikato sympathisers’. He further wrote that, unless forced upon the troops, ‘active hostilities are not contemplated, and in any case will only be carried out against open rebels’.³⁵ Smith pleaded with Fox, the Native Minister, to modify Carey’s instructions accordingly. For his trouble, Smith was severely reprimanded, both because he revealed too much information to Maori and because he interfered with Carey’s instructions. Indeed, according to Shortland, Fox believed that Smith himself had previously informed the Ministers that Maori on the west side of the harbour were ‘almost to a man committed in the Rebellion; that the greater part of them had actually been fighting in Waikato; that they were in fact W Thompson’s people, and the district in which they lived practically under his direct influence’.³⁶ In fact, Smith’s information showed that 230 of the 330 adult males from the western side of the harbour (approximately 70 per cent) had joined the Waikato fighting.³⁷ Smith was instructed to carry out a new survey of individuals and hapu that had been involved in the Waikato war and that had hoisted the King’s flag at their villages, or otherwise become involved in the ‘rebellion’.

The new survey, eventually completed in February, showed that 169 of 253 adult males of the western district (67 per cent) had joined the fighting in the Waikato; this figure was slightly smaller than Smith’s earlier estimate. On the eastern side of the harbour, only 34 out of 238 adult males had gone to the Waikato. Another 30 out of an adult male population of 80 from the offshore islands had also gone. We noted the hapu allegiances of those in Smith’s first survey above. Although the second survey was presumably a more accurate return than the earlier one, Smith still received no thanks for his efforts. Fox’s secretary told him bluntly that the new information did not justify his earlier interference with Carey’s instructions and conveyed nothing that the Ministers were not aware of when they gave Carey those instructions.³⁸ But Grey did praise Smith for informing him (through Carey) of his error in:

treating all the Natives on the western side of the Harbour of Tauranga, as enemies, seizing their crops, cattle, &c. I feel very much obliged to you for the fearless and honourable way in

34. Smith to Carey, 22 January 1864, AJHR, 1864, E-2, p 9

35. Smith to Colonial Secretary, 22 January 1864, AJHR, 1864, E-2, pp 8–9

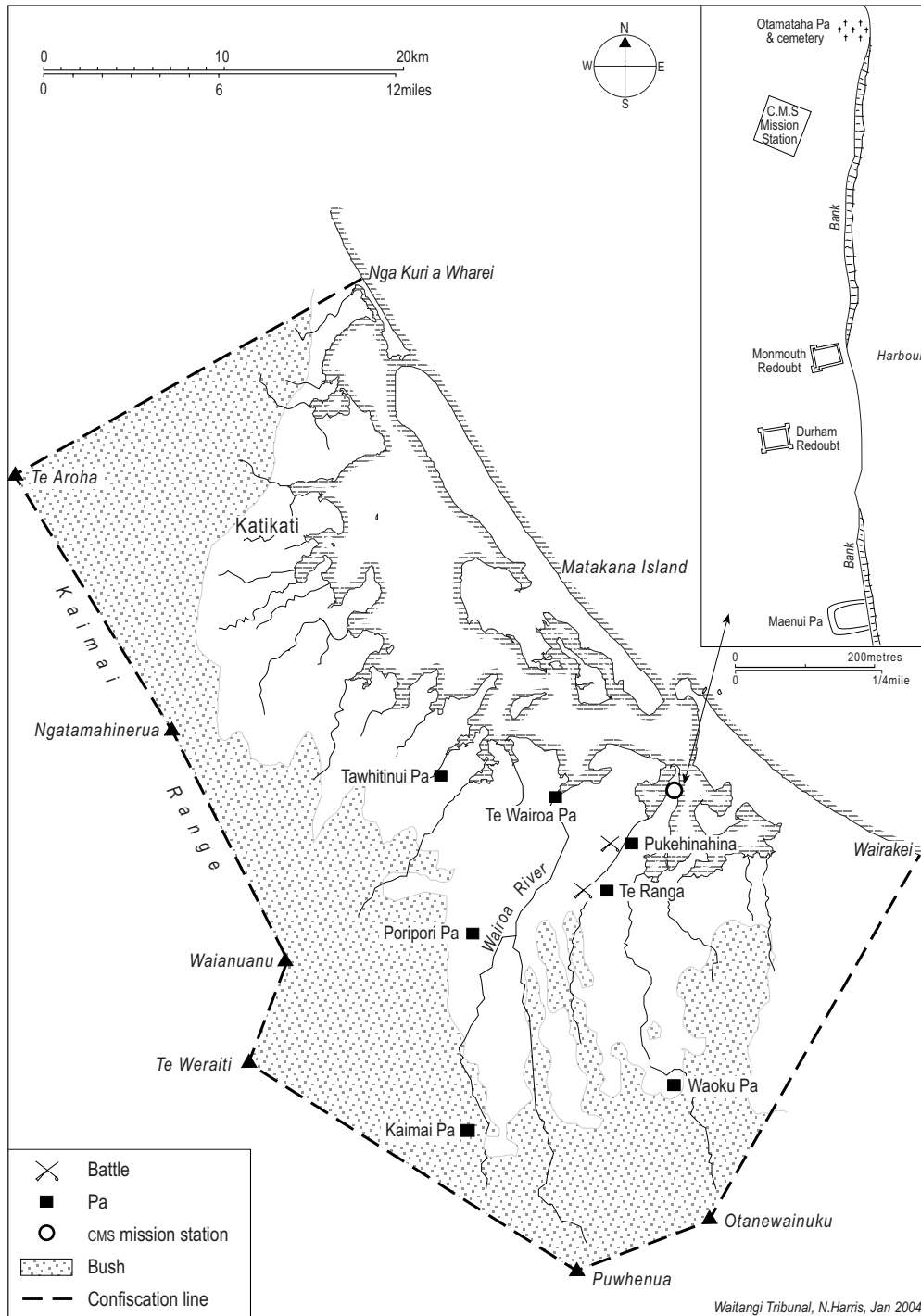
36. Shortland to Smith, 25 January 1864, AJHR, 1864, E-2, p 10

37. Smith to Fox, 11 February 1864, AJHR, 1864, E-2, p 14

38. Shortland to Smith, 22 February 1864, AJHR, 1864, E-2, pp 14–15

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Map 10: Tauranga, 1864

which you did your duty on this occasion, thereby preventing me from being the cause of bringing misery upon many innocent people.³⁹

However, in praising Smith in this way, Grey revealed the continuing friction between him and his Ministers.

Smith's contradictory instructions from the Governor and his Ministers were a foretaste of the way in which both sides attempted to use Native Department officials in their disputes over Tauranga. In this instance, Grey appears to have been the winner. After reading Smith's letter, he instructed Carey that he was 'not to adopt any aggressive movement against any Natives', and not to 'seize the cattle, or destroy the crops, of any Natives, whom you are not satisfied are open enemies', but merely to intercept armed parties passing through Tauranga to the Waikato front.⁴⁰

For their part, Tauranga Maori viewed the arrival of troops at Te Papa with suspicion. Although a blockade was imposed to stop the movement of hostile men and materials, normal commercial traffic across the harbour continued, and Maori on the eastern side soon found the troops to be a ready market for their produce.⁴¹ Nevertheless, there was much unease as each side tried to ascertain the intentions of the other. Battersby, who consulted the journals and correspondence of some military officers such as Carey, found several letters from Maori seeking information on the plans of the military force. Henare Taratoa wrote to Carey on 9 February, saying that he was 'searching for the reason why the soldiers were ordered here'.⁴² Battersby noted from Carey's correspondence with Grey that Tamihana had advised Maori on the western side of the harbour to 'sit still & not to fight'.⁴³ But other letters from Maori sympathetic to the Crown, as well as Auckland newspaper reports, relayed rumours of impending attacks by hostile Maori.⁴⁴ Though none of these attacks eventuated, there was growing tension in Tauranga in the three months between the landing of the troops at Te Papa and their assault on Pukehinahina. The troops may have refrained from plundering Maori crops, but their regular patrols outside the Durham and Monmouth redoubts, reconnaissance of Maori pa, shooting practices, and shooting of wildfowl near local kainga led Maori to fear that they would be attacked.⁴⁵ Yet, so long as the troops remained on the CMS block, which Tauranga Maori considered Pakeha had the right to occupy, they were not attacked.⁴⁶

39. Grey to Smith, 25 January 1864, AJHR, 1864, E-2, p 11

40. Grey to Carey, 25 January 1864, AJHR, 1864, E-2, p 11

41. Document M9, p 82

42. Taratoa to Carey, 9 February 1864, G16/3, 14, quoted in translation, Mary Drydon, August 2001, transcript 2 (doc M9, p 84)

43. Carey to Grey, 1 February 1864, G16/3, no 10, 'Official', ArchNZ (doc M9, p 84)

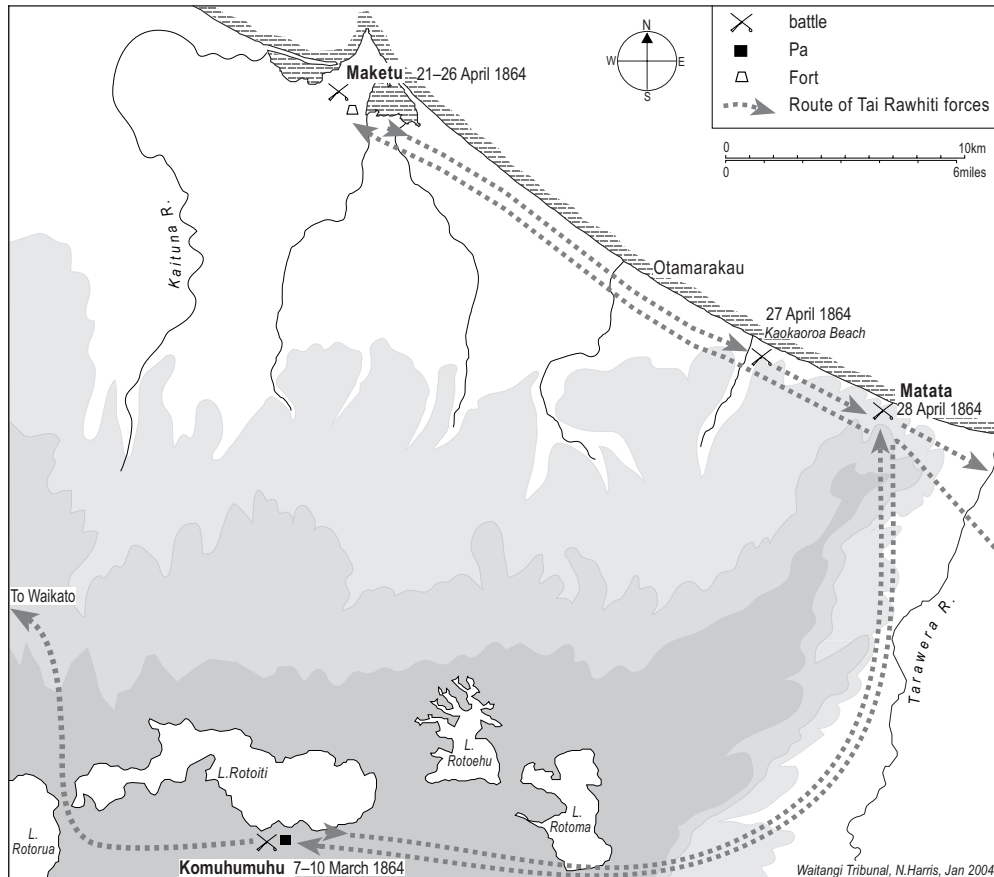
44. Document M9, pp 82-85

45. Ibid, pp 86-88

46. Ibid, p 94

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Map 11: Route of Te Tai Rawhiti forces

With the return of Tauranga Maori who had fought in the Waikato, the defence of Tauranga Moana came under the control of experienced campaigners who were well used to British battle tactics and modes of fighting. James Belich described the Maori leadership in Tauranga after the arrival of Carey's force as pursuing a military policy 'tactically defensive but strategically offensive'.⁴⁷ They attempted to draw the British out from their camp at Te Papa by issuing challenges and inviting assaults on the various pa they had fortified outside the CMS block. Initially, they tried to draw the troops to the ancient Waoku Pa, on the bush margin overlooking the Waimapu River 16 kilometres inland from the CMS mission. Pirirakau and others also occupied pa sites at Kaimai, Poripori, Wairoa, and Tawhitinui, in another attempt to draw the British forces into broken country in the hinterland where Maori would have the advantage.

The troops at Te Papa were still intent on stifling the flow of men from the east through Tauranga to the Waikato. A force of some 140 men, mainly from Tuhoe, Ngati Whare, and Ngati Kahungunu, had already got through to the front, where they fought at Hairini and,

47. Belich, p 177



Fig 4: *Taratoa, Lay Preacher. Killed at Te Ranga, 21st June 1864. Watercolour by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (A-033-011).*

most conspicuously, at Orakau. After the latter encounter, however, the focus changed from stopping fighting forces reaching the Waikato via Tauranga to preventing them from reaching Tauranga in the first place.⁴⁸

In March, 200 troops were sent to Maketu, where they established a fort. Their objective was to block the passage to the front of a taua of some 700 to 800 Te Tai Rawhiti warriors that had reached Matata in January. There, the group was halted by Te Arawa hapu that had remained loyal to the Crown. So the taua turned inland and, between 7 and 10 March, fought Te Arawa at the Rotoiti pa of Komuhumu. A truce was declared and the Te Tai Rawhiti warriors retreated to the coast east of Maketu, where they were reinforced by Ngati Porou, Tuhoe, Ngati Tama, and the coastal Arawa hapu, Ngati Makino. On 21 April, British troops stationed at Fort Maketu exchanged fire with an advance party of the Te Tai Rawhiti taua. Cameron, who had arrived at Tauranga that day, sent extra troops.⁴⁹ A stalemate persisted until the morning of 27 April, when Arawa troops arrived and the warships *Esk*, *Falcon*, and *Miranda*, along with the steamer *Sandfly*, began to shell the taua from offshore. The taua retreated along the coast, under fire from the ships and pursued by a land force of regular troops, supported by Forest Rangers and Te Arawa. After several minor engagements, the taua was decimated on the beach at Kaokaoroa. The survivors were pursued beyond the Tarawera River,⁵⁰ but there was no question of them proceeding to a Waikato – or Tauranga – front. After the defeat of the Waikato force and its allies at Orakau in early April, Cameron and Grey decided to

48. Document M9, pp 102–103

49. Ibid, pp 99–100, 102

50. Jenkins to Wiseman, 27 April 1864, AJHR, 1864, E-3, p 68

redirect to Tauranga troops that were originally intended for Taranaki.⁵¹ By the time fighting broke out at Tauranga, Cameron was commanding about 1700 troops there, and the victory over the Te Tai Rawhiti taua gave him a golden opportunity to finish off any resistance among Tauranga Maori without fear of intervention by outside forces.

Many Tauranga Maori had long been expecting to have to fight in defence of their land. The experienced Kingitanga commander Te Moananui had strengthened Tawhitinui Pa, which was situated inland from Te Puna, in the hope of drawing the imperial troops out from the safety of Te Papa. When no such response was forthcoming, a series of challenges taunting the British to engage was issued during March and April. Largely rhetorical in nature, and often made in response to British demands, these challenges resembled the wero traditionally issued on a marae to test the intentions of the manuhiri. When Colonel Henry Greer, who had replaced Carey, called for Ngai Te Rangi to cease their hostilities and surrender their weapons, Rawiri Puhirake replied: 'E kore au e whakaae kia hoatu aku pu; engari ka aea atu koe a ka parakuihi au ki Te Papa' ('I cannot consent to give up my guns, but if you so wish I shall take breakfast with you in Te Papa'). As Cowan described it, this 'was Rawiri's half-jocular way of announcing his intention of attacking the British camp'.⁵² In fact, he did not do so.

Another challenge to the British came in the form of a set of rules for combat, which were issued in expectation of an engagement at Waoku. Generally attributed to Henare Taratoa of Ngati Raukawa, who had been educated at Saint John's College in Auckland, these rules were remarkably similar to the Geneva Convention, which was signed between the major Western powers that same year with the aim of facilitating the work of the International Red Cross:

Poteriwhi District of Tauranga, March 28, 1864

To the Colonel, —

Friend, salutations to you. The end of that, friend, do you give heed to our laws for (regulating) the fight.

Rule 1. If wounded or (captured) whole, and the butt of the musket or hilt of the sword be turned to me (he) will be saved.

Rule 2. If any Pakeha, being a soldier by name, shall be travelling unarmed and meet me, he will be captured, and handed over to the directors of the law.

Rule 3. The soldier who flees, being carried away by his fears, and goes to the house of the priest with his gun (even though carrying arms) will be saved; I will not go there.

Rule 4. The unarmed Pakeha, women, and children, will be spared.

The end. These are binding laws for Tauranga.

51. Document M9, p103

52. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period, 1845-1864*, 2 vols (Wellington: Government Printer, 1983), vol 1, p 425

By Terea Puimanuka, Wi Kotiro, Pine Anopu, Kereti, Pateriki, Or rather by all the Catholics at Tauranga.⁵³

Grey forwarded a copy of these rules to the Duke of Newcastle, noting that they departed from traditional Maori custom, whereby ‘If any families were in their belief wrongfully deprived of land by others stronger than themselves . . . they sought revenge in sudden murders before they totally abandoned the soil.’ According to Grey, the rules demonstrated that ‘a feeling much more in consonance with the teachings of Christianity is now springing up amongst many of the natives’.⁵⁴

Claimant witness Kihi Ngatai, giving evidence on behalf of Ngati Hangarau, commented on these rules. Although he acknowledged that the second, third, and fourth rules showed the ‘importance of Christian beliefs to my ancestors’, regarding the first rule he stated in translation that it was ‘from the Maori world’:

Even today, if a gift of a traditional weapon is made with the butt or hilt facing the giver, then everybody knows that the gift is to be returned in due course. So it was to be with the Pakeha wounded. It showed that the Tauranga people were willing to give their Pakeha enemy the gift of life if the enemy acted according to tikanga Maori.⁵⁵

With no response forthcoming, Puhirake issued a further challenge, inviting the British to use the 12 kilometres of road his men had constructed so that their troops would arrive fresh and ready to fight. Puhirake then moved his forces even closer to Te Papa, occupying Poteriwihī Pa on the Wairoa River, and from there he issued yet another invitation to the British to come forward and engage, but still to no avail. Several other challenges were subsequently made, including a show of force on 2 April, when, according to Greer’s report, about 200 or 300 Maori assembled and began firing on the Durham redoubt from the Judea side of the estuary, some 2000 to 3000 yards away. This distance was so great, however, that, according to Greer, the shooting could have no effect: ‘I suppose they meant it in fulfilment of their challenge, as much as to say ‘here we are if you want to fight us’ & their position was far from a bad one, under cover themselves they could have inflicted considerable loss on any body of men crossing the ford.’⁵⁶ Greer did not accept the invitation to fight, but he eventually ordered the firing of an Armstrong shell, which ended the Maori shooting. A week later, according to the *Daily Southern Cross*, troops were again fired on by Maori. On that occasion, the sentries were able to disperse the attackers, apparently wounding one man.⁵⁷

53. Grey to Duke of Newcastle, no 34, 5 April 1864, AJHR, 1864, E-3, p 47 (doc A2, pp 21–22). It appears possible that more than one version of the rules of conduct were circulated, although differences between the known copies may be attributable to errors of transcription.

54. ‘Translation of Terea Puimanuka and Others to the Colonel’, 28 March 1864; Grey to Duke of Newcastle, 5 April 1864, AJHR, 1864, E-3, p 47 (doc A2, pp 21–22)

55. Document D24(a), p 16

56. Greer to Grey, 3 April 1864, GNZ MSS84(25), APL (doc M9, p 89)

57. *Daily Southern Cross*, 12 April 1864 (doc M9, pp 89–90)

Another incident was recounted many years later by Hori Ngatai:

For some time we waited for a reply to our challenges, but none came . . . We could not understand them making no move of any sort. We became impatient and it was decided to attack the soldiers' camp at Te Papa. Our party started out one night and selected men from other detachments who joined us at Kopurererua. Just as they were starting a gun accidentally exploded, wounding one of our men and giving the alarm, so we abandoned the attack and returned to our quarters.⁵⁸

Frustrated by the reluctance of the British to engage fully, Tauranga Maori made a further provocative move towards Te Papa, this time by fortifying Pukehinahina, or Gate Pa, which lay within three miles of the British headquarters. This action virtually sealed off land access to the peninsula and severely restricted the ability of the British troops to patrol the hinterland. But the new fortification was vulnerable, as Cameron soon realised. Belich pointed out that the Maori force then assembled was within easy reach of the harbour and that 'Cameron could concentrate as many men and guns against it as he thought necessary – without the problems of transport and supply that had bedevilled him in the Waikato'.⁵⁹

Cameron was by then intent on a full-scale attack on the new Maori position. He hoped to conclude the war at Tauranga and destroy the last remaining allies of the King with a battle as decisive as that at Orakau. After that engagement, both Cameron and the Ministers had quickly realised that there would be no more fighting in the Waikato proper.⁶⁰ That fact, together with the decision to send troops that had fought at Orakau to Tauranga, instead of Taranaki, and the decimation of the Te Tai Rawhiti taua at Kaokaoroa, meant that Cameron could turn his attention to the newly constructed Pukehinahina Pa, safe in the knowledge that Tauranga Maori would get no outside support and that he would not be distracted by fighting elsewhere. On 29 April, two days after the rout at Kaokaoroa, Cameron assaulted Pukehinahina.

4.4 THE BATTLE OF PUKEHINAHINA, 29 APRIL 1864

Pukehinahina is on a ridge near the base of the Te Papa Peninsula and is bounded by two arms of the harbour: the Waimapu Estuary and the swampy lower reaches of the Kopurererua Stream. The pa was built on Maori land just outside the southern boundary of the second (and larger) CMS purchase of 1839. In an early dispute over the legitimacy of the purchase, Maori constructed a post and rail fence to block the passage of Europeans inland. Following

58. Gilbert Mair, *The Story of Gate Pa, April 29th, 1864* (Tauranga: Bay of Plenty Times, 1937), p 23 (doc M9, p 90)

59. Belich, pp 176, 178

60. For example, Fox wrote that, three weeks after the battle, 'the final blow was struck in Waikato by the capture of Orakau and the evacuation of Maungatautari': Fox, 'Memorandum by Ministers in Reply to Aborigines Protection Society', 5 May 1864, AJHR, 1864, E-2, p 19.



Fig 5: *Earthworks and Fence of the Gate Pa Looking East from the Breach. Early Morn, 30 April, 1864.*
Pen and wash drawing by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (A-033-009).

negotiations, a gate was built into the fence, and it was this gate which gave the ridge-top pa its name: Gate Pa. The chosen site was therefore the ultimate challenge: if the British were to attack Tauranga Maori, they must do so on Maori land, though that was not the only difficulty facing them.

To fortify the pa, a ditch and embankment were constructed parallel to the fence. The outer palisades were made from manuka and tupakihi and were reinforced at key points with posts and rails plundered from stockyards and fences. To all outward appearances, the barrier was very flimsy; as Ensign Nicholl of the 43rd Regiment wrote, “The Pah from the outside looks the most insignificant place.”⁶¹ In fact, Pukehinahina was a fine example of the high level of military engineering developed by Maori at this late stage of the war – it had been designed by the military engineer Pene Taka as a complex maze of covered walkways and underground shelters, all roofed with alternate layers of soil and bracken to absorb the shock of bombardment. According to Cowan, the main part of the pa was garrisoned by some 200 warriors, mostly from hapu of Ngai Te Rangi, under the command of Puhirake. A smaller western part

61. Ensign Nicholl of the 43rd Regiment, diary, 29 April 1864, p 206 (as quoted in Belich, p 181)



Fig 6: Gate Pa, Pukehinahina Ridge, during the New Zealand wars, circa 1864. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (PA1-f-046-13-3).

was garrisoned by some 30 to 40 men, including 25 Pirirakau and a small party of Koheriki from Maraetai.⁶² Most of the men in the pa had seen action in the Waikato; some of the Pirirakau may even have taken part in the fighting in Taranaki earlier in the decade.⁶³ Philip Putnam, a British soldier present at Tauranga, later recalled that ‘all the hapu [of Tauranga] excepting two were present against us viz Nga Potiki and Ngati He who were living at Otawa some distance inland’.⁶⁴ Cowan wrote that, as well as the men, the women of the hapu who were present ‘toiled in the building of the fort, but . . . were sent safely away to the villages in the rear, by Rawiri’s order, before the fighting began’. The only exception was Heni te Kiri-karamu (Jane Foley) who was with the Koheriki taua.⁶⁵

On 27 April, Cameron began to assemble his troops within sight of Pukehinahina. The British force included elite light infantry and naval brigades, and totalled 1689 men.⁶⁶ They were armed with Enfield rifles, firing the expanding Minie bullet,⁶⁷ and were supported by a formidable arsenal of artillery arrayed on the British warships moored off the peninsula. This included a 110-pounder Armstrong gun, two 40-pounder and two six-pounder Armstrongs, two 24-pounder howitzers, two eight-inch mortars, and six Coehorn mortars.⁶⁸

62. James Cowan, p 423

63. ‘[A]ll of Pirirakau took up arms and took part in the fight at Gate Pah’: see doc A47, p 54.

64. Mair, p 12

65. Cowan, p 423

66. Document A2, p 24. According to Cowan’s estimates, the British force was ‘made up of a Naval Brigade of about 420, fifty Royal Artillery, 300 of the 43rd Regiment, and 700 of the 68th, besides 180 of a moveable column consisting of detachments of the 12th, 14th, 40th, and 65th regiments’: see Cowan, p 425.

67. Belich, p 22

68. Cowan, p 425

At low tide on the night of 28 April, Cameron sent Greer and the 68th Regiment around the western side of the peninsula to take up a position to the rear of the pa, apparently cutting off the main avenue of escape as well as the pa's water supply. The following morning, Cameron began an artillery barrage directed mainly at the western end of the main pa, the part best suited to an assault. During the middle of the day, at least one six-pounder Armstrong gun was hauled across the Kopurererua Swamp to high ground, from where it was able to enfilade the western outer works of the pa, forcing their abandonment. According to Belich's estimate, in all, 'perhaps thirty tons of shot and shell were dropped on or near the Maori position' that day.⁶⁹

By the late afternoon, a breach had been forced in the palisade and there was little sign of continued resistance from within the pa. Cameron ordered an assault by 300 elite troops comprised of equal numbers of the naval brigade and the 43rd Light Infantry Regiment. More troops followed in their wake, so that altogether some 800 men were involved in the assault.⁷⁰ While other elements of the British force kept up a heavy fire on the pa, Cameron later recounted, the assault party 'gained the breach with little loss, and effected an entrance into the main body of the work'.⁷¹ What ensued has been given various hues, depending on the source, but it appears that, on entering the confined space within the palisades, the troops became confused as a barrage of fire erupted from Maori hidden in rifle pits and trenches. After the first officers and men fell, the remainder panicked. According to Belich, the British troops had fallen into an elaborately laid trap and were caught in volleys of fire at short range.⁷² In the ensuing rout, the British force suffered 111 casualties, with 10 officers and 21 others killed or later dying of wounds, while only about 25 Maori were killed in the bombardment and in the engagement within the pa.⁷³ Cameron's troops had suffered what *The Times* of London called a defeat 'perhaps unparalleled in the British military annals'.⁷⁴

In his account of the battle, given many years later to Gilbert Mair, Hori Ngatai recalled that the Maori casualties numbered:

about 25 men killed, including the following:—Petarika Te Reweti Manatini (taken next day to Te Papa, where he died), Eru Puhirake, Te Kani, Reka Tamatea, Ihaka, Te Wano, Te Rauhuhu, Tikuhu, Te Rangitau, Te Kani Te Wharepouri, and Parawai. We Heti was both bayoneted and shot but got away, also Hone Taharangi and Te Moananui, the latter with gunshot wounds.⁷⁵

69. Belich, pp 181–183

70. Ibid, pp 183–184

71. Cameron, AJHR, 1864, E-3 (doc A2, p 25)

72. Belich, pp 185–186

73. Cowan, p 433

74. *The Times*, 14 July 1864 (as quoted in Belich, p 180)

75. Gilbert Mair, 1937, p 28 (doc A2, p 33)



Fig 7: *The War in New Zealand – Storming the Rifle Pits at Te Ranga, June 21, 1864* Drawing by Nicholas Chevalier from a sketch by G Lewis. Engraving by Samuel Calvert. Reproduced courtesy of the Alexander Turnbull Library (PUBL-0060).

After nightfall, the Maori defenders discreetly withdrew, as they had done so often in Taranaki and the Waikato. When the British entered the pa the following morning, they found several wounded soldiers, who, ‘to the credit of the natives, had not been maltreated; nor had any of the bodies of the dead been mutilated’.⁷⁶ Taratoa’s code of conduct had been honoured and, in keeping with that, the sole woman present, Heni Te Kirikaramu, had given water to Colonel Booth and other wounded British troops.

In his official report, Cameron described the defeat as a ‘repulse’, which he was ‘at a loss to explain otherwise than by attributing it to the confusion created among the men by the intricate nature of the interior defences, and the sudden fall of so many of their officers’.⁷⁷ The British officers who inspected the pa the next morning soon became aware of its involved structure. Although the defences were also described by Cowan, it was not until the publication of Belich’s *The New Zealand Wars* in 1986 that the significance of the Maori military engineering was fully explained.

76. Cameron to Grey, 5 May 1864, AJHR, 1864, E-3, p 61

77. Ibid

4.5 THE BATTLE OF TE RANGA, 21 JUNE 1864

In the period immediately after Pukehinahina, the British worked to consolidate their hold over the district; the pa was reconstructed as a redoubt, another small redoubt was built at Judea, and abandoned pa along the Wairoa River were occupied by troops. Regular detachments of upwards of 600 men were sent out from Te Papa, the soldiers eager to engage Maori in the open and thus avenge the debacle of 29 April.⁷⁸ But Grey and even Cameron were keen to swallow their pride and work for peace. Grey visited Tauranga on 12 May, conferred with Cameron, and shortly afterwards met with some neutral Maori, who agreed to act as intermediaries with the Tauranga Kingitanga and negotiate a peace, though only a few of those who had fought at Pukehinahina were prepared to surrender. On 15 May, Cameron informed Grey that he intended to 'abandon aggressive operations in Tauranga' and withdraw the bulk of his troops to Auckland. The next day, he departed with 700 troops, leaving instructions for more to follow. Greer remained behind with the rest of the troops, numbering some 800 or 900, with orders to hold Te Papa Peninsula.⁷⁹

With their mana enhanced by their victory at Pukehinahina, Tauranga Maori were reluctant to lay down their arms, and their success also encouraged a new Te Tai Rawhiti force to enter the fray. A taua of Ngati Porou headed by Hoera Te Mataatai was supplemented by fighters from the Te Arawa hapu of Ngati Rangiwehewehi and Ngati Pikiaio, and by some Whakatohea.⁸⁰ On 21 June, while on a reconnaissance tour some five kilometres inland from Pukehinahina, Greer and some 600 troops came across approximately 500 Maori constructing a new pa at Te Ranga. Although it has usually been assumed that this Maori force constituted the cream of Ngai Te Rangi who had been victorious at Pukehinahina, Belich argued that their contingent probably numbered fewer than 100, with the bulk of the group made up of the new Te Tai Rawhiti force.⁸¹ Oral accounts of Tauranga Maori, presented to us in claimant evidence, also recorded the presence of Ngati Porou and Tuhoe at the time.⁸² However, the combined force was again led by Puhirake of Ngai Te Rangi.

According to Greer, the Maori force 'had made a single line of rifle-pits of the usual form across the road'. Realising that the pa was only partly completed and that its defenders were vulnerable, Greer called for reinforcements from Te Papa and opened fire. He later reported his action as follows:

Having driven in some skirmishers they had thrown out, I extended the 43rd and a portion of the 68th in their front and on their flanks as far as practicable, and kept up a sharp fire for about two hours while I sent back for reinforcements . . . As soon as they were sufficiently near to support, I sounded the advance, when the 43rd, 68th and 1st Waikato Militia charged,

78. Belich, pp188–192

79. Ibid, pp188–189

80. Document A2, p 34; Cowan, p 435

81. Belich, p189

82. Document D24(a), p14

and carried the rifle-pits in the most dashing manner, under a tremendous fire, but which was for the most part too high. For a few minutes the Maoris fought desperately, when they were utterly routed. 68 were killed in the rifle-pits.⁸³

Although the situation appeared hopeless, Puhirake seems to have decided to stand and fight because he thought that reinforcements, led by Taraia Ngakuti of Ngati Tamatera, were in the vicinity. But no support arrived, and when Puhirake was killed, his remaining men broke and fled.⁸⁴ As Greer noted, by then they had already suffered heavy casualties.

In addition to the figures quoted above, there have been various other estimates of the Maori casualties. Greer himself gave another account of the dead, saying that 108 Maori were buried where they fell at Te Ranga⁸⁵ and that another 14 later died of their wounds and were buried in the CMS cemetery at Te Papa. Resident Magistrate William Baker estimated that 105 were killed and 37 taken prisoner, including 27 wounded, and Cowan produced figures of 120 killed and 27 wounded.⁸⁶ However, Belich argued that the Maori casualties were exaggerated by the British and opted for 68 – the number he said were found dead at Te Ranga – suggesting that the higher figures were based on the mistaken inclusion of prisoners, most of whom were wounded.⁸⁷ Whatever the true figures, there is no doubt that Tauranga Maori and their allies had suffered a heavy defeat, with the number killed considerably higher than the number of British troops killed at Pukehinahina. Among those killed was Henare Taratoa, who had also fought at Pukehinahina and had authored the proposed terms of engagement discussed above.⁸⁸ On the other hand, British casualties at Te Ranga were low. Greer listed nine men killed, and six officers and 33 enlisted men wounded.⁸⁹

As a victory for the British, Te Ranga served to assuage the bitter defeat of Pukehinahina. But for Cameron it was merely another end to the Waikato campaign, and he had no interest in continuing to fight in Tauranga. However, the victory was not enough to satisfy the Ministers, who wanted Cameron to follow it up with further campaigns in the hope that it might 'lead to the submission of the rebels of that district'.⁹⁰ Cameron was unwilling to carry out their wishes, telling Grey: 'There is no reason to hope that any such decisive result as that anticipated by Ministers, or that any real advantage whatever, would be obtained by following them [the Tauranga Kingitanga] into the interior.'⁹¹ Grey, like Cameron, suspected that Whitaker wanted to continue the war in Tauranga in order to justify the inclusion of the district in his proposed Waikato confiscation and to provide confiscated land for one of the

83. Greer to deputy quarter-master general, 21 June 1864, AJHR, 1864, E-3, pp 74–75

84. Belich, p 190

85. Greer to Cameron, 27 June 1864, AJHR, 1864, E-3, p 77

86. William Baker, resident magistrate, 21 June 1864, AJHR, 1864, E-3, p 75 (doc A2, p 31); Cowan, p 466

87. Belich, p 193

88. Baker, memorandum, 21 June 1864, AJHR, 1864, E-3, p 75 (doc A2, p 34)

89. Greer to deputy quarter-master general, 21 June 1864, AJHR, 1864, E-3, p 74

90. Whitaker to Grey, dispatch, 27 June 1864, AJHR, 1864, E-2, p 69

91. Cameron to Grey, 2 July 1864, select dispatch, pp 269–270 (as quoted in Belich, p 194)

Waikato regiments of military settlers. Grey told Cameron that he was ‘unaware that it was intended by Ministers to permanently occupy Tauranga with one of the Waikato Regiments’, and referred to his memorandum of 19 January 1864, written immediately before Colonel Carey’s arrival, in which he had ‘reluctantly’ agreed to an expedition of a ‘temporary character’.⁹² At the end of July, Grey told his Ministers that if military settlers were to be sent to Tauranga they should be ‘neither directly or indirectly led to believe that land will be provided for their location there’. He was ‘not at present satisfied that it will be practicable to obtain land for a settlement there of such an extent, and on such conditions as appear to be contemplated’.⁹³ We discuss the proposed military settlement and confiscation at Tauranga in the next two chapters.

4.6 CLAIMANT AND CROWN SUBMISSIONS

4.6.1 Claimant submissions

Because all claimant counsel made similar submissions to the Tribunal on the Tauranga campaign, we discuss them here in general terms, rather than claim by claim. We also concentrate on counsel’s closing submissions and subsequent submissions in reply to the Crown, because these provided the most distilled statement of the claimants’ positions.

The essence of the various claimant counsel’s extensive submissions is that the behaviour of Tauranga Maori provided no basis for the Crown’s attacks at Pukehinahina and Te Ranga and its subsequent confiscation of land.⁹⁴ The combined closing submissions made by Messrs Harvey, Webster, and Clarke (which we refer to as the joint submission) argued that the Crown breached the Treaty when it:

- ▶ levied war against Tauranga Maori without justification and killed and wounded members of the Tauranga iwi in breach of its kawanatanga obligations; and
- ▶ sought to defeat, by military force, the rangatiratanga of the Tauranga iwi and to negate the exclusive and undisturbed possession of their lands, estates, forests, fisheries, and taonga, which were solemnly guaranteed to them by article 2 of the Treaty.⁹⁵

Several claimant counsel argued that the hostilities in Tauranga needed to be understood in the wider context of the New Zealand wars, and they detailed the involvement of Tauranga Maori in the Taranaki and Waikato conflicts.⁹⁶ In the joint submission, counsel argued that Tauranga Maori were obliged to participate in the defence of the Waikato because of their

92. Grey, memorandum to Government House, 5 July 1864, AJHR, 1864, E-2, p 62

93. Grey, ‘Ministerial Memorandum’, 30 July 1864, AJHR, 1864, E-2, p 70

94. Document N3, pp 4, 7–10; doc N4, pp 13–16; doc N5, pp 3–5; doc N6, pp 9–12; doc N7, p 18; doc N8, pp 11–12; doc N9, pp 10–13; doc N10, pp 9–12; doc N11, pp 60–77; doc N12, pp 15–18; doc N22, p 8; doc N23, pp 20–21

95. Document N11, pp 74–77 (doc N11 was filed for the following claims: Wai 42(a), Wai 211, Wai 227, Wai 228, Wai 266, Wai 370, Wai 540, Wai 637, Wai 672, Wai 503, Wai 645, Wai 701, Wai 854, and Wai 938).

96. Document N6, pp 9–10; doc N9, p 10; doc N10, p 10; doc N11, pp 61–63; doc N23, p 16

4.6.1

kinship links and allegiance to the Kingitanga.⁹⁷ Claimant submissions also pointed to the lasting impact of the ‘musket wars’. Emphasising the long-standing ties between Tauranga iwi and Ngāti Haua, counsel quoted from a statement by Resident Magistrate Henry Clarke in 1862:

The Tauranga natives owe a debt of gratitude to Te Waharoa (William Thompson’s father) for . . . assistance rendered by himself and the tribe during the bloody conflict between the Tauranga and Arawa tribes; in fact it may be said that Te Waharoa saved them from annihilation.⁹⁸

Counsel generally agreed that the assistance rendered to the Waikato by Tauranga Maori led to the Crown levying war against the latter.⁹⁹ Some counsel claimed that both the Domett and the Whitaker Ministries developed plans to invade and confiscate Tauranga land during 1863.¹⁰⁰ In the joint submission, counsel quoted from the *Daily Southern Cross* of April 1866 that ‘Tauranga . . . contained a fine agricultural district, on which Mr Whitaker had set his eyes; and so Tauranga was invaded’.¹⁰¹ Counsel noted that the attack on Maori at Tauranga came after the fighting in the Waikato proper had ended, and argued that this was evidence that the Crown’s real intention in continuing the war at Tauranga was to provide a pretext for the confiscation that eventually followed.¹⁰²

Those counsel who commented on the matter contended that British troops were sent to Tauranga to attack local Maori and, by fighting back, those Maori were acting in self-defence.¹⁰³ Counsel making the joint submission argued that Tauranga Maori perceived Carey’s expedition as an attempt to ‘seize their land’ and that such views were justified, in light of what had happened elsewhere.¹⁰⁴ Local Maori could hardly believe assurances that the troops’ intentions were defensive, especially when reinforcements began arriving.¹⁰⁵ The joint submission (and counsel for Pirirakau) argued that Tauranga Maori were not in rebellion by their participation in the Waikato and Tauranga battles. Counsel argued that, since the Crown conceded in the Waikato Raupatu Claims Settlement Act 1995 that Waikato Maori were unfairly labelled rebels, it would be inconsistent for the Crown to regard Tauranga Maori as being in rebellion by going to the aid of their Waikato kin.¹⁰⁶ It was therefore contended that there were no grounds for the Crown to regard the Treaty rights of Tauranga Maori as being suspended.

97. Document N11, p 61

98. Ibid, pp 65–66; doc A2, p 15

99. Document N11, p 66

100. Document N10, p 10; doc N11, pp 66–68; doc N23, p 17

101. *Daily Southern Cross*, April 1866 (doc A58, p 6)

102. Document N10, p 10; doc N23, pp 22–23

103. Document N4, p 41; doc N6, pp 9–10; doc N7, p 22; doc N8, p 11; doc N9, p 12; doc N11, p 70; doc N23, pp 19–20

104. Document N11, p 68

105. Ibid, p 69

106. Ibid, p 102; doc N9, p 11

Finally, we note counsel's arguments in relation to specific breaches of Treaty principles. In the joint submission, counsel cited previous Tribunal and court judgments to argue that the Crown's *kawanatanga* right was 'not unfettered' and needed to be exercised with respect for Maori *tino rangatiratanga* and article 2 rights. Counsel said that this 'fundamental exchange in the Treaty' gave rise to obligations for both parties that were 'akin to partnership'. The Crown breached its Treaty obligations by levying war on Tauranga Maori 'in their own rohe on their own land'. Since Tauranga Maori 'were not in rebellion', they were in the same position as Wiremu Kingi's people at Waitara, who had been subject to 'an unlawful attack' by forces of the Crown even though they were, in the words of the Taranaki Tribunal, 'not at that time in rebellion'.¹⁰⁷ Several other submissions of claimant counsel made similar points.¹⁰⁸

While the claimants' submissions in reply to the Crown's closing submissions largely reiterated their earlier statements about the Tauranga battles,¹⁰⁹ some new arguments were made on the issue of rebellion.¹¹⁰ In particular, several counsel submitted that it was of limited importance to the Tribunal whether Tauranga Maori were legally in rebellion, because the Tribunal's focus must be on whether any breaches of Treaty principle occurred.¹¹¹ It was also contended that the legal authorities relied on by the Crown in its submissions about rebellion were not appropriate to the context of Tauranga in the 1860s.¹¹²

4.6.2 Crown submissions

As with the claimant submissions, we summarise here the main points of the Crown's closing submissions on the war at Tauranga.

Crown counsel acknowledged that 'Ministers intended from about mid 1863 to take land in Tauranga for the purposes of military settlement' but noted Grey's reservations about the Ministers taking a 'hard line'. In any case, Crown counsel argued, some Tauranga Maori were already in rebellion before the battles of Pukehinahina and Te Ranga, and this was grounds enough for confiscation. Those Maori had 'taken up arms against the Crown in Waikato . . . The Government did not need to engage in hostilities with Maori on Tauranga soil to enable them to use the New Zealand Settlements Act there.'¹¹³ More particularly, the Crown maintained that a state of rebellion existed in fact and in law in the centre of the North Island during the early 1860s. The Crown based its argument on definitions of treason made by two leading eighteenth- and nineteenth-century English jurists, William Hawkins and Sir William Blackstone.¹¹⁴

107. Document N11, pp 74–77

108. Document N10, pp 9–10; doc N23, pp 20–21; doc N3, pp 4, 9–10; doc N6, pp 9–11; doc N7, p 18

109. Document P4, pp 14–19; doc P7, pp 5–6; doc P8, pp 22–24

110. Document P2, pp 3–27; doc P3, pp 4–6; doc P4, pp 8–11; doc P6, p 6; doc P7, pp 4–5; doc P8, pp 15–17

111. Document P6, p 6; doc P8, p 15

112. Document P8, pp 15–16

113. Document O2, pp 26–27

114. *Ibid*, pp 14–20, 26

In light of the Crown's view of a pre-existing rebellion involving Tauranga Maori, it argued that 'the deployment of troops to Tauranga was a strategic decision taken by Cameron and the Crown in the wider context of the Waikato war'. Further, the Crown maintained that the deployment 'could not reasonably be termed an "invasion" in the ordinary sense of the word'. This was demonstrated by the defensive measures undertaken by Carey and by his refusal to respond to provocation from local Maori, who expected that the troops had come to fight them 'in retaliation for the support they had given their Waikato allies'. The Crown acknowledged that, when fired upon early in April, Carey's troops returned fire and apparently wounded one man. But the 'flashpoint' came, Crown counsel argued, when Maori constructed the Pukehinahina Pa, 'just outside the boundary fence surrounding the camp'.¹¹⁵ In view of this, it was 'hardly unreasonable' for Grey and Cameron to send reinforcements to Tauranga. The battle of Gate Pa was fought, the Crown concluded, because 'Maori sought, and very deliberately provoked, an attack by Crown forces'.¹¹⁶

So far as later events are concerned, the Crown noted both Cameron's advice to Grey, after the battle of Pukehinahina, that no further offensive operations were needed at Tauranga, and Cameron's subsequent withdrawal of 700 troops. Further, Colonel Greer, who commanded the remaining troops, was to keep them in defensive positions, but to patrol in strength to prevent Maori from building pa in the vicinity of British redoubts. When one of Greer's patrols discovered Maori entrenching themselves at Te Ranga, he attacked. In the Crown's submission, relying on Belich's analysis, Te Ranga was not the crushing defeat for Tauranga Maori that the claimants asserted.

In the next three sections, we reach conclusions on a number of issues of historical interpretation (sec 4.7), discuss the legal question of rebellion (sec 4.8), and make findings by applying Treaty principles to our discussion of the war in Tauranga (sec 4.9).

4.7 FINDINGS OF FACT

4.7.1 The Waikato context

Both the claimants and the Crown agreed that the Tauranga war needs to be understood in the wider context of the Waikato war, but they disagreed over the interpretation of that context and, in particular, the issue of whether Tauranga Maori, by participating in the Waikato war, were in rebellion. We also agree that the Waikato context must be taken into account.

Many Tauranga Maori, although not a majority, felt obliged to go to the aid of Waikato Maori when the Crown invaded their district. We accept claimant counsel's argument that they did so because of kinship and historical obligations, especially to Ngati Haua, and because of their allegiance to the Kingitanga. It is probable that Tauranga Maori realised that

115. Document 02, pp 27–29

116. Ibid, pp 29–30

their participation in the Waikato war would bring imperial troops to Tauranga, especially in light of Grey's proclamation of 14 July 1863. When troops did arrive, in January 1864, ostensibly to cut off the supply of men and materials to the Waikato war, Tauranga Maori hurried home to defend their lands.

In terms of military strategy, the Tauranga war was a continuation of the Waikato war. We accept that the initial dispatch of Carey's force to Te Papa was a defensive move, being intended to halt the supply of men and provisions to the Waikato front. But we believe that this tactic was no longer necessary after Cameron's victory over the King's forces at Orakau on 2 April ended the war in the Waikato. It appears that, for Cameron, the Tauranga war was, as Belich put it, another 'British effort to secure a decisive victory'.¹¹⁷ It was for this reason that he moved 1000 more troops to Tauranga by 27 April. On that day, operations were concluded against the Te Tai Rawhiti taua at Kaokaoroa, and since fighting had ended in the Waikato, the way was clear for a war in Tauranga. Two days later, Cameron seized the opportunity to assault Tauranga Maori in their pa at Pukehinahina. To him, it would have seemed the perfect opportunity to round off the Waikato war and destroy the last major undefeated support for the Kingitanga.

It is not sufficient, however, for us to consider the war in the Waikato and Tauranga solely in military terms. There was an important, if often confused and complicated, political context. As we have discussed at greater length in chapter 3, the Crown intended to break the authority of the Maori King, who it regarded as a threat to the Queen's sovereignty. The war was also intended to facilitate the Crown's policy of land confiscation. Confiscation was threatened in a proclamation that was backdated to precede the invasion of the Waikato and was subsequently implemented by the New Zealand Settlements Act 1863, which was passed while the Waikato campaign was in progress. The Act was also backdated to include rebellion since 1 January 1863, thus rendering Maori who had resisted the advance of Crown forces in the Waikato and Tauranga liable to have their land confiscated. We discuss the issue of rebellion below, and the implementation of confiscation in our next chapter. But, if war was the engine by which confiscation was effected, politics provided a guiding hand. The only trouble was that, during the Waikato and Tauranga campaigns, it was far from clear whether it was the Governor, his Ministers, or General Cameron who exercised political authority.

4.7.2 Responsibility for native affairs in Tauranga

Though Cameron's advice on military matters needed to be taken seriously, he did not have the final say. That responsibility rested with the Governor, who was officially commander-in-chief of the armed forces, though he in turn had to accept the advice of his Ministers. In section 4.2, we discussed the complicated process whereby responsibility for native affairs

117. Belich, p 133

was gradually transferred from the Governor to the settler Ministry. We noted, in particular, the long-running quarrel between Grey and the Whitaker Ministry. Although the latter accepted responsibility for native affairs when it took office in October 1863, it did so on the assumption that it could confiscate a large area of Maori land, raise an imperial loan, and secure that against the sale of much of the confiscated land. Well before troops were sent to Tauranga, the Ministry had set its mind on a confiscation line from there to Raglan. In our view, the Whitaker Ministry seized on Cameron's request for an expedition to Tauranga as an opportunity to secure the southern boundary of that confiscation. Even after Te Ranga, the Ministers assiduously promoted further military action to achieve their confiscation ambition. They proposed to settle one of the Waikato regiments of military settlers on part of the land confiscated at Tauranga. But, as we noted in section 4.2, Grey was suspicious of Whitaker's confiscation ambitions. He refused to sign the Order in Council that provided for the confiscations in the Waikato and Tauranga until after Whitaker and his Ministry resigned. We will explore the relationship between Grey and his Ministers further in subsequent chapters, when we discuss the confiscation.

4.7.3 The military occupation of Te Papa

Though there was some argument between claimant counsel and the Crown over whether Carey's initial occupation of Te Papa constituted 'an invasion', this matter was abandoned by claimant counsel in their joint closing submissions, when they merely said that the Crown 'deployed troops' to Tauranga.¹¹⁸ In our view, for so long as Carey kept his troops on the defensive, his expedition did not constitute an invasion. But when Cameron proceeded to attack Pukehinahina, that most certainly did constitute an invasion.

More important, in our view, are the questions of whether Carey's occupation of Te Papa was provocative and whether it led directly to the assault on Pukehinahina. The evidence presented in section 4.3 suggests that the occupation was regarded as a threat by many Tauranga Maori, who saw it as the beginning of a contest on their home ground for their land – a *casus belli* that precipitated war. They therefore embarked on a policy that was, in Belich's words, 'tactically defensive but strategically offensive'.¹¹⁹ However, their attempts to provoke the British into an attack were unsuccessful and Cameron attacked only when he was ready. As we have already said, Cameron pursued his campaign in Tauranga in the context of the wider conflict: he saw it as an opportunity to achieve a decisive victory. From the point of view of Tauranga Maori, on the other hand, the attack on Pukehinahina confirmed their fears about British intentions.

118. Document N11, p 66

119. Belich, p177

4.7.4 The battles of Pukehinahina and Te Ranga

Pukehinahina was a stunning defeat for Cameron's formidable army: some 1700 troops were repulsed by a mere 200 Maori. But the Maori defenders evacuated the pa in the night and Cameron's men took control in the morning. Cameron was so disillusioned by the loss of many of his elite officers and men that he wanted to quit the Tauranga war. Indeed, soon after, he left for Auckland with a large proportion of his troops, leaving Greer in command.

The very fact that Pukehinahina was defended by a mere 200 men should caution us against any assumption that all Tauranga Maori – or even all Ngai Te Rangi – fought against the British at Pukehinahina. Though there is a tendency for all to share in retrospective glory, and to claim that some ancestors were there, it is clear that many hapu, particularly from the east, south, and west of the district, were not represented at the pa at all. Even hapu were divided: some Ngai Tukairangi were at Pukehinahina, while others acted as guides for the Crown forces (a matter that still causes some embarrassment today, as we found). Although Pirirakau were definitely represented in the defence of one wing of the pa, other Ngati Ranginui hapu do not appear to have been significantly represented. However, the battle did take place on Ngai Tamarawaho land, and their counsel named six men from the hapu who took part. She also reminded us that a kin group that still exists, Ngati Matepu, got its name from those who died from the guns at Pukehinahina.¹²⁰

Te Ranga was a fortuitous victory for the British, who caught Ngai Te Rangi and their allies in an unprepared position and well and truly avenged Pukehinahina. We accept Belich's estimate that Ngai Te Rangi were a minority of those who fought at Te Ranga and that most of the others were from outside the district, though Ngai Te Rangi did provide the leadership and lost some of their finest chiefs. Nevertheless, the British victory at Te Ranga seemed to the colonial Ministers to have finally secured Tauranga for military settlement, though Whitaker wanted the campaign to be continued on both sides of the Kaimai Range to eliminate all possible opposition to his confiscation plan.

4.7.5 The aftermath

Adopting the view of claimant historian Dr Hazel Riseborough, some claimant counsel submitted that, in the negotiations that took place after the battles of Pukehinahina and Te Ranga, the position of Tauranga Maori was weakened by the deaths of their 'principal chiefs and most able negotiators'.¹²¹ The loss of Puhirake and the others was certainly a blow to the leadership of Tauranga Maori, and reduced their capacity to wage war. However, we consider that there is insufficient evidence to make firm conclusions on the extent to which the deaths weakened the negotiating position of Tauranga Maori. We simply do not have available to us information on the number of Tauranga rangatira there were at the time, let alone details of

120. Document N23, pp 20–21

121. Document A23, p 13

their names and hapu affiliations. What is clear is that some prominent and able leaders who had sided with the King (such as Enoka, Tupaea, and Hori Ngatai) and many loyalist leaders (such as those who had attended Kohimarama) survived to lead Ngai Te Rangi in the peace negotiations that followed the Tauranga battles. We discuss their role in our next chapter.

4.8 THE LAW OF REBELLION IN 1860S NEW ZEALAND

In its submissions to us, the Crown maintained that a state of rebellion existed in fact and in law in the central North Island during the 1860s. Specifically, it argued that, by taking up arms against the Crown in the Waikato, some Tauranga Maori were already in a state of rebellion before imperial troops arrived at Te Papa in 1864, and that this in itself allowed the confiscation of land there under the New Zealand Settlements Act 1863. Rebellion is a concept defined by law, which makes it a question of law whether a group of people is in rebellion. The law also defines the adverse consequences that may befall rebels. The Tribunal is not a court of law, and so is not concerned primarily with legal questions and their answers. These matters are, however, often ancillary to our primary task of determining whether, in a particular situation, the conduct of the Crown was consistent with the principles of the Treaty of Waitangi and, if it was not, whether prejudice that should be remedied has been caused to Maori. The result is that the law's assessment of either Treaty partner's conduct does not answer the question whether, in all the circumstances, the Crown has acted consistently with Treaty principles. Such an assessment, however, is likely to be relevant to Treaty-based analyses. For that reason, we consider the legal question of rebellion here.

It is a common-law rule that English colonists take with them to a new land as much of their law as is appropriate to their new circumstances. That common-law rule was given a statutory basis in New Zealand in 1858 when the English Laws Act of that year declared that the laws of England, as they existed on 14 January 1840, 'shall, so far as applicable to the circumstances of the said Colony of New Zealand, be deemed and taken to have been in force therein on and after that day and shall continue to be applied in the administration of justice accordingly'.¹²²

As we discuss further in chapter 5, the English law of rebellion was well developed by the mid-nineteenth century. In 1864, when the law officers of the Crown advised the Secretary of State for the Colonies on the validity of two New Zealand statutes dealing with rebellion, they explained that 'the Laws of England have repeatedly recognized the necessity for exceptional

122. The date given, 14 January 1840, was the date on which Governor Gipps issued a proclamation extending the boundaries of the colony of New South Wales to include New Zealand: see 'Copy of Dispatch from Governor Sir George Gipps to Lord John Russell', 9 February 1840, BPP, vol 1, pp 138, 141–142.

legislation, to suppress a rebellion threatening the existence of the State'.¹²³ The two New Zealand statutes under scrutiny were the Suppression of Rebellion Act 1863 and the New Zealand Settlements Act 1863. Neither Act contained a definition of 'rebellion', although both specified consequences that could befall people who were, or had been, engaged in rebellion.

The Suppression of Rebellion Act gave the Governor the effective power of martial law 'during the continuance' of 'the Rebellion which unhappily exists in this Colony'. It was a temporary measure, with a sunset clause providing that it would cease to be in force 'at the end of the next session of the General Assembly'.¹²⁴ The preamble to the Act explained that the 'acts of open Rebellion' to which it was directed were the product of 'a combination for the subversion of the authority of Her Majesty and Her Majesty's Government [that] has for some time existed amongst certain Aboriginal tribes of this Colony'. The preamble further stated that during the rebellion some of Her Majesty's subjects had been murdered or had their homesteads pillaged and their property destroyed, and it went on to say that 'the ordinary course of law is wholly inadequate for the suppression of the said Rebellion and the prompt and effectual punishment of those who are guilty of such atrocity and outrage'. Accordingly, the Act authorised the Governor to issue Orders in Council of the kind that would be authorised by martial law, during an emergency where military force and courts martial took the place of ordinary law and the courts.

In a report to the Taranaki Tribunal, Professor Frederic Brookfield explained that one difference between the common law's authorisation of martial law and the measures authorised by the Suppression of Rebellion Act was that the Act could be invoked in any part of New Zealand, including parts where peace prevailed and the courts could have maintained their regular civil and criminal jurisdiction. Another difference was that the Act severely limited the courts' common-law jurisdiction to check the excesses of martial law by reviewing the reasonableness of the measures taken to suppress the rebellion.¹²⁵

The second Act to impose consequences for what its preamble described as 'the open rebellion against Her Majesty's authority' was the New Zealand Settlements Act 1863. We discuss this Act's provisions in more detail in chapter 6. It suffices to note here that the purpose of the Act, as stated in the long title, was 'to enable the Governor to establish Settlements for Colonization in the Northern Island of New Zealand'. The preamble added that it was necessary to prevent future rebellion and to establish law and order, and that the best means for doing that was 'the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country'. To those ends, the Act established a process by

123. Palmer to Collin, 14 May 1864, CO209/186 (as quoted in Ann Parsonson, 'The New Zealand Settlements Act 1863', report commissioned by the Waitangi Tribunal, 1993 (Wai 143 RO1, doc 122, p 74))

124. Suppression of Rebellion Act 1863, s 11. The Act ceased to have effect on 13 December 1864: see Frederic M Brookfield, 'Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu' report commissioned by the Waitangi Tribunal, 1996 (Wai 143 RO1, doc M19(a)), para 9.1.

125. Brookfield, paras 9.1-9.2

which the Government could confiscate land from North Island Maori tribes who had been engaged in rebellion and then use that land to establish military or other settlements.¹²⁶

Crown counsel submitted that, at the time Tauranga Maori fought in the Waikato and then at Pukehinahina and Te Ranga, section 5 of the New Zealand Settlements Act provided 'a fair indication' of what constituted rebellion, and therefore who were rebels, according to New Zealand law.¹²⁷ The specific purpose of section 5 was to identify those who were not entitled to receive compensation for the taking of their land under other provisions of the Act, and it listed them as being anyone:

(1) Who shall since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand or—

(2) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or—

(3) Who shall have counselled advised induced enticed persuaded or conspired with any person to make or levy war against Her Majesty or to carry arms against Her Majesty's Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or—

(4) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or—

(5) Who on being required by the Governor by proclamation to that effect in the *Government Gazette* to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.¹²⁸

Section 2 of the Act authorised the taking of Maori land only where the Governor in Council was satisfied that a tribe or section of a tribe had been 'engaged in rebellion against Her Majesty's authority'. The Crown's submission, therefore, was that the concept of 'rebellion' referred to in section 2 of the New Zealand Settlements Act was, in effect, defined by the behaviours listed in section 5. In a general sense, that submission is undoubtedly correct. Brookfield made a similar point in his legal opinion to the Taranaki Tribunal in 1996 when he said that, in regard to 'rebellion', section 5(1) of the New Zealand Settlements Act 'does in

126. Section 2 empowered the Governor in Council to embark on the confiscation and settlement process whenever he was 'satisfied' that any tribe, section, or considerable number of a tribe had been engaged in rebellion after 1 January 1863. Brookfield concludes that, under the law of judicial review of administrative action, the basis of the Governor in Council's 'satisfaction' could be challenged in, and examined by, a superior court. While acknowledging that the courts are reluctant to invalidate administrative action taken in an emergency and authorised by a statutorily conferred discretion, Brookfield concludes that the Governor in Council's action would be invalidated in at least three situations: where there was no evidence at all of rebellion; where the evidence showed that Maori were acting in self-defence within the limits of the common law; and where the number of Maori involved in allegedly rebellious conduct was too small to constitute any conceivable threat to national security or public peace: Brookfield, paras 16.1–16.5.

127. Document 02, p15

128. New Zealand Settlements Act 1863, s5

effect provide a definition'.¹²⁹ Of the five subsections, section 5(1) identifies the most direct kind of behaviour involved in a rebellion: namely, 'levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand'.

Although it is implicit in section 5(1) of the New Zealand Settlements Act, an important matter that is not mentioned expressly by either of the 1863 Acts is that, for a rebellion to be established, the people involved must have an intention or purpose that is hostile to the Government. Exactly what intention or purpose must be present was a matter of dispute between the claimants and the Crown in their submissions. The claimants relied on Brookfield's opinion, from his study of the common-law rules of rebellion and the wording of the 1863 Acts, that the purpose of a rebellion must be to overthrow, by armed force or the threat of armed force, the authority of Her Majesty or Her Majesty's Government.¹³⁰ That conclusion takes particular account of the wording of the preamble to the Suppression of Rebellion Act 1863, which states that 'a combination for the *subversion* of the authority of Her Majesty and Her Majesty's Government has for some time existed amongst certain Aboriginal tribes of this Colony and has now manifested itself in acts of open Rebellion' (emphasis added). Consistent with that wording, Brookfield concluded that an intention to 'subvert' governmental authority may not be sufficient to establish that a state of rebellion exists, and may be more 'appropriate to a pre-rebellion stage'.¹³¹

When Crown counsel elaborated on the necessary 'mental element' for rebellion, she quoted from the works of William Hawkins and Sir William Blackstone. The first extract, from the 1795 edition of Hawkins' *A Treatise of the Pleas of the Crown*, begins with these words:

it is to be observed, that not only those who directly rebel against the king, and take up arms in order to dethrone him, but also in many other cases, those who in a violent and forcible manner withstand his lawful authority, or endeavour to reform his government, are said to levy war against him.¹³²

Counsel then quoted two examples of the 'many other cases', one being where the King's command not to withstand his forces was disobeyed and the other being where an insurrection was mounted in order to redress a real or pretended public grievance. While both examples require the use, or threatened use, of armed force by those who are 'levying war' against the King, neither requires that the conduct be engaged in for the specific purpose of dethroning the King. Rather, the examples indicate that 'levying war' against the King could be established where armed conduct, or the threat of it, was engaged in for a far more general anti-government purpose.¹³³

129. Brookfield, para 4.3

130. Ibid; doc N11, p 99

131. Brookfield, para 4.3

132. Hawkins, *A Treatise of the Pleas of the Crown*, 1795 (doc 02, p 17)

133. Document 02, p 17

Another difference between the claimants' and the Crown's views of the more specific ingredients of rebellion concerns the relevance of the legal concept of self-defence. The claimants relied on Brookfield's opinion that, since it is a fundamental rule of law that the Crown cannot declare war on its own subjects, it would be lawful for Maori, faced by an unlawful attack by the Crown, 'to meet force with force, by applicable standards of reasonableness, (in self-defence) or necessity (in defence of their dwellings)'.¹³⁴ The Crown challenged both the breadth of that conclusion and its acceptance by the Ngati Awa and Taranaki Tribunals. Referring specifically to the view that there can be 'reasonable' armed resistance to an unlawful attack or to arrest, Crown counsel said:

With respect, such definitions introduce an element of subtlety that is unsuited both to the circumstances of the 19th century British Empire or indeed to any circumstances in which some form of state 'emergency' exists.

More particularly, the extent to which a legal distinction can be drawn between 'defensive' and 'offensive' action when considering the existence of rebellion is extremely doubtful. Any consideration of the righteousness of the underlying cause of the rebellion is equally novel. The fact that posterity might judge an insurrection to be somehow justified does not change its fundamentally rebellious nature.¹³⁵

The claimants challenged the Crown's reliance on purely English legal sources, suggesting that the circumstances in New Zealand in the 1860s demanded some modification to the English law's concept of rebellion. The most notable of the unique local conditions was, of course, the existence of a Treaty between the Crown and Maori. Other modifying circumstances included the youth of the colony in the 1860s and, as a result, the relative unfamiliarity of Maori with English cultural and legal norms. As we discussed in chapter 3, this was especially true in Tauranga, where the Government had very little presence before 1863. In addition, there was an ambiguity in the status of Maori in relation to the colonial government, as was observed by the Secretary of State Lord Cardwell in April 1864. Cardwell cautioned Governor Grey about the confiscation of land under the New Zealand Settlements Act, stating that the property rights of 'Maori insurgents must be dealt with by methods not described in any law book'. The reason, he explained, was that English law did not deal with the 'exceptional circumstances' of the 'most anomalous case' that Maori occupied, having on the one hand acknowledged:

the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand . . . having been allowed to retain their tribal organisations and native usages, and . . . thus occupying, in a great measure, the position of independent communities. Viewed in the former capacity, they have, by levying war against

134. Brookfield, para 4.4

135. Document 02, pp 16–17

the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the criminal law. Viewed in the latter capacity, they would be at the mercy of their conquerors, to whom all public property would be at once transferred, private property remaining under the protection of international custom.¹³⁶

A few months earlier, at the end of 1863, the former chief justice of New Zealand, Sir William Martin, had written to Native Minister Fox with his own observations on the (then) New Zealand Settlements Bill. He, too, identified the unique position of Maori as being relevant to their fair treatment:

Leaving now on one side all questions of strict law, I proceed to other considerations, not to be disregarded by any reasonable man, as affecting the extent to which the rule of law, whatever it may be, should in practice be carried out; for every thoughtful man will see that the case of subjects over whom sovereignty has been acquired so recently and exercised so imperfectly, is practically very different from that of hereditary subjects of an ancient monarchy rising against a government which has been long recognised and established. . . .

Whatever the relation between Sovereign and subject may be defined to be in this case of New Zealand, the relation must in this, as in all other cases, be a mutual one.

If the Sovereign power has rights, it must also have duties; if the duties undertaken by the Sovereign have been fully performed, the Sovereign may claim a strict performance of the duties of the subject. If it has failed or been unable to perform them, it should deal less rigidly with its subjects.

This is a principle of natural equity, which I suppose all will admit.¹³⁷

Martin then set out at some length the reasons for his opinion that the Government had not taken 'its proper part in establishing institutions for the native race'.¹³⁸ Having paid particular attention to the situation in Taranaki and the Waikato, and noting 'the truth' that, 'in the greater part of this [North] island, the Queen's authority has never at any time been established in any real or practical sense', he continued:

Let us honestly ask ourselves these questions:—How far is the loyalty of Englishmen to their Government connected with a sense of the benefits secured to them by that Government? How long does the loyalty of any European nation last towards its Government, however ancient and venerable, when that Government has ceased to secure those substantial benefits to its subjects?

136. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, app, p 21

137. Martin to Fox, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, p 8. The quotation given by Sir William Martin is from a memorandum of Governor Browne of 25 May 1861.

138. Martin to Fox, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, p 8

At last we have made an attempt to retrieve our position by the 'Native Lands Act',¹³⁹ an Act which, if wisely worked, will necessarily and almost imperceptibly make us masters of the country, whilst it will benefit our subjects.

But this measure had not come into operation when the present troubles began.

I should not have spent many words on this point but for the language which is often heard, and which is used with evident honesty by many ill-informed people amongst us. Why should the Maoris distrust us? It is asked. In return it may be asked, 'Is not a distrust of the wielders of power one of the most habitual feelings amongst ourselves?' What is our whole system – House of Commons, trial by jury, municipalities, newspapers – but one elaborate manifestation of this feeling? How can we expect the New Zealanders to be free from it towards the strange race, whose power they see to be so vast, and of whose disposition towards themselves they feel so little assured?

From acts and omissions of the Government, from translations of local papers, from the words and demeanour of private persons, they form the best estimate they can of our intentions. We may be sure the persuasion or misgiving is real and deep which leads men with few rifles, without bayonets, and without artillery, to stand up in opposition to our power.¹⁴⁰

These contemporary opinions about the New Zealand situation provide a strong challenge to the Crown's submission that the appropriate definition of rebellion in 1860s New Zealand was that provided by the strictest of English legal rules. There is a strong case to be made that the particular circumstances of Maori needed to be taken into account when considering the question of rebellion. Chief among those particular circumstances was the existence of the Treaty of Waitangi, with its promise that the Crown would protect Maori tino rangatiratanga over land and other treasures. A related circumstance was the nature of Maori society: its strong tribal basis, the whanaungatanga links among tribal groups, and the dependence on the spiritual and physical connections of Maori to the natural world, particularly to their land. The 1860s New Zealand law of rebellion was not tested in court; had it been, and had it been found necessary to take account of such matters, one result might have been the acceptance of some kind of doctrine of justified self-defence. Accordingly, for one Maori group to help defend a related group from unlawful attack, for example, might have been found to be not rebellion but self-defence.

We have already noted that, in denying that Tauranga Maori were in rebellion by assisting in the Waikato, the claimants' submissions emphasised the connections between Tauranga and the Waikato, especially with Ngati Haua and the Kingitanga. Relying on the Crown's

139. The Native Lands Act 1862 brought the Native Land Court into being and gave it power to investigate customary title to Maori land and issue certificates of title to those found to be owners. It came into force throughout New Zealand by proclamation in December 1864: see David Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 64–69.

140. Martin, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, pp 11, 12

acknowledgements and apologies in the Waikato Raupatu Claims Settlement Act 1995, the claimants maintained that Tauranga Maori should be treated no differently. Some claimants considered – at least before the Crown’s closing submissions were made – that the Crown had acknowledged in the 1995 Act that Waikato Maori were not in rebellion.¹⁴¹ That is not the case, however.

In its preamble, the Waikato Raupatu Claims Settlement Act 1995 made a number of acknowledgements that are relevant here. These were that:

- ▶ the chiefs who pledged their land to the Maori King ‘bound their communities to the Kiingitanga, resisting further alienation of their land’;
- ▶ the ‘New Zealand Government at the time perceived the Kiingitanga as a challenge to the Queen’s sovereignty and as a hindrance to Government land purchase policies, and did not agree to any role for, or formal relationship with, the Kiingitanga’;
- ▶ in July 1863, ‘military forces of the Crown unjustly invaded the Waikato south of the Mangatawhiri river, initiating hostilities against the Kiingitanga and the people’; and
- ▶ ‘grave injustice was done to Waikato when the Crown, in breach of the Treaty of Waitangi, sent its forces into the Waikato, occupied and subsequently confiscated Waikato land, and unfairly labelled Waikato as rebels’.¹⁴²

Further, section 6 of the Act recorded the Crown’s apology in English in these terms:

1. The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangatawhiri in July 1863 and in unfairly labelling Waikato as rebels.

Bearing in mind the difference between legal rules and Treaty principles, the effect of those statutory acknowledgements by the Crown can be stated as follows:

- ▶ The Crown initiated hostilities by invading the Waikato and, in relation to the Kingitanga and Waikato Maori, this was unjust and in breach of the Treaty of Waitangi but it was not unlawful.
- ▶ Though it was unfair of the Crown to label Waikato as rebels, it was correct according to the law.

The Crown’s position in the Tauranga inquiry was notable for its reliance on the broadest possible definition of rebellion. In further support of that position, the Crown cited a modern authority on international law to the effect that, according to its own perception of the threat to its national security, a state possesses broad powers to declare the existence of an emergency and to decide how to overcome it.¹⁴³ Clearly, the Crown’s submission that Tauranga Maori were in rebellion by assisting in the Waikato was entirely consistent with the limited acknowledgements it made in the 1995 Act. Further, the Crown attempted to rebut

141. Document N11, pp 100–102

142. Preamble, B–E, R

143. Document O2, pp 18–19

the claimants' contention that Tauranga Maori were not in rebellion during the battles of Pukehinahina and Te Ranga but were acting in self defence.

As we indicated earlier, we consider the basis of the Crown's position to be an entirely Anglocentric view of the law of rebellion. Further, it is by no means clear to us that such a view would have been upheld in New Zealand in the 1860s had the matter been tested. However, even if the Crown's position were correct, and Tauranga Maori were legally in rebellion by rendering assistance in the Waikato, that conclusion would be no substitute for the Treaty-based analysis of the situation that we are charged with undertaking. We note that, where, as here, a question of law is relevant to a Treaty-based analysis of a situation but there is uncertainty about the law's answer to the question, the reasons for that uncertainty must also be relevant to the Treaty-based analysis.

4.9 TREATY FINDINGS

Having concluded that it is unclear whether Tauranga Maori were legally in rebellion, we now proceed to determine whether the Crown's military undertakings at Tauranga in 1864 were in breach of Treaty principles. We do this by considering the Crown's actions in light of the overarching Treaty principle of reciprocity, discussed in chapter 1. This principle holds that the Crown's exercise of kawanatanga, conceded by Maori in article 1 of the Treaty, must be balanced by respect for the chiefs' tino rangatiratanga, which is guaranteed in article 2. Though the Crown clearly had a kawanatanga right and responsibility to maintain peace and good order, it could not itself create potential for civil unrest or war by invading the territory of Maori without just cause.

The Crown presented a considerable amount of valuable evidence to the Tribunal on the battles at Tauranga and their surrounding historical context. As discussed in section 4.7, much of this evidence points to the conclusion that, in the words of Crown counsel: 'Maori sought, and very deliberately provoked, an attack by Crown forces.'¹⁴⁴ The construction of a fighting pa at Pukehinahina was pointed to as the primary example of such provocation. We agree that Maori attempted to goad the Crown forces into attacking them and that this was a deliberate and sustained military strategy. However, the provocations were a reaction to the landing of British troops at Tauranga, and the troops had the military means to withstand them without attacking Maori. Judging from the actions of 'rebel' Tauranga Maori, it is safe to conclude that they believed, in light of what had transpired in the Waikato, that they would be attacked and that this was why British troops were deployed at Te Papa. Therefore, they sought to have the British attack take place in circumstances that would be to their advantage. The British attack on Pukehinahina was not an act of self-defence. The British were not

144. Document 02, p 30; doc M9, pp 82–92

trapped on Te Papa but came and went freely by sea. The troops left the mission station and attacked Maori on their own land. The provocations that the British suffered did not provide sufficient reason for the Crown to attack its own citizens, breaching its article 1 duty to provide good government by keeping the peace.

The Crown contended in this inquiry that Europeans in Tauranga received threats of physical harm from Wiremu Tamihana, and that this contributed to the situation that made it necessary for imperial troops to be stationed at Te Papa.¹⁴⁵ We consider this to be incorrect. The so-called threat was contained in a letter from Tamihana to Alfred Brown, but Tamihana explained that it was a ‘warning’ and concerned a planned attack on Auckland in response to British troops crossing into the Waikato.¹⁴⁶ Tamihana’s explanation concurs with Brown’s reported understanding of the letter.¹⁴⁷ Fox used Tamihana’s alleged threat to kill unarmed civilians as part of the Government’s justification for taking a hard line with ‘rebel’ Maori. Yet, parliamentarian George Graham wrote to the Secretary of State in 1865 to inform him that Fox had deliberately misrepresented Tamihana in an attempt to justify the war against the Kingitanga.¹⁴⁸ Tamihana’s letter to Brown did not constitute a threat to kill the civilian population at Tauranga. We are unaware of any threats to kill civilians in Tauranga prior to the attack on Pukehinahina, and no civilians were killed before, during, or immediately after the two 1864 battles at Tauranga. The alleged threat of Kingitanga forces killing civilians has no bearing on the evaluation of whether the Crown acted within its *kawanatanga* rights in landing troops at Tauranga and attacking Pukehinahina.

In the period between the landing of troops at Te Papa and the battle at Pukehinahina, there was a considerable degree of interaction between Kingitanga Maori and the British forces. The commanders of the British troops received messages both directly and indirectly from the Kingitanga Maori at Tauranga. This correspondence varied in nature and included rumours of attack, inquiries as to why the troops were present at Tauranga, threats of attacks on the troops, attempts to set rules for fighting, and complaints about the conduct of the troops.¹⁴⁹ Several Tauranga Maori stated that they were perplexed by the presence of the soldiers; others complained that they had received no replies to their communications with British officers. Smith received a rebuke from Fox for revealing too much information about the Government’s intentions at Tauranga and was ordered to stop communicating with Kingitanga Maori.¹⁵⁰ There is no clear evidence that the Government or the British troops made any significant attempt to dispel the Kingitanga perception that the imperial army was in Tauranga to fight with them. We disagree with Crown counsel’s assertion that, after the troops landed at Tauranga, ‘The fact that Carey was acting under defensive orders would

145. Document M9, pp 26–27

146. Evelyn Stokes, *Wiremu Tamihana, Rangatira* (Wellington: Huia Publishers, 2002), pp 348–349

147. *Ibid*, pp 346–347

148. *Ibid*, pp 347–348

149. Document O2, pp 29–31

150. Document A23, p 7

immediately have been apparent.¹⁵¹ Communicating with Kingitanga leaders was no doubt difficult for the British, but it was not impossible. Brown remained in contact with his convert, Tamihana, and with other Kingitanga leaders, and he was one obvious potential go-between. After the battle of Pukehinahina, the Crown was able to initiate negotiations through a group of neutral Maori. We consider that, for the Crown to have fulfilled its Treaty obligations to provide good governance, a more widespread and concerted effort to negotiate with the adherents of the King movement before attacking Pukehinahina would have been necessary.

In fact, although the Crown may have had the means to negotiate in good faith with Tauranga Kingitanga adherents, it lacked the will to do so until after its defeat at Pukehinahina. By April 1864, any chance of negotiations that did not involve the unconditional surrender of the Kingitanga forces was very slim because of the Government Ministers' intransigence. In the historical context of the times, a negotiated settlement of the Tauranga stand-off was impossible unless local Kingitanga Maori forfeited their tino rangatiratanga to the Crown. We consider that Tauranga Maori were acting consistently with the rights guaranteed to them by article 2 of the Treaty when they refused to do this.

Between January and April 1864, the situation in Tauranga was characterised by low-level skirmishing, rumours of Maori attack, and threats to Crown forces. We consider that the actions of the Crown, in landing a large and heavily armed expeditionary force at Te Papa and proceeding to conduct military operations on Maori land, were the most significant factor in creating the heightened tension at Tauranga. These Crown actions were no longer necessary to limit the scope of warfare in the Waikato, once fighting had finished there. They actually had the opposite effect of expanding the war into the Bay of Plenty. The few Pakeha civilians present at Tauranga were not in danger, and the Crown did not use all means available to peacefully defuse the situation in Tauranga Moana. We consider that there were opportunities, both before and during the war, for representatives of the Crown to consult with Maori and in that way to observe their partnership and Treaty responsibilities. Regrettably, the opportunities were not taken.

We accept that in normal times the conditions for partnership expressed by the president of the Court of Appeal in 1987, obliging both Maori and the Crown to act in the utmost good faith toward one another, would apply.¹⁵² However, the conditions at Tauranga in the 1860s were not normal. Maori who were attacked by Crown forces obviously had difficulty in observing their duty of loyalty to the Queen. It was also difficult for Maori to accept the Queen's Government when there had been little evidence of the Government on the ground in Tauranga prior to the landing of troops, and when it was far from clear who held responsibility for various actions of the Crown. In light of these circumstances, it clearly was not

151. Document 02, p 28

152. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 207

Maori but the Crown who breached the reciprocal obligations the two Treaty partners had to each other.

There is one final conclusion to be drawn from our analysis of the Tauranga Moana conflict. It relates to a point that was not argued by the Crown but adverted to by some claimants, who relied on the *Taranaki Report* and its mention of extraordinary circumstances in which the Treaty of Waitangi could be suspended for a period.¹⁵³ It is our firm conclusion that the circumstances in Tauranga Moana were never so extraordinary as to warrant the suspension of the Treaty. To our mind, before the Crown could properly regard the Treaty protections and benefits guaranteed to Maori as having been suspended, Maori would need to have acted very clearly in contradiction of their Treaty promises to the Crown. Our analysis shows that the conduct of Tauranga Maori, both in the Waikato and in Tauranga before and during the battles there, was always open to an interpretation that was consistent with the Treaty, and particularly with Maori understandings of its meaning.

The result of our analysis to this point is that the Tribunal finds that the Crown acted inconsistently with the principles of the Treaty of Waitangi, especially the principles of reciprocity, partnership, and active protection by:

- ▶ failing to protect the rangatiratanga of Tauranga Maori by attacking them at Pukehina-hina and Te Ranga without just cause; and
- ▶ failing to provide good governance by attacking Tauranga Maori and thereby creating a state of war in the district.

4.10 CHAPTER SUMMARY

The main points in this chapter are as follows:

- ▶ The British military's 1864 campaign in Tauranga was undertaken with conflicting agendas in mind. Premier Whitaker hoped to use the campaign to advance his confiscation designs, while General Cameron and Governor Grey originally envisaged a defensive and temporary occupation. However, when Cameron saw an opportunity, he sought to end the Waikato war decisively at Tauranga.
- ▶ Tauranga Maori viewed the landing of troops in the region with deep anxiety. They soon came to believe that conflict with the British force was inevitable and set about trying to provoke the soldiers into attacking them in circumstances that were to their advantage.
- ▶ The British troops attacked Tauranga Maori and suffered a defeat in the battle of Pukehina-hina of 29 April 1864. However, this was more than avenged on 21 June 1864 at the battle of Te Ranga.

153. Document N11, pp 98–99

TE RAUPATU O TAURANGA MOANA

4.10

- ▶ The contention that Tauranga and other Maori were in rebellion in the 1860s was not tested in a court of law at the time. Had it been, the court could have upheld it only by relying on the strictest English definitions of the concept. It is entirely possible that a court could have taken into account the local circumstances of the time and found that Taranaki, Waikato, and Tauranga Maori were not in rebellion. It is therefore a moot point whether the actions of Tauranga Maori constituted rebellion in the legal sense of the word.
- ▶ Whether or not Maori were in rebellion, the Crown clearly acted in breach of the Treaty principles of reciprocity, partnership, and active protection by attacking Maori at Pukehinahina and Te Ranga.