

Te Roroa Claim

02 Nga Whenua i Hokona (Land Sales)

2.1 The Crown Resumes Land Purchasing

Take 2

NGA WHENUA I HOKONA (LAND SALES)

2.1. The Crown Resumes Land Purchasing

Pressure on northern tribes to sell large blocks of land built up rapidly after Vogel launched his bold ten year programme of government borrowing for assisted immigration and public works in 1870. His purpose was two-fold: to develop the national economy, and to gain control over remaining Maori districts in the North Island by opening up communications, introducing settlers and employing Maori on public works (B34:att 6-9; E2:6; H28:3-4). {FNREF:0-86472-088-2:2.1:1}

An essential requirement for the implementation of this programme was the purchase of North Island Maori land. Under the Immigration and Public Works Act 1870, the government was authorised to spend £200,000 on purchasing land in the North Island. A further £500,000 was authorised by the Immigration and Public Works Act 1873. In the years 1870-76, £415,634, that is, 4.3 per cent of total government expenditure of £9,660,151, was spent on the purchase of Maori land (H28:1-2).

In 1873, a special land purchase branch of the Native Department was established under Sir Donald McLean, Native Minister, 1869-76. Land purchase officers were then appointed, some of whom had worked under McLean in the old Native Land Purchase Office (H48:8 & addendum). In effect, the pre-1865 system of Crown purchasing was resurrected, but in competition with private purchasers. Moreover before Maori could sell land they had to establish their title to it in the Native Land Court. In the aftermath of the wars of the sixties following the Waitara purchase, McLean was more circumspect than he had been in the late 1850s. His primary concern was to keep the peace and risk no further disturbances and to extend British law and institutions to Maori districts. He cautioned his land purchase officers not to purchase land if the title was in dispute. But at the same time he was under pressure from his ministerial colleagues to push ahead with the purchase of Maori land so that Vogel's programme could be implemented.

In 1872 Lieutenant-Colonel Thomas McDonnell, Crown land purchase agent in Wanganui, was transferred to North Auckland. He had served with, and commanded, kupapa (Maori who fought on the British side) and colonial forces in the wars of the sixties, and was reputed to be ruthless and unscrupulous. He prided himself on his ability to speak Maori and was convinced that ultimately, force was the only argument Maori respected. {FNREF:0-86472-088-2:2.1:2} From the instructions he had been given in November 1871, he was well aware of McLean's concern that in his transactions he should not incur the risk of any trouble, disagreement, disturbance or

revival of Maori land feuding. Transactions were only to be carried out if Maori were favourably disposed to European settlement. A clear idea of what reserves would be necessary and their acreage was to be provided (E2:30-31).

McDonnell proceeded to make inquiries and negotiate purchases of blocks of land north, south and inland from Te Roroa territory (E2:36-49; H3:2-3 & app 2). Parore Te Awha had interests adjoining one of these blocks, Totarapoka, which he wished to protect (see E2:47). McDonnell "seems to have taken cognisance of McLean's instructions" not to risk trouble, attempting to identify owners correctly and not acting too hastily (E2:48-49). His reports conveyed the view that much valuable forest and open land was available, well suited for immigrants. They made no specific mention of reserves. They also illustrated the problems that could be caused by private agents and showed that McDonnell was in the habit of taking large sums of money with him, and giving advance payments or deposits to prospective sellers, on land which had not passed through the Native Land Court (E2:49).

The Maori name for advance payments was "tamana". The claimants have translated "ta" to mean sprinkle, and "mana", prestige. Under s75 Native Lands Act 1865 advance payments were "absolutely void" (A19:26; E2:14-15). {FNREF:0-86472-088-2:2.1:3} Even so s59 Native Land Act 1873 provided for:

the payment of the whole amount of the purchase money stipulated upon, without any deduction whatever except for advances of money made to the Native owners by way of earnest money to bind the agreement for such sale ... (A3:11; I16:25)

Armed with half the £500,000 authorised in 1873 and earmarked for the Auckland Province (A13:18; E2:54), the Land Purchase Department increased the tempo of its operations in areas surrounding Te Roroa before training their big guns on Te Roroa territory. In 1874, E T Brissenden was appointed an additional Crown land purchase officer and instructed to proceed to Auckland "with as little delay as possible" and endeavour to negotiate the purchase of several considerable blocks of forest land in the North "and any open lands which it may be thought expedient" (A3:180-181). He was authorised to engage, through Captain Heale, any surveyors required to map the land he purchased, and told to submit completed plans to the inspector of surveys for examination and approval. In Auckland, Brissenden arranged for C E Nelson, who had resided for some years in the Kaipara district, had a Maori wife, and spoke Maori fluently, to assist him.

Brissenden and Nelson proceeded to negotiate for land in the Kaipara district. Brissenden's reports convey the impression that large tracts of kauri forest and open land were available for settlement, that he was doing his best to purchase them as rapidly and cheaply as possible, and that prompt action was needed from McLean and his department to make purchase money available, particularly in view of competition he was encountering from private individuals with money in hand (E2:76 ff). Two deeds he sent the undersecretary in May were returned for correction with a specimen deed, and he was instructed to refer to the 1873 Act regarding their proper execution. By harping on competition he faced from private purchasers, he strengthened the belief of McLean and his department that private individuals and speculating interests were acquiring land and could thwart the execution of Crown policy. They assured him his requisitions would be met with necessary speed (E2:75).

It was not long before Brissenden's frenetic scramble for "all useful Native lands, be the blocks small or large" in the Kaipara district (B34:att 4) was extended to Te Roroa land. On 27 April 1874, McDonnell, who was completing arrangements to purchase Waoku, reported that:

the Waimamaku Natives at Hokianga have offered me a large block of land to the South of Waimamaku on the Coast there is some Kauri timber on it not very available, but a large portion of the land is good. There will be ... from 15,000; to 20,000 acres. (E2(a):392).

On 27 July Brissenden reported that he and McDonnell, working together "with considerable success", had secured, "by purchase", over 350,000 acres, for rates varying from 3d per acre for "poor open ridges" at Tautoro south, to 4s for flat, undulating and splendid land at Owe. Included were Maunganui, comprising 20,000 acres, and Waipoua of 40,000 acres, both for 1s 6d per acre (A3:286-289). His very general description of the blocks suggests that he was not as yet familiar with the area (E2:86).

The same day, Tiopira Kinaki and Peneti Pana informed Chief Judge Fenton that there was "a difficulty" with Wi Pou of Ngai Tu, concerning the boundaries of their land on the west coast, namely, Wairau, Ohemowaiotaane, Waipoua, Te Muriwai, Waikara and part of Maunganui. They requested Fenton to retain the money until after this was adjudicated, but indicated their willingness to sell Waipoua and Maunganui after they were surveyed (H3:6-7). A week later, McLean belatedly replied to McDonnell's despatch of 27 April that, "as Mr Brissenden and yourself are associated together, it will be as well that you should consider the blocks in your future operations" (E2(a):391).

From the end of July to early in the New Year, Brissenden extended his negotiations for the 40,000 acre Waipoua block to Kaihu to make it 100,000 acres, that is, he included the whole of the Maunganui block (E2:86; H3:11). He also negotiated the purchase of Waimamaku land at 1s 1d per acre and Kahumaku (properly called Raeroa and later incorporated in Waimamaku No 2 block) at 1s 6d, while McDonnell was negotiating Kahumaku for 1s 5d. Thus by early 1875, three different sets of negotiations were in progress at three different acreage rates, for what was to become Waimamaku No 2 block (H3:11-13).

Both Brissenden and McDonnell paid tamana while these negotiations proceeded. On 28 August 1874, the first payment of £100 for Waipoua was made to Hapakuku Moetara and two others. The same week Moetara was paid £50, being the first payment for Waimamaku. A further payment of £10 for expenses allowed during negotiations for Waipoua and two other blocks, was made to Moetara on 4 September. A £40 deposit on Waipoua land was made to Heta Te Haara on the 15th and Moetara received another £50 on the 29th. Te Hemara Tauhia received £100 on 11 September; Kikokiko £200 on 26 October and Te Rore Taoho and another received £100 on 12 December. Tiopira Kinaki received his first payment of £30 for Waipoua on 17 March 1875 (E2:83-84). These sums, less £10 for negotiating expenses, totalled £670.

Clearly these payments were intended to commit the recipients to sell at an early stage in the negotiations. Maning cynically wrote in 1874, that at one of his courts "a report came that a government land purchase agent had arrived at Waimamaku with lots of money and at once half the claimants shuttled off to see what they could do him out of to raise a spree" (D1:10; H3:8 fn 2). Brissenden reported to McLean in 1874, that the Maori thought the small deposit paid by government agents was "a trick to tie up their lands" (E2(a):336-337). Brissenden himself looked upon these payments as an essential means of countering the great delays in completing government purchases and strengthening the hand of Crown agents versus private agents (E2:87-89). To accelerate the negotiation process, he ventured to submit that surveys proceed almost contemporaneously with negotiations and judges be asked to facilitate the passage of government blocks through the court. Neither the Native Department nor Judge Maning were willing to act on his submissions, but an extra judge, J J Symonds, was appointed in February 1875. {FNREF:0-86472-088-2:2.1:4}

The first sign that McLean was beginning to feel uneasy about the activities of his agents in the far north was his concern to hear that McDonnell had attempted to proceed with the survey of disputed land in the Whangaroa district before the court investigated the title. Fearing a disturbance of the peace, he directed the district officer to take up his responsibilities under the 1873 Act and make preliminary inquiries into ownership (E2(a):349; E2:99-104). Sometime in March or April, J W Preece, son of a Church Missionary Society catechist and an experienced, Maori speaking land purchase agent employed by the government in the northern districts (H3:app 5), took over McDonnell's work, despite McDonnell's express wish to be allowed to finish his negotiations (E2(a):349-351; E2:106).

Brissenden, meanwhile, continued to complain that want of funds and competition from private parties were delaying his progress, and that Maori grumbled if they heard that others got more from private agents than they did from government. He also raised the issue of his commission payments. After some initial reservations, McLean agreed he should receive 2d for every acre upon which the government secured "a clear and undisputed title". In December 1874, Brissenden reported that he had purchased 15 blocks comprising 50,000 acres, but the Maori showed "considerable disinclination to sell owing to opposition offered to the Government by private parties". He would attempt to acquire another 200,000 acres in very many blocks, as holdings were small in Ngapuhi country. In fact, few large areas in the north remained unpurchased (E2(a):338-345; E2:109-112).

McLean's letters to Brissenden about this time reveal his growing concern that all was not well in the north. He told Brissenden he had received complaints about McDonnell's attempt to survey disputed land; also rumours that reserves were being made by Maori with agreements to dispose of them to private individuals when all the arrangements were completed. The pick of the lands would be reserved first, and then pass into private hands; the refuse would become property of the government (E2(a):345; E2:113). He reminded Brissenden of the need to consult the district officer and requested him not to proceed with any purchase where complications or difficulties were likely to arise between contending parties. Beyond the blocks under negotiation, he wrote on 23 January 1875, "there is little land which the Government at present desire to acquire" (E2(a):340; E2:115).

Brissenden's commission terminated five or six months later. By this time he had completed his land purchase negotiations. He went on to purchase land for the Crown in the Thames area, but was dismissed in October 1875 for the part he took in the issue of fraudulent miners' rights (E2(c):1-2).

A main point at issue between claimants and the Crown was the nature and purpose of tamana. The claimants allege that tamana was paid in respect of land under negotiation for sale, prior to any judicial determination of who owned it, and whether or not the recipients were owners. Tamana effectively committed the recipients to sell land before the title had been investigated by the Native Land Court. Its function was "to substantially guarantee the completion of land transactions once the recipient had been approved as an owner of the land by the Native Land Court" (B34:att 12-13).

The claimants submitted that tamana was essentially a pressure tactic, if not a bribe, to solicit sales and take advantage of Te Roroa's need for ready cash. It denied the sellers a competitive price for their land on the open market and tied them to low acreage rates. It assisted agents to purchase extensive areas of land quickly, cheaply and with scant regard for the requirements laid down in the Native Land Act 1873. By allowing Brissenden a commission as well as a salary, McLean further encouraged the practice.

The Crown submitted that the payment of tamana was necessary and reasonable in the circumstances occasioned by private competition and delays in completing land transactions and there was no evidence that the acreage rates of payment were unfair.

The Crown accepted McLean's and the Crown land purchase agents' letters at their face value. Yet there is substantial historical evidence that McLean had used pre-purchase payments to exert pressure on chiefs to sell in the 1850s, when a strong anti-land selling movement was emerging and sellers and non sellers were feuding over land. The native land purchase agents in his department continued the practice in the 1870s to execute the government's land purchase policy as quickly and cheaply as possible, overcome any Maori reluctance to sell, and get in ahead of private agents and speculators who could thwart the execution of government policy. McLean and others in his department were receptive to complaints from their agents about private competition and the urgent need for money and haste in completing land transactions.

In a later inquiry before R C Barstow, RM, Brissenden and Nelson were criticised by their successor, J W Preece, for making "very excessive deposits" and by Commissioner Kemp for "the reckless manner" in which they "paid money by way of advance to Natives having small or no interest in [the] lands" (A6:1017-1018). Yet Barstow found nothing irregular in these transactions.

In our view, the payment of tamana was undoubtedly an established pressure tactic, an unfair practice designed to purchase land as quickly and cheaply as possible, {FNREF:0-86472-088-2:2.1:5} and incompatible with the Crown's fiduciary duty under the Treaty. Tamana was a sprat to catch the mackerel.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.2 The Survey of Te Roroa Land

2.2. The Survey of Te Roroa Land

Waimamaku, Waipoua and Maunganui lands were surveyed under the survey provisions in ss69-74 Native Land Act 1873. The survey was under the control of the inspector of surveys. He or his deputy were required to authorise the survey in writing. They were further required to approve and deposit survey plans in court before the issue of memorials of ownership. In other words the land had to be properly surveyed before it could be put through the Native Land Court and sold (s33).

An understanding of how the survey was carried out and how the survey plans were done is fundamental to this claim. To follow these events readers of this report should refer to the maps we have included in the text. The blocks of land that we are primarily concerned to identify by survey are:

Waimamaku No 2 27,200 acres
Maunganui 37,592 acres
Waipoua No 1 35,300 acres

We are further concerned to identify certain areas in these blocks which Te Roroa wished to reserve from sale. These are:

Kaharau and Te Taraire in Waimamaku No 2
Manuwhetai Whangaiariki and Maunganui Bluff in Maunganui
Waipoua No 2 (Waipoua Native Reserve) in Waipoua No 1

Surveys were necessarily slow, costly undertakings and the acceleration of government purchasing and increased control over survey procedures gradually built up a backlog of uncompleted transactions. Although Brissenden was not allowed to appoint his own surveyors, the inspector of surveys, Theophilus Heale, arranged for S Percy Smith, his deputy in the Auckland office, to oversee and organise survey operations in the north. In September, October and November 1874, Percy Smith had discussions with McDonnell, Brissenden and Nelson to arrange the Hokianga survey. From December 1874 to June 1875, he was based at and around the Hokianga. He had 12 men under him, including his brother, Frank (F S) Smith (G10:3-4).

In January and early February, he began negotiations with local chiefs about block boundaries: Hapakuku Moetara on the Pakanae boundary; Peneti and Hapakuku Moetara about the boundaries of Raeroa, Waimamaku and Pakanae; and Te Whata

and Akatiti about the Waimamaku boundary. A difference of opinion existed between Te Whata and Peneti about the Waimamaku/Kahumaku boundary, but this did not impede the survey.

H and D Wilson from Whangarei were contracted to carry out work on the Waimamaku, Waipoua and Maunganui blocks. By December 1874, Dan Wilson was in Waimamaku but he did not receive written instructions from Percy Smith to proceed with the survey until it was nearing completion in early February. {FNREF:0-86472-088-2:2.2:6}

The survey of Kahumaku was completed in March and Davis's plan (ML 3221), for an area totalling 8517 acres (D18(a)) was submitted to the inspector of surveys in April although the boundary between Kahumaku and Waimamaku still had to be supplied.

Wilson completed his work at Waimamaku and proceeded to Kawerua on 17 February. That same day Percy Smith connected the boundaries of the Waipoua and Waimamaku blocks.

The Wilsons' plan of Waimamaku No 2 was not submitted in time for a court hearing scheduled for 14 May 1875 and postponed until 31 May. To meet this deadline Smith compiled a sketch plan of Waimamaku No 2, (ML 3268) from adjoining surveys {FNREF:0-86472-088-2:2.2:7} and approved his own plan subject to a proper plan being furnished. Smith's sketch plan was produced in court on 19 June. The claimants attributed Percy Smith's corner cutting to his haste to secure Waimamaku land for the Crown. The Crown submitted that vendors would also have been eager to settle the matter and that Smith's sketch plan was adequate for court purposes even if technically it contravened the Native Land Act 1873 (I2:(b)(iii):6-7).

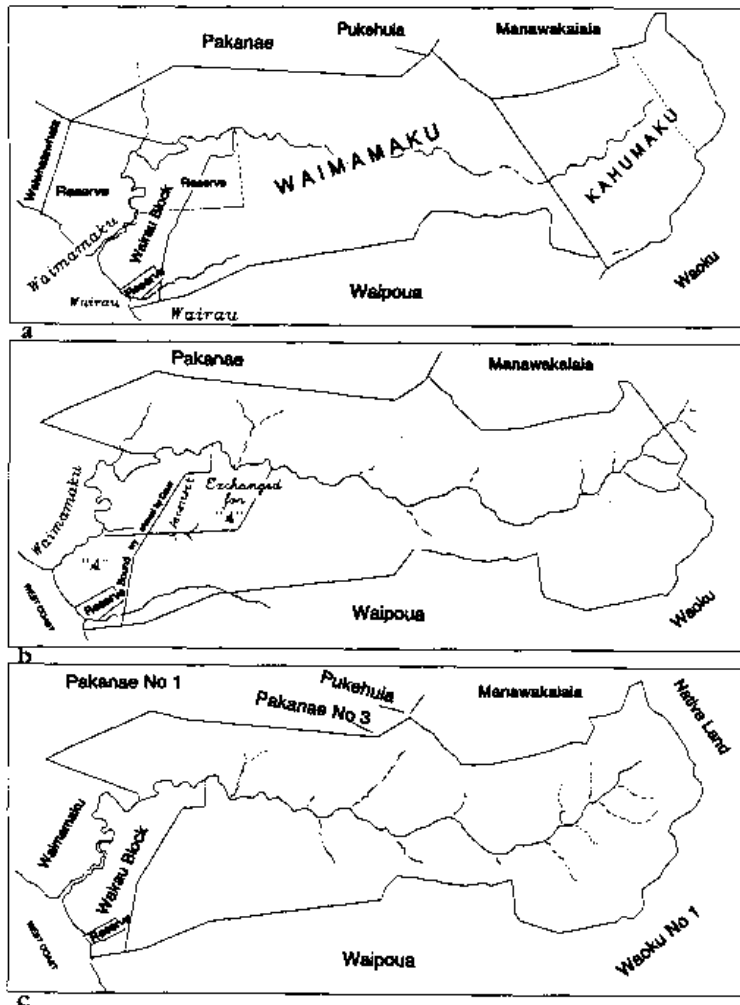


Figure 12: Diagrams of compiled and survey plans of Waimamaku 2 block, 1875 (a) from Smith's compiled plan of Waimamaku 2, ML 3268, 11 June 1875 (b) from H & D Wilsons' survey plan of Waimamaku 2, ML 3278, 14 July 1875 (c) from Kensington's compiled plan of Waimamaku 2, ML 3278A, 21 December 1875. Source: Department of Survey and Land Information, Auckland

Smith's plan included the whole of the Waimamaku, Kahumaku and Wairau blocks. It drew in the external boundaries of the Wairau wahi tapu reserve, and it clearly marked as "reserve" an area known as Kaharau straddling the northern portion of the Wairau block and part of Waimamaku No 2 block.

The tribunal researcher considered that Smith's plan clearly showed that Kaharau was outside the area being sold (D1:13). The Crown considered the lines round Kaharau were too indeterminate to reach any such conclusion (H3:27) but conceded that Smith was attempting to convey what the vendors required (H3:33). Obviously Smith lacked the information he needed to define the internal boundaries of areas Te Roroa wished to exclude from the sale. This could only be procured on the ground. His confusion and doubts over boundaries, total acreages and what areas were to be included in the sale are plainly evident from the indeterminate lines and different styles of lettering on his generally deficient sketch plan.

The Wilsons' plan of Waimamaku No 2 block (ML 3278), was produced over a month after the court hearing. {FNREF:0-86472-088-2:2.2:8} It was notified to the provincial surveyor on 27 July and returned to the Wilsons on 2 August. Neither Percy Smith's report nor the inspector of surveys' memorandum on the Wilsons' plan have been

located but it is referred to in a report on Judge Acheson's 1932 inquiry as being "imperfect" (D3:12-14). The Wilsons' plan was drawn after consultation between the vendors, the land purchase agents, Brissenden and C E Nelson, and the surveyors. Peneti Pana pointed out the boundaries to the Wilsons. As the Crown stated, the plan "clearly shows Kaharau and Te Taraire as being outside the Waimamaku 2 Block" (H30:2) and "should ... be viewed as the definitive record of the vendors intentions in respect of this sale" (H3:56-57). Having pointed out these boundaries and having seen the surveyors' cutting lines, the vendors would have felt quite satisfied that their wishes were being met.

The rejection of the Wilsons' plan necessitated a replacement to attach to the memorial of ownership for Waimamaku No 2 ordered by the court on 18 June 1875. It was also needed for a court hearing of an application for a partition from the named owners, and for the deed of sale. Plan ML 3278A, 21 December 1875, was compiled in the survey office by the chief draughtsman, W C Kensington, from adjoining surveys, approved by Heale and sent to the court on 14 January 1875 for the partition hearing.

Only the external boundaries of Waimamaku No 2 block were shown on Kensington's plan. These took in Kaharau which did not have any common boundaries with the adjoining blocks, Te Taraire and about 1200-1500 acres being Kahumaku, all of which had been excluded by the Wilsons. {FNREF:0-86472-088-2:2.2:9} Kensington excluded the Wairau block presumably because it was no longer in the sale. The total acreage contained within Kensington's boundaries was 27,200 acres (H3:63-69). Waimamaku No 2 block was sold on 10 January 1876, that is before the partition application came before the court. Kensington's plan was placed on the deed of sale. Thus Kaharau and Te Taraire were included in the sale contrary to the intentions of the vendors and the arrangements they had made with the Crown land purchase agents and surveyors.

On 25 January 1875, Sidney Weetman completed a check survey of part of the Waimamaku and Waipoua blocks. It was submitted to the survey office on 1 February, numbered ML 3435, and indexed in the Maori Land Plan Register as "Reserve, Waimamaku", a clear indication that it was a plan of reserves which local people had already pointed out on the ground to the surveyors. These were Kaharau,

the Wairau wahi tapu, and Waipoua No 2 but not Te Taraire.

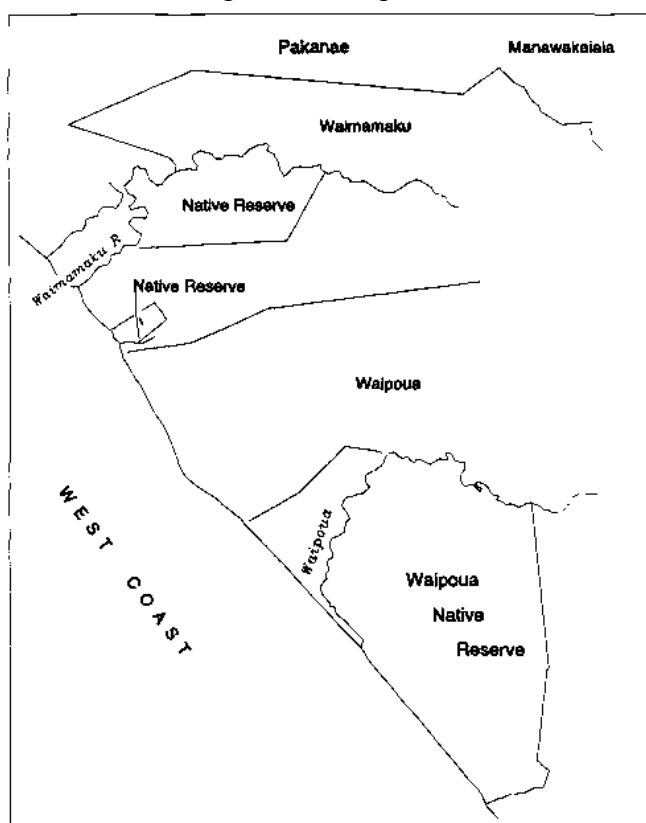


Figure 13: From Weetman's check survey of native reserves, ML 3435, 25 January 1878. Source: Department of Survey and Land Information, Auckland

Although Weetman must have been commissioned by a Crown agent to make his check survey, and was mapping the Kaharau reserve about the time Kensington began compiling his plan, his plan was not used to amend the deed of sale by excluding Kaharau nor to grant back Kaharau to the vendors. Nevertheless it indicates:

that at least someone in the survey office, and possibly other Crown agents, possessed an awareness that Kaharau had been sought as a reserve and at least initially took steps to ensure its reservation. (H30:5)

The survey of Maunganui-Waipoua by the Wilsons under Percy Smith's supervision began in February 1875. In evidence to the Native Land Court, 28 January 1875, Tiopira Kinaki said:

I procured the Survey of the land. I did not first speak to Parore about it. Parore did not attempt to obstruct the Survey but he was going to Shoot me. He intended to be in wait and Shoot me. I applied to have the land brought before the Court. The owners of the land are Roroa, Te Uriohau, N'Whatua, N'Rongo, Te Taou. Men of these tribes are now living on Kaihu. Enoho mana ana-I say so because Parore does not attempt to drive them away. (A4:432)

McLean had already been informed by Hapakuku Moetara on 7 December, that Parore had said that the survey should not be carried through. Moetara thought that Parore was wrong:

let the survey be proceeded with and the objections raised when it is brought before [the] Court, that would be the right course because all of us namely the tribes of te Roroa, Ngatiwhatua and te Uri-o-Hau have consented to hand this land over to Taare ... (Mr Nelson.) Parore alone is obdurate - if he intends to carry out his threat of sending the surveyors back by guns these tribes will rise to carry the Maunganui (survey) line through. (A4:393-394)

Nelson later recalled that when Wilson was surveying Waipoua he received a letter warning him to leave the land otherwise Parore would send a party to drive him off. The letter was in English and subsigned "Preece and Graham, agents for Parore" (A3:91).

On 24 February, J W Preece informed McLean that Parore had spoken to him and afterwards seemed to have withdrawn his opposition to the survey and sale and acknowledged it would be settled in the Native Land Court. He enclosed a letter Parore had written him, saying, "My idea of settlement is that the line should end at Waikara" (A4:398-399; E2:116-117). He recommended that instructions be sent to Wilson not to carry on the survey to the south of Waikara at the Maunganui end; further, that the agent be instructed to suspend negotiations for the purchase of that portion of the block until the matter was satisfactorily arranged among the disputants (A4:385).

In an undated letter to McLean, Parore explained his actions and interests at more length:

my land has all been surveyed my word was that the land be divided at Waikara If my land is divided by the law it will be right-If it is not divided I shall be forced into the ways of the ancestors and fathers. (A4:390-391)

McLean sought to reassure him:

You should leave the matter with me To say that the survey has been completed, is not a guarantee that the matter ends there-all the matters pertaining to the land have to be carefully debated. (E2:117)

On 11 March, McLean approved Preece's recommendation. Meanwhile, as a result of his own appreciation of the situation, Percy Smith had requested the Wilsons on 4 March to discontinue the survey and informed Heale:

a serious dispute arose as to boundaries, between Tiopira & party on the one side and Parore of Kaihu on the other. The disputed portion lies at Maunganui Bluff The whole of the boundaries are surveyed with the exception of that portion of the coast lying between the north boundary of Kaihu Block and a little stream immediately to the north of the Bluff it is quite possible to sketch in the intermediate coast line from the Trig stns as with the exception of the Bluff itself the coast is a perfectly straight line

As it is important to get the question of the title to Maunganui settled, seeing that it has been in dispute between these two hapus for many years past and is a matter that is always liable to crop up again, I submit that such a sketch survey, should be

accepted and if not deemed sufficiently accurate for further purposes, that the remaining piece of coast line should be surveyed when the title has been definitely settled

I should add that this arrangement about the survey of Waipoua seems to have given satisfaction to the natives concerned in the matter. (A6:894-895)

Hapakuku Moetara's evidence in the Native Land Court in January 1897 bears out Percy Smith's account of the situation, that Nelson:

was buying land for the Gov't. I had a lot to do with the Surveys. Rewiri Tiopira [Tiopira Kinaki's son who spoke English and acted as his agent] and another had charge of the Waipoua Survey. Parore interfered with some of our lines so Te Roroa came around, we saw Mr Smith, and I succeeded in getting the trouble smoothed over. (E2(a):151)

During the negotiations and survey, Te Rore Taoho, who lived at Opanake, seems to have conceded his authority to his nephew Tiopira in a rangatira way, expressed in the old saying: "You obtain the mana for all of us". Although Te Rore had received a payment of tamana, it is said he was against the sale.

As stated in this claim, the Crown agents and officials, from the outset omitted to recognise the mana and rangatiratanga of Te Rore Taoho and to negotiate with him (A1(i):17). The Crown researcher expressed the view that some kind of understanding may have been reached prior to mid-1874 by Te Rore and Parore as to the area over which each was to exercise predominant rights of ownership, with the only area of dispute seemingly centred in the Waikara-Maunganui Bluff area. In his view Te Roroa possibly began to promote a strong claim over the whole of Maunganui soon after July 1874 (E2:134-135). Neither of these views fits in very well with what we know about the disposition of the two rangatira and their people in the Kaihu valley and the use and occupation of Maunganui at this time. Te Roroa had kept their fires burning on this ancestral land. As Tiopira said in the Native Land Court, "Parore never fought us about the land between Waikare and Maunganui", meaning presumably the whole coastline from the Kaihu block to Maunganui Bluff (A4:434).

It seems more likely to us that Parore asserted a counterclaim to Maunganui in 1875 because he was affronted that Tiopira had agreed to sell and procured the survey without speaking to him about it and that he had not received any tamana. Parore had some rights in the land but not a clear title and the Crown must (or should) have known this. But it had ignored him until he spoke to Preece. Preece may very well have been appointed to replace Brissenden because McLean was anxious to ensure that Parore did not further delay or upset the sale.

There is substantial evidence that the survey of Maunganui-Waipoua was conducted under considerable pressure, as Preece and others manipulated the opposing chiefs, Tiopira Kinaki and Parore Te Awha, in the Crown's interest in accordance with the well-established tactics of divide and rule. Maunganui-Waipoua was partitioned into two blocks by survey inviting the later attempt by the court to solve the dispute between the two chiefs by awarding them one block each (C12:5). Preece

undoubtedly influenced Parore into giving up his opposition to the survey and leaving it to the court to settle the matter on this basis.

Percy Smith meanwhile was again under heavy pressure to complete survey plans in time for a court sitting. When the survey was stopped, the Wilsons had done enough to submit a technically unfinished survey plan of the Maunganui block, 10 May 1875 (ML 3242) and a plan of the Waipoua block (ML 3232), which is no longer extant (E2(a):399). No reserves had been cut out of the Maunganui block and the area round the Bluff had not been surveyed. The boundaries of the Waipoua Native Reserve which Te Roroa had arranged to retain as papakainga land were drawn on the plan of the Waipoua block.

Between 10 May and 15 May, a map of Maunganui block (ML 3253) was compiled by Percy Smith in the Auckland office from adjoining surveys and trigonometrical data and sent to the court. After the May sitting was adjourned, the plan was returned to the survey office and "notified to the Provincial Surveyor". Although an "approval" was not specifically recorded, its subsequent use implied its acceptance. A tracing was sent to the Native Land Purchase Department on 20 August. The map was returned to the court on 14 January 1876, produced at the hearing and annexed to the memorial of ownership and deed of sale (A4:452-458; A5:718-721; H28:9; E2:148).

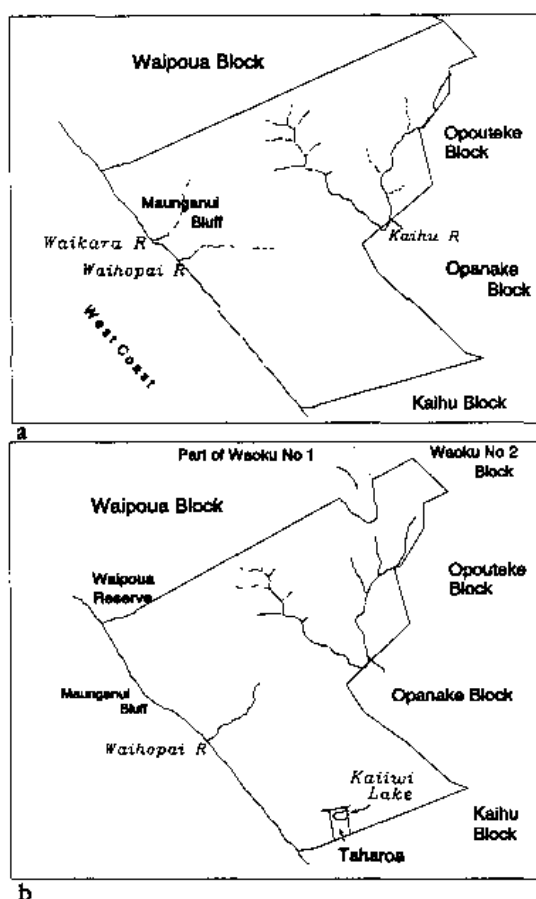


Figure 14: Diagrams of compiled and survey plans of Maunganui block (a) from H & D Wilsons' survey plan of Maunganui block, ML 3242, 10 May 1875 (b) from Smith's compiled plan of Maunganui block, ML 3253, 15 May 1875. Source: Department of Survey and Land Information, Auckland

In August-September 1875, Frank Smith returned to Maunganui to survey two reserves, Manuwhetai and Whangaiariki (A5:709-717; G10:1; E2:125). Almost

certainly he was completing "the arrangement" to which Percy Smith had referred on 4 March after he suspended the Waipoua survey. This would account for Percy Smith's remark that "this arrangement about the survey of Waipoua seems to have given satisfaction to the natives concerned" (A6:895). There is no conclusive evidence of who pointed out boundary markers for these reserves. Probably it was Rewiri Tiopira who had instructed the surveyors in Waipoua, but Te Rore Taoho who lived in the area must have known about the Maunganui survey.

Frank Smith's "Plan of Native Reserves", 14 September 1875 (ML 3297-8) was notified to the provincial surveyor on 15 September 1875 and entered in the Maori Land Plan Register under Manuwhetai and Whangaiariki. Registration under these names did not indicate that they were linked to the survey plan for Maunganui (ML 3253) although this number is on the plan of native reserves. The plan of native reserves was not sent to the inspector of surveys for approval. The native reserves were not marked on the map of Maunganui before it was sent to the court on 14 January 1876. Consequently they were not shown on the memorial of ownership or deed of sale. Once again the use of a compiled plan led to the loss of areas Te Roroa had arranged to reserve. {FNREF:0-86472-088-2:2.2:10}

Frank Smith had camped at Maunganui Bluff until his tents were both burnt down in January 1875 (E2(a):397). On his return to the area in August-September he did not attempt to complete the unfinished portion of the survey. Presumably Percy Smith did not want to risk any further dispute and was anyway satisfied that the straight line he had drawn on his map would suffice. Maunganui Bluff was left in the sale of the Maunganui block by reason of its not having been surveyed.

The Wilsons' plan of the Waipoua block (ML 3232) was replaced by an amended plan (ML 3277A) which could not be approved because it overlapped an adjoining block, Waoku No 1 which had already been surveyed and adjudicated upon by the Native Land Court. A new plan (ML 3277) was compiled in the office eliminating the overlap for a court hearing scheduled for August but subsequently cancelled. The Waipoua Native Reserve consisting of 12,153 acres, cut out of the Waipoua block and surveyed by the Wilsons, was recalculated and shown as 12,220 acres on the compiled plan (ML 3277).

The compiled plan (ML 3277) was approved by Heale and used to define the boundaries of Waipoua No 1 block when it was adjudicated by the court and sold to the Crown. The Waipoua Native Reserve was excluded from the sale and designated Waipoua No 2 block. The Wilsons' plan (ML 3277A) appears to have been used on the memorial of ownership for Waipoua No 2 to define the external boundaries, but the recalculated total acreage was substituted for the Wilsons' (I7:2-3). {FNREF:0-86472-088-2:2.2:11} The claim that the Crown omitted to ensure that Waipoua No 2 was fully and properly surveyed prior to the sale of Waipoua No 1 block (A1(i):24) is thus well-founded (see C12:5-6; H28:14-15; H29:4-6).

The errors and discrepancies concerning the boundaries and total acreages of Waipoua No 2, particularised in the claim and elaborated on in claimants' evidence (C12:6-8; H28:14-15; H29:4-6) raised issues relating to boundaries running along rivers and the coast which were not addressed by the Crown. {FNREF:0-86472-088-2:2.2:12}

The particular claim that needs to be dealt with here is that the Crown failed to correctly record traditional boundary markers, particularly for the north-east boundary which is some 40 chains short of the sacred hill Puketurehu and at variance with that shown on Weetman's check survey plan (A1(i):24). The north-east boundary on the Wilsons' plan was a straight line drawn from the original river traverse to Pukekaitui. The claimants were of the opinion that a fixed point, Puketurehu, should have been the boundary marker, not the river, which has subsequently changed its course (C12:7-8). Puketurehu was excluded from Waipoua No 2 because it was by-passed by the straight line. It seems to us that the particular claims concerning the boundaries and total acreage of Waipoua No 2 arose more from the different ways Te Roroa and European surveyors delineated boundaries than from the use of the Wilsons' unapproved plan and the compiled plan.

The evidence we have examined on how Te Roroa land was surveyed and how survey plans were furnished reveals a number of infringements of the survey provisions of the Native Land Act 1873. Even if they were minor in themselves their main purpose and cumulative effect was to accelerate the survey, the court's adjudication on title and the completion of the purchase negotiations. The use of compiled plans for court and sale purposes resulted in a failure to abide by the oral arrangements made with vendors to exclude certain wahi tapu areas from the sale or, in other words, the terms and conditions of sale agreed to by both parties. The failure to use Frank Smith's plan of native reserves cannot be simply excused as an oversight. Like the failure to use Weetman's check survey for the purposes it was intended, it reflects the prevailing attitude in official circles to native reserves. The Crown and its agents clearly failed to control the survey and furnish approved survey plans that defined boundaries for purposes of title and sale in accordance with the vendors' wishes and intentions. Its dealings with Te Roroa in respect of the survey were unfair and dishonourable and breached articles 2 and 3 of the Treaty.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.3 The Native Land Court Investigation of Title to Maunganui-Waipoua

2.3. The Native Land Court Investigation of Title to Maunganui-Waipoua

Beginning in March 1875, a series of Native Land Court sittings was held to cope with the outstanding cases from the area. Tiopira Kinaki applied for a Hokianga hearing into the Waipoua No 1 and Maunganui blocks "in the expectation that there he was more likely to receive justice" (C12:5). Having obtained an order from Judge Maning for the Koutu reserve he had confidence in him. Possibly he also had some inkling of Maning's hostility to the Crown land purchase agents (Preece in particular) who wanted him "to rob hundreds of owners of land", and of Maning's concern that Judge Monro, who was clearing most of the backlog of cases in the north, was "allowing himself to be led by the nose by the Government agents" (A6:1009-1012). But Maunganui was scheduled for a May hearing under Judge Symonds at Kaihu and Waipoua was advertised for a later hearing at Hokianga.

Monro had the reputation of passing cases quickly through the court and awarding title to chiefs only (A13:29; E2:132-133). He was also known to favour the sale of large tracts of Maori land to colonists:

the wide extent of the uncultivated holdings of the Maori ... [were] a curse to them rather than a blessing ... every legitimate encouragement should be held out to them to part with their surplus lands to those who can make the use of them for which they were intended, care being taken that each Native has ample land secured to him for his own maintenance. {FNREF:0-86472-088-2:2.3:13}

As Dr D V Williams in his evidence for the claimants pointed out, Monro "was an ideal Judge to suit the interests of the Crown's land purchase agents" (A19:6).

On 3 July, Preece informed McLean that matters with regard to Waipoua and Maunganui were "as good as settled". He had seen both parties and arranged to have a court sitting early in August. He had persuaded Parore to agree as the court was near his own place. He also told McLean that both Te Roroa and Parore's people had requested him to ask that Judge Monro hear the cases (A3:206-208; A4:481-482 passim). Preece was meddling in matters that were normally arranged by the court itself, picking out his judge and determining where he should sit. McLean overruled Preece's arrangements. Although he had received applications from other parties for sittings "at the more seasonable part of the year", his intervention was unusual.

The court sat at Kaihu, 27 January-3 February 1876, under Judges Monro and Symonds, with Hori Te Whetuki as native assessor. The Maunganui claim was heard first. Proceedings on behalf of the claimants, Tiopira Kinaki and Te Roroa, supported by Te Uriohau, Ngati Rongo and Te Taou, all hapu of Ngati Whatua, were conducted by Paora Tuhaere. Tuhaere was a Ngati Whatua leader who had been involved in the sales of Orakei, Manukau and other Waitemata blocks in the 1840s and 1850s and as an adviser to governments for over 30 years. Tuhaere was:

both pragmatist and visionary wanting tribal ownership of lands but aware that neither Government nor the Court favoured it, opposed to the sale of lands but alert to the reality that as the Crown could not be restrained from buying he could only urge his people not to sell. {FNREF:0-86472-088-2:2.3:14}

Te Rore Taoho, a major claimant from his mother's side, did not attend the court. The counter claimant was Parore Te Awha of Ngai Tawake hapu of Ngapuhi. His case was conducted by Taurau Kukupa of Whangarei, a brother of Te Tirarau (A3:97).

Tiopira claimed the land from ancestry; Parore counter claimed first from ancestry, but also from conquest and occupation. Common ground between them was descent from Toa. Disagreement centred on what happened after the battle of Te Ika-a-Ranganui in 1825. Te Roroa claimed they had never been driven off the land and were still living on it. Ngapuhi conceded that Te Ika-a-Ranganui was not fought for the purpose of taking land, but afterwards Parore had gone to live at Waipoua and the land from Wairau to Wairoa was under his mana. Te Roroa living on it were under his protection. Te Roroa responded that only two of their people had fought at Te Ika-a-Ranganui, neither of whom were killed, and that after the fight at Waiwhatawhata, Parore fled to Kaihu. Furthermore, Parore's grandfather had been driven from

Waipoua by Te Roroa rangatira and he was descended from Toa through his slave wife, Te Hei, not from the senior line. Judgment was deferred until after the Waipoua case was heard.

On 31 January, Paora Tuhaere said that Waipoua and Maunganui were one, and the evidence for Maunganui would do for Waipoua. Taurau Kukupa said the same (A4:420-448; A11:2; A13:29-31; C12(a):2; E2:133-135). The Native Land Court minute book contains no record of what followed.

According to Preece, the two judges found that Ngati Whatua, Uriohau and Te Roroa were subjugated by Ngapuhi, that Ngati Whatua and Uriohau were completely driven out, and that a portion of Roroa lived at Maunganui and Waipoua under Parore's protection and had remained there ever since. Neither Ngati Whatua nor Te Uriohau had any claim to the land. Those who had continued with Tiopira to live and exercise rights of ownership on the land were entitled together with Parore and his people. Both blocks being about the same size, the court awarded Maunganui, 37,592 acres, to Parore's party, and Waipoua, 35,300 acres, to Tiopira's party (A3:98).

Tiopira said he would go and take possession of the land; let the court suspend judgment. Hori Te Whetuki said he thought that Te Roroa had been badly treated. The presiding judge, Monro admitted that the assessor's expression of opinion was so contrary to the judgment itself that it could hardly be taken as concurrence. According to the law, the assessor had to concur in the judgment. The judgment could only become valid by both parties accepting it.

Hori Te Whetuki, later excused his "shouting so much for the natives at Kaihu" when he "spoke to all the assembled tribes about Maunganui on to Waipoua" to Chief Judge Fenton "my difference of opinion about Maunganui, and I was aware that we should choose different persons (as owners of that piece)" (A4:459-460).

The court adjourned to enable claimants to talk the matter over. That evening Te Roroa made plans to take up arms and occupy Maunganui (A3:92). Taurau Kukupa later ascribed the death of his two children to the arts of the tohunga, Otene Kikokiko, who was incensed by the evidence he had given in support of Parore's counterclaim and the court's majority decision. {FNREF:0-86472-088-2:2.3:15}

Preece, considerably strengthened by the tact, skill and standing of H T Kemp, civil commissioner for the Kaipara, attempted to mediate between claimants and counter claimants. The outcome was the arrangement announced in court on 3 February. Parore wrote to Tiopira and chiefs of the other side:

I consent that you should have Maunganui, and that I have Waipoua. The piece outside Waipoua [Waipoua No 2 block] to be for you only; and I also consent to the £100 at Waimata. (A3:92)

Tiopira wrote:

I consent to your having Waipoua and my having Maunganui. (A3:92)

Memorials of ownership for Maunganui, 37,592 acres, and Waipoua, 35,300 acres, were awarded on 3 February 1876 and both Tiopira Kinaki and Parore Te Awha were named on each (A4:452-458; A4:458(g)-458(j)). A memorial of ownership for Waipoua No 2, totalling 12,220 acres was then awarded to Tiopira Kinaki and nine others, Hapakuku Moetara, Wiremu Moetara, Rewiri Tiopira, Puka, Wiremu Tuwhare, Naera, Marara, Te Rore Taoho and Peneti (A4:458(a)-458(f)). Until then Preece had been under the impression that the block contained only 6000 acres not 12,200 acres (A3:92), an indication that he knew little about the arrangements made by Brissenden, Nelson and the Wilsons with the vendors. The block was entered as Waipoua Native Reserve in the minute book and on the deed of sale for Waipoua No 1 block. The names on the memorial of ownership had been given to the court by Tiopira Kinaki. Survey plans were drawn in the office and later annexed to these memorials of ownership.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.4 The Sale of Maunganui-Waipoua

2.4. The Sale of Maunganui-Waipoua

Preece now proceeded to complete the purchase of Waipoua and Maunganui dealing with each of the named owners separately. There was nothing unusual about this divide and rule tactic. It had been used, for example, in the notorious Heretaunga purchase by private agents (A19:30-31). First Preece sent for Tiopira Kinaki and Paora Tuhaere. On 8 February, in the presence of Judge Symonds, Kemp and J S Clendon (native interpreter), an agreement was completed to purchase Waipoua and Maunganui at 1s 1d per acre. An extra £56 13s 8d was added to make an even amount of £4000 for the 72,892 acres. From Tiopira's half share of £2000, £620 paid out in tamana was deducted and £100 was added on account of Parore for Waimata. Tiopira wanted 1s 6d per acre, but Preece stuck to the 1s 1d offered by Brissenden. The two deeds were read by the interpreter and signed by Tiopira, but at this time the respective sums had not been filled in.

As Preece carefully explained in his report on the whole set-up to the native office, he was now faced with the "difficulty" of Parore, who had not agreed to sell or to name a price. At first Parore insisted on 5s and 2s 6d per acre. After a day or two of patient waiting, during which Preece received guidance from Kemp "as to conceding to a higher price", agreement was reached with Parore, "with the concurrence of his people" to purchase his interest in the whole of the two blocks for the sum of £2500, that is, at a fraction over 1s 2¼d per acre. Preece also agreed to let Parore have a reserve of about 250 acres in Maunganui, being an eel fishery at Taharoa. Parore signed the deeds and was paid £2400. The sum of £100 was deducted for the Waimata payment to Tiopira (A3:98-99).

For each purchase, a standard form of deed in English was used conveying land and appurtenances to the Crown. The Maori version, read out to the people by Clendon, simply stated that all the land described had passed to Queen Victoria, her heirs and successors for ever. After the purchase was completed, the deeds were referred to the trust commissioner, T M Haultain, an ex-soldier and minister of defence, for inquiry under the Native Lands Frauds Prevention Act 1870. On 25 February he affirmed on each deed that he was satisfied that none of the provisions of the Act had been breached.

There is no evidence that the local district officer carried out his functions under s24 Native Land Act 1873 of setting apart inalienable reserves of at least 50 acres per person, and under s21 of compiling genealogies and maps but these provisions of the Act were not usually carried out by the court (A19:54). The memorials of ownership

had been issued under s46 of the 1873 Act which recognised voluntary arrangements come to by claimants and counter claimants amongst themselves. Whether the court complied with the requirements of the Act will be considered later in the report.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.5 Grievances Over the Sale and the Crown's Response

2.5. Grievances Over the Sale and the Crown's Response

When Tiopira discovered that Preece had let Parore have an extra £500, he "was troubled at the deceitful conduct of ... [the] European Land Purchase Agents" and the "tricky manner" in which they had acted. He had been "derided by the Ngapuhi" and was "overcome with shame". He said to Paora Tuhaere, you must urge Preece and Kemp to divide the £500 (A3:92-93). Paora complained to Kemp (A6:1010) and Tiopira went back to his place, where he remained "in great trouble of mind". On 5 May 1876 he wrote to McLean about what had happened. He had given Kemp Parore's letter and his letter to read out in court so that the whole of the tribes present might hear Parore's word consenting to pay him £100 for Waimata, but Kemp had not read them. He then knew that they might say that the £100 was from the sale of Maunganui. He was further troubled that Parore was given £2500 and a 250 acre piece of land, whereas they should have received £2000 each. By not entering the price of £2200 on the Waipoua deed and £2300 on the Maunganui deed until after he had signed them, the European land agents had made it look as if he had signed his name for these sums (A3:92-93).

On 6 March, an Auckland lawyer, J A Tole, on Tiopira's behalf drew the attention of the Auckland provincial superintendent, Sir George Grey, to the manner in which the deeds had been executed. Grey asked the colonial secretary at once to institute an inquiry. The matter was referred to Kemp and Preece. Kemp was of the opinion that Tiopira was more than compensated for the extra £500 received by Parore with the 6000 acre reserve that had turned out to be 12,000 acres. Preece submitted that Tiopira received for himself alone over 12,000 acres to which Parore was as much entitled by the court's verdict. Furthermore the purchase of their respective interests were two entirely different negotiations. One deed was made to cover both transactions simply as a matter of convenience. Both Kemp and Preece ignored the fact that the vendors had excluded Waipoua No 2 from the sale at the outset and that it was not part of the final settlement (A3:87-88).

Grey again asked the government to institute an inquiry and McLean requested R C Barstow, resident magistrate, Auckland, to investigate the matter and report to him. Barstow reported on 30 June. In his opinion there were two charges against Preece. First he had induced Tiopira to complete the sale by a representation that Parore would not receive a greater amount for his share. Secondly, the consideration money was not expressed on the deed when Tiopira signed it. The fact of the matter was that the figures were merely pencilled in. Then, should Parore be induced to sell, the sums paid to him might be added to those given to Tiopira, and one conveyance to the

Queen be taken from both vendors. He could find no irregularities in these transactions. Rather he drew attention to Nelson's dishonourable behaviour in keeping a diary in which he made notes which seemed to throw discredit on his superior, Preece, whilst in receipt of government pay as his clerk and assistant. He considered that Tiopira had received his due and that he and Paora were only begging for more money so that Tiopira's chiefs might not be put on a lower scale than Parore's (A3:100-107; see also A6:1013-1031).

Barstow's findings were essentially an endorsement of the views of the Crown officials and agents who had participated in the sale transactions and insisted that Tiopira had been excessively paid because he was granted a 12,220 acres "reserve". As we have seen, this was a misrepresentation of the facts. Waipoua No 2 was defined by survey so that the vendors could retain it as papakainga. Barstow ignored the question of whether Tiopira had been cheated and cast doubts on Nelson's evidence by suggesting he was a mischief maker. Yet Nelson was the only person from whom he obtained a statement who had been involved in the early negotiation and survey arrangements with Tiopira.

Tiopira persisted in his protest over the extra payment and the 250 acre reserve granted to Parore for some years (see below, pp 110-111). Two letters (no longer extant) from other Maori hint at some post-sale discontent, for example over not receiving a share of the proceeds (H43:1-4). The lack of any other evidence of protest before 1899 is due to the fact that Te Roroa did not realise that the areas they had intended to reserve from the sale had been sold until the Crown opened them up for settlement. The cries that followed will be discussed in Take 7 of this report. The areas concerned were Manuwhetai, and Whangaiariki which were not shown as reserves on Smith's compiled plan of Maunganui, and Maunganui Bluff which was not properly surveyed.

We now need to consider why these omissions by the survey office were not detected in court. One reason was that the rangatira who had kept Te Roroa's fires burning in Maunganui and was managing this resource area, was Te Rore Taoho. He was permanently based at Opanake. His absence from court needs to be considered in its cultural context and against the background of earlier land quarrels with Parore and possible disagreement with Tiopira over the sale of Maunganui land. At the Native Land Court hearing of the Kaihu block in 1871 requested by Parore, Te Rore Taoho had initially stopped the survey and along with Tiopira opposed Parore's claim in court (A13:26; A26:17). But Tiopira had known nothing about Parore getting the case of Opanake heard at Helensville in 1873 and saying that the land belonged to both Te Rore Taoho and himself (to the exclusion of Tiopira and Hapakuku Moetara) until after the court had dealt with it (E2(a):162).

The claimants implied from Te Rore Taoho's absence from the court hearings on Maunganui that he was against the sale. In their view, only selected Te Roroa were present (A26:18). They further pointed out that at a Native Land Court sitting in January 1897 Te Rore stated:

I did not associate myself with the hapu at the hearing of the Maunganui case

I stood alone when Maunganui went through the Court I did not touch the money
.....

It was Tiopira who distributed the purchase money of Maunganui among the hapu
Tiopira and Hapakuku did, I was averse to it. (E2(a):162-169; B34:att 14)

Yet the applicants for title on the Wilsons' survey plan of Waipoua block (ML 3277A)
were Tiopira, Hapakuku Moetara, and Te Rore Taoho.

According to the claimants:

It is obvious that some arrangement had been made between all three.

The original Waipoua survey map is of both the block to be sold and the reserve. Te
Rore was admitted to the reserve but would have nothing to do with the sale

Furthermore, as the Court was presumed to be investigating lands for sale, and not for
"reserves", Te Rore probably felt his presence was unnecessary. It may also be that
this indicated Tiopira's sensitivity. Te Rore did not actively dissent in the sale and this
raises the issue of obligations owed by Tiopira to Te Rore and whether they were met.
It is said that Te Rore's absence was a Maori matter and yet the Court adjudicated the
block without hearing his evidence. (B34:att 15)

The Reverend Maori Marsden gave evidence that cultural considerations would have
prevented both Parore and Tiopira from selling Manuwhetai and Whangaiariki and
would explain Te Rore's opposition to the sale and absence from the second and third
court sittings:

(a) Parore had two children buried there.

(b) Waiata was buried there. His brother Maunga and his son Taoho were also buried
there. These were the high chiefs of Te Roroa and Tiopira Kinaki's grandfather and
great-grandfather

We know that Te Rore Taoho certainly was against the sale. His boycotting of the
second and third court sittings was a clear indication.

Te Rore was being culturally consistent. Now the normal method of decision making
was by consensus.

If the matter was not critically important ... [then] a whanau or tribe would not worry
too much about achieving unanimity. To allow others to proceed, the chief of the
dissenting group would simply say,

"Waiho mai matou ki waho." "Leave us out"

with the unspoken understanding that the others could proceed. Sometimes they
would make this explicit with the words,

"Mahia mai e koutou." "You carry on"

If that matter was a weighty one as this certainly was; and consensus was essential, as in this case, then a chief would boycott the process. This, in Pre-Pakeha times, was an effective veto. (A21(a):4-5)

Tiopira, it seems, had taken over and Te Roroa Taoho felt excluded:

Ka pu te ruha
Ka hao te rangatahi.
(The old net is cast aside
The new goes a fishing).

Another reason for the failure to detect the inclusion of Manuwhetai, Whangaiariki and Maunganui Bluff in the sale was that the court did not address the questions of exactly what areas of land were being sold and reserved, only the dispute over ownership. The survey plans for Maunganui and Waipoua No 1 produced in court were taken as read.

A point at issue between the Crown and the claimants was whether Tiopira actually saw plan ML 3253 for the Maunganui block and plan ML 3277 for Waipoua No 1 block before he signed the deed of sale.

We have considered their evidence (I15:1-4; I16:1-14) {FNREF:0-86472-088-2:2.5:16} and are of the opinion that Tiopira did not look at the plans. Nor did Paora Tuhaere. Tiopira almost certainly could not read maps or follow the descriptions of boundaries based on survey data not Maori place names. He would not have known that the plans produced in court and placed on the memorials of ownership and deed of sale were compiled plans that showed external boundaries only, not internal boundaries of reserves. He would have felt confident that the oral arrangements he and others made with the surveyors had been carried out. Paora Tuhaere in a statement taken from him in Barstow's inquiry declared that he was present at the sale and heard the deed interpreted by Mr Clendon to Tiopira "I did not see the writing; I only listened to the interpretation" (A3:102).

Another point at issue between the Crown and the claimants was exactly what the claimants understood they were selling. Did the vendors, for example, understand they were selling growing timber? Oral tradition among Te Roroa is that the trees on Waipoua No 1 were not sold (A1(i):22). As we have seen, the standard form of land deed no longer spelt out what chiefs were selling as McLean's earlier deeds had done. It simply referred to "land and appurtenances" (translated as "whenua"). In law Te Roroa did not retain any rights to timber after the Maunganui and Waipoua No 1 blocks were sold. Far from being concerned actively to protect Te Roroa interests, the Crown was out to get as good a deal as possible. It ignored the value of the timber or gave it none at all. By purchasing large blocks of land well ahead of need for public works and settlement it was able to negotiate very low acreage rates. The underlying assumption of the Crown was that Te Roroa's present and future needs, including timber, would be met from lands reserved from the sale. Yet in respect of the Maunganui-Waipoua purchase, the Crown not only omitted to implement the no less than 50 acre per head rule; it also omitted to reserve Manuwhetai, Whangaiariki and Maunganui Bluff. Clearly it failed to carry out its treaty obligations to protect Te Roroa's existing resource base and to provide for Te Roroa's future needs.

Parore's counterclaim was based on conquest and occupation, and the court seemingly applied "the 1840 rule" laid down in 1869 by Chief Judge Fenton, by which Maori customary titles to land were deemed to have been stabilised in the year of the Treaty of Waitangi and "the coming of the law". While conquest was seen as a legitimate claim prior to 1840, it had to be supported by evidence of occupation. {FNREF:0-86472-088-2:2.5:17} As we have seen, Parore only resided at Waipoua for a short period. By 1840 he was based at Kaihu and Te Roroa were returning to Waipoua-Maunganui and exercising their rights to cultivate. Trade, Christianity, and more settled government enabled them to live at peace. It seems likely that the conquest take was asserted in court to strengthen Parore's interest in the land based on descent. In awarding Maunganui to Parore and Waipoua to Tiopira, the court applied the 1840 rule in a way that was so favourable to Parore that Hori Te Whetuki objected, Tiopira planned armed resistance and Taurau Kukupa believed he had been bewitched by an incensed tohunga.

The claimants submitted that the voluntary arrangement subsequently made by Parore and Tiopira "clearly sought an equality of interest between the opposing parties in the Waipoua No 1 and Maunganui Blocks and was the sole legal basis of the subsequent order of Court" (C12(a):3). The evidence on this is conclusive. Preece's payment of an additional £500 and the reservation of about 250 acres at Taharoa for Parore, breached the principle of equality of interests, and was an insult to Tiopira's mana as was failure to read Kemp's letter in court which made it clear that Tiopira received £100 for Waimata and that this was not part of the payment for Maunganui-Waipoua. Preece and Kemp acted in bad faith towards Tiopira, and resorted to unfair practices dishonourable to the Crown.

The way in which the land purchase system operated was clearly to the disadvantage of the sellers. Place names chiefs used as boundary markers were not shown on the survey plans. Survey plans based on compiled plans were drawn in the office and attached to deeds of sale after they were confirmed by the court. Although Maori versions of the deeds were read out and explained, they did not describe boundaries in the only way the vendors would have clearly understood, that is, by naming traditional boundary markers. Sellers did not realise that the oral arrangements they had made about boundaries and reserves were not adhered to in the deed of sale.

There is substantial evidence that neither the trust commissioner, Haultain, nor the resident magistrate, Barstow, carried out their inquiries properly. The trust commissioner signed the deeds notwithstanding Preece's and Kemp's unfair practices. Trust commissioners were, anyway, part-time officials who could hardly be expected to investigate all transactions thoroughly (A13:32). {FNREF:0-86472-088-2:2.5:18} Barstow's exoneration of Preece's activities and conclusion that there were no irregularities in the purchase is contrary to evidence we have received and respect. Preece's argument that Tiopira gained more than his fair share because he and others were awarded Waipoua No 2 block is "highly irrelevant", as that block was a separate adjudication and not for sale. As for Preece's statement that he thought the block was only 6000 acres until later, it was shown as 12,220 acres on the plan produced in court. Barstow treated the evidence of the Crown officials as more reliable than that of Paora Tuhaere and had no regard for Tiopira's statement that he understood he and Parore were to receive equal payments. He held Nelson, the only European who

appeared to support Tiopira's case, in low regard and suspected his motives (A13:34; E2:182-204). Clearly this was not a fair inquiry.

In conclusion we need to consider whether the manner in which the investigation of title and the sale were conducted was fair and reasonable in Treaty terms to Te Roroa.

Maning's private sentiments about how the Native Land Court system operated under Judge Monro are pertinent here:

the whole affair [he wrote to J Webster] is just a pretty little kettle of fish he [Monro] wittingly and deliberately ignored the rights of nine tenths of the owners of almost every case he had to do with and left them at the mercy of a few Rangatira sharks and the consequence is that as the right owners have not signed the Transfers or been named in the grants the Govt [Government] have not got a single valid title in the North ... (A6:1011)

Under the Native Land Court system, Tiopira and Parore became absolute owners of Maunganui and Waipoua No 1, not trustees for their hapu. Every other person with rights in these blocks was legally disinherited although some of them concurred in the sale and shared in the proceeds. There were some undercurrents of post-sale discontent (A13:33) but no sustained protest until the Crown began to open up the land for settlement. Te Rore Taoho and his people did not immediately mention that they had lost Manuwhetai and Whangaiariki which they understood had been cut out of the sale, nor Maunganui Bluff.

The Crown's title to Maunganui and Waipoua No 1 block was blighted by the failure of its agents to properly complete the survey and further to investigate title. In completing the purchases, Crown agents were unfair to Tiopira and breached the voluntary agreement between Tiopira and Parore which was explicit in the terms of sale. In investigating title and purchasing the Maunganui and Waipoua No 1 blocks, the Crown failed to actively protect Te Roroa interests under article 2 of the Treaty and properly to recognise the rights of its subjects under article 3.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.6 The Investigation of Title and the Sale of Waimamaku No 2

2.6. The Investigation of Title and the Sale of Waimamaku No 2

An application for the title of Waimamaku No 2 was lodged on 4 February 1875 by Tiopira Kinaki, Hapakuku Moetara and Te Rore Taoho for Te Roroa (D3:32). An application for the title of Raeroa and Kahumaku was lodged on 4 February by Te Whata, Nopera, Hone Tautahi, Komene Poakatahi for Ngati Ue (D3:28). A hearing scheduled for the March sitting of the Hokianga court was adjourned as no plans were produced. Brissenden attributed this to Smith's serious illness and Nelson's absence (A3:231-232; D1:12; H3:19).

The court began its adjudication on 12 June 1875. Judge Monro presided with Wiremu Hikairo as assessor. Percy Smith, Brissenden, Nelson and Preece were all present. The district officer, William Webster, had no objection to the case proceeding. As Waimamaku overlapped Kahumaku it was agreed that the two claims should be heard together. A "tracing" of Waimamaku was produced in court, which was obviously the sketch plan 3268 compiled and approved by Smith the day before. Te Whata affirmed that the boundaries on the map were correct. Tiopira and Peneti said that they knew the land on the map. Clearly they were all referring to the "tracing produced of Waimamaku". Hokianga stated he knew the land described on the plan of Kahumaku, clearly a reference to Davis's plan which was also produced. Komene Poakatahi subsequently pointed out that "the line shown on the map as the East boundary of Kahumaku is not a pakeha line ... It is an old Ancestral boundary" (D3:75-87; H3:30-32; D1:13).

Most of the evidence concerned old rivalries between Te Roroa, Ngati Ue, Ngati Pou and Ngaitu and the Waimamaku-Kahumaku boundary. Judgment was delivered on 18 June in favour of the descendants of Tarahape (from whom Te Roroa claimed descent), Taitua and Te Whareumu and Uetaoroa (D3:106). In other words the claims of all the hapu were recognised (D1:14). The court then adjourned to allow the claimants to decide on names that should be on the memorial of ownership.

On 19 June, Hapakuku Moetara stated they could not agree; Heta Te Haara then stated that Tiopira had gone back to his place and commissioned him to act on his behalf; further, that Tiopira had agreed Heta Te Haara's name should be on the memorial instead of his. Hapakuku Moetara then said they had had a meeting of all parties and agreed on the persons to be considered owners. Fifteen others assented and there were no objections. Judge Monro ordered a memorial of ownership naming Heta Te Haara of Te Roroa, Hone Mohi Tawhai of Mahurehure, Ngakuru Pana of Ngati Pou, Te Whata of Ngaitu and Hetero Waipapa of Ngati Ue for the whole block

including Kahumaku, to be called Waimamaku No 2 be inscribed on the court rolls (D3:108-109). Having accepted the list of owners supplied by the claimants themselves under s46 Native Land Act 1873, the court was not legally required to list the names of all the owners on the memorial (H3:39). Yet the identification of all the owners should have been a pre-condition of all land sales.

An application for the partition of Waimamaku No 2 was made on 25 June 1875 by Heta Te Haara, Ngakura Pana and Te Whata (D3:22). Hakaraia Te Manu had also applied for a subdivision on 16 August 1875 (H3:39). These applications, together with a request for a rehearing which had been refused and a complaint of unfair dealing, signified some dissatisfaction with the court's order (H3:39-41). As Preece wrote to McLean, 8 July 1875, the purchase of Waimamaku was "as good as finished", but the interests of "two dissentients" had yet to be defined (A3:199-203; H3:42).

The deed of sale for Waimamaku No 2 block was dated 10 January 1876. It was signed by the five Maori owners in the presence of the resident magistrate in Hokianga, Spencer von Sturmer. The block sold contained 27,200 acres which was the total acreage on Kensington's plan. The payment price was £1203 6s 6d. The description of the boundaries in the schedule refers to Kensington's plan ML 3278A and includes Kensington's links. The plan attached to the deed of sale is a copy of Kensington's plan ML 3278A, renumbered 3278, signed by von Sturmer and the sellers. No reserves were cut out of this plan.

We do not know whether Kensington's plan was approved in time to be attached to the deed for the signing or, if not, an unapproved plan or tracing was produced at the sale. In raising these latter possibilities counsel for the Crown was merely speculating (I2:(b)(iii):22). All we know is that Kensington's plan was approved by Theophilus Heale, inspector of surveys, in his Auckland office and entered in the Maori Land Plan Register. No dates were recorded in either case. The remarks beside the entry indicate that the plan was approved and entered sometime between 21 December 1875 and 14 January 1876. The remarks were as follows "'approved' to N.L.C. for subdivision 14 Jan/76. Returned 16 Feb/76. Placed on memorial of ownership 12 Apr/76" (E2(a):403).

The application from Maori owners to partition Waimamaku No 2 block came before the Kaihu Native Land Court on 31 January 1876. Kensington's plan had arrived because it was stamped with the court seal. It was not minuted as having been produced in court because the block had already been sold to the Crown and Kemp successfully applied to have the case dismissed (H3:64; D1:16).

Trust Commissioner T H Haultain certified on 25 February 1876 that he was satisfied with the results of his inquiries that the sale of Waimamaku No 2 block was valid (D2:28-31). This was probably little more than a formality. Certainly there is no evidence he carried out any kind of investigation.

On 17 January 1876, Preece submitted a report on the Waimamaku purchase to the Native Department, noting that he had completed the purchase of Waimamaku and that the Kahumaku block had been included in the same deed (H3:74-5). We know little about its contents. The Native Land Purchase Department had been merged with

the Native Department from August 1875 and the report was in the department's records destroyed in the Parliament Buildings fire of 1907 (H48:8).

On 10 April 1876, Preece despatched the deed for Waimamaku No 2 block to the Native Department. On 8 June 1876 he submitted the boundaries of the Waimamaku block, "as they appear on the Certificate of Title issued by the Native Land Court". The native undersecretary replied on 17 June, pointing out that it would facilitate the work of his office "if in every instance a copy of the Court Order was forwarded at the time of sending the deed" (H3:75). On 13 July 1876 Waimamaku No 2 block, including Kaharau and Te Taraire as shown on Kensington's plan, was proclaimed waste land of the Crown (D3:1-3).

Meanwhile, on 12 April 1876, Kensington's compiled plan was placed on the memorial of ownership and renumbered 3278 (D3:12-14; H3:77). The total acreage of 27,200 acres on the memorial was the same as Kensington's. The links, giving a detailed description of the boundaries, were annotated as being examined by Kensington on 19 April 1876. In fact they are Kensington's links. This evidence indicates that the plan annexed to the memorial and the total acreage and links were added about three months after the block was sold. The memorial of ownership was "certified as a true copy" and inscribed on the court rolls by Judge Monro on 1 September 1876 (D2:23-27), that is, almost eight months after the block was sold.

In the final stages the purchase proceeded notwithstanding a letter from Peneti Pana and others to the Native Department dated 5 June 1876 stating they were "in great trouble over their lands". Preece's reply, dated 14 July, stated that Ngakuru Pana had signed the deed and received his share of the money. H T Clarke subsequently wrote to them that it was now too late to reconsider the matter. Peneti Pana's letter has been lost so the precise cause of "the great trouble" is unknown (H3:77-8).

Dr Patrick Hohepa's translation of a letter written by Hapakuku Moetara, Peneti Pana and others to the Native Minister, 27 January 1892, indicates the probable cause:

When Pirihi (Preece) and Taare (Charles "Nelson") purchased the big block of Waimamaku No 2 a message was written clearly in the deed that a portion of the land will be sectioned off (teakina) for the Maori. Our sellers, on the other hand, only signed the sale of the big block. Charles (Nelson) wrote in his books his separating that other block outside of the sale of the big block. We think that his books are with the Department.

That is why we say that we still have possession of that portion of that block right from the distant past up to today. (D11:13)

The letter clearly indicates that the reserves arranged by the vendors with Nelson were included in the sale. Nelson's books have not been found. Again reserves were lost through the use of a compiled plan and lack of identification by traditional features. Vendors depended on oral arrangements and did not look at the documents.

In her final submissions on the sale and purchase of Waimamaku, counsel for the Crown conceded that the vendors of Waimamaku land intended to reserve Kaharau

and Te Taraire, albeit with some dissembling on Kaharau when she should have accepted the facts:

only ... a full enquiry and piecing together of circumstantial evidence ... has allowed the Crown to accept reasonably firmly that there is sufficient doubt about whether the vendors did or did not intend to sell "Kaharau"....

... in respect of Te Taraire the evidence is not so clear The lack of protest in respect of Te Taraire in the intervening years is ... a telling indicator, especially when compared to the profusion of petition and complaint in respect of "Kaharau". (I2:(b)(iii):27-28).

She wholly rejected the allegations of the claimants that the Crown somehow knowingly included Kaharau in the purchase and deliberately breached negotiated agreements with the chiefs. Virtually she was admitting the Native Land Court system caused the problem. She tried to pass off Kaharau by suggesting that possibly the Crown believed that Wairau North was the extent of the reserve asked for. She submitted:

that delays, changes of personnel, disputes among vendors and a mistaken assumption that the vendors would have been alerted to any difficulties by a reading of the deed or the information contained on the map led the agents of the Crown into a misunderstanding of the terms of the sale. Counsel for the Claimants has stated that the Chiefs would have relied on oral undertakings rather than the written words. Perhaps he is right, but by 1876 the Chiefs and their advisors, experienced land sellers, were surely aware of the nature and meaning of these documents. (ibid:27)

As to the irregularities and short cuts resorted to by Crown agents to purchase Waimamaku No 2 block, she submitted that surveys were costly and time consuming and vendors, as well as Crown agents, were anxious to complete the sale. The court proceeded to investigate the title and order a memorial of ownership before a proper survey plan was completed and approved. Smith's sketch map was sufficient for immediate purposes and everybody who took part in the hearing knew it was provisional (ibid:9-10).

She was unwilling to concede a possibility that Kensington's plan was not seen by vendors before they signed the deed of sale and before the plan was sent to Kaihu. Possibly an unapproved copy or tracing was sent to Herd's Point. The claimants' allegation that vendors signed the deed of sale without seeing Kensington's plan and that the description of boundaries and total acreage in the schedule were added later was serious, particularly as the deed was signed in the presence of the resident magistrate and the Maori version was certified by the interpreter. In her view it seemed to have arisen because the plan did not include the reserves which it is claimed the vendors wished to have made (ibid:22). She did not scrutinise the claimants' evidence on this point. Rather she cited the opinion of the Crown researcher that the vendors, on signing the deed, would have been convinced their wishes in respect of "Kaharau" were being met and that possibly they were told the reserves would be added to the map and deed later (ibid:22-23). She conceded the possibility that Weetman's plan showing the Waimamaku reserve was intended to be

added to Kensington's plan later, noting that data from Kensington's plan was added retrospectively to the memorial of ownership (ibid:23-25).

Her submissions relied mainly on the evidence of the Crown researcher, based on detailed material from official records, accepted at its face value. She was clearly reluctant to accept oral evidence of what was said, agreed to and acted upon at the time, unless it was supported by maps and documents. She failed to interpret written evidence in a wider historical and cultural context. She played down the irregular acts and sharp practices of the agents of the Crown. She assumed that because other hands worked on survey plans and the eastern boundary was disputed, there was confusion about what land was to be included in the sale and what was being reserved.

We have respected the oral evidence that vendors intended to exclude Kaharau and Te Taraire from the sale and understood they were excluded when they signed the deed of sale. It matches cultural imperatives to protect greatly respected and treasured taonga. We consider that irregularities occurred partly because of the anxiety of agents of the Crown to purchase large areas of land as quickly and cheaply as possible. We believe that the prevailing reluctance to set aside reserves may have contributed to failure to reserve Kaharau and Te Taraire. We attribute their loss directly to the use of Kensington's compiled plan on the deed of sale and failure to reconsider the sale in the light of Weetman's check survey and letters from the vendors. As Daniel Ambler, a descendant of Te Whata observed:

It was the written word that mattered, no longer the spoken. In this the Maori was totally reliant on the honesty of the Pakeha, his pen, his papers and his maps. But the people had great confidence in the Crown and its agents and trusted them to treat them equally and with justice. We would not be here addressing this issue if the Crown had been honourable instead of breaching the Treaty. The Crown did not give the protection promised to the Maori. (D21:2)

We agree with the claimants' counsel that, in the sale of Waimamaku No 2, the written word triumphed over the spoken word and the agreement made by agents of the Crown with the vendors was never honoured (I1(b):55).

From what we have been told about the spiritual and historical significance of Kaharau and Te Taraire we find it inconceivable that the tupuna of Waimamaku would have sold either place to the Crown.

Te Roroa Claim

02 Nga Whenua i Hokona

(Land Sales)

2.7 The Cession of Wairau South

2.7. The Cession of Wairau South

Initially, Wairau South had been included in the negotiations to purchase Waimamaku and Kahumaku. Brissenden, on 29 September 1874, made a down payment of £66 on the block, to Wiremu Ponga Rangatira Moetara (brother to Hapakuku). This was the amount apparently still owing on Campbell's 1870 survey. Both Smith and the vendors thought the block was being sold and the Wilsons surveyed Wairau South (H3:82-83). Annotations on the Wilsons' plan (ML 3278) led to the suggestion that it was proposed to exchange Wairau South for an area adjoining Wairau where the burial caves were, thus forming the Kaharau reserve (D1:15, 17 cf D12:7). But other evidence conclusively showed that "the exchange scenario" simply did not fit the facts (D18:14-15; H3:58-61). Kensington's plan excluded the Wairau block, as defined in Campbell's survey (ML 2012), from the area for sale. This necessitated the completion of the purchase of this block by the Crown.

Further payments were made by land purchase agents of £19 to Hapakuku Moetara and others on 23 November 1876, £4 15s to Hori Karaka Tawhiti and others on 15 January, and 9s 6d to Tane Pokaia on 1 March. Te Rore Taoho and another were paid 19s on 5 December and Te Rore Taoho a final payment of 17s on 12 July 1877. Total payments are reckoned by the Crown researcher to amount to £92 6d (H3:83-84).

A deed of sale for the block was signed on 9 November 1876 and 12 July 1877 by Hapakuku Moetara, Rewiri Tiopira, Te Rore Taoho, Heta Te Haara and 51 others (D2:32-39). It was witnessed by von Sturmer and the district officer. The plan on both copies of the deed was Campbell's plan ML 2012 of Wairau, incorporating some information from the Wilsons' plan of Waimamaku No 2, ML 3278. Campbell's external boundaries and boundaries of the wahi tapu reserve are used, but the boundary between Wairau North and Wairau South seems to correspond to the line shown on the Wilsons' plan. The total acreage given for Wairau South was 1239 acres, arrived at by subtracting 1300 acres (Wairau North) from Campbell's 2539 acres. Due to confusion and bungling, the figure arrived at was 110 acres more than the actual area of the block. The wahi tapu reserve was 171 acres (D2:32-36; H3:84-85; D18:12). The deed was signed by Tane Pokaia on 1 March, the day he received a final payment, having succeeded to the interests of a deceased owner. The consideration for 1239 acres was £92. All the vendors received from Preece was a small balance over and above the survey money, to make the payment equal to 1s 6d per acre, the rate agreed upon by the former land purchase agents (H3:87).

The deed was endorsed by the trust commissioner, Haultain, on 22 October 1877 (D1:17; H3:85), but remained in his hands because when the court awarded a certificate of title in 1870 it had made the land inalienable, except by lease, with the governor's consent, for 21 years. Preece had not been aware of this restriction when he completed the purchase. On 28 November 1877, he respectfully suggested that the restriction be removed as the portion had been marked off from the reserve by the owners themselves to pay the government for the survey. To get over the problem of purchasing the southern portion of the original block only, the undersecretary of the Native Department approved that application be made to the court for a partition (H3:87-88). On 16 September 1878, Tiopira, Ngakuru Pana and six others asked Fenton to adjudicate upon what land had gone to the governor and referred him to the Wilsons' map (H3:app 1, pp 19-20).

In the resident magistrate's court on 28 January 1879, von Sturmer, on the government's behalf, applied to have "that portion which the Natives have agreed to give up to the Government" vested in Her Majesty. The district officer, Webster, told the court that the government had paid for the survey of the whole block and arrangements had been made for the owners to make a portion over to the government for repayment. Rewiri Tiopira informed the court that the portion was at the south end and amounted to 1129 acres, and they were retaining 1410 acres at the north end. The portion marked off as tapu was not included. The dividing line was shown on the map. Peni Kahi said they all agreed and the owners of Wairau North would like to have their interests defined at some future sitting. Von Sturmer said he had a deed for 1129 acres but it was not fully completed. He therefore applied to have the south part containing 1129 acres vested in Her Majesty. The court ordered that the southern portion of the block, containing 1300 acres, had been duly ceded to Her Majesty (D2:37-38; D3:111-112). The wahi tapu area had been inadvertently added to the 1129 acres, not having been brought to the court's notice by vendors on account of there not being a fully completed plan.

Campbell's plan ML 2012 was produced in court. Later a plan of Wairau south drawn from it and incorporating the boundary between Wairau north and Wairau south from the Wilsons' plan, was appended to the deed and numbered 2012B (D2:39). The total acreage was shown as 1129 acres, excluding the wahi tapu reserve (D2:36). As a result of the utilisation of Campbell's plan, the area of the wahi tapu reserve was reduced from 210 acres on the Wilsons' plan to the original 171 acres. We shall examine Te Roroa's claim relating to this reduction in the next section of the report.

Wairau south was ceded to the Crown under s107 Native Land Act 1873, which dealt with "Inchoate agreements by Land Purchase Commissioners". No evidence has been found that the prohibition on alienation was removed by the governor. Nevertheless this seems to have been envisaged by the undersecretary of native affairs when he approved applying for a partition as the only course of action open to them (A3:20; H3:88, 92).

References

{FNTXT:0-86472-088-2:2.1:1}1 See also Raewyn Dalziel, Julius Vogel, Business Politician (Auckland, 1986) p 105

{FNTXT:0-86472-088-2:2.1:2}2 See James Belich "McDonnell, Thomas" DNZB, 1, M 4

{FNTXT:0-86472-088-2:2.1:3}3 When the Act was being drafted, Chief Judge Fenton had proposed that private dealings with the Maori prior to the court's award should not be merely void but illegal. The Chief Justice, Sir William Martin, urged that land having passed through the court should be sold under public auction. The government, dominated by land speculating interests, rejected both these proposals and waived the Crown's right of pre-emption, which had provided some measure of protection for the Maori from land speculators. When Crown and private purchasers competed for Maori land on the market, they could and did, risk their money, by paying tamana to those with whom they were negotiating. If the court then awarded a certificate of title to the recipients and they completed the sale, the amount advanced was deducted from the final payment. If the title was awarded to other claimants, the purchasers lost their deposits (B34:att 12-14; E2:12-15).

{FNTXT:0-86472-088-2:2.1:4}4 About this time, Brissenden, McDonnell and Nelson were actively engaged in negotiations for both new and partly acquired blocks in the north. These included negotiations with Parore Te Awha at Kaihu for the Mangakahia block. There was a lot of haggling over acreage rates, which reflected a number of variables such as situation, quality of the soil, kauri forests, access to waterways and suitability for settlement (E2:96-97). On 13 January, McDonnell submitted a list of 30 blocks he had negotiated. They ranged in price from 1s to 3s per acre. Deposits had been paid in 27 cases (E2(a):348).

{FNTXT:0-86472-088-2:2.1:5}5 cf the several uses and payment of takoha in Taranaki discussed by Keith Sinclair *Kinds of Peace: Maori People After the Wars, 1870-85* (Auckland, 1991) pp 67-68. He regards takoha as "a simple bribe".

{FNTXT:0-86472-088-2:2.2:6}6 At this time R C Davis was surveying Kahumaku lying to the west of Waimamaku. By the end of February his survey was well advanced and Percy Smith was under great pressure to produce the plans needed for a court sitting on Kahumaku and Raeroa scheduled for 14 March. But due to his bad attack of measles and Nelson's absence, the sitting was re-scheduled for 31 March.

The survey of Kahumaku was completed in March and Davis's plan (ML 3221), for an area totalling 8517 acres (D18(a)), was submitted to the inspector of surveys in April although the boundary between Kahumaku and Waimamaku still had to be supplied.

{FNTXT:0-86472-088-2:2.2:7}7 He incorporated Davis's plan of Kahumaku (ML 3221).

{FNTXT:0-86472-088-2:2.2:8}8 The Wilsons' plan indicates the total acreage of Waimamaku No 2 block as 24,500 acres, Kaharau as 1471 acres, Wairau North as 1300 acres, or alternatively 1410 acres, and Wairau South as 1345 acres. The 1300 acres is written in a different style from the other acreages (I7:2). From the total of 1345 acres of Wairau South, 210 acres have been subtracted, that is, the acreage of the Wairau wahi tapu native reserve, leaving a total of 1135 acres. The acreage of the native reserve is larger than on Campbell's plan (175 acres, later 171 acres). The

different acreages for Wairau North and different writing systems indicate some confusion regarding acreages and suggest that after its completion other hands worked on the Wilsons' plan. There are different lines and shading on the red external boundaries of Waimamaku No 2 block, that is, the Waimamaku No 2/Kahumaku boundary, the northern river boundary between Waimamaku and Waimamaku No 2 blocks, the eastern and southern boundaries between Kaharau and Waimamaku No 2, and the southern boundary between Wairau North and Wairau South and the Wairau wahi tapu boundary. Consequently the integrity of these boundaries must be questioned.

Probably the reason for the court's rejection of the Wilsons' plan was the serious error they made in placing the eastern boundary of Waimamaku No 2 to the east of the Davis line which Smith had incorporated in his sketch plan. This would have excluded from possible sale of what the Wilsons' understood to be Kahumaku, an area estimated to be about 1200 to 1500 acres (H3:65). The confusion among the surveyors over the Waimamaku/Kahumaku boundary reflected differing views of ownership held by Te Roroa, Ngati Ue and Ngaitu in respect of Kahumaku.

The alterations and annexations on the Wilsons' plan were examined in detail in the Crown's evidence (see H3:51-66; cf D18:11 passim & D1:15). Despite the questions they pose, "a great deal of unambiguous information can be gleaned from the Wilsons' map" (H3:53). First, the western boundary of Waimamaku No 2 block was closed in a way that excluded Waimamaku, Wairau North and Kaharau. Secondly, Te Taraire was included within the boundaries of Waimamaku No 2. Thirdly, the area of Wairau South was clearly defined, and the Wairau wahi tapu was cut out as a native reserve.

{FNTXT:0-86472-088-2:2.2:9}9 Part of Kahumaku was included because Kensington followed Davis's Waimamaku-Kahumaku boundary not the Wilsons'. The reason he included Te Taraire remains a mystery. He could have followed one fork of a two forked indeterminate line on Smith's sketch plan.

{FNTXT:0-86472-088-2:2.2:10}10 Garry Hooker expressed the view that the loss of Manuwetai and Whangaiariki was triggered by the early despatch of the tracing of the Maunganui plan to the Native Land Purchase Department, over three weeks before Frank Smith's plan of native reserves was registered. The Crown thought it more likely that the loss was triggered by the failure to ensure that the plan of Maunganui sent to the court was properly amended (I16:12 cf I15:3).

{FNTXT:0-86472-088-2:2.2:11}11 I7:2-3 is an amended version of E2:149. See also C12:5-6; H28:13-15; H29:4-6.

{FNTXT:0-86472-088-2:2.2:12}12 The claimants stated that it was never the intention of their tupuna to extend the western boundary of Waipoua No 2 to mean high water mark. They pointed out that Smith's plan included certain areas of sand excluded on the Wilsons' plan which would explain the discrepancy in total acreages (C12:7). The claimants further stated that the Waipoua river was a taonga of the people which should have been protected under article 2 of the Treaty by the Crown. In their view both Wilson and Smith understated the total acreage of Waipoua No 2 because they excluded the area of the Waipoua river (C12:6-8).

{FNTXT:0-86472-088-2:2.3:13} 13 AJHR, 1873, G-7, p 45. See also A19:38

{FNTXT:0-86472-088-2:2.3:14} 14 Report of the Waitangi Tribunal on the Orakei Claim (Wai 9) (Wellington, 1987) p 40. See also Stephen Oliver "Tuhaere, Paora" DNZB, I, T109.

{FNTXT:0-86472-088-2:2.3:15} 15 Te Waka Maori, 18 November 1876.

{FNTXT:0-86472-088-2:2.5:16} 16 Plan ML 3253 was produced in court but the court minutes do not record that Tiopira said he knew the land shown on it and that the boundaries were correct as he did in the case of Waimamaku No 2. Plan ML 3277 was annotated by Judge Monro on 2 February 1876, the day the court stood adjourned, not on 31 January when it decided the evidence for Maunganui would do for Waipoua No 1. The court made the order for Waipoua No 2 without hearing any evidence. Plan ML 3277A which was used to define its boundaries, was not sent to the court.

{FNTXT:0-86472-088-2:2.5:17} 17 Norman Smith Maori Land Law (Wellington, 1960) pp 8-9, 88-117.

{FNTXT:0-86472-088-2:2.5:18} 18 Alan Ward A Show of Justice (Auckland, 1974) p 252

Waitangi Tribunal, Department of Justice, Wellington.