

## CHAPTER 3

# PRE-TREATY TRANSACTIONS

<i>Turuturu taku manu ki te taha uta</i>	<i>Let my bird settle</i>
<i>Turuturu taku manu ki te taha wairua</i>	<i>May it bridge the gulf between earth and heavens</i>
<i>Koia atu Rutua</i>	<i>There at the horizon stands Rutua</i>
<i>Koia atu Rehua</i>	<i>There at the horizon stands Rehua</i>
<i>Turuturu taku manu</i>	<i>Let my bird settle at the place of joining</i>

‘The Joining of Peoples’, Muriwhenua karakia to accompany a gift  
(interpretation by Ross Gregory)

### 3.1 CHAPTER OUTLINE

Through trade with Europeans and enhanced horticultural capabilities, the mana of the Bay of Islands hapu grew daily while Muriwhenua languished. The missionaries were the main advisers on agricultural development, and Panakareao became determined to maintain a mission station at Kaitaia. At the same time, and apparently without Panakareao knowing, Pororua admitted certain traders and sawyers to Mangonui. Panakareao later disputed Pororua’s authority to do this but was keen to keep the traders and sawyers there, just the same.

This chapter describes the land transactions between the Maori leadership and Europeans which resulted from these manoeuvres. It is given in the context of a considerable debate: by claimants, that the transactions must be seen in the light of custom law, which, they argued, still prevailed; and for the Crown, that they should be seen in the context of a major shift to Western norms which, in the Crown’s argument, was then going on.<sup>1</sup>

The chapter also considers how the best of the Maori land was claimed to have been bought by Europeans, even before British sovereignty was proclaimed, but why Maori saw the Europeans as conditional occupiers only. The examination of the resultant land claims, through land commissioners Godfrey and Bell, is considered in the next chapter. A location map for the relevant area is figure 15.

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1. It has not been practical for the Tribunal to summarise the large volumes of evidence in this case. The evidence and the issues were brought together, however, in counsel’s closing submissions: see J V Williams and G Powell for the claimants (docs N1, N2, O3) and M T Parker and A Kerr for the Crown (doc O1). These too have not been summarised, although aspects are referred to throughout the report. (Continued on page 54.)

**3.2 THE TRANSACTIONS**

Church and traders would buy the prime land, but the deeds were poorly drawn

Purporting to evidence the first transactions were 22 deeds said to have been completed in five years from 1834. Then, in 1839 and early 1840, when it was apparent that New Zealand would be annexed by Britain, there was a sudden increase of 33 deeds in just over 12 months. Some may have been backdated to escape the law that, after January 1840, only Government officials could buy Maori land.

The transactions were mainly with traders in the east, and with people associated with the church in the west. While the traders were more numerous and made more transactions, by far the larger area was claimed by church adherents. Those of the church considered, however, that much of the ‘purchased’ land was in fact held in trust for Maori.

While these private transactions related to less land than was later claimed by Government purchase, they involved either the most fertile land or that most accessible to the port for the export of timber. The position is illustrated in figure 16, which locates the transactions and should be compared with figure 13 on land use. The land claimed was in the area where most Maori were concentrated, in a band from Ahipara to Mangonui.

Two factors affected the pre-Treaty transactions more than others. The first was the policies of rangatira to advance their hapu by incorporating Pakeha to live amongst them. The other was the rivalry of Panakareao and Pororua to control the lands in the east.

Figures 18, 20, and 21 reproduce five sample deeds. Those deeds involving Panakareao were all in Maori, while those with Pororua were in English,

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*(Continued from page 53.)*

The primary research reports relied on were: B Rigby and J Koning, ‘Historical Overview’, 4 December 1989 (doc A1; summary at doc B1); B Rigby, ‘The Mangonui Area and the Taemaro Claim’, July 1990 (doc A21; summary at doc C5); B Rigby, ‘The Muriwhenua North Area and the Muriwhenua Claim’, November 1990 (doc B15; summary at doc C6); B Rigby, ‘The Oruru Area and the Muriwhenua Claim’, February 1991 (doc C1; summary at doc D3); T Walzl, ‘Pre-Treaty Muriwhenua’ (docs D4, D5); T Walzl, ‘Report on the Historical Issues Relating to the Taemaro Mediation, circa 1830–1925’ (doc E2); D A Armstrong, ‘The Most Healing Measure: Crown Actions in Respect of Oruru–Mangonui, 1840–1843’ (doc J3); D A Armstrong, ‘The Taylor Purchase’ (doc I5); D A Armstrong, ‘Documents Supporting the Taylor Purchase’ (doc F1); D A Armstrong, ‘The Land Claims Commission: Practice and Procedure, 1840–1865’ (doc I4); M Alemann, ‘Muriwhenua Land Claim: Pre-Treaty Transactions’ (doc F11); P Wyatt, ‘The “Sale” of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions’, 16 June 1992 (doc F17); B Rigby, ‘The Mangonui Area and the Taemaro Claim’, 25 July 1990 (doc H2); D Loveridge, ‘The New Zealand Land Claims Act of 1840’, 18 June 1993 (doc I2); and F Sinclair, ‘Issues Arising from Pre-Treaty Land Transactions’ (doc I3).

For her willingness to seek a Maori dimension in the relevant history, where it was much needed, we particularly acknowledge Philippa Wyatt, ‘The Old Land Claims and the Concept of “Sale”: A Case Study’, MA thesis in history, University of Auckland, 1991, and the advance made on that study in this Tribunal in various papers, including document F17. The Tribunal was considerably assisted by her submissions. We note that Ms Wyatt’s view was supported by historian Michael Belgrave in ‘Recognition of Aboriginal Tenure in New Zealand, 1840–1860’, paper to the American Historical Association, Washington DC, 27 December 1992.

Figure 15: Muriwhenua location map

## 3.3

reflecting the fact that Panakareao dealt mainly with missionaries and Pororua with traders. The deeds were poorly and imprecisely drawn. We have studied each of the deeds and have to say that, in nearly every case, it would not have been possible for a surveyor to define the lands in question without further talks with the parties. Their form is less questionable than their status, however. A written deed is normally the best evidence of that which was agreed on the ground, but this rule of law has little application when one party is of an oral culture, where written documents are of no consequence, and when they contain terms outside that party's experience. In that situation, the deed evidences no more than that which the party who drafted it sought to achieve.<sup>2</sup>

This review follows four divisions

In view of their different circumstances, the transactions are examined in four divisions: the western division, which was virtually the sole province of the missionaries; the eastern division, which includes the separate Taemaro claims where traders and some speculators were involved; the central district, where church adherents and traders were mixed; and the northern peninsula, where a sort of Maori sanctuary appears to have been proposed.

### 3.3 THE WESTERN DIVISION – PANAKAREAO AND THE MISSIONARIES

The pre-Treaty transactions began with the church adherents in the west. On the Maori side, all the transactions were either in the name of Panakareao or under his supervision. Six Pakeha were to claim 20,814 acres (8423 ha). Had surveys been done at the time, they would have disclosed that the area involved was in fact some 32,727 acres (13,244 ha).

The transactions are depicted, following survey, in figure 17, and are scheduled in table A. A sample deed for this area is given in figure 18. All the deeds in the western sector were completed in the Maori language. Certified translations into English were either appended at the time or provided later.

#### 3.3.1 Kaitaia mission station

The first transaction in Muriwhenua concerned some 700 acres (283 ha) which the missionaries sought for a mission station in the name of the Church Missionary Society.<sup>3</sup> It followed three years of missionary visits to Muriwhenua, beginning with the journey of Henry and Edward Williams in 1831.

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2. For the interpretation of early documents with indigenous peoples, see Professor Bradford W Morse and Rosemary Irwin, 'Treaties, Deeds and Surrenders: An Analysis of Canadian and American Law', report commissioned by the Waitangi Tribunal, August 1994 (doc 02).
  3. By a second transaction in 1840, it was claimed that the area acquired had been increased to 1727 acres.

Figure 16: The land in the pre-Treaty transactions, Muriwhenua

Although one account describes Maori as hostile when the missionaries arrived,<sup>4</sup> the more likely situation is that the station had Maori support from the outset. Panakareao provided the land, protection, food, and timber and thatching for house building, as well as a labour force for construction and for clearing land and making roads.

Maori support for  
the mission  
station

Indeed, even the picture painted by the missionaries that they took all the initiatives does not stand scrutiny. Their journals describe Maori as objects for conversion, not as real people influencing the course of events, and the image they present of making intrepid and inspired journeys from the Bay of Islands to meet an unknown people in an untamed territory tells more of their anxieties than

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4. See S C and L J Matthews, *Matthews of Kaitaia: The Story of Joseph Matthews and the Kaitaia Mission*, Wellington, AH and AW Reed, 1940. According to Rima Edwards, the account that the missionaries' lives were at risk until Panakareao intervened is supported by Maori oral tradition.

of the state of the land. Panakareao and his people were in fact known in the Bay of Islands, which they regularly visited. They had joined Nga Puhi in raids to Hauraki and the Bay of Plenty in the 1820s. Panakareao was related to the Nga Puhi war leader Titore. It is apparent, however, that he soon came to appreciate how Nga Puhi had prospered from the establishment of mission stations amongst them.

Thus when the missionaries went to Muriwhenua they were meeting with no isolated and uninformed group. Seizing the opportunity, Panakareao himself suggested the site for the mission at Kaitaia. From the start he served as host and protector. In 1833 he declined Titore's request to join another expedition to the south, knowing that his charges were averse to that course and not wishing to prejudice the mission station project. He himself journeyed to the Waimate mission station to revitalise interest when the missionaries were having second thoughts. The Reverend Henry Williams and Charles Baker had both expressed concern that the Muriwhenua people were keener on trade than on God. The missionaries did not seem to understand that Maori saw divine authority as part of everyday business, that gods supervised trade as much as anything else and that they were not confined to a church.

On whether there  
was a meeting of  
minds

Crown counsel argued that the eventual Kaitaia transaction, and those that followed, were not effected in an exclusively Maori context, owing to the previous interplay between Maori and Pakeha in settling mutual affairs.<sup>5</sup> Crown lego-historian F Sinclair urged as well that the members of the tight-knit missionary communities had a large collective experience to draw from in acquainting themselves with things Maori.<sup>6</sup> We broadly considered this aspect in the last chapter. It seemed plain to us that, while each party noted in a general way the obvious differences between them, each was still a prisoner of their own world-view and mutual comprehension was minimal.

Etiquettes not  
observed

Indeed, even the distinctive social etiquettes necessary for social control were not always respected. Panakareao complained to the Reverend Henry Williams when, after construction began, the Reverend Charles Baker withdrew. Panakareao thought that it was not right (or 'tika', from which 'tikanga' or Maori law derives) for the work begun by one person to be finished by another. Baker's withdrawal had two implications for Maori. First, if Panakareao and Baker had made a commitment to each other, neither had the right to walk away. Secondly, as the hau (the inner breath or life-force of a person) is invested in a project through the expenditure of labour, it is made tapu to the individual concerned. No one could complete the work of another but was bound to start again out of respect for the hau of the initiator. There are modern instances where this rule has continued to be raised.<sup>7</sup>

5. Crown's opening submissions (doc 11), p 4

6. Document 13, p 70

7. The legal implications of 'hau' are examined by A Frame in 'Property: Some Pacific Reflections', *New Zealand Law Journal*, January 1992, p 21. The belief still applies, as was evident following the death of Inia te Wiata in 1971 with unfinished carvings in New Zealand House, London.

Figure 17: Pre-Treaty transactions, western Muriwhenua

Despite the missionaries' social gaffes, the project struggled on but nearly fell apart again when, in 1834, after the station was built, a ceremony was arranged for the signing of a deed and the delivery of presents. This involved 80 blankets, 30 hoes, 30 iron pots, 30 scissors, 10 shark hooks, 40 axes, 30 adzes, 80 plane irons, 2000 fish hooks, 48 combs, and 600 heads of tobacco. To Maori, the arrangements could have equated only with the hakari, a feast to cement a host group's alliances with numerous hapu, accompanied by proud displays of the host tribe's wealth. It also involved gifting every article on a stage to each interested party. Some protocol was necessary: the host's leader pointed to each

The gifting ceremony at Kaitaia

Claim	Parties and date	Value of goods	Area in deed (acres)	Area claimed (acres)	Examined	Outcome
Claim 675 to 'Kaitiata/Kerekere'	Panakareao and three others to Church Missionary Society, 17 March 1834 and January 1840	£123	2000	2000	Yes	Commissioner Godfrey recommended 1273 acres. Grant not issued. Land surveyed – 1727 acres. Commissioner Bell ordered grant of 1470 acres. Grant issued 1 November 1859. 257 acres 'surplus'.
Claim 328 to 'Otararau' and 'Waiokai'	Panakareao and four others to the Reverend J Matthews, 20 July 1835	£20	2000	1400	Yes	Godfrey recommended 1400 acres and 306.5 acres. Grant issued 22 October 1844. Called in by Bell and lands surveyed – 3134.5 acres (Waiokai 1279 acres and Otatarau 1855.5 acres). Bell ordered grants for 1279 acres and 1170 acres to Matthews. Grant issued 15 February 1859. 685 acres 'surplus'.
Claim 774 to 'Ohotu'	Panakareao and two others to W G Puckey, church worker, 20 July 1835	£20	2000	1500	Yes	Godfrey recommended 384.5 acres. FitzRoy awarded 1500 acres. Grant issued 18 June 1845. Bell cancelled grant and land surveyed – 2581 acres. Bell ordered grant of 2581 acres. Grant issued 3 November 1857.
Claim 705 to 'Okioire'	Panakareao and 13 others to S Ford, church worker, 11 September 1839	£215	3000	2000	Yes	Godfrey recommended 1357 acres grant. FitzRoy issued 1357 acres scrip July 1845. Scrip not accepted. Land surveyed in 1856 – 8280 acres. Bell ordered grant of 2627 acres 8 August 1860. 5653 acres 'surplus'.
Claims 875-877 to 'Awanui'	Panakareao and 10 others to H Southee, settler, March 1837 and 17 December 1839	£196	10,000	10,000	Yes	Godfrey recommended 2260–2560 acres for Maxwell with encumbrance for Maori reserve. Grant issued 22 October 1844. Recommendation that Southee receive 500 acres. Grant for 186 acres issued by Governor Grey 5 November 1853. 3200 acres scrip issued to Southee's mortgagees, Mair and Powditch, 5 November 1853. Investigated by Bell and surveyed – 13,684 acres. Maxwell's grants cancelled. Bell ordered grants of 4198 acres to Maxwell, 400 acres for Clarke, 500 acres for Southee, and 26 acres to Fenton. Grants issued 10 February 1862 and 27 April 1862. 200 acres reserved for Maori. Another 200 acres recommended to be reserved for Puhipi was not awarded. 8360 acres 'surplus'.

Claim	Parties and date	Value of goods	Area in deed (acres)	Area claimed (acres)	Examined	Outcome
Claim 330 to 'Warau' and 'Matako'	Panakareao and 3-4 others to R Matthews, church worker, 6 May 1839 and 18 December 1839	£73	3000	3000	Yes	Godfrey recommended a scrip. Land surveyed – 1 issued 24 February 1859
Claim 775 to 'Pukepoto'	Panakareao and two others to W G Puckey, church worker, 19 December 1839	£50	800	800	Yes	Godfrey recommended an increased award to 800 acres, cancelled grant and land 765 acres 3 November 1859 'surplus'.
Claim 776 to 'Okuraiti'	By unknown party to W G Puckey, church worker, 1839	Not known	Not known	100	No	Claim withdrawn
Claim 1375 to 'Awanui'	Panakareao to J Smith, sailor, date unknown	Gift	Not known	14	No	Not investigated.

Table A: Pre-Treaty transactions, western Muriwhenua, as represented in 'old land claims' and

cluster of goods, carefully assembled, and named it for the hapu or whanau for whom it was intended, taking care to ensure that each group was acknowledged and treated according to some rank.<sup>8</sup>

#### Okiore Deed

WAKARONGO e nga tangata katoa ki tenei pukapuka kua tuhituhia e matou e Nopera Panakareao ma ki tetahi taha ko te Poari ki tetahi taha kua oti tenei pukapuka te tuhituhi i tekau ma tahi o nga ra o Hepetema i te tau kotahi mano e waru rau e toru tekau ma iwa; kua tuhituhia tenei pukapuka e matou ara e Nopera Panakareao ma ki tetahi taha ko te Poari ki tetahi taha hei tino tohu ki a ratou katoa ki nga tangata katoa ano hoki kua oti te tuku e matou e Nopera Panakareao ma ki a te Poari tetahi wahi wenua oti tonu atu me nga rakau katoa me nga aha noa me nga aha noa katoa e tupu ana i taua wenua me nga mea katoa o raro o taua wenua. Ko nga ingoa nui o taua wenua ko Okiore ara ko Wangatane ko te Maki.

Na, ko nga kaha anei. Ko to te Ita ka timata i te kaha o to te Matiu ko ia ia kei te tikanga o te Pa o Tututarakihi e timata ana i te Wai o Okiore ara Wangatane, ka rere tahatahi tonu a ka tutaki ki te Reihana Matiu kaha i te Awanui, ki to te Hahi Mihanere taurangi hoki. Na, ko te Kokopu kihai riro, kia tapu taua wahi mo ona tangata. Engari ko te pito o te kokorutanga i waho atu o te Pa kotahi tekau Ekara te nui i kohia ki roto. Na ka rere tonu ano i konei tae noa ki Waikainga. Ka witi atu ka rere a te Karamu ra ano i te tuaauru kei te Tupehau te mutunga mai. Na, ko te kaha ki te Hauta tenei. Na, ka ahu tonu atu ano ra te Tupehau tae noa ki te Taupururu. Na, ko to te Weta kaha tenei. Ka wawati i reira, ka ahu mai ki te Wai wakaroto o te Tangonge. Ka puta ki te Waihou, hono noa ki te wai nui o Kaitaia rere tonu atu tahatahi o Ohotu tae noa ki Waiokai ki te kaha o to te Matiu ka ahu atu tika tonu ki te ritenga o Tututarakihi te timatanga o te kaha. Ko te kaha o te Hauta tenei. Na, mo te Hahi Mihanere me era atu te Ara Kata ki te Awanui ki tona wanui ano waihoki e rima tekau rara kuara hei tauranga mo nga mea o te Hahi Mahanere. Na, me noho tonu nga tangata maori i ona wahi ki te taha o te Wainui hei mahinga mona i te tetahi wakatupurangi ki tetahi.

Na, ko nga utu enei mo anei wahi, Kotahi Hoiho, he uwa, Kotahi Kaho Tupeka me nga Pauna e toru tekau ma rima I te taonga. Ka huihuia katoatia e waru tekau Pauna, a mo te Poari mo ona tamariki te wenua ake tonu atu.

#### Kai Tuku—

Nopera Panakareao x	Haunui x
Ripi x	Hapahana Tara x
Mahanga x	Witi x
Poho x	Kuri x
Turau x	Paonui x
Ruanui x	Rangiapiti x
Hohepa Wata x	Kepa Waha

#### Kai Titiro—

Joseph Matthews  
R Matthews  
E H C Souther  
Tomo x  
Toitahi x  
Reihana Morenui x  
Huri Kuri x

Figure 18(a): The Maori text of a typical missionary deed – Okiore

Listen all men to this book written by us Noble Panakareao and others on the one side, and Mr Ford on the other side. Finished writing of this book on the eleventh day of September in the year 1839. Written this book by us Noble Panakareao and others on the one side, and Mr Ford on the other side, as a chief to all of them to all men: that a certain piece of land has been transferred by us Noble Panakareao and others to Mr Ford, for evermore to remain; and all Trees and all other things whatsoever growing on that land, and all other things underneath that land. The principal names of the land are Okiore otherwise Wangatane and Te Meka.

Lo! the boundaries these. That of the East commences on the boundary of that of Mr Matthews, this is in keeping with the Pa Tututarakihi beginning at the Water of Okiore, otherwise Wanagatane, along the side of which it goes on till it joins the boundary of Richard Matthews at Te Awanui, to the landing place also of the Church Missionaries. Lo! Te Kokopu is not gone: let that place be reserved for its people. The projecting point of land beyond the village in size ten acres is enclosed within. Lo! thence proceed onward to Te Waiakainga, crossing over proceed even to Te Karamu on the Western Coast at Te Tepuhau the ending. Lo! this is the boundary to the South. Lo! proceed onwards by Te Tepuhau unto Te Taupururu. Lo! this is that of the Western boundary. Breaking off there proceed hitherwards unto the inner water Te Tongonge, arriving at (or by) Waihou until you join the large water of Kaitaia, thence running on by one side of Ohotu even unto Waiokai to that part of the boundary of Mr Matthews, proceeding thence straight on to the bearing of Tutukarakihi the beginning of the boundary. This is the boundary of the South. Lo! for the Church Missionaries and these others, the cart road to Te Awanui according to its breadth; so also fifty yards square as a landing place for the things of the Church Missionaries. Lo! the Natives are to be permitted to cultivate along the banks the Awanui river from one generation to another. Lo! these are the payments for these places: One Horse, a female; one Cask Tobacco and Pounds Money thirty-five, altogether Eighty Pounds: and for Mr Ford and his children the land for ever and ever.

Figure 18(b): Turton's English translation of the missionary Okiore deed

A description of the Kaitaia events survives in the separate journals of two missionaries. From these it is apparent that there was an unintentional but serious blunder. The missionaries displayed the gifts but failed to make the distribution as protocol required. That was left for the Maori themselves. It was as though their Maori guests were like sheep, one indistinguishable from another, or as though their hosts did not know what to call them or cared not to acknowledge them by their proper divisions. They were simply 'Maori'. The blunder raised the

8. In his reminiscences, Resident Magistrate W B White described a hakari at Ahipara in 1863, 30 years after the Kaitaia incident:

The hakare [sic] was a grand feast given by the tribe or section of it to their neighbours. The place selected was generally Ahipara beach, a fine open space. Great spars were collected, fifty and sixty feet high, and placed in rows five or six feet apart, leaning inwards towards the next row; there were two rows about eight feet apart. They were braced together by ties ornamented with pieces of calico, print, and all sorts of things flying out in streamers. I have known one pound notes pinned on to pieces of string. Tobacco pipes were there also. In the bottom space and all round it were piled kits of potatoes and kumara, loaves of bread, large cakes baked in ovens, a numbered [sic] of slaughtered sheep, several oxen and heaps of pigs that had been killed. When the company had assembled (it was of course very numerous) a person belonging to the giver of the feast would come forward with a long wand in his hand and welcome the company in a neat speech; then tap a portion of food and call the hapu for which it was intended. The party called upon would come forward and take possession and carry off to their camp close by (they were all scattered about in their own camps) . . .

William Yate provided a similar account of a hakari in the Bay of Islands. The stages rose in tiers and were 80 to 90 feet high. He also observed that 'the portion belonging to each tribe is particularly pointed out; and when the ceremony of presenting it is over, the people carry away their portions'.

prospect, too, that the missionaries were not honest brokers and might not have given their all, or had not taken the trouble to ensure beforehand that there was enough for each group with whom a bond was intended.

An uproar followed, in which the mission might well have been raided but for the intervention of Panakareao's party to deter retaliatory action. No doubt Panakareao excused the untutored ways of his fledgling wards by highlighting their virtues, their closeness to God and trade. In the end, after many threats and speeches, peace was restored. The missionaries, however, saw matters the other way around, as though Maori were uncivilised.<sup>9</sup>

We note that the same procedural error accompanied the Whanganui block transaction of the New Zealand Company at the other end of the island, and with virtually the same result – an uproar and fighting amongst the local hapu, while the leading rangatira held back from the *melée*. There the European party was saved from attack only by being ensconced on a boat offshore. On their part, Maori were willing to comply with protocols peculiar to their friends. They made their marks on deeds, for example, though they did not know the particular magic in doing so.

A personal  
relationship was  
intended

If Maori oral tradition does not record the Kaitaia land transaction, that is not surprising, for we doubt whether it was seen as a land matter at the time. In the Maori way, the contract concerned the formation of a personal relationship. In that respect, according to Rima Edwards, there are in oral tradition stories that portray Panakareao as saving the missionaries from disaster. The chronologies are doubtful, as Crown historian T Walzl pointed out. Dr Dame Joan Metge, however, an anthropologist drawing on nearly 40 years' research in the Muriwhenua area, explained how Muriwhenua historicity is less concerned with linear time. A story serves to transmit either events or inner truths, and it is with the latter that the accounts in this case were concerned. The oral tradition, as we see it, records the personal and spiritual closeness of Panakareao and the missionaries as seen at that time, as an allegory explaining the arrival and spread of Christianity in the district.<sup>10</sup>

Matthews' status  
today

None the less, after an unpropitious beginning, the Kaitaia mission station was established under the youthful Joseph Matthews and William Puckey. They were to remain there for the rest of their lives. It was evident to us that they now have high esteem in local Maori history. Neither took a Maori wife, but they are still remembered in Maori whakapapa, for some Maori adopted their names upon being christened. Matthews did not die until 1895, and the parents of some who spoke to us were said to have known him in person. They contended that

9. See H Williams, diary entry for 17 March 1834, *The Journal of Henry Williams, 1831–1840* (doc D5(c)), vol 3, p 376 (MS WIL, ATL); R Davis, diary entry for 17 March 1834, *The Journals and Letters of Richard Davis, 1834–1839*, (doc D5(c)), vol 3, p 802 (Hocken Library, Dunedin); J N Coleman, *A Memoir of the Reverend Richard Davis*, London, James Nisbet, 1865, pp 173–174

10. See R Edwards' submission on traditional history (doc B2), pp 1–2; doc D4, p 64, app II, pp 2–8; Dame Joan Metge, 'Cross Cultural Communication and Land Transfer in Western Muriwhenua, 1832–40' (doc F13), pp 16–17, 146–148

Matthews' love and integrity were beyond question, and we have no reason to think otherwise. Although Matthews' ordination was withheld by Bishop Selwyn until 1859 on account of his land transactions, Selwyn did the same to others who arranged personal purchases; and our later criticism of the way the Government gave effect to those transactions does not impugn Matthews.

### 3.3.2 The missionaries' personal transactions

Those associated with the church were later to pursue a number of personal transactions. Joseph Matthews claimed Otararau, Waiokai, and Parapara blocks (the latter in central Muriwhenua). His brother Richard Matthews, who was with the mission for a time, contended for Warau and Matako, while Puckey maintained that Ohotu and Pukepoto had been spoken for. Church Missionary Society surgeon Samuel Ford claimed Okiore and, in central Muriwhenua, the whole Oruru Valley, but in both cases a trust to hold the lands for Maori may be implied. In the same area, John Ryder, church carpenter, held out for Maheatai, while James Davis, son of the Reverend Richard Davis, maintained that he had acquired nearby Mangatete. Henry Southee, a very early settler, was independent of the church though a supporter of it. He claimed rights to the Awanui block, not only because of a deed but, far more convincingly, because he had married Eliza Ati, the daughter of the local rangatira, Ruanui, and lived on the land with a substantial Maori community of at least 300.

Personal transactions generally

Put together, the transactions in western Muriwhenua alone covered an enormous area, from well north of Awanui to south of Kaitaia and taking in nearly all the Kaitaia–Awanui flats. It was here that archaeological evidence, referred to in the last chapter, pointed to one of the largest Maori cultivation areas on record.

While a description survives of part of the Kaitaia mission transaction – the conveyance of the gifts but not the execution of the deed – there are no surviving accounts to show how publicly (or privately) the remaining transactions were arranged. It was conjectured that a report for the first transaction would have been needed, since it stood in the name of the Church Missionary Society, which would have required an account in due course. The last transaction, in January 1840, however, was also for the society and doubled the Kaitaia mission station area, but no description of the occasion or of the negotiations has been located.<sup>11</sup>

No description of other transactions

Each of the transactions was evidenced by a deed in Maori, which was then translated into English. Some similarity of form suggests that each deed was composed by Puckey, including Southee's. William Puckey was an honest man, and a fluent Maori speaker, but he was more of a faithful artisan than a wordsmith. He was a layman throughout his missionary service, being neither admitted to the diaconate nor ordained as a priest. His use of the Maori language left good scope for improvement, in our view, and as for legal draftsmanship his

Puckey's limited draftsmanship

11. See Kerekere deed, 2 January 1840, OLC 1/675, (doc D12(a)), p 13

## 3.3.3

deeds were in urgent need of repair. One cannot tell whether a trust was intended, and it is only by recourse to extrinsic evidence, which is precisely what deeds are meant to avoid, that anything like the true intent emerges. Indeed, Puckey's draftsmanship suggests that he saw a land deed as merely an instrument of transfer, so that ancillary obligations only marginally rate mention.

### 3.3.3 Joint occupancy and Maori authority

The reality of who controlled the ground

Whatever the deeds' words, that the lands were transferred or gone, they might just as well have been written for the river or the wind when for Maori the reality was rooted in the ground. And what was that reality? Alongside a handful of Pakeha was a numerous warrior people controlling the countryside from Ahipara to beyond Mangonui. Most, by far, were in this western part, at Te Wharo or Ahipara, Pukepoto, Kaitaia, Takahue, Awanui, and Mangatete. From these Panakareao could have mustered 1200 fighting men, according to Puckey at the time the mission was established. Perhaps it was a Maori boast, but we have little else to go on and, supposing that each warrior had one surviving parent, wife, and child, the district would have housed some 3600 souls. We do not rank highly those assertions of Pakeha ownership that spoke behind a paper cuff.

The comprehension of a 'sale' would seem more real had the flats from Awanui to Kaitaia been fenced off, with a force maintained to keep Maori out. Of course, nothing of that sort was feasible. Deeds or no deeds, life carried on with only this apparent change: that three Pakeha families now lived amongst Maori on Te Rarawa land. Te Rarawa was no less a force to be reckoned with, on account of this occupation, than it had been for centuries. Indeed, the purpose of admitting Pakeha had been to strengthen the tribe's power.

Inaccuracy of portrait of missionary control

Although Sinclair considered that the continued Maori occupation of the Kaitaia mission station was on missionary terms, the opinions in support appear to reflect only the point of view of certain missionaries at that moment in time. No such contention could have been real until much later, when Government authority and the significance of paper titles had been established in fact. Only then could the roles of Maori and Pakeha have been reversed.<sup>12</sup> The missionary interpretation of Maori opinion, it seems to us, too readily reflects what they knew to lie ahead, through their knowledge of British law and their understanding of the consequences of annexation. Likewise, while the missionaries spoke of the Maori living under their protection, and for reasons of their own Maori might feed that view back to them, Panakareao had stationed his fighting chiefs at the mission, Rawiri Tiro and Kepa Waha, to save the missionaries from harm. Who was really protecting whom?

No delivery of vacant possession

In any event, the most visible aspect of a land sale, the delivery of vacant possession, did not occur. Maori were still living on the Kaitaia mission station, for example, even 25 years after the 'sale', and this in turn was long after

12. Document 13, pp 19–29

‘government’ had ‘arrived’. In the exceptional case of Tangonge, on Joseph Matthews’ Otararau block, Maori were not finally evicted until the 1960s, when more than a century had passed.

Missionary journals acknowledged that the missionaries might not have survived without Panakareao’s support and protection. They recognised that protection was both needed and given, and that they were effectively tenants at will or on sufferance on Maori land. It seems to us that there was thus a wide disparity between the deed on paper and the deed on the ground, and that occasionally this was tacitly agreed. Thus in 1838 Captain FitzRoy, later the Governor of New Zealand, was examined by a British parliamentary select committee as follows:

On whose sufferance?

The Church Missionaries consider that they hold their Lands purchased on Sufferance?

Yes.

From which you believe them to contemplate the Possibility of their being taken away?

Decidedly; and I apprehend they consider that they hold their Property entirely at the Mercy of the Natives; that their Tenure in that Country depends solely on the Goodwill of the Natives.

Of course it does, generally speaking, but do you suppose them to be of the opinion that the New Zealanders themselves consider them to hold the Lands they have purchased on Sufferance?

It is a Sort of conditional Sale, such as ‘We sell them to you to hold as long as we shall permit you’.

I apprehend it is considered that they hold those Lands under the Authority of the New Zealand Chiefs; that they settle upon them as their own Property; but under the Protection and Authority of the Chiefs, and that they look up to the Chiefs as their Protectors, and, in fact, as their Masters.

Do you conceive at the Time that the Purchase is made there is not an Understanding between the Missionaries and the New Zealanders, that the Land is entirely given up for a positive Consideration?

The Use of the Land is certainly; but as the Missionaries have never wholly taken away Ground from the Natives, but always allowed them the Run of the Land, the Right of Common as it were, I do not think they at all apprehend at present, that a Day will come when they will not be allowed to go about the Land as they have hitherto done; they consider it their Country while it is not transferred from them to the Sovereignty of another Power.

Are you aware that the Missionary Society in all their Arrangements speak of the Land as a Possession in Perpetuity, and that they recommend to the Missionaries to purchase such Quantities of Land as a Provision for their Children?

Yes, I am quite aware of that; what I have meant is that they have a Right to hold that Land, or to make any Use of it for their own Benefit; and that they may act as

they please upon the Land as long as they acknowledge the New Zealand Chiefs as the Authorities under whom they hold it.<sup>13</sup>

There was nothing unexpected in this opinion. The principle had been stated by Chief Justice Marshall in the United States in 1823:

The person who purchases lands from the Indians, within their territory, incorporates himself with them so far as respects the property purchased; holds their title under their protection, and subject to their law.<sup>14</sup>

Crown researchers cautioned against relying on FitzRoy's view, as he may have had a purpose, to challenge the New Zealand Company's claims, and since he visited New Zealand only briefly, in 1835. We consider, however, that FitzRoy adequately reflected the commonly perceived position at the time and, if the missionaries later changed their view, that is only because it suited them to do so once annexation was imminent.

The simple reality was that, by sheer weight of numbers, Maori had control of the area. We incline to FitzRoy's opinion on this occasion, as a result; but especially note how the Government was on notice, because of this evidence and other evidence of the same kind, that a Maori comprehension of sales in English terms could not be presumed.

We substantially agree also with Maori witnesses before this Tribunal who, speaking on different marae at separate times, were consistent in their view that the land transactions with the missionaries, beginning with the Kaitaia mission station and the farm at Te Ahu, were not sales, and could not have been sales. We refer particularly to the Reverend Maori Marsden, Ross Gregory, and Rima Edwards. All three maintained that Panakareao could give no more than he had, and as a rangatira he had no more than the right to allocate land with the intention that the missionaries become part of the local community under his care, protection, and mana. Hence the missionaries held land on sufferance, as all Maori did, subject to their contributing to the common weal. In their view, this did not involve a transfer of the land, for, by the very nature of custom and tradition, the land belonged to no individuals but to the people who formed the local community.<sup>15</sup>

While those views are not independent opinions, as the witnesses belong to the claimant group, we accept them as very likely. They accord with the established laws and traditions of the Maori people, and there is no or no sufficient evidence or compelling circumstances to suggest that Panakareao was moved to contract on some foreign legal terms. The almost certain position is that he did not. The same conclusion was reached by the claimants' historian, P Wyatt.<sup>16</sup>

Limited rights  
conveyed in terms  
of Maori law

13. Evidence of Captain R FitzRoy, 11 May 1838, 'Report and Evidence of 1838 Select Committee on New Zealand', BPP, vol 1, pp 173–174

14. See *Johnson v McIntosh* (1823) 8 WHEAT 590

15. See, in particular, Rima Edwards' submission on pre-Treaty transactions (doc F23), pp 8–10

16. Document F17

Anthropologist Dr Dame Joan Metge concurred, noting how Maori and Pakeha imagined entirely different results from the same deal.<sup>17</sup>

### 3.3.4 Joint occupation, trusts, and the deeds translated to English

For those reasons we think that the deeds testify to little more than European hopes for the future, in the event that Britain annexed New Zealand as a colony. The deeds could not represent the position at the time of execution, for their efficacy depended upon reversing the de facto state of power. The substitution of British authority and law for that of Maori was needed before the deeds could have meaning or effect, for, until that was done, Maori law was the only law that existed in fact and was the only law that could apply. It should be noted, then, that six of the nine deeds for western Muriwhenua were executed in 1839, when annexation was likely.

The deeds  
predicated future  
annexation

This does not imply some subterfuge on the missionaries' part, that they were saying one thing and meaning another. They alone knew what the future was likely to hold, and written into the deeds of conveyance, or hidden behind them, were humanitarian intentions. The deeds, or the surrounding evidence, show in various ways the missionaries' mixed motives of protecting Maori interests and their own at the same time. We refer to three situations.

#### (I) *Trust deeds*

At one end of the spectrum, the object expressly stated or implied was to hold the land in trust for Maori, to guard against ill-advised sales and to prevent Maori, or dubious Maori factions, from purporting to sell the patrimony of their hapu. Thus in 1838 the northern Church Missionary Society subcommittee advised the society's parent committee that they had arranged trust deeds to ensure that 'immense tracts of good land . . . remain in [the] possession of the natives' who otherwise were 'continually parting with their land'.<sup>18</sup> In 1840 the society's subcommittee deposited with George Clarke 17 such trust deeds for the Bay of Islands where the lands were held 'for the Aborigines of New Zealand', at the time Clarke left the society to become Protector of Aborigines.<sup>19</sup> The intention to form a trust was not necessarily apparent in the deed but could be separately declared. The Waimate deed, for example, was written as an absolute conveyance, but the Reverend Richard Davis signed a statement that it was acquired 'as a place of cultivation for the Natives'.<sup>20</sup>

17. Document F13, pp 98, 107–108

18. Remarks of the northern sub-committee on the parent committee's letter of 9 August 1838, not dated, CMS/CN/M 11

19. This was brought to the Tribunal's attention by D Armstrong: see Clarke to Colonial Secretary, 16 November 1840, IA 1/1841/135 (doc F1, doc 1), pp 6–23. Although the Government was advised of these trusts, it appears that none was given force and effect.

20. OLC 1/676–679

**(2) *Joint occupation in deeds***

Other deeds enabled both Maori and European to occupy the land in question, jointly or in separate areas. This was the type of arrangement which prevailed in western Muriwhenua and which was provided for in the deeds for Awanui, Okiore, Ohotu, and Pukepoto. The relevant clauses were as follows.

In the Awanui deed:

The land is for Henry Southee and his children for ever but let the natives hear who are living on this place that they are to have the banks of the river to cultivate for themselves, the places are to remain sacred for them for ever, they are not to be troublesome, nor let anyone venture to offer for sale any part on what they are living because those places are for the cultivations of the natives from one generation to the other. And the natives residing on this place are to live according to the believe [sic] of the Church of England. . . .<sup>21</sup>

In a separate deed for part of the Awanui block:

This place is to remain as a settlement for us the natives those persons who live on the place and we are to work on those spots which we wish if it does not interfere with the plantations of the European we will not take without leave it is for the European to give his consent. . . .<sup>22</sup>

In the Okiore deed:

Lo! the natives are to be permitted to cultivate along the banks of the Awanui river from one generation to another. . . .<sup>23</sup>

In both the Ohotu and Pukepoto deeds:

The land for Mr Puckey forever and for the Natives.<sup>24</sup>

Extrinsic evidence  
amplifies

Puckey, as noted earlier, was no lawyer. Extrinsic evidence suggests that his limitation of occupancy rights to defined places was not intended to confine Maori to those parts, but, rather, to guarantee those parts for their use. In Ford's Okiore deed, for example, Maori were entitled to cultivate along the banks of the Awanui River, but this seems to reflect only the fact that that is where they mainly gardened. There is other evidence that most of the block was meant to be secured to them.

Ford's Okiore  
example

Dr S Ford was no doubt highly esteemed at this time when medical services were greatly needed through uncustomary plagues, and he appears to have been trusted. He did not farm the Okiore block, since he merely visited from the Bay of Islands, but Panakareao appears to have entrusted him with the largest block

21. OLC 1/875-877 (doc D5(f), fol 6), pp 1843-1847

22. Ibid, pp 1892-1893

23. Ibid, p 1587

24. Ohotu OLC 1/774 (doc D5(e)), vol 5, pp 1681-1682; Pukepoto OLC 1/775 (doc D5(e)), vol 5, pp 1724-1725

of any given to a church man in western Muriwhenua. It was later surveyed at 8280 acres (3351 ha). Similarly, Panakareao transferred to Ford's care the whole Oruru Valley in central Muriwhenua, some 20,000 acres (8094 ha) of prime country. In the latter case a trust for Maori was implicit, despite deficiencies in the deed's wording. It was stated that the people of that place could 'sit upon their places on the said land within the boundary' with Panakareao 'to point out the sitting places for the Natives'. In forwarding the deed to land commissioners later, Ford explained he had been asked to act as guardian.<sup>25</sup>

Then, in describing his Okiore transaction to land commissioners in 1841, Ford added how the '[Okiore] natives connected with it are provided for in a similar manner to those [at Oruru]'. This suggests that the purpose of the Okiore transaction, like that of Oruru Valley, was to secure the whole of the land, or at least the greater part of it, in Maori ownership.<sup>26</sup> It is significant that Ford claimed only 2000 acres (809 ha) in the Okiore block.

### (3) *Joint occupations in fact*

Finally, there were those where the deeds purported to make an unconditional transfer, but where a joint occupation continued in fact. The Kaitaia mission station and the transactions of Joseph Matthews provide examples. The former has already been referred to. Matthews' Raramata deed did not refer to Maori occupations but later, before the land claims commissioners, Matthews was adamant that the whole of that block was held for local Maori who were living on the land, and he asked that it be cut out for them. Similarly, Maori continued in occupation of Otararau. Matthews later asked that 685 acres (277 ha) be cut out to the south. From last century Maori have persistently maintained that that area was meant for them, but Matthews died soon after they filed a petition to that effect and they were unable to persuade the Government of their contention.

There is a further respect in which these and other deeds apparently drafted by Puckey, for Ford's Oruru block and Taylor's Muriwhenua Peninsula, do not necessarily disclose the true intent. At the Treaty signing at Mangungu in February 1840, when it was claimed that two people had taken large areas in the north – an apparent reference to Taylor and Ford as the two largest claimants – Puckey responded that the land was held 'under a trust deed for the use of the natives'. That may well have been intended, but the trouble was that he was not a lawyer and his trust deeds did not precisely say so.<sup>27</sup> Then, in 1846, Puckey wrote to the Church Missionary Society, possibly referring to the numerous transactions that had occurred throughout eastern and central Mangonui:

Later declarations  
of trust

At the period our purchases were made, the natives were selling land in all directions; in-so-much that both Mr Matthews and myself entertained serious

25. See Oruru OLC 1/704

26. Ford to land commissioners, 13 September 1841, OLC 1/700

27. Taylor, 'Notes of the Meeting at Hokianga', 12 February 1840, enclosed in Taylor to Jowett, 2 October 1840, Taylor papers, ATL, vol 10 (doc B15, pp 14–15)

apprehensions that the natives would part with more than they could spare from their families and in the end occasion material injury to them. This led us to buy more land than we otherwise should, and with this proviso stated in the deed that the natives should occupy it with our own children, thereby doing them a kindness by providing them with homes which they could never alienate from their families.<sup>28</sup>

Again, the trust deeds had not specifically stated that.

Lands entailed There is another point of confusion. Puckey's deeds consistently conveyed lands 'ki a mea, ratou ko ona tamariki', that is, to so-and-so and his children ('or heirs' in the English translation) but not to their assigns. No doubt Maori placed little or no weight on what was written in the deeds, but if the deeds reflect at all that which Puckey said to Maori, in the Maori language, he could only have affirmed their customary expectation of a personal arrangement. The European right of user, in other words, was personal, and could pass only on the bloodline within the family with whom there was an agreement. If there was a right of transfer to persons outside this arrangement, that had to be made clear at the time. The deeds suggest it never was. The implication is that, if a land right was indeed conveyed, it could only have been entailed – that is, could only have passed on the bloodline.

Marriage gifts A more particular problem concerned marriage gifts. Land had been given to certain Europeans on marrying Maori to pass to their children and down through the bloodline. One case involved James Berghan in eastern Muriwhenua, and another Henry Southee in the west. Later, when the Government arranged for purchases to be approved based upon the value of the goods conveyed, gifts were seen to fall outside the class of transaction that could be recognised. Southee protested to the Governor how his gift had cost him a great deal:

It is presumed that Your Excellency is aware of the nature of a Maori present – they always expect another in return which in the end is of far more cost than actual purchase.

Indeed, were the truth known, Southee's and Berghan's transactions were the only ones that should have been approved, for it was only gift exchange, not sales, that was known to Maori law.

Multiple payments The Maori view that sales had not been effected, and that continuing obligations applied, is corroborated by further evidence that additional payments were asked for. It could only have affirmed them in their belief that, in many cases, the additional payments were then made. Crown counsel argued that Maori requests for further payments were not like demands for rent, but were usually based on some pretext of previously unfinished business. We consider that simply gave grounds for raising the matter, as though the Maori concerned would otherwise have waited for the settlers to give of their own free will.

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28. Puckey to Church Missionary Society, 22 January 1846, Puckey MS, University of Auckland Library

### 3.3.5 The nature of the occupation and the deeds in Maori; ‘tuku whenua’

The claimants felt some outrage that so much land could have been taken on the basis of certain deeds in Maori when, on their reading of those deeds, they did not effect a land sale. The deeds spoke of tuku whenua, a conveyance of land, when the only land conveyance Maori then knew of, in their view, was one with a string attached, rather like a lease but nothing like a sale. They were angered that, while to them a traditional land conveyance was essentially a tribal arrangement to advantage the tribe, ‘tuku whenua’ had been manicured as a land sale, to advantage Europeans. Thus began the ‘tuku whenua’ debate, which was to consume much hearing time. Did ‘tuku whenua’ or ‘land conveyance’ mean a land sale or a traditional allocation, or was it a neutral term?

The tuku whenua  
debate

The claimants called Maori Marsden, Ross Gregory, Shane Jones, Rima Edwards, and Margaret Mutu to say what a tuku meant for them as Maori.<sup>29</sup> We were treated to a treasure trove of Maori law on managing land, which was really about managing people, along the lines described in chapter 2. It boiled down to this: that land was given to bring people into the hapu for the hapu’s long-term advantage. It was claimed that reference to a tuku of land, a ‘tuku whenua’ as it is described in the deeds, would have conjured up that purpose. It is not just that Maori had no word for ‘sale’ but more, that the word the missionaries chose for sale, tuku whenua, in fact had another meaning already. And ‘sale’ was not alone. There was no word for ‘ownership’ either, as claimant counsel observed, for Maori had the privilege of possessing or using only, or they might say that something was in their control.

Maori studies lecturer L Head and Crown historian F Sinclair argued that the claimants had wrongly limited ‘tuku whenua’ to a type of transaction which they had then elevated to an institution, creating a strange new element in a long historical debate.<sup>30</sup> Essentially, Head argued that tuku was a neutral term for ‘give, release or let go’, so that tuku whenua could refer to any land conveyance, including a sale. It meant simply to let land go. The Maori world had changed, it was argued, a permanent alienation was understood, and ‘tuku whenua’ was probably first used as a compound noun to cover land conveyances in Western terms.

We agree with Head’s point that context is more important than the linguistic debate, and Sinclair sought to provide that context. He argued that Maori made rapid adjustments. He pointed to the vigorous trade with Pakeha from the 1830s, and to a range of commentaries indicative of a substantial shift in Maori minds.

29. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Brooker and Friend Ltd, 1992 (doc C25); R S Gregory’s submission on pre-Treaty transactions (doc F28); doc F23; M Mutu, ‘Tuku Whenua or Land Sale’ (doc F12); S Jones, ‘He Whakaaringa mo te Tuku Whenua’ 20 March 1994 (doc M3). The matter was initially raised by Dr Rigby: see doc B1, p 1; and see also doc C5, p 1, doc C6, pp 1–2, and doc D3, p 1.

30. See L Head, ‘Maori Understanding of Land Transactions in the Mangonui–Muritoki Area during 1861–65’ (doc F21), ‘An Analysis of Linguistic Issues . . .’ (doc G5); F Sinclair, ‘Issues Arising from Pre-Treaty Land Transactions’ (doc I3)

We refer to those in a moment. For now we record our view, after careful consideration of the circumstances, that the Maori world had not in fact changed in a fundamental sense, and that the Maori understanding of a permanent alienation was probably no better than the European understanding of the primacy of ancestral tenure.

Read together, the lengthy submissions of anthropologists Metge and Salmond, linguist Bauer, and historian Wyatt would appear to acknowledge that *tuku whenua* was not an institution, but to hold nevertheless that the term had meaning for Maori only by reference to the long-established process which the claimants had described.<sup>31</sup> That process represented the norm, or that which was *tika* or right, it was argued, and *tuku whenua* referred to it. Western land sales were not known, it was said, nor was the concept of a permanent alienation. Maori believed they had retained their authority over the land, and Maori society was fundamentally as it had always been.

We have summarised lengthy arguments, and our own conclusions are brief. The main issue, as we see it, was the extent to which Maori had come to new ways, and that, in our view, required reference to the total context, not merely to the language of the deeds. We none the less note as follows. The traditional process of allocating land carried unique referents to continuing relationships and responsibilities, as was fundamental to Maori society. Despite changes in outer form, such fundamental values remained the same. Western land sales were diametrically opposed to the traditional concepts. They severed relationships and terminated obligations, while, for Maori, continuing obligations and relationships were essential. The evidence is that Maori still expected those relationships and obligations to carry on. Accordingly, whatever Maori word was used to denote the sense of giving or conveying land, and no matter how neutral that word was, it would still conjure up a giving or conveying on Maori terms, unless something else was done, within or outside the deed, to make it very clear to Maori that something extraordinary was happening. We are not aware of anything in particular that would sufficiently impute that new revelation.

In brief, no word is neutral in cross-cultural parlay, for no word lives on its own, divorced from its cultural milieu. To the English, for example, 'conveyance' is neutral, covering anything from a sale to a licence, but would hardly conjure up the prospect of being incorporated into a tribe. Likewise, even were 'tuku' neutral, for Maori it would not extend to encompass a land sale or a permanent severing of all ties. There is in each case a relationship between the act of conveyance and the way the conveyance is expected to be performed.

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31. See Dame Joan Metge, 'Comments on Issues Arising from Pre-Treaty Land Transactions . . .', 10 October 1993 (doc K1); Professor A Salmond, 'Likely Maori Understanding of Tuku and Hoko', July 1991 (doc D17), 'Treaty Transactions: Waitangi, Mangungu and Kaitaia, 1840' (doc F19); W Bauer, 'Tuku Whenua: Some Linguistic Issues' (doc L2); P Wyatt 'The 'Sale' of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions', 16 June 1992 (doc F17)

We doubt, therefore, whether *tuku* was in fact neutral, as was claimed. We think it was too much associated with gift-giving to be seen so. It is telling, in that respect, that like most Maori words it could be used in many ways where similar concepts applied, so that, while *tuku* certainly meant to give up or let go, it also meant to receive and entertain – the other side of gift-giving. Thus Maori words are used in many ways but regularly with a common conceptual denominator.

The source of the problem as we see it, giving good grounds for complaint today, was the presumption that the British way could be assumed and need not have been explained. It was assumed that the British system of land management would apply, not the Maori system for managing people. It was assumed that old Maori words could be given new meanings, and could be made to apply to this new system, as though any Maori methods would become redundant. Those assumptions were the cause of the trouble, in our view, for it was clearly wrong to impose them.

Thus it was expected that ‘*tuku whenua*’ would come to mean ‘land sales’ in time, despite the fact that those words had been associated with a process that was quite the reverse. We can thus appreciate the claimants’ anger. Their land and their language were assaulted at the same time, and the capture of one was used to justify the taking of the other.

In the highly conceptual and metaphorical manner of Maori speaking, ‘*tuku*’ was only one of many possibilities for ‘sale’, and in fact it was another word, ‘*hoko*’, which was eventually to prevail as an equivalent. The deeds also used ‘*hoatu*’. That captured another sense, a sense of direction away from the speaker or persons spoken of, just as ‘*homai*’ gives the reverse. ‘*Hoko*’ lay between, suggesting to and fro, give and take, or exchange. None of these words, however, described an absolute and unconditional transfer of land. The deed simply did not convey the notion that a vastly different type of land deal was meant to be going on.

Other words took on new meanings, too. It is doubtful whether Maori believed in ‘forever’ as Europeans did; instead, they considered more pragmatically that, if worked on, some things were more likely to endure. Thus it appears that, in their original meanings, ‘*oti tonu atu*’, ‘*ake tonu atu*’ and ‘*ake ake ake*’ had more to do with continuity than ‘everlasting’ or ‘an absolute end’. Similarly, ‘*tamariki*’ covered ‘issue’, and could have coped with certain ‘heirs’, but its meaning was stretched beyond comprehension when it was intended to include ‘assigns’. Meanwhile, ‘*utu*’ could mean payment, but more regularly meant the payments would go back and forth, and on and on. Neither ‘*rohe*’ nor ‘*kaha*’, nor even ‘*paewhenua*’, described boundaries or districts as Europeans understood them. ‘*Kainga*’ did not mean ‘estate’ but places where fires burnt, from homes to camp sites, and the name given to a land block might previously have referred to a locality larger or smaller than the block to which it was ascribed. It seems to us

that, despite Puckey's familiarity with Maori, the deeds were speaking Maori with an English intent.

### **3.3.6 The context – a European view**

Some passion in the *tuku whenua* debate may suggest the expert witnesses were further apart than they were. Each seemed to us to be saying that it was not the language, but the context in which words were used, that mattered most. We thought it necessary to ask: what were the thoughts of Maori and Pakeha at this time? what mores and myths shaped their points of view? what did they expect in light of their own norms? and had either side altered its traditional position?

Crown lego-historian Sinclair was foremost amongst those who saw change, Maori moving to European standards, in his view, and transferring land 'fairly and squarely within the province of [Western] trade and commerce', as Crown counsel put it. Not unnaturally, the sources relied upon were European accounts. It is not practical to review at length his considerable and intelligent historiography (or that of others), but we understood him to say in essence that Maori adapted with alacrity to novel ways, that they leant more to trade than land retention, and that they sold knowingly for immediate returns and because they anticipated future benefits.

We agree that Maori had long-term goals based upon expected gains from European settlement, and we presume that, like anyone, they would take what they could in the interim; but it is a large step to assume that they were thinking outside their own cultural framework, or were operating within that peculiarly Western concept of an absolute alienation – especially one that would remove them from the future economic equation. The position we see as mainly this: that Europeans saw a sale and, even if unconsciously, interpreted Maori opinion in terms of their own perspective.

The image of some osmotic pull to a stronger cultural system was also assumed, it seems, but again, that reflects how Europeans saw things and not the Maori reality. This illustrates the danger of the written record. It elevates the game of one team only, when there were two teams on the field. The pervasiveness of a one-sided story is not always appreciated. Since Maori spoke Maori, reports of what they said are more than second-hand. 'I sold the land' would be simple enough, for example, were it not for the fact that there was no word for sale. Is that what Maori said, then, or was it what the other party heard?

A number of accounts were relied on to show Maori understood sales. Thus, as early as 1835, a 'leading chief' at Kaitaia is reported to have considered that the land was gone for ever once payment was made. Given the debacle over that Kaitaia sale in the way the gifts were presented, however, what assurance is there that the European commentators put the story right, or were not influenced by that which a valid sale required? It could be the 'leading chief' was simply

playing back what the missionaries themselves had said, to check that he had heard aright. This was not unknown, by any means.

Also, it was said, a league was formed in Hokianga to oppose land sales, showing that Maori had come to understand the effect of them. But did this league against land sales exist purely in the European eye? Was it like the Taranaki league against sales, as perceived by Europeans, where in fact Maori were not debating the meaning of a sale but challenging the number of Europeans coming in, their independent behaviour and the threat to Maori power and authority.

Numerous other examples were given and some will be referred to in later chapters, but in looking at each, we can only say that a different view is obtained if one stands in the footsteps of a Maori. A sale in the European eye is an occupation in the eye of Maori, and vice versa. The documented opinions must now be revisited in light of the greater information that is available today on Maori customary standards.

In subsequent chapters on later events, this question of context is revisited, since both sides were presumably learning more of each other over time. For the moment, we are extremely cautious about relying upon reports from only one side, and reports, moreover, which reflect the particular presumptions of that time. A study of bicultural interaction would appear to require, first and foremost, an appreciation of how each culture worked before judgements are made of the extent of any change.

### 3.4 THE EASTERN DIVISION – PORORUA AND THE TRADERS

The transactions in the eastern division are shown in table B. The land boundaries in the associated deeds were not clearly described, nor were they later sketched or surveyed, but figure 19 is an indicative map of their approximate locations. Figure 20 gives three typical deeds for this area. Figure 21 is an example of a somewhat legalistic deed, the form of which was probably drafted in Sydney. Unlike the deeds in western Muriwhenua, which were all in Maori, these were in English without Maori translations.

The deeds

In the eastern division the Europeans were traders, sawyers, and the like with businesses based on Mangonui Harbour. The Maori party to the transactions comprised either Pororua, his family or his followers. Later, when a commission sat to investigate European purchase claims, Panakareao thwarted its inquiries, allowing no one to consider that Europeans could have a right in the Mangonui district without Panakareao's say-so. In the event, the transactions in this area were not investigated at the time; nor, as will be seen, were they properly investigated at any point later. The amount that Pakeha claimed as a result of the pre-Treaty transactions in the eastern division was 30,962 acres (12,530 ha). Virtually nothing survives on record to show how the various transactions were

The parties

Figure 19: Pre-Treaty transactions, eastern Muriwhenua

completed, whether in public or in private, whether the deeds were read and translated, how goods were distributed, and so on.

**3.4.1 The dispute between Panakareao and Pororua – a question of right**

Essential to understanding the transactions in the eastern division, however, as well as those in central Oruru, is the dispute between Panakareao and Pororua. While conflicting stories from rival hapu continue to confuse the picture, there is at least some local support for that which now follows. It appears that both

rangatira were born in Oruru Valley and that both were remarkable childhood leaders. Their rivalry goes back to then. Panakareao claimed the greater right in Oruru, through Te Rarawa, who had forced Nga Puhi from Oruru Valley and had reinstated Ngati Kahu to their ancestral territory. Panakareao identified himself with Te Rarawa, although the principal hapu of his father was in fact Ngati Kahu. Pororua, however, associated with Nga Puhi, in particular with Te Uri o Te Aho, the hapu of his father, Taiapa. He had Te Rarawa connections none the less. When Nga Puhi were driven from Oruru, Pororua's parents were allowed to stay, since his mother was a sister of the Te Rarawa leader, Poroa.

Panakareao and Pororua both left the area in early adulthood, Panakareao heading for the North Cape and battles with Aupouri and Ngati Kuri, Pororua for Whangaroa to join his Nga Puhi relations in their battles with Ngati Pou and the section of Ngati Kahu living there. By the early 1820s Hongi Hika had established his reputation as a military leader in the Bay of Islands, forging a number of hapu together under the name of Nga Puhi. In 1827, Hongi Hika and Nga Puhi expelled Ngati Pou from Whangaroa. By that time Ngati Kahu had also extended as far as the northern shores of Whangaroa Harbour and, soon after the expulsion of Ngati Pou, they too were forced from the district.

It is not clear when Pororua and his father joined Nga Puhi at Whangaroa, but both were apparently involved in routing Ngati Kahu from that area. It was on the basis of his father's battles that Pororua claimed an ascendancy over Ngati Kahu extending as far as Mangonui, and it was on the basis of those same conquests that Pororua claimed the sole right to treat with the first Pakeha settlers there. Further, Pororua married Ngaurupa of Ngati Kahu at Oruru, thus consolidating his position in that valley where he was later to introduce a number of his kinsfolk. Just as Panakareao lived at various places to maintain his leadership throughout Muriwhenua, so also Pororua lived variously throughout the centre and the east – at Oruru, probably near Peria, around Kenana and Kohumarua near Mangonui, and also at Whangaroa.

For his part, Panakareao regarded Pororua as an outsider in Oruru and an interloper at Mangonui. He never regarded Ngati Kahu as having been defeated at any point beyond Whangaroa. Panakareao had also kept Nga Puhi at bay at Whangaroa when they attacked Ngati Kuri. Furthermore, Panakareao had an alliance with influential sections of Nga Puhi who were in turn friendly with the Governor – Mohi Tawhai and Tamati Waka Nene.

It is difficult to see how the relationship between Pororua and the Mangonui traders was conceptually any different from that between Panakareao and the Kaitaia missionaries. Adopting customary styles, Pororua may be seen as doing no more than allocating areas where the traders could live or cut trees under his protection, in return for ongoing trading benefits. If Panakareao had no authority to sell land at Kaitaia, however, for no one was an absolute owner of any part, Pororua's authority in Mangonui was even less. It is doubtful whether he had any authority to represent the local Ngati Kahu communities who continued to reside

Pororua could have given only a use-right

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 847 to 'Toherry's Bush'	'Tyup' and another to W Murphy and J Berghan, sawyers, 15 May 1836	Not known	2	No	Claimant appeared but did not proceed with examination. No grant recommended
Claim 403 to 'Ryan's Point'	Pororua and seven others to T Ryan, sawyer, 14 May 1836	£79	300	No	Godfrey recommended 514 acres scrip for claims 403–407. On application to FitzRoy 1542 acres scrip offered. Not accepted. In 1852, White, assuming land was now the Crown's, granted J Lloyd 426 acres in the area where OLC 403 was situated. This grant satisfied Lloyd's share of OLC 458. Bell ordered three acres for W Butler for interest in OLC 407. Grant issued 4 October 1859.
Claim 1362 to 'Muritoki'	Pororua and six others to J Berghan, 30 May 1836	Not known. Perhaps a gift.	3000	No	Not investigated by Godfrey. Considered a transaction between Maori. Land surveyed in 1850s – 2337 acres. Commissioner Domett ordered a grant of 2414 acres 24 September 1864.
Claim 404 to 'Whakaangi'	Nukewa and two others to T Ryan, sawyer, 4 June 1836	£5 6s	320	No	Godfrey recommended 514 acres scrip for claims 403–407. On application to FitzRoy, 1542 acres scrip offered. Not accepted. No grants issued for OLC 404 by Bell.
Claim 618 to 'Putakaka River'	Pororua to G Thomas and T Phillips, traders, 1 November 1836	£10	200	No	Godfrey recommended 279 acres scrip for OLC 617–623. Increased to 757 acres by FitzRoy. Scrip refused. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (No survey for OLC 618. Assumed to be Crown land.)
Claim 558 to 'Waipumahu'	Kiwa and another to J Berghan, sawyer, 7 February 1837	£11	1000	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558–565. Grants issued 4 October 1859. Partly surveyed OLC 558 – 493 acres. Grant for 493 acres ordered.

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 619 to 'Oneti'	Pororua and two others to G Thomas and T Phillips, traders, 1 April 1837	£5	600	No	Godfrey recommended 757 acres scrip by FitzRoy in 1837. Grants issued in 1838 (OLC 619 surveyed – Thomas's daughters)
Claim 405 to 'Waiau'	Tetori Ehira to T Ryan, sawyer, 1 September 1838	£11	150	No	Godfrey recommended application to FitzRoy. Grants issued for OLC 405 in 1838
Claim 913 to 'Paewhenua'	Pororua and another to W Butler, trader, 17 December 1838	£47	640	No	Godfrey recommended confirmed award. Scrip issued in 1839
Claim 565 to 'Whatta' (Berghan Point)	Pororua and another to J Berghan, sawyer, 10 January 1839	£16	50	No	No deed presented in 1839. 50 acres scrip for all claims accepted. Bell orders issued 4 October 1851 there.
Claim 889 to 'Ngawai'	Pororua and four others to C Partridge, land speculator, 15 October 1839	Not known, but OLC 889–893 total £56	1600	No	Godfrey recommended Governor FitzRoy in 1839. Award of £500. Scrip accepted. In 1851, W granted J Duffus 426 under OLC 458.
Claim 854 to 'Oparehu'	Pororua and two others to S Wrathall, 23 October 1839	Not known, but OLC 851–856 total £33	1000	No	Godfrey recommended increased award to 6200 acres in 1839

Table B: Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 620 to 'Te Moka'	'Kohana Ti' and another to G Thomas and T Phillips, traders, 30 October 1839	Not known	150	No	Godfrey recommended 757 acres scrip by FitzRoy for 1288 acres. Grants issued for OLC 620 surveyed – 1859.)
Claim 890 to 'Te Moka'	'Kohana Ti' and another to C Partridge, land speculator, 30 October 1839	Not known, but OLC 889–893 total £56	200	No	Claim was withdrawn
Claim 566 to 'Oruaiti'	Pororua and another to J Berghan, sawyer, October 1839	£10	3000	No	Godfrey recommended 1146 acres scrip. Scrip issued for OLC 558–565. Grants issued for land surveyed in 1852 and 1853.
Claim 891 to 'Waimaori'	'Tupiariro' and four others to C Partridge, land speculator, 7 November 1839	Not known, but OLC 889–893 total £56	1800	No	Godfrey recommended 1800 acres scrip. Governor FitzRoy increased award of £500. Scrip issued and accepted.
Claim 856 to 'Otoomania'	Pororua and others to S Wrathall, sawyer, 11 November 1839	£35. Not known, but OLC 851–856 total £33.	4000	No	Godfrey recommended 4000 acres scrip. Governor FitzRoy increased award to 6200 acres.

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 892 to 'Kapara'	Pororua and nine others to C Partridge, land speculator, 12 November 1839	Not known, but OLC 889–893 total £56	4000	No	Godfrey recommended Governor FitzRoy in award of £500. Scrip accepted.
Claim 887 to 'Taemaro'	Pororua and five others to H Smyth, land speculator, 14 November 1839	Not known, but price of £9 for OLC 887–888	300	No	Godfrey recommended increased it to 500 ac
Claim 888 to 'Imua'	Pororua and five others to H Smyth, land speculator, 19 November 1839	Not known, but price of £9 for OLC 887–888	800	No	Godfrey recommended increased it to 500 ac
Claim 623 to 'Otonga'	Pororua and six others to G Thomas and T Phillips, traders, 20 November 1839	Not known	2000	No	Godfrey recommended 757 acres scrip by Fitz 1288 acres. Grants is (OLC 623 not surveyed)
Claim 893 to 'Otoha'	Pororua Wharekauri and four others to C Partridge, land speculator, 21 November 1839	Not known, but OLC 889–893 total £56	2000	No	Godfrey recommended Governor FitzRoy in award of £500. Scrip accepted.

Table B: Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 914 to 'Pukakawa'	Pororua Wharekauri and four others to W Butler, trader, 22 November 1839	£60	3000	No	Godfrey recommended confirmed award. See
Claim 443 to 'Mangonui' (location not known)	Katapona and six others to T Spicer, trader, 4 January 1840	£9	200	No	Claim withdrawn.
Claim 770 to unknown (not located)	T Ryan, sawyer, and others to A B Victor De Sentes, 4 January 1841	£80	650	No	Claim dismissed, no

Table B: Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and

there (though often identified at that time under the more embracing label of Te Rarawa).

### 3.4.2 The sawyers – a matter of marriage

The extraction of kauri began in 1831 when the *Darling*, the schooner of Sydney merchant Ranulph Dacre, landed a party of sawyers with a British Admiralty contract to supply spar timber. These included James Berghan, Thomas Flavell, Thomas Ryan, George Thomas, Thomas Phillips and Stephen Wrathall. Generally, these men had more right than the missionaries, for each became incorporated into the Maori tribal structures through marrying local women. These women had either Te Rarawa or Nga Puhi connections, and some were of distinguished rank. James Berghan's first wife, for example, was Turikatuku Makareta, the daughter of Ururoa, a Whangaroa rangatira of Nga Puhi. One of their sons, Joseph, was in turn to marry Maraea, the daughter of Pororua. Berghan's second wife was the daughter of Ihaka Te Teira of Peria, who claimed connections to both Pororua and Panakareao. Each of these European settlers was to claim land rights by purchase. However, it is likely that Maori saw their strongest right as arising out of marriage and would later support land claims in favour of the children.

The sawyers

In terms of the deeds, the sawyers acquired land, though possibly at the time they saw themselves as gaining no more than timber or timber cutting rights. Their deeds were probably drafted for them, since they were not literary types and at least one could not sign his name. These deeds purported to convey land, but they also gave some emphasis to the timber, which was the main attraction then. Thus Ryan's Waikiekie deed conveyed:

The acquisition of timber

all rights titles Interest to all the Bush Land and Timber known by the Name Ku Pona both sides of the River and all the Timber there on as far as the Mourea.<sup>32</sup>

Similarly, the Putakaka deed provided:

Know all men by these presents that I Bowrua or Ware Cowrie a Chief of Mongaruewie and Oduru on the first day of November One thousand eight hundred and thirty-six have sold unto Thomas Phillips, George Thomas and Thomas Burgess of Mongaruewie, Doubtless Bay, New Zealand, their heirs and assigns for ever all Rights Titles and Interest (excepting 6 spars now standing and belonging to Stephen Wrathall and two trees belonging to Mr Gudger) to a settlement now called Peutoearea with all the surrounding parts.<sup>33</sup>

The form of these deeds may have been prepared in Sydney, with the traders being left to add the names of the parties and the property in question.

Dieffenbach wrote, after visiting the area in 1840:

32. OLC 403–407 (doc D12(a), p 11)

33. OLC 617–623 (doc D12(a)(i), p 89)

## MURIWHENUA LAND REPORT

### Deed for 'Timber Land' on the Putakaka (Oruaiti) River

Know all men by these presents that I Bowrua or Ware Cowrie a Chief of Mongaruewie and Oduru on the first day of November One thousand eight hundred and thirty-six have sold unto Thomas Phillips, George Thomas and Thomas Burgess of Mongaruewie, Doubtless Bay, New Zealand, their heirs and assigns for ever all Rights Titles and Interest (excepting 6 spars now standing and belonging to Stephen Wrathall and two trees belonging to Mr Gudger) to a settlement now called Peutoearea with all the surrounding parts of which settlement I the said Bowrua or Ware Cowrie give all claims up to the said Thomas Phillips, George Thomas and Thomas Burgess, and I Bowrua or Ware Cowrie have received of the above Thomas Phillips, George Thomas and Thomas Burgess as a full and just payment in sterling money (£10) Ten Pounds for which I forfeit all rights and all claims or my heirs or successors to the above their heirs and successors for ever. In Witness whereof I set my hand and seal this first day of November 1836.

Bowrua or Ware Cowrie x  
Tanuware x his mark

Witness—

William Wells  
Robert Twait x my mark  
Stephen Wrathall  
James Whitaker x my mark

*(Turton's Deeds, pp 27–28)*

### Waipumahu Deed

Know all men by these presents that We Kiwa Pew and the undersigned Native Chiefs of Mungonui District Doubtless Bay New Zealand for and in consideration of £10 ten pound, One Dress Coat Value Five Pounds, one Box £1 one pound, one Blanket, 16 sixteen shillings, 10 lbs Tabacco, and 6 six yards of Calico, to us in hand paid by James Berghan of Mungonui the receipt whereof we hereby acknowledge have bargained sold and delivered and by these presents do bargain sell and deliver unto the said James Berghan all that piece or parcel of land timber mines and minerals belonging thereunto and bounded as follows: Commencing at Wymboomough and following the different windings of the Putta Kaka river unto the Wangaroa road and back to Wymboomough by the Wangaroa road and known by the Native names of Orudu, te Hate, Wymboomough &c &c to have and to hold aforesaid bargained premises unto the aforesaid James Berghan and his executors administrators and assigns for ever, and we E Kiwa Paowa Poruria and the undersigned for us and our executors administrators and assigns by these presents. In witness whereof we set our hands and seals this 7th day of February in the year of our Lord 1837.

Kiwa  
Na Pewa toku x tohu

[In] Presence of—

Frederick Hanckel

*(Turton's Deeds, pp 28–29)*

### Ngawai Deed

Know all men by these presents That we Native Chiefs residing at Oododo and Munganui of Doubtless Bay New Zealand, and known by the names 'Tai Heape', 'Waekowri', 'Tukarede' and 'Rekiwa'. On the fifteenth day of October in the year of our Lord One thousand eight hundred and thirty-nine have bequeathed bargained and sold and by these presents do bequeath bargain and sell unto Clement Partridge and Hibernia Smyth (late of Adelaide in South Australia but now of Munganui in Doubtless Bay) their Heirs Executors and Assigns for ever all our right title and interest in and unto a piece of parcel of land with all timber &c &c thereunto belonging situated at Munganui in Doubtless Bay fronting the salt water on the South West side and known by the name of 'Kngawi Tioararoa' on the South East Boundary and Kotehihi on the North West boundary adjoining a piece of land formerly purchased by Thos Ryan divided from his land by a small stream of water called the 'Hai Hai' creek bounded on the South West by the salt Water and extending to a ridge of hills to the North East which forms the outside boundary at the foot of the said hills the River runs which forms the outside boundary. We the said 'Tai Hape' 'Warekowri' – 'Tukarede' and 'Rekiwa' in consideration of the sum of Fifty pounds value in goods of the undermentioned description viz Ten pair of Blankets, nine gown pieces, six red Shirts, Eleven common Shirts, six pair of Trowsers. Three gross pipes, a double barrel Fowling piece, ten pounds of tabacco, six handkerchiefs – one bag of shot, three boxes of percussion caps, and a nipple screw, which we do hereby acknowledge to have received as a just and full payment for the above described piece of land, and do hereby resign all our right title and interest, in and unto, the said piece of land for ourselves and our Heirs, Executors, and assigns for ever and do yield up possession of the same to the said Clement Partridge and Hibernia Smyth their Heirs executors and assigns for ever in witness whereof, we have hereunto set our hands and seals this day and year and first above written in presence of the undermentioned witnesses.

October Fifteenth One Thousand eight hundred and thirty nine. Received the value of Fifty pounds in goods as described under of Messrs Clement Partridge and Hibernia Smyth being full and final consideration for the piece of land described on the other side in the presence of the undermentioned witnesses.

10 pair of blankets	1 Double Barrel Fowling piece
9 Gown pieces	10 lbs Tabacco
6 Red Shirts	6 Handkerchiefs
11 Common shirts	1 Bag Shot
6 Pair Trowsers	3 boxes of percussion caps
3 Gross Pipes	1 nipple screw

Witness

Thos Flavell his x mark  
George Thomas  
Thomas Phillips his x mark

*(Turton's Deeds, pp 39–40)*

Figure 20: Three typical trader deeds, eastern Muriwhenua

A great many of these first settlers, doubtful of being able to maintain their claims to their immense purchases, have no other object than to clear the greatest possible amount of profit in the shortest time, even at the sacrifice of a large and invaluable forest.<sup>34</sup>

He described the ‘reckless destruction’ of kauri forests occurring in many places, and noted that, once cleared, ‘kauri land is so exhausted that scarcely anything will grow on it but fern and manuka’. Much of the work of felling and cutting the logs up into 16-foot lengths was done by ‘native sawyers’. Cut in the inland forests, the logs were floated down tributary streams in flood times to the harbours. Dieffenbach recorded:

A melancholy scene of waste and destruction presented itself to me when I went up to see this forest. Several square miles of it were burning having been fired in order to make room for the conveyance of logs down to the creek. Noble trees, which had required ages for their perfection, were thus recklessly destroyed in great numbers, as, in consequence of the great quantity of resin around this pine, the fire always spread rapidly. The cupidity of new settlers too often occasions the destruction of the forests, to the irreparable injury of subsequent colonists.<sup>35</sup>

### 3.4.3 General overview of transactions

Each of the transactions in the eastern division is described in detail in Professor Stokes’s background report.<sup>36</sup> At this point we need make only the comments that follow.

Notwithstanding the paper conveyance in the deeds, on the ground nothing was given except a right to use and occupy; and that was subject to compliance with local laws and customs and contribution to the local community. As illustration of the above, the Europeans were subject to the law of muru or plunder for offences. The trader Thomas Ryan and his Maori wife were twice subjected to muru, on each occasion for leaving their place of residence and thus breaching their contractual obligations as Maori saw them. It was ‘their custom’, Ryan said, ‘to take all the possessions of any person who forsook any tribe, considering them forfeited’. That indeed was the custom as we understand it: the profit from the tribe had to return to it. Hibernia Smyth and his family were also subjected to muru, probably for similar reasons.

No change on the ground; Maori law continues to apply

Further, the right given was not a property right, for Maori had bargained for a relationship, not a sale. The arrangement was personal. Thus Panakareao later admitted Captain William Butler to residency at Mangonui, but, as land commissioner Godfrey noted:

A personal relationship was established rather than a land right

34. E Dieffenbach, *Travels in New Zealand*, London, John Murray, 1843 (reprinted Christchurch, Capper Press, 1974), vol 1, p 228

35. *Ibid*, p 227

36. Professor Evelyn Stokes, ‘Muriwhenua: Review of the Evidence’, May 1996 (doc P2), ch 13

This Indenture made the Seventeenth day of December in the year of our Lord One thousand eight hundred and Thirty- Eight Between Ekeva and Warekauri Chiefs of Mungonue and Odoodo Mungonue Doubtless Bay New Zealand of the one part and William Butler Master of the Whaling Barque Nimrod of the other part. Whereas the said Ekeva and Warekauri being Chiefs of Mungonue and Odoodo aforesaid in the Territory of New Zealand and having right and authority to alienate the land hereinafter described have contracted with the said William Butler for the sale to him of the said land for the consideration hereinafter expressed. Now this Indenture witnesseth that in consideration of one double barrell gun two casks of gunpowder three kegs of Gunpowder Sixty pounds of tobacco four cotton shirts four pair of duck trousers one canister of powder and one box of caps and two pair of blankets in hand well and truly delivered by the said William Butler to the said Ekeva and Warekauri before the sealing and delivery hereof the receipt whereof and that the same is in full for the absolute purchase of the Inheritance in Fee Simple in possession of the land and hereditaments hereinafter described and intended to be hereby enfeoffed and conveyed the said Ekeva and Warekauri Do hereby acknowledge and from the same and every part thereof Do acquit release and for ever discharge the said William Butler his heirs and assigns and also the said land. We the said Ekeva and Warekauri have given granted and enfeoffed and by these presents Do give grant enfeoff and confirm unto the said William Butler and his heirs All that Island situate in the Harbour of Mungonue and known by the name of Piehenou or by whatever name the Island is known or distinguished Together with all ways paths waters woods timber and other trees mines and metals and all appurtenances to the said land and premises belonging or in any wise appertaining And all the right and title whatsoever of them the said Ekeva and Warekauri or of any persons or persons claiming or deriving title through them or to the same To have and To hold the said Island hereditaments and premises hereinbefore described and hereby granted enfeoffed or confirmed or intended so to be with their and every of their rights privileges advantages and appurtenances whatsoever until and for the sole use and behoof of the said William Butler his heirs and assigns for ever And the said Ekeva Warekauri for themselves respectively and their respective heirs Do hereby covenant with the said William Butler his heirs and assigns That they the said Ekeva and Warekauri and their heirs shall and will warrant and for ever defend unto and to the use of the said William Butler his heirs and assigns All the Island and premises hereby granted and enfeoffed against them the said Ekeva and Warekauri and their heirs and against all and every other person and persons whomsoever claiming the said land and premises or any part thereof. In Witness whereof the said Ekeva and Warekauri have hereunto affixed their seals and signatures the day and year above written.

. . . [Attestation clauses]

Be it remember that on the seventeenth day of December in the year of our Lord one thousand eight hundred and thirty-eight peaceable and quite possession and full Seizin of the land and hereditaments within mentioned to be granted and enfeoffed to the within named William Butler was openly had and taken by the within named Ekeva and Warekauri and by them delivered to the said William Butler. To hold the same unto and to the use of the said William Butler and his heirs according to the purport and true intent and meaning of the within written Indenture in the presence of us whose names are hereunto subscribed.

. . . [Attestation clauses]

. . . [Receipt for goods]

Figure 21: Captain Butler's Paewhenua deed – eastern Muriwhenua

altho' the Claimant would be permitted to remain undisturbed upon these Lands by this Chief, yet, as it is not probable, that he would at any time be allowed to transfer them to others.<sup>37</sup>

Despite Ryan's experience, those who had taken Maori wives were probably more secure, at least so long as they lived on the land and kept the local law. Certainly, the husbands would remain outsiders, but the children would have a place as of right in the local hapu, for they came in on a bloodline. They came from the whenua. They would be the tangata whenua.

Some who came may be regarded as speculators, like Hibernia Smyth and Clement Partridge, who stayed briefly then went. For them no less than others the expectation was that they would settle, and they too appear to have been subjected to muru when they attempted to leave. It is then significant that many years later, when Maori petitioned that they were wrongly excluded from this district, the petitioners assumed, rather than stated, that the land had reverted to Maori after the departure of 'Smith' and 'Pateriki', as they were then called. On leaving, contractual arrangements were seen as at an end.

Speculators

The position is not so clear with Walter Brodie. He came and went but returned again with intentions of working a coppermine on his claim at Karikari Peninsula. In his case, he complained, Maori forced a renegotiation of his contract, reducing it considerably to leave only the coppermine part of his acquisition, that is, the area he intended to use.

Finally, the Europeans' right was no greater than the right of the one who gave it. In this case, the right of use and occupation was from Pororua. It seems, however, that the right thus obtained was not strong and that a right from Panakareao was mainly required. Those who stayed were eventually to receive Panakareao's blessing.

A question of authority

### 3.5 THE CONFLICT AT THE CENTRE

The transactions in the central district, from Mangatete to Mangonui, are set out in table c and are approximately delineated in figure 22(a) (Mangonui township), (b) (Oruru), and (c) (Karikari). The total area claimed by Europeans in the central district was 21,745 acres (8900 ha). Generally, the traders involved in the eastern division also claimed property in the centre, being either sections in Mangonui township or land in Oruru Valley. In each case, their pretended right was through allegiance to Pororua, as before, and tribute was given in the form of a variety of goods – blankets, clothing, guns, and implements. Those involved included Thomas Ryan, James Berghan, Stephen Wrathall, George Thomas, and Thomas Phillips. There were others, like William Wright, who transacted with Pororua although they had not been involved in the eastern sector.

The claims through Pororua

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37. OLC 913–914, (docs D5, D12(a)(ii))

Figure 22(a): Pre-Treaty transactions as represented in old land claims,  
Mangonui, central Muriwhenua

The claims  
through  
Panakareao

The other claimants in the central district claimed through Panakareao. All deeds through Panakareao were in Maori. Those of all others were in English. Two traders who had not been involved in the east, and who pursued rights through Panakareao, were Walter Brodie and William Murphy, although Brodie's purchase deed was effected without Panakareao being involved. Further, John Ryder, a carpenter for the Church Missionary Society, contended for land from Panakareao near Taipa. The missionary Joseph Matthews had a claim for land near Karikari, and James Davis, the son of missionary Richard Davis, had a stake

Figure 22(b): Pre-Treaty transactions as represented in old land claims,  
Oruru Valley, central Muriwhenua

nearby at Mangatete, in each case by aligning with Panakareao. There is extrinsic evidence, referred to in a later chapter, that both the Davis and Matthews transactions were meant to hold parts of the land for Maori. Finally, as if to outwit the adherents to Pororua, Panakareao gave the whole of Oruru Valley to the Church Missionary Society surgeon, Dr Samuel Ford, to hold on trust for local Maori according to such allocations as Panakareao might approve. He thus purported to subsume the right of anyone claiming through Pororua. In the opinion of Crown historian D Armstrong, Panakareao was also attempting to

Figure 22(c): Pre-Treaty transactions as represented in old land claims,  
Karikari area, central Muriwhenua

extend his influence to Mangonui, while the missionaries promoted the transaction in order to secure peace.<sup>38</sup> Then once more, when government was established and a commissioner was assigned to investigate these alleged purchases, Panakareao was to prevent any inquiry into any land claim that had not been approved by him.

Panakareao's transactions with Matthews and Davis, and the arrangements with Brodie, will be considered more fully when reviewing the inquiry into them

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38. See doc J3

in chapter 5. The transaction with Ford, however, needs further attention at this stage.

No doubt Samuel Ford, Church Missionary Society surgeon based mainly in the Bay of Islands, was highly valued for his treatment of a people troubled by fatal epidemics, against which the *tohunga*, unaccustomed to these imported infections, were powerless. Panakareao had already provided him with a large area at Kaitaia and, as mentioned in the previous chapter, there is evidence, extrinsic to the deed, that Ford maintained that the land was held on trust for the local people. Near the end of the pre-Treaty days, in November 1839, Panakareao set aside in Ford's name the massive and rich Oruru Valley. It was the second-largest land transaction in Muriwhenua and exceeded some 20,000 acres (8094 ha). It had once been the home of one of the most intense aggregations of Maori people.

Ford's Oruru  
transaction

There were several other unusual features to the Oruru arrangement. The deed covered not only the whole Oruru Valley but extended beyond to include the eastern extreme, the Kohumaru village, a regular residence of Pororua (see fig 22(b)<sup>39</sup>). Further, it encompassed and thus appeared to negate certain previous arrangements that Pororua had made with traders in this area. Then it purported to secure the land for two communities of Maori, both of them a mixture of Nga Puhi and Ngati Kahu–Te Rarawa: at Kohumaru, where Nga Puhi may have been the greater number, and at Oruru, where Ngati Kahu–Te Rarawa almost certainly were.

Furthermore, this deed was executed by 50 Maori, which suggests a rather public event; then, more extraordinary still, it was executed by people from both Ngati Kahu–Te Rarawa and Nga Puhi. None other than Kiwa, Pororua's brother, was among those who joined Panakareao and signed, but Pororua himself did not do so. Probably, this omission was not accidental.<sup>40</sup>

Nothing survives of the circumstances, the debate and the goods distribution, and whether the deed was executed at once or over time. Yet the deed has the hallmarks of an attempt to settle that debilitating tribal and leadership dispute between Pororua and Panakareao. Was it possibly settled that Pororua should stay in the east at Kohumaru and Panakareao in the west, along the lines allegedly stipulated by Mohi and Nene when ending the war in Oruru? Whatever the case, Pororua did not agree, and later he opposed the investigation of this transaction on the ground that he had not approved it.

While there is no hard record of the Maori opinion, from a Pakeha view the evidence is strongly indicative of a trust. The prospect of a trust arises from these words in the deed (as translated from the text in Maori):

A trust was  
intended

The people of Kohumaru with their children may sit upon this place from this generation to another: but not the people of other parts: those of the place only.

39. We have estimated the boundaries of Ford's Oruru transactions from the description in the deed, but, given the lapse of time, the exact location of the place names mentioned is uncertain.

40. For varying opinions on the purposes of the deed, see doc C1, p 16; doc D4, app v, pp 28–29; doc J3, p 3

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 155 to unnamed block, unlocated	Unknown party to R Dacre, sawyer, November 1831	£70	5000	No	Failed to appear. No grant.
Claim 617 to 'Purapura' (see fig 21(a))	Pororua and two others to G Thomas and T Phillips, traders, August 1834	£22	100	No	Commissioner Godfrey recommended 279 acres scrip for all claims. Increased to 757 acres scrip by FitzRoy. Refused scrip. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. ( oLC 617 surveyed – 14 acres. Ordered grants totalling 2.5 acres to Thomas's daughters, T Flavell, E Flavell, and Butler, October 1859.)
Claim 560 to 'Riria' (see fig 21(a))	Pororua and three others to J Berghan, sawyer, 4 May 1836	£20 8s	50	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for oLC 558–565. Grants issued 4 October 1859. oLC 560 partly surveyed – three acres. Grant for three acres issued.
Claim 561 to 'Ruakarama' (see fig 21(a))	Pororua and three others to J Berghan, sawyer, 9 June 1836	£16	50	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for oLC 558–565. Grants issued 4 October 1859. oLC partly surveyed – one acre. Grant for one acre issued.
Claim 852 to 'Waikainga' (see fig 21(b))	Pororua and another to S Wrathall, sawyer, 26 October 1836	Not known, but oLC 851–856 total £33	3000	No	Godfrey recommended 242 acres scrip for oLC 851–856. FitzRoy increased award to 640 acres scrip. Scrip accepted.
Claim 851 to 'Hemu no i' (see fig 21(b))	Pororua and another to S Wrathall, sawyer, 1 May 1837	Not known, but oLC 851–856 total £33	300	No	Godfrey recommended 242 acres scrip for oLC 851–856. FitzRoy increased award to 640 acres scrip. Scrip accepted.
Claim 160 to 'Mangatete' (see fig 21(c))	Taua to J Davis, church worker, 21 June 1837	£40	1000	Yes	Godfrey recommended 320 acres. Grant issued 24 June 1844. Grant called in by Bell and land surveyed – 535 acres. Bell ordered grant of 466 acres. Grant issued 10 February 1862. Land resurveyed – 5346 acres. 4880 acres 'surplus'.

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 406 to 'Kapanga' (see fig 21(b))	Rokaia and two others to T Ryan, sawyer, 9 November 1837	£26	1500	No	Godfrey recommended application to FitzRoy. In addition, £1500 scrip. Scrip accepted by Maori.
Claim 848 to 'Oparera no 1' (see fig 21(b))	Panakareao and two others to W Murphy, sawyer, 21 December 1837	£13	400	Yes	Godfrey recommended 22 October 1844. Claim by FitzRoy issued £2150. 303 acres cancelled by Maori.
Claim 407 to 'Waikielie' (see fig 21(b))	Ewarri to T Ryan, sawyer, 21 June 1838	£8	10	No	Godfrey recommended application to FitzRoy.
Claim 853 to 'Hemu no 2' (see fig 21(b))	Pororua and another to S Wrathall, sawyer, 6 November 1838	Not known, but OLC 851-856 total £33	400	No	Godfrey recommended increased award to £100.
Claim 894 to unnamed block	Pororua and another to W Wright, sawyer, 17 July 1839	Not known, but OLC 894-895 total £5	Not stated	No	Godfrey recommended acres scrip. Not known.
Claim 895 to unnamed block	Pororua and another to W Wright, sawyer, 23 October 1839	Not known, but OLC 894-895 total £5	20	No	Godfrey recommended acres scrip. Not known.
Claim 621 to Rangatakaka (see fig 21(b))	'Tamitiwauka' to G Thomas and T Phillips, traders, 5 November 1839	£38	600	No	Godfrey recommended acres scrip by FitzRoy. 1288 acres. Grants issued (OLC 623 not surveyed).

Table c: Pre-Treaty transactions, central Muriwhenua (Mangatete to Mangonui as represented in figure 22(a), (b), and (c))

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 563 to Kohikohi (see fig 21(b))	'Taweede' and two others to J Berghan, sawyer, 6 November 1839	£15	350	No	Godfrey recommended 1146 acres scrip. Scrip for OLC 558-565. Grants surveyed – 145 acres
Claim 562 to 'Otawuera' (see fig 21(a))	Ewarri to J Berghan, sawyer, 7 November 1839	£43	25	No	Godfrey recommended 1146 acres scrip. Scrip for OLC 558-565. Grants surveyed – four acres
Claim 855 to 'Tanepurapura' (see fig 21(b))	Tane and another to S Wrathall, sawyer, 7 November 1839	Not known, but OLC 851-856 total £33	1100	No	Godfrey recommended increased award to 6000 acres
Claim 850 to 'Waikiekie' (see fig 21(b))	Pororua Wharekauri and another to C Olman, 8 November 1839	£13	60	No	Godfrey recommended scrip. Olman transferred White recommended Mangonui. Grant issued
Claim 564 to Taipa (see fig 21(b))	Ewarri to J Berghan, sawyer, 9 November 1839	£17	40	No	Godfrey recommended 1146 acres scrip. Scrip for OLC 558-565. Grants surveyed – 41 acres.
Claim 559 to 'Tuckawera'	'Taweede' and another to J Berghan, sawyer, 9 November 1839	£9	40	No	Godfrey recommended 1146 acres scrip. Scrip for OLC 558-565. Grants surveyed – 41 acres. No grants issued thereafter
Claim 704 to 'Oruru' (see fig 21(b))	Panakareao, Kiwa, and 49 others to S Ford, church worker, 12 November 1839	£220	5000 (in deed 20,000)	No	Godfrey recommended 1146 acres scrip. Scrip issued

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 329 to 'Parapara' (see fig 21(c))	Panakareao and 15 others to J Matthews, church worker, 14 November 1839	£52	800	Yes	Godfrey recommended 800 acres. Grant issued for 800 acres. FitzRoy – 493.5 acres. Lands surveyed – 731 acres. Bell and Clarke 15 February 1840. Grant for Maori, 5229 acres.
Claim 849 to 'Oparera 2' (see fig 21(b))	Hu and another to W Murphy, sawyer, 22 November 1839	£3	400	Yes	Godfrey recommended 400 acres. Grant issued 22 October 1844. Claim 849. FitzRoy issued 215 acres. Grant of 303 acres cancelled. Land.
Claim 622 to 'Otanenui' (see fig 21(b))	Witirua to G Thomas and T Phillips, traders, December 1839	£5	100	No	Godfrey recommended 100 acres scrip by FitzRoy. 1288 acres. Grants issued. OLC 622 not surveyed.
Claim 570 to 'Knuckle Point' (see fig 21(c))	Paikai and 11 others to W Brodie, land speculator, 3 January 1840	£79	1200	Yes	Godfrey recommended 1200 acres. Grant issued for another OLC outside Muriwhenua. 947.5 acres. Land surveyed. 21 October 1846. Bell.
Claim 1025 to 'Maheatai' (see fig 21(b))	Panakareao and two others to J Ryder, church worker, 8 January 1840	£30	200	No	Commissioner Godfrey recommended 200 acres. Bell ordered grant for 'Surplus' of 167 acres.

Table c: Pre-Treaty transactions, central Muriwhenua (Mangatete to Mangonui as represented in figure 22(a), (b), and (c))

Also the people of Oruru may sit upon their places on the said land within the boundary. But for me [Panakareao] to point out the sitting places of the natives and those only shall be there who follow the directions of the Scripture of Jesus Christ.<sup>41</sup>

Puckey so  
admitted

As Armstrong pointed out, the arrangement that Panakareao could determine who might reside on the land, provided they were Christian, may have been a two-edged sword, for Pororua had so far refused to add Christianity to his ancestors' religious equipment. This deed too, however, was almost certainly the work of W. G Puckey, who saw the arrangement more clearly as a trust. At the Mangungu Treaty signing on 12 February 1840, Wi Tana Papahia objected to the large claims of two persons in the north, in what we consider was a pointed reference to the Reverend Richard Taylor and Dr Ford, who had the largest claims by far. Puckey was there and responded that:

the land alluded to was held under a trust deed for the use of the natives, and that the mission would hand over that [land] and all other Tracts held in a similar way to the Government.<sup>42</sup>

The intention that the land would be held in trust for Maori, or that the deed should serve to secure the land for them, is further supported in this written statement by Dr Ford, made in 1841 to the commissioners appointed to investigate these transactions:

I purchased this land at the urgent request of the natives who were desirous of disposing of it to one who [would] act as their guardian allowing them to cultivate portions of land within my boundaries.

This is expressed in the Deed and there are now many natives settled in legal and undisturbed possession on my purchase . . .<sup>43</sup>

In October 1840, Ford and Panakareao renegotiated the transaction, as shown by a codicil on the reverse of the deed. It translated into English as follows:

We Noble Panakareao and others whose names are affixed to this deed of land on the back of this, in conjunction with Mr Ford have all of us agreed that all the land therein mentioned shall go back to the natives excepting that expressed in the present writing which shall belong exclusively to Mr Ford & his heirs. Lo! these are the boundaries . . .<sup>44</sup>

There followed a description of boundaries enclosing perhaps some 5000 acres (2024 ha). Only Panakareao and one other signed. Various opinions were given on this amendment. Historian Dr B Rigby noted that Ford had left the Church

41. Turton 1879, deed 52

42. R Taylor, 'Notes of the Meeting at Hokianga, 12 February 1840', enclosed in Taylor to Jowett, 20 October 1840, Taylor papers, 10, ATL (doc B15, pp 14-15)

43. Ford to New Zealand land commissioners, 28 December 1840, OLC 1/700

44. OLC 1/704, (doc D12), pp 20-21

Missionary Society service and thought that could have been a factor. D Armstrong observed that the amendment effectively acknowledged that Panakareao had authority over the balance, and P Wyatt put the matter more strongly, that Maori were asserting their continued authority wherever they could.<sup>45</sup> Whether a severance of the trust was in fact intended, however, is doubtful. In the subsequent investigation of the claims, Ford filed for the full 20,000 acres, relying only upon the 1839 deed. Later he explained that only 5000 acres were sought for himself absolutely. It is possible, however, that an inalienable trust for Maori was intended for the balance.

### 3.6 THE NORTHERN SANCTUARY

The two transactions on the northern peninsula are summarised in table D and shown in figure 23. More detail on these is found in Professor Stokes's report.<sup>46</sup> The area claimed was 51,200 acres (20,721 ha), but the claim of one alone amounted to 50,000 acres. This is regularly referred to as 'Taylor's Purchase', although we think the word 'purchase' is a misnomer: there Panakareao and a missionary agreed to an arrangement to secure protection for certain hapu at risk.

Tables and figures

The mixed motives of missionaries, to protect Maori interests while not forgetting their own, are again apparent in the arrangements the Reverend Richard Taylor sought for the country's most northerly point. Adopting the thoughts of the missionaries in the Bay of Islands, though not quite following their form, Taylor proposed to hold the northern peninsula for the local Maori, many of whom had been driven from the area by Te Rarawa and wished to return. Taylor referred in particular to 'Te Aupouri', although he also used that name compendiously for all Maori of that area, just as the missionaries used 'Te Rarawa' for everyone else. Combining commercial objectives with his humanitarian ideals, Taylor sought also to invest in this venture some capital from certain colleagues in New South Wales, plus some of his own, so that, in addition to protecting the land for Maori, he might secure for himself and his partners an area proportionate to their investment based upon the New South Wales land ordinance scale.

Taylor's mixed motives

To this end, Taylor met with the Kaitaia missionaries and settled the arrangements with Panakareao. It appears that most of Te Aupouri and Ngati Kuri were then living at Kaitaia, although sections of Ngati Kuri were spread from Manawatawhi to Whangaroa. Although Panakareao was later criticised for treating with Taylor ahead of the local people, he appears to have shared Taylor's concern for the northerners' future. Te Aupouri and Ngati Kuri were living peaceably amongst Te Rarawa at Kaitaia at this time, and Panakareao had

Maori motives

45. See docs C1, J3, F17

46. Document P2, ch 16

Figure 23: Pre-Treaty transactions as represented in old land claims, northern peninsula taken up arms to protect Ngati Kuri when they were threatened by Nga Puhi at Whangaroa.

The deed's words      In the deed the arrangement was not described in full. The relevant part (translated) read:

This land becomes Taylor's. It has been decided to belong to his children forever and ever.

Taylor agrees that the rest of the Aupouri people live on his land if they live peacefully without stirring. Taylor will direct them as to where they should settle if they wished to settle and return there. However no person shall say the land belongs to them. They cannot stake their claims or buy or sell any part of this land.<sup>47</sup>

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47. Translation given to Crown by M Jones in 1993: see doc 15, p 15.

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 458 to 'Muriwhenua'	Panakareao and 28 others to R Taylor, church worker, 20 January 1840	£30	50,000	Yes	Godfrey recommended 1704 acres grant. Grant issued for 852 acres 22 October 1844. In addition, 852 acres scrip exchanged for land east of Mangonui by Duffus and Lloyd in 1850s. See OLC 403 and OLC 889.
Claim 382 to 'Kaimaumu'	Panakareao and seven others to T Grenville (W Potter pursued the OLC), 27 December 1839	£221	1200	Yes	Godfrey recommended 225 acres. Grant issued 22 October 1844. Called in by Bell and 130 acres scrip ordered for Macky. Scrip issued 20 June 1862. Scrip accepted. Land absorbed into Wharemaru block.

Table D: Pre-Treaty transactions, northern peninsula, as represented in old land claims and depicted in figure 23

Taylor's journal and letters provide the necessary amplification. He wrote in his journal on 21 January 1840:

Taylor's  
amplifications

This day I settled with Noble [Nopera Panakareao] the chief of the Rarawa to buy Muriwhenua or the north end of the island, a large though unserviceable tract of land 35 miles long and ten wide in one part arranging at the same time for the entire land as far as Mt Camel with the chieftainship of the whole. I have given the former one hundred and sixty pounds (£160) in goods which I have taken off Sadlier's hands at his request and £100 in money. I have been induced to do so because by my becoming purchaser 80 natives will immediately return and settle upon it where I have offered them and the entire tribe a home. They have been vanquished and expelled by Noble's tribe some years ago and have never since dared to live on the land.<sup>48</sup>

Later, in a letter of 5 October 1840 to the Church Missionary Society in London, Taylor wrote:

I have purchased the [Coast?] . . . from the North Cape to the Reinga. I did so because I thought if I did not I should never perhaps have another opportunity. This land was formerly the possession and abode of the Aupouri who being vanquished by the Rarawa lost both their chief . . . and their land, the greater part of the tribe was then cut off, the remainder fled to Wangaroa where they remained with a friendly tribe until a few months ago when their friends having parted with their land to Europeans they were compelled to seek a home elsewhere their desires were naturally towards their native spot. They petitioned Noble [Nopera

48. Taylor's journal, Auckland Institute and Museum (quoted at docs B15, p 8, 15, pp 10–11)

Panakareao] to restore it to them, the tribe refused, Noble himself pressed me to buy it, I declined, for I came to the land with the determination not to have any possession [of?] it, and therefore invested my little property in the Colony (of New South Wales) before I left, but it so happened my agent sent me word the security was not good and my money was still in his hands and he moreover strongly recommended to me to purchase land in New Zealand stating that this would be the only opportunity missionaries would have of making any provision for natives, he also sent goods to obtain some for himself (and he is one of our best men in the colony). I therefore bought the land partly with his goods . . .

Taylor then described the terms of the transaction and stressed his honourable intentions, in that he had:

made provision for the whole tribe of the Aupouri, only stipulating that each individual should be obedient to me, there are now nearly 100 men in the land which before was uninhabited, for myself I only claim 1500 acres and the same for the other owner. I may have erred but I believe whatever the world may say I have done more for the poor natives than will be done again, a tribe now have a home, its native home. I can only say that I am most willing to resign to the Society all my interest in it if deemed advisable. I cannot regret the step I have taken though I feel it will render the motives which led to it to be doubted until the circumstances of the case are known.<sup>49</sup>

On 6 October 1840, Taylor wrote to Hobson about his transactions:

Having been given to understand that you wish to ascertain what lands have been secured in behalf of the natives, I have the honour of informing you that I have purchased a tract of land extending from the north cape to Cape Maria V D [van Diemen] and thence to a small perforated island [Matapia], which I hold in trust for the natives of the Aupouri tribe reserving 6000 acres for myself, Col Phelps [who had acquired part of Sadlier's interest] and Lieut Sadlier RN joint purchasers to be selected from whatever parts of that purchase I may think proper. I have also to state that many of the natives of this tribe who once owned the above mentioned land but were vanquished and expelled from it by the Rarawa, have since my purchase returned, and are now residing upon it.<sup>50</sup>

A trust was intended

It is apparent that Taylor saw himself as holding the land in the deed on trust for the customary hapu, as well as having personal rights to a comparatively small part of it.

Taylor's later assessment of the area

We now know that the area concerned was about 65,000 acres (26,306 ha). At the time the deed was signed, however, Taylor had little idea of the size or boundaries. He had still to visit the area, and the deed's boundary description probably came from Te Aupouri and Ngati Kuri Maori then living at Kaitaia. Taylor later walked the land and completed a sketch in his journal, which is

49. Taylor to Church Missionary Society, 5 October 1840, Taylor MS/254, ATL

50. Taylor to Hobson, 6 October 1840, IA 1/1840/567, NA Wellington

Pencil, pen, and ink sketch of Kaitaia by the Reverend Richard Taylor. Reproduced with the permission of the Whanganui Historical Society. Print courtesy of the Alexander Turnbull Library (F2866o½).

reproduced in figure 24. The boundaries recited in the deed, however, give a different result, as is also shown in figure 24, especially excluding the fertile area on the east coast known as Waikuku. This is important, for when Taylor travelled to the area in January 1841, the local people were concerned that Waikuku should be left out.

At first Taylor had ‘a cool reception’ from those at Parengarenga. They considered that Panakareao had no business to deal with the land without them. When Taylor returned the following month, he met with:

the Chiefs of the Aupouri with Te Mu at their head when they stated that part of the purchase they allowed which is the land from Pakaho [Pakohu] to Waitohia [Waitohora] and then to Parengarenga and Matapiu [Matapia].<sup>51</sup>

This describes a triangle, as shown in figure 24, and again Waikuku is excluded. On returning to Kaitaia, however, Taylor endeavoured to secure Waikuku. His journal entry for 16 February 1841 records an arrangement with:

Taitimu a chief of the Aupouri (baptised yesterday) to go and reside on my land at Waikuku, he first signed a paper acknowledging that the land was mine and that none should live there without making the same acknowledgement and then I presented him with a handsome blue cloak intended for Noble but returned by him when he was out of temper with me.<sup>52</sup>

This agreement, translated into English, read:

This declaration is my agreement of a sale [hokonga] by Nopera in Muriwhenua to Taylor and I consent to his living in Waikuku, such place to be regarded as Taylor’s place. So that this agreement may be binding, I will not permit the people who oppose Taylor to live there, also those who object to this place being Taylor’s.<sup>53</sup>

Kai titiro [Witnesses]	Wiki Taitimu, Rangatira o te Aupouri
Nopera	Naterani Wakaruru
W G Puckey	Paraone te Huhu
J Matthews	Mehaka Hiko

The inclusion of Waikuku was to be the cause of some dissension. Indeed, the whole transaction became beset by confusion. There will be further reference to it in the next chapter, which concerns the Government’s subsequent inquiries.

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51. Taylor’s journal, 5 February 1841, ATL

52. Taylor’s journal, 16 February 1841, ATL

53. Translation for Crown counsel by M Jones, 1993

Figure 24: 'Taylor's transaction', northern peninsula

**3.7 SUMMATION**

Our opinions on the main points are as follows:

- While presumably Maori did not all see things the same way and thoughts changed over time, we think it is highly unlikely that Maori generally saw the land transactions in Muriwhenua as land sales in the European sense. Much more compelling evidence would be needed to assume that the profound and antithetical principles of traditional land tenure had been displaced.
- There is no compelling evidence that Maori had bowed to an alternative power structure when the transactions were entered into. The presumption must be the other way, that Maori saw things faithfully in terms of their own law, which was the only law they needed to know and the only one to which they owed commitment.
- Despite the use of deeds and money, and other changes in form, the fundamental value system underpinning Maori law appears to have been unaffected.
- It is far more likely the transactions were seen by Maori as creating personal bonds, and as allocating conditional rights of resource use as part of that arrangement.
- The general principle was that persons were allocated the right to use a particular resource, rather than the right to all uses within a defined parcel of land. Although some modification of that principle may have been seen as appropriate for Europeans, the principle still applied so that a right of exclusive possession to all resources in a given area could not be assumed.
- A personal contract needed to exist between the land user and the community. Rights passed to heirs of the blood and could not pass to assignees without community approval. It is consistent that the missionary deeds entailed the land, that is, that they personalised the right to the transferee and issue. By custom law, however, no land interest existed independent of the local community and was freely transferable outside of it. Land rights flowed from an abiding relationship with the associated hapu.
- Use rights were conditional upon regular contribution to the community and acceptance of its authority and norms. Accordingly, it was considered, continuing benefits would flow to the community from the allocation of use rights.
- The view persisted that the underlying right to the land, and the authority over it, remained with the ancestral community. People did not buy land so much as buy into the community. From a traditional view, the land was still the land of the people long after it was 'sold', so that even today, Maori speak of the relationship they have with their ancestral land, notwithstanding a century of intervening sales. In the same way, people throughout the Pacific still talk of church land, for example, as 'their' land, as though no permanent alienation of the freehold had occurred.

Mangonui early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G4902<sup>1</sup>/<sub>4</sub>).

- There is no sufficient evidence to show that, generally, early Europeans sufficiently understood the Maori tenure system or were sympathetic to it. They appear, rather, to have been locked into their own cultural opinions. Henry Southey may have been an exception.
- Generally, Europeans occupied the land at Maori will, but upon annexation, the deeds were presented as absolute land conveyances consistent with the English legal system.
- The basic distinctions were that Maori saw a social compact where Europeans saw a property conveyance. Europeans considered persons could hold land without social obligations and responsibilities to the local community, while to Maori, that was unthinkable; the use of a resource was a privilege passed down from the ancestors. Europeans saw a land transaction as simply a deal, a transaction where the parties need barely have known each other beforehand and need not know each other thereafter. To Maori it was the confirmation of a relationship which was intended to produce ongoing benefits for both sides.
- Contemporary opinion that Maori understood sales may be subjective, self-serving, overly dependent on the authors' interpretation and not founded on an adequate comprehension of Maori tradition.
- It does not follow that, when Europeans gave new meanings to Maori words and practices, in the deeds, they had the same meaning for Maori, or that words like 'sale' conjured up in the Maori mind all that they did for Europeans.
- It is doubtful that 'price' meant for Maori what it meant for Europeans. It was not about land value, but about the mana of the Europeans (a person of status should be able to give generously) and the mana of the contract (that given should suffice to honour the affected Maori and to mark the occasion).
- Effectively, the deeds evidenced only part of the arrangement, being that which the European party sought to achieve under English law.
- If Maori law applied before annexation (or after), as we consider it did, then, as a matter of law, the transactions could not have been sales, for Maori law did not permit of that. If English law had prevailed, the transactions are doubtful again, for lack of contractual mutuality.
- The rangatira did not have the right, title, and interest to effect a sale in Western law. They had only a power of allocation. We consider Panakareao did not seek to do more than allocate land, and for the benefit of the local community, with whom the European would then be bonded. Moreover, in allocating land to Europeans, the rangatira were not alienating their authority over the land but asserting it.
- The missionaries' concept of a trust, as implied with Oruru, Raramata, Mangatete, Okiore, Tangonge, and Muriwhenua North, or other joint-use arrangements, came closer to Maori expectations that the Europeans would have a role within the Maori communities and both would assist each other.