

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.1 Sharing the harbour with the settlers

5.1.1 Two communities

Figure 11: 1854 plan of the Town of Napier by Alfred Domett. Taken from M D N Campbell's *The Story of Napier 1874-1974* (Napier, 1975, endpages).

In the aftermath of the 1851 Ahuriri purchase and the laying out of the town of Napier in 1854 and 1855,¹ local Maori and settlers became what historian Dr James Belich categorised as:

twin communities co-operating in an often tense but more or less equal 'symbiosis' . . . economically interdependent, politically allied but autonomous, a more or less equal partnership . . . derived partly from mutual misunderstanding . . . based more on pragmatism than principle or policy.²

5.1.2 Continued exercise of customary use rights

For a decade or more, the Ahuriri purchase made little difference to the customary use and occupation of Te Whanganui-a-Orotu by local hapu, who continued to care for and control it, and related hapu, who visited it seasonally. In 1859 Te Koau (Gough Island), for example, was still 'much frequented as a camping ground by fishing expeditions' (A12:105), even though it had been laid out in sections in Alfred Domett's 1854 town plan (see fig 11). Local Maori were happy to permit Pakeha to use the harbour for trade and shipping.

Mataruahou, with its steep hillsides and gullies and cut off from the hinterland by the lagoon and swampy mudflats, was not an attractive or healthy site for the town. The first sales of town sections were held in 1855 and 1856, and some suburban sections were also sold in 1856.³ Napier was declared a customs port of entry for the supervision of shipping in 1855. But as long as it remained essentially a beach community, servicing the provisions trade and coastal shipping, local Maori were happy to share 'their lake'.

5.1.3 Maori trade and agriculture

Maori relocating and rehabilitating themselves near the shoreline after the return from Mahia 'quickly learned that if they cleared an area and planted grain and wheat they were in business'. 'By the digging of drains, the cutting back of flax and bringing on the consolidating hooves of animals', they were able to reclaim swampland for cultivations in response to the growing European demand for agricultural products.⁴ Maize, wheat, fruit, vegetables, pigs, and potatoes were transported by canoe on inland waterways and small seagoing craft to the port, where they were exchanged

with Pakeha storekeepers for horses, saddles, clothes, ploughs, and other goods or cash.

Wellington and Auckland merchants sent schooners and brigs to Ahuriri to procure pork and agricultural produce. Local Maori as well as Pakeha owned small vessels and participated in coastal trade and shipping. For a short time, the growth of trade, coastal shipping, and Maori agriculture produced the kind of wealth and reciprocity that local chiefs had expected when they offered to sell land and extended their hospitality to settlers. But promises held out by Grey and McLean of 'a new world of prosperity' and great benefits from a large population of good settler families and public amenities did not eventuate.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.1 Sharing the harbour with the settlers

5.1.1 Two communities

Figure 11: 1854 plan of the Town of Napier by Alfred Domett. Taken from M D N Campbell's *The Story of Napier 1874-1974* (Napier, 1975, endpages).

In the aftermath of the 1851 Ahuriri purchase and the laying out of the town of Napier in 1854 and 1855,¹ local Maori and settlers became what historian Dr James Belich categorised as:

twin communities co-operating in an often tense but more or less equal 'symbiosis' . . . economically interdependent, politically allied but autonomous, a more or less equal partnership . . . derived partly from mutual misunderstanding . . . based more on pragmatism than principle or policy.²

5.1.2 Continued exercise of customary use rights

For a decade or more, the Ahuriri purchase made little difference to the customary use and occupation of Te Whanganui-a-Orotu by local hapu, who continued to care for and control it, and related hapu, who visited it seasonally. In 1859 Te Koau (Gough Island), for example, was still 'much frequented as a camping ground by fishing expeditions' (A12:105), even though it had been laid out in sections in Alfred Domett's 1854 town plan (see fig 11). Local Maori were happy to permit Pakeha to use the harbour for trade and shipping.

Mataruahou, with its steep hillsides and gullies and cut off from the hinterland by the lagoon and swampy mudflats, was not an attractive or healthy site for the town. The first sales of town sections were held in 1855 and 1856, and some suburban sections were also sold in 1856.³ Napier was declared a customs port of entry for the supervision of shipping in 1855. But as long as it remained essentially a beach community, servicing the provisions trade and coastal shipping, local Maori were happy to share 'their lake'.

5.1.3 Maori trade and agriculture

Maori relocating and rehabilitating themselves near the shoreline after the return from Mahia 'quickly learned that if they cleared an area and planted grain and wheat they were in business'. 'By the digging of drains, the cutting back of flax and bringing on the consolidating hooves of animals', they were able to reclaim swampland for cultivations in response to the growing European demand for agricultural products.⁴ Maize, wheat, fruit, vegetables, pigs, and potatoes were transported by canoe on

inland waterways and small seagoing craft to the port, where they were exchanged with Pakeha storekeepers for horses, saddles, clothes, ploughs, and other goods or cash.

Wellington and Auckland merchants sent schooners and brigs to Ahuriri to procure pork and agricultural produce. Local Maori as well as Pakeha owned small vessels and participated in coastal trade and shipping. For a short time, the growth of trade, coastal shipping, and Maori agriculture produced the kind of wealth and reciprocity that local chiefs had expected when they offered to sell land and extended their hospitality to settlers. But promises held out by Grey and McLean of 'a new world of prosperity' and great benefits from a large population of good settler families and public amenities did not eventuate.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.3 Further Crown land purchases

5.3.1 Completing the Ahuriri purchase

Figure 12: Plan showing post-1851 purchases. Drawn from the sketch map in A12 at page 102 and the plans in A12 at pages 99, 103, 104, and 114 and in A21(f) at pages 1549 and 1556.

Between 1854 and 1859, G S Cooper, who succeeded McLean after he became Chief Land Commissioner in Auckland, purchased at least another 130,000 acres in Napier's country districts. These purchases were but a fraction of the total Crown purchases in Hawke's Bay, estimated by McLean to amount to about 1,404,700 acres by 1859 (A5(a):345). For the Maori population (estimated to be about 3500), only about 3000 to 4000 acres remained.

In contrast to the open methods of purchase that McLean employed in 1851, when the deals were discussed at large public meetings of local chiefs and people on the spot, the 1854-59 transactions were often conducted secretly with chiefs in town without the knowledge and consent of all the rights holders, who also did not share in the proceeds. Moreover, the sales were often solicited with advance payments, and attempts to return purchase moneys by persons repudiating them were refused.⁷ In this wider context, two smaller Crown purchases in 1855 and 1856 and two more in 1867 and 1869 under the Native Land Court system completed and extended the Ahuriri purchase at the southern end of Te Whanganui-a-Orotu. In 1869 and 1870, customary land at the northern end of the lagoon and the Roro o Kuri native reserve were Crown granted to 10 'owners', who sold it to a private purchaser.

Before considering the effects of these purchases on customary rights to use, occupy, and control Te Whanganui-a-Orotu, it would be helpful to identify the principal local chiefs who were involved and their post-1851 settlements. They were Tareha, who was living at Awatoto, Karaitiana Takamoana, who was living at Te Awapuni, Kurupo Te Moananui, who was living at Waipureku (East Clive), Paora Torotoro, who was living at Kohupatiki, and Renata Kawepo, who was living at Omahu.

5.3.2 Land adjoining Mataruahou

By deed receipt 6 of 11 April 1855 (A8(b)) and deed 13 of 13 November 1856 (A8(a)), the Crown purchased a piece of land adjoining Mataruahou that had been excluded from the Ahuriri purchase by the reservation of Pukemokimoki. The deed receipt records McLean's consent to a payment of £50 and two town sections, which were to be laid out on the land. Tareha signed the receipt for £25, and the other £25 was to be paid when the money arrived from Auckland. The witnesses to the

transaction were Robert Park, a Government surveyor, and G S Cooper, the district commissioner. The payment was initialled by McLean.

The Mataruahou deed conveying the land to the Crown 'for ever' was signed by Cooper on behalf of the Crown and by Tareha, Karauria Pupu, and Hone Hoeroa on behalf of the chiefs and people of Ngati Kahungunu, and another £25 was paid. Under a Crown grant made on 30 December 1862, Tareha received sections 179 and 180 in Carlyle Street (E3:26).

The boundary of the block is described in the English translation of the deed as follows:

The boundary begins at the old boundary of Oteranga and runs along the edge of the Water to Poua thence to Omoko thence to Ahi-tahu-o-te-Waru where it cuts on the bank (or spit) at Taupata and runs down to the Sea and follows the Sea shore till it closes up with the old boundary. (A8(a))

This description is slightly different in wording and spelling but not in meaning from that in the deed receipt. It is followed by the standard clause in McLean's land deeds weeping over and bidding farewell to this ancestral land. In the deed receipt the land was 'entirely given up . . . as a lasting possession' (A8(b)).

The only place name that the claimants were able to identify was Te Ahi a Te Wharu, which is at the northern end of the Tutae o Mahu block on the eastern side of McLean Park (A12:101). The 'old boundary line' was identified by Mr Campin as the section of the boundary on the deed plan of the Ahuriri purchase that runs in two right lines from the mouth of the Tutaekuri River to a point between Mataruahou and Pukemokimoki and thence to the foreshore. This would be roughly the line of Emerson and Carlyle Streets (A21©:729).

As Mr Parsons observed in his evidence, confusion has long existed over the circumstances of this purchase because the deed title led to the erroneous belief that it was Mataruahou that was purchased (A12:100). It was also suggested that this purchase was intended to pacify Tareha over the original purchase by giving him an additional payment of £50 and two sections.⁸ Crown research on this claim established that the Mataruahou block purchased in 1856 consisted of a small wedge of land that had been excluded from the 1851 purchase when a section of the southern boundary was altered to exclude Pukemokimoki.

No separate plan of the block appears to have been produced, presumably because it was part of the town survey in 1855 (ie, over a year before the deed was signed) (A12:99, 102; A13:77). In August of that year, Alfred Domett, the Commissioner of Crown Lands and the resident magistrate, reported to McLean that they were laying out their Napier town 'famously' and that they had 'that piece you bought when here, the flat Southern end' laid out in quarter-acre or half-acre allotments (E1(b):33-34). On 22 September, he reported that the town survey was just finished: 'Lots of sections for sale . . . the island, *spits & flat* last purchased by you all laid out' (emphasis in original) (E1(b):34). The area of the block was 650 acres.⁹ After an access road was

formed over Bluff Hill and reclamation to abate 'the swamp nuisance' was begun, it developed into the town centre.¹⁰

5.3.3 The Tutaekuri block

By deed receipt 7 of 11 April 1855 (A8(b)) and deed 14 of 13 November 1856 (A8(a)), the Crown also purchased the Tutaekuri block from Tareha, Karauria Pupu, and Hone Hoeroa for the sum of £200. According to Mr Parsons, about a third of the acreage was inside the boundaries of Te Whanganui-a-Orotu. This reinforces the claimants' view that Te Whanganui-a-Orotu was still Maori (customary) land. Once again, McLean made the initial agreement and paid the first instalment of £100 and Cooper completed the transaction. The deed and plan were published in Turton (A12:103-104; A13:80).

The block consisted of 1000 acres of lagoon and swampy mudflats lying between the Tutaekuri River and the almost parallel Purimu Stream and extending south to where they joined at Pukana or Tamahui where a small island lay in the river. On the thesis that Te Whanganui-a-Orotu was excluded from the Ahuriri purchase, the claimants viewed this purchase as filling the gap in the deed's description of the boundaries between the mouths of the Purimu Stream and the Tutaekuri River. The Crown, however, viewed it as extending the Ahuriri purchase to include a further portion of Te Whanganui-a-Orotu on the southern side of the external boundary (the red line) on the deed plan. In fact, the northern boundary of the Tutaekuri purchase was not the edge of the lagoon but the southern boundary of Napier.

More importantly, from McLean's point of view this purchase must have been 'essentially necessary' to control the main waterways south and east via the Tutaekuri River and Tareha's creek to Awatoto, Te Awapuni, and Waipureku (East Clive), then inland via two navigable rivers, the Ngaruroro and the Tukituki. In about 1857, a link road between Napier and Waipureku was formed, a toll-bar was erected at Tareha's bridge across Tareha's creek, and a toll-gate fence was placed across the beach.¹¹ The 200-acre Waipureku block, which controlled the routes further south, had already been purchased for the provincial government in 1855 and the town of Clive was laid out in 1857.

The swampy mudflats of the Tutaekuri block were an important resource for local Maori, especially for eels and birds; but there is no indication that they were informed or consulted about, or shared in the proceeds of, the sale. Nor were any reservations made for continued fishing and access rights. Within 20 years, the area had been drained to provide more suburban land for Napier.¹²

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.4 The anti-land selling movement

5.4.1 The 1857 war

Prominent among the chiefs selling land in Napier's country districts in 1854-59 was the Ngati Whatuiapiti chief Te Hapuku, a long-standing opponent of Te Moananui's. He continued to work with McLean and his land purchase agents in opposition to local chiefs, whose land he sold without their knowledge or consent.

Ostensibly, the armed clashes that occurred in August, October, and December of 1857 and the resulting casualties were caused by Te Hapuku's procuring of timber from Te Pakiaka bush, where Te Moananui had erected a rahui pole, to build a pa at Whakatu. But Te Moananui, Karaitiana, and their supporters also had the important objective of ending Te Hapuku's secret land deals.¹³

When McLean attempted to make peace, Te Moananui was adamant that Te Hapuku and his dwindling supporters withdraw to their ancestral lands at Te Hauke. With some inducements from McLean, they did leave in March 1858, after burning Whakatu. Peace for the iwi and hapu of Ngati Kahungunu was achieved at a meeting at Tane Nui a Rangi in September, though Te Hapuku did not attend. Meanwhile, at the request of anxious settlers, a detachment of the 65th Regiment (Royal Irish) was posted to Napier, which became a garrison town for some years.

5.4.2 The runanga movement

Although Te Moananui, Tareha, Karaitiana Tomoana, and other Ngati Kahungunu chiefs did not join the King movement, they followed the lead of Renata Kawepo and set up a runanga system of local self-government to maintain social order and stop the selling of land to the Government. In 1861 McLean decided that no more land was to be purchased in the Napier district without the Governor's special consent.

The chiefs at this time were attempting to use the remaining land for the benefit of their people, cultivating it or renting it to pastoralists for grass money. In 1861 Cooper reported to McLean that Maori villagers were erecting weatherboard cottages, fences, and stockyards, and purchasing bullocks, drays, horses, and carts. Land was being ploughed for wheat growing and there were two water-mills for grinding the wheat. Contracts were being made for quarrying and metalling roads. Fines imposed by runanga had almost ended drunkenness, and crime was almost unknown.¹⁴

In his opening address to the provincial council on 2 June 1868, McLean observed that the Maori population possessed no inconsiderable part of the wealth and resources of Hawke's Bay. They were rich in land, cattle, horses, sheep, mills, and agricultural implements, and were applying themselves to industrial occupations; they

were generally well-disposed, amenable to the law, and contributed much to the prosperity of their province (A21(b):500).

What Cooper and McLean failed to observe was that their extensive land purchases were undermining the tribal foundations of this prosperity. Proceeds from land sales and rents were soon spent, and chiefs bought goods from local storekeepers on account and were forced to sell more land to discharge their debts. Debts were also incurred by chiefs who equipped their own expeditions to fight alongside Government forces against Te Kooti during the east coast campaigns.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.5 Renewed land purchasing

5.5.1 The Native Land Court system

As part of a policy of pacification and opening up remaining Maori districts of the North Island to colonisation, the settler government in 1865 set up the Native Land Court to facilitate the purchasing of land. The court's function was to investigate customary title, award certificates of title to not more than 10 named 'owners', and issue Crown grants. Direct purchasing by private individuals was re-instituted, and a new phase of extensive land purchases by private individuals as well as the Crown began in Hawke's Bay.

In 1867 and 1869, the Crown purchased two more blocks of land at the southern end of Te Whanganui-a-Orotu under this system, and in 1869 a local storekeeper purchased a block at the northern end on behalf of a sheep farmer. These purchases further eroded customary and Treaty rights in Te Whanganui-a-Orotu as well as rights recognised in the Ahuriri deed.

5.5.2 The Tutae o Mahu and Te Whare o Maraenui purchases

The Tutae o Mahu and Te Whare o Maraenui Crown purchases were southern extensions of the 1855 and 1856 Mataruahou and Tutaekuri purchases. They were made in McLean's name and enabled the provincial government to push ahead with building roads, bridges, and the Napier to Paki Paki section of the railway to the Manawatu, which ran via the beach route. The purchases also eventually provided more flat land for suburban Napier through reclamation.

The 140-acre Tutae o Mahu block was Crown granted to Tareha Te Moananui on 15 July 1867, and the 1808-acre Te Whare o Maraenui block was Crown granted to Tareha Te Moananui¹⁵ and Wiremu Nga Maia on 18 November 1869 (A21(f):1556). Because both blocks were sold by the grantees soon after the Crown grants were issued, they were presumably put through the Native Land Court for this purpose.

The Tutae o Mahu block was a long, narrow strip of shingle beach from the southern boundary of Napier to Tareha's bridge. Te Whare o Maraenui comprised tidal backwaters of Te Whanganui-a-Orotu and swampy mudflats, which were underwater in floods, between the Tutaekuri River and the beach.

A memorandum of agreement to sell the Te Whare o Maraenui block (consisting of 1500 acres) and naming Tareha Te Moananui as the seller was entered into on 29 March 1869. The price was set at £800, of which £400 was paid when the memorandum was signed, with the balance to be paid when the deed was signed. A block of 10 acres on the eastern bank of the Tutaekuri River was reserved for Tareha

personally (D1:31; E1:33). According to Mr Parsons, about half the acreage of this block was in Te Whanganui-a-Orotu, a further reinforcement of the claimants' view that it was Maori (customary) land (E3:29).

The boundary of the block was described as:

commencing at Tareha's bridge and following along the Meanee [sic] Road in a westerly direction until that road strikes the Tutaekuri River and thence down the right Bank of that River in a northerly direction to its fall into the Ahuriri lake and thence along the outer edge of the land at low water in an easterly direction and a straight line to the junction of Hastings Street with the Beach Road and along High water line in a southerly direction to the starting point at Tareha's Bridge. (E1(b):35)

This description included the 1867 Tutae o Mahu block purchase and was rectified in the deed of sale, which was signed by Tareha and Wiremu Ngamaia on 22 December 1869. The section of boundary running along the edge of the lagoon was described as follows:

commencing at the Eastern side of the mouth of the Tutaekuri River on the Ahuriri Lake in a North Easterly direction a distance of 5928 links, to the Southern boundary of the Town of Napier, following along that boundary Easterly to the Western boundary of the Tutae o Mahu Block . . . (E1(b):35)

The block now consisted of 1818 acres, out of which 10 acres were cut for Tareha's reserve.

From the claimants' viewpoint, the northern boundary of the Te Whare o Maraenui block filled in what Dr Gilling described as the remaining gap in the southern boundary of the Ahuriri purchase (E27(a):65). From the Crown's viewpoint, the Ahuriri purchase was further extended to include Te Whanganui-a-Orotu to the south of the external boundary (the red line) on the deed plan, thus acquiring a small section of the lagoon for the second time.

Following the Waipureku, Tutae o Mahu, and Te Whare o Maraenui purchases, the chiefs and people who had principal settlements near the southern end of the lagoon moved elsewhere: Karaitiana to Pakowhai and Omahu, Te Moananui's people to Pawhakairo and Matahiwi, and Tareha to Waiohiki. A rich traditional resource area and network of inland waterways and tracks was replaced by a network of roads and bridges, and by the railway and suburban Napier. In contrast to the Ahuriri purchase, these further Crown purchases appear to have been private transactions with an individual chief and one or two others. We have no evidence that all those with interests in the land consented to the sales or shared in the proceeds.

5.5.3 The Te Pahou purchase

The Pahou block consisted of 620 acres of land situated south of Petane and north of Ruahoro between the Waiohinganga River and the coast, two small nearby islands, Te

Ihu o te Rei and Parapara (four acres in total), and the native reserve of Roro o Kuri (70 acres) at the northern end of Te Whanganui-a-Orotu (A12:120) (see fig 12).

An application from Paora Torotoro and Te Waka Kawatini to put the block through the Native Land Court was heard on 16 August 1866 by Judges Monro and Smith. Ten names were put in by Paora Torotoro. In evidence to the 1873 Hawke's Bay Native Lands Alienation Commission, Tareha said that he was not included because he had quarrelled with the applicants about the land going through the court, but three of his people (Te Waka Kawatini, Morehu, and Maihi Raukapua) were (A5(i): evidence, p 6).

Utiku Te Paeata, one of about 40 people living at Petane, said that they had argued about the names before the grant was ordered and he had applied to the court to be included. The court said that it would not be right to have 12 or 20 names in the grant and there could be only 10. The 10 who were in the grant said that they were to be guardians. Utiku and his people were sad on account of their land being devoured by those whose names were on the Crown grant; the land belonged to the whole hapu (A5(i): evidence, p 5).

An order was made that a Crown grant be issued to the 10, namely, Paora Torotoro, Te Turuhira Heitoroa, Maihi Raukapua, Hama Paeroa, Te Waka Takahari, Pera Te Ruakohai, Matiu Te Manuhira, Morehu, Te Waka Kawatini, and Hoera Paretutu. The judge, however, ordered that it be delivered to the surveyor, Bousfield, to hold until the applicants paid the survey costs. In addition, they were liable for a court charge of £3 (D1:33). A Crown grant was issued to the 10 on 3 October 1866. Five of the grantees were among those who complained to the 1873 commission about the manner in which the block was purchased (A5(i): evidence, pp 3-6).

In the first instance, the block was rented by Thomas Richardson, a Petane sheep farmer and grazier, for £80 per annum. Payments were made to the grantees through Samuel Locke, the resident magistrate in Napier, who negotiated other Government purchases. Richardson then proposed to Paora Torotoro that he purchase the block for £400, but, because Paora was obstinate, he left the matter to a Meeanee storekeeper, R D Maney, to negotiate. Over time he paid the £400 to Maney but took no part in its distribution.

Maney prevailed upon Paora Torotoro to sign the deed of conveyance at his public house on the understanding that he (Paora) would be given £100 personally. Despite many applications to Maney, he was not paid. He therefore procured goods and spirits on account but received no statements or bills. On another occasion when Tareha visited him, Maney gave him £50 on account of Te Pahou for himself alone, because Tareha said that the land was his. Tareha then signed the deed, as did Paraone Kuare, who was also there and said he did so 'for a gig'. Paraone seems to have acted as Tareha's secretary. Four other grantees who lived at Waiohiki denied that they had signed the deed or received any payment in money or goods.

When Utiku Te Paeata tried to pay for a pair of trousers, a vest, and a shirt in wheat, he found that Maney wanted to put them on the land. He told Maney that he might put them on Te Ihu o te Rei, not Te Pahou. His mark on the deed for that debt was Maney's doing.

H M Hamlyn, a licensed interpreter, recollected that Paora Torotoro and Te Waka Kawatini signed at Maney's house and the rest signed at Tareha's place. The extra names on the conveyance were supposed to be outsiders agreeing to the sale.

The commission's chairman, C W Richmond, in his report on the five complaints concurred in by Commissioner F E Maning, stated that the deed of conveyance of 28 January 1870 was executed by Paora Torotoro and the other grantees, as well as by Tareha Te Moananui and several natives not named in the Crown grant: Wi Nganga, Utiku, Tareha, and Paraone. He expressed doubts about the adequacy of the price but reached no conclusions. As far as he could make out, all the complaints related to the distribution of the purchase money and to the mode of its payment. The grantees who said that they got nothing were not entitled to equity to repudiate their own acts. As to the mode of the payments, all the principal vendors' accounts with Maney that were mentioned appeared to be properly accredited to them. He believed that Paora Torotoro's allegation that Maney agreed to pay him £100 was 'pure fiction'.

Commissioner Hikairo expressed a different opinion. He believed that Paora Torotoro made frequent applications for the money without success and because of that went on getting credit. Maney was in the habit of holding back money so as to compel Maori to go to him in order to get goods on credit. Hikairo believed the four grantees who complained that they got no goods on account. 'This transaction,' he concluded, 'was not quite fair'.

Regarding Utiku's evidence, Hikairo said that according to Maori custom there were 20 persons with interests in the land who suffered injury through the insertion of only 10 names in the Crown grant. They had not received any of the proceeds. He believed that 'Maney had not got the whole of the land; There was a balance left and he applied that they should get the said balance'. It would be for Parliament to consider Utiku's statement (A5(i): report, p 56).

5.5.4 To whom was Roro o Kuri sold?

Mr Parsons expressed some doubt that Roro o Kuri was sold to Thomas Richardson. He cited a report in the *Hawke's Bay Herald* of 6 December 1870 that:

Te Roro o Kuri an island in Napier Harbour containing 70 acres, formerly the property of Mr A KOCH, was yesterday sold at auction by Mr E Lyndon for the sum of £142, the purchaser being Mr G E G RICHARDSON. (A12:120)

He pointed out that no such sale was recorded in the Native Land Court's minute books and Thomas Richardson's evidence to the 1873 commission made no mention of any of the islands in the block that he was farming. Rather, he had described a large part of the block as being 'sea beach and shingle bed', containing about '230 acres of good available land' (A5(i): evidence, p 6). Hikairo had referred to Maney as not having procured the whole of the land. Utiku's evidence seemed to suggest that the Petane people wanted to partition Te Ihu o te Rei out of the Crown grant.

In his *History of Hawke's Bay*, Wilson referred to a map of the province prepared by A Koch, a surveyor, and published by order of the provincial council in 1874, which

listed Richardson and Hutton Troutbeck as the purchasers of Te Pahou (an area of approximately 694 acres) and to the 1872 sheep return, which listed 2521 sheep for Richardson and Troutbeck of Petane.¹⁶ This evidence suggests that the *Herald* was incorrect.

Troutbeck was also listed in the 1875-76 electoral district roll for Napier as the owner of the Roro o Kuri island freehold.¹⁷

5.5.5 Te Pahou sale inconsistent with Treaty principles

In ordering a Crown grant for Te Pahou to 10 'owners', the Native Land Court acted inconsistently with customary law and Treaty principles. By including the reserve of Roro o Kuri in Te Pahou, it acted inconsistently with the 1851 deed of sale. By failing to take appropriate action to remedy this situation and to reserve a fishing and access right for Maori, the Crown acted inconsistently with its Treaty and contractual obligations.

The continuing importance of fishing rights in Te Whanganui-a-Orotu for local Maori was demonstrated by a passage in Richmond's 1873 report:

In the course of our enquiry Mr Maney gave evidence, that it had been stipulated on the part of the native sellers that they retain the right to resort to the beaches of Pahou, as a fishing ground, and to erect whares on a particular part of the block for their residence whilst so employed. This was admitted on the part of Mr Richardson, the purchaser. But as the Deed of Conveyance is silent on the subject, we recommend that steps should be taken, without delay, to define the reserved right, and to put it upon a proper legal basis. (A5(i): report, p 11)

This recommendation was not implemented.

Te Pahou was a minor loss compared to the Heretaunga block, which was purchased by similar methods less than two months later. None the less, it eroded the customary, Treaty, and contractual rights of the local hapu at the northern end of Te Whanganui-a-Orotu and deprived them of one of the three native reserves provided for in the 1851 deed of sale.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.6 Port development and reclamation

5.6.1 Admiralty survey

In 1853 the first official survey of the harbour and lagoon was carried out by Captain B Drury and others in the Royal Navy ship HMS *Pandora*. An Admiralty chart of Ahuriri Road and the Port of Napier was published in 1854 (A21(f):1543).

5.6.2 Provincial council improvements

Harbour improvements and reclamation were initiated almost immediately after the first provincial council and superintendent (T H Fitzgerald) were elected, a clear indication of their crucial importance for the future development of Napier and its country districts. In 1861 the first harbour commission, a select committee of the provincial council, was appointed to inquire into and report on the capabilities of the harbour and means of improving it (A21(b):438).

A civil engineer, Edward C Wright, 18 was instructed to survey the harbour and report on the best means of rendering it available to vessels of greater tonnage. In August 1859, he produced a scheme for substantial harbour works, a small part of which was carried out in the next three years (A21(b):414-419; E9:3-4).

5.6.3 Opinion sought on ownership of reclaimed land

The reclamation of very shallow mudflats in front of town sections and all round Gough Island was proposed, and, on 8 December 1859, Fitzgerald sought an opinion from a Wellington barrister, C D Ward, on possible objections to this work under section 2 of the Public Reserves Act 1854. This section stated:

It shall be lawful for the Governor . . . with the advice of his Executive Council to grant and dispose of any land reclaimed from the sea, and of any land below high water mark in any harbour, arm or creek, or any navigable river or on the sea coast . . . to the Superintendent of the Province . . . (cited in A12:107)

Ward's opinion was that 'The soil below high water mark is prima facie the Crown's property' and the Government had the power to vest the land in question in the superintendent and the owners of the town sections could not demand compensation (A21(b):421-422).

5.6.4 The Crown vests Ahuriri Harbour in the superintendent

On 29 December 1860, under the Public Reserves Act 1854, the Crown vested a small part of Te Whanganui-a-Orotu in the superintendent and his successors for the improvement of the harbour and the construction and maintenance of docks, piers, and other works deemed advisable for facilitating the trade and commerce of the town and port. This part of Te Whanganui-a-Orotu was later described by Judge Harvey as 'what could have been the then Native and official idea of the extent of the Ahuriri Harbour' (A5(m):48). As the claimants stated, the grant was made without reference to or consultation with their forebears (1.2(d):5).

5.6.5 Provincial harbour works and reclamations

In February 1861, the harbour commission took evidence from shipmasters and others and issued a detailed plan for dredging, constructing breastworks, and disposing of reclaimed lands. The select committee reported that work should continue for that year and the Government's attention should be directed to deepening the eastern harbour and providing wharf accommodation for vessels frequenting it (A21(b):455-470).

Under the Harbour Reserves Act 1861, the provincial government was able to acquire revenue for the improvement of the harbour as well as the facilitation of trade and commerce by the sale of land reclaimed from the sea. Between 1859 and 1862, harbour improvements and reclamation were a principal item of expenditure. Te Pakake and Te Koau were joined together, Watt's and Routledge's wharves were constructed on the north side of the Iron Pot, and a timber breastwork was constructed on the south side. Dredging commenced at the harbour entrance and at the Iron Pot (A21(b):414-419; D4:49; D9:98; E9:4; F3:16).

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.7 The loss of Te Pakake

The provincial government's actions and policies to improve the harbour led to the loss of Te Pakake, which McLean had obviously anticipated when he agreed that it should be reserved 'during such time as it remained unoccupied by Europeans'. When Domett surveyed Te Koau in 1854, he reported to the superintendent in Wellington that the small island nearby had not been surveyed for the present because there was an old pa fence and burial ground upon it, and he found that there was an understanding with McLean at the time of the purchase that it would not be used for some time (A21(b):403; E1:17). Clearly, the small island was Te Pakake, or Maori Island, then known as Tareha's reserve.

Te Pakake and Te Koau were included in the Ahuriri harbour area that was vested in the provincial superintendent on 29 December 1860, and they were connected to each other by Wright's harbour improvements and the accumulation of silt. On a plan numbered Hawke's Bay B1 14, Te Pakake was shown as a four-acre 'native reserve for fishing purposes. Also the perpetual right of fishing over all the mud flats in the inner harbour' (A12:116).

Between 1861 and 1874, Te Pakake and Te Koau were reclaimed and partially divided into lots for sale (D1:66, 125). Reclaimed sections 588 to 601, located on Te Pakake, were offered for sale by public auction in 1874 (A12:125).

According to the introductory notes to Stephanie McHugh's supporting papers (A21(b)), Te Pakake was taken for the construction of the Port Ahuriri to Napier section of the Napier to Manawatu railway in 1873, and compensation was paid to Tareha in 1874. According to claimant counsel, Tareha was granted a section on Te Pakake in 1877 (D9:108). Presumably, no legal change in its status was deemed necessary as it had been reserved only for such time as it was unoccupied by Europeans (A12:125).

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.8 The Crown's anomalous position on reserves and islands

5.8.1 Sinclair's 1862 list of reserves

In 1862 a Native Department official, Andrew Sinclair, compiled a return for McLean of general reserves that had been made for Maori in cessions of territory to the Crown in the province of Hawke's Bay. The return also listed the claim, the name of the block, the district, the area, the number on the map and the tribe, and the section number or name.

The names listed in the Ahuriri block were Roro Okuri, Whanganui Lake, Wharerangi, and Puketitiri. Each was listed on a separate line, and no lines were ruled between each entry (A5©), which led to speculation that 'Roro Okuri' and 'Whanganui Lake' were one entry and should have been printed as 'Roro Okuri, Whanganui Lake'. Judge Harvey, for one, rejected the designation of Whanganui Lake as a reserve, because in his opinion most of it had not been sold.

5.8.2 The claimants' submission

As Mr Boast said:

Anyone who saw this report could certainly be forgiven for thinking that Whanganui Lake had a reserve status of some kind. (D1:32)

Mr Hirschfeld submitted that the Crown had never satisfactorily explained this 'anomaly', perhaps because it was:

at least partially consistent with the Maori version of events, and wholly inconsistent with its interpretation of the deed. If it were a mistake, it was not only a glaring one . . . but also one which was not corrected.

Mr Hirschfeld quoted Sinclair on the subject of the compilation of the list to the effect that he had examined all the records most thoroughly, which had been a work of considerable magnitude. In conclusion, Mr Hirschfeld said:

Whilst it was not submitted that Te Whanganui-a-Orotu was in fact a reserve, it is submitted that in the minds of colonial officials, there was no one clear title in the Crown. (D9:51)

Mr Hirschfeld also observed that the inclusion of Te Ihu o Te Rei and Parapara in the Te Pahou Crown grant was inconsistent with the Crown's position: 'If the lake had been purchased so had these two islands' (D9:49).

5.8.3 The Crown's submission

For a number of reasons, the Crown did not consider that much weight should be placed on Sinclair's list. Mr Brown pointed out that at least one other entry on the list was unclear. The word 'about' appeared by two entries in the column headed 'Area' and could refer to either. To Judge Harvey, it had appeared that the two entries 'Roro Okuri' and 'Whanganui Lake' were set up from want of space in two lines instead of one. Moreover, the map numbers and acreage were not given for 'Whanganui Lake', even though they were available. We note, however, that no acreage was given for 'Roro Okuri'.

Mr Brown also pointed out that 'Te Whanganui-a-Orotu was not named as a reserve in the Ahuriri Deed unlike Roro o Kuri'. Nor was it logical to have both Roro o Kuri, an island in Te Whanganui-a-Orotu, and Te Whanganui-a-Orotu listed as reserves. Furthermore, one could not lay too much store on the omission of a comma between 'Roro Okuri' and 'Whanganui Lake'. We could also add that there is a full stop after 'Roro Okuri' but not after 'Whanganui Lake'.

Finally, Mr Brown conceded that the word 'reserve' might well have had a number of meanings in the 19th century but that in this context it was quite clear that it meant 'not outside the transaction but embraced by the transaction with an entitlement nevertheless reserved to Maori'. In any event, the Crown did not understand the claimants to be arguing that Te Whanganui-a-Orotu was a reserve in the context of the sale (I15(a):28-29).

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.9 Paora Torotoro's application for title to six islands

Figure 13: Ellison's 1867 survey plan of groups of islands near the Port of Napier

Further evidence of early concern over settler encroachments into Te Whanganui-a-Orotu is provided by a survey plan that Paora Torotoro and others commissioned from William Ellison in November 1867. The plan was for the purpose of making an application to the Native Land Court for a title to six islands that were still regarded as Maori (customary) land. The islands shown on the plan were Urewiri (7.25 acres), Poroporo (1.75 acres), Tirowhangaho (1.5 acres), Tuteranuku (3.5 acres), Awa-a-waka (2 acres), and Matawhero (4 acres).

Mr Parsons could not find any reference to the application in the relevant Native Land Court minute books. Mr Hirschfeld submitted that the plan constituted both the application and the survey of the land, in accordance with section 25 of the Native Lands Act 1865. The plan has some faded pencil entries that appear to read 'not gazetted. The plan is incomplete . . . would require some portion of the beach to show some connection with the mainland.' Possibly for this reason, the plan, 'doubling as it were as the application and having been considered insufficient for surveying purposes . . . never reached the stage of being entertained by the court' (see fig 13).¹⁹

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.10 Tareha claims reclaimed land

The first recorded Maori claim to the bed of Te Whanganui-a-Orotu following the Ahuriri purchase was prompted by reclamation work. On 20 June 1861, G S Cooper, the district commissioner, wrote in a report to McLean:

Tareha one day said to me that he had only sold the land as far as the high-water mark, and that all, that is being now reclaimed, is his property, as having been under the sea when he sold the Ahuriri Block. He did not say much on the subject at the time, and has not reverted to it since, so that I am in hopes my arguments have convinced him.
(A5(a):353)

Presumably Cooper explained to Tareha Ward's opinion that land reclaimed from the seabed belonged to the Crown.

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.11 An inner harbour versus a breakwater harbour

After C H Weber replaced Wright in 1863, little more was done for almost 10 years to improve the harbour other than repair work and some swamp draining and reclamation (E9:4). Relations with local Maori were unsettled, part of the Pakeha population left for the goldfields, and provincial revenue fell.

In 1864 the harbour commission made a contract with the surveyor O L W Bousfield for charts of the Ahuriri Lake, the Port of Napier and the harbour, and Hawke's Bay, showing the Ahuriri Plains. In laying these before the chairman on 17 April 1865, Bousfield drew particular attention to the formation of mudflats and sandbanks on the southern side of 'the lake'. The cause, he ventured to suggest, was probably the combined action of the west and north-west winds and the earth washed down by the Tutaekuri River when in flood.

The entrance to the port was undergoing great and rapid change. In 15 years its width had increased to 13 chains (260 m), twice its previous width, and its depth had decreased from five to four fathoms, affecting its navigability. Bousfield concluded that the Iron Pot was formed and entertained by a tidal eddy and any interference must result in its filling up and being useless for shipping purposes. From soundings taken in 1862 and 1865, it was apparent that the Iron Pot was becoming more shallow and, since the commencement of what were called 'harbour improvements', a very great change for the worse had taken place. It could be maintained in a useful state only through an enormous initial and annual expenditure (A5(m):30-36; A12:105-106; A21(b):426-427; D4:48-49; D9:98; F3-16).

After the devastating 1867 flood, the services of the colony's civil engineer, J M Balfour, were procured to inspect the situation. He reported that for £10,000 the existing inner harbour could be improved to amply accommodate the present shipping (A21(b):493). But in 1873 the fear of floods and a strong demand for a deep-water harbour for ocean-going vessels led a select committee to invite John McGregor, a Scottish harbour engineer who had been forming a breakwater harbour for Oamaru, to report on the feasibility of one for Napier. In order to provide a completely sheltered harbour, McGregor proposed a protecting breakwater starting from the bluff, and he submitted two alternative estimates of the cost: £100,000 and £246,000 (A21(b):531-534, 568-569).

Several months later, the engineer-in-chief of the Public Works Department, John Carruthers, reported to his Minister that a harbour large enough to receive English ships would be a great boon and valuable as a port of refuge between Wellington and Auckland. According to Carruthers, the completion of the railway would enlarge the port's business and something must be done to improve it; if it were found that the shingle could be dealt with, the present port could be improved, but if the shingle

moved rapidly, a bolder plan to make an artificial harbour would be cheaper in the end (A21(b):567-568).

Waitangi Tribunal, Department of Justice, Wellington.

Te Whanganui-a-Orotu Report 1995

5 Settler Encroachments in the Provincial Period

5.12 The provincial government proposes Te Whanganui-a-Orotu as security for a harbour loan

In his opening speech to the provincial council in June 1874, Ormond recommended that a £250,000 Government loan to construct a breakwater harbour be sought and all reclaimed land within the Ahuriri Lagoon and the Marae o Maranui (Te Whare o Maraenui) block be set aside as security (A21(b):563). A select committee was appointed to prepare a memorial to the General Assembly setting forth the necessity for the construction of the harbour, urging the Assembly to authorise a £250,000 loan, and indicating what securities could be set aside (A21(b):541).

The memorial stated that the petitioners, acting on behalf of the province, were willing to have a rate on land imposed to provide for yearly interest and a sinking fund. It also stated that the petitioners had set aside valuable blocks of land as security for the repayment of the principal. A portion of this land included about 70 acres in the immediate proximity of the proposed harbour (A21(b):566), described in a schedule to the select committee's report on the memorial as follows:

1. Port Ahuriri Lagoon, 74 acres in the vicinity of the proposed harbour.
2. Te Whare-o-Maraenui block, 1,748 acres 2 roods, in the Napier suburban district.
3. Ahuriri lagoon, 7,900 acres excluding the islands called Roro-o-Kuri, Parapara, Te Ihuotekei, Uruwiri, Poro-Poro, Tirowhangahe, Tuteranuku, Awa-a-waka, and Matawhero. (A21(b):573)

There is no record of anyone considering Maori rights and interests; indeed, local hapu were probably unaware that the provincial council was proposing to set aside Te Whanganui-a-Orotu as security for a harbour loan. The exclusion of the six islands shown on William Ellison's 1867 survey plan was an official acknowledgement that they were still Maori land.