Downloaded from www.waitangitribunal.govt.nz

CHAPTER 8

LAND DONATIONS AND THE SITUATION OF MĀORI IN SOUTHERN KAIPARA BY 1900

8.1 Introduction

In this chapter, we conclude our review of land loss in southern Kaipara during the nineteenth century. We begin by examining specific donations of land by Ngāti Whatua to the Crown for the general economic development of the district before 1900. We then examine the situation in which Ngāti Whātua found themselves by 1900.

8.2 The Helenville Courthouse Reserve

The most contentious piece of land in Te Awaroa (Helensville) was not a purchase but a gift. The claim, which figures in Wai 756 as well as Wai 312, is based on subsequent Crown actions or inaction in fulfilling the terms of the gift.

8.2.1 The history of the reserve

When Native Minister William Fox met Ngāti Whātua at Te Awaroa on 14 March 1864, he not only introduced their new resident magistrate, John Rogan, but also, as the official reporter recorded, 'invited them to grant a site for a Court-House, schools, and church'.[1] Fox recorded later:

> On the evening of the same day, I was present when the Natives made a gift of ten to twelve acres on the right bank of the Kaipara, between the Awaroa creek and the landing place, for a Court House. At first they desired to make a deed of gift to Mr Rogan, but that gentleman made it clear that the reserve was for Government purposes, and that he could have no right or title to it. This preliminary having been arranged, the boundaries were fixed, and the dedication made to Mr Fox on behalf of the Government, in the presence of Mr Rogan and several visitors.[2]

1. Document P1, pp 10–11. No church was built on the reserve.
2. BPP, vol 13, p 18 (doc P1, p 13)

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

No deed of gift has been found, but there is sufficient other evidence to support the claim that the local rangatira, Te Ōtene Kikokiko, on behalf of Ngāti Whātua, made the gift of 10 acres of land which became known as the courthouse reserve (fig 33).[3] The Kaipara resident magistrate's letterbook, compiled by Rogan, includes several references to the gift of the courthouse reserve. On 30 November 1864, he wrote:

> The natives proposed to give me a piece of land about 10 acres on which the Court House is now built, this land has since been conveyed to the Crown for public purposes, and is the only place at present available for a Government building.[4]

Crown researcher Paul Goldstone stated that the Government had allowed £150 for the construction of the building, and that the timber was purchased for £50, not given by Ngāti Whātua, as suggested by Bruce Stirling in his report for the Wai 312 claimants. Tirarau of Te Parawhau in northern Kaipara provided kauri posts and rails for a fence around the building, but Rogan subsequently gave him 1000 bricks in return. Goldstone suggested that Rogan was 'concerned lest gifts incur potential future obligations upon the Government, and he was careful to make payment for them, so as to avoid this'.[5] In May 1865, Rogan reported to the Government on how valuable the courthouse reserve had become for public purposes:

> Te Otene Kikokiko who was the principal proprietor has been ridiculed lately by his neighbours for being so foolish as to give land even to the Government and I respectfully recommend that I may be authorised to give Te Otene a sum of ten pounds, more by way of present from the Government, than payment for the land, by way of showing to those who laugh at him, that there is not much lost by maintaining a liberal spirit towards the Government.[6]

Two years later, on 4 July 1867, Rogan referred to this payment and the use of the land:

> Subsequently Mr Mantell authorised a present of £10 to the owners and a deed of cession to the Queen was signed by the Chief Otene which is recorded in the Resident Magistrates office at Kaipara and there can be no question of disputed title as far as the natives are concerned as it is possible that a question may arise at a future time as to the legality of this deed. I shall have no trouble at any time in obtaining Te Otene's signature to a form of deed which may be furnished to me from Wellington if it is considered necessary. The Court House has been erected on this land at the expense of the public and I have occupied an office within the building to the present time. There is a lockup, guardroom, and a dispensary erected by the Govt at the back of the Court House and attached. There is a House detached therefrom built by the Gov't for the accommodation of natives coming from a distance. There is

3. Document F2
4. Document P1, p14
5. Ibid, p16; doc F8, pp35–37
6. Document F2, app

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

> also a boat mans cottage on the Govt land and a stable built at my expense which is easily removed at any time should the Govt have any objections to this place being erected on public property.[7]

In his report on 6 January 1873, Rogan repeated the history of the 'Govt reserve in Helensville', saying that it was a gift for a site for Government buildings:

> £10 was paid by the Govt through me to Te Otene to effectually extinguish the Maori title and time has proved that this was a judicious payment as the terminus of the Kaipara Railway is actually on this reserve. I have called the attention of the Govt years ago to the advisability of doing something more than holding a mere receipt for the title. It might be passed through the Native Land Court and conveyed to the Crown. If this land be valued at so much per foot hereafter a question of defective title might arise.[8]

There is no record that the block went through the Native Land Court, and Rogan's remarks suggest that there was no deed of gift either. Goldstone suggested that, while Te Ōtene may have considered the land conveyed to the Crown, others may have claimed residual rights. Several claims to land called Noki, which was either part of the courthouse reserve or a road alongside it on the bank of the Kaipara River, were lodged with the Native Land Court in 1875, 1877, 1878, 1885, and 1889, but in every case were dismissed because the land was Crown land.[9]

On 9 May 1879, one acre of the courthouse reserve was 'temporarily reserved' under section 144 of the Land Act 1877 for the 'Use of aboriginal natives of the colony'. On 28 July, this land was confirmed as 'permanently reserved' under section 145 of the same Act.[10] This gazettal was probably related to agreements reached over the Kaipara railway, which we discuss below. (A brief chronology of transactions on the courthouse reserve is shown in table 21, and see also figure 33.)

Many of the current uses of the courthouse reserve can be described as public purposes, including its use as the site of the Helensville Primary School, fire station, police station, library, park, and pensioner flats (the latter three facilities being on land vested in Helensville Borough and, later, the Rodney District Council). Some blocks have been conveyed to others but are still used for public purposes. One is the Saint John Ambulance Association land, although it is not clear why title was transferred to allow this use without protection from future sale for a non-public purpose. Both the Telecom and railway lands were formerly State-owned but were privatised by the Government in the 1980s. The Telecom land was transferred subject to a memorial on the title under section 27B of the State-Owned

7. Rogan, letterbook, 4 July 1867, NA(A)BADW 10512/1a (doc P1, p 23)
8. Rogan, letterbook, 6 January 1873, NA(A)BADW 10512/1a (doc P1, p 24)
9. Document P1, pp 24–25
10. 'Land Temporarily Reserved in the Provincial District of Auckland', 15 May 1879, *New Zealand Gazette*, 1879, no 51, p 643; 'Lands Permanently Reserved', 31 July 1879, *New Zealand Gazette*, 1879, no 81, pp 1053–1054

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

Year	History
1864	Courthouse reserve (10 acres) given to Crown for public purposes
1865	Courthouse and other buildings constructed on section 57
1879	Native reserve (one acre) gazetted
1884	Railway land proclaimed as terminus of Kaipara railway
1890	Library site gazetted on part of native reserve
1894, 1912	School site gazetted (four acres)
1924	Section 38 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act vests native reserve in Helensville Town Board for park, public garden, and recreation ground, and validates library site gazettal
1956	Sections 28 and 29 sold by Crown to Helensville Borough
1958	Police station gazetted on section 34; section 37 vested in Helensville Borough as recreation reserve
1966	Pensioner flats constructed by Helensville Borough on section 47, part of former native reserve
1968	Saint John Ambulance Association purchases sections 27 and 48
1969	Crown sells section 33 to private owners for a garage
1973	Part of section 34 gazetted as automatic telephone exchange
1982	Sections 25, 36, and part of 27 vested in New Zealand Fire Service
1982	Section 57, old courthouse site, vested in Ngāti Whātua trustees
1990	Automatic telephone exchange site transferred to Telecom, subject to section 27B of the State-Owned Enterprises Act 1986
1991	Sections 28 and 29 sold by Rodney District Council to private buyers

Table 21: Transactions on the courthouse reserve.
Source: document F2; document F8, pp 33–44; document F3, pp 165–174.

Enterprises Act 1986. The status of the railway land, which includes the site of the original Helensville South station, the terminus of the Riverhead to Kaipara railway constructed in 1875, is unknown.

Some of these transactions failed to acknowledge the original gift to the Crown by local Māori, and this has given rise to two issues of concern. One is the transfer of sections 28, 29, and 33 to private ownership, all titles now registered in the Land Transfer Office. Section 33 was Crown land disposed of in 1969 as surplus to the requirements of the Department of Justice. Sections 28 and 29 were sold separately in 1991 by the Rodney District Council. These three transfers constitute a failure of the Crown to acknowledge the nature of the original gift of land for public purposes.

8.2.2 The native reserve

The second issue is the failure of the Crown to protect the one-acre native reserve set aside in 1879. The 'native hostelry', which Rogan had constructed in 1866, was beside the courthouse, across the road from the reserve. It was a basic structure and, after complaints of cold, Rogan requested funds for the construction of a fireplace and chimney. However, the structure does not seem to have been maintained, and by the 1880s it was reported as being

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

in a disgraceful state – with only tramps using it – and a fire hazard to the courthouse. It was eventually demolished in 1896. In 1899, a Ngāti Whātua complaint to the Native Minister led to a recommendation that a disused police house, which was in need of some repairs, be made available to accommodate visiting Māori. It is not known what became of this recommendation.[11]

Meanwhile, in 1890 the Helensville Town Board had set aside 18 perches of the native reserve as a library site under section 227 of the Land Act 1885.[12] In 1908, this site was vested in the Helensville Public Library Trust Board (Incorporated), in trust, 'for a site for a library' under section 4 of the Public Reserves Act 1881.[13] These gazettals were subsequently found to be without lawful authority and had to be validated later, as detailed below. Although Crown land, the area was gazetted as a reserve for the use of Māori, but there seems to have been no consultation with Ngāti Whātua on this use of the reserve. In 1906, the Helensville Town Board asked the Native Minister for its use as a site for municipal buildings. The request was declined by Cabinet. At this time, the land was fenced and used by the local constable as a horse paddock. In December 1906, Poata Uruamo advised the Helensville Town Board that the Ngāti Whātua Māori Council wanted to build a 'council chamber' on the site. This request was forwarded to the Native Minister and approved.[14]

In 1908, the 'Helensville native reserve' was considered by the Stout–Ngata commission, which recommended that the block be reserved for Māori occupation under part II of the Native Land Settlement Act 1907.[15] The commission was apparently unaware of the gazettal of a library site on the reserve. In 1909, the committee for the 'Maori House for Awaroa' petitioned the Native Minister for funds for a hostel to house Māori visiting Helensville to attend the Native Land Court or there for other purposes, such as visiting the doctor. The committee sought £300, being a pound-for-pound subsidy on local fundraising. The request was declined. In 1911 and 1912, there were similar requests, this time supported by local businessmen James and Isaac McLeod. It is not coincidental that in 1911 Sarah McLeod, James's wife, had purchased the Aotearoa block, on which a meeting house had been built in 1883. It was proposed that this house be moved to the Helensville native reserve.[16] However, nothing came of this proposal, and the old house was later shifted to Ōtamatea. Meanwhile, visiting Māori still had problems finding accommodation in Helensville.

In 1919, a deputation met the visiting Minister of Justice in Helensville and asked that the native reserve be made into a public park for Māori and Pākehā. The Native Department responded that the reserve was for Māori use, and would not agree to any rights over it

11. Document F8, pp 41–42
12. 'Lands Permanently Reserved', 30 January 1890, *New Zealand Gazette*, 1890, no 5, pp 114–115
13. 'Vesting a Reserve in the Helensville Public Library Trust Board (Incorporated)', 20 February 1908, *New Zealand Gazette*, 1908, no 12, p 622
14. Document F3, pp 166–167
15. Robert Stout, 'Lands Recommended to be Reserved for Maori Occupation', AJHR, 1908, G-1G, sch 1B, p 3
16. Document F3, pp 167–169

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

being given to the Helensville Town Board. There was still no decision in 1922 when H R H Balneavis, the private secretary to the Native Minister, J G Coates, who was also the member of Parliament for Kaipara, suggested that the town board could have temporary use of the land, since no funds were available for a hostel and he thought there was a reduced need for one. Ngāti Whātua petitioned the Minister against the reserve being given to the town board. They reiterated their desire to build a hostel and cited their use of the reserve for their horses and traps when they visited Helensville. The town board did not want only temporary use of the land if it was to spend money on it. The Helensville Chamber of Commerce organised a petition, signed by 332 citizens, asking Coates to vest the land in the town board for a park and warning that the petitioners had 'a very serious objection to a Maori hostel'. Coates's response was that the town board could begin work on a park but that the title would be sorted out later. A lease had been suggested, he said, but the Native Department refused to grant one.[17]

The town board began work on creating a park, but in 1924, when more funds were required, it moved to secure title to the land. Coates's response to this request, given at a meeting in Helensville with board representatives, was minuted as:

> What I told you was that you should go ahead. It is a piece of land given for a Maori Hostel and comes under the Native Administration. The Maoris protested. I asked them to write to me and say they were willing for this to become a park for Helensville. The idea is that you go on and make use of the land as soon as possible it will need a small clause in the Native Lands Adjustment Act which alters the title. Whether it can be done this year I am unable to say. I think you had better carry on quietly and when the park is opened you should invite the Maoris to come to the opening and make a speech.[18]

The enabling legislation was contained in section 38 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924. Stating that the native reserve was 'no longer required for such purpose, and it is desirable to dispose of it', the legislation cancelled it, validated the gazettals of the library site in 1890 and 1908, and vested the balance of the reserve (three roods 22 perches) in 'the Helensville Town Board in trust for the purposes of a park, public garden, and recreation-ground'. Clearly, Native Minister Coates had put the wishes of his Pākehā electorate in Kaipara ahead of local Ngāti Whātua.

One very small piece of the courthouse reserve has been returned to Ngāti Whātua. On 10 November 1982, on the application of the commissioner of Crown lands under section 436 of the Māori Affairs Act 1953, the Māori Land Court vested section 57 (1444 m^2) in Te Ōtene Kikokiko (deceased), and created a trust under section 438. Margaret Kawharu,

17. Document F3, pp 170–173
18. Notes on file to Balneavis on 2 January 1924 meeting between Minister, Lambert, and Stewart in Helensville, MA1 1919/729, DB4/3/8 (doc F3, p 173)

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

claim manager for Wai 312, explained that in 1979 the Department of Justice advised Ngāti Whātua that the old courthouse on section 57 in the Helensville courthouse reserve was no longer required. There had been 'some lengthy negotiations' before the land was returned to Māori ownership: 'The best rational compromise in contemporary Ngati Whatua thinking was to be as inclusive as possible in terms of beneficiaries of a trust estate.'[19] The five trustees appointed under section 438 of the 1953 Act were representative of the five main Ngāti Whātua communities: Orākei, Reweti, Helensville, Haranui, and Kakanui/Araparera.

Only the land was returned to Ngāti Whātua. The negotiations included a discussion of the future of the original courthouse, which was built in the 1860s and had been recognised and classified by the Historic Places Trust. Ngāti Whātua wanted the building left on the site to be used for tribal and community purposes. The Helensville Borough Council and Helensville Historical Society wanted to move the building to a site beside the museum. Finally, the Ngāti Whātua representatives agreed to the disposal of the courthouse and associated buildings. These were relocated to the museum site in April 1982, leaving only a disused toilet block on the land.[20]

8.2.3 Claimant submissions

Counsel for Wai 312 submitted that the Helensville courthouse reserve is 'a piece of land of major significance' to the claimants and that the Crown had failed to meet the conditions of the gift.[21] Among the conditions alleged was a promise to establish a church (as mentioned by Fox) and a school, and to provide accommodation for Māori on the block. No church was established, but counsel suggested that, even if 'sectarian politics' prevented the Crown from doing this on public land, there should have been consultation with Ngāti Whātua. Though a public school was later established on the block, counsel submitted that the promise of a school for Ngāti Whātua had not been kept by the Crown.[22] Counsel conceded that 'one promise the Crown did meet, at least in the short term . . . was the construction of a much needed small house for the accommodation of Ngati Whatua and other Maori attending the Courts from distant homes'. However, the hostel was dilapidated by the late 1880s.[23]

Counsel concluded that the Crown's failure to give effect to the terms of the gift and to protect the native reserve was a breach of the Treaty: 'instead of the gift helping to buy Maori into the heart of the settler community at Te Awaroa, [it] was a further and significant step in their total exclusion from the town.'[24]

19. Document H11, p7
20. Document F2
21. Document Q1, p141
22. Ibid, pp143–144
23. Ibid, p144
24. Ibid, p147

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

8.2.4 Crown submissions

Crown counsel noted that the Crown had constructed a courthouse on the block at Government expense. The construction of a hostel beside the courthouse 'was not the result of any promise but rather an undertaking at Rogan's initiative'.[25] Counsel also submitted that 'there were sound reasons why the Government was opposed to the idea of allowing a church to be built on a government reserve'. In any case, counsel submitted, Goldstone provided evidence that Rogan did consult with Ngāti Whātua at a hui, where it was agreed that land not be granted for a church on the courthouse reserve.[26] Counsel submitted that the promise of a school had been kept because a school was established on the land in 1877.[27]

8.2.5 Tribunal comment

The courthouse reserve was undoubtedly a gift to the Crown in 1871 by Ngāti Whātua. The payment of £10 to Te Ōtene Kikokiko was described by Rogan as a 'present from the Government', not a payment for the sale of the land. Stirling interpreted the gift as a 'clear indication' of Ngāti Whātua's 'desire to engage with the Crown and encourage an official presence in Te Awaroa'. He suggested that this gift 'should be considered within the context of Ngati Whatua's expectation of their continuing alliance with the Crown, and the ongoing obligations of the Crown to reciprocate by providing the benefits it had promised when granted the free use of the valuable township land'.[28] It should be noted that the land gained its value from Pākehā development, but no evidence of valuation was produced. Geoff Watson, in his evidence for the Wai 756 claimants, Lou Paul and Te Taoū, described Te Ōtene's gift as 'an illustration of Te Taou's effort to foster a constructive relationship with the Crown', and said that there was a 'spirit of partnership implicit in the gifting of the land'.[29] Ropati Saipaia, in his evidence for Wai 756, stated that this gift was a symbol of a 'constructive attempt at building a positive relationship with the Crown' by Te Taoū.[30]

Goldstone suggested that 'greater caution be taken with such an argument' and that the 'minimal' evidence available did not support the 'alliance' argument put forward by claimant historians.[31] He considered that the accounts by Fox and Rogan provided 'no indication at all of any promises' tied to the gift, and refuted Stirling's assertion of a 'treaty of Awaroa'.[32] We have commented in chapter 7 on the alliance argument put forward by Wai 312 claimant historians and we agree that the description 'treaty of Te Awaroa' is inappropriate.

---

25. Document Q16, p 93
26. Ibid, pp 93–94; doc P1, p 20
27. Document Q16, pp 94–95
28. Document F8, pp 36–7
29. Document N1, pp 41–42
30. Document N4, sec 2.2, p 10
31. Document P1, p 13
32. Ibid, p 15; doc F8, p 38

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

The terms of the gift were that the land should be used for public purposes, and initially that was done. A native reserve of one acre was set aside for the accommodation of Māori when visiting Helensville, but the Crown failed to build the accommodation facilities (also promised as part of the Kaipara railway gift, which is considered in the next section). The native reserve was later cancelled, and the land vested in the Helensville Town Board, without any consultation with Ngāti Whātua. There have since been other transfers to private ownership of parts of the block. The Crown has failed to make clear to the relevant local authority that the terms of the gift were to use the land for public purposes. We consider that, if parts of the land were no longer required for a public purpose, then they should have been returned to Ngāti Whātua. The return in 1982 of section 57, without the old courthouse building, we consider to be but a small token gesture.

The courthouse reserve, while only a small area in itself, has an acrimonious history. It has become the flagship for the assertion of Ngāti Whātua rights in southern Kaipara, and a symbol of Ngāti Whātua frustration and resentment over being relegated to the fringes as second-class citizens apparently not worthy of consultation in their own ancestral land.

8.2.6 Findings

We make the following findings on the Helensville courthouse reserve:

- In 1864, Ngāti Whātua donated to the Crown 10 acres of land in the future township of Helensville for use for public purposes.
- Within this area, one acre was gazetted as a native reserve for Māori use, but this reserve, the only area remaining for Māori use in Helensville, was transferred to the Helensville Town Board in spite of Māori protest. This was a breach by the Crown of its Treaty duty to act reasonably and in good faith toward Māori.
- While most of the 10 acres was used for public purposes, and some remains so used, other areas were subsequently transferred to private purchasers. This was a breach of the original terms of the gifting, and a breach by the Crown to act reasonably and in good faith toward Māori.

8.3 The Kaipara Railway

Ngāti Whātua gifted land in 1871 for the purpose of constructing a railway line between Riverhead, on the upper Waitemata Harbour, and Helensville. The line was completed in 1875. As with the courthouse reserve, there is no dispute about the original gift, but the claims (which figure in the Wai 279 claim by the Uruamo whanau as well as in Wai 312) relate to whether the Crown gave effect to all the conditions of the gifting.

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

8.3.1 The history of the railway

After the establishment of the capital at Auckland, the Māori portage route between the Kaipara River and the upper Waitemata Harbour at Pitoitoi/Riverhead assumed even greater importance. As with Māori, European settlers relied on the waterways of Kaipara Harbour to bring in people and goods and to export timber and produce. Roads were few, and often impassable in wet weather. In the late 1860s, the Auckland Provincial Council determined that the cheapest and most practical transport option for the Riverhead to Helensville route was a railway, which would provide a much faster and all-weather mode of transport compared with the four-hour trip by horse-drawn coach. The council was given authority to construct the line by the Kaipara Railway Act 1871. The cost was estimated to be £27,000, but this figure assumed that the land for the line would be freely given by both Māori and Pākehā landowners along the route. Some claimant researchers have suggested that only Māori gave their land. Goldstone clarified this by pointing out that all the land along the Riverhead to Helensville line was given for nothing, although a few years later, when the Kumeu to Auckland connection was under construction, some landowners did create a stir by demanding compensation.[33] It was commonly assumed in the 1870s that the public good was paramount, that adjacent landowners would benefit from the improved access, and that compensation would therefore not be paid.

In February 1871, during a sitting of the Native Land Court at Helensville, John Sheehan, the Auckland Provincial Council treasurer, took the opportunity to talk with Ngāti Whātua leaders. At the end of the hearing, a hui was called to discuss the proposed railway and the giving of land along the route. Rogan was also present, and backed Sheehan by offering his own land south of Helensville where it would be crossed by the railway. A number of Ngāti Whātua rangatira spoke in support of giving the land, although Te Ōtene showed some reluctance. However, his wife, Maata Tira Koroheke, was expansive in her support:

> We give the land you ask for, and we give it willingly, without cost. You know my lands; take your railway through them. It will do good. Our land will rise in value. We can travel quickly, provisions and clothing will be cheap, and Europeans will come to dwell amongst us. Kaipara will come to be a dwelling place of chiefs, as Auckland now is. When we die, we will leave our children among a people who will treat them kindly, as we, when living, treated the Pakeha. The land is yours to deal with. One thing I ask – let an acre be set apart at the end of the line, as a landing place for us when going to Auckland.[34]

This was the first mention of a reserve for Māori accommodation. Apparently, it was also agreed that an area be set aside at the Helensville terminus, which was located in the courthouse reserve, as discussed in the previous section.

33. Document P1, pp 77–78; doc F8, pp 179, 184
34. Document P1, p 80; doc F8, p 181

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

In May 1871, a formal agreement was signed at a hui attended by about 450 people, according to the *New Zealand Herald*, and there were 169 signatories to the deed.[35] Unfortunately, the actual deed, which would have set out any conditions for reserves, can no longer be found. Stirling reported that, although there was an Auckland Crown purchase deed (number 4164), this was given to the custody of the Railways Department in the 1950s but cannot now be found.[36] However, it seems that part of the agreement was that the provincial government should set aside a one-acre reserve for Māori accommodation facilities at each end of the line. As Goldstone remarked, 'when a promise *was* made by the Government to Ngati Whatua, Ngati Whatua referred to it repeatedly' (emphasis in original).[37] The reserves were referred to, for example, in the speeches of Ngāti Whātua rangatira in August 1871 at a ceremony to turn the first sod. There is no contemporary evidence of any promise to provide free travel, as alleged later.

The Riverhead to Helensville line was officially opened on 28 October 1875, at a total cost of £67,329. The route of the line is shown in figure 31. Stations en route were at Kumeu, Waimauku, Reweti, and Woodhill. It was only the second railway line in the North Island, the first, from Auckland to Mercer, having been opened only five months earlier.[38] Ngāti Whātua speakers at this ceremony again reminded the Government of the promised reserves for accommodation facilities.

In 1877, Pāora Tūhaere petitioned Parliament about the alleged promises made to Ngāti Whātua, including the reserves at each end of the line. He also told the Native Affairs Committee that Ngāti Whātua had been promised free railway travel for three years. Sheehan absolutely denied this. Goldstone reviewed the petition file and found some contradictory evidence, which he described as 'perplexing' and 'confusing', casting doubt on any promise of free travel.[39] The Native Affairs Committee was unequivocal in its report:

> There is no foundation whatever for the assertion that the natives were promised free passes for three years in consideration of their conceding lands required for the Kaipara Railway line without payment.
>
> That it does appear that Mr Sheehan promised the natives at the time when the concession was made, that landing sites would be reserved for them at the Helensville and Waitemata [Riverhead] Stations, and that buildings would be erected on the landing sites for the accommodation of Maori travelling by the Railway. The Committee would strongly recommend that those promises should be fulfilled without delay.[40]

---

35. Document F8, p 184
36. Ibid, p 179 fn 432
37. Document P1, pp 78, 81
38. Ibid, pp 81–83
39. Ibid, pp 83–84
40. Ibid, p 84

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

In 1879, as noted in the previous section, a one-acre section in the courthouse reserve at Helensville was set aside as a reserve for Māori purposes, but no hostelry was ever built on it and the reserve was later cancelled. Neither reserve nor hostelry was made available to Māori at Riverhead. A further petition in 1882 asking about the construction of accommodation facilities on the promised reserves brought no action.

The middle line of the railway had been surveyed and gazetted in 1873 and 1875, and after construction, the land taken up by the line and the stations was proclaimed Crown land in 1884 under section 130 of the Public Works Act 1882, with a deviation at Woodhill taken in 1888.[41] Stirling argued that this 'taking' illustrated that the Crown perspective on 'the railway treaty of 1871' was 'apparently of greater symbolic than real value', and that the 'railway compact' with Ngāti Whātua was being ignored.[42] While section 130 gave the Governor power to take land for a railway, the Riverhead to Helensville railway had been operating for nearly 10 years. It is more likely (though we were given no specific evidence on this point) that the 1884 proclamation was intended, as set out in section 130, to provide conclusive evidence that the land was Crown land, in this case for the purpose of a railway, so there could be no grounds for legal challenge to the Crown title. Public works legislation has always made provision for the Crown's 'taking' by agreement.

The taking without compensation of additional land closer to the Kaipara River for the Woodhill deviation and new station in 1888 was a particular concern of the Wai 279 claimants. The original railway route at this point lay across the Te Kēti and Pukekauere blocks. After the deviation, some of this land was used for the main road north from Auckland to Helensville (now State Highway 16), but the balance area, taken for sidings and the original Woodhill station, was not immediately returned to the Māori owners. Part of this area, on the Pukekauere block, was used for Woodhill School and a community hall, and the balance was sold. On the Te Kēti block, a small area (¼ acre) at the western end of the station yard was returned to the owners of the Te Kēti A block in 1927. The remaining Crown land was declared surplus to railway requirements in 1971, and in 1983, following protests about the failure to return this land, three sections of it were vested in the owners of Te Kēti A. About 10 acres in total were taken from the Te Kēti block for the railway at Woodhill, and some of this land remains Crown land.

41. 'Limits and Description of Line of Railway from Kaipara to Riverhead', 3 April 1873, *New Zealand Gazette*, 1873, no 19, pp 211–213; 'Description, Line, and Limits of Deviation of a Further Portion of the Railway from Kaipara to Riverhead–Helensville Terminus Extension', 6 May 1875, *New Zealand Gazette*, 1875, no 25, pp 305–306; 'Land Taken for Further Portion of Kaipara–Waikato Railway (Kumeu–Helensville Section)', 24 July 1884, *New Zealand Gazette*, 1884, no 86, pp 1161–1163; 'Land Taken for the Woodhill Deviation of the Kaipara–Waikate Railway', 16 August 1888, *New Zealand Gazette*, 1888, no 45, p 873

42. Document F8, p 187

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

8.3.2 Claimant submissions

Claimant counsel for Wai 312 submitted that the Crown had failed to honour the conditions of the Ngāti Whātua gift of land for the Kaipara railway. These conditions were that:

- reserves for Māori, of one acre each, should be set aside at each end of the railway at Riverhead and Helensville;
- accommodation would be provided on these reserves for the use of travelling Ngāti Whātua; and
- Ngāti Whātua 'would receive free travel on the Railway during the first three years of its operation'.

Only one reserve was set aside (in the courthouse reserve at Helensville), but it was subsequently alienated, 'no accommodation house was built, and no free travel was provided'.[43]

Furthermore, counsel submitted, 'the Crown aggravated the grievance by taking further Ngati Whatua land for the railway' without paying compensation or consulting with Ngāti Whātua.[44] Counsel for the Wai 279 claimants also complained about the choice of the railway's route across Māori lands on the western side of the river rather than on land acquired by Pākehā settlers east of the river.

8.3.3 Crown submissions

In relation to the Wai 312 claim, Crown counsel submitted that the intention Māori had in gifting the land was that they would benefit by an increase in the value of land adjacent to the railway and by the encouragement of more settlers. Counsel conceded that, while a reserve had been allocated to Māori at Helensville, nothing had been done at Riverhead. However, it was argued that the alleged promise of free travel was not clearly supported by the evidence. The Native Affairs Committee inquiry into the petition from Pāora Tūhaere in 1877 'concluded there were no promises of free passes'. Counsel also commented on the beneficial impact of the Kaipara railway: 'Overall, however, a significant asset had been created and completed by 1875, having cost the Government £63,269.'[45]

In relation to the Wai 279 claim, Crown counsel submitted that Māori welcomed the construction of the railway and gifted the land required in 1871, and that this indicated 'an acceptance of the proposed route'. However, counsel acknowledged that 'it appears that no compensation was paid for the subsequent takings of land under the Public Works Act for railway purposes'. Counsel also acknowledged that, while 'some of the land gifted has been

---

43. Document Q1, pp 148–149
44. Ibid, p 150
45. Document Q16, pp 95–97

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

revested in the descendants of the original owners, it [the Crown] accepts that some of the land taken was not returned to the owners when no longer required for railway purposes'. Counsel also noted that some, however, was 'used for the purpose of other public works'.[46]

8.3.4 Tribunal comment

It was acknowledged by all concerned that the Ngāti Whātua gift of land for the Kaipara railway in 1871 was a major contribution to the economic development of the Kaipara district that would benefit both local Māori and Pākehā settlers. There is insufficient evidence, however, to support the alleged Crown promise of three years of free travel for Māori, and we do not accept this aspect of the claim. The Crown has acknowledged its failure to provide a reserve at Riverhead (outside the Kaipara district inquiry area) and the cancellation of the Helensville reserve. As for the assertion that Māori lands on the western bank of the Kaipara River were preferred over Pākehā settlers' lands on the eastern bank, we have no evidence to support this. It could be argued that settlers on the eastern bank would have preferred direct access to the railway.

It is agreed that no compensation was paid for the Woodhill deviation land taken in 1888, but the question of its return is not so clear-cut. Pukekauere was sold into private ownership before 1900. On the evidence presented to us, we are unable to determine which, if any, parts of the Te Kēti A block taken for railway purposes are still Crown land and no longer required for any public purpose. If there is any such land, we consider that it should be returned to the Māori owners of the block at no cost to them.

We consider that the gift of land for the Kaipara railway indicates the willingness of Ngāti Whātua to engage in the developing economy of the Kaipara district, and that both this and the gifting of the Helensville courthouse reserve represent a substantial contribution by Ngāti Whātua to the development of southern Kaipara in the 1870s and beyond.

8.3.5 Findings

We make the following findings on the Kaipara railway:

- In 1871, Ngāti Whātua donated most of the land taken up by the Kaipara railway and its railway stations south of Helensville to Riverhead.
- We have no evidence to substantiate an alleged promise of free travel for Ngāti Whātua.
- A promise was made on behalf of the Crown to create reserves and to provide accommodation for Māori at each terminus of the line. A one-acre reserve was set aside within land already donated by Ngāti Whātua in the courthouse reserve in Helensville, and no

46. Document Q16, p108

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

reserve was created in Riverhead. The Crown failed to fulfil this promise, and it thereby failed to act reasonably and in good faith towards Ngāti Whātua.

- No compensation was paid for the Woodhill deviation land taken in 1888. If any of the land taken for railway purposes on the Te Kēti A block is no longer required for public works, it should be returned to the owners without cost to them.

8.4 The Taking of Land for Roads

We now consider the Crown taking of Māori land, without compensation, for public roads between 1874 and 1885. Two roads in particular are involved: what is now State Highway 16 on the Puatahi block and South Head Road across the Ōtakanini block. The issues related to each taking will be described under claimant and Crown submissions below, but first we outline the statutory provisions from 1862 on that empowered the Crown to take Māori land for the purpose of public roads.

8.4.1 Statutory provisions

Under section 27 of the Native Lands Act 1862, the Crown could, on any land purchased from Māori, 'take and lay off for public purposes one or more line of public road for public purposes', in area up to 5 per cent of the land, but with no time limit. A general power for the Crown to take any land, whether Māori customary or freehold, or privately owned, for roads or for other public purposes was provided in the Public Works Land Act 1864, and in subsequent public works legislation. In the Native Lands Act 1865, the 5 per cent limit was retained in section 76 and applied to all Māori blocks for which title had been awarded by the Native Land Court, but with the additional provision that there was a 10-year limit from the date of a Crown grant to exercise this power. No compensation was payable. There was also a provision that excluded 'the taking of any lands which shall be occupied by any building gardens orchards plantations or ornamental grounds'. A similar provision was retained in subsequent Māori land legislation, although in section 14 of the Native Land Amendment Act (No 2) 1878, the duration of the Crown power to take land for roads was extended from 10 to 15 years from the issue of a Native Land Court title.

In 1927, these provisions for the Crown to take Māori land for roads without paying compensation were repealed by section 30 of the Native Land and Native Land Claims Adjustment Act. All subsequent takings of Māori land by the Crown for roads or other public purposes came under the provisions of the Public Works Act 1928 and its amendments, and compensation was required to be paid.[47]

47. For a review of public works legislation, see Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1994), pp 63–72.

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

8.4.2 Claimant submissions

Counsel for the Wai 312 claimants stated that Ngāti Whātua at Puatahi (who, the Tribunal notes, also identify with Ngati Hine as their hapū) 'were happy to give their consent to the construction of the road' now known as State Highway 16. However, a dispute arose when the route was surveyed through part of the kainga without any consultation with local people, who then protested. The 'road was constructed, through the middle of the Puatahi kainga'. In 1887, the Native Land Court awarded £70 to the Māori owners in compensation.

The South Head Road was proposed in 1880 across the Ōtakanini block, which was then still customary land. Local people sought compensation, but none was paid. When the title was investigated by the Native Land Court in 1906, the road route on the land was declared public road.

Claimant counsel concluded that these two examples illustrate the 'highhanded manner with which the Crown was treating Ngati Whatua by the end of the nineteenth century', and were 'clearly in breach of the Crown's obligation to act in good faith'.[48]

8.4.3 Crown submissions

Crown counsel noted that roading issues in the nineteenth century were largely a function of local government, and central government had a limited role. Moreover, nineteenth-century county councils and road boards did not normally pay compensation, whether to Pākehā settlers or to Māori owners, for roads constructed across their land, because it was argued that the owners benefited from this.[49]

On the Puatahi road dispute, counsel noted that local Māori happily agreed to the construction of a road, but 'geography dictated the line of the road'. Construction was delayed while the matter was sorted out, compensation of £70 was paid to the owners of the Puatahi block, and there was no subsequent protest.

On the South Head Road dispute, counsel suggested that the reason for the opposition to the proposed road on the Ōtakanini block was not known and that this road 'was not put through until the 1900s'. Given the previous Ngāti Whātua attitude, which welcomed road construction, counsel proposed that 'a principal grievance of Kaipara Maori in the late 1870s and early 1880s was the fact that the land was subject to rates' but did not elaborate on this suggestion.

8.4.4 Tribunal comment

While the taking of land for road construction or improvement was mentioned by many claimants, we were given only these two examples, both in the Wai 312 claim. It was not

48. Document Q1, pp 151–152
49. Document Q16, pp 97–99

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

explained to us why the roads on the Puatahi and Ōtakanini blocks were raised as specific issues when many other Māori blocks in southern Kaipara were affected by Crown takings for roads laid out over them.

At Puatahi, compensation was paid, but that was probably because the land affected was cultivated gardens and part of Puatahi kainga, and because no alternative route was feasible. The South Head Road at Ōtakanini was treated no differently from other roads laid out over other Māori blocks, for which no compensation was paid. The argument that the local community benefited and therefore payment of compensation was not required was applied to both Māori and Pākehā in the nineteeth century. We do not know how much Māori land was acquired by the Crown under the provisions of the Native Lands Acts before 1927.

8.4.5 Finding

On the question of the taking of Māori land for public roads, we find that the legislative provision allowing up to 5 per cent of a block of Māori land to be set aside without compensation for public roads meant that an undefined area of land was donated by Ngāti Whātua for public use, in addition to the donations of the Helensville courthouse reserve and the Kaipara railway land.

8.5 Loss of Land in the Nineteenth Century

A major issue in Wai 312 and all the southern Kaipara claims is the loss of land, and figure 34 illustrates very clearly that substantial losses had occurred by 1900. We have calculated that Crown purchases before 1865 came to 131,866 acres, with another 50,812 acres purchased between 1865 and 1878, and a further 82 acres in 1890, meaning that a total area of 182,760 acres had been acquired by the Crown before 1900. Private sales from 1864 to 1900 amounted to 63,658 acres. The total area sold in the southern Kaipara inquiry district by 1900 was therefore 246,418 acres. Stirling estimated that the land remaining in Māori tenure in 1900 included some 15,000 acres of Māori freehold land and about 23,000 acres in customary tenure. Much of this total of 38,000 acres was also alienated in the early twentieth century, as is described in the following chapters.[50]

The central question, however, is why Ngāti Whātua sold such a large area. The argument put forward by historian Philippa Wyatt, for the Wai 312 claimants, to explain the willingness of Ngāti Whātua to sell land between 1840 and 1865 was based on the assumption that an 'alliance' had been forged between Ngāti Whātua and the Crown when they invited Hobson to establish his colonial capital at Auckland in 1840. We have already found, in section 6.3.6, that we are not required to consider any alleged relationship beyond the terms of the Treaty

50. Document F8, p 2

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

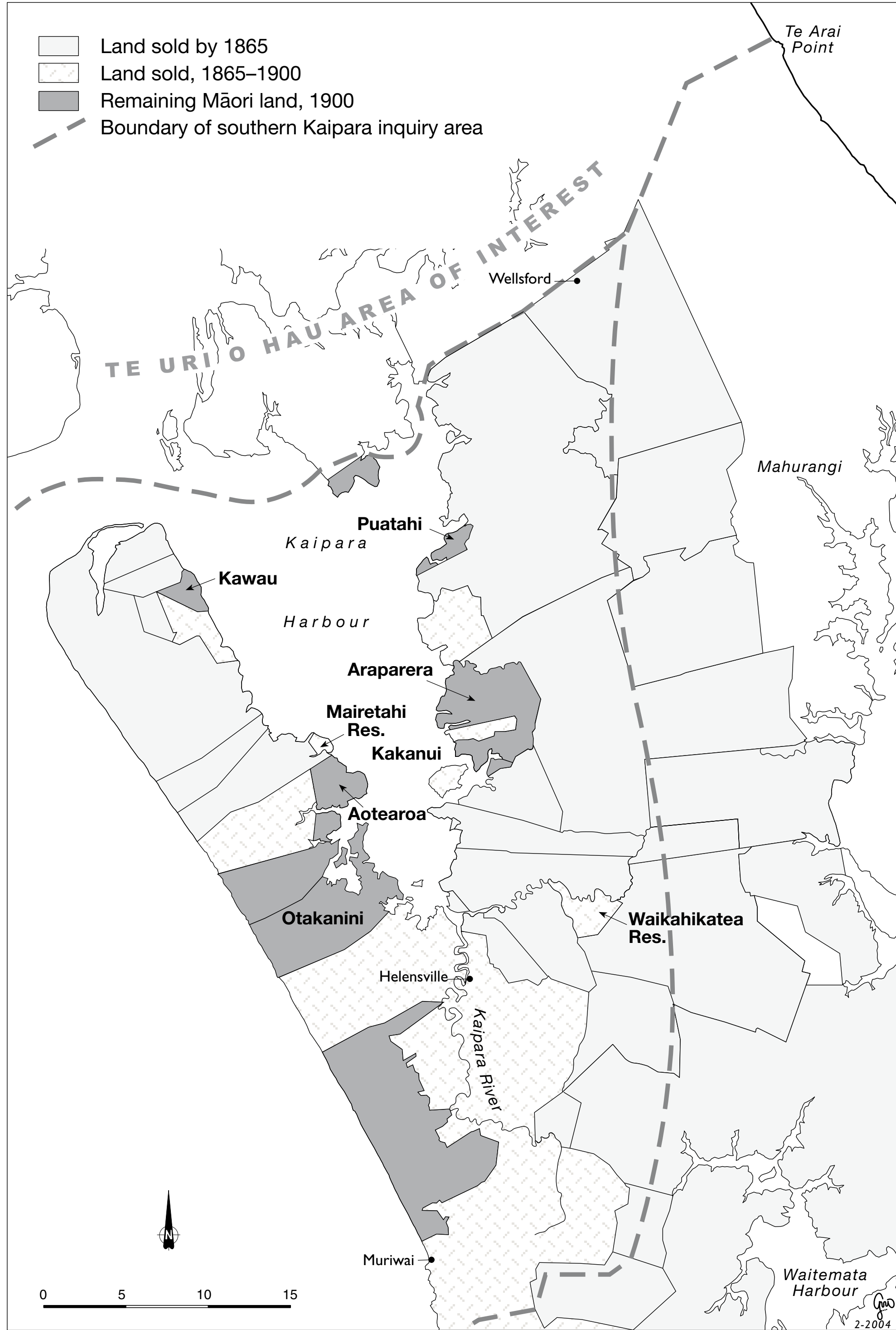

Figure 34: Land alienation in southern Kaipara, 1840–1900

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

itself. However, we examine now the Wai 312 claimants' arguments about how Ngāti Whātua viewed their ongoing relationship with the Crown between 1840 and 1900, and why it may have led to the sale of such a large area of land.[51]

According to Wyatt, Ngāti Whātua expected that the Crown would stand as 'their parent, or the protector and guardian of their interests' and that the Queen and her agents would 'also actively advance their position'. This was the basis of their support for and loyalty to the Crown from 1840 on. Wyatt also suggested that there 'was a fundamental conflict between the advancement and protection of Maori interests and the views and aspirations of the Government and settlers'.[52] By the late 1860s, as 'the dominance of the settlers increased, so too did the need to maintain the support and cooperation of Ngati Whatua'. Wyatt concluded that 'Ngati Whatua gradually became aware that while the immediate benefits offered by the Crown were important', these were 'worth little without the power to determine policy and to invest their own views and interests into the structures and institutions that governed'.[53]

The theme of an 'alliance' between the Crown and Ngāti Whātua also provided the context for Stirling's research reports on the period between 1864 and 1900.[54] He suggested that over this period Ngāti Whātua had:

> maintained and strengthened their hold over their lands through the judicious fostering of an alliance with the Crown; welcomed, adapted to, and benefited from the early expansion of settlement around Tamaki-Makaurau and southern Kaipara; seen themselves swamped by uncontrolled Pakeha settlement.
>
> . . . . .
>
> Despite the staggering pace of change [since 1840] Ngati Whatua made astounding efforts to adapt their social and economic structures to a rapidly changing world. They were, however, overwhelmed by the land sharks, costly surveyors, sharp lawyers, unscrupulous shopkeepers, and wily settlers, all of whom were empowered by the Native Land Acts, just as Ngati Whatua were disempowered by them. These laws undermined the communal basis to their society and their key economic asset. Finally, Ngati Whatua were also undone by the Crown, which acted not as their partner in coming to terms with colonisation but rather as the agent and facilitator of these damaging new forces.[55]

In responding to Stirling's report, Goldstone suggested that the historical evidence presented by the claimants regarding 'the operation of the Native Land Court and the process of land selling in southern Kaipara' was exaggerated. Goldstone concluded that it was not in dispute that by the early twentieth century Ngāti Whātua were 'almost landless', but he

51. Document F4(d), p 2
52. Ibid, p 6
53. Ibid, p 7
54. Documents F5, F8
55. Document F8, pp 457, 459

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

suggested that 'the historical process by which this came about would appear to be a great deal more complex'.[56] We agree. The relation of land loss to the socio-economic condition of Ngāti Whātua in 1900 is a complex matter. Interpretation may range from regarding Ngāti Whātua as hapless victims of Crown policy to the suggestion that, by recklessly selling land, Ngāti Whātua were the architects of their own misfortune. The reasons lie in the sum of many factors, and we have insufficient evidence about a number of them. But all parties agree that by 1900 Ngāti Whātua had lost most of their traditional land base.

We consider that the situation of Ngāti Whātua by 1900 must be viewed against the broader context of New Zealand's social and economic conditions in the nineteenth century. At this point, we note Goldstone's warning about the interpretation of the nature of government and the role of the Crown:

> Quite simply, it was not the role of the State alone in the nineteenth century to provide roads, schools, or other social services. This was more properly regarded as the preserve of parents, locally elected boards raising their income from rates, and charities. Government would simply facilitate these groups, and heavily subsidise them, but their organisation was at a local level. The kind of central economic planning and intervention demanded by claimant historians for Ngati Whatua was unthinkable in the nineteenth century. The idea that nineteenth century bureaucracy (with barely 400 civil servants nationwide by the 1870s) was capable of implementing such programmes is unreasonable. It is anachronistic to expect nineteenth century people to have behaved (let alone thought) like twenty-first century people.[57]

However, the question we need to consider here is whether the Crown could have done more for Ngāti Whātua in the nineteenth century.

Crown counsel suggested that there were social and economic factors at work within Ngāti Whātua and external forces over which the Crown had little control, all of which contributed to the situation Ngāti Whātua found themselves in at the end of the nineteenth century. By the 1880s, many of the strong leaders of Ngāti Whātua had died, and no obvious leaders had emerged by 1900. Changing economic circumstances, including reduced employment in the timber trade and in gum-digging, contributed to Ngāti Whātua poverty in the 1890s. Crown counsel commented:

> The reasons for diminution of tribal control are complex and that diminution cannot be accounted for simply by Crown actions.
>
> It is likely that the sale of land may have reduced the influence of tribal leaders; the impact of Christianity probably had its part to play; the adoption of a cash economy by Maori and the elimination of tribal warfare may have also been factors.[58]

56. Document P1(d), pp 3–4
57. Document P1, p 197
58. Document Q16, p 64

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

Counsel concluded that by 1900 Ngāti Whātua had gained little from the previous decades of land sales and leases and that any material shift in their fortunes would have required 'significant government intrusion', such as requiring Ngāti Whātua to invest rather than consume the proceeds from land sales, gum-digging, or the timber trade. The outcome for Ngāti Whātua in 1900 was that 'the potential for any collective action over land management had seriously diminished and there was an absence of capital to develop lands'.[59]

Through the nineteenth century, Ngāti Whātua had remained loyal to the Crown, participated actively in the developing economy, sold land for settlement, and welcomed Pākehā settlers. Ngāti Whātua also gave land for public purposes, including the land for most of the roads in southern Kaipara, the railway between Helensville and Kumeu, and the courthouse reserve in Helensville itself. Their reasons for doing so are indicated in the comments made by Maata Tira Koroheke in advocating the donation of land for the railway in 1871: 'It will do good. Our land will rise in value. We can travel quickly, provisions and clothing will be cheap, and Europeans will come to dwell amongst us. Kaipara will come to be a dwelling place of chiefs, as Auckland now is.'[60]

Initially, local Māori found employment on Pākehā farms, but over time, as the farms were developed, Māori and Pākehā competed with each other to sell produce, especially in the depression years of the 1880s. By the late 1880s, the income available from working in the bush felling timber or digging for gum dwindled. The Pākehā settlers then held most of the good land and were poised to participate in the developing dairy industry. As at 1900, Ngāti Whātua had lost most of their land but had not derived much benefit from the colonial economy, and most were poverty-stricken, eking out a subsistence living on the small scattered remnants of their ancestral estate. As will be seen in the following chapters, the Ngāti Whātua land base was further eroded in the twentieth century, and life in the Māori communities of southern Kaipara remained on the margins of economic development.

At this point, we need to step back a little and consider whether the new tenure regime imposed by the Native Lands Acts in the 1860s and the individualisation of Māori interests in land contributed significantly to the subsequent alienation of that land. The Turanga Tribunal considered the relationship between land loss and poverty in the Gisborne district and remarked:

> We are left to conclude that Maori communities could not have withstood the introduction of an aggressive land purchase market if armed only with the land tenure system provided under the 1873 [Native Lands] Act. In fact, no population could have.[61]

The creation of individual, disposable interests in land and a complex legal regime operated by the Native Land Court – a process not controlled by Māori and based on English

59. Ibid, p 65
60. Document P1, p 80; doc F8, p 181
61. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 521

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

legal concepts, not tikanga Māori – inevitably led to land sales, landlessness, and poverty. The Turanga Tribunal concluded that the statutory regime of the 1870s 'led Māori to sell lands individually, which they could never have sold collectively', and that the Crown failed to provide any effective provision for the community management of land. The Crown 'was aware of the risks of landlessness and title fragmentation which the system presented and was recklessly indifferent to them.'[62] The Turanga Tribunal also considered that the processes reviewed in the Gisborne district applied generally in the North Island in the later nineteenth century.

The Turanga Tribunal concluded that 'the extremely high level of land alienation in Turanga and the equally low level of Māori participation in alternative capital investment were effects of the system of tenure provided under the Native Lands Acts'. It did not accept that the alienation of some 70 per cent of the Māori land base of the Gisborne district was the result of the actions of willing sellers. The sales were 'not the result of conscious choices made by Māori communities selecting from a range of reasonable alternatives': Turanga Māori were 'pushed' into the only option of sale 'by the structure and objectives of the native land system' imposed by legislation without Māori consent. The Turanga Tribunal found that Māori landowners were subject to 'unbearable statutory pressure to sell' and that this pressure was 'inconsistent with the Crown's fiduciary obligation to Māori and its related obligation to actively protect the Māori interest'.[63]

The conclusions in the Turanga report are relevant to Kaipara, where land transactions were carried on under the same legal regime. Furthermore, Kaipara is reasonably close to Auckland, known as a major centre for Māori land purchases in the 1870s and 1880s. The market pressures to sell were significant for Kaipara Māori. There were few other sources of significant income for them, and by the late 1880s employment in timber extraction, in gum digging, or on public works or local Pākehā farms had dwindled. Individualisation of interests did not create individual title for a Māori family to develop a farm as settler families did. Individualisation often created titles with multiple owners of individual, undivided interests. There was no mechanism for creating a governance structure for the corporate management of Māori lands until the Native Land Court Act 1894 provided for Māori incorporations. But that came too late for Kaipara Māori.

The system of succession to individual interests, from both male and female lines by all children, served to fill titles with even more owners of even smaller interests over successive generations, and the partitioning of blocks among owners did not solve this problem. A greater number of smaller and often economically unviable blocks was created, fragmenting parent blocks which might have been managed communally for the benefit of whānau or hapū. Moreover, there was no mechanism to finance corporate Māori farming or other activities, nor any educational programme to encourage Māori to participate effectively in

62. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, p 532
63. Ibid, pp 536–537

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

the new economic order created by Pākehā settlement. It was not sufficient to assume that Māori would simply learn by example from their Pākehā neighbours, although a few did try.

In our view, the revolutionary system of land tenure imposed on Māori in the 1860s, without their consent, was a cause of landlessness and poverty among Kaipara Māori by the end of the nineteenth century. We acknowledge that wealth is not necessarily measured by land ownership, nor is the possession of land a guarantee of prosperity. But land does form a basis for creating wealth. In section 7.4, we referred to various ratios of population to land area, including section 24 of the Native Lands Act 1873, which prescribed that 50 acres should be reserved for every Māori man, woman, and child. These numbers do not, however, provide the answer or remove from the Crown the responsibility of ensuring that sufficient land was retained to meet the present and future needs of Kaipara Māori. Land provides the base for creating wealth, but only where the owners have access to the capital, technology, and expertise needed to create it. Kāipara Māori communities in 1900 had none of these available to them.

8.6 Findings on the Native Land Court and Land Sales

We make the following findings on the impact of the Native Land Court and land sales in southern Kaipara between 1865 and 1900:

- The Native Land Acts of 1862 and 1865, which established the Native Land Court, imposed a tenurial revolution on Kaipara Māori, without consultation or their consent, and had a profound effect on the relationship that Ngāti Whātua had with all their lands. One serious effect of this was the loss of control of the management of Māori lands to the title investigation and other functions of the Native Land Court judge.
- The allocation by the court of individual, undivided interests in Māori land created individual, disposable, property rights, quite foreign to customary Māori tenure based on collective rights of use and occupation of land. Furthermore, the 10-owner system of allocating interests had the potential to disinherit a number of Kaipara Māori. However, no evidence was presented to us as to its actual effect, if any, in the Kaipara region.
- Section 24 of the Native Land Act 1873 provided for reserves of 50 acres per person, but the legislation governing Native Land Court operations generally failed to prevent the loss of communally held land (including that subject to restrictions on alienation), which might have provided a base for the future benefit of Kaipara Māori communities.
- The legislation governing Native Land Court operations also allowed for the direct private purchasing of individual interests in Māori land, and thus Māori were subjected to considerable market pressures to sell their interests. However, we have insufficient

Downloaded from www.waitangitribunal.govt.nz

Downloaded from www.waitangitribunal.govt.nz

information about the costs of land court processes, surveys, and other expenses to determine the extent and significance of debt as a factor in sales of land interests, although anecdotal evidence suggests that debt was a factor in some transactions.

- Given all the pressures to sell interests in land, we find that it is not reasonable to assume that all the individual transactions in Kaipara were made by willing sellers. A free market in Māori land was created without arming Māori with the knowledge, independent legal advice, and expertise to participate effectively in the developing colonial economy in Kaipara.
- By imposing the legislative regime which governed Māori land tenure and the Native Land Court, the Crown failed in its fiduciary duty, set out by Lord Normanby in his instructions to Lieutenant-Governor Hobson and in the guarantees in the Treaty of Waitangi, to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities.
- In section 8(e) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged 'that the operation and impact of the Native land laws . . . had a prejudicial effect on those of Te Uri o Hau who wished to retain their land and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'. The Crown also acknowledged that 'the awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau'. In section 8(f), the Crown acknowledged that:

> this loss of control over land has prejudiced Te Uri o Hau and hindered the economic, social, and cultural development of Te Uri o Hau. It has also impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.

We find that Ngāti Whātua in southern Kaipara were similarly prejudiced by the effects of these generic issues, as set out in the above acknowledgements to Te Uri of Hau of northern Kaipara.

Downloaded from www.waitangitribunal.govt.nz