THE AFTERMATH OF THE TAURANGA RAUPATU, 1864-1981

AN OVERVIEW REPORT COMMISSIONED BY

THE CROWN FORESTRY RENTAL TRUST

VINCENT O'MALLEY

JUNE 1995

FOREWORD

This report was commissioned by the Crown Forestry Rental Trust in order to provide an overview of the events subsequent to the confiscation of Maori land in the Tauranga district following the New Zealand Wars of the 1860s, on behalf of the various claimant groups to the Athenree State Forest, near Katikati. Approximately two-thirds of this forest falls within the northern boundaries of the district confiscated by the Crown in 1865, and within the boundaries of the area purportedly purchased by the Crown in various transactions over the period 1864-71.

The actual confiscation and purchase of these lands is the subject of a separate report by Dr. Hazel Riseborough, which was also commissioned by the Crown Forestry Rental Trust. This provides much of the essential background to the topics discussed here.

I would like to thank Therese Crocker and Dion Tuuta, who both provided research assistance for parts of the report, Dr. Donald Loveridge, who made useful comments on an earlier draft of the work, the staff of the Crown Forestry Rental Trust, and the people of Tauranga Moana for their support and encouragement in completing this report. I am, however, solely responsible for any errors or omissions contained in the report.

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INTRODUCTION

On 18 May 1865 an Order-in-Council was issued under the provisions of the New Zealand Settlements Act 1863 whereby the entire Tauranga Moana district (described as `All the Lands of the Ngaiterangi Tribe') were confiscated by the Crown. The proclamation further specified that `in accordance with the promise made by His Excellency the Governor at Tauranga, on the sixth day of August, 1864, three-fourths in quantity of the said lands shall be set apart for such persons of the tribe Ngaiterangi as shall be determined by the Governor after due enquiry shall have been made'.[1] Although the proclamation estimated the area included in its schedule (which extended from Nga Kure a Whare to Wairakei along the coast and inland approximately to the summit of the Kaimai Ranges, as well as some offshore islands) at 214,000 acres, in 1927 the Royal Commission on Confiscated Lands and Other Native Grievances concluded that the actual area affected by the confiscation was 290,000 acres.[2] Of the area formally confiscated at Tauranga, 93,188 acres constituted the Katikati-Te Puna Block allegedly purchased by the Crown in various transactions ranging over the period 1864-71 (and included about 6,500 acres of reserves); within the 58,950 acre block retained by the Crown about 9,200

[1] *New Zealand Gazette*, 27 June 1865, Raupatu Document Bank (RDB), vol.11, p.4025.

[2] `Report of the Royal Commission on Confiscated Lands and other Grievances', *Appendices to the Journals of the House of Representatives* (AJHR), G-7, 1928, p.19. [vol.1, p.340. Figures given in brackets refer to the volume and page numbers for the supporting documents to this report].

acres were returned to or reserved for Maori, leaving 49,750 acres as the actual area taken.[3] The remaining area, about 137,000 acres, was `returned' to Maori by specially appointed `Commissioners of Tauranga Lands' in 210 blocks in a process which dragged on until 1886.[4]

Behind these bare facts lie a number of issues concerning the Crown's actions at Tauranga. Some of these, particularly relating to the implementation of confiscation, the Crown's purchase of the Katikati-Te Puna Block, and the circumstances leading up to these events have already been covered in some depth by previous research.[5] In 1978 both Professor M.P.K. Sorrenson and Dr. Evelyn Stokes presented submissions to Parliament's Maori Affairs Select Committee on the history of the Tauranga confiscation in support of a petition seeking compensation in respect of this. Since this time Dr. Stokes has written a voluminous amount of work on land dealings and aspects

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[3] Schedule of Tauranga lands, Papers of the Royal Commission on Confiscated Lands and other Grievances: Exhibits of the Commission, MA 85/6, RDB, vol.50, p.19430.

[4] `Lands Returned to the Ngaiterangi Tribe under Tauranga District Land Acts', *AJHR*, G-10, 1886. [vol.1, pp.272-76].

[5] M.P.K. Sorrenson, `The Tauranga Confiscation', (a submission to the Select Committee on Maori Affairs, 1978), in Maori Affairs Tauranga Confiscation file AAMK 869/1589a, RDB vol.139, pp.53351-71; E. Stokes, `Te Raupatu o Tauranga: A Study of Land Transactions and Race Relations at Tauranga, 1864-1886', Hamilton: Centre for Maori Studies and Research, University of Waikato, occasional paper no.3, August 1978; E. Stokes, `Te Raupatu o Tauranga Moana/ The Confiscation of Tauranga Lands' (a report prepared for the Waitangi Tribunal), Hamilton: University of Waikato, 1990; V. O`Malley and A. Ward, `Draft Historical Report on Tauranga Moana Lands', Crown-Congress Joint Working Party, June 1993; H. Riseborough, `The Crown and Tauranga Moana, 1864-1868', October 1994.

of the traditional history of Tauranga Moana, along with a general history of the district, published in 1980. More recent research has been generated by the 1985 amendment to the Treaty of Waitangi Act, allowing for claims dating back to 1840 to be considered by the Waitangi Tribunal. In 1990, for example, Dr. Stokes completed a further report on the confiscations, which was commissioned by the Tribunal, and in 1993 the present author and Professor Alan Ward wrote a draft report on the district on behalf of the Crown-Congress Joint Working Party.

In the first part of this report the process by which lands were returned to Maori under the Tauranga District Lands Acts is considered. It will be suggested in this section that the process involved more than simply the `return' of lands to their customary owners. Indeed, aside from the Crown's retention of a block of approximately 50,000 acres, the key point concerning the Tauranga raupatu would seem to be that because the entire district was affected by the confiscation proclamation the Crown was, in effect, free to do what it liked with the remainder of the lands - and frequently did so. The 1865 proclamation extinguished native title at a stroke over the entire district - allowing for the forcible tenurial reform of Maori landholdings - and any lands subsequently `returned' to Maori became to all intents and purposes gifts from the Crown. The bases upon which such `gifts' were awarded will be explored in this section, along with questions concerning the jurisdiction of the Native Land Court at Tauranga, and the status of the lands returned.

The second section of this report focuses on Government and private land-purchase activities in the wake of the confiscation and overlaps chronologically to a large extent with the long drawn-out process of the return of lands. A key question considered in this section concerns the imposition and subsequent removal of alienation restrictions on lands returned to Tauranga Maori. It will be suggested that having imposed such restrictions on lands granted under the Tauranga District Lands Act in order to insulate Maori from the pressures to part with their lands, the Crown's failure to rigorously enforce these restrictions was a serious abrogation of its obligations to positively protect Maori interests. Moreover, as a result of this Tauranga Maori were subjected to a series of fraudulent and dubious land-purchase activities which rivalled for pure cynicism (if not quite in scale) those conducted in Hawke's Bay in the 1860s and 1870s. And while most of these efforts to defraud Tauranga Maori of their lands were conducted by private speculators, at least one Government Land Purchase Officer engaged in similar activities.

It was the raupatu, however, which first opened up Tauranga to large-scale Pakeha settlement and the attendant pressures imposed on Maori to part with their remaining lands, and in the final section of this report the Tauranga tribes' long history of efforts to gain redress for the confiscation of their lands and the Crown's response to these will be outlined. Particular attention will be devoted to the Royal Commission on Confiscated Lands and Other Native Grievances (more commonly referred to as

the Sim Commission), which was appointed in October 1926 and had its report tabled in Parliament in September 1928. It will be shown that the findings of the Sim Commission that the Tauranga confiscation was both justified and not excessive was flawed for several reasons but nonetheless remained the basis upon which a steady stream of petitions and appeals on the subject were rejected over the years. The history of this long struggle to overturn the verdict of the Sim Commission will also be outlined before finally moving on to consider the circumstances surrounding the passing of the Tauranga Moana Maori Trust Board Act in 1981. It will be shown that Tauranga Maori accepted the $250,000 offered them as the best they could expect to receive at the time but remained adamant in their opposition to the Act's declaration that this was to be paid `in full and final settlement' of their grievances relating to the raupatu.

PART A: THE RETURN OF LANDS

1. INTRODUCTION

In the wake of Governor Grey's announcement at Te Papa on 6 August 1864 that not more than one-fourth of the lands of the `Ngai Te Rangi' tribe would be retained by the Crown for their `rebellion' there remained the problem as to how the remaining three-quarters were to be dealt with.[6] The `purchase' of the 93,000 acre Katikati-Te Puna block, also initiated at about this time, partly answered this question, even if Crown officials continued erroneously to refer to the return of three-quarters, when less than half of the district now remained available for Maori. According to H.T. Clarke, Civil Commissioner for the Tauranga district, efforts had been made to define the quarter to be retained by the Crown at the time of the Governor's visit, but so many difficulties had presented themselves that it was decided to return the three-quarters (less the Katikati-Te Puna block, of course) after the actual area to be confiscated had been decided on.[7] One option was simply to proclaim the boundaries of the area to be retained by the Crown once this had been decided upon, thereby allowing the Native Land Court jurisdiction over the remaining lands, over which native title

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[6] For Grey's speech see *AJHR*, 1867, A-20, pp.5-6. [vol.1, pp.20-21]. See Riseborough, *passim*, for a discussion of the background to the confiscation and Katikati-Te Puna purchase.

[7] Clarke to W.B.D. Mantell, Native Secretary, 23 June 1865, *AJHR*, 1867, A-20, p.12. [vol.1, p.27].

would remain unextinguished. Yet this would have prevented the Government from compensating `friendly' Maori out of the lands to be returned, as well as legally allowing `unsurrendered rebels' to apply for title to lands. Thus when an Order in Council was issued in May 1865 under the provisions of the New Zealand Settlements Act 1863 the entire district was technically confiscated, thereby giving the Crown greater discretion in deciding to whom the lands would be returned. And despite subsequent calls for the confiscation proclamation to be abandoned over the lands to be returned, the Crown stoutly refused to allow the Native Land Court (or indeed the Compensation Court, to which it failed to refer any claims from Tauranga) any meaningful involvement in the process of returning lands in the district, instead doing so in a haphazard and protracted manner, by means of specially appointed Commissioners of Tauranga Lands.[8]

2. JURISDICTION OF THE NATIVE LAND COURT AT TAURANGA

In October 1865 F.D. Fenton, Chief Judge of the Native Land Court and Senior Judge of the Compensation Court, wrote to T.H. Smith, the former Civil Commissioner for Bay of Plenty who had recently been appointed a Judge of the Native Land Court, to advise him of his decision to fix a sitting of the Native Land Court at Tauranga for December of that year. Fenton added that

[8] See Appendix II for a list of the Commissioners and the dates of their appointments.

he did not go against Smith's opinion as to the inadvisability of holding such a Court at Tauranga lightly, yet:

> I have not been able to satisfy myself that we had any right to deprive any considerable class of Her Majesty's subjects of the benefit of the Courts established in the colony except in circumstances of peculiar exigency which I do not think exist at the present time at Tauranga.[9]

Frederick Whitaker (who had been deeply involved in confiscation arrangements at Tauranga in his former capacity as Attorney General in 1863-64 and was by this time Auckland Superintendent and Agent for the General Government), assumed that any sitting of the Court would be `nugatory' since it did not have jurisdiction over Crown lands (as territory confiscated under the Settlements Act became). Fenton maintained, however, that it was a judicial act to determine a Court's jurisdiction. When claimants had complied with the requirements of the Native Land Act and paid their costs, he added, then they had every right to be heard:

> and I cannot imagine that the Crown can step in and demand the closing of a Court in any case in which the involvement of its own interests places it in the position of a quasi defendant.[10]

Clearly the Government was anxious to prevent the Court from sitting at Tauranga before the arrangements for confiscation had

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[9] Fenton to Smith, 28 October 1865, `Correspondence of Chief Judge Fenton, 1865-67', DOSLI Hamilton Tauranga Confiscation file 2/8, RDB, vol.125, p.47889. Smith was by this time a Judge of the Native Land Court.

[10] Fenton to Whitaker, 18 December 1865, ibid., p.47896.

been completed. Under the provisions of the Native Land Act 1865, however, it was powerless to intervene[11] and considerable behind-the-scenes manoeuvring was probably required in order to persuade the claimants to withdraw their cases only a matter of days before the sitting was scheduled to commence.[12] Despite this, Fenton remained adamant of the Court's right to determine its own jurisdiction, and, although anxious to afford `as little embarrassment as possible to the executive Government', caused it considerable consternation in January 1866. Fenton pointed out, in a letter addressed to the Native Minister, ambiguities in the original Order in Council by which Tauranga had been confiscated, noting that:

> no block of land has been confiscated in Tauranga but merely the lands of a certain Tribe in a defined Territory. If the Courts over which I have the honor [sic] to preside have no jurisdiction how will the question of which are the lands of this tribe be settled.[13]

The Attorney General, James Prendergast, responded that upon it being ascertained that a particular claim fell within the limits

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[11] The 1865 Act authorised the Chief Judge of the Court to suspend its operations where deemed necessary. However, in 1866 an amendment was passed to the Native Land Act (section 18) which allowed the Government to do so. This had been introduced mainly to allow the Government to proceed with plans for confiscations on the East Coast without the threat of private competition for the best lands. For a discussion of this question in relation to the East Coast see V. O`Malley `Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and its Implementation', February 1994, ch.9.

[12] Fenton to Whitaker, 23 December 1865, DOSLI 2/8, RDB, vol.125, p.47900.

[13] Fenton to Native Minister, 22 January 1866, ibid., p.47907.

of a district proclaimed under the Settlements Act, then the Court would be obliged to dismiss the case.[14]

Probably lacking an awareness of the tribal situation at Tauranga, Prendergast had failed to grasp the key point Fenton was making, which was that the Native Land Court would first have to decide which were the lands of the Ngai Te Rangi within the schedule to the confiscation proclamation in order to determine which lands were subject to the provisions of the New Zealand Settlements Act and therefore outside the jurisdiction of the Court. Since the proclamation had confiscated all the lands belonging to a particular tribe within a specified area, the Court would first have to determine which lands belonged to that tribe within the boundaries named before the lands actually confiscated were determined.

The Government's sweeping assumption that all of Tauranga Moana belonged to Ngai Te Rangi now had the potential to cost it dearly, particularly since another iwi whose lands had not been confiscated under the proclamation, Ngati Ranginui, had substantial claims to the 50,000 acre block the Government intended retaining.

Section 18 of the Native Land Act 1866 gave the Governor-in-Council the authority to suspend the operations of the 1865 Act and its amendment in any district, but this was never done at

[14] Prendergast, memorandum for Native Minister, 16 January 1866, ibid., p.47911.

Tauranga. In August 1867 Fenton forwarded to the Native Minister a list of claims for a Native Land Court hearing at Tauranga and stated that he could no longer abstain from fixing a sitting there in the absence of an Order in Council suspending the operations of the Native Land Court in that district.

Section 6 of the New Zealand Settlements Acts Amendment Act 1866 (which declared `absolutely valid' all orders, proclamations, awards and grants made under the authority of the Settlements Acts) had arguably provided retrospective validation for the 1865 proclamation by which Tauranga was confiscated. The Government was clearly not keen to test the point, however, and informed Fenton that it instead proposed to shortly introduce a Bill which would `set at rest' doubts as to the validity of the original Order in Council.[15] Perhaps partly as a sop to Fenton (who jealously guarded the powers of his Court throughout his career as Chief Judge), Rolleston also informed him of the Government's intention to seek legislative authority to refer the subdivision of lands awarded under the Settlements Act to the Native Land Court.[16] In September 1867 Fenton was informed that the Government did not consider it advisable that notice of a Native Land Court sitting at Tauranga be advertised in the *Kahiti* until the validating legislation was passed.[17]

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[15] Rolleston (Native Under Secretary) to Chief Judge, Native Land Court, 22 August 1867, ibid., p.47933.

[16] ibid., p.47935. Section 5 of the Confiscated Lands Act 1867 provided for this.

[17] Rolleston to Fenton, 10 September 1867, ibid., p.47937.

Before the Court was to be allowed to sit at Tauranga, the Government first sought legislative ratification of the district's status as Crown land. Moreover, though the Court was later able to hear cases relating to lands returned to Maori at Tauranga, this was only for the purposes of subdividing blocks (where referred to the Court) or drawing up succession lists. And even in undertaking these tasks the Court has never been able to decide such matters on the basis of native title, since the original `return' of lands was based on a number of factors - of which customary entitlement was only one.

3. THE TAURANGA DISTRICT LANDS ACTS 1867-68

The Tauranga District Lands Bill was introduced into the House in September 1867 and passed into law on 10 October. During the Bill's second reading in the House on 19 September the Native Minister,[18] informed members that the 1865 confiscation proclamation had embodied Grey's promise in 1864 that three-fourths of the land surrendered by Ngai Te Rangi would be restored to them. Despite this, `a question had been raised [as to] whether the terms of that Order in Council were not vague and uncertain; and some legal doubts had arisen as to its validity'. As several `large interests' had arisen under the proclamation, it was necessary to ask the House to declare that it was valid. The intention behind the Bill, then, was `to give

[18] James Crowe Richmond was officially Collector of Customs but acted as a de facto Native Minister in the Stafford Ministry between 1866-69.

effect to certain past transactions, or rather to remove any doubts in reference to them, and to prevent future litigation'.[19]

George Graham, who was something of a maverick on matters concerning the confiscations, commented in reply that the Bill was `a very unjust one'. The Government had attempted to take more than the 50,000 acres agreed to be given up at Tauranga and when some Maori had tried to put a stop to the survey of their lands an engagement had taken place with colonial troops which had resulted in them being driven from their lands and forced to subsist on fern roots. Now the Government was attempting, by means of the Bill before the House, to take away lands from Maori `which it had been thoroughly understood they were to retain'.

Graham's voice of opposition was a lone one, however, and the Bill passed into law with little further debate at the end of the 1867 session.[20] The preamble to the Act recited Grey's promise in 1864 and the subsequent Order in Council issued pursuant to this and stated that `questions have arisen as to the effect of the said Order in Council and as to the validity of the said arrangements'. Section 2 of the Act set such questions aside by declaring `absolutely valid' any grants, awards, or other arrangements made pursuant to the proclamation,

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[19] For the second reading of the Bill see *New Zealand Parliamentary Debates (NZPD)*, 19 September 1867, pp.978-79. [vol.2, p.350].

[20] For the full Act see RDB, vol.10, pp.3390-91. [vol.2, pp.393-94].

notwithstanding `any uncertainty in the said Order in Council or of any omission or defect or departure of or from' the provisions of the New Zealand Settlements Act or any of its amendments. It was further declared that all the lands specified in the schedule to the original proclamation were duly set apart and reserved for the purposes of colonization under the provisions of the Settlements Act by means of the 1865 Order in Council. As if to emphasise the point, section 4 declared all the lands described in the schedule to the Act (which was virtually identical to that included in the proclamation) to be the lands defined in the Order in Council. Section 3 further provided for the `due enquiry' into the manner of what lands would be returned to the `Ngai Te Rangi' tribe in accordance with the proclamation to be undertaken by persons appointed by the Governor (as had already been occurring).

The effect of this Act was to declare all of Tauranga Moana to be Ngai Te Rangi land which had duly been confiscated by Order in Council in 1865 under the provisions of the New Zealand Settlements Act. Ngati Ranginui, Ngati Hinerangi, Waitaha and other iwi with claims in the district were not acknowledged by name and, what is more, were henceforth prevented from lodging any legal challenge to any acts of the Crown with regards to the Tauranga raupatu. Though all of the people of Tauranga Moana were affected by the confiscation proclamation and subsequent validating legislation, many were acknowledged by the Crown only to the extent that they were perceived to be `*inferior* hapus of

Ngaiterangi'.[21] That the Crown should confiscate their lands and not even acknowledge them as ever having been such, undoubtedly added greatly to the sense of grievance of these groups. Moreover, because of the confiscation such tribes continue to be denied the opportunity to press their claims to mana whenua in the district through the agency of the Native Land Court.

The Tauranga District Lands Act of 1867 amounted to an implicit acknowledgement on the part of the Government that it had not thusfar acted in accordance with the requirements of the New Zealand Settlements Act. But the 1867 Act was itself shown to be defective when the Inspector of Surveys, Theophilus Heale, reported to the Government in July 1868 that certain lands surveyed at Tauranga fell outside those included in the schedule to the Act.[22] H.T. Clarke, the Tauranga Civil Commissioner, was requested to report on Maori feelings regarding this `error' the following month. He was informed that `The Government are most unwilling to take any further legislative action, which is certain to be misinterpreted by Ngaiterangi' but would prefer it if Clarke could gain their consent to a `nominal purchase' of the land.[23] Clarke's response to this request has not been located, but J.C. Richmond later told the House that the Civil

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[21] Clarke to Richmond, 25 September 1866, *AJHR*, A-20, 1867, p.23. [vol.1, p.38].

[22] Assistant Native Under Secretary to Inspector of Surveys, Auckland, 13 August 1868, Native Department General Outwards Letterbook, 1868, MA 4/11.

[23] G.S. Copper, Acting Under Secretary, to Civil Commissioner, Tauranga, 18 August 1868, Native Department Outwards Letterbook to Resident Magistrates and Civil Commissioners, 1868-69, MA 4/64.

Commissioner had been told by `Ngai Te Rangi' that they would `not be satisfied unless the Government confiscate the whole of [their] territory'.[24] No mention was made of any offer to purchase the land having been declined, which seems a little strange given the Government's reluctance to introduce fresh legislation on the subject.

When the Tauranga District Lands Bill (which merely amended the schedule to the 1867 Act of the same name to include the lands already surveyed) received its second reading in the House on 5 October 1868 Richmond stated that `the amended schedule would not alter any understanding which existed' and was merely intended `to replace an erroneous schedule by a correct one'.[25] Clearly, however, regardless of whether the original schedule had been erroneous or not, the 1868 Act added a reasonably substantial area of back-country to the confiscation district, and the Government's earlier inclination to make a `nominal purchase' of this was probably influenced by the fact that this apparently included lands surveyed as part of the Katikati-Te Puna and confiscation blocks - both of which were to be retained by the Government. Moreover, an added effect of the 1868 Act (which was passed into law on 16 October) was to further validate Ngai Te Rangi claims to lands contested by other groups.[26]

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[24] *NZPD*, 5 October 1868, p.148. [vol.2, p.362].

[25] ibid.

[26] Sorrenson (1978), RDB, vol.139, p.53365. For the full Act see RDB, vol.10, pp.3397-98. [vol.2, pp.395-96].

4. ALLOCATING LANDS IN THE KATIKATI-TE PUNA AND CONFISCATION BLOCKS

The New Zealand Settlements Act 1863 provided for the establishment of specially appointed Compensation Courts to sit and hear the claims of `loyalists' and `surrendered rebels' for compensation and reserves in districts confiscated under the Act.[27] With `three-quarters' (or, in reality, one half) of the district to be `returned' to `Ngai Te Rangi', one might have expected such a Court to have a busy time at Tauranga. Yet none was ever convened there. Fenton, the Senior Judge of the Court, informed the Native Minister in 1867 that this was because the Government had failed to refer any claims for compensation to it as required under the Act.[28] But if J.C. Richmond was to be believed then there was never any need to do so. The Native Minister told the House during the second reading of the Tauranga District Lands Bill 1867 that all claims for compensation had been extinguished out of Court up to the time for bringing in claims and that none had been received since.[29]

Richmond's comments were apparently made in respect of claims for compensation from those whose lands fell within the boundaries of the block to be retained by the Government. Both

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[27] For the New Zealand Settlements Act 1863 see RDB, vol.10, pp.3294-98.

[28] `Report by Mr Fenton Respecting Non-Sitting of Compensation Court at Tauranga', *AJHR*, A-13, 1867. [vol.1, p.16].

[29] *NZPD*, 19 September 1867, p.978. [vol.2, p.350].

H.T. Clarke and J. Mackay Jnr., in their respective capacities as Civil Commissioners for the Tauranga and Thames districts, were initially responsible for setting aside reserves within this and the Katikati-Te Puna Block. At the meeting held with `Ngai Te Rangi' in November 1866 in order to complete the purchase of the latter block Mackay promised them 6,000 acres of good agricultural land.[30] Turton's Deed number 461 is dated 3 November 1866 and was signed between Mackay and twenty-four chiefs on behalf of the `People of the Tribe Ngaiterangi and its hapus'.[31] A schedule attached to the Deed lists `lands returned to Natives' which amounted to 6,034 acres. According to Sim Commission figures, a further 9,200 acres was returned to or reserved for Maori within the confiscation block, though according to these figures this was not (as was claimed at the time) taken out of the 50,000 acres retained by the Crown but additional to it.[32]

Mackay and Clarke both seem to have taken some care to ensure that kainga in actual occupation at this time were awarded to chiefs in trust for the hapu concerned (even if, as will be discussed subsequently, these `trustees' were often recognised as outright owners of the lands for the purposes of

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[30] Mackay to J.C. Richmond, 22 November 1866, *AJHR*, A-20, 1867, p.27. [vol.1, p.42].

[31] Turton's Deed no.461, Province of Auckland, H.H. Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington: Government Printer, 1877-78, (Alexander Turnbull Library microfiche edition), pp.638-41.

[32] Schedule of Tauranga lands, MA 85/6, RDB, vol.50, p.19430.

alienation).[33] Other factors, however, also influenced their allocation of lands. This is apparent from a letter written by Mackay in July 1867 to explain progress to date. Mackay suggests that Grey's original intention was that compensation was to be provided for `friendly' Maori out of the three-quarters to be returned. Whether `non-rebels' understood the Governor's promise that their rights would be `scrupulously respected' to be along these lines seems doubtful, though they might well have anticipated being *rewarded* for their loyalty out of the three-quarters. In any event, Mackay's contention that the `return' of the three-quarters was an out-of-Court arrangement which was intended to supersede the need for any Compensation Court sitting raises a key point as to why the entire district was confiscated rather than just 50,000 acres:

> As to the lands reserved or returned to loyal Natives within the Military Settlements Block of 50,000 acres, I would observe that these were at first [considered] to be more in the light of gifts from the Crown to the Natives on account of having lost land, than as compensation. It is true that since the extension of the area of these to six thousand acres by Mr Clarke and myself that we and the Natives now look on it as compensation. The intention of the Governor in the first instance was evidently that the question of compensation to loyal Natives should be adjusted out of three fourths of the whole district to be returned to the tribe, and not out of the one fourth retained by him.

Mackay added that the confiscation of the entire district:

> could hardly be done for any reasons save than to afford power to compensate the loyal Natives for lands taken from them in the one fourth (50,000 acre block) as His

[33] Stokes (1990), p.155.

> Excellency if merely desiring to give back the three fourths to the tribe could hardly have done so without any trouble or *inquiry* by surrendering or abandoning the Crown's right to take the land in accordance with the provisions of the New Zealand Settlements Act.
>
> The fact of the Natives having sold to the Crown the Katikati and Puna block which formed a considerable proportion of the three fourths above alluded to also to a certain extent altered the position of the case. However in arranging this question Mr Clarke and myself endeavoured to adjust any outstanding claims by making reserves for some of the loyal persons who had received but little before on account of their lands being within the Military Settlements Block of 50,000 acres, although they had but very small right to land otherwise within the Katikati and Puna blocks.[34]

Mackay's report contains several key points. Most crucially perhaps, the Government's self-proclaimed reluctance to confiscate the entire district (something supposedly done at the insistence of `Ngai Te Rangi') seems less than convincing in the light of Mackay's supposition that this had been done so that compensation could be awarded out of the three-quarters to be `returned'. The purchase of the Katikati-Te Puna block had, as Mackay says, altered this situation somewhat, and outstanding compensation claims were able to be dealt with out of this and the confiscation blocks. Two claims to the Katikati-Te Puna Block (lodged by chiefs of the Te Arawa and Ngati Raukawa tribes) were considered by Mackay as claims for a share of the purchase money and dismissed as invalid in any event, and others registered with the Native Land Court were also not regarded as compensation claims.

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[34] Mackay to Native Under Secretary, 31 July 1867, `Reports of James Mackay Jr., 1866-67', DOSLI Hamilton Tauranga Confiscation file 1/1, RDB, vol.124, pp. 47557-59.

It followed that since these had, supposedly with only one exception,[35] already been settled out of the Katikati-Te Puna and confiscation blocks, the `three-quarters' to be returned was no longer required for compensation purposes. Mackay therefore suggested that the confiscation proclamation be abandoned over the lands outside the Military Settlements and Katikati-Te Puna blocks, thus allowing the land to revert to its original aboriginal title and giving the Native Land Court jurisdiction to hear claims in respect of that part of Tauranga. At a two day meeting held with members of the `Ngai Te Rangi' tribe on Motuhoa Island on 15-16 July 1867 Mackay had:

> asked the Natives (loyal and ex-rebel) whether they desired that the Governor should survey the lands outside the Purchased and Military Settlements blocks, and grant it to such persons as he deemed fit, in order that he might compensate any loyal Natives, the claims of whom had been overlooked in the 50,000 acre piece? Or whether they would prefer to have the whole surrendered to them under the provisions of the "New Zealand Settlements Act" survey it at their own expense pass it through the Native Lands Court and take their chance with the rebels still in the bush who could come into the Native Lands Court as the land reverted to its original position as regarded title?[36]

The meeting was said to have been almost unanimous in support of the latter proposal. Yet Mackay was informed in response to his suggestion that difficulties would arise in adopting such a course of action:

> as abandonment in terms of the Act has reference to a special claim or claims and it would appear that notice has

[35] ibid., p.47559.

[36] ibid., pp.47564-65.

> to be given to the claimants of abandonment before the claims have been disposed of, as they have been in this case.[37]

Given that the Government had already determined to introduce special legislation to deal with the Tauranga situation, this was hardly an insurmountable obstacle, however, and one can only conclude that the Government had decided that all `lands returned' at Tauranga would be done so by means of Crown grants through a process over which it had complete discretion in terms of deciding who lands would be awarded to. When in 1869 Fenton again floated the idea of abandoning the confiscation over the lands to be returned he was informed that the Tauranga District Lands Act had worked `smoothly' so far and that to set it aside might `convey a wrong impression to the Natives'.[38]

5. RETURN OF THE `THREE-QUARTERS'

In the face of the Government's reluctance to abandon the confiscation proclamation over the lands outside the Katikati-Te Puna and Military Settlements blocks some alternative means had to be found to decide who the lands would be awarded to. Section 3 of the Tauranga District Lands Act 1867 had authorised the Governor to appoint individuals to make the `due enquiry' into this matter specified in the 1865 proclamation. These persons,

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[37] Rolleston to Civil Commissioner Auckland (Mackay), 19 August 1867, Native Department Outwards Letterbook to Resident Magistrates and Civil Commissioners, MA 4/62.

[38] Cooper (Native Under Secretary) to Chief Judge, 24 December 1869, DOSLI Hamilton Tauranga Confiscation file 2/8, RDB, vol.125, p.47945.

usually the local Resident Magistrate or Civil Commissioner, came to be known as Commissioners of Tauranga Lands. H.T. Clarke was the first to be appointed to this position and was officially charged with the task of determining to `what persons of the tribe Ngaiterangi three-fourths in quantity of the lands...shall be set apart in pursuance of the said Order in Council'.[39] This *Gazette* notice said nothing of the basis upon which Clarke was expected to allocate the lands, but this point was clarified somewhat in a letter sent to the Commissioner in June 1868:

> I have the honour by direction of Mr Richmond to request you to undertake the duty of dividing that portion of the Confiscated Block outside the Katikati Puna purchase and the 50,000 acres to be retained by the Government as nearly as may be equitably among the Ngaiterangi, having regard to the shares which the several hapu of that tribe have already received of the purchase money of Katikati Puna, and of the Reserves in the District generally. In doing this you should if practicable obtain the general assent of the tribe to the proposed arrangements, and in order to afford no excuse to the Natives for future complaint, it would be desirable to suspend your final award for a period sufficiently long to enable you to report your proposals, and to allow the dissentients, if any, to forward their objections for the consideration of the Government.[40]

An undated memorandum to Fenton on the subject of referring certain claims to the Native Land Court under the provisions of the Confiscated Lands Act 1867 was included in Clarke's

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[39] *New Zealand Government Gazette*, 11 July 1868, RDB, vol.11, p.4265. In practice the Commissioners were also required to complete outstanding arrangements with respect to the allocation of reserves within the Katikati-Te Puna and confiscation blocks, even though this was not specified in any of their appointments.

[40] Halse, Assistant Under Secretary, to Civil Commissioner, Tauranga, 29 June 1868, Letterbook to Resident Magistrates and Civil Commissioners, MA 4/63, National Archives.

instructions and provides further evidence of the Government's intentions:

> The entire land of the Ngaiterangi as a tribe was supposed to be nominally taken, and one fourth or thereabouts was to be retained by the Crown. It was practically impossible to distribute this the effective confiscation over the lands of all the separate hapu. Accordingly one continuous block of 50,000 acres was retained. It would however be obviously unjust in restoring the rest, that the former claimants should be placed in possession of the restored land to the exclusion of those whose land lay formerly within the 50,000 acres retained.[41]

Fenton was asked whether the Court was likely `to see its way to recognising the broad intention of the Government' before any claims were referred to it for hearing.

That `broad intention' would seem to be that the lands to be returned were to be awarded to their customary owners subject to two considerations: firstly, that those deemed `unsurrendered rebels' were ineligible to receive grants of land; and secondly, that the land was to be distributed as equitably as possible, taking into account arrangements already made in respect of the Katikati-Te Puna and confiscation blocks. Thus while the return of lands might broadly follow customary landholding rights, this was not the sole criterion.

In practice there were enough anomalies to indicate that the Government's intentions were given effect to. In 1912 the Native Land Court was asked to rule on the division of shares in the

[41] Memorandum for Fenton (enclosure in ibid.), n.d. The author of this memorandum is not stated.

Umuhapuku No.1 Block on Matakana Island. Judge J.W. Browne's ruling on the basis upon which the land had originally been returned was central to the whole case and sheds further light on the general question:

> this block is confiscated land returned by the Government to loyal natives and surrendered rebels as compensation for the land taken from them on account of the rebellion. ...
>
> Matahou contended that the rights to the land were decided according to Native custom but this is not correct. All the rights according to Native custom were wiped out by the confiscation of the land and the land is to all intents and purposes a gift from the Crown to the persons in the list. It is true that many persons have been included who if the land had not been confiscated would have been entitled as owners under Native custom. But again as Matahou admits a great many others were included who had absolutely no right to the land according to Native custom and if his contention is correct these persons would be entitled to a nominal interest only. But as stated before his contention is not correct. The whole nature of the award and the reasons for it preclude that idea. ...*It would seem that Mr Brabant when sitting as Commissioner held some kind of an enquiry as to the persons entitled according to Native Custom but this was only, the Court thinks, for the purpose of placing the Natives as far as could be done on the land they originally owned and thereby inflicting as little hardship as possible*.[42]

The same point was reiterated more succinctly in a subsequent decision on the same block in which Judge Browne stated that `this is not land the ownership of which was ascertained according to Native Custom. Therefore Native Custom cannot be applied in partitioning it'.[43]

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[42] Tauranga Minute Book 7, pp.134-36 (emphasis added). Also cited in Stokes (1990), pp.157-58.

[43] Tauranga Minute Book 7, p.157.

Just a short time before this, in 1910, the Court had also ruled that `unsurrendered rebels' of the Pirirakau hapu had been ineligible to participate in the awards of the Commissioners and could not in all fairness `come in now and take advantage of an arrangement which they absolutely refused to agree to at the time it was made'.[44] Pirirakau had hardly just come in: they had been living on the lands in question (at Te Puna) since the time of the wars. Nonetheless, the point was clear: those who actively opposed the Crown confiscation of their lands were to be punished for this by being denied compensation or reserves.

In 1869 H.T. Clarke reported that the settlement of the various claims was going on `satisfactorily' if a little slowly, as he could only devote one or two days a week to the task.[45] Others, however, were apparently frustrated at the slow rate of progress. At a meeting held with the Native Minister, Donald McLean, in January 1871 the Tauranga tribes requested that the return of lands be proceeded with `so that each individual or hapu might know to what piece of land they were entitled'.[46] Uncertainty, partly resulting from the fact that Maori could not

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[44] ibid., p.52. For a typescript of the judgement see LE 1/1911/7, RDB, vol.3, pp.1017-19. Several petitions presented to Parliament sought a review of this decision. Potaua Maihi and two others declared, for example, that the result of the Native Land Court's decision `if allowed to stand will be that the Pirirakau who have occupied for forty years will be evicted and rendered homeless'. RDB, vol.3, p.1021.

[45] Clarke to `my dear Doctor' [Pollen?], 9 August 1869, McLean Papers, MS-Copy-Micro-0535-045 (f.217), Alexander Turnbull Library.

[46] Clarke to Native Under Secretary, 26 January 1871, `Further Reports From Officers in Native Districts', *AJHR*, 1871, F-6A, p.6. [vol.1, p.101].

assume that they would receive back their customary lands, apparently hindered cultivation in the region.[47] In September 1871, one politician, Thomas Gillies (whose primary concern was that the `opening up' of the district to Pakeha settlement was being impeded), told the House that:

> the promise made by the Government in power in 1864, with respect to giving back to the Natives a portion of the confiscated land, had not as yet been carried out by the Civil Commissioner. No doubt the Civil Commissioner...had had instructions to allot the land; but the Natives had complained to himself personally, on many occasions, of their extreme dissatisfaction with the mode of that Commissioner's operations. There were cases in which the lands that were to be given back, to those who were previously owners of them, the Commissioner had proceeded - by virtue of his power, simply - to hand those lands over to other Natives who had no claim whatever to them. There were other Natives who, believing that their title to the returned confiscated land was good, had disposed of their rights to Europeans and others, who had the land surveyed and applied to have the title investigated in the Native Lands Court. The Court had been prevented from adjudicating upon them, and the whole matter had been put into the hands of an irresponsible Civil Commissioner.[48]

For all its failings the Native Land Court at least had a set procedure and was obliged to award lands on the basis of customary entitlement. Yet the return of lands at Tauranga proceeded in a seemingly haphazard manner and without the benefit of any clear guidelines as to how the Commissioners ought to proceed. In 1879 the then Commissioner, J.A. Wilson, complained that the absence of any continuous record of the administration of Tauranga lands had made it difficult for him

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[47] Hopkins Clarke to Native Under Secretary, 8 May 1874, ibid., 1874, G-2, p.5. [vol.1, p.124].

[48] *NZPD*, 21 September 1871, p.542. [vol.2, p.370].

to assess progress to date.[49] His successor, H.W. Brabant, commented in 1881 that:

> The "enquiry" required by the [Tauranga District Lands] Act has always been made by an officer appointed from time to time by the Government and called the Commissioner of Tauranga Lands. There is no direction in the Acts as to how the enquiry should be made, but the Commissioners have as far as I know always made it an open court and have more or less closely assimilated their practice to that of the Judges of the Native Lands Court, the cases coming before them for decision being similar in character. I submit that where such important interests are involved the mode of proceeding in investigating the claims should be fixed by Act or by regulations made by the Governor for that purpose, and in particular the mode in which notice of intended investigations should be given *so as to shut out future claimants* requires in my opinion laying down authoritatively, the practice of the different commissioners not having been in all respects similar nor in any case authorised by law.[50]

Brabant then went on to outline several specific proposals which would have brought the work of the Commissioners more or less into line (procedurally at least) with the operations of the Native Land Court in mandatory terms. But as the Native Minister thought it `very undesirable to introduce fresh legislation' on the subject no action was taken on his recommendations.[51]

This absence of clear and open guidelines for the proceedings of the Commissioners was undoubtedly prejudicial to Maori

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[49] Wilson to Native Minister, 8 July 1879, `Tauranga District Lands Acts', *AJHR*, 1879, Sess.I, G-8, p.2. [vol.1, p.151].

[50] Brabant to T.W. Lewis, Native Under Secretary, 16 May 1881, [original emphasis], `Miscellaneous Papers, 1879-85', DOSLI Hamilton Tauranga Confiscation file 4/26, RDB, vol.127, pp.48670-71.

[51] Lewis to Brabant, 7 June 1881, ibid., p.48661.

interests. In 1882, for example, Brabant was informed that the Native Minister was aware that the Commissioner was in a better position than he to estimate the value of an appeal against his (Brabant's) own decision,[52] and an earlier request for a Native Assessor to be formally appointed was declined on the grounds that `the Native appointed would have equal powers with yourself, which is not desirable'.[53]

Earlier, in 1878, H.T. Clarke had informed Parliament's Native Affairs Committee that the effect of the Commissioner's decision was `absolute almost' and that no appeal could be made against this other than to request a rehearing before a new Commissioner (though judging from what Brabant was told on the subject, the Native Minister's decision as to whether to accede to such a request was swayed heavily by the recommendations of the Commissioner who had heard the case originally).[54] Clarke added that sittings of the Commissioners Court were not publicly advertised and that no formal records of its proceedings were kept.[55] Clarke's comments were made in reference to a petition from Te Korowhiti Tuataka, who among other things had alleged that she had been unaware of the fact that the Court had been

[52] Morpeth (for Under Secretary) to Brabant, 18 May 1882, Native Department General Outwards Letterbook, 1882, MA 4/32, National Archives.

[53] Lewis to Brabant, 18 May 1881, ibid. Brabant was authorised to employ an Assessor on an informal basis.

[54] Minutes of Evidence, 20 September 1878, `Native Affairs Committee. Report on Petition of Mrs. Douglas, Together with Minutes of Evidence and Appendix', *AJHR*, 1879, Sess.I, I-4, pp.3-4. [vol.1, pp.155-56].

[55] ibid., p.4. [vol.1, p.156].

adjudicating upon lands in which she was a major owner until after the event (and that Clarke, though admitting the validity of her claims, had told her she was too late to be included on the title).[56] In 1880 Moananui Wharenui and twenty-nine others complained that their claims to the Whareroa block had been rejected by Commissioner Wilson, who had employed an informal Assessor who was an interested party in the case, that an official interpreter had not been present, and that the witnesses were not sworn in by the Court.[57] The Committee reported that it had no reason to suppose that justice would not be done. Yet several other petitions from this period also alleged discrepancies and inconsistencies in the manner in which the Commissioners Court conducted its proceedings.[58]

By the beginning of 1879 only about one-seventh (19,734 acres) of the lands to be returned had been dealt with and a further 38,951 acres had been partially dealt with.[59] In November 1880 J.A. Wilson was informed that his services as Commissioner were no longer required as the Government intended that the Native Land Court should take the duty of dealing with the remaining lands under the Tauranga District Lands Acts.[60] However, with

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[56] ibid., 7 October 1878, p.9. [vol.1, p.161].

[57] 296/1880, *AJHR*, 1880, I-2, p.23. [vol.1, p.236].

[58] See appendix I.

[59] Wilson to Native Minister, 8 July 1879, ibid., 1879, Sess.I, G-8, p.1. [vol.1, p.150].

[60] Lewis to Wilson, 15 November 1880, `Papers on Brabant's Appointment as Commissioner of Tauranga Lands', DOSLI Hamilton Tauranga Confiscation file 4/24, RDB, vol.126, p.48604.

William Rolleston's appointment as Native Minister in January 1881 the Government appears to have had a change of heart on the subject, and H.W. Brabant (who was formerly Commissioner from 1876-78) was reappointed to the position. Between 1881-86 he dealt with the bulk of the lands and in the latter year produced a final report detailing the lands returned to the `Ngai Te Rangi' tribe, after which point in time the Native Land Court was given responsibility for their subdivision.[61]

6. STATUS OF THE LANDS RETURNED AND RESERVED

Part of the Government's motivation for confiscating a substantially larger area at Tauranga than it intended retaining for itself may well have been a desire to enforce a kind of tenurial reform in the district. In the 1860s many politicians believed that Maori who held land under Crown grant were less likely to pose a threat to the peace of the colony. The extinguishment of aboriginal title was the first step towards opening up Maori lands to European settlement, and the individualisation of title was regarded as a crucial prerequisite to the `amalgamation' of Maori into the mainstream of colonial New Zealand life. It is hardly surprising therefore that in every district proclaimed under the Settlements Act substantially larger areas of land were confiscated by the Crown than it intended retaining. For besides enabling it to compensate `friendly' Maori, such a strategy also enabled the

[61] Brabant to Native Under Secretary, 4 May 1886, *AJHR*, 1886, G-10, p.1. [vol.1, p.272].

Government to extinguish native title at a stroke over large areas of the country.

At Tauranga delays in returning the lands probably hindered rather than assisted the opening up of the district. Many complained that the settlement of the district would have been greatly expedited had the operations of the Native Land Act been allowed to take their course. William Kelly, the MHR for the East Coast, for example, informed the House in 1871 that Tauranga Maori `were in a very unsatisfactory state, owing to the manner in which the land had been dealt with by the Civil Commissioner [Clarke], and had made frequent complaints to himself on the matter'.[62] Kelly believed that if the land were thrown open to free selection a large European population would be induced to settle on it, and suggested that a commission should be appointed to investigate the administration of lands in the Tauranga district.

With the exception of some reserves set aside for `general native purposes' within the Katikati-Te Puna and confiscation blocks (and in the township of Tauranga), which remained Crown lands, almost all the lands returned to or reserved for Maori at Tauranga were done so by means of Crown grants. While most of these were made under the Tauranga District Lands Acts, others were issued under various other pieces of legislation, including

[62] *NZPD*, 21 September 1871, pp.541-43. [vol.2, pp.369-70].

the Confiscated Lands Act 1867, the Volunteers and Others Lands Act 1877, and the Special Powers and Contracts Act 1883.[63]

Early grants, particularly in the Katikati-Te Puna and confiscation blocks tended to be issued to leading chiefs in trust for the hapu concerned. Prior to the passing of the Native Land Act 1873, however, those named on the grant tended to be regarded as outright owners rather than merely trustees. In 1871 the Land Claims Commissioner, Alfred Domett, criticised H.T. Clarke's practice of issuing such grants at Tauranga as a `source of impolitic mischief' since those named as the `so called Trustees' were alleged to act `without sufficient regard' for the interests of the rest of the hapu.[64] Whether the `trustees' were the source of mischief so much as those who later came to regard them as outright owners is debateable. Whatever the case, the failure to list all the owners on the grant was undoubtedly detrimental to Maori interests. By 1875, for example, much of the land awarded to Maori within the confiscation block had either been sold or leased to European settlers.[65]

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[63] Abstracts of Title, Bay of Plenty. MA 12/5, National Archives.

[64] A. Domett (marginal note), 7 July 1871, `Fairfax Johnson Papers 1870-76', DOSLI Hamilton Tauranga Confiscation file 2/14, RDB, vol.125, p.48135.

[65] J. Prendergast memorandum, 21 March 1875, `H.T. Clarke's Correspondence and Papers, 1866-1876', DOSLI Hamilton Tauranga Confiscation file 2/13, ibid., p.48083.

Many Tauranga petitions to the Government from this period refer to reserves having been sold without the consent of the rest of the tribe. In 1876 (and again in 1878), for example, Ani Ngarae Honetana and others complained that lands to which they were entitled had been awarded solely to Te Moananui, who had subsequently sold the reserve in question.[66] In 1877 Hori Wirihana and eighty-nine others alleged that their reserves, including urupa, had been sold without their consent;[67] and in 1878 Te Winika Hohepa complained that a fifty acre reserve within the Katikati-Te Puna block to which she had been entitled had been secretly sold to R.J. Gill, a Native Department official, without her consent.[68] Several more petitions along these lines were also heard by the Native Affairs Committee.

Lands were also awarded to individuals outside the `three-quarters' to be returned in reward for `loyalty and services rendered'. For example, thirteen chiefs who had assisted in an expedition against Pirirakau in November 1866 each received seven acre grants in the Parish of Te Puna.

Within the township of Tauranga, the site of which had been purchased by the Church Missionary Society in 1838-39,[69] and

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[66] *AJHR, 1876, I-4, p.21 [vol.1, p.130]; 141/1878,* AJHR, 1878, I-3, p.6. [vol.1, p.144].

[67] *AJHR*, 1877, I-3, p.31. [vol.1, p.139].

[68] 143/1878, LE 1/1878/6, RDB, vol.1, pp.309-16; *AJHR*, 1878, I-3, p.12. [vol.1, p.145].

[69] Turton's Deeds no.s 410-11. See V. O`Malley and A. Ward, `Draft Historical Report on Tauranga Moana Lands',

subsequently ceded to the Crown in September 1867, several small plots were awarded to various Te Arawa hapu and a few local chiefs in return for `loyalty and services rendered'.[70] Other sections within the township were set aside under the provisions of the Native Reserves Act for `general Native purposes' or a hostel and were administered by the Commissioner of Native Reserves.[71]

In the case of the `three-quarters' to be returned, this seems to have been done on the basis of equal undivided shares, Crown grants for which were issued between 1878-86. These generally involved much larger blocks, which were frequently contested between different hapu in open court. Thus, by contrast with those issued in respect of reserves within the Katikati-Te Puna and Military Settlements blocks, the Crown grants for these often contained many names. Commissioner Brabant in particular appears to have taken considerable care to ensure that all members of a hapu awarded land were included in the grant for it, including women and children.

Although the Government initially met the costs of surveying blocks brought before the Commissioner's Court for decision, this was held to be recoverable in the event that the land was sold. Brabant was informed in 1878 that:

Crown/Congress Joint Working Party, June 1993, pp.19-28, for a discussion of the circumstances surrounding this purchase.

[70] Stokes (1990), pp.251-52.

[71] ibid., p.152.

> upon the general question the Honourable Native Minister has decided that the cost of survey should be a lien on every block, and that while it would not be enforced against the Native owners, it should in all cases be demanded from any European purchaser.[72]

By 1881 this policy had been extended, and Brabant was instructed that Crown grants should not issue for blocks awarded without alienation restrictions imposed on them until the lien had been discharged.[73] Thus a lien was to be enforced not only in the event that the land was sold, but also in cases where it might potentially be alienated.

By the 1880s Tauranga had become a substantial township and the question of provision being made for roads also occupied some attention. Though the right to take land for roads might be reserved to the Crown in the case of blocks taken through the Native Land Court, the Tauranga District Lands Act made no provision for this.[74] In 1880 Brabant was informed that the Government was considering amending the Act to allow for this.[75] However, nothing was done in the matter and in 1884 Brabant reported that although he had caused roads to be surveyed and placed on plans and certificates:

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[72] Lewis to Brabant, 30 January 1878, Native Department General Outwards Letterbook, MA 4/24, National Archives.

[73] Lewis to Brabant, 19 October 1881, ibid., MA 4/33.

[74] S. Percy Smith, Assistant Surveyor General, Auckland, to Commissioner of Tauranga Lands, 22 October 1884, DOSLI Hamilton Tauranga Confiscation file 4/26, RDB, vol.127, p.48656.

[75] Lewis to Brabant, 5 November 1880, Native Department General Outwards Letterbook, MA 4/30, National Archives.

> I do not think...that I have any legal power to set aside these roads to the use of the public and concluded that legislation will eventually be necessary to justify what I [have] done and to provide for future requirements.[76]

Whether these takings of land for roads were illegal is a moot point given that the land was essentially a gift from the Crown in any event. But it does not appear that any legislation was ever passed to validate Brabant's actions.

Crown grants were not issued for all of the `lands returned', however. By 1880 the Government had decided that: `the Maunganui Mountain should be preserved to the public under all circumstances & that no steps should be taken which could lead to any private person acquiring any part of it'.[77] At about the same time Brabant reported to the Under Secretary of the Native Land Purchase Department that

> The land has been adjudged in small blocks to a number of owners...The bulk of them (individuals excepted) are at present unwilling to sell. If you will return the papers when convenient a favourable opportunity will be taken of endeavouring to purchase.[78]

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[76] Brabant to Lewis, 24 October 1884, Tauranga Confiscation file 4/26, RDB, vol.127, p.48660.

[77] J. McKerron, Surveyor General, to Chief Surveyor, 2 December 1880, `Commissioner Wilson's Awards and Brabant's Revisions, 1880-86', DOSLI Hamilton Tauranga Confiscation file 4/21, ibid., vol.126, p.48451.

[78] Brabant to Under Secretary, Native Land Purchase Department, n.d. [1880?], `Mount Maunganui Papers', DOSLI Hamilton Tauranga Confiscation file 3/18, ibid., p.48321.

Certificates subsequently issued to the owners of Hopukiore, Oruahine, Hikitawatawa, Awaiti and other blocks on Maunganui were marked `Owners shall not be permitted to dispose of the land in any way except to the Crown and no grant need issue'.[79] By 1886 the Crown had acquired, or was in the process of acquiring, almost all of these blocks.[80]

7. CONCLUSION

It was seen in this chapter that the return of lands at Tauranga was a protracted affair, conducted without any clear or open guidelines. The Crown could have returned the lands it did not intend to retain simply by abandoning the confiscation proclamation over these, or by referring claims for land to the Compensation Court set up under the provisions of the New Zealand Settlements Act 1863. Instead, it chose to appoint special Commissioners of Tauranga Lands, who were under no obligation to advertise their proceedings (meaning some Maori were left unaware of the fact that the blocks they were interested in were being considered), or to keep any formal records of their activities. The Commissioners themselves appear to have had the main say as to whether appeals should be granted against their own decisions, and formal Assessors, who may have been able to assist on points of customary Maori land tenure, were not appointed. What is more, the process of returning lands

[79] Register of Crown Grants to be issued to Natives within the Tauranga Confiscated Block, MA 14/14, National Archives.

[80] *AJHR*, 1886, G-10, pp.4-5. [vol.1, pp.275-76].

involved considerations of more than merely customary entitlement. `Unsurrendered rebels' were ineligible to receive grants of land (a decision upheld by the Native Land Court in 1910), and on the whole efforts were made to distribute the lands as equitably as possible amongst those Maori who had made their submission to the Crown, taking into account the effects of the confiscation and Katikati-Te Puna purchase. Thus although lands were often returned to those who had some customary rights to them according to traditional land tenure in the area, this was not the sole criterion used by the Commissioners. Moreover, lands reserved for Maori within the confiscation and Katikati-Te Puna blocks were generally granted to just a handful of chiefs, supposedly in trust for the remaining members of the hapus concerned, yet rapidly alienated thereafter. Having lost almost half of the district to the Crown virtually overnight by dint of confiscation and compulsory purchase, Tauranga Maori were left in a precarious position with regards to their remaining lands. That this was recognised by the Crown is evident from its decision to impose alienation restrictions on all lands returned to Tauranga Maori. Unfortunately, though, as will be seen in the next chapter, the Crown's failure to enforce this restriction with any rigour only made matters worse.

PART B: LATER LAND DEALINGS

1. INTRODUCTION

European frustrations at the slow and protracted process of returning lands to Maori at Tauranga reflected a desire to see the district `opened up' and colonized by settlers. Whereas prior to the wars of the 1860s Tauranga had, for all its natural attributes, been largely overlooked by settlers anxious to avoid an area still fraught with tribal tensions and essentially outside the bounds of effective British control, in the wake of these factors such as its splendid natural harbour and fertile soils came to the fore, and many began to consider it a district ripe for settlement. Yet despite this, and the Crown's acquisition of nearly half the district, the process of `opening up' the region was largely left to the initiative of enterprising private agents and land speculators, who targeted the half of Tauranga remaining in Maori ownership as the source of their profits. Crown acquisitions in the following two decades, though relatively limited in extent, were often conducted in a highly dubious manner. Private land purchases, though much more significant, were also frequently of doubtful validity, even if the Crown turned a blind eye to their defects, and treated alienation restrictions imposed on lands returned to Maori as little more than a dead-letter, for much of the time. This section, then, deals as much with what the Crown failed to do as with what it did do. Moreover, it will be seen that the Crown's failure to enforce its own stated policy was no less

prejudicial to Maori interests than the confiscations themselves in terms of overall land alienation. In 1870 Tauranga Maori at least had about half the district available to them (once the process of returning these lands had been completed); by the turn of the century less than one-seventh remained in Maori ownership.

2. SETTLEMENT IN THE 1870S

The sending of 580 military settlers of the First Waikato Regiment to Tauranga in 1864 was the Crown's first serious effort to encourage European settlement in the district. After being relieved from active service each military settler was to receive twelve months free rations and an allotment of confiscated land based on rank. In return he was required to stay in the district for a minimum of three years, during which time he could again be called upon to perform military duties in the event of further conflict.[81]

Continuing tensions in the district, and delays in completing the surveys of the confiscation block, resulted in the military settlers being confined to township allotments at Te Papa until late in 1866. The Bush Campaign fought in the early months of 1867 forced those who had ventured on to the rural lands allotted to them back to the township and by the end of the year

[81] Stokes (1990), p.177.

almost all the military settlers were reported to have left the district.[82]

Presumably many returned once tensions had eased, since by 1870 only 257 Europeans were resident in the Tauranga district, of whom all but eleven were military settlers and their families.[83] Little land was under cultivation. Many allotments had been abandoned and few private settlers had been encouraged to purchase Crown waste lands in the district. A.F. Halcombe, who was commissioned by the Native Minister Donald McLean in 1871 in order to assess the prospects for settlement at Tauranga, concluded that:

> Settlement in this district has been kept back by three great causes. First, the fear of the Natives. Secondly, the absence of any means of communication overland. Thirdly, ,the locking up of the whole of the Government lands. The district from its position, its climate, its fine harbour, its good soil (so marvellously easily put under English grass), its proximity to the great Waikato plains, and to the market which the goldfields will probably long afford. All these give an intrinsic value to the land which has been, and must be fully recognised.[84]

Although noting that the military settlements had been `entire failures', Halcombe believed that `Now that the Government has happily succeeded in removing the Native obstructions to settlement, it only remains for it to remove the other

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[82] *Tauranga Record*, cited in Gifford and Williams, p.267.

[83] Stokes (1990), p.178.

[84] Halcombe to Minister for Public Works, 20 October 1871, `Report Upon Lands Suitable for the Settlement of Immigrants at Tauranga', ibid., 1873, D-6, p.4. [vol.1, p.115].

obstructions and the natural settlement of the place will proceed with the greatest rapidity'.[85] The construction of a number of roads (and the diversion of the Wellington to Auckland telegraph line through Tauranga) helped to improve communications with other districts and provided employment for many local Maori in the 1870s and early 1880s. But despite periodic Government promises that the district would receive its fair share of assisted immigrants, further European settlement of Tauranga was largely left to the initiative of private agents and land speculators.

By the mid-1870s the former CMS mission station turned military camp had become a substantial township of upwards of 500 Europeans and boasted its own newspaper, the *Bay of Plenty Times*. In 1875 a special settlement, largely made up of Protestant immigrants from Ulster, was established on a 10,000 acre block at Katikati under the leadership of George Vesey Stewart. A further Stewart settlement was established at Te Puke, to the east of the confiscation line in 1881, and altogether almost 2,500 Europeans were resident in the Tauranga district by this time.[86] Throughout the 1880s the Pakeha population of the Te Puke and Maketu area increased substantially, whilst that of the rest of the Tauranga region dropped slightly as a result of the long depression and - the

[85] ibid.

[86] Stokes (1978), p.46.

local paper complained - the `locking up' of lands returned to Maori by the Government.[87]

Although the census returns are much less reliable, there is also a clear pattern of a slow but steady decline in Maori numbers at Tauranga for the corresponding period (from a total of about 1,245 in 1874 for the area excluding Te Puke-Maketu, to 1,020 in 1881 and 963 in 1886.[88] Though the numbers fluctuate for the period thereafter, not until the 1920s did any consistent pattern of recovery appear. And while the temporary fall in European numbers was primarily the result of migration from the region, according to Stokes the decline in Maori numbers was mainly the result of an extremely high level of infant and child mortality - both of which were aggravated by poor housing and sanitation.[89]

Some of the inland kainga destroyed during the 1867 Bush Campaign had subsequently been reoccupied, but by the 1880s most Ngati Ranginui hapu had established permanent coastal settlements in the Te Puna area, with others at Huria (Judea),

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[87] On 11 February 1886, for example, the paper commented that `because there seems to have been a vague tradition in the Native Office that the natives agreed to take this land on condition that they did not sell any part of it without the consent of the Governor (i.e., Native Department) all the land surrounding Tauranga has been, and still is practically locked up'.

[88] E. Stokes, *A History of Tauranga County*, Palmerston North: Dunmore Press, 1980, p.304.

[89] ibid., p.310.

Peterehema (Bethlehem), and Hairini.[90] Ngai Te Rangi had abandoned their former stronghold at Otumoetai and, with the exception of a few settlements in the Katikati district at Otawhiwhi and Tuapiro, were largely clustered around the eastern end of the harbour at Whareroa, Maungatapu, Matapihi, and Mangatawa. Other Ngai Te Rangi settlements were located on the islands of Rangiwaea, Matakana, Tuhua and Motiti. Te Arawa's main coastal settlements remained to the east of the confiscation line, although members of the dissident Ngati Rangiwewehi tribe, who had fought against the British at Gate Pa, squatted on confiscated Crown land in the Te Puna area with the support of their Pirirakau friends.

On the surface, relations between local Maori and settlers may have appeared cordial enough, but at another level the legacy left by the raupatu gave an underlying tension to these interactions. Six chiefs of the Pirirakau, Ngati Hinerangi and Ngati Tokotoko tribes received belated recognition from the Crown of their claims in the district when they were paid £471 in respect of the Katikati-Te Puna Block in 1871.[91] McLean apparently hoped that such a payment `would secure Tauranga from any further annoyance from that tribe'.[92] However, whether these six members of `that tribe' (meaning Pirirakau, which in practice seems to have been a label sometimes used to refer to

[90] ibid., p.304.

[91] Turton's Deed no.462, Province of Auckland, Turton, pp.641-43.

[92] marginal note, 12 January 1871, Bay of Plenty - Te Puna Purchase, MA 13/89, RDB, vol.78, p.29890.

all of `the malcontents of all the tribes round about')[93] were acting in accordance with the wishes of their fellow tribesmen and women appears doubtful given both the small number who signed the deed and continued Pirirakau renunciation of the Katikati-Te Puna purchase subsequent to this.

Some years later, lands temporarily reserved for Pirirakau out of the confiscation block had still not been awarded to them on the grounds that they had yet to make a satisfactory submission to the Queen's law. Certain of these lands had subsequently been sold by the Crown, and Brabant somewhat cryptically informed the Native Under Secretary, T.W. Lewis, `You are well aware the grievance this hapu have, & that there is some grounds for it'.[94] Despite this, the Native Minister, John Bryce, later dismissed a Pirirakau grievance concerning a reserve not made as `obsolete, or as otherwise fulfilled'.[95]

In December 1873 the then Native Minister, Donald McLean, visited Tauranga and at a meeting with Pirirakau held at Te Puna was told by Pene Taka (described by Clarke as `the recognised leader of the Hau-Hau party in Tauranga')[96] that:

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[93] Clarke to Native Minister, 15 May 1877, *AJHR*, 1877, G-1, p.26. [vol.1, p.135].

[94] Brabant to Lewis, 14 March 1881, `Papers on Awards in Katikati Te Puna Purchase, 1873-87', DOSLI Hamilton Tauranga Confiscation file 5/28, RDB, vol.127, p.48887.

[95] Lewis to Brabant, 29 September 1883, ibid., p.48920.

[96] Clarke (Native Under Secretary) to Native Minister, 15 May 1877, `Reports from Officers in Native Districts', *AJHR*, 1877, G-1, p.24. [vol.1, p.133].

> my plough must go as far as Otumoetai. Mr Clarke and I have often quarrelled about this land. Mr Clarke had no right to locate settlers here. Remove the Frenchman away from this place, lest I should become a second Purukutu, because with the Europeans it is a word followed up by a blow. I object to the land here being given to people from other places. Do not locate any one here, either Pakeha or Maori.[97]

This may well have been a reference to a 206 acre block of land at Omokoroa which had been reserved for the benefit of the Ngati Haua tribe in 1867 (apparently against the wishes of many local Maori) and subsequently leased to a settler, Gillibrand. By 1877 Brabant, the local Resident Magistrate, was reporting that this dispute showed signs of developing into something more serious, and H.T. Clarke (now Native Under Secretary) was sent back to Tauranga to report on the disturbance. Pene Taka told him that:

> the Hau-Haus had been greatly irritated by the false accusations of the Europeans, and by the intemperate language of the Ngaiterangi; that I might rest assured that no violence would be attempted by the Natives; but, he added, the Pirirakau were bound by their principles to protest vigorously against the occupation of land, whether confiscated or purchased, to which they believed they had a claim.[98]

Manuera, another of the `King party' at Tauranga, also told Clarke that they had obstructed Gillibrand's occupation `to show every one that they protested against our encroachments; but, having given expression to their protest, they did not intend to

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[97] Minutes of Meeting, 10 December 1873, `Notes of Native Meetings (East Coast and Bay of Plenty)', ibid., 1874, G-1, p.10. [vol.1, p.123].

[98] Clarke to Native Minister, 15 May 1877, ibid., 1877, G-1, pp.24-25. [vol.1, pp.133-34].

interfere any further'.[99] Clarke recognised that Pirirakau protest in this instance was not a new thing but a continuation of a principled stand `not against any individual European purchaser, but against the system of confiscation altogether' and cautioned that `any sign of wavering may be followed by bad effects'.[100]

But although this particular dispute was resolved when Ngati Haua were persuaded to sell the land in question to Gillibrand for £350, Clarke believed that some of the Pakeha settlers at Tauranga were only adding to simmering Maori discontent in the district and was scathing in his general remarks on the question, stating that:

> There is a small section of Europeans in Tauranga who I fear...will exercise a baneful influence on the Natives of the district, and retard the progress of settlement. Their one leading idea appears to be to obtain from the Natives "by hook or by crook" all the lands that can be procured, without any regard to the wants of the Natives, or the political questions so often involved in matters relating to Native title. In fact, they speak and write as though they had a vested right in the lands now in the possession of the Natives. This is well known to those most interested, and a certain section of them are determined to obstruct what they consider "Pakeha" encroachment, and with some slight show of reason. They see thousands of acres of valuable lands awarded to military settlers lying waste, and yet the Europeans are hankering after the limited extent of country still in their possession. I regret to say that a large section of the Natives are being imbued with the sentiment "Let us eat and drink, for to-morrow we die". They are perfectly oblivious as to the future, and will inevitably pauperize themselves and their successors if the Government do not stretch forth a protective hand to save them from their own reckless extravagance. It is quite a common thing to hear people say that "they are not

[99] ibid., p.25. [vol.1, p.134].

[100] ibid., p.27. [vol.1, p.136].

> children, and [are] therefore quite capable of looking after their own interests". If they are not children, they are equally unable to act with judgment and discretion so far as their landed property is concerned, and equally require their interests to be guarded by some authority wiser than themselves.[101]

Clarke then went on to estimate that `at the very least' 15,000 acres of Maori land had been acquired by private individuals. Citing section 24 of the Native Land Act 1873 (and assuming that the Tauranga confiscation district contained 214,000 acres), Clarke pointed out that if reserves were set on the basis of fifty acres per head of Maori population then, based on census figures, the Tauranga tribes required a minimum of 62,250 acres for their own needs, leaving a mere 6,750 acres available for Europeans to purchase.[102]

Clarke was hardly overstating the case in describing his views as `by no means popular' with local settlers (Gifford and Williams' *A Centennial History of Tauranga* commented that Clarke `was condemned even by the missionaries for his weakness in dealing with the natives').[103] As will be seen later, however, the Native Under Secretary was far from the only nineteenth century official to argue that the Crown had an obligation to actively protect Tauranga Maori from the pressures to part with their remaining lands.

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[101] ibid., pp.26-27. [vol.1, pp.135-36].

[102] ibid., p.27. [vol.1, p.136].

[103] Gifford and Williams, pp.337-38.

3. GOVERNMENT LAND PURCHASE ACTIVITIES

In fact, there is evidence to suggest that the Crown had recognised the need to impose restrictions on the alienation of at least some of the lands returned to Tauranga Maori as early as August 1864. Clarke's 1865 report of events at this time stated that `It was...arranged that Ohuki and the Islands of Rangewaea [sic] and Motuhoa should be reserved for the Natives...and that they should receive certificates which should be inalienable'[104]. Halcombe's 1871 report suggested a much larger area had been made inalienable at this time and stated with reference to all of the lands between the Waimapu river and the eastern boundary of the confiscation district that Clarke had informed him that:

> under a distinct agreement made with Sir George Grey by the Ngaterangi [sic] in 1864, the grants of these lands, as also of the Island lands, are made inalienable; they are not, therefore, open to purchase. Much of this land is, moreover, under profitable occupation by the Maori owners, and what they do not use themselves they will probably make some arrangement to let temporarily to Europeans. Judging from the facility with which they part with the bulk of their lands so soon as an individualized title has been granted it appears to me a wise provision that they should be restricted from pauperizing themselves and their descendants'.[105]

In reaching the conclusion that these lands ought to remain inalienable Halcombe seems to have been influenced by the

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[104] Clarke to Mantell (Native Under Secretary), 23 June 1865, *AJHR*, 1867, A-20, p.12. [vol.1, p.27].

[105] Halcombe to Minister for Public Works, 20 October 1871, ibid., 1873, D-6, p.2. [vol.1, p.113].

comments made by the Native Minister in requesting that he assess the land situation at Tauranga. McLean noted with regards to the lands referred to above that:

> with the exception of the lands in the immediate vicinity of Matapihi, Maungatapu, and Hairini, which are in extent insufficient for the wants of the Natives inhabiting those places, the soil here is of poor character - a great portion of the back country is under lease.[106]

If the coastal reserves returned to Maori ownership were already insufficient to meet their owners needs then permitting Crown and private land dealings for the inland blocks would only add to this problem. Halcombe's report revealed that by 1871 the lands reserved for Maori within the Katikati-Te Puna and Te Papa blocks (most of which had supposedly been returned to chiefs `in trust' for the hapu) had `nearly all fallen into the hands of Europeans, either by purchase or lease'.[107] And a schedule of lands awarded to Maori within the confiscation block indicated that most of these had also been sold or leased by 1875.[108]

To all intents and purposes therefore the lands returned to Maori outside of these blocks were all that remained in their possession by this time. Yet even though most of the lands already in the Crown's possession lay vacant and uncultivated,

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[106] McLean to Halcombe, 14 September 1871, Immigration Department, Tauranga Special Settlements, IM 6/11/1, National Archives.

[107] Halcombe to Minister for Public Works, 20 October 1871, *AJHR*, 1873, D-6, p.2. [vol.1, p.113].

[108] Prendergast memorandum, 21 March 1875, DOSLI Hamilton Tauranga Confiscation file 2/13, RDB, vol.125, p.48083.

McLean believed it ought to acquire even more, stating that `a portion...if not the whole' of the lands between the Ruangarara stream and Wairoa river might be acquired from its Maori owners.[109] Halcombe supported this, believing the Government would have `little difficulty in acquiring this from the Native owners' and also strongly urged the necessity of purchasing the vast bush blocks behind this (estimated to contain over 56,360 acres) as a means of linking up the district with Waikato.

In summarising the state of land administration at Tauranga in 1871 Halcombe concluded that of an estimated 254,000 acres in the district, all but 4,000 were not yet profitably occupied. Of the unoccupied lands, 44,000 acres were in the possession of Europeans and a further 105,000 acres were in the hands of the Government, leaving a balance to Maori of 104,000 acres. But that the lands already in the possession of the Government and settlers ought first to be developed before efforts were made to acquire even more Maori land does not seem to have occurred to Halcombe, who recommended that endeavours be made to purchase a further 55-65,000 acres.[110]

But despite both McLean and Halcombe's apparent enthusiasm for large-scale land purchases, by 1886 the Government had managed to acquire only 4,957 acres in the Tauranga district (4,561 acres of which consisted of the Otawa Waitaha No.1 Block, which

[109] McLean to Halcombe, 14 September 1871, IM 6/11/1.

[110] Halcombe to Public Works Minister, 20 October 1871, *AJHR*, 1873, D-6, p.4. [vol.1, p.115].

had been controversially awarded to the Waitaha tribe of Te Arawa in 1878, and the rest a number of small blocks on Maunganui).[111] In addition, a further 13,936 acres, mostly in the Maunganui and Papamoa area, was in the process of being purchased.[112]

All of the lands either under negotiation or purchased by the Crown by 1886 were located in the area Halcombe reported had been declared inalienable in 1864 and `not, therefore, open to purchase' and were also in close proximity to the lands which McLean had considered `in extent insufficient for the wants of the Natives'. Presumably these lands had been declared inalienable in order to ensure that Maori retained sufficient reserves for their own requirements. Yet any restrictions imposed on the alienation of these lands were apparently considered not to apply to the land purchase activities of the Crown.

The apparent reluctance of Tauranga Maori to sell land to the Crown may well have resulted from a deeply-held resentment towards it stemming from the raupatu[113] or might, as some suggested, simply have reflected the low prices it was obliged

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[111] ibid., 1886, G-10, p.4. [vol.1, p.275].

[112] ibid., p.5. [vol.1, p.276].

[113] Sorrenson suggests that the Bay of Plenty tribes sold little land to the Government in the 1870s because they had been antagonised by the confiscations. M.P.K. Sorrenson, `The Purchase of Maori Lands, 1865-1892', M.A. History thesis, Auckland University College, November 1955, p.78.

to offer them.[114] But there are also indications that many Maori were becoming increasingly concerned at the continuing alienation of their lands. In 1878, for example, Brabant reported that `the Natives, having now no great extent of land which is available for disposal to Europeans, are but lukewarm as to selling their titles',[115] and in 1883 he remarked that they were `themselves...asking for a large proportion [of lands returned] to be marked inalienable'.[116]

But despite this evidence of Maori concern, Clarke's view that the Tauranga tribes had little land left which they could safely afford to alienate was not shared by later Commissioners. Wilson was of the opinion that `There is much surplus Native land in the district, which the Natives cannot cultivate or occupy',[117] and Brabant, contradicting his earlier statement, believed there to be `no doubt the natives have more land...than they will ever utilise'.[118] Clarke's calculations may have been astray in that they involved inaccurate estimates of the area concerned; but it is not apparent that either Brabant or Wilson had undertaken any

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[114] *Bay of Plenty Times*, 6 May 1886, (citing *New Zealand Herald*, 3 May 1886).

[115] Brabant to Native Minister, 10 June 1878, `Reports from Officers in Native Districts', *AJHR*, 1878, G-1, p.9. [vol.1, p.142].

[116] Brabant to Native Under Secretary, 14 June 1883, ibid., `Reports from Officers in Native Districts', 1883, G-1A, p.4. [vol.1, p.252].

[117] Wilson to Native Minister, 8 July 1879, ibid., 1879, G-8, p.3. [vol.1, p.152].

[118] Brabant to Native Minister, ibid., `Reports from Officers in Native Districts', 1882, G-1, p.5. [vol.1, p.243].

detailed sort of comparison of lands remaining in Maori possession against the contemporary and future requirements of the Tauranga tribes before concluding that they had ample left.

Although the Crown had purchased relatively little land in the district prior to the 1880s (with the exception of Katikati-Te Puna), Government Land Purchase Officers nonetheless remained active in the region, as Brabant's 1880 report to the Native Department made clear:

> The Natives in this district have, during the past year, received from Government considerable sums in payment for purchased lands; but, I fear, owing to their neglecting their ordinary avocations to attend the Land Courts, and to their squandering the money when they get it, it has really done them but little good.[119]

In April 1878 John Charles Young was appointed a Government Land Purchase Officer at Tauranga and remained in the position until January 1880, when, along with his clerk and interpreter Abraham Warbrick, he was dismissed from public service after allegedly misappropriating public money. Young was acquitted on charges of larceny in the Auckland Supreme Court in April 1880, but only after the jury had publicly expressed its opinion that `the system of Native land purchase expenditure, as disclosed by the

[119] Brabant to Native Under Secretary, 15 May 1880, ibid., `Reports from Officers in Native Districts', 1880, G-4, p.6. [vol.1, p.192].

evidence, is extremely loose and reprehensible, and affords no sufficient check against fraud by persons employed as agents'.[120]

But although Young's prosecution was prompted by apparent evidence he had been pocketing public money, what emerged from a much more wide-ranging investigation of his activities at Tauranga (undertaken by the Assistant Controller and Auditor, C.T. Batkin, and released after the Court's verdict) was evidence of an especially dubious and sometimes outright fraudulent system of land purchasing. Batkin concluded that it had been common practice for Young to make payments to Maori in want of money before recording it as consideration for any particular block he thought fit. Thus `it frequently happened that Natives who had not even been consulted as to the sale of their interests in some particular block, would find themselves not only enrolled as sellers, but as having received one or more payments on account'.[121] Batkin's investigations also revealed that:

> in innumerable instances moneys charged as paid to Natives were, in fact, paid to storekeepers for goods supplied. These sums were charged and vouched as payments made to Natives on account of lands. The charges were made without the sanction, or even the knowledge, of the persons concerned. They were very often entered as payments in respect of blocks in which the Natives charged had no interest, or in respect of which they had already received the whole - and in some cases more than the whole - share

[120] Supreme Court 22 April 1880, `Transactions of Messrs. Young and Warbrick (Papers Relative to) as Officers of the Land Purchase Department', ibid., 1880, G-5, p.25. [vol.1, p.217].

[121] Batkin to the Controller and Auditor-General, 31 May 1880, ibid., p.15. [vol.1, p.207].

> of purchase-money to which they were respectively entitled.[122]

It was also found that storekeepers at Tauranga demanded a higher price for their goods from Maori than they did from Europeans - a practice apparently encouraged by Young, who received a commission on orders placed through his office.[123] Moreover, Warbrick gave written evidence of outright forgery, stating that `it was his practice, under Young's direction, to fill up...blank but receipted vouchers by the hundred as occasion required, and to use them in support of the cash accounts'.[124]

Batkin condemned Young for the `flagrant indifference to right with which the Natives have been saddled with charges on their lands' and concluded that:

> Mr Young's system of purchase seems to have been founded on the plan adopted by the lowest order of land speculators - that of taking advantage of the wants or the cupidity of the Natives in order to obtain a hold upon their lands. The frequency with which the names of the same men appear in the storekeepers' accounts as recipients of supplies, shows how readily their demands for food, clothing, and spirits were acceded to; while the indifference with which, at the discretion of Mr Young or of his clerk Mr Warbrick, the liabilities of the Natives for such supplies were allocated to this block or to that, would seem to indicate that the question of the land to be purchased had not even been discussed; and it is obvious that, under such

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[122] ibid., p.7. [vol.1, p.199].

[123] ibid., p.13. [vol.1, p.205].

[124] ibid., p.2. [vol.1, p.194].

> circumstances, no question of price can have been considered.[125]

There is nothing to suggest that some of Young's more fraudulent practices were standard procedures among Government Land Purchase Officers at this time.[126] It would seem, however, that the practice of making payments to those considered legitimate owners in advance of the Native Land Court's investigation of title was widespread. Young reportedly told Batkin, for example, that `Payments were made, under a practice of his predecessors, to Natives supposed to be owners, before the Court had adjudicated'.[127] According to Sorrenson, though this practice was probably a legal one, `it seems quite likely that many of the Maoris regarded the land purchase officials as fair game, although they probably often failed to understand the

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[125] ibid., p.14. [vol.1, p.206].

[126] However, in 1876 the Auckland Superintendent drew the attention of the Government to the grievance of Ani Ngarae in relation to the Rereatuakahia block of about 600 acres. Before her death, the complainant's mother had willed the land to her children, the eldest of whom was about fifteen at the time. R.J. Gill, who was employed by the Native Office in Tauranga at the time (and later became Under Secretary of the Native Land Purchase Department), purchased the land for a small sum from Te Moananui. According to the Superintendent, `The Natives complain that being so employed he ought not to have tried to purchase this land, and indeed could not lawfully have purchased it during the minority of the children'. Gill was said to be now selling the land for £1,500. Auckland Superintendent to Colonial Secretary, 10 June 1876, Papers About Maoris and Land, AP 5/15B, National Archives. In the same year the Native Affairs Committee recommended that land should be provided for Ngarae's children to live on. Two years later this had obviously not been done, and a further petition brought the same response. *AJHR*, 1876, I-4, pp.21-2 [vol.1, pp.130-31]; 141/1878, *AJHR*, 1878, I-3, p.6. [vol.1, p.144].

[127] Notes on Examination of Mr. Young, 25 February 1880, ibid., 1880, G-5, p.27. [vol.1, p.219].

significance of the receipts they signed for the money or orders granted'.[128] Once they had signed a receipt for the advance, though, Maori were obliged to complete the sale after the land had been awarded to them or, less likely, find some alternative means of repaying their debt. Moreover, it also appears to have been fairly standard practice for such advances to have been made by way of orders on storekeepers. Sorrenson cites one correspondent from 1877 who claimed that:

> The Government has fallen into a system of enticing the Natives into debt by freely giving them orders on storekeepers for goods and drink, called "rations" - reihana in Maori phrase...I was told in Auckland that the debt of the Ohinemuri Natives was actually in this way swelled to £26,000.[129]

Drawn into a rivalry with private purchase agents for the best of the lands, Crown officials adopted broadly similar tactics, apparently with the more or less open blessing of the Government of the day. One of the chief criticisms of Young's practices appears to have been not that Maori were enticed into debt with storekeepers and then subsequently forced to part with their lands in order to settle their accounts, but that he failed to clearly link payments to Maori (or to storekeepers, in settlement of Maori debts) with a full and final extinguishment of their acknowledged claims over particular blocks of land. Young had been costing the Government money for few tangible results; that he had also been defrauding Maori of their lands

[128] Sorrenson (1955), p.85.

[129] ibid., p.84.

was a secondary issue, largely attributed to `the cupidity of the Natives'. And nor, in the wake of Young's scandalous dealings did the Government simply write off all debts charged against various Maori as a result of his activities. Instead, Brabant, who was given sole management of all land-purchase activities in the Bay of Plenty and Taupo districts,[130] was informed that Henry Mitchell had already classified the various debts:

> what is now required is that each claim should be entered on a Government voucher form and attached to it a schedule showing the Native's advance, and on what land the recovery of the money is to be made from. On the voucher being returned Mr. Bryce will then consider the question of paying the claim.[131]

Given that Batkin's inquiry had cast grave doubts as to whether any of Young's transactions as a Land Purchase Officer could be considered valid one wonders what criteria Mitchell had used to determine which were bona fide debts that could be used in extinguishment of Maori claims to land.

When seen from a broader perspective, even the most conscientious of Land Purchase Officers were implicated in a cynical system of debt entrapment which more often than not resulted in Maori being forced to part with their lands.

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[130] R.J. Gill (Native Land Purchase Department Under Secretary) to H. Mitchell (Land Purchase Officer), 5 June 1880, 468/1880, Outwards Letterbook 1879-80, MA-MLP 3/3, National Archives. Gill to Brabant, 5 June 1880, 471/1880, MA-MLP 3/3.

[131] Gill to Brabant, 14 May 1880, 423/1880, ibid.

Lawyers, land agents, interpreters, surveyors, publicans, storekeepers and speculators all took advantage of Maori debt (frequently incurred as a result of the costs associated with securing title to their lands). Many might have agreed with Chief Judge Fenton that it was not the duty of the Government `to make people careful of their property by Act of Parliament, so long as their profligacy injures no one but themselves.'[132] Support for such a view would not have been surprising among people who had a vested interest in ensuring open access to Maori lands,however, and in any event hardly excused the Crown from the obligations incumbent on it to provide reasonable protection for Maori from the accumulated pressures to part with their lands.

4. THE IMPOSITION OF ALIENATION RESTRICTIONS AND PRIVATE LAND PURCHASE ACTIVITIES

In 1879 the then Commissioner of Tauranga Lands, J.A. Wilson, reported that of the 19,734 acres so far investigated and Crown-granted to Maori under the provisions of the Tauranga District Lands Acts, 16,825 acres of this had been granted without alienation restrictions of any kind, and 14,623 acres (seven-eighths of this) had already been sold at an average price of less than two shillings and ten pence per acre.[133] Wilson added that the remaining portion of this might also have been sold in

[132] Fenton to J.C. Richmond, 11 July 1867, *AJHR*, 1871, A-2A.

[133] Wilson to Native Minister, 8 July 1879, ibid., 1879, G-8, p.2. [vol.1, p.151].

as-yet unregistered deeds and opined that all kainga and cultivation sites ought to be registered as inalienable.

Yet on the face of it, the Government had already gone one step further than this, declaring all the `lands returned' at Tauranga inalienable. On 12 November 1878 the *Bay of Plenty Times* published a telegram sent from the Native Under Secretary, Clarke, to Wilson four days earlier:

> I am directed by the Hon. the Premier to request you to be good enough, as Commissioner of Tauranga Lands, to inform the Natives that all the lands returned to them in the Tauranga District, the titles to which you are now investigating, including Otawa and Waitaha Blocks, are inalienable. The Native Affairs Committee has advised that the Natives should not be allowed to dispose of these lands; that, should they desire to lease them, they must do so by auction or public tender.[134]

Premier Sir George Grey's directive was advertised only once and followed the release of a report of the Native Affairs Committee (chaired by John Bryce) on 24 October 1878 in which it was recommended to Government:

> That, in the opinion of the Committee, no other portions of the land in the Tauranga District which was returned by the Government to the Natives should be allowed to be alienated, by way of sale or by way of lease, for a longer period than twenty-one years, and then only by public auction or by public tender.[135]

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[134] cited in G.E. Barton to Native Minister, 14 May 1886, `Removal of Restrictions on Sale of Native Lands', ibid., 1886, G-11, p.2. [vol.1, p.278].

[135] Report of Native Affairs Committee, 24 October 1878, ibid., 1879, Sess.I, I-4, p.1. [vol.1, p.153].

This recommendation was included in the report of the Committee on a petition from a Maori woman, Te Korowhiti Tuataka of the Ngati Ruahine hapu, who complained that she had been omitted from the lists of owners for the Pukepoto and Ohauiti blocks by Clarke when he was Commissioner. Edward Douglas, the petitioner's husband, claimed among other things that members of the Ngaiteahi hapu who were awarded the two blocks were pressed into selling them by Captain Morris (the buyer) with the assistance of Clarke. Though they had not wished to sell, he stated, they were afraid of getting into debt.[136] Douglas also alleged that although £2,000 was purportedly paid for the land, only £600 of this was paid in cash; the remainder was paid to Pakeha storekeepers in extinguishment of the owners' bills.[137]

The question of alienation restrictions was raised when Douglas claimed that the hapu concerned had understood there to be an entail on the land which they had never asked to be removed.[138] Clarke, however, stated that lands at Maungatapu and Ohuki, along with the islands of Rangiwaea and Motuhoa, had been declared absolutely inalienable in 1864. Beyond that, his policy had been to make as much as possible of the lands returned inalienable, but only once certificate of title had been issued

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[136] Minutes of Evidence, 3 October 1878, ibid., p.7. [vol.1, p.159].

[137] E. Douglas to G. Grey, 15 November 1877, Miscellaneous Papers Laid before the Committee, ibid., p.32. [vol.1, p.185].

[138] Minutes of Evidence, 7 October 1878, ibid., p.11. [vol.1, p.163].

for it and provided the owners did not unanimously request that no restriction be placed on the land.[139]

The Committee rejected any notion that Clarke had assisted Morris in the purchase of the land but did find that the petitioner had been accidentally omitted from the list of owners. Grey, a member of the Committee, was apparently now of the opinion that he had returned all of the lands at Tauranga (including the 50,000 acres confiscated!) to its original owners in 1866 with the intention that they should not be allowed to part with any of it[140] and may have brought about the recommendation concerning the imposition of alienation restrictions as some kind of endorsement of his effort to rewrite history.

Reaction to the publication of the telegram was swift. A meeting attended by both Pakeha and Maori on 21 November was said to have unanimously requested the Government to reconsider its decision.[141] Despite this, Grey remained adamant that the restrictions would remain and subsequent Crown grants were issued with the proviso that `Grantees are not to sell, mortgage or lease for a longer period than twenty-one years except with the consent of His Excellency the Governor first obtained'. This provision seems to have been modelled on section 13 of the Native Land Act 1867 which gave the Native Land Court discretion

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[139] 20 September 1878, ibid., pp.3-5. [vol.1, pp.155-57].

[140] ibid., p.3. [vol.1, p.155].

[141] Gifford and Williams, p.331.

to place similar restrictions on blocks dealt with. Grey's further instruction that lands to be offered for lease were to be thrown open to public auction or tender was not, however, stipulated in any of the grants and seems to have been entirely overlooked by the Commissioners.

But while Wilson reported in 1879 that the restrictions had brought private surveying work to a halt in the region,[142] others apparently considered it more or less still-born. In 1881 H.W. Brabant wrote to the Native Under Secretary for advice on the topic:

> You are aware that the alienability or otherwise by the natives of the Tauranga Lands dealt with by the Commissioners has long been a vexed question. The instructions to me when I formerly held office as Commissioner were that I was to use my discretion in regard to lands not actually in use by the natives but some time ago, while Mr Wilson was Commissioner Government issued instructions that all Tauranga lands were to be made inalienable (except by leave of the Governor first obtained).
>
> I found that speculators continued dealing with these lands & assumed that these instructions which I have referred to have been revised.
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> I have the honour to request that I may be definitely instructed on this matter as soon as convenient to the Hon. the Native Minister.[143]

Brabant received the same reply as that sent to Wilson in response to a similar enquiry the previous year: the

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[142] Wilson to Native Minister, 8 July 1879, ibid., 1879, Sess. I, G-8, p.2. [vol.1, p.151].

[143] Brabant to Lewis, 16 March 1881, DOSLI Hamilton Tauranga Confiscation file 4/25, RDB, vol.126, pp.48640-41.

instructions issued in 1878 had not been modified since, and Crown grants were to continue to be issued subject to the `usual restrictions' on the sale, mortgage or lease for more than twenty-one years of the lands.

5. THE BARTON COMMISSION AND THE REMOVAL OF ALIENATION RESTRICTIONS

Although alienation restrictions were imposed on all lands returned after 1878, these could be removed upon application of the Maori owners following a full enquiry into the circumstances surrounding the proposed purchase (usually undertaken by the Commissioner himself). In December 1882 H.W. Brabant wrote to the Native Minister, John Bryce, seeking instructions as to how he should deal with applications for the removal of alienation restrictions in the Tauranga district. Bryce's reply, drafted by the Native Under Secretary, more or less encapsulates the Crown's stated policy on the general question of removing restrictions at this time:

> The points upon which you require to be satisfied before advising His Excy. to consent to alienations are generally these
>
> 1. That the natives have amply sufficient other land for their maintenance or that from the unsuitability of the land to be alienated for native occupation or other considerations it is to their interests to dispose of it.
>
> 2. That the owners of the land proposed to be alienated are *unanimous* in their desire to sell.
>
> 3. That the price proposed is prima facie fair & reasonable.
>
> It has always, & I think fairly, been presumed by the native department that when restrictions are imposed it is not intended that the land should be alienated unless very

> good reason is shewn. It is difficult to make the purchasers & even the natives see the question from this point of view; the former simply looking at it from the stand point that they desire to obtain the land, & the natives that they wish to satisfy their present desire for money or what it will procure [.] The latter never I think considering the requirements of succeeding generations in view of which the restrictions are no doubt specially imposed.[144]

These instructions were broadly similar to those issued to Trust Commissioners under the provisions of the Native Lands Frauds Prevention Act 1870 and subsequent amendments.[145] Part-time Commissioners appointed under these Acts were required to investigate all direct private purchases of Maori land in order to ensure that they were not `contrary to equity and good conscience' and were specifically required to satisfy themselves that `the Natives interested in the lands the subject of alienation have sufficient land left for their occupation and support' before declaring the transactions valid.[146]

Thus the Crown made it clear, both in terms of confidential instructions issued by its ministers and through legislation passed through the General Assembly, that it continued to assume a certain responsibility for ensuring, as Normanby had instructed Hobson, that Maori would `not be permitted to enter into any contracts in which they might be the ignorant and

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[144] Lewis to Brabant, (draft), 9 December 1882, ibid., pp.48638-39.

[145] Instructions to Trust Commissioners under the Native Lands Frauds Prevention Act, 1870, *Appendices to the Journals of the Legislative Council*, 1871, no.23., p.162.

[146] *New Zealand Statutes*, 1881, no.17.

unintentional authors of injuries to themselves'. In fact, by the early 1880s even the respective Native Affairs and Lands ministers in a conservative government, John Bryce and William Rolleston, were publicly denouncing `huckster' land agents and speculators who were trafficking in Maori lands.[147] Politically, the tide seemed to have turned very much against rapacious Pakeha `land-grabbers', and those who argued that the Government had a positive obligation to protect Maori from fraudulent `blood and rum' land transactions appeared to be in the ascendancy.

Yet such protections as were devised were only effective as protections for Maori provided they were genuinely meant and diligently administered; and as the Native Minister, John Ballance, told Parliament in 1886:

> it is notorious that the Frauds Commissioners in the past had performed their duties in a most perfunctory manner, and passed transactions when the consideration is a mere bagatelle.[148]

Brabant, though initially of the view that the Tauranga tribes had little land available for disposal, seems to have undergone a rapid conversion to the opposite opinion and subsequently appears to have had few doubts about the advisability of recommending the removal of alienation restrictions in just

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[147] R.C.J. Stone, `The Thames Valley and Rotorua Railway Company Limited 1882-1889: A Study of the Relationship of Business and Government in Nineteenth Century New Zealand', *New Zealand Journal of History*, vol.8, no.1, April 1974, p.31.

[148] *NZPD*, 1886, p.463.

about every case. Between 1 April 1880 and 31 March 1885 restrictions were removed in respect of 33,033 acres of Maori land in the Tauranga district, almost always on the application of Europeans proposing to purchase the land.[149]

Typical of these, for example, was the 2,550 acre Oropi No. 1 Block, in respect of which Thomas Buddle, a local land agent applied for the removal of restrictions on behalf of Frederick Whitaker and Thomas Russell, the original architects of the confiscation policy, in 1881. Brabant recommended the lifting of restrictions in this case on the grounds that `the Native owners have sufficient land for their subsistence; moreover, the block in question is forest, and only used by them for pig-hunting and bird-shooting'.[150] Apparently the fact that the land was still being used by its owners for mahinga kai purposes was not sufficient to dissuade the Commissioner from his opinion that the land was surplus to Maori requirements. Wild pigs and birds probably remained important staples in the local Maori diet. Although many of the inland blocks such as Oropi were not occupied all year round by Maori, they were used at certain times as sources for food.[151] Yet Brabant does not seem to have taken into account this traditional pattern of land use at Tauranga Moana in deciding on the removal of restrictions.

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[149] Calculated from returns published in *AJHR*, 1883, G-4; 1884, Sess.II, G-5; 1885, G-7. See Appendix III for the full list of these.

[150] ibid., 1884, Sess.II, G-5, p.5.

[151] E. Stokes, `Te Raupatu o Tauranga Moana vol.2: Documents Relating to Tribal History, Confiscation and Reallocation of Tauranga Lands', 1993, p.141.

All too often phrases like `sufficient land elsewhere' were bandied about by the Commissioners as justification for the removal of restrictions without adequate investigation of actual Maori needs, and without proper consideration as to whether the lands remaining in Maori hands were sufficient to met these. Brabant was probably being unwittingly frank in expressing the view that Oropi's owners had sufficient land elsewhere for their `subsistence', but whether, given the cumulative effects of numerous such alienations, Tauranga Maori were left with adequate lands to do much more than scratch out a bare subsistence remains doubtful.[152]

Oliver Quintal, a solicitor who later represented Russell in relation to another piece of land at Tauranga, subsequently stated that at the time the application was made for the removal of restrictions on Oropi (along with the adjacent blocks of Waoku No.s 1 and 2, also purportedly purchased by Russell and Whitaker), `the deeds were not signed by a quarter' of the owners prior to the application being approved.[153] According to Quintal, these facts were publicly known in Tauranga, as was

[152] Not that Crown officials were always keen on the prospect of Maori commercial enterprise. A small timber reserve for Maori at Katikati was approved on condition that the timber was for their own use only and `not for sale'. Lewis to Brabant, 27 August 1879, DOSLI Hamilton Tauranga Confiscation file 5/28, RDB, vol.127, p.48867.

[153] O. Quintal, Evidence before Commission on Removal of Restrictions, MA 11/3. When the purchasers failed to get some of the remaining signatures a title was obtained in the Native Land Court under the provisions of the Native Lands Division Act 1882 for the portions they had succeeded in obtaining.

J.B. Whyte's purchase of the Kaimai Block - again approved and the land subdivided with less than the unanimous consent of the owners. Oliver Creagh, another prominent Tauranga land agent, apparently gained the impression, after a conversation with Commissioner Brabant, that it was `merely a matter of form to get the restrictions removed' and later stated that the ease with which such transactions were approved `induced me to think I shall have no difficulty beyond what these other purchasers had had' in relation to the blocks he was interested in.[154]

That the alienation restrictions were regarded by settlers, speculators and Crown officials alike as little more than formalities to be completed before land transactions were confirmed is all too clear. As one disgruntled individual, R.J. Duncan, wrote to the Native Minister and Minister for Lands, John Ballance, in December 1884:

> Other persons during that time also acted openly and bought other Blocks, which have been approved of by Government. Indeed nearly all Native lands [at Tauranga] were open for the public to buy, had they been disposed to invest in such troublesome speculations.[155]

The cause of Duncan's disgruntlement, and indeed that of several other speculators and land agents was an apparent shift away from the former policy of rubber-stamping Brabant's recommendations, which was underlaid by concern over the apparently dubious activities of would-be land purchasers and

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[154] ibid.

[155] R.J. Duncan to Ballance, 30 December 1884, MA 11/3.

their agents at Tauranga. In November 1882 the Native Under Secretary recommended to Bryce that solicitors acting on behalf of the supposed purchasers of a number of blocks at Tauranga be informed that `their clients run considerable risk of losing their money in dealing with Natives whose interests are undefined and whose lands or a portion of them might be absolutely inalienable'.[156] Bryce referred the cases in question (Poripori No.s 1 and 2, allegedly purchased by Hugo Friedlander; Oteora No. 1, Major John Wilson; and Te Mahau, Thomas Russell) to Brabant for the usual investigation late in 1883 and received his report in April 1884. Brabant had earlier reported that Poripori No. 2 had been declared absolutely inalienable at the request of its owners, a majority of whom remained of that view.[157] In relation to the other blocks Brabant made no firm recommendation either way but noted:

> It appears that the Natives have followed a not uncommon but reprehensible practice of selling the land first and asking leave of the government afterwards, and I am told that nearly all the purchase money has been paid.[158]

Bryce instructed his Under Secretary to `withhold action for further enquiry', stating that he did not like the manner in which the transactions had been pushed through to near completion before any effort had been made to ascertain whether the restrictions would be removed or not (and that the

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[156] Lewis, memorandum for Native Minister, 30 November 1882, ibid.

[157] Brabant to Lewis, 12 October 1883, ibid.

[158] Brabant to Lewis, 9 April 1884, ibid.

application ought to be made by the owners of the land in question, rather than the purchasers).[159] Earlier Brabant had declined to recommend the removal of restrictions on the Waimanu No. 1 Block owing to discrepancies over the boundaries of this (none of which were specified on the deed at the time that it was signed).[160]

But with the appointment of John Ballance as Native Minister in August 1884 there appears to have been an even greater shift in policy with regards to the removal of restrictions. In rejecting further applications, Ballance was often careful to note that this was not done because of any `special objections' to the particular purchase but because the whole policy was one requiring further consideration by the Government.[161]

Moreover, in rejecting an application made by Whitaker and Russell in September 1884, for example, Ballance noted that `There is no valid reason shown, & certainly the fact that the Natives have other lands is no recommendation'.[162]

With Ballance seemingly intent on a policy of only consenting to the removal of restrictions in exceptional circumstances, a number of those who had already invested considerable sums of

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[159] Bryce memorandum, 18 April 1884, ibid.

[160] Brabant to Lewis, 7 September 1883, ibid.

[161] See, for example, Lewis to Duncan, 31 December 1884, Native Department General Outwards Letterbook, MA 4/40, National Archives.

[162] Ballance (marginal note), 22 September 1884, MA 11/3.

money in the lands in question lobbied strongly for a return to a free market in the Tauranga lands. Whitaker attempted unsuccessfully to argue that the Commissioner had no legal authority to recommend restrictions,[163] whilst others sought to persuade the Government to overturn Ballance's policy. Despite this, Cabinet decided not to interfere with the decision of the Native Minister,[164] though by August 1885 Ballance apparently felt under sufficient pressure to promise a Commission to inquire into the character of the purported purchases of land at Tauranga and elsewhere.[165]

On 30 November 1885 George Elliot Barton, a lawyer and former Member of the House of Representatives, was issued with a Commission to inquire into all applications for removal of restrictions referred to him by the Native Minister. Eighty-three blocks in various parts of the country were subsequently put before the Commissioner for investigation and Barton was specifically directed to `ascertain whether the persons to whom the lands were proposed to be alienated had acted with good faith in their negotiations with the Natives and were paying sufficient prices'.[166]

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[163] Whitaker memorandum, (encl. in S. Jackson Jnr. to Vogel, 25 February 1885), ibid.

[164] R. Stout to Duncan, 10 March 1885, ibid.

[165] Duncan to Ballance, 21 August 1885, ibid.

[166] Barton to Native Minister, 14 May 1886, *AJHR*, 1886, G-11, p.1. [vol.1, p.277].

Barton commenced his investigations at Tauranga, `the district where inquiry was most urgently called for', on 19 January 1886. The local newspaper chose to interpret Barton's arrival at Tauranga as a welcome sign that the Government had finally seen `the necessity of throwing open for settlement the unoccupied land in the neighbourhood',[167] though by February some of those whose alleged purchases were under investigation were apparently concerned that the Commissioner was `entering too minutely into the circumstances connected with their claims'.[168]

On 14 May Barton submitted a general report on his progress to date which focused almost solely on his work at Tauranga[169] and probably vindicated the concerns of those who worried that their claims would be investigated in great detail. He noted, however, the difficulties he had had in ascertaining the existence of any improprieties given that most Maori brought before the Commission were reluctant to disclose evidence of misconduct, even when they were the victims of this. Such reluctance, Barton noted, `seemed to be actuated by a vague fear that they might lay themselves open to criminal proceedings, ending in imprisonment and loss of character', and apparent threats from

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[167] *Bay of Plenty Times*, 9 January 1886.

[168] ibid., 13 February 1886.

[169] There appear to be no surviving records of Barton's investigations outside the Tauranga district. No reports relating to these were published in the *AJHR's* and the archives of the Commission (MA series 11/3) deal solely with the Tauranga district. This file is at least 500 pages long (the minutes of evidence from Barton's Tauranga hearing is in itself 132 pages in length), and for that reason was not included in its entirety in the supporting papers to this report.

unnamed sources that such would be the consequence of doing so. Thus he was forced to rely on available documentary evidence and the opportunities created by the quarrels of rival purchasers, most of whom were eager to point the finger at their competitors.

The first matter which Barton addressed with relation to the Tauranga cases was the imposition in 1878 of alienation restrictions on all Maori lands in the district. He concluded, however, that since this policy was not meaningfully enforced for a number of years subsequent to this it would be unfair to now dismiss purchases initiated at a time when the restrictions were little more than nominal, stating that:

> Notwithstanding this advertisement, much speculation in Tauranga Native lands took place in 1878, 1879, and 1880, and purchasers seem not to have been in the least deterred by it - if, indeed, they were aware of its existence. The Government, too, treated the advertisement as a dead-letter. His Excellency was advised to remove, and did remove, restrictions on many purchases made subsequently to its publication, not only in favour of persons who had settled upon and improved their purchases before applying, but also in favour of speculators who had not settled - and apparently did not mean to settle - on their lands. It was even sworn before me that restrictions were removed in one instance where the purchaser had only as yet obtained one-fourth of the signatures of the Native owners. Therefore, when it was urged that these Tauranga purchases had all been negotiated during 1878, 1879, and 1880, I felt bound to consider them with regard to the policy of the Government at that period, and not with regard to a subsequent policy, which was not acted upon till after the purchasers before me had irrecoverably embarked their capital in these enterprises.[170]

[170] Barton to Native Minister, 14 May 1886, *AJHR*, 1886, G-11, p.2. [vol.1, p.278].

Whether Barton ought to have considered these land dealings in the light of the Crown's stated policy at the time that all Tauranga lands were inalienable or in terms of its non-enforcement of this policy in practice would seem a moot point.

But the Commissioner also pointed to the potential for exploitation of Maori which arose as a result of allowing speculators to purchase lands before matters concerning their ownership and boundaries had been settled. He stated that:

> At the time when the Tauranga purchases before me were initiated - that is, in 1878, 1879, 1880 - and the rival agents were struggling to secure the blocks in advance of each other, none of the lands in question had gone through the Commissioner's Court nor through the Native Land Court, their boundaries were undefined, no reserves for the permanent use of the Natives had been selected, and the conflicting claims of contending tribes and individuals had not been adjusted. Consequently the dealings of the purchasers and their agents in making their money-payments and in taking signatures to transfers were very loosely conducted. In excuse for this looseness, it was pleaded that purchasers were compelled to come into the field before anything was settled, because otherwise they would lose their chances as against their competitors. To convince me that I ought not to deal too stringently with what was the universal and unavoidable practice, it was stated that in all the cases in which the Government had allowed removal of restrictions the early transactions had been conducted in a similar manner, and had nevertheless passed the Frauds Prevention Commissioner, as well as the Government, and finally it was urged that all the cases before me in which I might report would at a latter stage have to pass the Frauds Prevention Commissioner, who might safely be trusted to protect the interests of the Natives.[171]

Yet Barton was scathing in his remarks on the Frauds Prevention Commissioners and their standard `form C', which was described

[171] ibid.

as `a positive cloak for fraud', insisting on the right to conduct a thorough investigation of the circumstances surrounding each purchase himself.

In his general report, Barton stated that the looseness of this system, and the absence of reliable checks on dubious land dealings, had allowed agents such as Creagh and the others to take advantage of the system `to defraud both their employers and the Natives'. In defence of this accusation, Barton summarised a few of his findings with respect to the Tauranga cases investigated:

> Their employers were debited with moneys that never reached the Native vendors, while the Native vendors were charged with these moneys although they never received them. I found also that receipts were taken from Natives for payments in such a manner that they could be easily manipulated, and were in fact manipulated, to represent payments on transactions to which they did not belong. I found that in some instances receipts were so handled as to cheat the Native vendor, by charging him with payments made to him for survey-work as payments on account of land. I found blank, or nearly blank, receipts, signed ready to be filled up, but not filled up. I found blank transfers signed for the transfer of shares in a certain block of land, and afterwards filled up with the addition of another block, the property of the same owners, but not sold by the majority of those who had so signed. I found a receipt given for a payment on a certain block altered fraudulently into a receipt for a payment on another block, which I had every reason to believe was never sold by the chief (now deceased) who gave the receipt...I found receipts for the same payment entered in different places for different blocks. I found signatures of certain vendors signed in their own handwriting, and other signatures of the same vendors signed by "mark". I found one signature of a vendor in bold handwriting, and another of the same vendor written as if he had been intoxicated...In short, I found that the books and documents purporting to record the transactions of the agents and sub-agents were so manipulated and altered in different handwritings as to entirely destroy their reliability, especially taken in

connection with the instances of actual fraud sworn before me.[172]

Barton's investigation into the activities of private land agents and speculators at Tauranga was undertaken with a meticulous attention to detail which concerned many of those whose dealings were placed under scrutiny. Some chose to avoid possible embarrassment by withdrawing their claims as soon as it became apparent that the inquiry `was not to be a mere formal one, in which everything doubtful could be glossed over and explained away by the production to me of a document called "Form C". On 31 May Barton submitted his more detailed report to Government on eight of the Tauranga cases which remained (and in each of which Oliver Creagh had acted as land agent).[173]

The Commissioner accepted that the Maori vendors of the blocks concerned had ample other lands for their requirements, ignoring the evidence of some Maori witnesses that they would return to the area in the planting season to cultivate the land before returning to their coastal reserves.[174] And although Brabant's initial investigation had concluded that the price paid for Poripori No. 1 was a little low,[175] Barton decided that a sufficient amount had been paid in each of the cases. As to the

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[172] ibid., pp.2-3. [vol.1, pp.278-79].

[173] Barton to Native Minister, 31 May 1886, `Removal of Restrictions on Sale of Native Lands', ibid., 1886, G-11A. [vol.1, pp.281-87].

[174] Evidence of Maihi Te Poria, MA 11/3.

[175] Brabant to Lewis, 9 April 1884, ibid.

legality or otherwise of the transactions, the Commissioner was of the view that although purchases initiated before the setting of boundaries and ownership had been illegal since the passing of the Native Land Laws Act 1883, deals such as the Tauranga ones completed prior to 1883 were merely void and unenforceable.[176] And since the 1878 prohibition on all land alienations was deemed not to affect the legality or propriety of the purchases, the only remaining question to be considered was whether the Maori owners had been dealt with in good faith by the agents of the purchasers.

On this final question Barton stated:

> ...I am unable to say that in any of these cases I am quite satisfied that they have been fairly dealt with. The receipts taken from the Natives for payments made to them are of a character even more loose and unsatisfactory than the memoranda of transfer - so loose, indeed, that from almost the commencement of the evidence they raised my suspicions that such looseness was greater than might have been forced upon the purchasers' agents by the indefiniteness of their transactions, and that it was a looseness intentionally increased for improper purposes...It has been with great hesitation that I have recommended the removal of restrictions in any of these cases, because the fact of my having discovered such frauds in the transactions relating to the other cases shows me that I can place but little reliance on the testimony of any of the persons who were engaged in such transactions; but I have felt pressed with the difficulty that, in the absence of evidence impugning the transactions, the purchasers, who are not parties to any wrongs discovered by me, should be allowed the benefit of the positive evidence in their favour.[177]

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[176] Barton to Native Minister, 31 May 1886, *AJHR*, 1886, G-11A, p.3. [vol.1, p.283].

[177] ibid., p.4. [vol.1, p.284].

Thus although deeply suspicious of much of the evidence presented to him, Barton felt compelled by his conviction that the agents had been acting independently of their clients' instructions to allow several of the purchases in the absence of conclusive proof of outright fraud having been perpetrated. Of the eight cases investigated, Barton recommended the removal of restrictions in three cases (Te Irihanga No. 1, Oteora No. 1, and Waimanu No. 2A);[178] and a conditional removal of restrictions on two others, saving the interests of those who had not consented to the purchases (Te Mahau and Waimanu No. 1), but rejected three applications (Waimanu No. 1C, Poripori No.s 1 and 2), all allegedly purchased by Hugo Friedlander.[179]

In view of Barton's general findings, most of which were applicable to all the cases under investigation, it seems surprising that any of the restrictions were removed. Yet the Commissioner saved perhaps his most damning and controversial statement for last:

> If the conduct of the agents in the transactions recorded in this report admits of any extenuation it is in the fact credibly vouched to me that in land transactions with the Natives such conduct is not the exception but the rule.[180]

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[178] Barton mistakenly recorded the latter case as not approved on the original copy of his report. Barton to Native Under Secretary, 22 June 1886, MA 11/3.

[179] Barton to Native Minister, 31 May 1886, *AJHR*, 1886, G-11A, pp.1-2. [vol.1, pp.281-82].

[180] ibid., p.7. [vol.1, p.287].

Such a remark, at the end of a consistently forthright report, called into question not only the activities of a few agents at Tauranga, but the entire system of private land purchasing throughout the colony. After initially hailing Barton's every move at Tauranga as a giant leap forward in the opening up of the district, the *Bay of Plenty Times* reacted to the release of his report with something akin to stunned silence, whilst in the Auckland press Barton became a target for popular invective. Many apparently considered that the Commissioner's report had been produced for purely political ends, in order to strengthen the hand of Ballance, who had been attempting unsuccessfully for two years to introduce a law clamping down on the worst aspects of direct private purchase.[181]

T.W. Lewis, the Native Under Secretary, strongly urged on Ballance that the recommendations contained in Barton's report be adopted, commenting that `He has certainly made a most exhaustive & careful enquiry'.[182] This was initially approved by the Native Minister; but on 10 August 1886 Parliament's Native Affairs Committee, on petition from Creagh and Friedlander (who alleged that the accusations made in Barton's report were `utterly unfounded and incorrect and contrary to the facts and evidence adduced during the enquiry'), overturned the Commissioner's recommendations in respect of the rejected applications and stated that the restrictions ought to be

[181] *New Zealand Herald* leader, 11 August 1886.

[182] Lewis, memorandum for Native Minister, 23 July 1886, MA 11/3.

removed.[183] Ballance informed the House that he proposed to establish why the Committee and Barton had reached `directly opposite' conclusions but appeared to side with the latter, stating that he believed the evidence heard before the Committee had been of a purely *ex parte* character'.[184]

Barton also produced a lengthy memorandum on the subject which defended the findings of his own report in a devastating fashion. Whereas the Committee had considered the matter for just two mornings and called a total of four witnesses, `three of the agents whose conduct was impugned' and one of the purchasers, Major Wilson, Barton pointed out that he had investigated the Tauranga purchases for more than two months and taken 132 pages of evidence from twenty-nine witnesses examined.[185] Quoting extensively from the evidence presented to the Committee, Barton highlighted the fact that at least four glaring discrepancies in the receipts issued by Creagh (most involving getting the sex of the person who had supposedly signed wrong) were conveniently explained away as `clerical errors', to the apparent satisfaction of the Committee members.

By the end of 1886 the restrictions had been removed on those blocks which Barton had reported favourably on (including those where certain conditions had been imposed), although in the

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[183] `Reports of the Native Affairs Committee', *AJHR*, 1886, I-2, p.39. [vol.1, p.291].

[184] *NZPD*, 1886, p.668. [vol.2, p.376].

[185] Barton, memorandum to Native Minister, 21 September 1886, MA 11/3. [vol.2, p.409].

light of the evidence he had outlined (and his stinging attack on the inefficacy of the Frauds Prevention Commissioners), this was no guarantee that the transactions would be confirmed. Meanwhile attention focused on three of the remaining blocks, Poripori No.s 1 and 2, and Waimanu No. 2A (which Barton had recommended favourably on provided payment for the block could be properly vouched for by an officer of the Crown).

J.A. Tole, Minister of Justice in the Stout-Vogel Government, concluded that `no value whatsoever' was to be attached to the report of the Native Affairs Committee since its investigation was `a mockery and unworthy of a Parliamentary Committee', being `absolutely condemned by the culpably partial nature of the enquiry'.[186] Julius Vogel, on the other hand, while admitting to knowing nothing of the matter, criticised Barton's response to the Committee's report as `intemperate' and described his suggestion that he ought to have been called to give evidence as `preposterous'.[187]

Other prominent politicians, including William Reynolds, T.W. Hislop, and P.A. Buckley all concurred with Tole's opinion, and in March 1887 Cabinet declined to recommend the removal of restrictions to the Governor, deciding further that certificates of title would not be issued for the lands and that parties aggrieved by this decision were free to appeal to Parliament

[186] J.A. Tole, memorandum, 7 December 1886, ibid. [vol.2, p.435].

[187] Vogel, memorandum, 11 December 1886, ibid. [vol.2, pp.436-40].

again on the matter.[188] In December 1887 the Native Affairs Committee upheld a second petition from Friedlander requesting that its earlier recommendation be given effect to (though apparently without considering any evidence on the matter, including Barton's response to its original decision).[189]

Early in 1888 the matter was again considered by Government. T.W. Hislop, Colonial Secretary in the Atkinson administration, argued that the restrictions ought to be removed but not so as to admit of a valid title to the `so called purchasers'.[190] J. MacDonald, Chief Judge of the Native Land Court, to whom the matter was referred for decision, believed that the terms of Barton's Commission `were entirely misconceived so far as they imported into the question of removal of restrictions irrelevant issues as to the conduct of would-be purchasers'.[191] Provided the owners of the blocks in question had other lands sufficient for their requirements, MacDonald believed the restrictions ought to be removed as a matter of course, regardless of such extraneous concerns (a view considered `morally unhealthy' by Hislop).

The Native Land Court Act Amendment Act 1888 allowed the Government to wash its hands of the matter entirely, giving the

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[188] Cabinet minute no.9, 2 March 1887, ibid. [vol.2, p.441].

[189] Minute Book of Native Affairs Committee, 21 December 1887, LE 1/1887/8, National Archives.

[190] T.W. Hislop, memorandum, 9 March 1888, MA 11/3. [vol.2, p.442].

[191] J. MacDonald, memorandum, 13 March 1888, ibid. [vol.2, p.451].

Court the authority to remove restrictions upon the application of a simple majority of owners (a change condemned by J.C. Richmond in the Legislative Council as an abdication of the trustee role the Crown had assumed on behalf of Maori).[192] In October 1888 Cabinet decided that Barton's recommendations would stand,[193] though this was largely irrelevant now. The following year further legislation was passed which provided for two Commissioners to be appointed to inquire into and validate any alleged alienations completed prior to July 1887 which, though perhaps technically in breach of a current or previous law, had been entered into in good faith and which were not contrary to equity and good conscience.[194] W.B. Edwards and J. Ormsby were subsequently appointed Commissioners[195] and investigated a number of the Tauranga transactions (including some of those where the restrictions had been removed in 1886 but the claimants had been unable to obtain a valid title to the land) in February 1891.[196] By 1890 J.F. Buddle had obtained a valid title to Te Irihanga No. 1 (which he promptly sold to Thomas Russell), and in 1895 Major John Wilson finally received Crown grant for Oteora No. 1 (probably through the Validation Court set up in 1893).

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[192] Cited in Ward (1973), p.298.

[193] Cabinet minute, 19 October 1888, MA 11/3.

[194] Sections 20-28, Native Land Court Acts Amendment Act 1889. [vol.2, pp.397-98].

[195] Sorrenson (1955), p.183.

[196] The minutes of this Commission are not included in the Tauranga Native Land Court minute books, and the *Bay of Plenty Times* for 1891 is not available in Wellington, so whether they validated any of the alleged purchases is unclear at this stage. [See vol.2, pp.399-405, for *Gazette* notices of the Commission's Tauranga hearings].

But the real significance of the Barton Commission is not so much the fate of these few blocks as the wider issues highlighted by the very thorough investigation undertaken. Barton's enquiries revealed that after purporting to make all of the lands returned to the Tauranga tribes inalienable in 1878, the Crown failed to enforce this policy for a number of years. When reports began to reach Wellington from 1882 onwards of some of the shadier dealings being done in the district, a belated effort was made to enforce the restrictions and an unlucky few speculators and their agents found their activities placed under intense scrutiny from a very diligent and scrupulous Commissioner. Yet others escaped such attention, even though there was much to suggest that the manner in which their purchases had been completed had been little better than those highlighted by Barton. Brabant had been specifically instructed that alienation restrictions were not to be removed without the unanimous agreement of the owners to sell. In view of this stated policy one can only wonder how it is that restrictions were removed on three blocks purchased by Whitaker and Russell before less than even a quarter of the owners had agreed to alienate the lands.[197] Moreover, this disavowal of the Crown's obligations to Maori was heightened even further in the late 1880s through a number of legislative measures which effectively validated illegal land dealings and undermined the original reasoning behind imposing alienation restrictions.

[197] Quintal evidence, MA 11/3.

6. CONCLUSION

John Bryce, the Native Minister, had informed Brabant in 1882 that the restrictions on the alienation of Maori land at Tauranga had been `no doubt specially imposed' in view of the requirements of succeeding generations of Maori. This view that the Crown had a positive obligation to protect Maori from the pressures to part with their lands was echoed in much of the political rhetoric of the times and had been the raison d'etre for several pieces of legislation. Though many Pakeha opposed `special laws' for Maori on the grounds that `they are not children', these were frequently the same individuals - whether storekeepers, speculators, or whatever - who had a vested interest in ensuring open access to Maori lands. In a young settler colony the lands belonging to the indigenous people are always vulnerable to the pressures of colonisation. That the government in New Zealand had begun to introduce a few belated and unevenly administered protections for Maori was not in itself paternalistic but simply a reflection of this reality.

Few Pakeha politicians or judges put it in such terms at the time, but it seems clear that the cession to the Crown of certain rights under Article One of the Treaty of Waitangi also implied an active obligation on the Crown to protect the rights guaranteed to Maori under Articles Two and Three. As the Waitangi Tribunal's *Orakei Report* said:

> In agreeing to confirm and guarantee to the Maori people the rights conferred on them in Article 2 of the Treaty in

> respect of their lands the Crown incurred an obligation actively to ensure that its Treaty undertakings were adhered to. It follows that an omission to provide protection is as much a breach of the Treaty as a positive act that removes or abrogates those rights.[198]

Had the Crown diligently administered the alienation restrictions on the lands returned to the Tauranga tribes, then those iwi might have been able to remain in `undisturbed possession' of their lands. As it was, they were the victims of fraudulent land dealings inflicted on them by both private speculators and at least one Government Land Purchase Officer. Caught up in a cycle of debt, many had no other option but to sell. Ironically, when these debts were not incurred with `generous' storekeepers or hoteliers who would extend Maori huge sums of credit in the hope of receiving their lands as payment, they were often directly the result of the costs involved in securing title to their lands. Barton reported on an application for removal of alienation restrictions `made under exceptional circumstances' by the thirty-seven owners of the Waimanu No. 2A Block:

> all are ready to sell their shares for the purpose of paying the expenses incurred on the contest in Court through which they obtained this block...
>
> The whole cost of the litigation and the maintenance of the hapu in Tauranga while the Court was sitting was defrayed by a single Native named Ropata Karawe...The only method by which the hapu could recoup him his expenses is by sale of this land.[199]

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[198] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington: Waitangi Tribunal, 1987, p.149.

[199] *AJHR*, 1886, G-11A, pp.6-7. [vol.1, pp.286-87].

Barton recommended the removal of restrictions in this case. Months later, Karawe's lawyer sought to find out what steps were being taken to implement this recommendation and reported that his client was in bad health and impecunious, `hardly able to find food for his family and...being pressed by his creditors for old debts of a trifling amount'.[200]

The practical result of this combination of pressures was the rapid alienation of Maori land in the Tauranga district. By 1875 most of the lands reserved for Maori within the Katikati-Te Puna, confiscation and Te Papa blocks had already been alienated. Between the late 1870s, when the first Crown grants were issued, and 1886, when Brabant wrote the final report on `lands returned under the Tauranga District Lands Acts', just on half the 136,191 acres returned to `Ngai Te Rangi' under the various Commissioners had already been purchased, most by private individuals or companies.[201]

Grey may have promised the Tauranga tribes in 1864 that only a quarter of their lands would be taken, but by 1886 less than a quarter remained in their hands. By the time of the Stout-Ngata Commission in 1908 less than one-seventh remained. It is doubtful that this was sufficient to meet the requirements of the Tauranga tribes. The Commissioners, seeking to avert renewed pressure for the acquisition of Maori freehold, recommended that

[200] E.G. Moss to Native Minister, 28 October 1886, MA 11/3.

[201] *AJHR*, 1886, G-10, p.5. [vol.1, p.276].

of the 42,970 acres remaining in Maori ownership, 9,452 acres of this be leased out, with a further 6,000 acres to be sold and the balance of 26,000 acres to remain with Maori.[202]

But while some hapu seem to have remained reasonably well-endowed with land, others had virtually none left. In 1900 a return of `Landless Maoris in the Waikato, Thames Valley, and Tauranga Districts who Lost their Land by Confiscation' included the names of several hundred Tauranga Maori.[203] In 1927 the Sim Commission reported on a petition from the Ngaitamarawaho hapu of Ngati Ranginui. Evidence presented to the Commission showed that one 600 acre block was owned by 111 members of the hapu, with succession orders down to one-seventieth of a share; a second block containing 59 acres was owned by 61 persons; and a 41 acre block was owned by 112 persons, with succession orders down to a fraction of one-three hundredth of a share.[204] For a still predominantly rural people this was hardly ample land, even for their `subsistence'.

H.T. Clarke had warned the Government in 1877 that if it did not `stretch forth a protective hand to save them from their own reckless extravagance', then the Tauranga tribes would `inevitably pauperize themselves'. And while his analysis of the causes of Maori impoverishment seems rather questionable in view

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[202] `Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', *AJHR*, 1908, G-1K, p.2. [vol.1, p.306].

[203] ibid., 1900, G-1, pp.7-8, 13. [vol.1, pp.300-02].

[204] ibid., 1928, G-7, pp.29-30. [vol.1, pp.344-45].

of the tactics adopted by would-be land purchasers, the Crown's failure to heed the message of Clarke and others seems a serious abrogation of its obligations to Maori under the Treaty which almost certainly brought about the predicted results.

PART C: EFFORTS TO GAIN REDRESS

1. INTRODUCTION

In the 130 years since the Tauranga district was confiscated by the Crown from its Maori owners there have been few, if any, periods during which the grievances of Tauranga Maori concerning this and subsequent Crown actions have not been given expression to. In the period to 1935 at least sixty petitions were referred to Parliament's Native Affairs Committee concerning Tauranga lands. A few of these concerning the raupatu were referred to the Royal Commission on Confiscated Lands and Other Grievances in 1927. Its finding that the confiscation of Tauranga lands was neither unjustified nor excessive, inadequate though it was, gave later Governments a ready excuse to dismiss these without serious consideration. It also gave Tauranga Maori a fresh sense of grievance, as they sought for the next half century to overturn the verdict of the Sim Commission and obtain Government acknowledgement that it had acted wrongly in confiscating their lands. Yet, as will be seen in this section, even when such an acknowledgement was eventually forthcoming in 1981, the circumstances behind the compensation settlement arranged were such as to again create a new sore on an old wound.

2. EARLY PETITIONS AND APPEALS

If Pirirakau initially eschewed the parliamentary petition as a means of gaining redress for their grievances in the wake of the

Tauranga raupatu, many other hapu did not. In fact, within weeks of Grey's visit to the district in August 1864 a group of Tauranga chiefs had reportedly travelled to Auckland in order to urge the Governor to return their lands;[205] and before the year was out the Te Tawera section of Ngati Pukenga had forwarded the first petition to Parliament on the matter, complaining that their lands had been `taken by the hand of Ngaiterangi, together with the Governor'.[206] A number of further petitions and appeals followed soon after, and though some of the groups concerned had their claims in the area recognised in the form of compensation for the Katikati-Te Puna Block, just as many others did not. Those appealing against the essential injustice of the confiscation of their lands were most often met with a stony silence. In 1882 (and again in 1886) Mary Callaway Te Wheko Yeoland petitioned the Government that although her grandfather was a loyalist, his lands had been confiscated.[207] The Native Affairs Committee concluded, however, that `The Crown has no equitable liability in this case'.

Between 1873-1889 nearly forty petitions were presented to Parliament from Tauranga Maori in relation to their lands.[208]

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[205] *Southern Cross*, 22 August 1864, cited in Sorrenson (1978), RDB, vol.139, p.53357. Evidently their efforts were unsuccessful. A few days later the chiefs returned to Tauranga having supposedly agreed to `sell' the Katikati-Te Puna block to the Crown.

[206] *AJHR*, 1867, A-20, p.11. [vol.1, p.26].

[207] 325/1882, *AJHR*, 1882, I-2, p.31 [vol.1, p.249]; 211/1886, *AJHR*, 1886, I-2, p.22. [vol.1, p.289].

[208] See Appendix I.

Nearly a quarter of these referred to the Katikati-Te Puna purchase, of which about half appear to have been organised by one man, Renata Te Whauwhau, who lodged almost annual petitions on the matter in the early 1880s. In 1881, for example, Renata lodged two petitions on the purchase. The first, signed by fifty-five others, stated that `certain land at Katikati had been, at a time unknown to them, sold by the Ngatimatera [Ngatitamatera] to some Europeans, and they pray that the sale should not be legalized until the case has been carefully inquired into; and also that the trees upon the land should be protected from both Maoris and Europeans'.[209] The second complained that `part of their land near Katikati had been sold by others during their absence'.[210] In both cases the Committee's report referred merely to the official `facts' of the case, ignoring strong evidence that the `purchase' had been made under duress, and with a handful of chiefs:

> This was confiscated land, but returned to the Ngaiterangi Tribe. In 1864 the Government opened negotiations for its purchase, and this was completed by May, 1871. The deeds (seven) extend from August , 1866, to May, 1871; and the cost was £8,951. The various sections of the tribe received their shares, and everything was done in the most open way. The Committee cannot recommend the prayer of the petition.[211]

Subsequent petitions produced a similar response, although an 1883 petition from Reha Aperahama and twenty-six others

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[209] 248/1881, *AJHR*, 1881, I-2, p.19. [vol.1, p.241].

[210] 272/1881, ibid. [vol.1, p.241].

[211] ibid.

concerning `Tanahawaero, between Katikati and Te Aroha' prompted the Committee to comment on discrepancies in the area supposedly purchased:

> the land referred to was confiscated land, which was returned to the Natives. The boundary of the confiscated land at this place was designated the "Watershed". Government subsequently considered it desirable to purchase this portion of the land. It was understood that the block to be purchased corresponded with that given back to the Natives. When the purchasing arrangement was being made, the boundary was described in the Katikati-Te Puna deed by names of places. From correspondence produced by the Government it seems that the Natives now allege that these names show that a portion of the land was not included in the purchase... .It is unfortunate that in the purchase the word "watershed" was not again used.[212]

Later petitions also suggested that Maori understood the boundaries of the Katikati-Te Puna purchase differently from the Crown. In 1888 Tawaha Te Riri and thirty-five others complained that the Katikati Hill had never been included in the boundaries of the block sold to Government.[213]

Early petitions concerning the confiscation per se were generally related to the claims of specific individuals or hapu, rather than being organised on an iwi or pan-tribal basis, and for the most part sought the return of additional areas of land. An 1876 petition described simply as that of members of the Ngai Te Rangi tribe (but in fact coming from the Nicholls family)[214]

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[212] 54/1883, ibid., 1883, I-2, p.6. [vol.1, p.253].

[213] 402/1888, ibid, 1889, I-3, p.1. [vol.1, p.299].

[214] LE 1/1876/7, RDB, vol.1, pp.221-23.

stated the petitioners dissatisfaction with the quantity of land returned to them,[215] whilst an 1877 petition from Te Kahui and others sought the return of various blocks of land, `confiscated for the offences of others'.[216]

By the late 1870s and early 1880s many petitions related to grievances concerning the process of returning lands at Tauranga. Some petitioners complained that reserves had been sold without their consent, for the most part, it seems, referring to reserves set aside within the Katikati-Te Puna and confiscation blocks, which had generally been awarded to a small numbers of chiefs, supposedly `in trust' for the other owners.[217]

Many petitioners complained that they had been omitted from the lists of owners for various blocks adjudicated on by the Commissioner of Tauranga Lands. In 1877 Wiremu Te Whareiro and members of the Ngati Pukenga tribe petitioned for the opportunity to have their claims to the Otawa block reconsidered by the Commissioner.[218] Three years later Moananui Te Wharenui and twenty-nine others sought a rehearing into the Whareroa block, complaining among other things that `the Assessor was an interested party; that the witnesses were not sworn; and that

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[215] *AJHR*, 1876, I-4, p.24. [vol.1, p.132].

[216] ibid., 1877, I-3, p.15. [vol.1, p.138].

[217] See, for example, petitions of Ani Ngarae, *AJHR*, 1876, I-4, pp.21-2 [vol.1, pp.130-31]; 141/1878, *AJHR*, 1878, I-3, p.6. [vol.1, p.144].

[218] ibid., 1877, I-3, p.35. [vol.1, p.140].

there was no interpreter'.[219] Most such petitions, however, were lodged by individuals who claimed to have been excluded from the lists of owners for various blocks. Te Korowhiti Tuataka lodged innumerable petitions relating to several blocks of land at Tauranga (including the 1878 petition which prompted the Native Affairs Committee to recommend that all lands returned at Tauranga should be inalienable). Tuataka was still petitioning on these matters in 1911,[220] when a fresh spate of petitions seeking rehearings in respect of various lands at Tauranga (some of which, for the first time, came from Pirirakau) were forwarded to Parliament.

Not all of the petitions from Tauranga Maori related solely to land. In 1888, for example, Ngaitamawhariua complained that their right to fish for shark in the harbour had not been recognised. Brabant believed that this matter opened up a very large question and stated that:

> Ever since I have acted as Commissioner to decide titles within the confiscated block I have been from time to time asked by various natives to decide the native title to 1. salt water marshes (where birds and eggs are obtained), 2. Sand flats & islands covered at high water (where shell fish are obtained), & 3. fisheries within the harbour.
>
> I have always replied that I did not understand my commission to extend to any thing below high water mark...In order that the importance of the question may be understood I may point out that any recognition of these fishing claims would result 1. In their preventing all fishing by Europeans in the harbour & 2. in the various

[219] 296/1880, ibid., I-2, p.23 [vol.1, p.236]. See minutes of evidence for this petition, LE 1/1880/6, RDB, vol.3, pp.814-40.

[220] 75/1911, ibid., 1911, I-3, p.6. [vol.1, p.310].

> hapus quarrelling amongst themselves as to the right to fish at particular spots.[221]

Ngaitamawhariua's right to fish for shark was accordingly dismissed.

Some grievances were put to the various Native Ministers direct, on their occasional visits to the district. When Ballance visited Tauranga in February 1885 he was confronted with a list of nine grievances from all of the people and a few smaller ones from particular individuals or hapu. Wiremu Parera told the Minister by way of introducing these grievances:

> This is not a new saying: that the Maoris and Europeans should be as one people; that is an old word. I have always held to that word and treasured it up in my heart. But I am not sure that such is the case. I think that we are not yet living together as one people, for when the Europeans are in the house we stand outside the door, and, instead of being invited to enter, we are told to go away. When the Europeans call to us and tell us to come into the house and sit down with us, and live with us under one roof, as it were, then I will know for the first time that we are really living as one people.[222]

Ballance was more sympathetic than most to Maori interests and gave the speakers a kind hearing. But while smaller grievances might be resolved through the intervention of the Native Minister or by petition to Parliament, those seeking to air their take in relation to the raupatu found few avenues of

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[221] Brabant to Lewis, 2 February 1888, DOSLI Hamilton Tauranga Confiscation file 5/28, `Papers on Awards in Katikati Te Puna Purchase', RDB, vol.127, pp.48881, 48883.

[222] *AJHR*, 1885, G-1, p.58. [vol.1, p.259].

redress open to them. Parliament might refer their petitions to Government for consideration; but in the absence of any willingness on the part of politicians to reconsider the matter of the confiscations, such petitions were largely a futile gesture, useful only as a reminder to later generations that the take was never forgotten, no matter how forlorn seemed the prospect of gaining redress for it.

3. BACKGROUND TO THE SIM COMMISSION

In the early decades of the twentieth century a new generation of Maori leaders, schooled in the Pakeha ways and thoroughly at home in the mainstream of the country's political system, provided fresh hope for action on long-held grievances. J. Gordon Coates, Native Affairs Minister from 1921-28 and Prime Minister between 1925-28, was the country's first New Zealand-born leader of any note and grew up in a predominantly Maori district. In terms of his native policies, Coates relied heavily on the advice of the Maori members of Parliament, and in particular Apirana Ngata and Maui Pomare. Already in 1920 they had been successful in getting a Royal Commission appointed to investigate the Ngai Tahu claim and several other grievances (including the confiscation of Whakatohea lands, which was found to be excessive), and in the following few years they lobbied strongly for a Commission to be appointed to consider the confiscations generally.

In the wake of the First World War many tribes, perhaps anticipating that their contributions to the war effort might be rewarded by the Government, had flooded Parliament with a number of petitions concerning the confiscations and other grievances. Pomare and Ngata led a deputation to Coates in 1923 of representatives of the various tribes concerned at which the Native Minister promised to consider the request put forward for a Commission to investigate the matter.[223]

By early in 1925 Coates had decided to proceed with the suggestion and requested Pomare to elicit further petitions from the Taranaki and Waikato tribes, detailing specific charges against the Crown for the Commission to consider.[224] Coates put the recommendation to Cabinet in September and was advised by his private secretary that it would be `politically wise' to announce the Government's intention as soon as possible; the Labour Party had already promised a Royal Commission to investigate Maori grievances `arising out of or subsequent to the Treaty of Waitangi' and Balneavis believed they would steal the kudos for any such Commission unless the Minister acted quickly.[225]

During the second reading of the annual `washing up' Bill, the Native Land Amendment and Native Land Claims Adjustment Bill, on

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[223] *The Dominion*, 18 August 1923, MA 85/8, RDB, vol.50, p.19601.

[224] Coates to Pomare, 3 February 1925, ibid., p.19593.

[225] H. Balneavis (Private Secretary) to Native Minister, 28 September 1925, ibid., p.19568.

28 September 1925 Coates made his announcement. Many North Island tribes, he stated, had for long given expression to `a general sense on their part of unjust treatment' as a result of the confiscation of large parts of their territories.[226] Occasional appeals to the Imperial Government had always been referred back to New Zealand, but this recognition of the exclusive authority of the Dominion's Parliament and Government on the subject involved, he believed, a duty to afford Maori an opportunity to vent their grievances before a tribunal willing and qualified to hear these claims and make recommendations concerning them back to Government. Since becoming Native Minister in 1921 Coates had `felt a personal responsibility in this matter' and notwithstanding obvious difficulties in terms of selecting members of the tribunal and drawing up its order of reference, declared that he could no longer reconcile himself to further delay. He accordingly announced the Government's intention to appoint a Royal Commission `directed to allow the Natives the fullest possible hearing, and to make recommendations to the Government and to Parliament'.

But a hint of things to come was apparent in Coates' next remarks:

> The failure to obtain consideration in the past has been due largely to the ill-advised attempts by the Natives' advisers to rely on the terms of the Treaty of Waitangi. The obvious answer to that claim is that such reliance is propounded on behalf of men who repudiated the Treaty, and with the Treaty the cession of sovereignty to the Crown, which was the basis of the Treaty.

[226] *NZPD*, 28 September 1925, pp.773-74. [vol.2, pp.377-78].

`Ill-advised' Maori attempts to argue against the confiscations on the grounds of the Treaty were therefore not to be countenanced by the Commission to be set up. The Treaty had been primarily a cession of sovereignty, Coates believed, and those who had fought against Her Majesty's forces during the wars had denied the sovereignty of the Crown and therefore could not in all fairness expect to rely on its provisions in seeking redress for their grievances.

Coates added however that:

> the Treaty is in no sense an element in benevolent consideration of the question whether the extent of the territorial confiscation was just and fair under the circumstances of the warfare and the action taken by Natives and by Europeans. That question can be temporarily and fairly considered after the long lapse of years since the confiscation.

Thus although the Commission to be established would not be permitted to consider the fundamental justice or otherwise of the confiscations in the light of the Treaty, it would, out of the Government's `benevolent consideration', be directed to consider whether the territorial extent of the confiscations was just and fair under the circumstances prevailing in the 1860s.[227] Subject to this proviso, the intention of the Government, Coates stated, was:

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[227] Coates added that the Commission would also `attempt to deal...fully and satisfactorily' with the `minor but important' grievance concerning `the inclusion of the property of loyal Natives within the confiscated areas'.

> to enable a complete investigation of the whole subject,and thereby to ascertain what injustice, if any, has been done in the past, and then to provide such remedies as will remove the sense of grievance from the Native mind.

As Donald Loveridge rightly points out,[228] Coates was careful not to claim that any remedies arising out of the Commission's findings would remove forever Maori grievances concerning the confiscations, but hoped that they might eliminate `the sense of grievance' many Maori had harboured on the subject. Apirana Ngata seems to have concurred in this view and after congratulating Coates for his announcement stated that:

> Some of the ablest tribes in the North are the most backward, simply because of these long-standing grievances. One doubts whether the grievances are capable of being removed. However, the injustice has to be removed, and one of the greatest injustices is that investigation has until now been consistently refused.[229]

Thus the very fact that Maori were for the first time to be allowed to air their grievances in an official forum was considered as important as any particular outcomes which might result from the Commission's findings. This view was reinforced by the member for Bay of Plenty (Williams), who believed that even if the decision should go against them the airing of Maori grievances would `go a long way to putting at rest the old

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[228] D.M. Loveridge, `The Taranaki Maori Claims Settlement Act, 1944', Crown Law Office, August 1990, p.16.

[229] *NZPD*, 28 September 1925, p.776. [vol.2, p.379].

feeling that they were unjustly treated and dealt with in the past'.[230]

It is clear, then, that Coates already had a fair idea as to the scope and intent of any Commission to be established before making his announcement in Parliament. Even so, the Native Minister was careful to ensure that terms of reference were drafted which reflected his ideas, and it was not until 18 October 1926 that a formal commission was issued to Sir William Alexander Sim, chairman of the Commission and a Judge of the Supreme Court, Vernon Herbert Reed, a Member of the Legislative Council, and William Cooper of Gisborne, the only Maori representative on the Commission.[231]

After reciting the main provisions of the New Zealand Settlements Acts, the commission issued by Governor-General Fergusson stated that claims had been lodged by those who had remained `loyal to the Crown or neutral and were entitled to or interested in some of the lands so taken' which alleged that they had not received the compensation for the confiscation of their territory to which they were entitled.[232] Other claims had been lodged by those who had been `actually in rebellion against Her Majesty or otherwise within the classes excluded from

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[230] ibid., p.778. [vol.2, p.380].

[231] Originally Sir Frederick Chapman, a former Supreme Court Judge, was to chair the Commission. It is not clear why Sim was appointed instead. See draft commission, MA 85/8, RDB, vol.50, p.19529.

[232] *AJHR*, 1928, G-7, pp.1-5. [vol.1, pp.322-26].

compensation by...section five of the [New Zealand Settlements] Act of 1863' which alleged that the confiscation of their title and interest was either excessive or `improper in the inclusion in the confiscation of land which should properly have been reserved for Native purposes'; and it was now `deemed desirable to review the whole position created by and consequent upon the said Acts' with the object of enabling Parliament to remedy such grievances of either type `as may appear now to have just and reasonable foundation'.

Of the four questions the Commission was asked to inquire into and report upon, the first of these was the key (and the one which most closely mirrored Coates' earlier outline of the scope of the inquiry to be undertaken). Sim and the other Commissioners were asked to consider:

> 1. Whether, having regard to all the circumstances and necessities of the period during which Proclamations and Orders in Council under the said Acts were made and confiscations effected, such confiscations or any of them exceeded in quantity what was fair and just, whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the said Acts.

In considering this question, however, the Commissioners were explicitly instructed that:

> (a) you shall not have regard to any contention that Natives who denied the sovereignty of Her then Majesty and repudiated Her authority could claim the benefit of the Treaty of Waitangi; (b) you shall not accept any contention that the said Acts or any of them were *ultra vires* of the Parliament of the Dominion.

On the other hand, if the Commissioners decided that any of the confiscations was excessive in extent then they were to recommend an appropriate level of compensation in money, based on `the value of the confiscated land as at the date of confiscation, and not to any later increment of the value thereof'.

The Commission was also asked to report on three further questions (without any of the restrictions imposed on its consideration of the first). They were to decide whether any lands included in the confiscations `were of such a nature as that they should have been excluded for some special reason' (such as wahi tapu, urupa and pa sites); whether any Maori remained entitled to claim compensation in respect of the confiscation of their lands; and whether reserves set aside for the support and maintenance of Maori who had done any of the things mentioned in section 5 of the 1863 Act had been in any case inadequate. In addition, fifty-six petitions from Maori in various parts of the North Island (including three from the Tauranga district, and one from the `Arawa district' which concerned the Tauranga raupatu) were referred to the Commission to `make such recommendation thereon as appear to accord with good conscience and equity in each case'. Although most of these petitions related to the confiscations, fifteen petitions from Muriwhenua Maori concerning promised tenths and various other grievances were included amongst these along with several other petitions on different matters.

But it was the first question, requiring the Commission to consider whether any of the confiscations had been excessive, upon which most attention was focused. As the Commissioners themselves noted in their report: `This question assumes that in every case confiscation was justified, and directs an inquiry as to the extent only of the confiscation'.[233] Government willingness to examine the issues raised by the raupatu petitions it had received clearly did not extend to include the fundamental question of whether any confiscations had been justified. And even in considering the question of whether the confiscations had been excessive, the Commission was barred from accepting any arguments based on the rights guaranteed to Maori under the Treaty or on constitutional or legal grounds. As Loveridge says:

> One can only conclude that it was not Coates' intention to give the Commission a free hand on the confiscation question, and he did not do so. The terms of reference were carefully designed to steer the Commission away from the major legal-historical problems which lay at the heart of this question, and to prevent it from making recommendations for redress which might be too expensive or too politically sensitive for Government to act upon.[234]

4. THE COMMISSION'S ENQUIRIES

The Sim Commission had a little over eight months from the date of its appointment to complete its enquiries and commenced its

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[233] ibid., p.6. [vol.1, p.327].

[234] Loveridge, p.20.

hearings at New Plymouth on 9 February 1927. Its final sitting was held at Wellington on 12 May and its report submitted to the Government just a day before the deadline imposed of 30 June.

Question one was obviously going to take up most of the Commission's time, but during the opening submissions at Waitara in February Counsel for the claimants, Mr D.S. Smith, scored a significant procedural victory in arguing successfully that the question of whether the confiscations had been justified at all was one the claimants were entitled to raise given that a number of the petitions referred to the Commission dealt with this issue and no restrictions were placed on its consideration of these. Smith's contention `was not really disputed' by Counsel for the Crown, Mr C.H. Taylor, `and in each case the question whether or not there should have been any confiscation at all was raised and discussed'.[235]

However, Smith's attempt to argue on similar grounds that in considering the justice or otherwise of the confiscations the Commission was not bound by the limitations imposed on its findings in connection with question one (and could therefore consider the matter in the light of the Treaty of Waitangi) was disputed by Taylor. Perhaps remembering Coates' comments to the House in 1925, the Commissioners pulled back from introducing the Treaty into their deliberations. Though admitting that Smith was correct that the limitations did not apply to the petitions, the Commissioners believed that `in ascertaining what accords

[235] *AJHR*, 1928, G-7, p.6. [vol.1, p.327].

with good conscience and equity, we should treat petitioners whose ancestors were rebels as not entitled, except in special circumstances, to claim the benefit of the Treaty of Waitangi'.

Those who argue that the Commission was flawed because it was not permitted to consider whether the confiscations were justified miss the real point. As it turned out, the Commissioners took advantage of a legal technicality to consider the justice or otherwise of the confiscations on a district-by-district basis. The point is, however, that this was still done under the assumption that those who had fought against the British and their allies had been in rebellion against the Queen's sovereignty and were (along with their descendants) therefore ineligible to claim any of the benefits of the Treaty of Waitangi in respect of the confiscated lands.

Yet although it was true, in a narrowly legal sense, to say that many Maori had been in rebellion against the Crown's authority, the Commission's own findings in respect of the Taranaki confiscations made it clear that this had to be to be seen in the context that, in at least some districts, Maori were forced to rebel against the Queen's sovereignty in order to defend their homelands against a British attack. The Commission accepted claimant Counsel's view that the Crown's wrongful insistence on having completed the purchase of the Waitara Block (and its belated retraction of this claim) was the primary cause of the Taranaki War and an important factor behind the outbreak of hostilities in the Waikato. In arguing that the Taranaki

confiscations were entirely unjustified the Commissioners stated:

> The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home.[236]

The Commissioners effectively said much the same thing about confiscations in the Manukau-South Auckland area, stating that, if Sir John Gorst's account of events was accepted as accurate, then `a grave injustice was done to the Natives in question by forcing them into the position of rebels, and afterwards confiscating their lands'.[237] On the question of the Waikato confiscations more generally, the Sim Commission considered that:

> the Government did afford them some excuse for their resort to arms. For them the Government had become a gigantic landbroker, whose sole object, however disguised, was the acquisition of their territory, regardless of their rights under the Treaty of Waitangi.[238]

But although the Commission apparently rejected any notion that the King Movement was necessarily antagonistic to the Queen's authority, the Waikato confiscations were considered justified in principle (though excessive in extent) on the basis that a

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[236] ibid., p.11. [vol.1, p.332].

[237] ibid., p.17. [vol.1, p.338].

[238] ibid., p.15. [vol.1, p.336].

Waikato war party was supposed to have set out for Auckland on 11 July 1863 - the day before General Cameron and his troops had crossed the Mangatawhiri stream - with the intention of setting the town ablaze and slaughtering its inhabitants. In support of this contention, the Commission quoted from W.P. Reeves *The Long White Cloud*; Reeves, in turn, was probably relying on a proclamation issued by Governor Grey on 11 July which stated that Waikato Maori were `assembling in armed bands' and threatening to come down the river to ravage the settlement of Auckland, and to murder peaceable settlers'.[239] Thus the Commission relied on a secondary source (a short history of New Zealand) and a certain amount of hearsay evidence (the unsubstantiated reports of James Fulloon) as the basis for its finding that the Waikato confiscation was justified but excessive.[240]

However, no finding was made as to the extent to which it exceeded what would have been reasonable and instead an annual payment of £3,000 was recommended as compensation. Similarly the Commission declined to estimate the value of the confiscated Taranaki lands but merely recommended that a yearly payment of £5,000 be made to a Board representing the tribes affected. In the case of the Bay of Plenty confiscation, the Commission found that, except in the case of the Whakatohea tribe, this had not exceeded what was fair and just, and recommended an annual

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[239] *New Zealand Gazette*, 15 July 1863, RDB, vol.11, p.3763.

[240] *AJHR*, 1928, G-7, p.17. [vol.1, p.338].

payment of just £300 for the purpose of providing higher education for the children of that tribe.

5. THE TAURANGA HEARING

The Sim Commission hearing at Tauranga lasted for a total of two and a half days, from 31 March-2 April 1927, the final morning of which was mostly taken up in connection with a petition lodged by the Ngati Tumatawera tribe concerning the loss of their lands as a result of the Tarawera eruption in 1886. Four petitions concerning the Tauranga confiscation had been referred to the Commission for investigation, the first two of which had been forwarded to Parliament as early as 1920. Rotohiko Pakana and eight others of the Ngati Makamaka hapu complained that they were the landless descendants of loyalists whose lands had been confiscated at the time of the wars and prayed for a grant of 1050 acres of Crown land adjacent to the Whakamarama No.1 Block.[241] A petition from George Hall and nine others of the Ngaitamarawaho hapu was along similar lines,[242] and one from Te Hautapu Wharehira and twenty-three others of the Waitaha tribe in 1923 complained that a disproportionate amount of their land had been confiscated in comparison to the few of their number who had joined the rebels at Gate Pa.[243] The largest of the petitions was also forwarded to Parliament in 1923 by Nepia Kohu

[241] 154/1920, AAMK 869/1588b [formerly MA 7/6/168, vol.1], Tauranga Confiscations, RDB, vol.138, p.53032.

[242] 269/1920, ibid., p.53035.

[243] 86/1923, ibid., pp.52998-99.

and 648 others, mostly of the Ngati Ranginui tribe, and stated that their lands had been confiscated `to pay for the misdeeds of others'.[244] Curiously, evidence relating to a further petition from James Douglas and the Ngati Hinerangi tribe concerning the Maurihoro Block[245] was also heard during the Tauranga sitting, even though it was not included in the schedule of petitions referred to the Commission and no reference was made to it in the final report.

Smith opened the case for the claimants on the morning of 31 March by contending that on the general question there ought to have been no confiscation at Tauranga.[246] Though there could be no doubt that a considerable number of Tauranga Maori had stood with Taranaki and Waikato in opposition to the Crown and were therefore legally perhaps `rebels', Smith argued that `of course the whole matter is within the general question as to who commenced the war'.[247] If, however, the Commission found that the confiscation was justified then he would submit that it was excessive in that `loyal' Maori were not secured in their

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[244] 153/1923, Sess.II, ibid., pp.52973-93. This petition was consistently referred to as being from Kohu and 628 others, even though 648 names are listed.

[245] MA 85/6, RDB, vol.50, p.19324.

[246] It is unclear whether detailed minutes were kept of the Tauranga hearings. None are to be found in the archives of the Commission, and this outline of proceedings is taken from summarised minutes of evidence found in the exhibits of the Commission (MA 85/6, RDB, vol.50, pp.19293-99), reports from the *Bay of Plenty Times*, (in MA1 5/13/- part 1, RDB, vol.56, PP.21270-73), and Taylor's speech notes (located in Crown Law Office Sim Commission archives, CL 179/7, National Archives).

[247] MA 85/6, RDB, vol.50, p.19293.

ancestral rights; and secondly, that it was excessive in that `rebel' Maori were not given enough lands for their support.[248] Quoting from the reports of Mackay and Baker, Smith claimed that those who had surrendered in 1864 were never aware that in doing so they also forfeited their rights to their lands. By the time that they had surrendered and been disarmed the Government was in a very strong position. Grey had promised `loyal' Maori that they would get their ancestral lands, and those who had rights in the 50,000 acres were entitled to these lands or their equivalent. Moreover, it was a `curious thing', Smith said, that the Government had confiscated the entire district rather than just the 50,000 acres it intended keeping, and he contended that both `loyalists' and `rebels' were entitled to their full share as though the land returned had not been confiscated. Lands had been awarded to Maori outside the area of their ancestral rights and had not been dealt with under the provisions of the New Zealand Settlements Act. The Native Land Court had not had the opportunity to investigate ancestral rights in the area and he now requested that it should be asked to investigate which Maori had lands in the 50,000 acres confiscated in order to determine a satisfactory basis upon which compensation could be awarded.[249] As to the Katikati-Te Puna purchase, Smith noted that the petitioners he represented had not been included in the deeds,

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[248] *Bay of Plenty Times*, 1 April 1927, MA1 5/13/- part 1, ibid., vol.56, p.21273.

[249] MA 85/6, ibid., vol.50, p.19294.

and secondly that the purchase of very valuable lands at three shillings an acre `was not fair and equitable'.[250]

Smith concluded his opening address by admitting that, although he had at first thought the Tauranga sitting would not take very long, he had yet to `get all the details'. He therefore asked for an adjournment for the afternoon `as the task of getting the necessary information was somewhat laborious'.[251] The Counsel for the claimant's lack of preparedness for the Tauranga sitting probably reflected both the tight schedule of the Commission's sittings (just two days before it had been at Whakatane hearing evidence on the Bay of Plenty confiscations) and his relative lack of resources. Smith appears to have at least one assistant to help him prepare for the hearings. Taylor, the Crown Counsel, by contrast had the resources of the Crown Law Office, Native and Lands and Survey departments at his disposal, and several employees of each assisted in researching the Crown case.

When the Commission resumed its hearings Smith called upon a number of the petitioners to give evidence. Nepia Kohu of Ngaitamarawaho stated that he had been born before the Battle of Gate Pa and provided the Commission with a list of loyalists of his hapu (which, he added, was Ngati Ranginui, and not Ngai Te Rangi) whose lands had been confiscated. Henare Piahana, also of Ngati Ranginui, stated that his people had owned the lands

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[250] *Bay of Plenty Times*, 1 April 1927, MA1 5/13/- part 1, ibid., vol.56, p.21273.

[251] ibid.

between the Waimapu and Wairoa rivers and also handed in a list of loyalists who had lost their lands. The Government, he believed, must have had some bitterness against his people, seeing that the 50,000 acres taken belonged to them.[252]

On the morning of 1 April Mita Karaka and James Douglas both gave evidence concerning the Maurihoro Block, which straddled the inland boundary line of the confiscation district. Douglas claimed that about 8-9,000 acres of the block fell within the confiscation district and that Ngati Hinerangi had never been recompensed for the land so taken. However, the petition was not presented to Parliament until January 1927 (too late to be included in the Commission's schedule) and no report was made concerning it.

In summing up the case for the claimants Smith reiterated that the cession of 50,000 acres could hardly be considered a voluntary one under the circumstances and submitted that the Crown should not have confiscated the entire district but allowed the rest of it to remain in the possession of its customary owners. Furthermore, it was unjust to take land from rebels and loyalists alike.[253]

Taylor's case for the Crown was a straightforward one. The `unprovoked and unjustified' intervention of the Tauranga tribes in the Waikato War and the subsequent fighting at Gate Pa and Te

[252] ibid.

[253] ibid., 2 April 1927, p.21272.

Ranga were more than sufficient acts of rebellion to justify confiscating some of their lands. However, although the Tauranga district had been formally proclaimed under the New Zealand Settlements Act, there was, Taylor contended, no real confiscation in the district at all since the Ngai Te Rangi tribe voluntarily ceded its lands to the Crown `quite independently of the surrender of its arms [and] in the most certain definite & unequivocal way'.[254]

Ignoring (or perhaps ignorant of) the fact that there was more than one tribe at Tauranga, Taylor argued that this voluntary cession was `incontrovertible' and that `If a tribe voluntarily offers its lands [to the Crown] the acceptance thereof cannot...properly be called a confiscation'. Of the 290,000 acres in the Tauranga district, nearly five-sixths of this had been returned to its owners, he added, and no complaints had been made at the time as to the manner in which this had been undertaken. Moreover, according to Taylor the Tauranga tribes had asked the Government to form a military settlement in order to protect them in their weakened state and had freely given up the 50,000 acres for this purpose (the internal inconsistency of this argument apparently escaping him).

In relation to the Katikati-Te Puna purchase, Taylor submitted that this was not encompassed in the Commission's terms of reference (a dubious argument given that it was included in the confiscation district) but added that:

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[254] Tauranga Notes, CL 179/7.

> If the Commission does enter in that matter it is submitted that the Ngaiterangi who voluntarily ceded the Kati Kati Te Puna Block to the Govt. cannot with any show of justice make a complaint that after they had given the land for nothing the Govt. actually gave them £10,401 for it. The contention that the consideration was inadequate is based on the incorrect assumption that the Govt. was paying for the land. Actually it was giving the natives £10,401.[255]

6. THE COMMISSION'S TAURANGA FINDINGS

The Sim Commission's findings with respect to the Tauranga confiscation amounted to a more or less total acceptance of the arguments put forward by Taylor, which was underlaid by an apparent inability (or perhaps unwillingness) to grasp what it was that Smith had argued. Consequently the Commission failed to address several of the points that Smith had raised, and in any event was debarred from considering these in the context of the Treaty of Waitangi.

In narrowly legal terms the Commission was probably correct in stating that Tauranga Maori, or at least a significant proportion of them, `were engaged in rebellion against Her Majesty's authority after the 1st January, 1863, and their case came, therefore, within the terms of the New Zealand Settlements Act, 1863'. However, its ready acceptance of Mackay's report of 31 July 1867 that `the whole tribe, loyal and ex-rebel' had joined in the meeting with Grey in August 1864 and its finding that `they really agreed then with the Governor as to the total

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[255] ibid.

area to be confiscated as a penalty for their rebellion'[256] revealed an unwillingness to consider Smith's contention that there had been nothing voluntary about this cession and ignored considerable evidence that many Maori had not been a party to this `agreement' and had in fact opposed it whole-heartedly. Smith's further argument that those who had agreed to this arrangement did so believing the Crown was to confiscate only a quarter of their lands and not the entire district was also ignored, and the implications of Grey's quite explicit promise that `loyalists' would have their rights `scrupulously respected' were again disregarded. Instead Mackay's rather premature and optimistic belief that all but one claim for compensation had been settled by 1867, and Brabant's 1886 list of lands returned, were taken as sufficient evidence that the Crown had discharged its obligations in an honourable manner, the Commission concluding:

> It seems clear from Mr Mackay's letter that the claims of both loyal Natives and rebels were duly considered at the time, and an endeavour made to do justice to them all. It is not suggested that any complaint was made on the subject at the time, or, indeed, until quite recently, and in these circumstances it is reasonable to conclude that substantial justice was done to the Natives by the settlements made by the Government. We think, therefore, that the confiscation was justified and was not excessive, and that the Natives have not made out any case for the inquiry asked for by them.[257]

It is difficult to know how the Commission arrived at the conclusion that no suggestion had been made that there were any

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[256] *AJHR*, 1928, G-7, p.19. [vol.1, p.340].

[257] ibid., p.20. [vol.1, p.341].

complaints as to the arrangements undertaken at the time. Smith had read considerable correspondence to the Commission reporting such dissatisfaction, including a letter from H.T.Clarke dated 23 June 1865 which specifically stated that Tauranga Maori had taken exception to the proposed confiscation arrangements.[258] More disturbingly, however, the Commission's report misrepresents the case the claimants had argued. It is stated, for example, that:

> Mr Smith did not contend seriously that confiscation was not justified, or that in the circumstances the area finally confiscated was excessive. His main contention was, first, that as to the 50,000 acres confiscated the loyal Natives, who had ancestral rights therein, were entitled to those rights or their equivalent; and, secondly, that as to the remainder of the land both the loyalists and rebels were entitled to their full share therein as if the land had not been confiscated. Mr Smith suggested that there should be an inquiry by the Native Land Court as to both these matters. Before such an inquiry can be recommended a *prima facie* case of injustice at least must be established, and it must be reasonably certain that, if injustice has been done, the facts can be ascertained and the sufferers compensated. Mr Smith did not attempt to prove a *prima facie* case of injustice in any of the arrangements and settlements that were made in connection with the

[258] *Bay of Plenty Times*, 1 April 1927, MA1 5/13/- part 1, RDB, vol.56, p.21273. See Clarke to Mantell, 23 June 1865, *AJHR*, 1867, A-20, p.12. [vol.1, p.27].

> confiscated land, and confined himself to suggesting that the purchase of the Katikati and Te Puna Blocks was made at an undervalue.[259]

Smith's opening remarks to the Commission that the Tauranga confiscation was unjustified or if found to be justified was excessive were presumably not made in jest, even if the Commissioners failed to take them seriously. And given that their evidence went largely unchallenged by the Crown, one might have assumed that the string of witnesses Smith produced - each of whom stated that though loyalists they had lost land as a result of the confiscation - might, in combination with the documentary evidence presented, have been taken as sufficient to prove to a *prima facie* standard that injustice had been done. Such was not the case, however, and instead the Commission rather bizarrely suggested that Smith had confined his arguments to suggesting that the Katikati-Te Puna purchase had been `made at an under-value'.

Moreover, the Commission contradicted its own conclusion that substantial justice had been done in stating that `it is impossible to say whether or not any injustice has been done'.[260] Smith's request for a Native Land Court enquiry into the relative interests of `loyalists' and `rebels' in the confiscation block, already rejected on the grounds of his supposed failure to prove a case of *prima facie* injustice, was

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[259] *AJHR*, 1928, G-7, p.19. [vol.1, p.340].

[260] ibid.

also declined on the basis that it would be extremely difficult for the Court to ascertain all the relevant facts after such a length of time. Yet already in other instances the Court had been called upon to determine the beneficiaries of other compensation claims in respect of nineteenth century grievances,[261] which was little more than what Smith was requesting on behalf of the claimants.

But it was in its rather offhand dismissal of the Tauranga petitions that the Commission revealed most fully its failure to come to terms with what it was many of the claimants were saying. The petition of Nepia Kohu and 648 others was rejected on the grounds that the issues raised by it had already been covered in its general report on the Tauranga confiscations. Yet this was hardly accurate since the report had said nothing of Ngati Ranginui claims in particular but merely assumed that three-quarters of the land had been returned to the Ngai Te Rangi tribe in accordance with Grey's promise. This of course missed the whole point of the petition, which was that Ngati Ranginui were seeking - as a separate and distinct iwi - to have the merits of their own claims assessed by the Commission, rather than being subsumed under those of Ngai Te Rangi once again.

Like a fair number of nineteenth century officials before them, the Commissioners were obviously rather bewildered by this

[261] In respect of the Patutahi block, confiscated from Poverty Bay Maori, for example. See O`Malley (1994), pp.169-71.

emphasis on the distinctiveness of the different iwi and commented in relation to the petition lodged by Waitaha that:

> Until the year 1923 every one acted on the view that practically the whole of the confiscated land belonged to the Ngaiterangi Tribe. The Proclamation refers to it as their land, and Acts of Parliament were passed and settlements were made with the Natives on this basis.[262]

It was then asserted that the supposed silence of Waitaha - and by implication other iwi - between 1865 and 1923 (when they had lodged their petition) was `in itself strong evidence that the claim now made is without any merit'. Yet as the Commissioners admitted, Waitaha had lodged a claim to the Otawa Waitaha Block in 1878, and Te Tawera's 1864 petition had named them and Ngati Ranginui as the original owners of the Tauranga district. Moreover, there could hardly be any doubt as to Ngati Ranginui's long struggle for recognition from the Crown - a struggle which had fallen on deaf ears in the nineteenth century and met a no better reception before the Commission, which relied heavily on official sources, with their in-built tendencies to describe all Tauranga Maori as belonging to the Ngai Te Rangi tribe.

The Commission declined to make any recommendation in respect of the petition from Ngati Makamaka, stating that `This petition really raises a general question of policy - namely, whether or not the Government should undertake to provide land for Natives who are landless'.[263] A much more specific question concerning

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[262] *AJHR*, 1928, G-7, p.18. [vol.1, p.339].

[263] ibid., p.29. [vol.1, p.344].

`loyal' Maori dispossessed of their lands as a result of the confiscation despite Grey's promise to the contrary was ignored by the Commission. Furthermore, evidence of Ngaitamarawaho's relative landlessness was detailed in the Commission's report without any recommendation as to the merits of the petition - even though again this might have been considered in the context of question three (whether any Maori remained entitled to claim compensation in respect of the confiscation of their lands). In fact, given that almost all of the Tauranga petitions were along these lines, the Commission's general report on the matter seems quite remarkable:

> This question, as we understand it, is intended to deal with the case of Natives, belonging to a tribe or hapu whose land was properly confiscated, who, for reasons personal to themselves, did not deserve to share in the punishment thus inflicted. Our answer is that such a case was not put forward on behalf of any Native.[264]

One wonders what the lists of loyal Tauranga Maori submitted to the Commission by Kohu and Piahana were intended for if not as evidence of `Natives...who...did not deserve to share in the punishment thus inflicted'.

7. THE AFTERMATH OF THE SIM COMMISSION, 1928-35

The Sim Commission represented a notable initial effort to face up, in however partial a way, to the realities of the confiscations, but as such was - and could only ever be - a

[264] ibid., p.22. [vol.1, p.343].

limited success. Despite this, the Sim Commission's conclusion that the Tauranga confiscation was neither unjustified nor excessive was echoed down the years by a succession of Native/Maori Affairs Ministers who used the 1927 report as the basis upon which to reject a steady stream of petitions and appeals on the subject. Initially these petitions came disproportionately from Ngati Ranginui and were usually along the lines that the descendants of `loyalists' had suffered as a result of the erroneous confiscation of their ancestors' lands. But by the 1970s appeals to Government were being coordinated on a pan-tribal basis and more often than not involved a flat rejection of the arbitrary distinction between Kingite and Kupapa.

Initially, though, there were those who saw some prospect of overturning the Sim Commission verdict on the Tauranga confiscation, particularly in view of the considerable doubts raised in the report as to which side had been the aggressor in the Taranaki and Waikato wars (which, it was argued, had led almost directly to the Tauranga Campaign). Although the Sim Report had been forwarded to Government on 29 June 1927, it was not until 28 September 1928 - nearly fifteen months later - when it was finally laid on the table of Parliament. Loveridge suggests that financial constraints standing in the way of compensation payments may well have been behind this, but also points to the reaction of the Maori MPs to its findings.[265] As early as May 1928 Ngata and Pomare had been briefed on the

[265] Loveridge, p.29.

report's contents. Given that it was election year, Ngata expressed optimism for the prospects of:

> Clinching Raupatu matters at figures higher than those recommended by the Commission and covering the Bay of Plenty & Tauranga as well as other districts, and so getting behind us these old grievances. Phoenix arising out of the ashes.[266]

In response to a request from Coates, just before the release of the report in late September the four Maori MPs (Ngata, Pomare, Tau Henare, and Henare Whakatau Uru) submitted their own recommendations for compensation to Cabinet.[267] Whereas the Sim Commission had recommended annual payments totalling £8,600 (and a one-off payment of £300 in respect of the Parihaka raid), the Maori MPs considered that yearly payments of £12,500 `would not be unreasonable'. Of this, £2,600 was to be paid to the Bay of Plenty tribes (including £1,000 for the Tauranga tribes and £150 for Waitaha), Ngata and the others stating as justification for this

> We do not think that the Commission has given adequate consideration to the position of the Bay of Plenty tribes under the confiscations which deprived them of so much of their lands. A factor to be considered is that the source of the disquiet and rebellion was in the grievances which led to the wars in Taranaki and Waikato

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[266] Ngata to P. Buck, 6 May 1928, in M.P.K. Sorrenson (ed.), *Na To Hoa Aroha: From Your Dear Friend. The Correspondence Between Sir Apirana Ngata and Sir Peter Buck, 1925-50*, vol.1, Auckland: Auckland University Press, 1986, p.90. [vol.2, p.454].

[267] Memorandum for Prime Minister, 10 September 1928, MA1 5/13/- part 2, RDB, vol.57, pp.21671-72.

Ngata strongly believed that `if any relief is being given Bay of Plenty should participate',[268] and reiterated this view in Parliament when the Commission's report was tabled. Though generally welcoming the Commission's findings, Ngata was far from in total agreement with them, stating that:

> Naturally, when a body of men come to tackle a question over sixty years old, it requires a good deal of courage and that the men be imbued with a sense of justice to overcome the hesitation of reversing to some extent the verdict of history. And as we see that hesitation throughout the report, it would be just as well, I think, if the Government delayed a little the giving of full effect to the report in order that public opinion and public sentiment might be attracted towards its contents.[269]

Coates told the House that annual payments of approximately £12,000 would be required to meet the recommendations of the Commission, which suggests that he had accepted the arguments of the Maori MPs in respect of compensation for the Bay of Plenty tribes.[270] Section 20 of that year's Native Land Amendment and Native Land Claims Adjustment Act allowed the Government authority to give effect to the recommendations of the Commission:

> either according to the terms of the Commission's recommendations or in accordance with any modified, varied, or extended terms that may be deemed just or expedient: Provided nevertheless that where the recommendations of the Commission requires the payment of any sum of money, whether periodically or otherwise, no payment shall be made

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[268] Ngata to Buck, 24 September 1928, in Sorrenson (ed.), vol.1, p.138. [vol.2, p.455].

[269] *NZPD*, 28 September 1928, p.642. [vol.2, p.383].

[270] ibid., p.643. [vol.2, p.383].

> unless and until the amount to be paid has been appropriated by Parliament for the purpose.[271]

This clause conceivably opened the way for compensation to be paid to the Tauranga and Bay of Plenty tribes, and Ngata was again a forceful advocate for their claims during the third reading of the Bill on 6 October 1928.[272]

Prospects for a settlement of the Tauranga claims seemed even better the following month when Coates' Reform Government was surprisingly defeated at the polls and Ngata was himself appointed Native Minister in Sir Joseph Ward's minority United Party administration. Before the formal change of Government, Coates wrote a memorandum supporting Ngata's proposals for increased levels of compensation from those recommended by the Sim Commission and the recognition of Tauranga and Bay of Plenty claims `on as liberal a scale as the Crown can afford'.[273] During the early months of 1929 Ngata at first gained Ward's agreement to negotiate settlements of the confiscation claims before travelling around the North Island to gain the consent of the tribes concerned.[274] In June Ngata informed Buck that the Tauranga, Bay of Plenty and Wairoa tribes `Have agreed to the proposals made by the Government as to amounts & mode of

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[271] s20(1), Native Land Amendment and Native Land Claims Adjustment Act 1928.

[272] See *NZPD*, 6 October 1928, pp.946-60. [vol.2, pp.385-92].

[273] Coates, memorandum, 7 December 1928, MA1 5/13/- part 1, RDB, vol.56, pp.21225-27.

[274] Loveridge, pp.41-42.

administration' (which was to involve annual payments devoted specifically to education, health, farming and marae improvements).[275]

But the onset of the Depression placed severe financial constraints on the Government, and with Treasury strongly opposed to the principle of perpetual payments,[276] the settlement of anything other than claims found to have merit by one or other of the 1920s Commissions probably became something of a forlorn hope for the foreseeable future. While continuing efforts were made to settle the Taranaki and Waikato claims, Tauranga and Bay of Plenty no longer seem to have figured in the picture quite so prominently; and Ngata's resignation as Native Minister in November 1934 lessened the prospects for recognition of their claims even further.

But although out of office, Ngata remained an important advocate for the claimants and in September 1935 led a deputation of Tauranga, eastern Bay of Plenty and Wairoa Maori to Coates, by now Finance Minister in the Coalition Government. Ngata

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[275] Ngata to Buck, 12 June 1929, in Sorrenson (ed.), vol.1, pp.202-03. [vol.2, p456].

[276] A 1929 memorandum to the Prime Minister written by the Secretary to the Treasury, R.E. Hayes, recommended that `The North Island [confiscation] claims should not be met by perpetual payments, and, further, until a basis of settlement definitely acceptable to the Natives is arrived at, it seems premature to make any payments'. The latter recommendation was based on reported `agitation...for the setting up of a further Commission to enquire into the North Island confiscations' and Treasury's belief that neither the compensation recommended by the Sim Commission, nor the higher levels suggested by the Maori MPs, would satisfy Maori. 14 March 1929, MA1 5/13/- part 2, RDB, vol.57, p.21657.

suggested that Smith, the claimant Counsel before the Sim Commission, had not been well briefed as to the case of the Bay of Plenty tribes and stated that `If the Government wanted to get rid of all the problems in one hit, it could be done' (on the basis of one half of the compensation eventually decided upon for Waikato to be paid to the three districts represented in the deputation). Coates, in reply, believed that further investigation might be required into the claims of the Tauranga tribes,[277] a point reiterated more generally by the Prime Minister, George Forbes, in formally responding to the representations made by Ngata.[278]

8. THE FIRST LABOUR GOVERNMENT AND THE TAURANGA CLAIM

Again, a change of Government intervened, and no steps were taken to set up a new Commission before Labour came to power in December 1935. In August 1936 Prime Minister Savage suggested that this remained a possibility, before rejecting the idea in favour of more informal round-the table discussions with the claimants.[279] Savage, who was also the Native Minister, visited Ngaruawahia in March 1937 and stated that there had been enough Royal Commissions already and that it was time for the Crown and Maori to meet together with a view to finding satisfactory solutions. During the Minister's visit to Waikato, a deputation

[277] Minutes of meeting, 23 September 1935, MA1 5/13/- part 2, RDB, vol.57, pp.21622-24.

[278] Forbes to Ngata, 26 October 1935, ibid., p.21620.

[279] Loveridge, p.57.

from Ngati Ranginui led by George Hall raised their claim with Savage. Hall emphasised during the talks with Savage the desire of his people `to be heard as Ngati Ranginui, and not under the domination of Ngaite Rangi [sic]'[280] and this appeared to have had almost immediate results: for the first time Crown officials began acknowledging in their correspondence and memoranda the existence of a distinct and separate Ngati Ranginui claim.

That the Crown's recognition of Ngati Ranginui was little more than superficial was, however, evident from the reply of the Acting Native Minister, Frank Langstone, to the substance of their claim in August 1937. After reciting the Sim Commission's finding that the Tauranga confiscation `was justified and was not excessive', Langstone informed Hall that:

> As the Commission did not recommend compensation to be paid in connection with this claim, it does not, therefore, come within the undertaking made by the Right Hon. Mr Savage at Ngaruawahia before he left for England, that it would be in the best interests of all concerned if the representatives of the Government met the representatives of the Natives and discuss their claims with a view to finding a satisfactory solution.[281]

Langstone, like the Sim Commission, had entirely missed the point Ngati Ranginui were attempting to make, even though Hall had virtually spelt it out for him. Though politicians and officials might bring themselves to at least acknowledge Ngati Ranginui by name (unlike their earlier counterparts), they could

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[280] G. Hall to Savage, 17 August 1937, AAMK 869/1588b, RDB, vol.138, p.52964.

[281] F. Langstone to Hall, 24 August 1937, ibid., p.52960.

not, it seems, grasp the fact that the claim of that iwi rested in large part on the fact that they were not Ngai Te Rangi.

But despite Langstone's rather offhand dismissal of the Ngati Ranginui claim, the Labour Party - which was making a strong bid to capture the four Maori seats (having already secured two) in alliance with the Ratana movement - could not afford to alienate its potential supporters. In January 1938 the Native Under Secretary submitted a memorandum to Langstone on outstanding land claims in which it was suggested that the claims of Waitaha, Ngai Te Rangi, and Ngati Ranginui (in addition to those of the eastern Bay of Plenty tribes) required full investigation by a Royal Commission.[282] During February and March a series of conferences were held with the representatives of tribes whose claims had been investigated and found to be valid with a view to arriving at settlements of these. The Tauranga tribes were not invited to participate in these, presumably since the Government had accepted the view that these required further investigation. However, by 1940 the Government had decided to set up a Commission to investigate the surplus lands question, and in a further memorandum it was stated that it was a matter for the Government to determine whether this should also be empowered to inquire into other outstanding claims, which were divided into four classes. Under class three, `Claims or grievances which have been investigated by some tribunal but in

[282] Native Under Secretary, memorandum for Minister, 25 January 1938, MA1 5/13/- part 2, RDB, vol.56, pp.21331-39.

respect of which no relief has been recommended', it was stated that:

> There are two cases in this class, both arising out of the confiscation. Although the 1927 Commission concluded, in effect, that the Natives were not entitled to relief, the Maori Members urged that certain sums be granted as compensation. In view of these and other representations which, [sic] have been made it might be possible, without creating too dangerous a precedent, to have the claims reinvestigated by the Commission.[283]

The two cases referred to were clearly those of Tauranga and eastern Bay of Plenty. This time, though, war intervened, and when the Commission was eventually set up in 1946 only the surplus lands issue was included in its terms of reference.

Nonetheless the drawing to an end of the war brought its own pressures to bear on the Government. More than 27,000 Maori men and women had been mobilised for the armed services or essential industries, largely under the leadership of the Maori War Effort Organisation, which had a politicising effect on many Maori.[284] By 1943 even Apirana Ngata's Eastern Maori seat had fallen prey to the Ratana-Labour alliance, and the Government now came under immense pressure to reward Maori for their fine service records and overwhelming political support by settling their long-held grievances.

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[283] Native Under Secretary, memorandum for Minister, 4 April 1940, ibid., p.21315.

[284] See C. Orange, `An Exercise in Maori Autonomy: The Rise and Demise of the Maori War Effort Organisation', *The New Zealand Journal of History*, vol.21, no.1, April 1987, pp.156-72.

Between 1944-46 Taranaki, Ngai Tahu and Waikato claims were finally `settled' by the Government and Parliament was inundated with a raft of petitions from other tribes calling for action on their grievances. In 1944 alone nine petitions were received from the Tauranga tribes in respect of the confiscation of their lands. Seven of these came from hapu of Ngati Ranginui, one from Waitaha, and one from Ngati Hinerangi.[285]

Of the Ngati Ranginui petitions, one referred to the fact that Judea pa had raised over £45,000 for the war effort and another stated that owing to the brevity of the Sim Commission's sitting at Tauranga they had been unable to give full evidence before it. But the substance of the petitions was virtually the same (and in some cases almost word-for-word) in every case: the 50,000 acres retained by the Crown was Ngati Ranginui land; relatively few Ngati Ranginui had fought against the Imperial troops and yet their lands had been confiscated for the rebellion of others. As one of the several Ngaitamarawaho petitions stated:

> If the whole area finally retained by the Crown after the confiscation had been the common property of the rebellious tribes no injustice would have been done but our ancestral lands aggregating 50,000 acres were taken (with the exception of approximately *700* acres returned to us) in punishment for the rebellion of the tribes and sub-tribes

[285] See AAMK 869/1588b, RDB, vol.138, pp.52899-52956 for copies of these petitions and the reports of the Native Affairs Committee thereon. Those from Ngati Ranginui were 1944 petition numbers 71, 75, 76, 88, 89, 124, 125. The Waitaha petition was no. 101/1944; and Ngati Hinerangi, no.108/1944. A further petition, 120/1944, from Ngatoko Rahipere and ninety others is also listed as referring to the Tauranga confiscated lands, p.52910.

> in the Tauranga District and their allies from outside the Tauranga District. These tribes and sub-tribes had never owned the lands thus confiscated. The rebellious tribes had practically all their land returned to them. Our loyal ancestors had practically all their land confiscated and retained. Rebellion was thus apparently rewarded by an almost complete amnesty. Loyalty to the Crown was thus apparently punished by an almost complete deprivation by the Crown of the loyalists['] ancestral lands.[286]

In consequence of the confiscation of their lands Ngaitamarawaho claimed to be `practically landless and destitute' and requested a full enquiry into the facts of the matter in order that appropriate relief or compensation might be given.

The petition of Waitaha, signed by Te Pirihi Kerei and sixteen others, stated that although the 1865 Order-in-Council was intended to confiscate the lands of Ngai Te Rangi, it had encroached on their tribal territory and that:

> when objection was made by the Waitaha tribe against the encroachment of the said confiscation into their territory, the Government to validate the said Order-in-Council which was clearly ultra vires, immediately enacted "The Tauranga District Lands Act, 1867".[287]

James Douglas had given evidence before the Sim Commission in 1927 and stated that the matter raised in his petition on behalf of Ngati Hinerangi had not been pressed further at that time. His tribe claimed the 20,000 acre Aongatete Block (part of the Katikati-Te Puna purchase) had been sold to the Crown by those

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[286] Petition of S. Kohu and others, no.76/1944, ibid., p.52953.

[287] no.101/1944, ibid., p.52928.

who were not its rightful owners and requested the return of the lands or adequate compensation in lieu of this.[288]

These were only the beginnings of a fresh wave of Parliamentary petitions and appeals to ministers. In 1945 George Hall and Ngati Ranginui petitioned the House again, this time citing their service record in no uncertain terms and specifically requesting the appointment of `a competent and impartial tribunal' to hear the claims of their tribe.[289] Maharaia Winiata of the Judea (Huria) Tribal Welfare Committee wrote to the Native Minister, Rex Mason, in August 1945 seeking definite information on the Government's intention to establish a tribunal to investigate Maori claims,[290] but was informed in response that claims with `undoubted merit' would be settled before any such Commission was established.[291]

Already Parliament's Maori Affairs Committee had referred numerous petitions to the Government for consideration and in 1946 further requests for action on the grievances of the Tauranga tribes were sent to Wellington (including one from Ngai Te Rangi).[292] In November of that year Prime Minister Fraser

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[288] no.108/1944, ibid., p.52924.

[289] no.108/1945, ibid., pp.52886-87.

[290] M. Winiata to Minister of Native Affairs, 6 August 1945, ibid., pp.52888-90.

[291] Native Minister to Winiata, 13 August 1945, ibid., p.52891.

[292] N. Tutahi to Prime Minister, 19 August 1946, AAMK 869/207a [formerly MA 7/6/168, vol.2], ibid., p.53287.

visited Judea pa, where representations were made to him that the Surplus Lands Commission set up under the chairmanship of Sir Michael Myers ought to be directed to also investigate the claims of the Tauranga tribes.[293] Fraser promised to review the matter but in the end it was concluded that the surplus lands issue was more than enough for one Commission to handle.

But if initially the Labour Government was at a loss as to how to respond to these petitions, by 1947 it appears to have decided that none of them had any merit. In May of that year, Eruera Tirikatene, a member of the Executive Council, informed George Hall that, in view of the Sim Commission's findings, `there is really nothing left to be investigated so far as Ngatiranginui are concerned'.[294] Later that month the Under Secretary wrote a detailed memorandum for the Native Minister which weighed up the pros and cons of all the petitions referred to the Government for consideration which remained outstanding. Almost all of the Tauranga petitions listed were considered `concluded' or `perhaps...concluded' since they supposedly referred to matters already investigated by the Sim Commission.[295]

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[293] memorandum re visit to Judea pa, 22 November 1946, ibid., p.53280.

[294] Tirikatene to Hall, 5 May 1947, ibid., p.53277.

[295] Native Under Secretary, memorandum for Minister, 21 May 1947, MA1 5/13/- part 3, ibid., vol.57, pp.21693-96.

In 1948 the indomitable George Hall and forty-seven others of the Ngati Ranginui tribe again petitioned Parliament,[296] prompting a further review of the Tauranga claims by Tipi Ropiha, Under Secretary of the renamed Department of Maori Affairs. In a detailed draft memorandum on the subject dated 1 December 1948 Ropiha concluded that:

> the petitioning parties have alleged no grounds of complaint additional to those made before the Commission of 1927. I cannot see that any good purpose would be served by referring the matter to another tribunal. After some sixty years without complaint the Maoris asked for an investigation. The investigation was granted and duly conducted, with the result that the Maoris failed to establish even a prima facie case of injustice warranting detailed investigation...
>
> A further careful and detailed investigation of each claim has now been made in this office; but the information available serves only to deepen the impression that...none of the claims has sufficient merit to warrant reference to a Royal Commission.[297]

Ngati Ranginui, according to Ropiha, had been `as deeply involved in the rebellion as Ngaiterangi' and were in any event `already well intermingled' with them at the time of the wars. Particular individuals may or may not have been loyalists during the 1860s; this would be impossible to tell after so many years (which in itself was considered telling evidence against their claim). Again, Waitaha's supposed silence between 1865 and 1923 (according to the Sim Commission) was considered sufficient to dismiss their claim; and Ngati Hinerangi's claim to the

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[296] no.68/1948, AAMK 869/207a, ibid., vol.138, p.53272.

[297] T. Ropiha, draft memorandum for Maori Affairs Minister, 1 December 1948, ibid., pp.53254, 53256.

Aongatete Block was rejected on the grounds of the 1871 deed signed with the Crown - even though only a handful of chiefs had been a party to this.

Ropiha's `detailed investigation' of the Tauranga claims seems to have involved little more than reading and reciting the report of the Sim Commission. Ngata and many others had for years pointed to the inadequacies in the Commission's findings with respect to Tauranga and yet despite this (and complaints from many Maori that they had not had an opportunity of giving evidence to the Commission), the Sim Report provided a convenient escape route for Governments seeking to avoid the bother and expense of conducting a truly detailed investigation of the Tauranga confiscation.

In 1949 George Hall was granted an interview with the Prime Minister and Minister for Maori Affairs, Peter Fraser, and reiterated his request on behalf of Ngati Ranginui for an impartial tribunal to sit and consider their case.[298] Fraser replied that:

> From all the information it would appear that the two tribes - Ngati Ranginui and Ngaiterangi were so intermixed that it would be a very difficult thing to sort them out. He understood that all the people round about the Tauranga area were known as Ngaiterangi. It would be for the people concerned to establish a claim.

[298] Notes of Representations made to the Minister of Maori Affairs, 9 July 1949, ibid., p.53240.

Exactly how they were supposed to establish a claim in the absence of any Government willingness to provide a forum in which to air their case was not made clear.

9. CONTINUING EFFORTS, 1949-72

A decade later, Hall was still pressing the Government to set up a Commission to investigate Ngati Ranginui claims and receiving much the same response from Prime Minister Nash. Ngati Ranginui had `received substantial justice' he was told,[299] whilst H. Piahana was informed a year earlier that:

> In the light of the [Sim] Commission's report, and in the light of the fact that any enquiry about the ancestral rights of those who were not engaged in the fighting would now be virtually impossible, it is very much to be doubted that there can be any reopening of the question.[300]

A Ngati Ranginui deputation to the Prime Minister in 1959 again produced no tangible results, despite the representations of a local Pakeha Mormon leader who explained that most of the Judea people were members of his Church and were regarded locally as the `landless Maoris'.[301]

Up until this time the Tauranga confiscation claim had to a large extent been a Ngati Ranginui, and in particular

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[299] Minister of Maori Affairs to G.R. Hall, ibid., p.53158.

[300] Minister of Maori Affairs to H. Piahana, 9 June 1958, (draft), ibid., p.53185.

[301] Notes of Interview with Prime Minister, 17 February 1959, ibid., p.53167.

Ngaitamarawaho, one. In October 1948 George Hall had presided over the inaugural meeting of the Raupatu Land Claim Committee, which had been formed in order to `direct the affairs of the Ngatiranginui Tribe re confiscated lands Claim'.[302] This committee appears to have been active until at least 1951, raising funds for Hall's meetings with Government officials and discussing the best way to proceed with Ngati Ranginui's claims.[303] There is little record of further activities over the next seven years, but in 1958 the Ranginui Land Investigation Committee was formed in order to `look into the availability and interest of the small holdings of the Ranginui people and administrate the affairs connected with their Lands'.[304] Whereas this committee decided at its first meeting to affiliate with the Labour Party, a further committee established in October 1959 took the opposite tack. Perhaps partly as a result of Nash's recent rejection of their raupatu claim, the rather grandly-named New Zealand Independent Maori Movement resolved that the four Maori seats in Parliament should be free from all ties with the major political parties and determined to fight for `racial equality'. `In simple form', it was stated, `the committee is to right the considered wrongs'.[305]

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[302] Raupatu Land Claim Committee Minute Book 1948-1960, entry for 10 October 1948, Cooney, Lees & Morgan [Tauranga law firm] Archives. [vol.3, p.588].

[303] Hall had been appointed `legal advisor and Delegate to the ministers, and any other Govt. parties concerned re our Petition Affairs and administration' at the inaugural meeting. [vol.3, p.590].

[304] Raupatu Land Claim Committee Minute Book, 1948-60, entry for 1958 [date not given]. [vol.3, p.608].

[305] ibid., entry for 8 October 1959. [vol.3, p.604].

A portent of things to come, however, was perhaps to be seen in a Ngai Te Rangi deputation to Nash in 1960. Mr K. G. Gardiner argued that it was inconsistent for the Crown to compensate Waikato for the confiscation of their land but not Ngai Te Rangi, who were no more involved in the war. Moreover, the Government of the day had purchased Ngai Te Rangi lands from those who were not the true owners.[306] The Prime Minister's subsequent written response to the representations made was the by now all too familiar stock reply that `substantial justice' had been done; a Commission had already considered the arguments made and no point would be served by a further enquiry into the matter.[307]

Decades of being rebuffed by the Crown in this manner seem to have prompted a rethink as to how the confiscation claim ought to be presented. In September 1961 the four Tribal Executives of Ngai Te Rangi, Ngati Ranginui, Matakana and Katikati united to form the Tauranga Tribal Executive, which had as one of its principal goals the presentation of a pan-iwi raupatu claim to Government.[308] By 1962 the Executive had resolved to undertake research into the confiscation as a preliminary to presenting a claim and, though receiving little more than a recitation of

[306] Notes of Deputation to Prime Minister, 9 September 1960, AAMK 869/207a, RDB, vol.138, pp.53138-39.

[307] Nash to Gardiner, 11 October 1960, (draft), ibid., p.53136.

[308] Tauranga Tribal Executive Minute Book, 1961-68, entry for 8 September 1961, pp.1-3.

the Sim Report in response to a request to the Maori Affairs Department for assistance,[309] persevered in the matter. On the centenary of Gate Pa and Te Ranga in 1964 W. Ohia of the Tauranga Tribal Executive informed J. McEwen, Secretary for Maori Affairs, that despite all the calls for racial unity at the recent commemorations:

> mere words cannot displace the feeling of injustice which still remains in the district from the confiscations and unhappy land sales which followed 1864. Our people is one of the few, maybe the only one which has not been awarded compensation for those confiscations...
>
> Our Executive wishes to bring the matter of compensation forward again, but this time on a tribal basis rather than on an individual basis, whereby any funds received may be used for the common benefit.[310]

McEwen believed they would have great difficulty in proving their case. The verdict of the Sim Commission had taken on a life of its own: not only validating the official rationale for the Tauranga confiscation but also ensuring that the claims of the Tauranga people would continue to go unrecognised for so long as it remained intact. In 1965 Ohia described to McEwen how bitterly the Tauranga iwi felt at the manner in which successive Governments had denied the legitimacy of their grievances simply on the basis of the Sim Commission's findings. Both public and historical opinion had moved on since 1928, according to Ohia,

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[309] W. Ohia, Secretary, Tauranga Tribal Executive, to J,K, Hunn, Secretary for Maori Affairs, 25 June 1962, AAMK 869/207a, RDB, vol.138, p.53134. Secretary for Maori Affairs to Ohia, 16 July 1962, pp.53132-33.

[310] Ohia to Macewen [sic], n.d. [received 3 October 1964], ibid., p.53129.

and it was about time that the politicians faced up to this fact and reopened the matter of the Tauranga confiscated lands so that it could be judged in the light of these changes.[311]

McEwen replied that the Tauranga iwi would need to prove that the Sim Commission was wrong in order to assert any claim for compensation, and in the mid-1970s this challenge was taken up and a renewed campaign for recognition of their grievances commenced.

10. THE THIRD LABOUR GOVERNMENT AND TAURANGA

In 1973 Prime Minister Norm Kirk visited Tauranga and promised to consider any case that was brought forward in respect of the confiscated lands.[312] By February 1975 Mr E.D. Morgan of the local law firm Cooney, Lees & Morgan had been instructed to act on behalf of the Tauranga Moana Executive Committee in preparing its case for presentation to Government. On 2 April 1975 a deputation from Tauranga made a number of submissions to Prime Minister Rowling. Morgan stated that the Tauranga confiscation was `unjust' and the subsequent purchase of the Katikati-Te Puna Block made `under duress'. The Tauranga Campaign of 1864 was inextricably linked with the Taranaki and Waikato conflicts, something which the Sim Commission - whose terms of reference were very narrow - had failed to appreciate. Whereas previous efforts to obtain redress had been made by one group or another,

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[311] Ohia to McEwen, 5 February 1965, ibid., pp.53126-27.

[312] *Bay of Plenty Times*, 23 April 1975, ibid., p.53094.

Morgan stated that `Now, for the first time, all tribes have united to plead for justice'.[313] A submission from W. Ohia was along similar lines,[314] and one from T.R. Te Kani provided further background to the battles at Gate Pa and Te Ranga.[315] Pei Jones, the noted Tainui scholar, also added the support of his people for the Tauranga tribes' efforts.[316]

Rowling visited Tauranga on 24 May 1975 in order to attend the opening of the Whareroa marae dining hall and took the opportunity provided to announce that the Government accepted in principle the claim of the Tauranga people and was considering establishing a Trust Board to administer any compensation paid. Morgan was advised that a committee ought to be established to represent the Tauranga iwi in their negotiations with Government[317] and subsequently informed the Minister of Maori

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[313] Morgan, submission to Prime Minister, n.d., AAMK 869/1589a [MA 7/6/168, vol.3], RDB, vol.139, pp.53465-67.

[314] Ohia, submission to Prime Minister, n.d., AAMK 869/207a, ibid., vol.138, pp.53097-53101.

[315] T.R. Te Kani, submission to Prime Minister, n.d., ibid., pp.53102-03.

[316] Tainui support for the efforts of Tauranga Maori to receive compensation in respect of the confiscations was long-standing. When compensation for the Waikato confiscations was agreed upon in 1946, Tainui offered to share this with the people of Tauranga Moana. According to Jones, the elders of Tauranga `expressed themselves as being deeply touched by the offer to participate in the Waikato grant, but said that their claim for compensation was still a very much live issue, and that it had become a matter of tribal honour to be vindicated and sacred duty for their people to persevere with their claim'. P. Jones, submission to Maori Affairs Select Committee, 1978, Petition no.78/21, ABGX acc.W3706, box 14, National Archives. [vol.3, p.492].

[317] Minister of Maori Affairs to Morgan, 29 May 1975, AAMK 869/207a, RDB, vol.138, p.53088

Affairs, Matiu Rata, that an informal Tauranga Moana Trust Board had been elected on 1 June for the purposes of holding discussions with the Crown.[318]

Part of the raupatu claim presented in 1975 was that the Crown should remove the stigma of `rebels' from the Tauranga tribes by acknowledging that they had acted in self-defence during the wars. One Maori Affairs official perceived problems with this. With the exception of Taranaki, the other raupatu claims settled had all been on the basis that the confiscations had been justified but excessive. But as E.W. Williams, the Deputy Secretary, pointed out:

> If now, by some means or other, the Maori people of Tauranga involved in the fighting in the Waikato and subsequently in their own district are pronounced not to have been rebels, the same must presumably be said of Waikato and others. It will be open to the latter tribes to claim further compensation not for excessive confiscation but for the total area confiscated. This could involve sums of money so great as to be quite out of the question.[319]

Williams also considered the inclusion of the Katikati-Te Puna purchase in the claim `a little disingenuous' and concluded that:

> For a net confiscation of 462,000 acres Taranaki received $10,000 p.a. Waikato get the same amount in respect of a confiscation totalling 800,000 acres which the Commission said (but not by how much) to be excessive. If any sort of comparison at all is to be made on the basis of areas

[318] Morgan to M. Rata, 13 June 1975, ibid., p.53085.

[319] E.W. Williams (Deputy Secretary), memorandum for Minister of Maori Affairs, 8 May 1975, ibid., p.53096.

> taken, Tauranga could expect at the most a few hundred dollars a year, a sum which would not justify the setting up of a trust board to administer it.

Members of the Tauranga Moana Trust Board met with Rata on 19 August and made their own representations concerning compensation. Morgan submitted that this should be set at $10,000 per annum in perpetuity (with adjustments for inflation) and a lump sum one-off payment of $450,000.[320] In a detailed written submission outlining their reasons for requesting this amount, Morgan stated that for the sake of simplicity the Board had decided to set aside their claims for compensation in respect of the Katikati-Te Puna purchase and focus solely on the 50,000 acres retained by the Crown. This was `among the best and most valuable land in the Tauranga district', according to Morgan, fetching prices of $1,000 per acre or more. Based on the modest figure of $100 an acre, however, the Board would still be entitled to claim $5,000,000. Recognising that this would be more than the Government was prepared to consider, and the need to relate their compensation to that received by Tainui, they were prepared, though, to accept $10,000 per annum, plus a lump sum for the forty-five years since 1930 (when several other settlements were calculated from) or alternatively a one-off payment of $1,000,000.[321]

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[320] Minutes of Meeting with M. Rata, 19 August 1975, AAMK 869/1589a, ibid., vol.139, pp.53539-40.

[321] Morgan to Rata, 8 September 1975, ibid., pp.53523-25.

So far as the Government was concerned, however, the figures requested were still too high. In September Rata submitted a memorandum to Cabinet suggesting the payment of $160,000 spread over four years as `full and final' settlement of the claim.[322]

But with the end of the Parliamentary session and a general election looming, Morgan was anxious to ensure that enabling legislation was passed as soon as possible to formally establish the Tauranga Moana Trust Board as the recipient of any compensation, considering that the actual level of this could always be fixed later by Order-in-Council if agreement had not been reached before passing the Act.[323] On 12 September 1975 Rata assured the MP for Eastern Maori, Mr P.B. Reweti, that the proposed legislative sanction for an agreement would be included in the Maori Purposes Bill then before the House.[324] Draft clauses establishing the Tauranga Moana Trust Board were accordingly prepared for inclusion in the Bill but withdrawn when no agreement was reached as to the level of compensation.[325]

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[322] Minister of Maori Affairs, memorandum for Cabinet, (draft), [24 September 1975], ibid., pp.53514-15.

[323] Morgan to Secretary for Maori Affairs (Apperley), 8 September 1975, ibid., p.53526.

[324] Minister for Maori Affairs to P.B. Reweti, 12 September 1975, ibid., p.53522.

[325] These clauses formally constituted a Tauranga Moana Maori Trust Board under the provisions of the Maori Trust Boards Act 1955. The beneficiaries of this Board were to be `the members of the Tauranga tribes and their descendants' who for the purposes of the compensation deal were defined as `such of the Ngaiterangi and Ngatiranginui tribes, or sections of those tribes, who were the owners according to Maori custom of the lands described in the Schedule to the Tauranga District Lands Act 1867 as amended by section 2 of the Tauranga District Lands Act 1868'. A sum of $160,000 was to be paid to the Board by four

At the end of the Parliamentary session (but before the general election) Morgan wrote bitterly to Rowling, complaining that the Trust Board felt dismayed that nothing had been done to fulfil the promise made at Whareroa in May.[326] In November the third Labour Government lost office and the Tauranga iwi were once more faced with the prospect of having to convince yet another set of politicians of the justice of their claim.

11. BACKGROUND TO THE TAURANGA MOANA MAORI TRUST BOARD ACT 1981

In a briefing paper to the incoming Minister of Maori Affairs, Duncan MacIntyre, the Deputy Secretary of the Department wrote that by the mid-1950s `the generally accepted situation was that all recognised claims were considered to have been settled'. The Tauranga claim had never been recognised by the Crown, since a Royal Commission had found there to be no case. The previous Prime Minister's public announcement that the claim would be settled and a Trust Board set up had altered this situation somewhat but he believed the $160,000 compensation proposed by

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equal annual payments `in full and final satisfaction and discharge of all claims and demands against the Crown in respect of land appropriated by the Crown and land claimed by the Tauranga tribes and granted by the Crown to other persons prior to the date of this Act'. Beyond this, however, there was no draft clause formally apologising to (or even pardoning) the Tauranga tribes for the events surrounding the wars of the 1860s and subsequent confiscations. See ibid., pp.53507-08 for these draft clauses.

[326] Morgan to Rowling, 22 October 1975, ibid., p.53484.

Rata to be `excessive in relation to the payments to the Tainui or Taranaki Boards'.[327]

Morgan had already begun lobbying the Minister over the matter, requesting a meeting as early as January 1976.[328] But by the middle of the Muldoon Government's first term in office MacIntyre was still considering the issue. N.I. Te Tua of the Tauranga Executive of Maori Committees wrote to the Minister in June 1977 to express his concern that no decision had been reached yet, adding `all we have to show our people for all our efforts, is a "wait-and see", or "Taihoa" policy...We feel that we have been patient long enough'.[329] In December Morgan sent the Minister a detailed submission outlining their reasons for considering compensation justified.[330]

By April 1978 MacIntyre had finally reached a decision of sorts. He had been unable to decide on the merits of the claim and suggested that they petition Parliament so that the Government could act on any recommendations of the select committee.[331]

By May the Tauranga Moana Trust Board and Tauranga Executive of Maori Committees had decided to follow this well-worn path and

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[327] Williams, memorandum to Minister for Maori Affairs, 11 February 1976, ibid., pp.53469-71.

[328] Morgan to MacIntyre, 20 January 1976, ibid., p.53473.

[329] N.I. Te Tua to MacIntyre, 8 June 1977, ibid., p.53428.

[330] Morgan to MacIntyre, 7 December 1977, ibid., pp.53417-21.

[331] MacIntyre to Morgan, 13 April 1978, (draft), ibid., p.53415.

in August lodged a petition with Parliament.[332] Emphasising firstly that the Executive and Trust Board represented the voice of the Maori people of Tauranga without dissent, the petitioners sought redress for `the forcible confiscation of 50,000 acres of Maori land following the Battles of Gate Pa and Te Ranga in 1864' and `the purchase of land at nominal prices from the defeated and dispossessed tribes'. The Tauranga claim had been dealt with `in a most superficial way' by the Sim Commissioners, who `appeared to be men in a hurry'. A legacy of bitterness had been born of the failure of past Governments to recognise the injustice done them and they now requested that their submissions be heard at Tauranga `in the hope that the wrongs may be righted in the same historic area as they occurred'.

A number of submissions were heard by the Select Committee on Maori Affairs at Hairini marae on 18 September 1978.[333] Professor M.P.K. Sorrenson and Dr Evelyn Stokes both tabled historical accounts of the Tauranga confiscation, and R.T. Mahuta continued the long-standing Tainui support for the Tauranga claim.[334]

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[332] no.78/21, ibid., pp.53339-41.

[333] On 6 September 1978 a special report of the Committee was tabled in Parliament, informing the House of a resolution passed `That the Maori Affairs Committee have power to adjourn from place to place to enable the committee to travel to Tauranga to obtain evidence on Petition No. 78/21 of the Tauranga executive of Maori Committees and the Tauranga Moana Trust Board, and that the proceedings of the committee be open to accredited representatives of the news media during the hearing of submissions'. *Journals of the House of Representatives of New Zealand*, 6 September 1978, pp.192-93. [vol.3, p.471].

[334] See `Submissions in Support of Petition for Tauranga Confiscated Lands by R.T. Mahuta on behalf of the Waikato Tribes', Maori Affairs Committee petition no.78/21, ABGX, acc.W3706, box 14, National Archives. [vol.3, pp.476-86].

Morgan was asked at the hearing to provide a statement of the amount of compensation which the Executive and Trust Board sought and replied in writing a week later. On 25 September he informed the Select Committee that the amount of compensation the claimants sought was a lump sum payment of $2,000,000, which had been calculated on the basis of $10,000 per annum since 1930, with 5% compounded interest for the same period. Though they also considered that it would only be fair and proper for this to be adjusted for inflation, this would have produced a `staggering' figure. The amount proposed, Morgan stated, would create a viable trust fund for a Board whose beneficiaries would probably number more than 10,000.[335]

Morgan and Ohia both travelled to Wellington to provide further evidence to the Select Committee (which had changed in membership since the general elections at the end of 1978) on 4 July 1979. In summarising their case, Morgan once more pointed to the obvious inconsistency of compensating Taranaki and Waikato but not Tauranga and added:

> The only argument we have ever heard against us is that the 1928 Commission of 50 years ago - in these less enlightened times, with its limited terms of reference, dealing with a poorly prepared case [-] found against Tauranga...It sometimes seemed to us that the ghost of the 1928 Commission was still howling around the corridors of

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[335] Morgan to Secretary, Maori Affairs Committee, 25 September 1978, ibid. [vol.3, p.487].

> the Treasury & Maori Affairs, and that they could hear no other argument however logical.[336]

Though $2,000,000 might sound like a great deal of money, Morgan suggested, in the context of the hundreds of millions the land taken would be worth now, the 10,000 potential beneficiaries of the Board, and the $55,000,000 spent on foreign aid in the previous financial year, the amount they requested was merely a token one. But aside from the question of compensation, Morgan added that the people of Tauranga also sought to have the stigma of rebels removed from them by Act of Parliament.

On 9 August 1979 the Maori Affairs Committee released its report on the petition, finding in favour of the petitioners in relation to the confiscation of 50,000 acres but declining to make any recommendation in respect of the Katikati-Te Puna purchase. In recommending that the Government give favourable consideration to the petition, however, the Committee added certain guidelines it believed ought to be taken into account in assessing the degree and extent of compensation payable:

> 1. The need to acknowledge tribal honour adversely affected by the declaration of the ancestors of the petitioners as "Rebels", by removing the stigma of rebellion.
>
> 2. That in recognising as legitimate this prayer, any compensation have due regard to the two major claims of a similar nature already adjudged - namely the Taranaki and Waikato land claims.
>
> 3. That any compensation paid pursuant to all matters raised in this petition shall be full and final settlement.

[336] Summary of Evidence Presented to the Maori Affairs Select Committee on 4 July 1979 by Mr. E. Morgan, ibid. [vol.3, p.498].

> 4. That any compensation agreed to and paid in cash or kind be vested in and administered by the Tauranga Moana Trust Board in accordance with the Maori Trust Board Act 1955.[337]

Clearly the Committee was concerned that any compensation agreed on might unintentionally reopen the vexed question of past confiscation settlements or create some kind of precedent for outstanding claims. The Department of Maori Affairs was requested to provide the Committee with information on these matters and the reply of its Secretary, I.P. Puketapu, in July 1979 appears to have had a significant influence on the Committee's final recommendations:

> It is...vital to recognise that a settlement at Tauranga of a claim which governments have refused to concede in the past is likely to result in the renewal of other previously unsuccessful claims. Also if settlement is made at Tauranga at a figure which appears high by comparison with other previous settlements there may well be a call to renegotiate these.
>
> The evidence presented by the Tauranga petition appears sound. Set against the present mood in Maoridom about land issues, my advice to the Select Committee is that if the evidence weighs in favour of the petition, then every effort should be made by Government to settle in 1979. On the evidence of known confiscation claims, such settlement would not prejudice the Select Committee's consideration of any other petitions likely to be lodged using the Tauranga decision as a precedent. All other major confiscation claims have been well heard and could only be reopened on the basis of new evidence in respect of original propositions.[338]

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[337] Report of the Maori Affairs Committee on petition no.78/21, AAMK 869/1589a, RDB, vol.139, pp.53337-38.

[338] Puketapu to Chairman, Maori Affairs Committee, 9 July 1979, Maori Affairs Committee, Papers Re Tauranga Moana Trust Board Bill, ABGX, acc.W3706, National Archives. [vol.3, pp.501-02].

In December the chairman of the Select Committee, W.R. Austin, was informed by the Minister of Maori Affairs, Ben Couch, that calculations were being done as to the amount of compensation to be paid.[339] Early in 1980 Couch prepared a draft memorandum for Cabinet concerning a proposed basis for settlement. The Minister believed that `some compensation is justified', even taking into account the findings of the Sim Commission and emphasised that his proposal took cognisance of the guidelines laid down by the Maori Affairs Committee (also avoiding an annual payment `which would tend to encourage further approaches to Goverment [sic]'. Though the proposal had yet to be discussed with the petitioners, Couch recommended that Cabinet:

> (a) approve that the Maori tribes who fought against the Government forces at Gate Pa and Te Ranga not being designated as "rebels"
>
> (b) approve compensation amounting to $201,184 to the Tauranga Moana Trust Board in the 1980/81 financial year provided that
>
> > (i) suitable financial authority is made
> > (ii) a Tauranga Moana Trust Board is properly constituted by 31 December 1980
> > (iii)it be accepted in full and final settlement of land confiscated from the Maori people of the Tauranga area following the battles of Gate Pa and Te Ranga in 1864
>
> (c) If the compensation of $201,184 is not acceptable to the petitioners, the Ministers of Finance and Maori Affairs be delegated authority to approve jointly compensation up to $250,000 such compensation [to] be subject to the same conditions as in (b) above.[340]

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[339] Couch to Austin, 7 December 1979, AAMK 869/1589a, RDB, vol.139, p.53330.

[340] Minister of Maori Affairs, draft memorandum to Cabinet, 17 January 1980, ibid., pp.53324-26.

The figure of $201,184 had been calculated on the basis of 20% of the Taranaki claim (taking into account relative land values and suggestions that some of the land returned at Tauranga had not gone to its rightful owners). Twenty per cent of Taranaki's compensation would have amounted to $2,000 per annum between 1946-1979 and $3,000 after April 1979, which totalled $171,184 (though this of course ignored the fact that Taranaki had been receiving compensation since 1930, not 1946). Added to this was $30,000 as `The cost of "buying out" the obligation to make future annual payments of $3,000 p.a.', producing the figure of $201,184.[341]

Neither this nor the higher figure of $250,000 subsequently offered to the Trust Board was acceptable to the Tauranga people, however. They had made it plain that they considered their request for $2,000,000 to be an eminently reasonable one and had several times set out their basis for requesting such an amount.

On 8 May 1980 Cabinet's Committee on Legislation and Parliamentary Questions considered the proposal for compensation. According to the minutes of this meeting:

> The Committee was informed that the amount of compensation had not been discussed with the Tauranga Executive of Maori

[341] G.D. Fouhy (Chief Registrar) to [Treasury?] Secretary, 12 December 1979 [? date obscured], ibid., p.53329.

Committees - their original demand was $2 million which in subsequent discussions rose to $10 million.[342]

Further to this, a `major divergence of opinion between Treasury and the Department of Maori Affairs over the funding of the compensatory payment'[343] had emerged, with Treasury advocating that any compensation should come out of the Maori Affairs Vote, and the Department strenuously seeking to resist this. This inter-departmental conflict over the method of payment seems to have been of more concern to officials than the fact that the Tauranga people had yet to be consulted concerning the proposed compensation. On 12 May Cabinet deferred a decision on the matter for a week in order to allow both Departments to consult on the matter.[344] When the question was finally considered by Cabinet on 19 May Treasury's position won the day, and provision was approved for up to $250,000 to be included in the estimates for the Maori Affairs Vote for 1981-82, `as a compensatory payment to a Tauranga Moana Trust Board', provided this was properly constituted by the end of 1980 and `the compensatory payment is accepted as full and final settlement for land

[342] Minutes of Cabinet Committee on Legislation and Parliamentary Questions, 8 May 1980, Tauranga Confiscations, MA 7/6/168, vol.4, [note: volumes 1-3 in this series are reproduced in RDB vols.138-39. vol.4 commences in May 1980]. Maori Land Court, Head Office, Wellington. [vol.3, p.549].

[343] ibid.

[344] Secretary of Cabinet to Minister of Maori Affairs, [received 14 May 1980], ibid. [vol.3, p.552].

confiscated from the Maori people of the Tauranga area in 1864'.[345]

On 29 May 1980 the Minister of Maori Affairs, Ben Couch, officially informed the chairman and members of the Tauranga Moana Maori Trust Board Working Party of the Government's decision:

> In response to your petition, the Government has removed the designation "rebel" from those Maori tribes who fought against the Government forces at Gate Pa and Te Ranga in the 1860's.
>
> A payment of $250,000 will be made in the financial year 1981/82 in full and final settlement of all claims arising from the confiscation of Maori land after the battles of Gate Pa and Te Ranga in 1864; and from the purchase of land at nominal prices from the defeated and dispossessed tribes.
>
> This payment will be made on two conditions: one is that a properly constituted Tauranga-Moana Trust Board exists by December 31, 1980; and that the payment is accepted by that board as a full and final settlement of all claims concerning the land confiscated and bought in this area.
>
> If these conditions have been met, it may be possible to make an initial part payment during the financial year 1980/81, and this will be kept under review.[346]

Couch's letter presented the people of Tauranga Moana with something of a `take-it-or leave-it' offer. They had not been consulted over the level of compensation offered by the Government (which Morgan later stated had been `unilaterally

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[345] Secretary of the Cabinet to Minister of Maori Affairs, [received 20 May 1980], ibid. [vol.3, pp.553-54].

[346] Couch to the Chairman and Members of the Tauranga-Moana Maori Trust Board Working Party, 29 May 1980, Cooney, Lees & Morgan archives. [vol.3, p.629].

decided upon')[347], nor as to the other terms of any settlement. This was despite the fact that the Government was already aware of the substantially larger amount of compensation the Trust Board was seeking.

On 17 June 1980 Morgan informed the Minister that a meeting of all the people had been called to discuss the Government's offer. Early in July Couch informed Morgan that a decision as to whether to accept or not would have to be made by the end of August in order to ensure the money was paid before the end of the financial year (31 March 1981).[348] On 20 August 1980 Couch prepared a memorandum for Cabinet on negotiations for a settlement in which he stated that the Tauranga Maori people had made representations to him concerning three aspects of the Government's `decision':

> (a) They would prefer that the payment be accepted as something other than "as full and final settlement". The amount of compensation was calculated to accord with payments already made in respect of the Waikato and Taranaki land claims. The Tauranga Maori people are concerned that they are not to be overlooked if any adjustments are made in future in respect of those two settlements.
>
> (b) They would prefer compensation of $500,000. In making this request, the Tauranga Maori people mentioned that it would be difficult to make a suitable investment in land near Tauranga using $250,000 as a deposit. Values are very high in that region because of the emphasis on horticulture. Also, although a minority of the local people

[347] Submission to the Chairman and Members of the Select Committee on Maori Affairs, Maori affairs Committee Papers Re Tauranga Moana Trust Board Bill, ABGX, acc.W3706. [vol.3, p.509].

[348] Couch to Morgan, 11 July 1980, (draft), MA 7/6/168, vol.4. [vol.3, p.570].

> are still seeking a grant of $2,000,000, compensation of $500,000 would be acceptable to most - who are aware of the present value of the 50,000 acres that was confiscated.
>
> (c) They seek an additional grant of $20,000 for the work involved in setting up the Trust Board.[349]

Couch recommended that Cabinet confirm its earlier decision in respect to compensation, other than removing the words `and final' from the terms of the settlement. This, he believed, would still not commit the Government to make any further grants in respect of the confiscated land, but would leave open `the facility (which already exists) for groups of dissatisfied people to make special representations to Government'. Notwithstanding the proposed amendment to the terms of settlement, however, Couch noted that `the Tauranga Maori people may well not accept a compensatory payment of up to $250,000 as a full settlement for the land confiscated from their ancestors in the 1860s' and asked Cabinet to authorise him to continue discussions in an attempt to reach an early settlement of the claim.

On 25 August 1980 Cabinet, after considering the minister's recommendations, declined to remove the words `and final' from the terms of the settlement and whilst confirming its earlier decision noted that `the Tauranga Maori people may not accept the compensatory payment of up to $250,000 as agreed to by

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[349] Minister of Maori Affairs, memorandum for Cabinet, 20 August 1980, ibid. [vol.3, p.575].

Cabinet as a full and final settlement'.[350] Couch had suggested in his memorandum that $500,000 would be an acceptable level of compensation for most Tauranga Maori. Yet despite this, Cabinet refused to budge from its earlier decision to offer up to $250,000 `in full and final settlement'. The minister was authorised to continue negotiations, but given little room to manoeuvre in terms of these.

Representatives of the Tauranga people were informed of the Government's decision early in September.[351] In reviewing the position of a number of outstanding land claims, the Maori Affairs Secretary informed his minister early in November that the Tauranga confiscation claim had:

> reached the stage where Cabinet has agreed to remove the designation "rebel" from those Maori tribes who fought against the Government forces at Gate Pa and Te Ranga in the 1860's but has declined the request to delete the words "and final" from the terms of the settlement approved by Cabinet. Cabinet has also declined to increase the compensation from $250,000 to $500,000 or to provide an additional $20,000 for current expenses.
>
> Legislation giving effect to the settlement and establishing a Tauranga Moana Trust Board has been drafted and on the footing that the Government's terms are accepted, will be included in this years [sic] legislative programme.[352]

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[350] Secretary of the Cabinet to Minister of Maori Affairs, [received 27 August 1980], ibid. [vol.3, p.579].

[351] Couch to Morgan, 11 September 1980, (draft), ibid. [vol.3, p.581].

[352] I.P. Puketapu, Secretary, to Minister of Maori Affairs, 4 November 1980, ibid. [vol.3, p.582].

With the Government apparently unwilling to budge from its earlier decision, the prospects for a settlement of the claim now seemed minimal. On 17 March 1981, however, the minister reported a possible breakthrough in negotiations to the prime minister. Couch informed Muldoon that:

> On Friday, March 13, 1981, I met again the Steering Committee of the Tauranga Moana Trust Board about further negotiations on the settlement of the confiscation of the lands after the Gate Pa Battle of 1864. Members are still divided about accepting the $250,000 offered by the Government. I was asked to bring back the following resolutions passed at the meeting:
>
> 1. The Board asks if the Government will consider adding another clause to the second-to-last paragraph of the agreement, to replace the present clause. The suggested clause is: "that this payment will be made on two conditions; firstly, that a properly constituted Tauranga Moana Trust Board exists; and, secondly, that the payment be accepted by the Board as a full and final settlement of all claims (to the same extent as any other Trust Board concerning all lands confiscated)["].[353]

Couch commented that `The Tauranga people asked that, if further claims were made, their claim would also be reconsidered. I see no reason why this should not be accepted'.In addition to this, Couch reported their desire to see the Trust Board properly constituted by legislation by the year's end, and their request for an additional sum to meet expenses incurred in compiling their claim. `It was apparent', he commented, that `these people still have mixed feelings about the grant. All agree it is not enough but, at the same time, most would like to get on with the settlement as soon as possible'. The Trust Board's members had

[353] Couch to Prime Minister, 17 March 1981, Cooney, Lees & Morgan Archives. [vol.3, p.632].

asked that priority be given to a loan to allow them to purchase a commercially viable block of land in addition to the $250,000 compensation, and the minister believed that this would be `one way of concluding the settlement more quickly'. On 18 March Couch informed Morgan that he had `approached the Prime Minister and he agreed to alter the Clause in the third paragraph as mentioned by your committee'. The minister believed that the payment of a loan `could be dealt with separately but successfully with the Department of Maori Affairs' and hoped that the Trust would have its expenses incurred in advancing the claim reimbursed as soon as possible.[354]

In a separate letter of the same date the minister formally informed the members of the Tauranga Moana Maori Trust Board Steering Committee of the Government's decision to accept the proposed change to the terms of the settlement:

> In response to your petition, the Government has removed the designation "rebel" from those Maori tribes who fought against the Government forces at Gate Pa and Te Ranga in the 1860's.
>
> A payment of $250,000 will be made in the financial year 1981/82 in full and final settlement of all claims arising from the confiscation of Maori land after the battles of Gate Pa and Te Ranga in 1864; and from the purchase of land at nominal prices from the defeated and dispossessed tribes.
>
> This payment will be made on two conditions: one is that a properly constituted Tauranga-Moana Trust Board exists by December 31, 1981; and that the payment is accepted by that Board as a full and final settlement of all claims, *to the same extent as any other Trust Board, concerning all land confiscated.*

[354] Couch to Morgan, 18 March 1981, ibid. [vol.3, p.630].

> If these conditions have been met, it may be possible to make an early initial part payment during the financial year and this will be kept under review.[355]

On 2 April 1981 Morgan informed the minister that at a meeting of the proposed Trust Board it had been resolved to seek Government acceptance in principle of the Board's proposal to apply for a loan of $1,750,000 so that the purchase of a suitable property could be investigated `before the Board decides on acceptance of the Government offer of $250,000'.[356] Couch, in reply, stated that:

> I agree, in principle, to the Board borrowing money for investment in property. However, a decision on any loan will be made by the Maori Land Board and not by the Government. Accordingly such a decision cannot be a condition of the Board's acceptance of the Government's offer of compensation. It is very unlikely that the Maori Land Board could consider a loan of the sum you mentioned in your letter, and I suggest the trustees could more realistically ask for an advance not exceeding $250,000.[357]

The members of the proposed Trust Board had not attempted to link the loan with acceptance of the compensation offered, but had merely sought to establish whether they would have

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[355] Couch to the Chairman and Members, Tauranga-Moana Maori Trust Board Steering Committee, 18 March 1981, [emphasis added], ibid. [vol.3, p.631].

[356] Morgan to Couch, 2 April 1981, MA 7/6/168, vol.4. [vol.3, p.584]. Morgan also informed the minister that they wished the numbers on the Board to be increased from nine to ten, that Ngati Ranginui should also be named in the legislation along with Ngai Te Rangi, and that the words `to the same extent as other Trust Boards concerned with claims arising out of confiscated land' should be added after `full and final settlement' in the draft Bill.

[357] Minister of Maori Affairs to Morgan, 14 April 1981, (draft), ibid. [vol.3, p.585].

sufficient funds for its operations in the event that they did so. Since the amount of compensation offered was clearly inadequate, this meant they would be forced to apply for a loan.

The minister's acceptance in principle to the Board borrowing additional funds to invest in property, along with the Government's concession on the full and final nature of the settlement appears to have tipped the balance in favour of accepting the offer of $250,000, despite considerable opposition from those who considered this grossly inadequate. On 14 August 1981 the Tauranga Moana Maori Trust Board Bill was introduced into Parliament, and after being read a first time was referred to the Maori Affairs Select Committee for consideration.[358]

There was, however, to be a shock in store for those who had expected the Bill to accord with Couch's letter of 18 March announcing the Government's willingness to modify the full and final nature of the settlement with the words `to the same extent as other Maori Trust Boards. On 15 August the *Bay of Plenty Times* reported that acceptance of the Bill was now unlikely in its present form. Morgan told the newspaper that:

> The Government had insisted that the words "full and final settlement" were included in the bill... .
>
> The board had accepted this, subject to an additional tag saying "to the same extent as other Maori trust boards". But it was understood this clause had been taken out of the bill.

[358] *Journals of the House of Representatives of New Zealand*, 14 August 1981, p.135. [vol.3, p.473].

> "I am sure the board will not accept it", ... "That clause was vital to the board". [359]

On 15 September 1981 submissions concerning the Bill were heard by the Maori Affairs Committee. Morgan told the Committee that following the earlier favourable recommendation in respect of the petition:

> the Government unilaterally decided on a figure of $250,000.00 as an award and for a long period the Minister of Maori Affairs has had discussions with members of the proposed Tauranga Moana Trust Board regarding acceptance of this figure.
>
> The people of Tauranga Moana have a very special place in their regard for the Committee and for the Minister, to whom they owe any progress made towards putting right an injustice over a century old.
>
> They have never been satisfied with the proposal of $250,000.00. They know that the compensation awarded has to be enough to fund a charitable trust set up in perpetuity for an estimated pool of 20,000 beneficiaries. The fund has to be enough to buy a productive asset that will provide enough income permanently for charitable grants to the old, the sick, children's education, health aims, housing. In the present times of galloping inflation, when one kiwi fruit orchard of 10 acres is worth $750,000 an award of $250,000 for the land lost seems out of touch with reality - especially when compared with the number of people in the pool of beneficiaries.

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[359] undated press clipping, Cooney, Lees & Morgan Archives. This report dates from 15 August 1981, since it refers to the Bill being introduced to the House the previous day. [vol.3, p.634].

Compared with the $950,000 paid as compensation for the injustice done against one man, Arthur Thomas, the members of the Trust Board believed they had not been unreasonable in seeking more than the amount offered them. There had, however, remained room to move provided the wording `full and final settlement' was amended. Morgan recounted what had followed this period of deadlock as to the level of compensation to be paid:

> None of the people of Tauranga Moana were happy with the size of the proposed award of $250,000 in 1979 money. However, the majority on the Board finally resolved to accept this figure, even though the money had depreciated by nearly one third in 2 years of inflation.
>
> They were able to force through the Board a vote to accept because of the one concession the Government made in the long negotiations. They required the Trust Board to accept this figure "in full and final satisfaction of all claims". It was agreed by both sides to add the words "to the same extent as other Maori Trust Boards have accepted such payments in respect of claims arising out of confiscated land".
>
> This clause was the one basis on which the majority obtained enough support to pass a resolution to accept. It was the one concession the Government made in 2 years of negotiation.
>
> To the Board's dismay, when the Bill went to Parliament, this clause was unilaterally struck out. Without it, the Trust Board does not accept the offer, and no settlement has been reached.[360]

Tim Smith, the chairman of the proposed Board; D. Mathews, a member; and W. Ohia, the deputy chairman also presented submissions to the Committee. Ohia told its members:

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[360] Submission to the Chairman and Members of the Select Committee on Maori Affairs, Maori Affairs Committee Papers Re Tauranga Moana Trust Board Bill, ABGX, acc.W3706. [vol.3, pp.509-10].

> There are those from within our ranks who are advocating a Raglan or a Bastion Point approach to this. So far we have managed to contain this element within us.
>
> How much longer must we, can we, maintain this. The Government has seen fit to exclude the clause which gave us grounds to accept the Government's offer, albeit with reluctance. This therefor [sic] brings us back to square one.[361]

Morgan had suggested that the Government would need to at least double the proposed compensation to make it acceptable, while Ohia stood by the original $2,000,000 claimed. The point is, however, that neither were prepared to accept the amount offered, and the Government was hardly acting in good faith towards the people of Tauranga Moana in refusing to budge from its original bargaining position and then subsequently breaking an apparent compromise agreement which had been negotiated.

Having been placed in a situation where it was clearly going to be $250,000 in full and final settlement or nothing, the Trust Board reluctantly decided to accept the Bill. On 22 September a telegram from Morgan notifying the Minister of the Board's acceptance was tabled in Committee.[362] More than coincidentally no doubt, on the same date the Committee reported back its recommendation to the House that the Bill be allowed to proceed

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[361] Submission of W. Ohia, ibid. [vol.3, p.512].

[362] 22 September 1981, Office of the Clerk of the House of Representatives, Maori Affairs Committee Minute Book 1980-85, ABGX, acc.W3706, National Archives. Unfortunately this telegram has not been located.

without amendment.[363] Three days later the Tauranga Moana Maori Trust Board Bill received its second and third readings and was passed into law on 3 October 1981.

Contemporary press reports give a good indication as to why the Trust Board eventually agreed to the Bill, even though the Government had effectively `pulled a fast one' on them, and despite considerable opposition to the compensation `deal' from many Tauranga Maori. Tim Smith told the *Bay of Plenty Times* that `The terms of the bill have been accepted most reluctantly because it was a case of $250,000 or nothing'.[364] Though he was personally not happy with the terms of the settlement, Smith was conscious of the fact that with a general election looming the whole matter of compensation might again become a contentious one if not settled before then.[365] Moreover, he regarded the $250,000 compensation as a `token gesture' and stated that `This matter may not be settled in our time but I believe that following generations will continue to press for a more just settlement'.[366]

Smith also believed that the final settlement `was something of a political football in which points scoring was more important that justice', and certainly the Bill was vigorously debated in

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[363] *NZPD*, 22 September 1981, p.3498. [vol.3, p.517].

[364] *Bay of Plenty Times*, 26 September 1981, p.4. [vol.3, p.523].

[365] ibid., 23 September 1981, p.5. [vol.3, p.522].

[366] ibid., 3 October 1981, p.5. [vol.3, p.524].

the House, particularly by the Maori MPs. Koro Wetere, the Labour MP for Western Maori, announced the Opposition's support for the legislation but also asked the Minister during the first reading of the Bill what criteria the Government had used to arrive at the $250,000 figure and in what manner it had been decided that the settlement should be a full and final one.[367] Mrs Whetu Tirikatene-Sullivan, the MP for Southern Maori, welcomed the fact that the Bill would be referred to a select committee where further submissions could be made on it, since the Cabinet committee had seen fit to expunge the words `to the same extent as other Maori trust boards' in the subclause stating that the sum would be in full and final settlement.[368] Couch, in reply, stated that:

> $250,000 was the first offer by the Government, and the member for Western Maori knows that at the time it was rejected as not sufficient by the people of Tauranga. We have had negotiations with them since then, and I, personally, have been to Tauranga twice to try to obtain a consensus. It is very difficult for a board to reach a decision when it does not legally represent all the people. I have recently negotiated with the solicitors for the people, and they have accepted the amount of $250,000 as a final payment. That is why I was able to introduce the Bill. The payment is still not accepted by all the people, but the member for Western Maori knows perfectly well that when Maoris get together one does not get a 100 per cent consensus. It has made it difficult for the people. The board-elect of the trust gave me its approval to accept $250,000 so that the Bill could be introduced.[369]

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[367] *NZPD*, 14 August 1981, p.2647. [vol.3, p.514].

[368] ibid., p.2649. [vol.3, p.515].

[369] ibid., p.2650. [vol.3, p.516].

However, Mr P.B. Reweti, the MP for Eastern Maori, had been involved in the negotiations and took exception to what the Minister said, stating `I want to put the record straight by telling the Minister that the interim board had difficulty in accepting the offer of $250,000. That amount was accepted under duress'.[370] He had hoped that the matter of compensation could be dealt with by the select committee but `did not want the House to get the wrong impression that the board had accepted the offer of $250,000. It was made to accept it'.[371]

By the time of the Bill's second reading on 25 September the Maori Affairs Committee had reported back their recommendation that it proceed without amendment, and the Maori MPs once more questioned the purportedly full and final nature of the settlement. Wetere commented that:

> Although...the petitioners do not agree fully with the Bill but have accepted it in the way in which it has been presented, I believe they will come back to Parliament again. What is written in the Bill should not be accepted as a final and full settlement of their grievances, because the Minister and the House well know that Parliament will depend on a statutory authority - the Tauranga Moana Maori Trust Board - to do much work for the Maori people, whether it be in employment, education, housing, or whatever.[372]

Tirikatene-Sullivan pointed out that her remarks during the first reading of the Bill that the Trust Board were not happy with the subclause concerning `full and final settlement' had

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[370] ibid.

[371] ibid., p.2651. [vol.3, p.516].

[372] 25 September 1981, ibid, pp.3653-54. [vol.3, pp.518-19].

been confirmed by Ohia's submission to the Select Committee on 15 September, but added:

> the Minister has told us that the board has accepted the Government's offer without the inclusion of those words [qualifying the `full and final settlement'], and I have no option but to accept his observation. Obviously, the submissions have been overruled.[373]

12. THE TAURANGA MOANA MAORI TRUST BOARD ACT 1981

The preamble to the 1981 Act stated that it had been agreed between the Crown and representatives of those whose lands had been confiscated at Tauranga under the New Zealand Settlements Act 1863 that $250,000 was to be paid `in full and final settlement of all claims of whatever nature arising out of the confiscation or other acquisition of any of the said lands by the Crown'. Section 4 of the Act provided for a legally-constituted Tauranga Moana Maori Trust Board to be established in accordance with the provisions of the Maori Trust Boards Act 1955. The beneficiaries of this Board were declared to be `the descendants of those tribes who took up arms against the Crown at the Battles of Gate Pa and Te Ranga or which were dispossessed of any lands as a direct result of those battles'. Section 5 stated that ten members (amended to fifteen in 1988) were to be appointed to the Board by the Minister of Maori Affairs, with later members to be elected by the Board's adult beneficiaries (a roll of whom was to be prepared `as soon as practicable').

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[373] ibid., p.3655. [vol.3, p.519].

Section 6 provided for the appropriation of $250,000 out of the consolidated account to be paid to the Board, which was to `be accepted in full and final settlement of all claims of whatever nature arising from or out of any confiscation or acquisition by the Crown of any of the land described in the Schedule to this Act'. Given that the schedule included the entire Tauranga district (as described in the schedule to the Tauranga District Lands Act 1868), this was indeed a sweeping provision, which in theory debarred Tauranga Maori from claiming compensation in respect of *any* acquisition of land by the Crown at Tauranga. Thus not only did the Act encompass the Crown's retention of 50,000 acres, but also the CMS Te Papa purchase, the Katikati-Te Puna purchase, subsequent Crown land dealings in the area, and land-takings under the Public Works Act. Curiously, too, the Act's schedule retained the century-old estimate of the Tauranga district's area as 214,000 acres (or 86,602.804 hectares), despite the Sim Commission's finding that it contained 290,000 acres (116,000 hectares).

Like the Sim Commission before it, the 1981 Act was a partial and flawed effort to come to grips with the consequences of the confiscation. Section 7, restoring the character and reputation of those who had fought at Gate Pa and Te Ranga, went some way to erasing the bitterness many Tauranga Maori felt at the branding of their ancestors as `rebels' merely for defending their lands. But just as the Sim Commission's offhand dismissal of their grievances created fresh resentments of its own, so too

did the manner in which the Crown had rammed through the 1981 Act in the face of obvious and widespread dissatisfaction with its contents on the part of Tauranga Maori.

13. LATER EFFORTS TO INCREASE COMPENSATION

A change of Government in 1984, and the passing of the Treaty of Waitangi Amendment Act in 1985, provided renewed impetus for efforts to increase the level of compensation paid in respect of the Tauranga confiscations. In November of the latter year the Secretary of the Tauranga Moana Maori Trust Board, Ed Morgan, wrote to the Minister of Maori Affairs, Koro Wetere, concerning this issue. Morgan informed the minister that:

> Members of the deputation who negotiated the compensation with the Crown were very strongly of the opinion that the amount offered was minute in comparison with the loss to the people who suffered confiscation, but they had the option of either accepting that amount or nothing.
>
> We think you are aware that the limit was imposed at that time by the Prime Minister of the day, who had made up his mind on the figure to be offered as a maximum.[374]

With more than 10,000 beneficiaries of the Board to provide for, it had been apparent from the outset, Morgan wrote, that the sum of $250,000 was far too little to establish a viable trust fund for the future. Accordingly, the Board had invested in horticulture, but had been forced to borrow nearly half a million dollars from the Board of Maori Affairs in order to do

[374] Secretary, Tauranga Moana Maori Trust Board, to Koro Wetere, 22 November 1985, Cooney, Lees & Morgan Archives. [vol.3, p.640].

so. Morgan suggested that one way in which the people of Tauranga Moana might receive additional compensation for the confiscations without requiring the Government to make an additional cash payment would be for it to cancel the Trust Board's existing mortgage liability, thereby allowing it to become a viable economic entity over time.

In December the minister replied that he would be unable to assess the merits of the case for an increase in the level of compensation until several other important land grievances were settled by the Government.[375] Six months later the minister wrote to reassure the Board that their desire to have the level of compensation paid in 1981 renegotiated had not been forgotten and would be addressed as soon as possible.[376]

By March 1987 the Board had resolved to send a delegation to Wellington,[377] and informed both Winston Peters, the Tauranga constituency MP and Peter Tapsell, the representative for Eastern Maori, of its decision to seek an audience with the minister.[378] The latter, however, expressed his concern that:

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[375] Minister of Maori Affairs to Secretary, Tauranga Moana Maori Trust Board, 6 December 1985, ibid. [vol.3, p.643].

[376] Minister of Maori Affairs to Morgan, 30 June 1986, ibid. [vol.3, p.648].

[377] Secretary, Tauranga Moana Maori Trust Board, to Wetere, 24 March 1987, ibid. [vol.3, p.654].

[378] Morgan to Peters, 18 March 1987, ibid [vol.3, p.653]; Morgan to Tapsell, 24 March 1987, ibid. [vol.3, p.655].

> the major problem we will have will arise from the use of the words "in full and final payment" or words to that effect which were in the original deed.
>
> My own view is that if the board members have now changed, that is to say there are new board members, we might stand a chance, but it would inevitably mean that we would have [to], to some extent, be critical of the old board for having accepted under the terms at that time.[379]

Morgan, in reply, informed the MP for Eastern Maori that:

> The Board struggled hard to avoid the use of this form of words, or at least to drop the word "final" from the legislation. However, the previous Government would not approve any compensation unless this phrase was accepted.
>
> We understand however, that Sir Wallace Rowling advised members of the Board that when his Party achieved office, a more generous settlement would be extended to the Board. The Board would hope to rely on his mana even though he is now at a distance.[380]

On 15 June 1987 members of the Board met with the Minister of Maori Affairs (both the Prime Minister and Minister of Finance were also invited to attend, but declined to do so). Following this meeting the Board set out in writing the bases upon which its claim to additional compensation rested.[381] Morgan recounted how the Board had made a claim for $2 million in 1981 (at time when the unimproved value of the land confiscated was alone reckoned to be in the order of $96 million), in order to create a viable trust fund for its 10-12,000 beneficiaries. Though they had received only one-eighth of what was needed, they remained

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[379] Tapsell to Morgan, 26 March 1987, ibid. [vol.3, p.656].

[380] Morgan to Tapsell, 31 March 1987, ibid. [vol.3, p.657].

[381] Morgan to the Maori Trustee, 17 June 1987, ibid. [vol.3, pp.666-70].

grateful, `because no one else had ever lifted a finger to help, but the amount was just enough to get us into trouble'. Moreover, the Select Committee had recommended compensation in respect of the confiscation alone, and not the subsequent purchase of land under duress (that is, the Katikati-Te Puna purchase). Yet despite this, the Act had specifically stated that the compensation was to be paid in respect of any acquisition of land by the Crown within the Tauranga district. Morgan added that:

> The payment was stated in the Act to be "in full and final settlement of all claims". The Board fought hard against accepting these words. First members asked that "final" be cut out. When that was refused, we asked that the words " to the same extent as any other Trust Board" be added. This was accepted and added in the draft Bill. [reference made to attached letter from Ben Couch, 18 March 1981]. However, the last phrase was cut out just before the Bill went to the House. The Trust Board was told at the last minute to accept that or nothing.
>
> In the end the Board relied mainly on promises by two men whom it knew to be men of honour. Bill Rowling had come to Tauranga and promised that when his party came to power they would deal with us generously. [reference made to letter from Rowling, 12 June 1980].[382]
>
> The other man was Ben Couch, who told the Board it should look on the quarter million dollars as a starting point to be traded into a viable trust fund, that he would arrange finance at cheap rates, and that an orchard owned by the Department at Opureora on Matakana Island would be transferred to the Board as soon as it became productive. This promise was carried out, with interest at 7 1/2 %. But now the interest rate has doubled, these purchases have

[382] Rowling wrote to Paraone Reweti on 12 June 1980 `This is to acknowledge your letter of 11 June, in which you ask me to confirm my earlier comment that if the Tauranga Compensation claim was not effectively met by the present Government, we would be prepared to review the situation. I assure you that your understanding of my comment on that occasion was quite correct and that further, if your people wish me to come to Tauranga at some time to discuss the issue on the Marae, I will be glad to meet their wishes', ibid. [vol.3, p.658].

> become a trap. Interest has been capitalised and the total debt of the Board has grown to over $1 million while development required to complete the Matakana orchards is estimated to require $454,000.00. ...
>
> To comment on the words "full and final settlement" which were accepted, it can properly be said:
>
> (a) The settlement accepted was only for the land confiscated.
> (b) The purchase under duress of 93,000 acres was not the subject of the settlement.
> (c) The settlement figure itself, coupled with the grant of mortgage finance and capitalised interest led the Board into a trap.

Since it had first been set up, the Trust Board had been prevented by its precarious financial situation from exercising its primary function as a charitable trust. Requests each year to help young people finance their university or technical educations, or for assistance with medical care or housing had all had to be declined `to the stage where the Board might ask why it was established'. Instead, Morgan stated, the Board had found itself used by the Government and a number of other authorities to undertake various tasks, with only a limited amount of additional funding under the Mana employment scheme. Thus the Board sought discharge of its existing debts of over $1 million, $454,000 to allow it to complete the development of the Opureora orchards, and $500,000 to enable it to undertake its various other functions.

In August 1987 the Minister of Maori Affairs informed the Trust Board that the Department was `attempting to draft a paper to

the Government seeking approval to renegotiate'.[383] The following month Morgan was advised that the Board would be informed of Cabinet's decision in due course. Meanwhile, however, the Ngaitamarawaho sub-tribe of Ngati Ranginui had occupied the disputed site of the Tauranga Town Hall, as a result of which twenty-two people had been arrested for trespassing after their eviction by police in August. In October Ngaitamarawaho announced their decision to resign from membership of the Trust Board. This action had become necessary, according to the chairman of their runanga, in order to demonstrate their non-support for the principles on which the Trust Board had been created, or more specifically their opposition to the Tauranga Moana Maori Trust Board Act of 1981.[384] Whilst other hapu declared their support for the Board, almost all agreed that they had never considered the 1981 Act a `full and final settlement', but rather as a `grossly inadequate' one, which had been forced through by the Government in the face of considerable opposition, both to the level of compensation paid and to the wording of the Act.[385]

Yet despite the apparent support of both the Minister for Lands, Peter Tapsell, and the Minister of Maori Affairs, Koro Wetere,

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[383] Minister of Maori Affairs to Morgan, 18 August 1987, ibid. [vol.3, p.676].

[384] A. Tata to Wetere, 17 October 1987, ibid. [vol.3, p.681].

[385] See undated press clippings [*Bay of Plenty Times*] in Cooney, Lees & Morgan Archives. [vol.3, pp.683-96].

for the compensation question to be renegotiated,[386] little further progress appears to have been made towards a just and honourable settlement of the Tauranga confiscation claim since that time. That the 1981 Act was not considered just and honourable by the people of Tauranga Moana is evident from the high number of claims to the Waitangi Tribunal from Tauranga Maori since 1985 which refer to it not merely as inadequate compensation for their historic grievances, but as a gross breach of the Treaty in its own right. Certainly as an example of how to negotiate a durable settlement of historic Maori land claims, the Tauranga Moana Maori Trust Board Act of 1981 is singularly lacking. Politicians and administrators would be well advised to pay heed to the mistakes of their predecessors if they wish to reach such durable settlements in future.

14. CONCLUSION

It was seen in this section that the grievances of Tauranga Maori since the 1860s have for the most part (though not solely) focused on the confiscation of their lands following the battles of Gate Pa and Te Ranga in 1864. In the few decades following this many individuals, whanau or hapu lodged petitions with Parliament concerning the confiscation of their particular ancestors' lands, or relating to the manner in which lands had

[386] Tapsell was reported in October 1987 as having stated that `It is certainly my view, and I think that of Mr. Wetere's, that in spite of the legality of the situation the settlement was manifestly inadequate and I`m prepared to put that view to the Government'. *Bay of Plenty Times*, 24 October 1987, ibid. [vol.3, p.695].

been returned to them. Many petitioners complained that the Katikati-Te Puna purchase had been arranged with those who were not the true owners of the lands, whilst others complained that reserves had been awarded to individuals, who had promptly sold their interests, leaving the non-owners effectively landless.

Whilst the Sim Commission considered some of the grievances of Tauranga Maori in relation to the confiscations, it was seen that this was done on the basis that those who had `rebelled' against the sovereignty of the Crown (or their descendants) were ineligible to claim any of the benefits of the Treaty of Waitangi in respect of their ancestral lands. For other reasons, too, the Commission's finding that the Tauranga confiscation had been justified and was not excessive was found to be flawed. The Commission heard the case of the Tauranga tribes for less than two days. Some Maori complained that they had not had an opportunity to present evidence, and their Counsel, Smith, admitted during the hearing that he had not had the time or resources to prepare for it. It was suggested that the Commission's almost total acceptance of the Crown case in respect of the Tauranga confiscations was underlaid by an apparent inability (or unwillingness) to grasp what it was that local Maori were saying, but nonetheless became the basis upon which a steady stream of petitions and appeals were subsequently dismissed by later Native/Maori Affairs Ministers.

If initially such appeals to Government came mainly from Ngati Ranginui (and usually declared that the descendants of

`loyalists' had suffered as a result of the wrongful confiscation of their ancestors' lands), by the 1970s, it was seen, these were being coordinated on a pan-tribal basis and generally involved a flat rejection of the arbitrary distinction between Kingite and Kupapa. By 1975 Tauranga Maori had gained acceptance in principle from the Government as to the merits of their claim, before being forced back to square one by a change of Government at the end of the year. A favourable recommendation from the Maori Affairs Committee in 1979 in respect of a petition lodged the previous year again raised the prospects for a negotiated settlement of the claim for compensation. It was seen, however, that the sum of $250,000 paid to the Tauranga Moana Maori Trust Board under legislation passed in 1981 in `full and final settlement' of their claims had been unilaterally decided upon by the Government. Many Tauranga Maori were clearly unhappy with such a sum, considering it grossly inadequate in relation to the value of the lands confiscated and the functions the new Board would be required to fulfil. Despite this, members of the Board accepted the amount provided the supposedly `full and final' nature of the settlement was qualified to allow additional compensation to be received in the event that other confiscation claims were renegotiated. Although the Government clearly accepted this qualification on the settlement, it ignored it when enabling legislation was presented to Parliament. Faced with a `take it or leave it' situation, members of the Trust Board reluctantly accepted the settlement, though at the same time declaring their belief that it ought to be regarded as neither full and final.

It was seen that the manner in which the Crown had rammed through this settlement in the face of obvious and widespread opposition to its terms created fresh resentments of its own. By 1987 the fourth Labour Government had agreed in principle to renegotiate the level of compensation, though this had still to be settled when a change of Government again intervened at the end of 1990.

CONCLUSION

This report has examined the manner in which lands were returned at Tauranga in the wake of the confiscation of the entire district, the subsequent fate of these, and later Maori efforts to gain redress for the actions of the Crown. Of the 290,000 acres formally confiscated at Tauranga by Order in Council in 1865 approximately half of this (comprising the Katikati-Te Puna and Military Settlements blocks) was retained by the Crown. The remaining half (erroneously referred to as `three-quarters' by Government officials, who claimed that the Katikati-Te Puna block had been returned to its owners before being voluntarily sold again to the Crown) was eventually restored to Maori.

It was seen that the Government's decision to confiscate the entire district, rather than merely the area it intended retaining, was the result of several circumstances and partly reflected delays in finalising the boundaries of the block to be taken for the purposes of a military settlement. Beyond this, the decision to confiscate the entire district gave it greater discretion in terms of who the remaining lands would be returned to. Not only was native title over the district extinguished at a stroke (something considered highly desirable in its own right), but `friendly' Maori and `surrendered rebels' could be compensated out of the lands to be returned. Two key considerations appear to have been uppermost in arranging the return of lands: `unsurrendered rebels' were ineligible to receive grants of land (a decision upheld by the Native Land

Court in 1910); and blocks were to be distributed taking into account the effects of the confiscation. Thus while some attempt was made to place hapu on the same lands they had owned before the confiscation, the process of returning lands was one which was guided, but not governed, by native custom. Moreover, whereas in other districts confiscated under the New Zealand Settlements Act Compensation Courts were set up to undertake the return of lands, no claims from Tauranga were ever referred to this. Instead, the task of returning lands was entrusted to specially appointed `Commissioners of Tauranga Lands', who were generally the local Resident Magistrate or Civil Commissioner. The process of returning lands at Tauranga was, it was seen, a protracted and almost haphazard one which was undertaken without clear guidelines. Reserves set aside within the Katikati-Te Puna and Military Settlements blocks were generally awarded to just a few chiefs, supposedly in trust for the rest of the hapu, but as a consequence of these `trustees' being regarded as outright owners had mostly been alienated by the mid-1870s. Many Maori later complained that their reserves had been secretly sold.

Efforts were made to ensure that the remaining lands (the so-called `three-quarters') were granted to all members of hapu awarded them. Despite this, there were numerous other problems with the `Commissioners Courts'. Sittings of the Court were not publicly advertised (some Maori complained that they were unaware the blocks they were interested in had already been adjudicated upon), no formal records of proceedings were kept, and the decision as to whether to grant an appeal was apparently

decided by the Native Minister largely on the basis of the recommendations of the Commissioner who had heard the case originally. Formal Assessors were not appointed because it was decided that `the Native would have equal powers with [the Commissioner], which is not desirable'. In one case where an informal assessor was appointed, however, there were complaints that he was an interested party (and that witnesses had not been sworn in, and that no interpreter was present).

The absence of clear and open guidelines for the proceedings of the Commissioners (something which Clarke, Wilson, and Brabant all commented on at various times) was undoubtedly prejudicial to Maori interests. The right to run roads through Maori lands was included in grants made pursuant to the decisions of the Court, for example, apparently without legislative sanction, and in the case of Mount Maunganui lands no grants were issued, since the Crown was anxious to acquire this area itself. Despite numerous petitions and controversies relating to the return of lands at Tauranga the Government steadfastly refused to abandon the confiscation proclamation in respect of the blocks to be returned, which would have allowed the Native Land Court (which for all its failings at least had set procedures and was obliged to award lands on the basis of native custom) jurisdiction in respect of these.

The slow and protracted process of returning lands at Tauranga frustrated Maori and Pakeha alike. Many Europeans were anxious to see the district `opened up' and colonized by settlers. Yet

despite the fact that the Crown had acquired nearly half the district the task of `opening up' Tauranga to settlement was largely left to the initiative of private agents and speculators, who eyed the half of Tauranga remaining in Maori possession as the source of their profits.

In theory many of these lands ought to have been immune to the pressures of colonization. According to A.F. Halcombe, when Governor Grey visited Tauranga in 1864 to arrange confiscation matters he had promised that all lands to the east of the Waimapu river returned to Maori ownership would be made inalienable. There were sound reasons for imposing such a restriction. McLean stated in 1871 that these lands were `in extent insufficient for the wants of the Natives inhabiting those places'. Yet despite this, and an 1878 decision that all lands returned at Tauranga should be inalienable, such restrictions as were imposed were merely nominal. Commissioner Barton's investigations in 1886 showed that not only were these alienation restrictions treated as a dead-letter by Crown officials for a considerable period of time, but that as a result of this Tauranga Maori had been the victims of several highly dubious and in some cases outright fraudulent land dealings. According to the evidence of one witness before the Barton Commission restrictions had been removed on some blocks before more than a quarter of the owners had consented to sell. This was despite the fact that (according to Brabant) Tauranga Maori were themselves asking for a large proportion of their lands to be inalienable and had become `lukewarm' as to selling

their titles `having...no great extent of land...available for disposal to Europeans'.

Not only did the Crown turn a blind eye to the scandalous dealings of many private parties at Tauranga, but its own land-purchase activities in the district were also far from above reproach. The fraudulent dealings of J.C. Young, the Land Purchase Officer, may have been enough to see him dismissed from public service and placed on trial for allegedly misappropriating public money, yet was apparently not enough for the Government of the day to cancel all debts attributed to Maori in the district by Young. C.T. Batkin's thorough investigation of Young's activities condemned him for the `flagrant indifference to right with which the Natives have been saddled with charges on their lands'. Yet incredibly, even after Batkin's inquiries, the Government attempted to recover these often fraudulently incurred `debts' with the extinguishment of Maori claims to land.

The Crown's failure to seriously enforce the alienation restrictions it had imposed (for the sake of `succeeding generations, according to Native Minister Bryce) on lands returned at Tauranga was to have serious consequences. Governor Grey may have promised Tauranga Maori that only a quarter of their lands would be taken, but by 1886, when the process of returning these had been completed, just on half of the area returned had already been alienated, mostly to private individuals or companies. By the time of the Stout-Ngata

Commission in 1908 less than one-seventh remained. A 1900 return of Maori made landless as a result of the confiscations included the names of several Tauranga hapu. Doubtless in many cases the impact of the confiscations had been compounded by the Crown's failure to ensure that those lands returned remained in Maori ownership, as it had purported to do by making these inalienable.

Certainly many petitions and appeals to Government were from Tauranga Maori who claimed to have been made landless as a result of the actions of the Crown. It was seen that a large number of the early petitions referred to the Native Affairs Committee concerned the Katikati-Te Puna purchase and generally disputed the bona fides of this. `Loyalists' complained that their lands had been `confiscated for the offences of others', whilst several petitions concerned the secret or unauthorised sale of reserves by individual chiefs, who had supposedly been granted these as `trustees' for the rest of the owners. Many petitioners complained that they had been excluded from the lists of owners for various blocks adjudicated on by the Commissioners of Tauranga Lands, or took issue with other discrepancies in the manner in which lands were returned in the district.

Some of these petitions might be referred to the Government for consideration, but given its unwillingness to reconsider fundamental questions such as the propriety of the confiscations or the Katikati-Te Puna purchase, the prospects for gaining

redress for the actions of the Crown were in many cases negligible.

The appointment of a Royal Commission on Confiscated Lands and Other Native Grievances provided fresh hope for action on long-held grievances, but again the results were to be disappointing. Coates, the Native Minister responsible for establishing the Commission, was not prepared to countenance any arguments against the confiscations based on the Treaty of Waitangi and restricted the terms of the inquiry accordingly. The Commission's finding that the Tauranga confiscation was neither unjustified nor excessive was, it was seen, based on a very superficial inquiry into the background to the raupatu there and revealed an inability (or unwillingness) to seriously consider the arguments put forward on behalf of Tauranga Maori.

Flawed though it was, the Sim Commission's finding with respect to the Tauranga confiscation was echoed down the years by successive Native/Maori Affairs Ministers, who found it a convenient basis upon which to reject a steady stream of petitions and appeals on the subject. A fresh sore thus grew on an old wound, as Tauranga Maori sought not merely to convince various Governments of the merits of their claim for compensation, but also of the inadequacy of the Sim Commission's findings.

Up until the 1960s the Tauranga confiscation claim had to a large extent been a Ngati Ranginui, and in particular

Ngaitamarawaho, one. But from the 1970s a concerted pan-tribal effort was made to overturn the verdict of the Sim Commission and gain Crown recognition for the legitimacy of their grievances. By 1975 this appeared to have been successful. The third Labour Government had accepted the merits of the Tauranga claim and was in the process of negotiating compensation, before being voted out of office. Forced back to square one, Tauranga Maori were once more faced with the prospect of convincing yet another Government of the justice of their efforts to obtain redress.

Favourable recommendations from the Maori Affairs Committee on an 1978 petition on the matter left Tauranga Maori again in the position of negotiating a compensation settlement with the Crown. The net result of these negotiations, the Tauranga Moana Maori Trust Board Act of 1981 was not, however, a settlement negotiated in good faith and freely consented to by both parties but was one unilaterally decided upon by the Crown. It was seen that the sum of compensation to be paid under the Act, $250,000, was considered grossly inadequate by many Tauranga Maori, especially in relation to the value of the lands confiscated and the many social functions the Trust Board to be established would be expected to fulfil. During negotiations the Government refused to budge from this amount, however, and a breakthrough was only made possible when the Crown consented to the compromise suggested by members of the proposed Trust Board to modify the supposedly `full and final' nature of the settlement to allow for additional compensation to be paid in the event

that other confiscation claims were renegotiated. Yet despite the Government's written acceptance of this as one of the terms of the settlement, Tauranga Maori found to their horror and amazement when the legislation was introduced to Parliament that the Crown had reneged on this crucial aspect of the deal and was once more insisting that $250,000 would be paid in `full and final settlement' or nothing. Faced with a `take it or leave it' situation (and an upcoming election which once more threatened to set back matters), the Tauranga negotiating party reluctantly accepted the settlement, whilst at the same time publicly declaring their view that it ought not to be regarded as full and final.

The arrogant and underhand manner in which the Crown went about gaining acceptance for the 1981 settlement has hardly done much to erase the bitterness of 130 years amongst Tauranga Maori. Instead, for many, it has created new resentments, new grievances, and new divisions. An honourable settlement, negotiated in good faith, may not erase these entirely, given what has gone before. But it would certainly be a step in the right direction.

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APPENDIX I: PETITIONS PRESENTED TO THE NATIVE AFFAIRS COMMITTEE RELATING TO TAURANGA LANDS, 1873-1935

Note: This schedule of petitions should not be regarded as comprehensive. Certain periods were searched more closely than others. Petitions whose reference to Tauranga was uncertain were generally excluded. A few of the petitions listed were lodged by Europeans and refer to land transactions with Tauranga Maori.

SOURCE	PETITIONERS	DATE	SUMMARY
LE 1/1873/10 (RDB vol.1, pp.70-1)	Te Reita Ngakohiku	1873	For grant of land as compensation for land taken by Government. Committee report: Government should inquire into petition.
LE 1/1873/10 (RDB vol.1, pp.79-84)	Alfred Faulkner	1873	Seeking compensation for land taken by Government. Report: Recommends that more land should be awarded.
I-4, pp.21-2, 1876	Ani Ngarae Honetana and 2 others	1876	Petitioners' mother entitled, along with Te Moananui to land called Rereatukahia. Government had allowed his name only to appear on Crown grant. Report: Land should be granted to petitioners.
LE 1/1876/7 (RDB vol.1, 221-23). I-4, p.24	Members of the Ngai Te Rangi tribe	1876	Seeking additional land to be returned. Report: No recommendation.
I-3, p.15, 1877	Te Kahui and others	1877	Land confiscated for offences of others. Report: Referred for Government consideration.
I-3, p.31, 1877	Hori Wirihana and 89 others	1877	Reserves sold without their consent. Report: Government should give their attention to manner in which these acquired.
LE 1 1877/5 (RDB vol.1, 259-68). I-3,	Wiremu Te Whareiro and others of Ngati Pukenga	1877	Claims to Otawa. Report: Should be given opportunity

p.35, 1877	tribe		to advance claims.
I-3, p.42, 1877	Reha Aperahama and others	1877	Money paid for Aroha to those not rightful owners. Report: Land Court should inquire further.
I-3, p.6, 1878	Ani Ngarae and others	141/ 1878	Te Moananui had secretly sold their land at Tauranga called Te Rereatukahia. Report: Same recommendation as in 1876.
LE 1 1878/6 (RDB vol.1, pp.309-16). I-3, p.12, 1878.	Te Winika Hohepa	143/ 1878	50 acres in Katikati-Te Puna block secretly sold by Te Moananui to Gill. Report: From evidence of Clarke land sold by correct owner.
I-3, p.27, 1878.	Nepihana Tuiri	97/ 1878	His land (Waitoa) taken by Moananui and sold to Government. Report: Insufficient time to consider.
I-3, p.26, 1878	Ripeka W. Turipona	333/ 1878	Seeking return of numerous blocks of land at Tauranga. Report: Insufficient time to inquire into.
I-4, sess. I, 1879	Mrs. Douglas (Te Korowhiti Tuataka)	1878	Principal owner of various lands but not included in Crown grants. Report: Full inquiry should be made into her claims. All lands returned to Maori at Tauranga should be inalienable, except by lease not exceeding 21 years.

I-2, p.23, Sess.II, 1879	Te Korowhiti Tuataka (Mrs. E. Douglas)	216/ Sess II 1879	Petitioner complains that her name was excluded from Crown grant for a block of land called Orania because she refused to sell her interest to Mr. Whitaker. Report: Insufficient time to consider.
LE 1 1879/3 (RDB, vol.2, pp.688-92). I-5, Sess.I, p.2, 1879	Ripeka W. Turipona	333/ 1878	Praying that numerous blocks of land at Tauranga to which she is entitled may be returned to her. Report: From evidence of T.W. Lewis it appears only real grievance of petitioner already being dealt with.
I-2, p.9, 1880	Karanama Te Uamaungapohatu and others	229/ Sess II 1879	Seeking removal of alienation restrictions on Tauranga lands. Report: Land can be sold with consent of Governor. No recommendation.
LE 1 1880/6 (RDB vol.3, pp.814-40). I-2, p.23, 1880.	Moananui Wharenui and 29 others	296/ 1880	Parents' claims to Whareroa rejected by Commissioner. The Assessor an interested party; witnesses not sworn; no interpreter. Seek reinvestigation. Report: Matter now under consideration by Government.
I-2, p.25, 1880	Mrs. Douglas	146/ 1880	Praying that interests in Okauia Block may

			be restored to her. Report: Nothing to add to recommendations in 216/Sess.II, 1879.
I-2, p.3, 1881	Ripeka Wiremu Te Pea	31/ 1881	Lands at Tauranga sold by Marake Te Moananui. Report: If she has a claim it is upon her tribe.
I-2, p.19, 1881	Renata Te Whauwhau and 44 others	272/ 1881	Part of their land near Katikati sold during their absence. Report: All sections of tribe paid for their interests, 1864-71. Not recommended.
I-2, p.19, 1881	Renata Te Whauwhau and 55 others	248/ 1881	Land at Katikati sold by Ngatimatera to some Europeans. Sale should not be legalised; trees on the land should be protected. Report: Not recommended. All sections of the tribe paid for their interests, 1864-71.
I-2, p.20, 1881	Rotohiki Pootu and 20 others	262/ 1881	Petitioners complain that whilst absent in 1865 their land at `Awangatete' [Aongatete] had been sold by Ngai Te Rangi. Report: The land had been confiscated, but returned to Ngai Te Rangi. Between 1864-71 the Government negotiated its purchase. All sections of the tribe received their share.

I-2, p.9, 1882	Reneti Te Whauwhau and 45 others	87/ 1882	Unbeknown to them, other tribes had sold their land at Katikati. Report: No new evidence adduced.
I-2, p.19, 1882	G.A. Douglas	299/ 1882	In 1868 petitioner had leased part of Motiti from Hori Tupaea. In 1874 had negotiated to purchase, but told by Government the land held in trust and could not be disposed of. Report: Difficulty can only be overcome by special legislation, which ought to apply to all such cases.
I-2, pp.20-1, 1882	Mrs. E. Douglas (Korowhiti Tuataka)	331/ 1882	Her name not included in Crown grant for Okauia block, because she refused to sell her interests. Report: Her name in memorial of ownership for Okauia no.2. Judge had thought this sufficient to satisfy her claim.
I-2, p.28, 1882	Mrs. E. Douglas (Korowhiti Tuataka)	332/ 1882	Referring to earlier report, prays that her name may be included in Crown grant for Poeke. Report: From special report of Commissioner Brabant it appears her claims being dealt with. No recommendation.
I-2, p.31, 1882	Mary Callaway Te Wheko Yeoland	325/ 1882	Te Wheko, her grandfather, loyal, yet his lands were

			confiscated. Report: Crown has no equitable liability in this case.
I-2, p.32, 1882	Hone Hupe and 21 others	374/ 1882	Popa Te Wheko, who died in 1867, never disloyal, yet his grandchildren deprived of their lands. Report: Petition sent in to support that of Mary Yeoland.
I-2, p.6, 1883	Reha Aperahama and 26 others	54/ 1883	Petitioners say a Government official alleged that land between Katikati and Te Aroha, Tanahawaero, had been confiscated. They protest this act of injustice. Report: Land referred to had been confiscated but was returned. Government subsequently purchased it, although Maori now allege that a portion of this was not included in the purchase. Unfortunate that the word `watershed' not used in purchase. No recommendation.
I-2, p.8, 1883	Reneti Te Whau Whau and 35 others	82/ 1883	Lands at Katikati sold to Government by those who were not the true owners. Report: No new evidence adduced since report on similar petition in 1881.
I-2, p.8, 1883	Te Amo-o-Te-Rangi and 12 others	55/ 1883	Tuapiro (near Katikati) sold to

			Government by Ngai Te Rangi in 1864. They protest sale. Report: No information to suggest any injustice done.
I-2, p.26, 1883	Hoani Motutara and 32 others	446/ 1883	Their land secretly sold by Marake Te Moananui to Government. Report: Insufficient time to consider.
I-2, p.18, Sess.II, 1884	Reneti Te Whauwhau and 33 others	48/ Sess II 1884	They received no money, being Hauhaus, for their lands at Katikati sold by others. Report: Insufficient time to consider.
I-2, p.20, Sess.II, 1884	Te Rauhea Paraone and 13 others	116/ Sess II 1884	Seeking certain land at Judea, Tauranga, called Rangipani, as they reside there, and say their dead are buried there. Report: Insufficient time to consider.
I-2, p.27, Sess.II, 1884; I-2, p.18, 1885	Hone Taharangi and others	433/ Sess II 1884	Seeking a rehearing into Wahirere block, Matakana. As rehearing already scheduled, no recommendation.
I-2, p.22, 1886	Mary Yeolands	211/ 1886	Her grandfather, Hopa Te Wheko, who died at Tauranga in 1867, a loyalist, yet lands confiscated. Seeks relief. Report: Claims investigated by Commissioner Brabant in 1882. No recommendation.
I-2, p.34,	James Potier and	130/	Lands seized by

1886	sister	1886	Government at close of war. Seek relief. Report: No reason to reopen the case.
I-2, p.39, 1886	Hugo Friedlander and another	369/ 1886	That G.E. Barton's report accuses them of having defrauded Maori of their lands. Pray for an enquiry. Report: Barton's recommendation against removing alienation restrictions was not justified. Consent should be given to the sales.
I-2, p.41, 1886	Henry Riley Bennett	432/ 1886	Married a Maori woman from Tauranga who had been gifted 208 acres known as Ruakaka block in 1882; but Commissioners Wilson and Brabant had admitted others to title. Report: Government should make inquiry into facts of the case.
I-3, p.14 Sess.II, 1887	Hugo Friedlander	480/ Sess II 1887	Petitioner prays that 1886 report re petition be given effect to. Report: Government should give immediate effect to 1886 report.
I-3, p.15, Sess.II, 1887; G-6, Sess.II, 1887	Te Korowhiti Tuataka (Mrs. Douglas)	121/ Sess II 1887	Petitioner complains that excluded from Crown grant for Okauia block and that Commissioner Barton found prima facie evidence of fraud. Report: No recommendation.

I-3, p.1, 1889	Tawaha Te Riri and 35 others	402/ 1888	Katikati Hill never included in boundaries of block sold to Government. Report: Referred to Government for inquiry.
I-3, p.8, 1901	Te Reneti Te Whauwhau and 19 others	171/ 1899	Katikati Block sold to Government by those who were not the rightful owners. They had received no consideration. Report: No recommendation.
I-3, p.7, 1904	Nepe Patehau and 14 others	453/ 1903	Te Whakamarama Block, Tauranga district, wrongfully taken from them. Report: No recommendation.
I-3, p.6, 1911	Te Korowhiti Tuataka (Mrs. Douglas)	75/ 1911	Praying for inclusion in list of owners for Te Waoku no.3 Block. Report: Referred to Government for inquiry.
LE 1 1911/7 (RDB vol.3, pp.1014-23).I-3, p.8, 1911	Potaua Maihi and 2 others of Pirirakau tribe	146/ 1911	Seeking further inquiry into interests in lots 16 and 184, Parish of Te Puna, Tauranga. Report: Referred to Government for immediate inquiry.
I-3, p.5, Sess.II, 1912	Potaua Maihi and 74 others of Pirirakau tribe	101/ Sess II 1912	For inquiry into lot 154, Parish of Te Puna. Report: Referred to Government for consideration.
LE 1 1911/7 (RDB vol.3, pp.1031-33).I-3, p.5, Sess.II, 1912	Te Wanakore Maungapohatu, of Ngati Pirirakau	323/ 1911	Re lot 154, Parish of Te Puna. Report: Referred to Government for consideration.
LE 1 1912/19	Te Reneti Te	87/	Praying for

(RDB vol.3, pp.1070-76).I-3, p.7, Sess.II, 1912	Whauwhau and 30 others	Sess II 1912	investigation re ownership of Tuhua. Report: No recommendation.
I-3, p.8, 1915	R. Tahuriorangi and 136 others	475/ 1914	Praying for relief re confiscation of the lands of Ngati Ranginui. Report: No recommendation.
I-3, p.19, 1915	Pohoi Te Tahitika and another of Te Puna, Tauranga	96/ 1915	Praying for amendment of partition of Okauia Block. Should be referred to Government for inquiry.
LE 1 1915/9 (RDB vol.4, pp.1197-1202).I-3, p.4, 1916	Ramarihi Te Uru Tekohiwi and 2 others of Maungatapu, Tauranga	99/ 1915	Praying that subdivision of Hairini block be revised, so that owners may receive equal shares. Report: No recommendation.
LE 1 1915/9 (RDB vol.3, pp.1193-96).I-3, p.4, 1916	Tamatehura Winika	95/ 1915	Praying that subdivision of Matakana Block be revised, so that owners receive equal shares. Report: No recommendation.
I-3, p.5, 1921-22 [see also G-7, 1928, p.29]	Rotohiko Pakana and 7 others	154/ 1920	Praying for grant of land in Parish of Apata, Tauranga. Report: Referred for Government consideration.
I-3, p.5, 1921-22 [see also G-7, 1928, pp.29-30]	George R. Hall and 9 others	269/ 1920	Praying for a grant of land for the benefit of the Ngai-tamarawaho sub-tribe. Report: Referred to Government for consideration.
I-3, p.10, 1924 [see also G-7, 1928,	Te Hautapu Wharehira and 23 others	86/ Sess II 1923	Praying for legislation to restore certain Te Puke confiscated

pp.17-8]			lands. Report: Referred to Government for consideration.
I-3, p.13, 1924 [see also G-7, 1928, p.30]	Nepia Kohu and 628 others	153/ Sess II 1923	Praying for relief from oppression caused by erroneous inclusion of their lands in Tauranga confiscated district. Report: Referred to Government for consideration.
I-3, p.11, 1925	Hori Raharuhi	12/ 1925	Seeking legislation to rehear succession orders, lots 85, 86, 87, Parish of Katikati. Report: Referred to Government for inquiry.
G-6C, 1927	Hori Raharuhi	12/ 1925	Inquiry by Judge A.G. Holland into succession orders, lots 85, 86, 87, Parish of Katikati.
I-3, p.4, 1935	Te Auta Te Rou Ngatai, of Tauranga	66/ 1935	Praying for compensation for alleged deprivation of interest in lot 108B, Parish of Te Papa. Report: Referred to Government for inquiry.
I-3, p.6, 1935	Sam Kohu, of Tauranga	339/ 1934 -35	Praying for relief re lot 452, Parish of Te Papa. Report: Referred to Government for consideration.

APPENDIX II: COMMISSIONERS OF TAURANGA LANDS

Brabant, Herbert William		**Gazette**
Appointed	11 July 1876	13 July 1876,No.40 RDB vol.13,p.4593
Revoked	23 January 1878	24 January 1878,No.9 RDB vol.13,p.4662
Appointed	8 April 1878	18 April 1878,No.34 RDB vol.13,p.4675
Appointed	4 January 1881	6 January 1881,No.1 RDB vol.13,p.4746

Clarke, Henry Tacy		
Appointed	8 July 1868	11 July 1868,No.42 RDB vol.12,p.4265
Revoked	7 January 1870	17 January 1870,No.4 RDB vol.12,p.4326
Appointed	27 January 1871	31 January 1871,No.7 RDB vol.12,p.4360
Revoked	11 July 1876	13 July 1876,No.40 RDB vol.13,p.4595
Appointed	23 January 1878	24 January 1878,No.9 RDB vol.13,p.4663
Revoked	8 April 1878	18 April 1878,No.34 RDB vol.13,p.4675

Mair, William Gilbert		
Appointed	2 November 1869	17 January 1870,No.4 RDB vol.12,p.4326
Revoked	27 January 1871	31 January 1871,No.7 RDB vol.12,p.4361

Wilson, John Alexander

Appointed	30 July 1878	1 August 1878,No.75 RDB vol.13,p.4677
Revoked	4 January 1881	6 January 1881,No.1 RDB vol.13,p.4747

Note: Henry Tacy Clarke, who was appointed Resident Magistrate for the Tauranga and Bay of Plenty districts on 5 April 1862 under the provisions of the Native Circuit Courts Act 1858 (*Gazette*, 7 April 1862, RDB vol.11, p.3731), was along with James Mackay Jnr. responsible for setting aside reserves within the township, Katikati-Te Puna and Military Settlements blocks prior to his formal appointment as the first Commissioner of Tauranga Lands in 1868.

APPENDIX III: TAURANGA LANDS ON WHICH ALIENATION RESTRICTIONS REMOVED, 1 APRIL 1880-31 MARCH 1885

Sources: Adapted from table in Stokes (1990), p.199. *AJHR's*, 1883, G-4; 1884, Sess.II, G-5; 1885, G-7.

DATE	BLOCK	ACRES	REASON FOR REMOVAL	APPLICANT
6 August 1881	Waitaha no.2	8,082	Commissioner Wilson had recommended removal. Sir D. McLean had approved "provided the Natives had sufficient land at Tauranga to live upon".	J.Brown, per R. Browning
6 September 1881	Whaka-marama no.2	7,080	"Amply sufficient other land". Unanimous decision to sell.	F.A. Whitaker, per Whitaker and Russell
11 October 1881	Kumikumi no.1	2,617	Ample reserves in block. Unanimous decision to sell.	J.B.Whyte
20 May 1882	Waoku no.2	1,656	Brabant in favour of sale. Only used for pig-hunting and bird-shooting.	Buddle and others, per Whitaker and Russell
22 June 1882	Oropi no.1	2,550	Brabant reports that "the Native owners have sufficient land for their subsistence...and only used by them for pig-hunting and bird-shooting".	T.Buddle and others, per Whitaker and Russell
22 June 1882	Waoku no.1	1,995	Brabant in favour of sale as it is dense forest and only used for pig-hunting,etc.	T.Buddle, A.C. Turner, and J.F. Buddle, per Whitaker and Russell
4 March 1884	Kaimai no.1	4,500	Owners desirous to sell. Sufficient other lands.	J.B. Whyte
4 March	Ongaonga	3,057	Owners desirous to	J.B.

1884	no.2		sell. Sufficient other lands.	Whyte
4 March 1884	Purakau-tahi	463	Owners desirous to sell. Sufficient other lands.	J.B. Whyte
4 March 1884	Kaimai no.1A	1,033	Owners desirous to sell. Sufficient other lands.	Te Mete Raukawa and others

Total Area over which alienation restrictions removed, 1 April 1880-31 March 1885: 33,033 acres.