Te Korowai o Wainuiārua Historical Account – Draft for eminent historian review

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1. Uenuku, Tamakana, and Tamahaki at 1840 and the Treaty of Waitangi

Uenuku, Tamakana, and Tamahaki identity at 1840

1.1. The three principal iwi of Te Korowai o Wainuiārua, Uenuku, Tamakana, and Tamahaki, resided in their central Whanganui rohe when the Crown came to the district in 1840. They consider themselves to have distinct tribal identities, though they are closely connected in their whakapapa and history.

Uenuku

1.2. The principal tupuna of Uenuku, named Uenuku, connects the iwi to many of their neighbouring iwi and hapū through whakapapa.[1] At 1840, the iwi Uenuku resided in the Manganui-a-te-ao Valley and the Mākōtuku Valley, as well as the Waimarino plains.[2] Their kāinga in this area are called Waikurekure, Papatupu and others.[3] In the decades prior to 1840, Uenuku also moved into settlements on the Whanganui River called Pīpīriki, Autumutu and others.[4] Two of their principal rangatira in the nineteenth century were Te Pare-o-te-rangi and his mother, Hinepare-o-te-rangi.[5]

Tamakana

1.3. Tamakana, the tupuna, and his iwi had settled in the Manganui-a-te-ao Valley with Uenuku and their other whānaunga.[6] The rohe of Tamakana stretches from Taurewa near Tongariro maunga to the Waimarino plains.[7]

1.4. The descendants of Tamakana who led the iwi in the nineteenth century include Tūkaiora II, Te Pikikōtuku, Te Whetū Kākahi and his son Winiata Te Kākahi, Te Wharerangi and his son Matuaahu Te Wharerangi, Te Rangihuatau, Kaioroto, Te Riaki, Uenuku Tūwharetoa and his son Taurerewa Tūwharetoa, Te Hītaua and his son Te Pēhi Tūroa I, and Hekeāwai.[8]

Tamahaki

1.5. Tamahaki, the tupuna of the Tamahaki iwi, was a descendant of Ruatipua and Paerangi, original tangata whenua of the district.[9] The nineteenth century rangatira, Uenuku

[1] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.76
[2] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.76
[3] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.76
[4] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.77
[5] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.77
[6] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.73
[7] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.74
[8] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.74, 76
[9] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.77

Tūwharetoa, Taiwiri Toho and Te Rangihuatau, can trace descent from Tamahaki.[10] The Tamahaki rohe is primarily on the western side of the middle reaches of the Whanganui River.[11] Tamahaki and its associated hapū lived in settlements along the Whanganui River, including Pīpīriki, Tīeke, Mangapāpapa, and Kirikiriroa.[12]

The Treaty of Waitangi

1.6. Te Korowai o Wainuiārua had little contact with Europeans before the signing of te Tiriti o Waitangi/the Treaty of Waitangi in their remote inland rohe. When a Church Missionary Society missionary visited Whanganui in May 1840 with a copy of te Tiriti/the Treaty, he did not travel inland to the rohe of Uenuku, Tamakana, or Tamahaki.

1.7. On 23 May, nine Whanganui rangatira signed te Tiriti/the Treaty at the mouth of the Whanganui River.[13] One of the signatories was the high-ranking rangatira Te Pēhi Tūroa I of Te Patutokotoko. On 25 May, his son, Te Pēhi Pākoro Tūroa II, signed the same copy of te Tiriti/the Treaty in Waikanae along with four other Māori.[14] The iwi of Te Korowai o Wainuiārua consider that the signing of te Tiriti/the Treaty created an expectation of a relationship that should have been based upon fairness, justice, and honour.[15]

2. Uenuku, Tamakana, and Tamahaki and the Colonial State 1840-1860

The New Zealand Company

2.1. Iwi and hapū from the middle and upper reaches of the Whanganui River, including iwi of Te Korowai o Wainuiārua, utilised the mouth of the river for fishing and trade, often for months at a time.[16]

2.2. In 1839, an independent British settlement company, the New Zealand Company, sent an agent to New Zealand to negotiate the purchase of land from Māori before the arrival of the Crown.[17] The Company prepared a land purchase deed for over a million acres of Whanganui land from the coast to Tongariro maunga.[18] Two Te Korowai o Wainuiārua tūpuna, Te

[10] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), pp.77-78; Hemara, W. and CCCT Stream Researchers (2008) *Central Claims Charitable Trust: Oral and Traditional History Report* (Wai 903 A152) p.184

[11] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.78

[12] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.79

[13] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.130

[14] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.131

[15] Counsel for Uenuku (2009) *Closing Submissions for and on Behalf of Those Embraced by Uenuku and Their Constituent Hapu and Whanau* (Wai 903, 3.3.108), p.7

[16] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903) pp.250, 284.

[17] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.126

[18] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.126

Rangiwhakarurua and his son Te Kurukaanga, were living near Waikanae in November 1839 and signed the deed aboard a Company ship anchored off the Kāpiti coast.[19]

2.3. In March 1840, Te Kurukaanga accompanied the Company agent to Pūtiki.[20] At a hui of 300-400, the Company agent gave gifts to Te Pēhi Tūroa I of Te Patutokotoko and two other leading rangatira, though it was not intended as payment for the land.[21] Te Patutokotoko coalesced in the early nineteenth century around the leadership of Te Pēhi Tūroa I, and drew support from several locations along the river.[22]

2.4. In May, after te Tiriti/the Treaty had been signed, the Company called a large hui at Pākaitore to discuss the 1839 deed and secured the signatures of 32 Whanganui Māori.[23] By September, Whanganui Māori had built thirty houses in preparation for the arrival of the settlers and Te Kurukaanga built a house for the Company agent.[24] The settlers first arrived at the beginning of 1841.[25] The Company called their settlement Petre.[26] However, the Company's attempt to survey the land it had attempted to purchase was obstructed by Māori who were not involved in the Company's negotiations.[27]

The Spain Commission

2.5. In January 1840, Governor Hobson proclaimed all private purchases were null and void.[28] In 1841, the Governor established an old land claims commission to investigate the validity of pre-Treaty transactions.[29] In 1843, Commissioner William Spain held hearings to investigate the Company's attempted purchase of Whanganui land.[30]

2.6. Te Korowai o Wainuiārua tūpuna took part in the hearings, though Te Kurukaanga was not present.[31] Te Pēhi Tūroa I gave evidence, stating that, by signing the deed, he expected to be paid.[32] However, he said that payment went to others and not himself.[33] Ngāpara, also of Te Patutokotoko, stated that the deed had not been explained to him when he signed it in May 1840.[34] He also stated that most people opposed the purchase due to the insufficiency of the

[19] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.126

[20] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.127; Macky, M. (2006), *Whanganui Land and Politics, 1840-1865*, (Wai 903, A100), p.16

[21] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.127

[22] Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report, volume one (Wai 903)*, pp.64, 80.

[23] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, p.129

[24] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.169

[25] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.170

[26] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.171

[27] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), pp.175-177

[28] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.164

[29] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.173

[30] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.180

[31] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.182

[32] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.181

[33] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.181

[34] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.181

payment.[35] Spain quickly found that there were serious flaws in the Company's putative purchase.

2.7. In September 1843, Spain stated in an interim report that the Company had failed to prove it had purchased the land it claimed.[36] However, he also considered that many Whanganui Māori wanted the settlers to stay in the small township they had established.[37] Spain thought the Company should pay an additional £1,000 to the Crown for a Crown grant of 40,000 acres around the settlement of Petre, otherwise called Wanganui, and announced this as an award to Whanganui Māori in 1844.[38] In March 1845, Spain finalised this recommendation to the Crown.[39] Governor Fitzroy, however, did not approve the recommendation and urged the settlers to leave Petre.[40]

Crown purchasing negotiations

2.8. Governor Grey replaced Governor Fitzroy and arrived in New Zealand in November 1845 with instructions to complete the purchases on behalf of the Company.[41] Grey went to Petre in March 1846 to assess the willingness of leading rangatira to complete the purchase as Spain had recommended.[42] Te Pēhi Tūroa, Ngāpara, and others affirmed that they were willing.[43]

2.9. The next month, Crown purchase agents were sent to Whanganui to complete the purchase. Spain's report had included a map of the Company's claimed land (89,600 acres) which included a line around the 40,000 acres Spain recommended for the purchase.[44] The Crown began surveying the 89,600-acre block, as opposed to the agreed 40,000 acres and did not inform Whanganui Māori of the difference.[45]

Conflict halts negotiations

2.10. Whanganui Māori negotiated with the officials to finalise the boundaries and reserves.[46] However, the purchasing was stalled when fighting broke out in Heretaunga between the Crown and upriver Whanganui Māori in June 1846.[47] Te Pēhi Pākoro Tūroa advised the local missionary that he intended to live in peace with Pākehā and that his

[35] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.181

[36] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.183

[37] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.183

[38] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume One (Wai 903), p.186; Macky, M. (2006), *Whanganui Land and Politics, 1840-1865,* (Wai 903, A100), pp.113-114

[39] Reports by commissioner of land claims on titles to land in New Zealand, No.4 (Petre (Wanganui)), Spain to Governor, 31 March 1845, BPP, 1846, vol.30 [203], p.82 (IUP, vol 5, p.90) in Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, p.188; Macky, M. (2006) *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.113-114

[40] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.121

[41] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.189

[42] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.190

[43] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.190

[44] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.191

[45] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.190

[46] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.193

[47] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.193

brother, Tāhana Tūroa, had gone to attempt to persuade Whanganui Māori in Heretaunga to return to Whanganui.[48]

2.11. In July, after receiving a copy of a letter to Whanganui Māori seeking support for the fighting in Heretaunga, Grey proclaimed martial law over the Whanganui district.[49] After the fighting had ended in Heretaunga, an upriver tauā came to Petre in October and the threat felt by the settlers led the Crown to station 180 troops in the township.[50] In April 1847, following an incident where a group of Māori youths were executed for the murder of four settlers, martial law over Whanganui was extended.[51] The next month, another upriver tauā arrived in Petre and there was several months of skirmishing.[52] The biggest fight was at St John's Wood in July, but the conflict produced a stalemate and the tauā withdrew upriver.[53]

Crown completes the purchase

2.12. By February 1848, peace had been reached between the parties, though the situation remained tense and the Crown kept its troops garrisoned in the township.[54] In May, the Crown sought to recommence its purchase negotiations for the Whanganui block.[55] At a hui on 25 May of around 600 Whanganui Māori, 80 people signed the Crown's purchase deed and 126 others signed the following day.[56] The additional purchase money of £1,000 was divided among fifteen hapū.[57] Tāhana Tūroa received £50 on behalf of Te Patutokotoko.[58] The Crown still did not inform the owners that the £1,000 was for just over 86,000 acres and continued to represent the purchase as the completion of Spain's recommended 40,000 acre purchase.[59]

Whanganui block reserves

2.13. In the original Company deed, it stated that a portion of the land sold would be reserved which was sufficient for the "residence and proper maintenance of the said chiefs and their families".[60] In 1843, the Crown took responsibility for reserving land from the purchase.[61] In 1845, Spain recommended to the Crown that 4,000 acres (a tenth of the recommended Whanganui purchase) in addition to pā, urupā, and cultivations be reserved for Māori.[62] However, in the following year, Governor Grey instructed his purchase agents to

[48] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.193
[49] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, Volume One (Wai 903), p.204
[50] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), pp.207-209
[51] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.218
[52] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.246
[53] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.246
[54] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), pp.223, 231
[55] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p. 229
[56] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, pp.234, 248
[57] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.235
[58] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.236
[59] Macky, M. (2006) *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.315
[60] Deed of Sale to the New Zealand Company, OLC 1, Box 47, 909, ANZ(W) in Macky, M. (2006) *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.26; Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.257
[61] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.258
[62] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, pp.258-259

induce Māori to abandon any cultivations the agents did not think they needed and would "interfere with the pursuits and prosperity of the settlers".[63] In 1848, Te Patutokotoko were allocated a reserve called Waipākura of 2,358 acres.[64]

3. Uenuku, Tamahaki, and Tamakana and the New Zealand Wars 1860-1872

The establishment of the Kīngitanga

3.1. Traditionally, the iwi of Te Korowai o Wainuiārua used rūnanga and hui to resolve the challenges they faced.[65] Their strategies evolved following 1848 to engage with their new Treaty partner.[66] Over the 1850s and 1860s, rangatira of Te Korowai o Wainuiārua and Whanganui increasingly sought to work together on issues they all faced.[67] From the late 1850s, rūnanga became larger and more formal and were often called rūnanganui.[68]

3.2. In 1856, some Whanganui Māori attended a rūnanganui at Pūkawa where they discussed the establishment of a Māori king.[69] The Kīngitanga movement, as it came to be called, was intended to transcend tribal rivalries through the creation of a national Māori organisation to administer their own affairs within their boundaries.[70] At the Pūkawa hui, it was agreed that a 'rohe tapu', later called Te Rohe Pōtae, around Tongariro maunga would be established, within which no land would be sold.[71] In 1857, Tōpia Tūroa (among others) had declined the offer of kingship and Pōtatau Te Wherowhero was selected to be the first Māori King.[72] In 1858, Tōpia Tūroa championed the Kīngitanga in the Whanganui district and support spread quickly among Te Korowai o Wainuiārua iwi.[73]

The Taranaki and Waikato Wars

3.3. In 1860, fighting broke out when the Crown attacked Te Kōhia pā in Taranaki to enforce the Waitara purchase.[74] The iwi of Te Korowai o Wainuiārua decided not to be involved.[75] In March 1860, Te Korowai o Wanuiārua iwi participated in a large and significant hui at Kōkako,

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[63] Grey to Symonds, 17 April 1846, Further Correspondence Relative to New Zealand, British Parliamentary Papers (1846-47) vol. 5, p. 550 in in Macky, M. (2006) *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.159; Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, p.259

[64] Waitangi Tribunal (2015) He Whiritaunoka: The Whanganui Land Report, pp.264-265

[65] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.291

[66] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.293

[67] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.293

[68] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.294

[69] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, pp. 303-4; Tūhoe Deed of Settlement of Historical Claims (2013), para. 2.10; Grace (1959) *Tūwharetoa: a History of the Māori People in the Taupō District* (Wai 1200, A047), p. 444

[70] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), pp.303, 305

[71] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report,* Volume One, p.305

[72] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report,* Volume One, pp.304-305

[73] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.307

[74] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.309

[75] Stirling, B. (2004) *Whanganui Māori and the Crown: 1840-1865* (Wai 903, A65), pp.708-709

south of Ruapehu maunga, to discuss inter-tribal boundaries, land selling, and the Kīngitanga.[76] Soon after, Kīngitanga supporters established an aukati (boundary) at Maraekōwhai on the Whanganui River near its confluence with the Ohura River, and much of the Te Korowai o Wainuiārua rohe lay north of this line.[77] The aukati was a designation of Māori customary land which could not be entered without the approval of the King.[78] In 1861, the Crown and Kīngitanga agreed to a truce in Taranaki.[79]

3.4. In 1862, Te Ua Haumēne of the Taranaki Kīngitanga founded a faith called the Pai Mārire, which translates as 'good and peaceful'.[80] The faith gained a following within the Kīngitanga and later became its religion.[81] Its adherents sought control over their religion and land and to reject European religious authority.[82]

3.5. In 1863, following the Crown's reoccupation of the Omata and Tataraimaka blocks,[83] fighting in Taranaki erupted for a second time and, on this occasion, Tāhana Tūroa and other Whanganui Māori joined the conflict.[84] In June, Hōri Pātene, an influential and popular rangatira of Pipiriki, was killed in the fighting at the battle of Katikara in Taranaki.[85] In October, Te Pēhi Tūroa raised a force and joined Taranaki Māori in part due to their need to seek utu for the death of Hōri Pātene.[86] The Whanganui tauā fought in Taranaki until they ran out of supplies and returned home in early 1864.[87]

3.6. Meanwhile in July 1863, the Crown's forces had crossed the northern boundary of Te Rohe Pōtae at the Mangatāwhiri River and therefore began the Waikato War. The tūpuna of Te Korowai o Wainuiārua were not involved in this conflict.

Warfare spreads to Whanganui

3.7. In January 1864, the Crown issued a declaration in Whanganui that 'rebels' must swear their allegiance to Queen Victoria. They risked being arrested if they had fought against the Crown.[88] No Whanganui Kīngitanga swore allegiance to the Queen, although, in April, Te Pēhi Tūroa indicated that he would not fight again unless attacked in his upriver home.[89]

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[76] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), pp.294-295

[77] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.310

[78] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.310; Marr, C. (2011), *Te Rohe Potae Political Engagement 1864-1886* (Wai 898, A78), pp.134-135

[79] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.378-379

[80] Young, D. (1998), *Woven by Water: Histories from the Whanganui River*, p.57

[81] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.325

[82] Young, D. (1998), *Woven by Water: Histories from the Whanganui River*, p.57

[83] Stirling, B. (2004) *Whanganui Māori and the Crown: 1840-1865* (Wai 903, A65), p.761

[84] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.320

[85] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.320

[86] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.321

[87] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.321

[88] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.397-398

[89] Wanganui Chronicle, 2 April 1864, in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.398

3.8. By April, the Pai Mārire became involved in the Taranaki War and quickly gained a reputation among Europeans and the Crown for violence.[90] Later that month, Mātene Rangitauira returned to the Whanganui district from the Taranaki War.[91] He had become a disciple of Pai Mārire and sought to convert Whanganui Māori to the faith.[92] When he visited his home in Pipiriki, he found many eager converts who were still mourning the death of Hōri Pātene.[93]

3.9. In May, Mātene Rangitauira began to lead a force of 120-150 Pai Mārire Māori down the Whanganui River to attack the township at the mouth of the River.[94] He met with Te Pēhi Tūroa in Pipiriki where Te Pēhi Tūroa stated that no war party should proceed down the River and break the peace in the district.[95] Mātene Rangitauira disregarded this and continued his journey downriver. In response, Te Pēhi Tūroa sought lower-river Māori support to stop the tauā from reaching the township.[96] Thirty-forty Kīngitanga and 300 lower-river Māori met the Pai Mārire at Moutoa Island near Ranana on 14 May.[97] The battle was short, though around 65 men were killed in total, including Mātene Rangitauira.[98] Following their victory at Moutoa Island, the Kīngitanga and lower-river force moved on to take over three pā formerly held by Mātene Rangitauira and took around 40 Pai Mārire as prisoners.[99]

The battles at Ōhoutahi and Pipiriki pā

3.10. In the aftermath of the battle at Moutoa, the Crown began fortifying the pā of its Whanganui Māori allies from the end of May and provided them with arms.[100] There remained great tension in the district for the remainder of 1864 and Kīngitanga Māori increasingly converted to Pai Mārire. In June, Tāhana Tūroa warned those supporting the Crown that there would be a battle with the Kīngitanga at Hiruharama, though it never eventuated.[101] On 2 November, the Governor proposed a cessation of hostilities whereby those who took an oath of allegiance would be provided with an amnesty.[102] However, they

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[90] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.324

[91] Young, D. (1998), *Woven by Water: Histories from the Whanganui River*, p.57; Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.325

[92] Young, D. (1998), *Woven by Water: Histories from the Whanganui River*, p.57; Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.325

[93] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.325

[94] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.402; Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), pp.326-327

[95] Statement of Koroneho Karipa, May 1864, AD 1/1864/2394, ANZ(W) in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.399

[96] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.399-400; Statement of Koroneho Karipa, 19 May 1864, Resident Magistrate's Letterbook,JC-WG, 1, 5, p. 45, ANZ(W) in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.401

[97] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.328-329

[98] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.329

[99] Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.329

[100] White to Booth, 30 May 1864, MS-Papers-0075-14, ATL, in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.406

[101] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume One, p.332; Stirling, B. (2005) *Supporting Documents to the Evidence of Bruce Stirling 'Whanganui Māori and the Crown: 1840-1865', Volume 10* (Wai 903, A65(m)), pp.5332-5334

[102] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.407

would also have to agree to cede land to the Crown.[103] The Kīngitanga refused to accept these terms, stating that they would only agree to peace if they could retain their King and their own laws.[104]

3.11. Later in November, Te Pēhi Tūroa led the Kīngitanga to fortify the Ōhoutahi pā.[105] In January 1865, the Crown dispatched a force of 400 of its Whanganui Māori allies up the Whanganui River to within one mile of Ōhoutahi.[106] On 24 February, the Crown's allies attacked and captured the Ōhoutahi pā. Twenty-seven of the Kīngitanga were killed.[107] Members of the Tūroa whānau were among the 100 Kīngitanga taken prisoner.[108] In March, Te Pēhi Tūroa travelled to the Whanganui township and swore an oath of allegiance to the Crown.[109] Tōpia Tūroa, however, refused to swear the oath of allegiance.[110] Tōpia was given 24 hours to get away and the Crown offered a £1,000 reward for his apprehension.[111] None of the other Te Korowai o Wainuiārua Kīngitanga agreed to submit to the Governor.[112]

3.12. By the end of March, the Crown had decided that it would seize the Pipiriki pā. It sent a force of 200 Crown soldiers and constructed four stockades.[113] In July, the Crown received intelligence that the Kīngitanga would attack them at Pipiriki.[114] There was no sustained assault on the pā, though Crown forces skirmished with Kīngitanga forces over twelve days.[115] Te Pēhi Tūroa fought for the Kīngitanga again in this conflict, though he had sworn his allegiance to the Crown in March.[116]

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[103] Wanganui Chronicle, 2 November 1864 in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.407

[104] Wanganui Chronicle, 5 November 1864 in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.407

[105] AJHR, 1865, E-4, *Further Papers Relative to the Spread of the Hau Hau Superstition Among the Maories,* p.36; Stirling, B. (2005), *Whanganui Māori and the Crown: 1840-1865* (Wai 903, A065), p.797; Waitangi Tribunal (2015), *He Whiritaunoka: The Whanganui Land Report*, Volume One (Wai 903), p.331

[106] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.410

[107] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.412

[108] Stirling, B. (2005), *Whanganui Māori and the Crown: 1840-1865* (Wai 903, A065), p.800; Church, I. 'Turoa, Topia Peehi', from the Dictionary of New Zealand Biography. Te Ara - the Encyclopedia of New Zealand, Available at: http://www.TeAra.govt.nz/en/biographies/2t55/turoa-topia-peehi Accessed 21 April 2019; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, Vol.1, p.333; Booth to White, 23 February 1865, MS-Papers-0075-15, ATL; R. Taylor Journal vol. 12, 25 February 1865, p.151, qms 1996, ATL, in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.412

[109] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.412-413

[110] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.413

[111] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.413-414

[112] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.415

[113] Grey to Cameron, 22 March 1865, AJI-IR (1865), A-4, p. 19 in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), pp.415-416

[114] Hireti Haimona to Haimona Hiroti and Te Poihipi, 14 July 1865, AJHR (1865), A-7, p. 6 in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.415

[115] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, Volume One (Wai 903), p.336; Mete Kingi Paetaha to Grey, 3 August 1865, AJHR (1865) A-7, p.9, in Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.416; Belich, J. (1998), *The New Zealand Wars and the Victorian interpretation of racial conflict*, p.207

[116] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.417

The end of the New Zealand Wars

3.13. In September the Governor issued a proclamation of peace.[117] The Crown pardoned all those who had fought against it, aside from Te Pēhi Tūroa and those guilty of certain murders.[118] In 1865, the Crown utilised the provisions of the 1863 Suppression of Rebellion Act and the New Zealand Settlements Act to confiscate a large area of land in Taranaki.[119]

3.14. The Crown's exclusion of Te Pēhi Tūroa from the pardon meant there could be no formal peace in Whanganui. In 1869, though, Hona, a relative of Tōpia Tūroa, was killed by a force led by Te Kooti Arikirangi Te Turuki who the Crown had been pursuing across the North Island.[120] In September, a priest or 'Papa' of Tōpia was also killed near Lake Rotaira.[121] These events led Tōpia to join other Whanganui Māori who participated in the pursuit of Te Kooti into upper Whanganui and beyond the aukati of Te Rohe Pōtae.[122] However, once Te Kooti was within Te Rohe Pōtae, the Whanganui tauā ended their pursuit.[123]

3.15. Between January 1871 and April 1872, Whanganui iwi, including those of Te Korowai o Wainuiārua, held three large hui to discuss the peace and unity of Whanganui Māori from the source of the Whanganui River to its mouth.[124] Peace in Whanganui was confirmed at an 1872 hui in Putiki.[125]

4. The Native Land Laws

The introduction of the native land laws

4.1. In the 1860s, the Crown introduced native land legislation. One of its objectives was to facilitate the opening-up of Māori customary lands to Pākehā settlement. The Crown established the Native Land Court through the Native Land Acts of 1862 and 1865 without consulting Māori or gaining their consent.[126] A principle function of the Native Land Court was to investigate customary titles to land.[127] Following such investigation, persons found by the Court to be owners could apply to the Governor for a Crown grant.[128] The Māori land title system established in the 1860s was subsequently altered by later amendments and other statutes. The Native Land Act 1873 introduced memorials of ownership which required all customary owners to be listed on the titles.[129]

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[117] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.418
[118] Macky, M. (2006), *Whanganui Land and Politics, 1840-1865* (Wai 903, A100), p.418
[119] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, Volume One (Wai 903), p.336
[120] Binney, J. (2012) *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki,* second edition, p.185
[121] Binney, J. (2012) *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki,* second edition, p.185
[122] Belich, J. (1986) *The New Zealand Wars and the Victorian interpretation of racial conflict*, p.283
[123] Belich, J. (1986) *The New Zealand Wars and the Victorian interpretation of racial conflict*, p.283
[124] Woon to Under Secretary, 23 April 1872, AJHR, F-3A, p.3
[125] Woon to Under Secretary, 23 April 1872, AJHR, F-3A, p.3
[126] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, pp.379, 425
[127] Native Lands Act 1862, section VII
[128] Native Lands Act 1862, section IX
[129] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.393

4.2. The new native land law system created individual title to Māori land which enabled individuals to alienate Māori land interests without reference to their iwi or hapū.[130] This introduced a profound change to customary land tenure, and undermined Māori communal ownership of land and collective decision-making.[131] The owners of Māori customary land were forced to participate in this new system if they were to integrate their land in the modern economy, or to defend their interests in customary land if it was claimed by any other individual.[132] Through the individualisation of land ownership, the Crown expected that Māori would eventually abandon the tribal and communal foundations of their traditional land holdings.[133]

4.3. The first Native Land Court hearing in the southern portion of the Whanganui District took place in 1866.[134] The impact of the native land laws on Te Korowai o Wainuiārua was delayed compared to other iwi because their rohe was remote from European settlement. The principle venue of the Native Land Court was the Whanganui township, and so when hapū began taking their land to the Court they were required to travel a considerable distance from their rohe. In 1876, tūpuna of Te Korowai o Wainuiārua applied for a title investigation of the Tawhitoariki block.[135] The hearing was completed within a day and the Court awarded the land to the applicant and the numerous hapū he represented.[136] The Crown purchased the entire block by 1879.[137] In 1880, the tūpuna of Te Korowai o Wainuiārua took the Atuahae, Mangapukatea, and Raoraomouku blocks to the Court after the Crown had advanced payments.[138] Titles for the block were required to complete the purchase and they were all subsequently sold to the Crown.[139]

Pre-Native Land Court title determination payments

4.4. From 1879, the Crown opened negotiations for several relatively small blocks of Te Korowai o Wainuiārua land.[140] The Crown was keen to purchase land in this area in part because the customary owners were Kīngitanga supporters and had previously been opposed to all Crown land acquisitions.[141] The Crown also sought to secure as large an estate as possible as it was

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[130] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.546

[131] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.375

[132] Macky, M. (2004) *Crown Purchasing in the Central North Island Inquiry District, 1870-1890* (Wai 1200, A81), pp.11-26

[133] Ahuriri Hapū and the Trustees of the Mana Ahuriri Trust [initialled] Deed of Settlement of Historical Claims (2015), para. 2.43

[134] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.436

[135] Berghan, P. (2003) *Block Research Narratives of the Whanganui District 1865-2000* (Wai 903, A37), p.940

[136] Berghan, P. (2003) *Block Research Narratives of the Whanganui District 1865-2000* (Wai 903, A37), p.940

[137] Berghan, P. (2003) *Block Research Narratives of the Whanganui District 1865-2000* (Wai 903, A37), p.942

[138] Berghan, P. (2003) *Block Research Narratives of the Whanganui District 1865-2000* (Wai 903, A37), pp. 36 (Atuahae), 238 (Mangapukatea), 821 (Raoraomouku); *New Zealand Gazette*, 20 February 1879, No.20, p.253

[139] Berghan, P. (2003) *Block Research Narratives of the Whanganui District 1865-2000* (Wai 903, A37), pp. 36 (Atuahae), 238 (Mangapukatea), 821 (Raoraomouku); Innes, C. and Mitchell, J. (2004) *Whanganui and National Park Alienation Study* (Wai 903, A66), pp.9 (Atuahae), 59 (Mangapukatea), 181 (Raoraomouku)

[140] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.31 (Aratawa), 41 (Huikumu), 235 (Mangapukatea), 820 (Raoraomouku)

[141] 27 Apr 1880, James Booth to R.J. Gill, MA/MLP 1 1880/310 found in MA/MLP 1 1886/134 Nat Arch, in Berghan, P. (2003) *Supporting Papers for Block Research Narratives of the Whanganui District: Vol.XXIV Raoraomouku to Taku* (Wai 903: A37(x)), p.13419

concerned about the activity of private speculators in the area.[142] In 1879, the Crown began advancing payments to those who it considered to be owners of the Aratawa Huikumu, Mangapukatea, and Raoraomouku blocks before any application for title had been made to the Native Land Court.[143]

4.5. In the case of these land blocks, the Crown had to estimate the individuals who the Court would later recognise as owners, and the size of the block before the boundaries had been surveyed, which led to difficulties in the Raoraomouku block.[144] Later in 1879, the Crown instructed purchase agents to refrain from the practice of making pre-title advances.[145]

4.6. The Crown often operated as a monopoly purchaser. In 1877, the Crown promoted legislation which provided for it to proclaim the prohibition of all private purchases and leases of Māori land once it had made payments to individual owners.[146] In 1879, the Crown issued such a proclamation over the Raoraomouku and Huikumu blocks.[147] The Crown's proclamations of monopoly powers could have a significant impact on the iwi of Te Korowai o Wainuiārua as their only option under such a proclamation was to sell or lease land to the Crown if they wished to alienate it.[148] Subsequent legislation continued to allow the Crown to prohibit alienations to private purchasers in blocks that the Crown had targeted for purchase.

4.7. In 1880, the Crown's estimation of the size of the Raoraomouku block proved markedly different from its surveyed acreage. The Crown purchase agent had estimated the block to contain 60,000 acres and had advanced £1120 towards the purchase of this block.[149] However, the 1880 survey of the Raoraomouku block showed that it was only 8,697 acres and the purchase agents were instructed to recover some of the advances from the Te Korowai o Wainuiārua owners.[150]

4.8. In 1881, following the title determinations for the Aratawa, Huikumu, Mangapukatea, and Raoraomouku blocks, the Crown made further payments to the legally recognised owners and signed purchase deeds.[151] The Crown and the owners appear to have compromised on the purchase price for the Raoraomouku block, as the Crown paid an additional sum of £1500 in December 1881, though not the additional amount of over £2000 that was initially agreed to in 1879.[152] The Crown then applied to the Court for an award of its interests in the four blocks

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[142] 27 Apr 1880, James Booth to R.J. Gill, MA/MLP 1 1880/310 found in MA/MLP 1 1886/134 Nat Arch, in Berghan, P. (2003) *Supporting Papers for Block Research Narratives of the Whanganui District: Vol.XXIV Raoraomouku to Taku* (Wai 903: A37(x)), p.13420

[143] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.31 (Aratawa), 41 (Huikumu), 235 (Mangapukatea), 820 (Raoraomouku)

[144] Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, volume one, p.484

[145] Edwards, C. (2006) *Crown Purchasing in the Whanganui Inquiry District, 1865-1900* (Wai 903, A102), p.323; Macky, M. (2004) *Crown Purchasing in the Central North Island Inquiry District, 1870-1890* (Wai 1200, A81), p.82

[146] Native Land Act Amendment Act 1877

[147] *New Zealand Gazette*, No. 73, p.932

[148] Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, volume one, p.485

[149] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.822-823

[150] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.823

[151] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.32, 42, 238, 823

[152] 31 Dec 1881, Minute from Booth to Sheridan, MAIMLP 1 *18801515* found in MAIMLP 1 18861134 Nat Arch"

and, between September and November 1881, the Court awarded all the 16,605 acres in these four blocks to the Crown.[153]

5. Kemp's Trust and Uenuku, Tamakana, and Tamahaki

5.1. In 1880, tūpuna of Te Korowai o Wainuiārua supported the attempt to vest their land in a trust as a way to engage with European settlement in a controlled manner.[154] Te Keepa Te Rangihiwinui (Major Kemp), was a Whanganui Māori rangatira who had become increasingly disillusioned about the ability of Māori to control land alienation and had been involved in a particularly contentious Native Land Court case in the eastern Whanganui district in early 1880.[155] In April, he began promoting the idea of a trust which became known as Kemp's Trust.[156] In May, Te Keepa held hui in the Whanganui district to propose his plan to become the trustee of customary lands within a designated boundary.[157] By 1881, it was estimated that 600-700 Whanganui Māori had signed the trust deed, though support was not universal.[158] Pou were placed to mark the boundaries of the trust lands containing 1.5-2 million acres and one, Kemp's Pole, remains at Raorikia on the Whanganui River.[159]

5.2. In September 1880, Te Keepa's lawyers outlined the plan for the Trust in a letter to the Native Minister.[160] The Trust was intended to end disputes between groups of owners and between the owners and the Crown by fixing the boundaries of blocks, vesting such blocks in the Trust, ascertaining their ownership, negotiating purchases on behalf of the owners, and distributing the payment.[161] They sought the Crown's support for the Trust.[162] In a later letter, the lawyers explained the purpose of the Trust as a way "to save the Natives if possible from the nefarious and corrupting Land Purchase system".[163]

Supporting Papers Vo124, p.13403 in Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.825

[153] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.31, 41, 239, 821, 824

[154] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.405; Counsel for Tamahaki (2009) *Closing* Submissions (Wai 903, 3.3.85) p.22; Counsel for Wai 1393 claimants (2009) *Closing Submissions for and on Behalf of Geraldine Taurerewa; Rosita Dixon; Sharlene Winiata and Phillip Ponga (Wai 1393)* (Wai 903, 3.3.89), pp.10-12; Counsel for claimants (2009) *Generic Submissions of Counsel: Kemp's Trust* (Wai 903, 3.3.48), p.1

[155] Bayley, N. (2004) *Murimotu and Rangipō-Waiū 1860-2000* (Wai 903, A48), p.60, section 4.1

[156] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406

[157] *Wanganui Herald,* 31 May 1880 in Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), pp.80-81; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406

[158] W. Sievwright to *New Zealand Times,* 9 May 1881 in Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.81; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406

[159] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406

[160] Crown Law Office (2006) *Bundle of Documents Referred to in the Crown Statement of Response Dated 14 August 2006* (Wai 903, 1.3.3(b)), pp.112-113; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.407

[161] Crown Law Office (2006) *Bundle of Documents Referred to in the Crown Statement of Response Dated 14 August 2006* (Wai 903, 1.3.3(b)), pp.113-114; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, pp.407-408

[162] Crown Law Office (2006) *Bundle of Documents Referred to in the Crown Statement of Response Dated 14 August 2006* (Wai 903, 1.3.3(b)), p.114; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.408

[163] Crown Law Office (2006) *Bundle of Documents Referred to in the Crown Statement of Response Dated 14 August 2006* (Wai 903, 1.3.3(b)), pp.121-122

5.3. The Native Minister wrote to Te Keepa's lawyers that the Crown would not support Whanganui Māori vesting their land in the Trust.[164] He explained that much of the land was already subject to the Government Native Land Purchases Act 1877 as the Crown had made advanced payments to some of the owners.[165]

5.4. At the same time, Te Keepa began establishing a council of 180 people who would have represented each iwi within the Trust's boundaries.[166] It was intended to carry out work of the Trust and be a kind of self-government which would issue and enforce laws.[167]

5.5. While the Trust's supporters had intended to boycott the Native Land Court, they were soon drawn into its proceedings when others made applications for title determinations of blocks within the Trust's boundaries.[168] On 1 August 1881, the Native Land Court held title determinations for the Huikumu and Umumore blocks.[169] The Crown had made advanced payments on all three blocks prior to their investigations and so all were subject to the Government Native Land Purchases Act 1877.[170] Ultimately the Trust was never able to be formally established because the Crown refused to cooperate with it.[171]

5.6. Despite this, the Trust attempted to do its intended work for several years.[172] By 1882, the Trust established an aukati on its boundaries which could not be crossed without permission.[173] It also actively opposed European expansion into the interior of the district by obstructing surveying work, though Te Keepa remained interested in economic development for Māori benefit.[174] The Trust's resistance to alienation caused, in part, a hiatus in Crown purchasing of Te Korowai o Wainuiārua lands between 1881 and 1884.[175] The council had ceased functioning by 1885.[176] The native land laws did not provide for an effective form of collective title over Māori land until 1894.[177]

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[164] Letter to Sievwright and Stout, 29 September 1881, MA *13114,* ANZ(W) in Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.91

[165] Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.91

[166] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.409; Bargh, B. and Cross, S. (1996) *Rangahaua Whanui District 9: The Whanganui District* (Wai 903, A18), p.54

[167] Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.85; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.409

[168] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.411; Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.102

[169] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.41; Innes, C. (2004) *Whanganui Gap Filling Narratives* (Wai 903, A54), p.96

[170] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.41; Innes, C. (2004) *Whanganui Gap Filling Narratives* (Wai 903, A54), p.96

[171] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406; Macky, M. (2005) *Kemp's Trust* (Wai 903, A073), p.125

[172] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.411

[173] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.412

[174] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.412

[175] Macky, M. (2005) *Kemp's Trust* (Wai 903, A73), p.108; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.412

[176] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.406; Macky, M. (2005) *Kemp's Trust* (Wai 903, A073), p.125

[177] Native Land Court Act 1894, s.14(10), p.315

6. Te Rohe Pōtae and the North Island Main Trunk Railway – *subject to negotiation and agreement between UCT and the Crown*.

6.1. The Rohe Pōtae (or 'King Country') was a zone of independent Māori authority intended to control contact and cooperation between peoples outside or enclosed within the boundary, but not prevent it. By the late 1860s, it was widely assumed that Pipiriki marked the boundary between Crown and Kingitanga authority. Controlling entry from the south into the Rohe Pōtae was an important responsibility of the communities of the upper Whanganui River , including Te Korowai o Wainuiārua. The Crown exercised no authority over Te Rohe Pōtae from the end of the New Zealand wars until negotiations between Crown officials, representatives of the Kingitanga, and tribal leaders commenced in the early 1880s. Te Korowai o Wainuiārua traditional history states that at all times they formed part of the Whanganui grouping that entered into negotiations with the Crown in the 1880s relating to Te Rohe Pōtae, and that they were also connected to the Whanganui claimants who participated in the Rohe Pōtae case in 1886.

Te Ōhāki Tapu: The negotiations and agreements to lift the aukati

6.2. From the 1860s, the Crown developed plans to construct a main trunk railway through the North and South Islands. The Crown anticipated purchasing a large amount of land it would sell to settlers at a profit, and thereby pay for the railway and open the interior of the North Island to European settlement. However, during the 1870s the Crown's plans to for the railway could not proceed due to the aukati around Te Rohe Pōtae.

6.3. In 1882, the Crown opened negotiations with Te Rohe Pōtae rangatira who sought Crown recognition and protection of their autonomy before they would agree to the railway proceeding through their lands.

6.4. In March 1883, the Crown secured informal consent from leaders of a neighbouring iwi for a 'reconnaissance survey' to ascertain a possible route for the railway. The agreement was reached on the condition that the Crown would get consent from all Te Rohe Pōtae leaders and would report back immediately on the route.

6.5. In June 1883, Whanganui iwi joined with three other iwi in petitioning Parliament with an outline of the conditions the Crown would need to fulfil in order for the aukati to be lifted. The boundaries described in the petition as Te Rohe Pōtae denoted a smaller area than that defined in the 1860s. The petition called for the exclusion of Te Rohe Pōtae from the jurisdiction of the Native Land Court, the Crown to make Te Rohe Pōtae land inalienable by sale, and enabling the tribes to develop their own systems to fix the boundaries of land for each Te Rohe Pōtae hapū. The Crown made some adjustments to land procedures that provided additional protections for Māori land. The majority of the requests outlined in the petition, however, went largely unanswered and Te Rohe Pōtae was not excluded from the jurisdiction of the Native Land Court.

6.6. Between 1883 and 1885, even though the Crown had yet to secure the consent of Te Rohe Pōtae Māori, the Crown developed legislation and policy to facilitate the process of land acquisition for the railway and settlement. The Native Land Alienation Restriction Act 1884 prohibited private transactions on 400 million acres in the general vicinity of the proposed

railway. The Railway Authorisation Act 1884 provided for the route of the railway to run through Te Korowai o Wainuiārua lands in the Waimarino and Raetihi blocks. In August 1884, a rangatira of another Te Rohe Pōtae iwi reminded the Crown that consent had only been given for the preliminary survey, and construction remained dependent on the Crown's acceptance of the conditions regarding self-determination outlined in the petition.

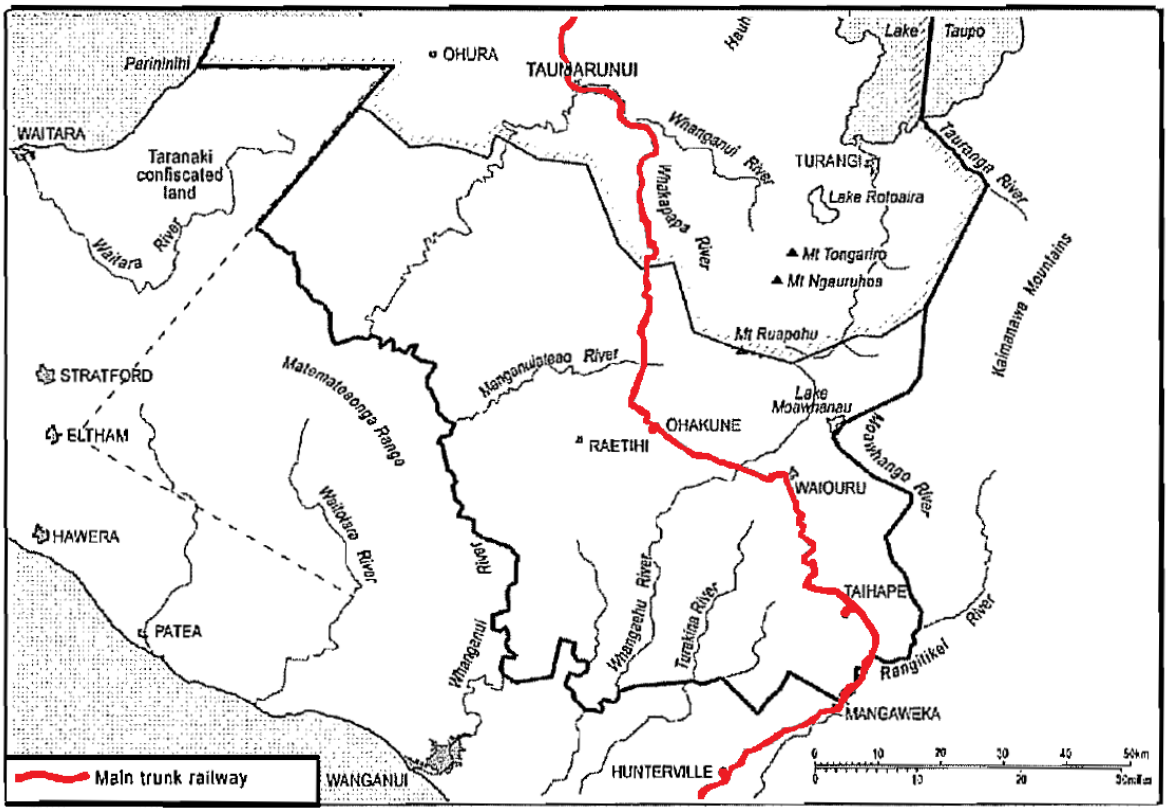

Figure 1: The North Island Main Trunk Railway in the Whanganui district

6.7. In 1885 the Native Minister, John Ballance, held a series of hui with rangatira in Te Rohe Pōtae and upper-Whanganui to further the Crown's plans for the railway. Ballance emphasised the long-term economic benefits that roads and railways would bring to Māori communities in the way of settlement, trade and farming. Ballance called attention to the employment opportunities the construction of the railway would provide. But, in the face of the continued opposition of Whanganui Māori to the Crown's native land regime, he downplayed the extent and nature of the settlement the Crown expected would coincide with the construction of the railway.

6.8. At a hui at Rānana in January 1885, Ballance encouraged Whanganui Māori to gift land for the railway, but assured them that compensation would be paid for land not gifted. Follow-up letters from Crown officials reiterated Ballance's promises that compensation would be paid for land taken for the railway. At a hui at Kihikihi with other Te Rohe Pōtae Māori on 4 and 5 of February 1885 Ballance clarified that one chain width was required for the railway and 5-10 acres for stations.

6.9. A Te Rohe Pōtae rangatira informed the Crown of their agreement to lift the aukati and allow the railway to proceed in March 1885. Building on his earlier support for the rail survey, Te Keepa proved instrumental to convincing many Whanganui Māori of the potential benefits of the railway. In the face of continuing objections from Whanganui Māori to the 'system of sale' for land for the railway, Crown officials later clarified to Whanganui Māori that compensation, if requested by Māori, would be paid but only to the owners as ascertained by the Native Land Court. The involvement of the Native Land Court helped to undermine one of the key objectives of the four tribes as outlined in their 1883 petition.

6.10. The Crown began construction of the railway through Whanganui land in 1885. However, Ballance had failed to get the support of Cabinet or Parliament for some of his promises made to Te Rohe Pōtae rangatira and the Crown did not uphold assurances Ballance had given. In 1886, Ballance changed his message to indicate the railway itself constituted payment.

The 1886 Title Investigation and Determination of Whanganui Interests in the Aotea block

6.11. In late 1885, the Crown supported the applications to the Native Land Court to determine titles for the Tauponuiatia and Waimarino blocks which included large areas which had been part of Te Rohe Pōtae. Another Te Rohe Pōtae iwi made an application for the title to land which became known as the Aotea block in an attempt to manage what they considered to be the inevitable coming of the Court. In 1886, the Native Land Court investigated the titles to the three Te Rohe Pōtae blocks in the townships of Otorohanga, Taupo, and Whanganui. At around two and a quarter million acres, these blocks were the largest blocks into which the Native Land Court inquired.

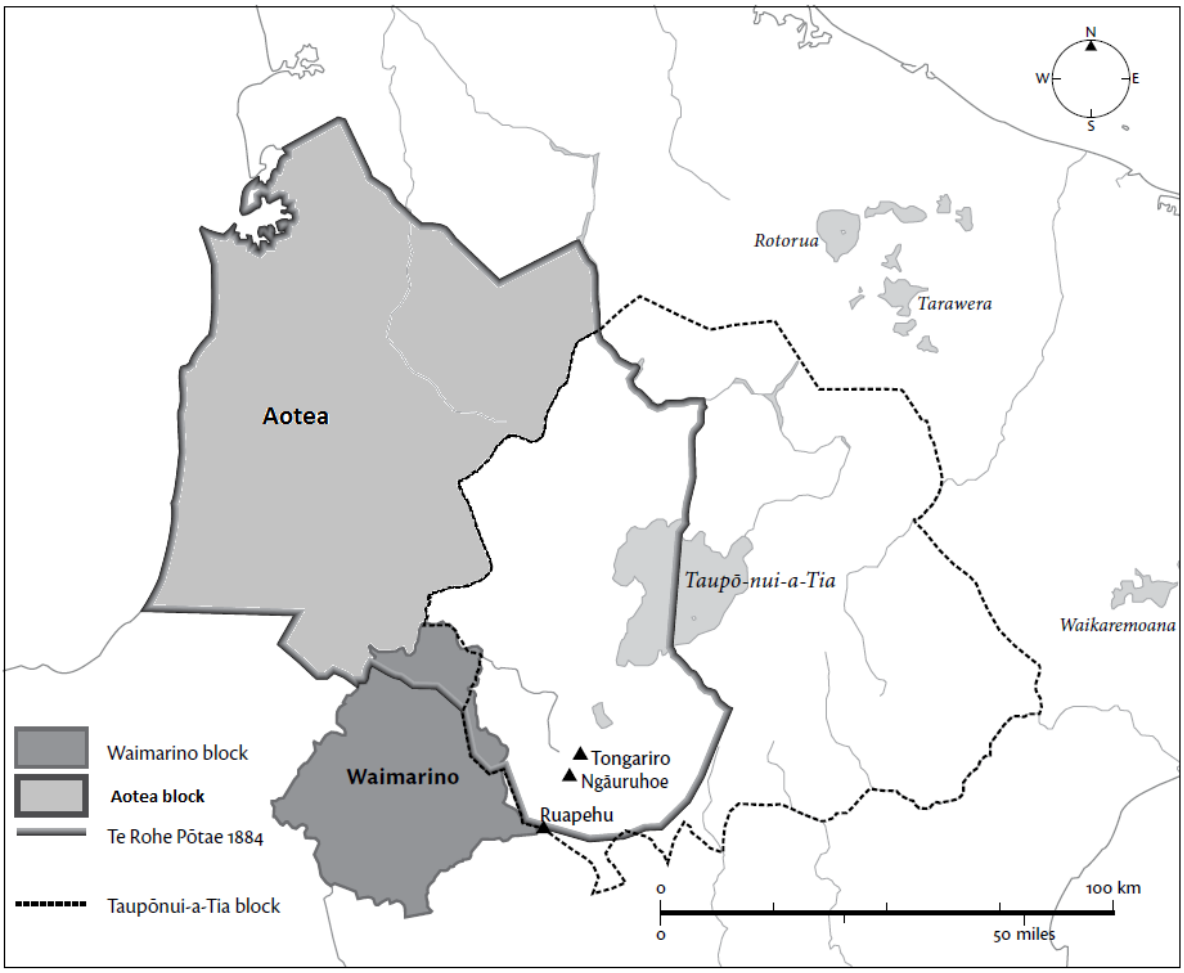

Figure 2: Approximate boundaries of the Aotea, Waimarino, and Tauponuiatia blocks

6.12. The application for the investigation of title to the Aotea block was filed on 20 April 1886 on behalf of five iwi, including Whanganui. Commencing on 2 August 1886, the case took nearly three months to be heard over 58 full sitting days. On 23 October 1886, the Court gave judgment and, after allocating some small areas in the Kawhia district to some of the counterclaimants, it awarded the block to "the five tribes". Therefore, an undefined but significant section of the Aotea block was allocated to 'Whanganui'. An upper Whanganui rangatira jointly presented the main case at the beginning of the hearing with another Te Rohe Pōtae rangatira.

6.13. Following the Court's decision, the lists of owners for the Aotea block were arranged. The claimant groups preferred to have the block allocated to iwi and hapū rather than to lists of individuals, partly because Crown purchasing officers had been canvassing individual owners about their willingness to sell. However, at this time the Court vested blocks in individual owners rather than in iwi or hapū. It is not known how these lists of owners were compiled. The lists of owners were written into the Court minutes along with their iwi and hapū affiliation, including "Whanganui and their hapus". The Court in accordance with the wishes of the owners of the Te Rohe Pōtae block also declared all the orders made at the sitting to be inalienable. Subsequently, some subdivisions of the Aotea block were declared

inalienable. In 1887, the Crown agreed that it would not purchase any land until the Aotea block had been partitioned.

Rohe Pōtae partitions and Te Korowai o Wainuiārua

6.14. The 1886 title investigation of the Aotea block defined its customary boundaries but did not define what areas and blocks within the Aotea block should be allocated to "Whanganui" or other tribal groups. In 1887, owners of the Aotea block submitted applications to the Native Land Court for its partition. While the Native Land Court generally heard applications in the order they were received, Te Rohe Pōtae Māori successfully sought for the subdivisions to considered for iwi first before land was partitioned for hapū and, lastly, for individuals. Because of the size of the block and the complexity of traditional interests involved the partition hearings were unusually lengthy and generated significant costs, particularly regarding the surveying.

6.15. In 1888, the Court began determining the tribal boundaries of the five iwi who collectively owned the block. The boundaries between some of the iwi were resolved by agreement outside the Court in April, but the preliminary partition boundaries for the other groups, including Upper Whanganui, proved much more difficult to resolve. In early 1888, the boundary between Whanganui and Te Rohe Pōtae iwi to the north was determined at a hui in Te Kuiti. The correctness of this boundary was subsequently contested between Whanganui and other iwi within the Aotea block. Subsequently the Native Land Court partitioned the Aotea block into a number of subdivisions of varying sizes.

6.16. In March, Te Rohe Pōtae rangatira provided a list of Whanganui owners to the Court for the southern section of Te Rohe Pōtae which was to be called the Ohura South block. In August, the Court determined the Ohura South block was an estimated 95,000 acres and had 225 Whanganui owners. In January 1889, the Court confirmed the boundaries of the Ohura South block as those determined at the Te Kuiti hui and the surveying commenced later that year. In late 1890, the Court approved the survey map which defined the Ohura South block as 116,125 acres. In 1892, the Ohura South block was partitioned into 20 subdivisions.

6.17. While many of the Ohura South partitions were awarded to the hapū and descendants of tūpuna of other Whanganui iwi, tūpuna of Te Korowai o Wainuiārua were included on the ownership lists of the Ohura South #, #, #, and # partitions. Whanganui tūpuna such as #, #, #, and # had multiple affiliations, including to Te Korowai o Wainuiārua .

6.18. In 1889 Judge Mair noted the vast scale of partitioning that was occurring within the Rohe Pōtae. By the end of 1890 the Native Land Court had made orders for 254 individual blocks within the boundaries of the original 1886 Aotea block representing an area of about 1.5 million acres.

7. The Operation of the Native Land Court

7.1. Once the blocks in the Te Korowai o Wainuiārua rohe began to be investigated by the Native Land Court, title investigations were progressed at a rapid rate. Between 1886 and 1887, some of the largest blocks of most importance to the iwi of Te Korowai o Wainuiārua passed through the Court. This included the Waimarino, Whitianga, Taumatamāhoe, Raetihi, Urewera and

the Whakaihuwaka blocks, totalling just over 730,000 acres.[178] This was the majority of their rohe.[179]

7.2. Te Korowai o Wainuiārua tūpuna found title determinations expensive. The most significant cost was for surveys. Under the 1865 Act, land had to be surveyed before the Court would issue a certificate of title.[180] Later, under the Native Land Court Act 1886, lands had to be surveyed prior to a title determination.[181] The cost of surveying land sometimes led to Te Korowai o Wainuiārua owners alienating further land to repay their debt.[182] For example, in 1904, the Crown was awarded 1072 acres in the Urewera block to satisfy survey charging orders issued by the Crown.[183]

7.3. Following the completion of Crown purchasing, it would apply to the Court for a partition of the Crown's and the 'non-sellers' sections.[184] Those who did not sell their land could still be required to contribute to the payment for the survey of their remaining land.[185] This was exacerbated when the Crown applied for numerous partitions to provide for multiple Crown purchases within a single block.[186] For example, between 1889 and 1896 the Crown acquired 7,458 acres of the Raetihi block through five separate transactions. Each transaction required a partition and its own survey.[187]

7.4. Surveying in the Te Korowai o Wainuiārua rohe was complicated by its remote and difficult landscape. Surveying errors were not uncommon, such as the misunderstanding in 1886 that Taumatamāhoe and Maraekowhai blocks shared a boundary.[188] There is, however, 26,400 acres of land between the two blocks.[189] In 1894, the Court investigated this piece of land as the Whitianga block.

7.5. Other costs borne by the iwi of Te Korowai o Wainuiārua as a result of their participation in the Court included Court fees, the many costs associated with attending the Court in the Whanganui, Otorohanga, and Taupo townships and not being at home to attend to their

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[178] Waimarino, see Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.545; Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp. 678 (Raetihi), 889 (Taumatamāhoe), 1011 (Urewera), 1071 (Whakaihuwaka)

[179] The title of Tawhito Ariki was investigated by the Court in 1876, see Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.940; The title for the Taku block was investigated in 1913, see Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.856; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.439

[180] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.458

[181] Section 18, Native Land Court Act 1886

[182] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.460

[183] Oct 1904, Aotea Land Court MB *521166-168 in* Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.1019

[184] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.458

[185] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.458; Waitangi Tribunal (2008) *He Maunga Rongo: Report on Central North Island Claims,* volume two, p.511

[186] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.493; Pickens, K. (2006) *Introduction and Operation of the Native Land Court in the Whanganui Inquiry District 1866-1899* (Wai 903, A83), p.399

[187] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, pp.493, 538

[188] R.P Boast (ed) The Native Land Court: A Historical Study, Cases and Commentary 1888-1909, *volume 2*, p.830

[189] R.P Boast (ed) The Native Land Court: A Historical Study, Cases and Commentary 1888-1909, *volume 2*, p.830

land.[190] Attendance at the Court also caused social and economic disruption for the iwi of Te Korowai o Wainuiārua.[191] Te Korowai o Wainuiārua tūpuna had to travel great distances to attend Court hearings in the townships.[192] On some occasions, the Court completed title investigations for land in which Te Korowai o Wainuiārua iwi asserted interests in both Taupo and Whanganui within a similar timeframe.[193] The cost of their participation in title determinations was exacerbated by, in some cases, a long stay in the Whanganui township.[194]

7.6. In the nineteenth century, it was customary for not only the claimants and witnesses to attend the Court hearings, but whole communities of all ages often travelled to support them.[195] In 1880, the iwi of Te Korowai o Wainuiārua travelled the long distance down the Whanganui River by waka to the Whanganui Court for the hearing of the Raoraomouku block which was scheduled to begin on 2 June. Due to a delay in another hearing, the title investigation for the block began on 30 July. By this time, however, six members of the party had died due to their living conditions during their protracted stay in the township.[196] Tautahi Wiremu Pakau wrote to the Crown that

7.6.1. *we have experienced much hardship during the last two months and a half and suffered much loss, our tents having been injured by the wind and the rain, and much food consumed [;] four or five times have supplies of food been brought for our use while here… Besides all this four of our children and two of our old people have died in consequence of the hardship we have suffered in watching the Court dealing with the lands lest by being absent we should lose our rights*.[197]

7.7. Another difficulty for Te Korowai o Wainuiārua iwi was the effect of the Court making succession orders. The numbers of owners on Māori land block titles increased as the original owners passed on and their share was then split among successive generations of descendants.[198] This process continued through the generations of owners and the growth of the Māori population in the twentieth century.[199]

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[190] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, pp.456-457

[191] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.462; Crown Law Office (2006) *Final Statement of Response on Behalf of the Crown* (Wai 903, 1.3.3), p.166

[192] Waitangi Tribunal (2013) *Te Kāhui Maunga: National Park District Inquiry Report,* p. 296; the Native Land Court sat at Ūpokongaro in 1882, and at Pīpīriki, Palmerston North, Marton, Turakina, Pātea, Waitōtara, New Plymouth and Ōtorohanga after 1898, see Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, pp.439, 448, 450

[193] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.538, 586-589; Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* p. 367

[194] Crown Law (2009) *Closing Submissions of the Crown, Issue 5: The Native Land Court* (Wai 903, 3.3.129), p.2; Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.445

[195] Pickens, K. (2009) *Dr Keith Pickens' Written Answers to Tribunal Questions* (Wai 903, A83(f)), p.47

[196] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.445

[197] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume one, p.445; Letter from Tautahi Wiremu Pakau to the Government, 16 August 1880, in Berghan, P. (2003) *Supporting Papers for Block Research Narratives of Whanganui District: Vol.XXIV, Raoraomouku to Taku* (Wai 903, A37(x)), p.13414

[198] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.470

[199] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.470; Crown Law Office (2009) *Closing Submissions of the Crown: Breach Issues* (Wai 903, 3.3.130), para.57.2, p.16

8. Nineteenth Century Crown Purchasing

8.1. Following title investigations, very large areas of land were purchased by the Crown from the iwi of Te Korowai o Wainuiārua. These purchases were conducted by means of undivided, individual share-buying by Crown Native Land Purchase officers. As the Crown purchased land from Te Korowai o Wainuiārua individuals without reference to their iwi or hapū, Māori leaders were unable to control the sale of land.[200] The Crown generally gathered signatories to a purchase deed one by one, and sometimes over many years.[201]

8.2. In the 1880's and 1890's, the Crown purchased land for the purposes of building the North Island Main Trunk railway and for European settlement in the Whanganui district.[202] The Crown purchased vast tracts of Te Korowai o Wainuiārua land, such as in the Waimarino, Taumatamāhoe, Whitianga, and Raetihi blocks as a monopoly purchaser.[203]

8.3. Land purchase agents generally sought to acquire land as cheaply as possible within the price ranges approved by the Crown.[204] In the nineteenth century, owners were unable to ensure they were paid a fair price for their land, especially if it contained valuable resources, because they did not have access to independent valuations or private competitors who may have offered to pay more than the Crown.[205] It was not until 1905 that a requirement was introduced for the Crown to pay at least the value assessed by the Valuation Department.[206]

8.4. The Court had the power to impose a restriction over the alienation of Māori land once its title had been determined.[207] However, restrictions on alienation could be removed through a proclamation by the Governor, usually by application of the owners.[208] In 1909, all restrictions on alienation were abolished by the Native Land Act 1909.[209]

9. The Taumatamāhoe Block

9.1. The 146,000-acre Taumatamāhoe block is a large area of land containing the Tangarakau River and Whangamomona River basin in the traditional rohe of Tamahaki.[210] The land also contains important tracks which provided pathways from the Taranaki coast to the Whanganui River which were used by Whanganui Kīngitanga during the New Zealand Wars.[211] The Whanganui River became the block's eastern boundary and it shares a boundary in the west with the Taranaki land confiscated by the Crown in 1865. Following the New Zealand Wars, an aukati

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[200] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.491

[201] Edwards, C. (2006) *Crown Purchasing in the Whanganui Inquiry District, 1865-1900* (Wai 903, A102), p.322

[202] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.555, 603; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.62

[203] Native Land Alienation Restriction Act 1884

[204] Hearn, T.J. (2007) *'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000* (Wai 903, A110), para.6.23, p.157

[205] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, pp.497-498

[206] Maori Land Settlement Act 1905, s.25

[207] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.522

[208] Native Land Laws Amendment Act 1883, s.16

[209] Native Land Act 1909, section 207, p.203

[210] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.7

[211] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), pp.8, 11

was maintained in the upper Whanganui district, including the majority of the land that would be later included in the Taumatamāhoe block.[212] The southern boundary of the aukati on the Whanganui River was at Parinui and the rangatira there was named Taumatamāhoe. It is thought the block was named after him.[213]

9.2. In the late 1870s, the Crown was seeking to purchase as much land as it could in the upper Whanganui region in the hope that the Kīngitanga aukati could be broken down.[214] In 1879, the Crown sought to purchase land called Tāngarākau, the southern part of which was later incorporated into the Taumatamāhoe block, and began to make advances of money before the Native Land Court had determined who the owners were.[215] Following its advance of payments, the Crown proclaimed a prohibition on private purchasing over the land.[216] However, due to disputes over the distribution of money and opposition to surveying, the Crown cancelled its purchase but maintained its proclamation.[217]

9.3. In 1886, Te Rangihuatau applied for a title determination of the Taumatamāhoe block on behalf of his hapū, Ngāti Tamahaki.[218] On 23 February, the Court completed the title investigation for the block in the Whanganui township.[219] Following Te Rangihuatau's evidence of occupation, the Court called for objectors and, as none were present, it made the orders asked for.[220] Te Rangihuatau submitted a list of 495 names, and the Court admitted 474 descendants of Tamahaki, from various hapū, to the ownership list.[221] Less than half of those who received money for the Tāngarākau block were named on the Taumatamāhoe block title.[222] Each of the owners was awarded an equal and undefined interest in the block and their shares would remain this way until the owners had sold their interests or had them partitioned.[223]

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[212] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.12

[213] Downes, T. W. (1984) *History of and guide to the Whanganui River*, 71; Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.12

[214] Walker to Native Minister, 31 January 1879 (Archives New Zealand, Wellington MAMLP 1 1905/03) in Hearn, T.J. (2007) *'Creating a public estate:' Crown land purchasing in the Whanganui Inquiry District: 1865 to 2000: Supporting Documents volume four* (Wai 903, A110(d)), p.235; Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), pp.12-13

[215] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p.889; Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.13

[216] Hearn, T.J. (2007) *'Creating a public estate:' Crown land purchasing in the Whanganui Inquiry District: 1865 to 2000* (Wai 903, A110), p.113

[217] Hearn, T.J. (2007) *'Creating a public estate:' Crown land purchasing in the Whanganui Inquiry District: 1865 to 2000* (Wai 903, A110), p.113

[218] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p.891

[219] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p.891

[220] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p.891

[221] Wanganui MB 9, 23 February 1886, pp. 189-190; Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), pp.26-27. Oliver notes however that "in the same year as the Court's decision, 1886, the block was treated as having 472 owners. This may have been due to a duplication of two names in the name lists."(p.27).

[222] Hearn, T.J. (2007) *'Creating a public estate:' Crown land purchasing in the Whanganui Inquiry District: 1865 to 2000* (Wai 903, A110), p.114

[223] Pickens, K. (2006) *Introduction and Operation of the Native Land Court in the Whanganui Inquiry District 1866-1899* (Wai 903, A83), para.1083, p.401

9.4. Te Rangihuatau intended the Taumatamāhoe block to be inalienable and requested that the Court restrict the sale of the block until the Court had finalised the subdivisions for hapū.[224] On 5 March, the Court imposed a restriction on alienation, except through a single 21-year lease.[225] For reasons that are unclear, the Governor removed the restriction in July 1886.[226]

9.5. In February 1889, the Crown began purchasing shares in the Taumatamāhoe block, before any applications for subdivision had been made by the owners and while the owners still held equal shares in the block.[227] On 26 February, a large group of owners, including Tōpia Tūroa, protested against the Crown's purchasing activities.[228] They believed that the restriction on alienation would apply "until the court had subdivided the block to the Hapūs included in the certificate".[229]

9.6. In March, Te Rangihuatau wrote to the Native Minister on behalf of another group of owners expressing concern that no reserves for sellers had been made in the Taumatamāhoe block and that they had sold enough land to the Crown in the Waimarino block.[230] He stated that the Taumatamāhoe block was "to be reserved for the benefit of the future Maori race".[231] The Native Minister responded that "each person is entirely at liberty to dispose of his share when he thinks fit. Therefore let those who wish to sell do so, and let those who do not keep their shares".[232] This response shows the extent to which Crown purchasing had become based on individualised shareholding.

9.7. Despite these protests, the Crown continued to purchase interests from the owners. In 1893 and 1896, the Court made two large partitions of the shares purchased by the Crown which

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[224] Hearn, T.J. (2007) *'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000* (Wai 903, A110), p.115; Oliver, S. (2003) *Taumatamāhoe Block Report* (Wai 903, A42), p.26

[225] Transcript, 8 March 1886, Taumatamahoe block order file 1, WH330, Aotea Maori Land Court, in Oliver, S. (2003) *Taumatamāhoe Block Report* (Wai 903, A42), p.26

[226] *New Zealand Gazette* (1886) no. 35, p.768; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.523

[227] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.26; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.523; Hearn, T.J. (2007) *'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000* (Wai 903, A110), p.115.

[228] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p 894; 26 Feb 1889, Large petition from Topia Turoa and 126 others to Native Minister, MA/MLP, 1889/95 found in MA/MLP, 1905/03 Nat Arch, Supporting Papers, Vol, Doc., pp. 14652-14660.

[229] Berghan, P. (2003) *Block Research Narratives of the Whanganui District* (Wai 903, A37), p 894; 26 Feb 1889, Large petition from Topia Turoa and 126 others to Native Minister, MA/MLP, 1889/95 found in MA/MLP, 1905/03 Nat Arch, Supporting Papers, Vol, Doc., pp. 14652-14660.

[230] Te Rangihuatau to Native Minister 8 March 1889, in Archives New Zealand, Wellington MA-MLP 1

1905/03. Supporting Documents, Volume 4, pp.203-239 in Hearn, T.J. (2007) *'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000* (Wai 903, A110), p.115

[231] Te Rangihuatau to Native Minister 8 March 1889, in Archives New Zealand, Wellington MA-MLP 1

1905/03. Supporting Documents, Volume 4, pp.203-239 in Hearn, T.J. (2007) *'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000* (Wai 903, A110), p.115

[232] Hearn, T.J. (2007) 'Creating a Public Estate:' Crown land purchasing in the Whanganui Inquiry District, 1865 to 2000 (Wai 903, A110), pp 115–116; Native Minister to Te Rangihuatau, 6 April 1889, MA-MLP 1

1905/03 in Document A110(d) (Hearn supporting documents), pp.203-239.

equated to over 100,000 acres.[233] In 1896, 44 of the non-sellers, led by Riwai te Pokaitara, petitioned the Crown with an objection to the Court's assumption that each owner held equal shares in the block, when the owners' relative interests had never been determined by the Court.[234] They argued that those who had sold their interests would have had relatively small shares.[235] They also questioned how the Crown could have purchased interests in the block when their understanding was that the Court's restriction on alienation would apply until the hapū had decided on the subdivision of the land.[236] The Crown took no action in response to this petition.

9.8. The Crown completed a further purchase in 1899.[237] By this time, the Crown had purchased 80 per cent of the Taumatamāhoe block.[238] In 1906, the Crown resumed purchasing interests in the remaining land.[239] It was reported by a Commission of Inquiry in April 1907 that the non-sellers of the Taumatamāhoe block were pushing for a cessation of Crown purchasing.[240] The 1907 Commission advised the Crown to stop purchasing land in the block.[241] In May 1907, the Court awarded the Crown 17,402 acres for the interests it had purchased in 1906.[242]

9.9. In 1915, despite the 1907 Commission's recommendations, the Crown issued a proclamation prohibiting the owners from selling interests in the Taumatamāhoe 2B2B block to private purchasers and recommenced its land purchasing.[243] The Crown wanted to acquire this block for settlement before the construction of a roading network.[244] Between 1916 and 1923, the Crown completed 13 transactions for a total of 12,536 acres, all of which required partitioning and thus further survey costs for the owners.[245] As a result of Crown purchasing and its compulsory acquisition of land for roading and scenic reserves along the Whanganui River, less than 3,600 acres of the 146,000-acre Taumatamāhoe block remains in the ownership of the iwi of Te Korowai o Wainuiārua.[246]

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[233] Pickens, K. (2006) *Introduction and Operation of the Native Land Court in the Whanganui Inquiry District 1866-1899* (Wai 903, A83), para.1078, p.400; Innes, C. and Mitchell, J. (2004) *Whanganui and National Park Alienation Study* (Wai 903, A66), p.A196

[234] Oliver, S. (2003) *Taumatamāhoe Block Report* (Wai 903, A42), pp.50-51

[235] Oliver, S. (2003) *Taumatamāhoe Block Report* (Wai 903, A42), pp.50-51

[236] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), pp. 50-51.

[237] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.905

[238] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.523

[239] Oliver, S. (2003) *Taumatamahoe Block Report* (Wai 903, A42), p.69; Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.3; Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.891

[240] Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.4

[241] Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.4

[242] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), p.908

[243] Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), p.90

[244] Linz file 20/8-2-SNP, Commissioner of Crown Lands, New Plymouth, to Under Secretary of Lands, 30 October 1911 in Oliver, S. (2003) Taumatamāhoe Block Report (Wai 903, A42), pp.89, 91

[245] Innes, C. and Mitchell, J. (2004) *Whanganui and National Park Alienation Study* (Wai 903, A66), pp.A196-197

[246] Innes, C. and Mitchell, J. (2004) *Whanganui and National Park Alienation Study* (Wai 903, A66), p.A196

10. The Waimarino Block in the Native Land Court

10.1. The Crown's purchase of the Waimarino block was a grievous example of its approach to land purchasing in the mid-1880s.[247] The Crown's engagement with the owners of the Waimarino block resulted in the rapid alienation of a vast tract of land of crucial economic, social, political, and spiritual importance to the iwi of Te Korowai o Wainuiārua. The Crown discouraged owners from applying for partitions and purchased shares without assessing owners' relative interests or the subsequent allocation of reserves. The 1887 purchase of the Waimarino block was the biggest single partition between the Crown and non-sellers' portions. Of this large block of 452,196 acres, 417,500 acres was awarded to the Crown.[248]

The Native Land Court's Title Determination of the Waimarino Block

10.2. The massive Waimarino block comprises almost thirty per cent of the Te Korowai o Wainuiārua rohe.[249] Stretching from the western slopes of Ruapehu to the open plains and densely forested areas, the Waimarino block contained valuable resources for traditional use and was strategically important to the iwi of Te Korowai o Wainuiārua.[250] The Retaruke, Whakapapa, and Manganui-o-te-Ao Rivers also flow through the block and the Whanganui River forms the western boundary of the block. These waterways are critical to the iwi of Te Korowai o Wainuiārua, who established permanent settlements along their banks.[251]

[247] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.637

[248] R.P Boast (ed) The Native Land Court: A Historical Study, Cases and Commentary 1862-1887 (Thomson Reuters, Wellington, 2013) 1200.

[249] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.545

[250] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), pp.18-19

[251] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.19

Figure 1: The major rivers, Māori settlements, and western portion of Ruapehu within the Waimarino block

10.3. On 27 December 1885, Te Rangihuatau, Tāwhirimatea and Tūrehu-o-te-motu applied to the Native Land Court to determine the title of the Waimarino block.[252] Te Rangihuatau, who claimed interests in the block on behalf of Ngāti Tamakana but who was also affiliated to Ngāti Tamahaki, Ngāti Maringi, and Ngāti Taipoto, became instrumental to the Crown's successful purchase of the Waimarino block.[253]

10.4. On 21 January 1886, the notice for the hearing for the Waimarino block was gazetted in the *Kāhiti*. The Chief Judge of the Court gave five weeks' notice for the hearing of the Waimarino block, which did not allow sufficient time for notice to travel to remote communities, to build a case for the hearing, and to travel to the Whanganui township where the hearing was to be held.[254] In the two years following the title investigation, the Crown

[252] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.562; Pickens, K. (2006) *Introduction and Operation of the Native Land Court in the Whanganui Inquiry District 1866-1899* (Wai 903, A83), p.452

[253] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.562; Butler report on purchase and allocation of reserves in Waimarino, 8 July 1887, NLP 87/234, MA1, 1924/202 v1 ANZ in Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.563

[254] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.584

received many petitions from Māori who were not judged to be owners of the Waimarino block, including iwi of Te Korowai o Wainuiārua, who asserted that they did not attend the title investigation because they had not received adequate notice.[255] The petitioners sought to be included on the ownership lists for the Waimarino block but the lists were not altered.[256]

10.5. On 2 March 1886, the Court began hearings for the Waimarino block in the Whanganui township.[257] The location of the hearing caused great expense and inconvenience for the iwi of Te Korowai o Wainuiārua.[258] The hearing of the Taupōnuiātia block was also held early in 1886 in Taupo.[259] The Court held the title determination in four days over two weeks.[260] Te Rangihuatau was the only claimant to give evidence of occupation of the Waimarino block. He stated that he lived at Tīeke and claimed the block under the tūpuna Tamakana.[261] Three objectors spoke, and their claims were admitted by Te Rangihuatau in an adjournment and thus the hearing of evidence was complete within a day. The other three days of title investigation were spent organising the ownership lists.[262] On 16 March 1886, the Court awarded the Waimarino block to 1010 owners, later reduced to 921, including many owners from iwi of Te Korowai o Wainuiārua.[263]

10.6. Immediately following the March 1886 hearing, the Court received six partition applications for the Waimarino block from its Māori owners.[264] The Crown discouraged applications for subdivision by delaying their proclamation in the *New Zealand Gazette.*[265] The Crown did not want partition hearings to proceed while it pursued its purchasing programme, as hearings would cause delays.[266] Consequently, the Crown did not gazette the notice of the applications for partition hearings until it had completed its purchase of the Waimarino block in February 1887, and notified its own partition application for the interests

[255] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.584; Joel, A. (2006) *Document Bank Volume 6 to Waimarino Purchase and Survey Issues Reports 1 & 2, Native Land Purchase Department Files pp.1392-1643* (Wai 903, A99(f)), pp.1487-1502

[256] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.584-585

[257] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.586-589; Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* p. 367

[258] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.584

[259] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.548

[260] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.586-589

[261] Wanganui minute book 9 1 March 1886

[262] R.P Boast (ed) The Native Land Court: A Historical Study, Cases and Commentary 1862-1887 (Thomson Reuters, Wellington, 2013), p.1113

[263] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.592

[264] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.606

[265] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.606-607; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.307; MLC Whanganui MB 10, p 255, 18 June 1886

[266] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.606-607; Joel, A. (2006) *Document Bank Volume 3 to Waimarino Purchase and Survey Issues Reports 1 & 2, Native Affairs Committee papers, Justice & Native Department correspondence files pp.516-761* (Wai 903, A99(c)), pp.550-551

it had acquired.[267] The Chief Judge consistently refused applications for a rehearing of the Court's determination.[268]

11. The Waimarino Block Purchase

11.1. From 1886 to 1887, the Crown sought to purchase as much land in the Waimarino block as possible for European settlement into the area, to acquire land for the construction and operation of the North Island Main Trunk railway, and for the valuable timber resources on the block.[269] The Crown sought to profit from the on-sale to settlers of a large area of land, in part, to repay the £1,000,000 loan it had taken out to construct the railway.[270]

11.2. On 20 March 1886, the Crown made the first payments for the Waimarino block to two individual owners.[271] These payments occurred four days following the Court's issue of a provisional certificate of title and before the expiry of the three-month period during which parties could apply for a rehearing of the title investigation.[272] As the Crown had not yet set a purchase price, these two owners were bound to the Crown's purchase before a price for the block had been agreed.

11.3. The Crown had been aware of the valuable timber resources on the Waimarino block - from as early as 1879.[273] The Crown's purchase prices, however, did not reflect the value of this resource.[274] An official noted that the value of the timber would "probably repay the total cost of the purchase".[275] In April 1886, the Land Purchase Commissioner sought approval to purchase around 400,000 acres of the Waimarino block for £50,000.[276] The Native Minister approved a maximum price in the purchase deed at £50,000 and a minimum purchase price

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[267] Crown Law Office (2009) *Crown Closing Submissions, Issue 6: Waimarino Block* (Wai 903, 3.3.122), p.11, para. 46; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.606, 618, 620

[268] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.641; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), pp.307-308

[269] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.555, 603; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.62

[270] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.561; North Island Main Trunk Railway Loan Act 1882, s.3

[271] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.597, 601; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report* (Wai 903, A99), p.10; Joel, A. (2006) *Document Bank Volume 1 to Waimarino Purchase and Survey Issues Reports 1 & 2, Lands & Survey Wellington and Auckland District Office Files pp.1-360* (Wai 903, A99(a)), p.27

[272] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.601

[273] Crown Law (2009) *Opening submissions on behalf of the Crown* (Wai 903, 3.3.43), p.5; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.62

[274] Crown Law (2009) *Opening submissions on behalf of the Crown* (Wai 903, 3.3.43), p.5; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.62

[275] Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.63; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.604

[276] Telegram Lewis to Butler, 10 April 1886, NLP 86/144, MA 1, 1924/202 v1, ANZ in Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.350; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.603

at £35,000.[277] Crown purchase agents were usually expected to acquire Māori land for as low a price as Māori would accept within the approved range. The minimum purchase price of £35,000, divided by the 1,010 owners of the block, equated to at least £35 for each owner's interest.[278]

11.4. The Land Purchase Commissioner made payments according to his own assessment of their relative interests in the block.[279] He decided £35 would be the minimum payment for an individual's interest that he judged to be nominal, and to those who did not live on the land.[280] Some rangatira, such as Tōpia Tūroa, were paid as much as £170 per interest as the Land Purchase Commissioner believed they owned more of the block and had greater mana in the area.[281] The Crown was also unresponsive to requests from the block's owners to disclose the price per acre, a measure Māori would have been familiar with.[282] The price the Crown paid to the majority of individuals for the Waimarino block, therefore, was low, even according to its own estimates of a reasonable purchase price, and unfair considering its knowledge of the valuable resources on the block.[283]

11.5. The Crown also purchased individual shares from members of Te Korowai o Wainuiārua without knowing the relative size of each owner's interests and where those interests were located on the land.[284] This issue was aggravated by the extensive size of the block on which some of the land would have been more valuable than other parts. Under the provisions of the Native Land Act 1873, those owners who were listed on the Court's provisional certificate of title were often considered to hold an equal interest in the entire block until the Court determined the owners' relative interests.[285] Consequently, the owners of the Waimarino block were uncertain which land was included in the Crown's purchases, and were entirely reliant on the Crown's representations.[286]

11.6. Between March 1886 and February 1887, the Crown purchased 94.7 per cent of the interests of owners under the age of eighteen in the Waimarino block.[287] The Crown purchased the interests of minors from individuals who had not yet been appointed as trustees, and therefore lacked the legal capacity to sell the land.[288]

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[277] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.603; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.11

[278] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.604

[279] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.604

[280] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.604; Hayes, R. (2009) *Brief of Evidence* (Wai 903, M2), p.127

[281] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.606

[282] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.611

[283] Telegram Lewis to Butler, 10 April 1886, NLP 86/144, MA 1, 1924/202 v1, ANZ in Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.350; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.603-604; Joel, A. (2006) *Waimarino Purchase and Survey Issues Report: Part Two* (Wai 903, A99(g)), p.63

[284] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.606

[285] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.601

[286] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.304

[287] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.614

[288] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.617-618

11.7. In January 1887, the Chief Surveyor approved a survey of the Waimarino block, despite additional work on the survey plan continuing through until the partition hearing commenced in March 1887, only a year after the title was determined.[289] By February 1887, the Crown had purchased 821 shares from 921 owners which was equivalent to 417,500 acres.[290] There was opposition to the Crown's case at the partition hearing, including from Tōpia Tūroa who unsuccessfully sought to discuss the location of the Crown's interest with the Land Purchase Commissioner.[291] On 1 April 1887, the Court awarded the Crown the Waimarino No.1 block which was the largest single block purchased by the Crown in the Whanganui district.[292]

The Non-Seller Blocks

11.8. In the partition hearing, the Land Purchase Commissioner appeared at Court to request the partition of the Crown's interest. The 41,000 acres of the Waimarino block that the Crown was not able to purchase from 100 owners was subdivided as non-seller blocks.[293] In December 1886, the applications for partitions from the owners that the Crown had held back since March 1886 were published in the *New Zealand Gazette*.[294] In April 1887, the Court considered the non-sellers' applications for partitions alongside the Crown's application.

11.9. The Court heard a significant amount of evidence from the Land Purchase Commissioner, and from those owners who supported him, but did not appear to regard the evidence of other owners as reliable.[295] Only three of the non-sellers attended the hearing, and the Court discounted the evidence of one of them.[296] The Chief Judge stated at the hearing that, due to their non-attendance, it was "the non-sellers own fault it they are located on the precipices and pinnacles" of the Waimarino block.[297] The Court partitioned seven blocks for the 'non-sellers': Waimarino No.s 2 to 8.[298] There is no record of how the Court determined the acreage and location of the non-seller reserves.[299] Te Korowai o Wainuiārua non-sellers lost kāinga and urupā of great importance to them through the Crown's purchase of the Waimarino block.[300] Also, the part of the Waimarino block that included a large section of Mount Ruapehu fell within the Crown section of the block.[301]

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[289] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.621

[290] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.479

[291] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.624

[292] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.620-621, 631

[293] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.620, 626

[294] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.624; NZ Gazette 1886, vol 2, no 69, 30 December 1886, pp.1725-6

[295] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.629

[296] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.629

[297] Clayworth, P. (2004) *'Located on the Precipices and Pinnacles': A Report of the Waimarino Non-Seller Blocks and Seller Reserves* (Wai 903, A55), pp.39-40

[298] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, pp.626-627, 629

[299] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.627

[300] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.636

[301] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.630

11.10. Due to a shortage of surveyors, the surveys of the non-seller blocks were delayed until 1891 and were completed in 1896.[302] The Court's issue of certificates of title for the non-seller blocks were also delayed from 1887 to the mid-1890s, until after the completion of the Crown's surveys, though the Court back-dated the certificates to 1887.[303] Before 1900, the Te Korowai o Wainuiārua owners remained unsure of where their interests were located and were unable to develop the land.[304]

12. The Waimarino Block Seller Reserves

12.1. The Waimarino block purchase deed stipulated that the location and acreage of the seller reserves would be agreed between the Crown and "a representative Chief of each hapū".[305] By May, the Land Purchase Commissioner had promised the sellers 50,000 acres in reserves. [306]

12.2. However, in July 1887, the Land Purchase Commissioner reported that he had created 33,140 acres of seller reserves in six blocks (Waimarino A to F) and allocated each owner a share between 10 and 50 acres.[307] He described how he had consulted, rather than coming to a mutual agreement as stipulated in the purchase deed, with a representative chief of each hapū, on the location of the seller reserves.[308] The Land Purchase Commissioner wrote that he had chosen to locate the reserves in "areas to which I consider they are entitled".[309] For example, in 1886 the Land Purchase Commissioner had made a special arrangement with five owners from Ngāti Kahukurapango that the Crown would reserve them 300 acres in "any particular spot they may desire" before the owners agreed to sell their interests.[310] However, in 1887 the Crown allocated 225 acres for Ngāti Kahukurapango in the Waimarino E reserve, a location selected by the Crown.[311]

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[302] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.503; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.635

[303] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.634

[304] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.634

[305] Hayes, R. (2009) *Brief of Evidence of R Hayes* (Wai 903, M2), p.110; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.631

[306] Hayes, R. (2009) *Brief of Evidence of R Hayes* (Wai 903, M2), p.122

[307] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.620

[308] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.631; Hayes, R. (2009) *Brief of Evidence of R Hayes* (Wai 903, M2), pp.110-111

[309] Hayes, R. (2009) *Brief of Evidence of R Hayes* (Wai 903, M2), pp.110-111

[310] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.632

[311] Joel, A. (2006) *Document Bank Volume 4 to Waimarino Purchase and Survey Issues Reports 1 & 2, Native Land Purchase/Native Department Waimarino Purchase Correspondence File, Part 1 (beginning) pp.775-1122* (Wai 903, A99(d)), p.1059; Hayes, R. (2009) *Brief of Evidence of R Hayes* (Wai 903, M2), pp.110-111

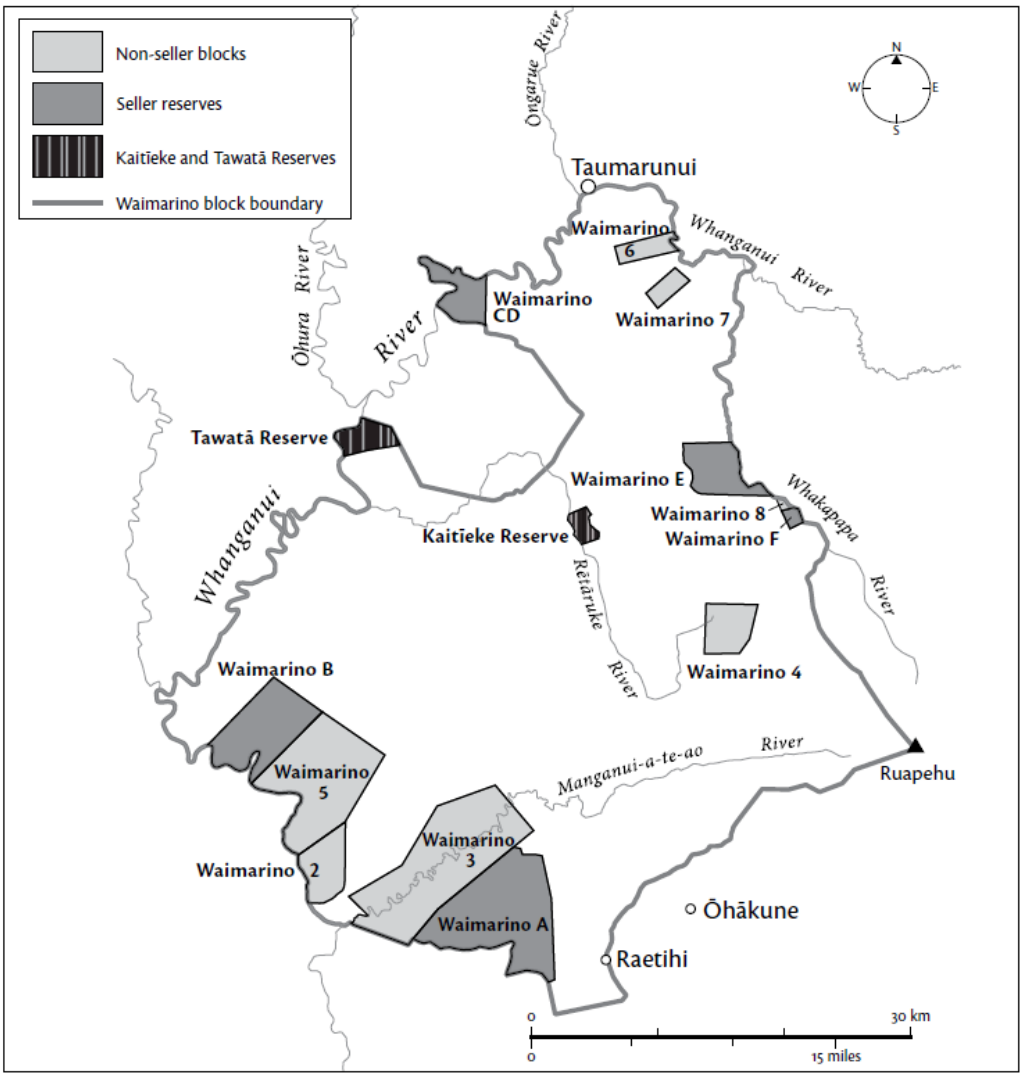

Figure 2: Seller Reserves (A-F) and Non-Seller Blocks (1-8) in the Waimarino Block[312]

Te Korowai o Wainuiārua Protest Over the Location of the Reserves

12.3. In the years following the Crown's purchase of the Waimarino block, several members of Te Korowai o Wainuiārua petitioned the Crown to reserve them specific land that the Crown had not included in the seller reserves.[313] For example, in 1887, Wiari Tūroa petitioned for a 3,000-acre reserve for the grave for his father, Te Pēhi Pakoro Tūroa.[314] The Crown declined the request.

12.4. Kirikiriroa was a well-populated settlement on the bank of the Whanganui River which was not reserved for the iwi of Te Korowai o Wainuiārua and was instead included in the land

[312] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.630

[313] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.555

[314] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.555

awarded to the Crown.[315] In 1892, the Crown proclaimed Kirikiriroa to be within the public domain under the Wanganui River Trust Act 1891.[316] Between 1903 and 1912 Te Korowai o Wainuiārua individuals made a number of petitions to the Crown to have Kirikiriroa returned to their ownership without success.[317]

12.5. In 1895, Winiata Te Kakahi of Ngāti Tara and Ngāti Hinekoropango petitioned the Crown about important burial sites that had been included in the Waimarino No. 1 block, including Tama te Aroha, Te Akatahi, Pakarukaru and Koaikou.[318] In 1910, following a petition from some of the Ngāti Hinewai sellers, an official explained that the Crown had selected the location of the seller reserves which it considered were "gifts from the Crown to the former Native owners".[319] This attitude was directly at odds with the 1886 deed, which provided that the location of the seller reserves would be agreed between the Crown and a representative rangatira of each hapū.

Tīeke

12.6. Tīeke was a Te Korowai o Wainuiārua kāinga and a highly significant urupā. Despite its inclusion in the Crown's portion of the Waimarino block, members of Te Korowai o Wainuiārua continued to live at the kāinga until the first decade of the twentieth century.[320]

12.7. Tīeke was the residence of Te Rangihuatau, the rangatira who made the initial application to the Court for the Waimarino block in 1886.[321] He supported the Crown at the hearings, and assisted the Crown with its purchase of the block.[322] During the Crown's purchase negotiations in 1886 and 1887, the Commissioner had made other special arrangements with rangatira, including Te Rangihuatau, for land or money as rewards for their assistance with the Crown's purchase of the Waimarino block, but no official record was made of some of these arrangements.[323]

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[315] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.558

[316] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.559

[317] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.559

[318] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.555; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume one, p.59

[319] Memo T W Fisher to Chairman Native Affairs Committee 17 November 1910, Le1/1910/21 ANZ in Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.553

[320] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.637; Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), pp.2, 24

[321] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.588

[322] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.588

[323] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), pp.570, 575

12.8. In 1887, officials instructed Crown surveyors to include Tīeke in the Crown's Waimarino No. 1 block, rather than in a non-seller reserve.[324] When the Court provisionally partitioned the Crown's purchase of the Waimarino block in April 1887, the sketch plan of the Waimarino block included pencil lines indicating the boundary lines of the non-seller blocks. These lines show that Tīeke was within the Waimarino No. 1 block, though it is not known when these lines were added to the plan.[325] Te Rangihuatau and others who continued to live at Tīeke were awarded land in the Waimarino E seller reserve.[326]

12.9. In 1892, the Crown declared an unsurveyed block of 267 acres of land on the banks of the Whanganui River, including Tīeke, to be a Public Domain and placed under the control of the Whanganui River Trust.[327] The Crown only held a provisional title to this land. However, the Crown accepted Te Rangihuatau's continued occupation of the site. In 1894, Premier Seddon visited Te Rangihuatau at his residence at Tīeke.[328]

12.10. In January 1895, Te Rangihuatau wrote to the Minister of Native Affairs questioning why there would be a survey of the urupā at Tīeke as he had withdrawn the "Tieke block in a proper manner before the Court and the man who bought it".[329] He explained that Tīeke had been withdrawn from the sale at the second Court hearing by Major Kemp, in the presence of the Native Minister.[330] While, there is no mention in the Court's minute books that this occurred, the Minister was in Whanganui at the time of the hearing.[331]

12.11. Te Rangihuatau and Ngāti Maringi had no intention of leaving Tīeke.[332] Te Rangihuatau described how he met with Native Minister John Ballance in 1887 to discuss reserving the land at Tīeke for the sellers' occupation.[333] Te Rangihuatau's letter also states that the hapū

[324] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.637

[325] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.32; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.569

[326] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.33

[327] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume two, p.638; Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.3; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.567

[328] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), pp.3-4, 14

[329] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.16

[330] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), pp.17, 20

[331] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.23; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.583

[332] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.23

[333] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.23; Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), pp.564, 569

had built new meeting houses and churches, which Native Minister Richard Seddon had seen on his visit in 1894.[334]

12.12. The Crown did not instantly dismiss the claims in Te Rangihuatau's 1895 letter as it had with other land claims on the Waimarino block but promised to send officials to Tīeke to discuss the matter directly.[335] However, there is no record for this meeting. In 1898, the Chief Land Purchase Officer noted that Tīeke was "Crown lands which the Natives are allowed to use and occupy without a title".[336] Te Rangihuatau passed away in 1908 and was buried at Tīeke, which became depopulated.[337]

12.13. In 1916, the family of Te Rangihuatau gave evidence to the Wanganui River Reserves Commission of Inquiry on the Crown's acquisition of Tīeke.[338] The Commission described how a "mistake about this public domain" appeared to have been made.[339] They found that twenty-five acres had been incorrectly included in the 267-acre public domain in 1892, upon which the Tīeke kāinga and urupā stood, and should be "restored" to the Māori owners.[340] The Crown did not act on this recommendation.[341]

13. Public Works

North Island Main Trunk Railway

13.1. Between 1893 and 1929 the Crown compulsorily acquired more than 207 acres of land from iwi of Te Korowai o Wainuiārua for the North Island Main Trunk (NIMT) railway, mainly from the Waimarino reserves and Raetihi blocks.[342] Haitana Te Kauhi and others wrote to the Minister of Public works as late as 1912 raising concerns that compensation for the taking of land from the Waimarino block still had not been paid.[343] The response from the Minister's office echoed Ballance's 1887 message that the increase in value of the remaining

[334] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.23

[335] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), pp.584-585

[336] Marr, C. (2004) *The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues* (Wai 903, A60), p.585

[337] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.24

[338] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.29

[339] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.30

[340] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.30

[341] Gould, A. (1994) *Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Whanganui River and Associated with Tieke Hut* (Wai 903, A15), p.36

[342] C. Marr (2004) The Waimarino Purchase Report: The investigation, purchase and creation of reserves in the Waimarino block, and associated issues, (Wai 903, A60), pp. 607.

[343] Cleaver (2004) The Taking of Maori Land for Public Works in the Wanganui Inquiry District: 1850-2000 (Wai 903, A057), p.192.

land was compensation enough.[344] Despite promises in 1885 that compensation for compulsory acquisitions would be paid, by the turn of the century, officials from the Public Works Department had become unaware that any compensation was owed to Māori at all for land taken for the railway.[345] The iwi of Te Korowai o Wainuiārua were not paid compensation for the 207 acres of land taken for the NIMT railway.

Defence taking

13.2. In the twentieth century, the Te Korowai o Wainuiārua owners of the Waimarino no.4B2 block were leasing 904 acres of their land to a European while they retained the remaining 146 acres.[346] In 1911, the Crown furthered its plans to establish a Territorial Force for the defence of New Zealand by setting aside a large military training ground in the Waimarino district.[347] The Crown did not consult with the owners of the Waimarino No. 4B2 block before the Crown acquired approximately 1,417 acres of the Waimarino No.4 block 'for defence purposes' under section 9 Public Works Act 1908.[348] Part of the proclamation was revoked in February 1912 because the land was no longer needed for the purposes for which it had been taken. This left the acquisition as 1,051 acres from the Waimarino no.4B2 block.[349]

13.3. In February 1912, Haitana Te Kauhi wrote a letter of objection at the Crown's failure to pay compensation for land taken for the railway to the Minister of Public Works in February 1912 and mentioned that 'we notice you propose to take part of this land for purposes of the Defence System'.[350] The letter invited the Minister to meet with them at Raetihi to discuss their concerns. The Office of Public Works declined to meet or to address issues that did not concern takings for scenic reserves.[351] In March, the Native Land Court awarded the owners almost £540 in compensation.[352]

13.4. There is no evidence that the Crown ever used the land acquired in the Waimarino No.4B2 for the purposes for which it was taken. In 1922, 649 acres of the Waimarino No.4B2 block that had been acquired for defence purposes were incorporated into the Tongariro National park. In 1940, the Crown gazetted that 12,000 acres of Waimarino defence training

[344] Cleaver (2004) The Taking of Maori Land for Public Works in the Wanganui Inquiry District: 1850-2000 (Wai 903, A057), p.192

[345] Cleaver (2004) The Taking of Maori Land for Public Works in the Wanganui Inquiry District: 1850-2000 (Wai 903, A057), p.191.

[346] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.158

[347] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.156.

[348] Waitangi Tribunal (2013) Te Kāhui Maunga: The National Park District Inquiry Report, volume two (Wai 1130), p.725; P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.157.

[349] *New Zealand Gazette* (1912) No.2, p.16; P. Clayworth, (2004) *'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves* (Wai 1130, A35), p.157.

[350] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.157

[351] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.157.

[352] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.158

ground was no longer needed for the purposes for which is was taken. Instead of offering this land back to its original owners, it was declared to be Crown land.[353] A year later, the Crown added 55 of those acres to a new state forest and added the remaining 346 acres to the Tongariro National Park.[354]

14. Twentieth Century Crown Purchasing

14.1. At a hui in Pūtiki in 1898, attended by rangatira with affiliations to Te Korowai o Wainuiārua, Premier Seddon stated that the sale of Māori land must stop, because "in saving the land [they] are saving the Native people".[355] Despite the taihoa on purchasing from 1900 to 1906, Crown purchasing in the Te Korowai o Wainuiārua rohe continued into the twentieth century. Between 1906 and 1907, the Crown also purchased over 80 per cent of the 63,463-acre Whakaihuwaka block.[356] In 1907, the Stout-Ngata Commission investigated the land remaining in Māori ownership and made recommendations to the Crown about where purchasing should cease.[357] With regard to the whole Whanganui district, the Commission advised the Crown that its present system of purchasing should not continue.[358] In particular, the Commission investigated Crown purchasing in the Whakaihuwaka block and stated that the owners pressed for a cessation of Crown purchasing.[359] The Commission recommended that the remaining land in the Whakaihuwaka block be kept in Māori ownership for their own farms and to lease to European farmers.[360]

14.2. In 1909, the Crown promoted the Native Land Act which lifted all restrictions on alienation and, from 1910, the Crown resumed purchasing in the region.[361] Between 1917 and 1927, despite the recommendations by the Stout-Ngata Commission, the Crown purchased more than 20,000 acres in the Whakaihuwaka block.[362] There is only about 1,252 acres remaining in Māori ownership in this block.[363] Private parties also acquired a large proportion of the small amount of land retained by the iwi of Te Korowai o Wainuiārua. For

[353] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), p.159

[354] P. Clayworth, (2004) 'Located on the Precipes and Pinnacles': A Report on the Waimarino Non-Seller Blocks and Seller Reserves (Wai 1130, A35), pp.158-60.

[355] AJHR (1898) *Meeting of the Premier and the Hon. James Carroll with the Chiefs and others of the Wanganui Tribe, held on the 14th of May 1898, at Putiki, Wanganui*, p.35 in Walzl, T. (2004) *Supporting Papers for Whanganui Land: 1900-1970, Vol. V* (Wai 903, A51(e)), p.1851

[356] Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.3

[357] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.704; Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.3

[358] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.704; Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.16

[359] Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.4

[360] Stout-Ngata Commission (1907) *Native Lands in the Whanganui District (Interim Report on)*, AJHR 1907 G-1a, p.4

[361] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.704

[362] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.1077-1079

[363] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.1080-1081

example, between 1911 and 1956, private parties purchased 3,272 acres of land in the Mairekura block, leaving little over 270 acres in Māori ownership.[364]

14.3. Between 1910 and 1930, the Crown acquired more than half of the land remaining in the Waimarino non-seller blocks and seller reserves.[365] The largest Crown purchase in this period was the Te Korowai o Wainuiārua owner's 6,195-acre seller reserve, the Waimarino block B3B2B, in 1913.[366] A meeting of assembled owners, attended by three of the 172 owners, decided unanimously to sell the block to the Crown.[367] By 1929, large-scale Crown purchasing had ceased.[368] In the same period, private parties purchased 28,200 acres of the remaining Māori land in the Waimarino block.[369] In the Waimarino E seller reserve, in which Te Rangihuatau was allocated land, private parties purchased all of the remaining Māori land.[370] By 1930, of the 74,140 acres of land originally allocated as seller reserves and non-seller Waimarino blocks, less than 35,000 acres remained in Māori ownership.[371]

15. The Tongariro National Park

15.1. In the 1880s, the Crown sought to establish national parks in New Zealand around Aoraki/Mount Cook and the central North Island akin to the national park that had opened at Yellowstone in Wyoming, America in 1872.[372] In early January 1886, Crown officials expressed a desire to make the three central North Island volcanic peaks, Tongariro Ngauruhoe, and Ruapehu, and the principal thermal springs of Taupō, into inalienable reserves in Crown ownership.[373]

15.2. Negotiations to establish a national park in the central North Island occurred in a context of significant Native Land Court activity and Crown-purchasing in the central North Island. For example, in January 1886, the Court investigated title to the one-million acre Taupōnuiātia block in Taupō, with the first stage of the subdivisions from February to April, and made grants to individual owners.[374] The Court investigated the title for the 83,000 acre Ōkahukura block at Taupō in February 1886, and subdivisions around the three volcanic peaks began in February and March.[375] Early March also saw the title investigation in

[364] Berghan, P. (2003) *Block Research Narratives of the Whanganui District: 1865-2000* (Wai 903: A37), pp.179-187

[365] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.1042

[366] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.1049

[367] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.1049

[368] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.722

[369] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, p.1054

[370] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, Volume Two, pp.1056-1057

[371] Innes, C. and Mitchell, J. (2004) *Whanganui and National Park Alienation Study* (Wai 903, A66), p.A232

[372] Joel, A. (2005) The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park (Wai 1130, A056(a)), paras. 14, 32; Yellow Stone National Park (accessed 28 January 2016); In 1894, two parks already existed in law (nearly 100,000 acres around Mount Cook was set aside as Tasman National Park in 1887, and a further 38,000 acres adjacent to it was set aside as a second National Park in 1981)

[373] L. M. Grace to Balance, 6 January 1886, NLP 86/8 with LS 1 29805, ANZ, Wellington in Joel, A. (2005) The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park (Wai 1130, A056), para. 134, pp.60-61

[374] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* p. 296

[375] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* p. 296; Taupo Native Land Court Minute Book No. 4, 3 February 1886, pp. 107, 114

Whanganui of the Waimarino block.[376] Although the Court's sitting schedule was consistent with requests made by Māori from the south-west of Ruapehu not to run hearings concurrently, the tight schedule and rugged terrain between Whanganui and Taupō made it challenging for the iwi of Te Korowai o Wainuiārua to defend their interests at all hearings.[377]

15.3. In March 1886, iwi of Te Korowai o Wainuiārua petitioned the Court for a re-hearing of the southern Taupōnuiātia blocks in which they asserted interests, claiming that hearings had occurred in their absence.[378] The Chief Judge dismissed this petition because ignorance of, or inability to attend, a session, were insufficient grounds for reinvestigation.[379]

The Tongariro National Park is Established/Proclaimed

15.4. In January 1887, the Crown opened negotiations with another iwi about the prospect of the volcanic peaks of the mountains forming the nucleus of a proposed national park.[380] Negotiations with this iwi continued until September when they signed a deed of conveyance with the Crown for the three volcanic peak blocks, binding the Crown to the tuku with the iwi, or partnership, to ensure the mountains' future protection.[381]

15.5. There is no evidence that officials consulted or negotiated with Te Korowai o Wainuiārua iwi regarding the proposed national park, despite having purchased land from them in the south and west of what would later be included in the Tongariro National Park, including a large portion of the Waimarino block on the western slope of Ruapehu.[382]

15.6. In 1894, Parliament passed the Tongariro National Park Act which provided for the Crown to proclaim the establishment of the Park.[383] In the same year, the passage of the Native Land Court Act provided for Crown pre-emption over the country.[384] By 1899, officials had purchased all but about 5,000 acres of the land designated for the Park.[385] On 23 August 1907, the Crown legally proclaimed the establishment of the Park over 62,300 acres surrounding the Ruapehu, Ngauruhoe and Tongariro mountain peaks.[386] This proclamation authorised the Crown's compulsory acquisition of 5,000 acres of land within the Park's boundaries that remained in Māori customary ownership. Although the Crown was required

[376] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* p. 296

[377] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report,* pp. 296-7

[378] Anderson, R. (2005) *An Overview Report on the Relationship Between Māori and the Crown in the Establishment of the Tongariro National Park* (Wai 1130, A009), pp. 71, 72

[379] Anderson, R. (2005) *An Overview Report on the Relationship Between Māori and the Crown in the Establishment of the Tongariro National Park* (Wai 1130, A009), p.73

[380] Notes of an Interview between the Hon. Te Heuheu Tukino and Minister of Tourist and Health Resorts, 13 November 1920, Wellington in Joel, A. (2005) The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park: Document Bank (Wai 1130, A056(a)), p. 000311

[381] Ngati Tuwharetoa Deed of Settlement of Historical Claims (2017), paras. 2.186-7

[382] Crown Closing Submissions (Wai 1130, 3.3.45), chapter 6, Pdf p. 148, para. 170

[383] Tongariro National Park Act 1894, http://www.nzlii.org/nz/legis/hist_act/tnpa189458v1894n55326/

[384] Section 117, Native Land Court Act 1894

[385] Edwin Mitchelson, 17 September 1890. NZPD, 1890, pp.952-953, cited in Wai 1130 #A56, p.26; and, TKM, pp.368-369 and 372

[386] Proclamation setting apart land for Tongariro National Park, New Zealand Gazette, 23 August 1907, no. 76, p. 2677, Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report*, p. 576

by the 1894 Act to pay compensation for lands compulsorily acquired for the Park, it did not do so.[387]

Management of the Tongariro National Park

15.7. In 1894, a board of trustees was established to manage the Park. The four-member board did not include a member of Te Korowai o Wainuiārua.[388] Throughout the nineteenth century, despite changes to the structure of the board and the composition of its membership in 1914, 1922, 1924, 1952, and 1980, the iwi of Te Korowai o Wainuiārua continued to have no role in the Park's management. Consequently, the iwi of Te Korowai o Wainuiārua have been unable to exercise their kaitiakitanga and protect taonga within the Tongariro National Park from physical and cultural degradation.[389]

16. The Aotea District Maori Land Board and Vested Lands

16.1. The last decade of the nineteenth century saw increasing Māori protest about the loss of their lands and exclusion from its management.[390] Crown officials attended many hui in Whanganui in these years to discuss with Māori their land management and how the Crown could facilitate the protection of remaining Māori land.[391] In 1900, the Crown promoted the Maori Land Administration Act to reserve the remaining Māori land for its better settlement, utilisation, and administration.[392]

16.2. The 1900 Act provided for the establishment of Māori land councils to administer Māori land in a particular district.[393] In 1901, the Aotea District Maori Land Council was established, which included most of the Whanganui region, except for the far north.[394] The Council had seven members; the president and another member were European, three elected members were Māori, and two Crown-appointed members were also Māori.[395] The five Māori members remained on the Council for four years.[396] Māori owners within the district had the option to vest their lands in the Council.[397] The Council could lease, partition,

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[387] Commissioner of Crown Lands to Under-Secretary for Lands, 13 December 1929. AANS 6095 W5491, 4/362. ANZ. Wai 1130 #D55, pp.73-74; Wai 1130 #A53, pp.18, 22, and 31-34; Wai 1130 #A53(a), p.121; Judge O'Malley, 1960, cited in Wai 1130 #A70(a), p.12; and, TKM, pp.439 and 531-533, 537-538, 574-575, and 595

[388] Tongariro National Park Act 1894 (58 VICT 1894 No 55), s4

[389] Closing Submissions on behalf of the people within the embrace of Uenuku and their constituent hapū and whānau (Wai 1130, 3.3.37), paras. 3.9-10, 20.5, 20.8, 20.21, 21.5; Closing Submissions of Counsel [Tamahaki] (Wai 1130, 3.3.40), paras. 699, 705; Generic Submissions Relating to the 'Gift' of the Peaks and the Establishment of the Tongariro National Park (Wai 1130, 3.3.23)

[390] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.664

[391] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.664

[392] Maori Land Administration Act 1900, Preamble

[393] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.668

[394] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, pp.669-670; Loveridge, D. (1996) *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952* (Wai 1200, A60), p.32

[395] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.669

[396] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.670

[397] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, pp.668-669; Walzl, T. (2004) *Whanganui Land: 1900-1970* (Wai 903, A51), p.63

manage, improve or use the land as security for a loan. However, the land could not be sold.[398]

16.3. In March 1902, members of Te Korowai o Wainuiārua met with the Native Minister and president of the Council at Hiruharama and agreed in principle to vest 11,984 acres of the Waharangi block in the proposed Council.[399] A period of signature collection followed this for the 1,007 owners of the Waharangi No. 1, 2, 4, and 5 blocks.[400] The Waharangi blocks were vested in the Council in August 1903.[401] The vesting deeds had a standard clause which allowed the land be leased in perpetuity.[402] However, the owners of the Waharangi block wrote onto the deed that the maximum length of lease would be 42 years.[403]

16.4. In 1903, the Council advertised some of the vested land blocks for one 21-year lease, with the right to renew the lease for a further 21 years.[404] However, the Council received very few applications for leases on these terms.[405] Following this failure to lease the vested lands, the Crown and European members of the Council attempted to pressure the Māori members to allow the lands to be vested on perpetual lease agreements.[406] However, the Māori members represented a majority and would not agree to lease the land in perpetuity, knowing that the owners would never approve of this.[407] The Council agreed, instead, to offer the lessees compensation for any improvements made to the land to be paid by the owners upon resumption of the land.[408] If the compensation could not be paid by the owners at the conclusion of the lease, the Council agreed that the land would be leased again for a further 21-year term.[409] At the same time, however, European members of the Council believed that the owners would not be able to pay the compensation required, and commented at the time that this made the leases, in effect, perpetual.[410] However, in 1907 the Crown promoted legislation providing that the vested lands should be returned to Māori control by 1957.[411]

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398 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.669

399 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.673; Walzl, T. (2004) *Whanganui Land: 1900-1970* (Wai 903, A51), pp.62-63

400 Walzl, T. (2004) *Whanganui Land: 1900-1970* (Wai 903, A51), pp.63-64

401 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.902

402 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.908

403 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.908

404 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.910

405 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.910

406 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.921

407 Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.914; Horan, M. (2006) *The Management of Vested Lands in the Aotea District, 1902-1913* (Wai 903, A101), para.109, p.57

408 Extract from Aotea District Maori Land Board Minute Book, No.1 page 218', 21 July 1904, Whanganui, in Horan, M. (2006) *Document Bank for The Management of Vested Lands in the Aotea District, 1902-1913,* Volume 18 (Wai 903, A101(r)), p.36

409 Extract from Aotea District Maori Land Board Minute Book, No.1 page 218', 21 July 1904, Whanganui, in Horan, M. (2006) *Document Bank for The Management of Vested Lands in the Aotea District, 1902-1913,* Volume 18 (Wai 903, A101(r)), p.36

410 6 Ju11904, Fisher to Sheridan, MA13/56c, Arch. NZ. Wgtn, in Walzl, T. (2004) *Supporting Papers for Whanganui Land: 1900-1970* (Wai 903, A051(f)), p.2219

411 Bassett, H. and Kay, R. (2004) *Whanganui Leased Vested Lands c. 1951-2000* (Wai 903, A062), p.25; Native Land Settlement Act 1907, s.28

16.5. In 1905, the Crown promoted the Maori Land Settlement Act, which abolished the councils and provided instead for Māori land boards. In March 1906, the Aotea District Maori Land Board was established with only three Crown-appointed members, just one of whom was required to be Māori.[412] After 1913, the Crown did not appoint any Māori members to the Board.[413] The Board inherited the lands which had been vested in the Council, including the Waharangi block.[414]

16.6. In 1907, the owners of the Raetihi block vested 5,200 acres in the Board, and between 1908 and 1910 the Board leased Te Korowai o Wainuiārua lands in the Raetihi and Waharangi blocks to European settlers on the terms agreed to in 1904.[415] The amount of rent to be paid to the owners of the land for the first 21-year term was set at five per cent of the value of the land.[416]

16.7. In 1909, the Native Land Act empowered the Native Minister to direct the Board to create a sinking fund from a portion of the lease revenue to assist the owners with paying the compensation at the end of the lease period.[417] The Native Minister did not make such a direction during the first 21-year lease due to the need to pay back debt incurred from the establishment of infrastructure on the land.[418]

16.8. Between 1929 and 1931, the Board renewed the 21-year leases on terms that led to the owners' annual rental income substantially declining. The rent for the second 21-year lease was based on the value of the land minus the value of improvements.[419] The improvements were valued at what they would cost when the lease was renewed, but many of the improvements, such as clearing the land, had been carried out decades earlier, at the beginning of the lease period.[420] This led to the value of improvements being set as higher than their cost and, as a result, the rent received by the Te Korowai o Wainuiārua owners decreased by almost 30 per cent in their second lease period.[421]

16.9. The decline in rentals and the absence of a sinking fund compromised the ability of the owners to pay the compensation for improvements due at the end of the lease and recover control of their land. The Native Minister did not direct the Board to create a sinking

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[412] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, pp.676, 679

[413] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.679

[414] Horan, M. (2006) *The Management of Vested Lands in the Aotea District, 1902-1913* (Wai 903, A101), para.142, p.73

[415] Horan, M. (2006) *The Management of Vested Lands in the Aotea District, 1902-1913* (Wai 903, A101), para.143, 145 pp.74-75; Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.902

[416] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.926

[417] Native Land Act 1909, s.263, p.220; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.925

[418] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.926

[419] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp.927-928

[420] *Report of Royal Commission appointed to inquire into and report upon matter and questions relating to certain leases of Maori lands vested in Maori Land Boards,* AJHR 1951, G-5, p.25 in Bassett, H. and Kay, R. (2004) *Whanganui Leased Vested Lands c. 1951-2000: Document Bank* (Wai 903, A062(a)), p.17

[421] *Report of Royal Commission appointed to inquire into and report upon matter and questions relating to certain leases of Maori lands vested in Maori Land Boards,* AJHR 1951, G-5, p.25 in Bassett, H. and Kay, R. (2004) *Whanganui Leased Vested Lands c. 1951-2000: Document Bank* (Wai 903, A062(a)), p.17; Walzl, T. (2004) *Whanganui Land: 1900-1970*, Volume One (Wai 903, A051), p.377

fund in the second lease term due to the poor economic conditions in the 1930s and 1940s.[422] Crown officials were aware that the owners would not be able to reoccupy the lands at the end of the second lease and discussed options to remedy this in the 1930s, but ultimately, the Crown took no action to prevent this outcome.[423] In 1953, the Crown promoted the Maori Land Amendment Act which discontinued the boards and transferred their powers and duties to the Māori Trustee.[424] Despite the provision in the Native Lands Act 1907 for the vested lands to return to their owners' control no later than 1957, Te Korowai o Wainuiārua land, apart from three blocks of land, remained vested in the Māori Trustee and occupied by the lessees until they were amalgamated into the Ātihau-Whanganui Incorporation in 1970.[425]

17. The Whanganui River Scenic Reserves

Te Korowai o Wainuiārua and the Whanganui River

17.1. The iwi of Te Korowai o Wainuiārua have strong associations with the Whanganui River and its tributaries. The source of the Whanganui River connects the iwi of Te Korowai o Wainuiārua with their tūpuna of te Kāhui Maunga – Tongariro, Ruapehu and Ngauruhoe.[426]

17.2. The records of early European travellers show that the stretch of the River that ran through the rohe of Te Korowai o Wainuiārua was densely settled, with many fortified villages positioned at the top of steep hills 500-600 feet above the river for security reasons. There are many pā sites on the Whanganui River with which the iwi of Te Korowai o Wainuiārua have close associations.[427] Iwi and hapū managed sections of the river in accordance with Māori custom in order to maintain fish stocks, to maintain water purity, and to avoid any appearance of greed or disrespect.[428] In the 1840s, these river settlements were described as having cultivations, springs, woods of timber, and "ample room to support many hundreds of people when compelled to take refuge there". [429]

Scenic reserves

17.3. In the decades around the turn of the twentieth century, the Crown sought to preserve the scenery of the Whanganui River and compulsorily took significant areas of land for this purpose. The Crown was motivated by growing public concern that the landscape in the Whanganui region was being lost to pastoralism and agriculture.[430] In 1891, the Wanganui River Trust Act provided for the establishment of the Wanganui River Trust to

[422] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp.936-8

[423] Letter from Under-Secretary to the Hon. Native Minister, 7 December 1926, in Walzl, T. (2004) *Supporting Papers for Whanganui Land: 1900-1970*, Volume One (Wai 903, A051(a)), p.74; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp.930-932

[424] Waitangi Tribunal (2015) *He Whiritaunoka: Whanganui Land Report*, volume two, p.681

[425] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp.942, 944

[426] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.5

[427] See map in Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.37

[428] Waitangi Tribunal, *Whanganui River Report,* 19 [WT wording].

[429] Waitangi Tribunal (2015) *He Whiritaunoka: The Whanganui Land Report*, volume one (Wai 903), p.83

[430] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.757

promote navigability and scenery preservation.[431] The Act was not to "affect any rights conferred upon the Natives by the Treaty of Waitangi."[432]

17.4. In 1892, the Trust established the Wanganui River Trust Public Domain for "the conservation of natural scenery".[433] The domain was a mile-wide strip totalling around 33,000 acres along each side of the River, from its confluence with the Tangarakau River to Taumarunui.[434] It was created from Crown land purchased in the Waimarino, Kirikau, Rētāruke, Ōpatu, Raoraomouku, and Mangapukatea blocks, and included kāinga on Crown land at Tīeke, Kirikiriroa, and Mangapāpapa.[435] The majority of this land was eventually gazetted as scenic reserves in 1958.[436]

17.5. By 1903, the Trust had made the River navigable by steamer as far as Taumarunui.[437] However, soil erosion threatened the maintenance of the River's navigability as a commercial route.[438] The Crown envisioned that scenery preservation would help to combat this, and that the subsequent potential for tourism would have economic benefits.[439]

17.6. In late 1904 and early 1905, the newly established Scenery Preservation Commission travelled up the Whanganui River to Pīpīriki, choosing potential sites to be brought under the provisions of the Act.[440] In 1906, the Commission was replaced with the Scenery Preservation Board.[441]

17.7. In 1907, the Crown used the provisions of the Public Works Act 1905 to compulsorily acquire 21 acres of land near Pīpīriki, including the Waiora mineral springs.[442] This site was sacred to the iwi of Te Korowai o Wainuiārua as a place of healing and cooking.[443] The taking was instigated by a local tourist operator to whom the Crown leased the land to develop the springs into a tourist attraction.[444] The iwi of Te Korowai o Wainuiārua were not consulted and though the 232 owners sought over £260 in compensation, they received only £45.[445]

17.8. In 1908, the Scenery Preservation Board recommended the Crown reserve 15,356 acres of Māori land along the River for scenic reserves; it described the Māori owners of river-

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[431] Wanganui River Trust Act, 1891, section 9; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 757

[432] Wanganui River Trust Act, 1891, section 11; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 757

[433] Wanganui River Trust Act, 1891, s 9; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 758

[434] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 759

[435] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 758.

[436] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp. 758, 785.

[437] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 758.

[438] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 757.

[439] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 757, 757.

[440] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 762

[441] Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), p. 84.

[442] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 768.

[443] Southen, Wai Wiari (2008) Brief of Evidence (Wai 903, E12), p. 7; Public Works Act 1905, s 14.

[444] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.768

[445] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.768; Walzl, T. (2004), *Whanganui Land 1900-1970* (Wai 903, A51), p.198

front land as one of the River's scenic attractions.[446] The proposed scenic reserves included land which had been reserved for the iwi of Te Korowai o Wainuiārua from the Crown purchases of the previous century, including the entire River frontage of the Waimarino B reserve.[447] These scenic reserves would be additional to the 33,000-acre public domain established in 1892.[448]

17.9. In 1908, Cabinet approved the Crown to spend £8,000 pounds to purchase 19,000 acres along the Whanganui River.[449] Instead of negotiating the purchases with the owners, however, the Crown elected to compulsorily acquire Māori land and pay compensation.[450] In 1911, the Crown compulsorily acquired 54.5 acres from the Popotea block, 429.75 acres from the Waimarino block, 1,740 acres from the Waharangi block (the Crown's largest taking), and 683.5 acres in the Whakaihuwaka block, despite the letters of complaint from Eruera Hurutara who lived on some of the land.[451] As a result of the Crown acquiring land adjoining the Whanganui River, the legal principle (by which title to a land bounded by a river extends to the mid-line of a river) potentially became applicable in the Crown's favour.[452]

17.10. Iwi of Te Korowai o Wainuiārua strongly protested the compulsory takings of their land for scenery by felling or burning off forest.[453] They also lodged petitions supported by many signatories, such as a 1912 petition signed by 424 Whanganui Māori, including Te Korowai o Wainuiārua tūpuna.[454] In 1913, Eruera Hurutara and nine others petitioned the Crown, stating that they were still running stock and living on a papakāinga on the Whakaihuwaka block which had been included in the Crown's 1911 compulsory acquisition.[455] By 1914, there was near universal Māori opposition to the Crown's compulsory acquisitions of scenic reserves along the Whanganui River.[456] Most of the owners felt it should be up to them to decide which land was suitable for scenic preservation and which would be used for occupation or farming.[457] On 11 November 1916, the Crown compulsorily acquired 478 acres from the iwi of Te Korowai o Wainuiārua in the Taumatamāhoe block, and 198 further acres from the Waimarino block.[458]

17.11. In November 1916, the Crown appointed a Royal Commission to investigate and report on whether any of the existing scenic reserves should be cancelled and what portion

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[446] 'Scenery Preservation Report', AJHR, 1908, C-6, p. 14; Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), p. 84; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 764.

[447] Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), p. 84

[448] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 759

[449] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 769

[450] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 769

[451] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp.773, 779

[452] Court of Appeal Wellington (1962) *In the Bed of the Whanganui River*, NZLR 600

[453] Walzl, T. (2004), *Whanganui Land 1900-1970* (Wai 903, A51), pp. 201, 206, 210-211; Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), p. 89; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 771

[454] Walzl, T. (2004), *Whanganui Land 1900-1970* (Wai 903, A51), pp. 210-214; Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 773.

[455] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 773

[456] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 774

[457] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 774

[458] *New Zealand Gazette*, no.124, pp.3424-3425

of the proposed scenic reserves should be acquired and set apart.[459] The Commission held hearings along the River, including at Pīpīriki on 7 and 9 December, to hear Whanganui Māori grievances, which included lack of consultation on the land to be taken, lack of compensation, and arbitrary procedures.[460] Many witnesses from iwi of Te Korowai o Wainuiārua were generally willing for the Crown to reserve land as scenic reserves, particularly in inaccessible areas, but wanted the Crown to return urupā, landing sites, and good workable land for stock.[461]

17.12. The Commission recommended that almost all of the existing and proposed scenic reserves should be retained by the Crown, and that the Whanganui River Trust Public Domain should be vested in the Crown.[462] However, it also recommended the Crown re-draw the boundaries of some existing and proposed reserves in order to restore or exclude sections of land holding kāinga and urupā to the Māori owners which amounted to 850 acres.[463] One of these sections was around 25 acres from the proposed Kahura Scenic reserve, which contained the Tīeke kainga and Ōkirihau urupā.[464] The Crown did not act on the vast majority of the Commission's recommendations.[465]

17.13. In January 1917, rather than returning land as the Commission recommended, the Crown compulsorily acquired an additional scenic reserve of 219.5 acres in the Whakaihuwaka block from the iwi of Te Korowai o Wainuiārua.[466] Between 1907 and 1917, the Crown had compulsorily acquired almost 6,700 acres of the 19,000 Cabinet-approved acres of Māori land for scenery preservation purposes.[467]

17.14. The Crown did not provide for the inclusion of Māori in scenic reserve management for the first fifty years after their creation.[468] The iwi of Te Korowai o Wainuiārua had no avenue to ensure their interests were protected which was a matter of concern for Te Korowai o Wainuiārua iwi.[469] In 1958, Whanganui Māori gained a single representative on the newly formed Wanganui River Scenic Board which managed all of the reserves taken for

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[459] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 774; Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), p. 85; Hodge, Robyn (2002), *The Scenic Reserves of the Whanganui River 1891 – 1986* (Wai 903, A34), p.93

[460] Waitangi Tribunal (1999), *The Whanganui River Report*, p. 191; Hodge, Robyn (2002), *The Scenic Reserves of the Whanganui River 1891 – 1986* (Wai 903, A34), p.94

[461] Hodge, Robyn (2002), *The Scenic Reserves of the Whanganui River 1891 – 1986* (Wai 903, A34), pp.103-105

[462] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 777

[463] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 777; Walzl, T. (2004), *Whanganui Land 1900-1970* (Wai 903, A51), p. 216.

[464] Hodge, Robyn (2002), *The Scenic Reserves of the Whanganui River 1891 – 1986* (Wai 903, A34), pp. 131, 140; Marr, Cathy (1995), *Whanganui Land Claims Historical Overview* (Wai 903, A13), pp. 91-92.

[465] Waitangi Tribunal, *The Whanganui River Report* (1999), (Wai 167), p.191

[466] *New Zealand Gazette*, No.8, p.180

[467] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.779

[468] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p.782

[469] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, pp. 782-783; 28 September 2009, Closing submission of on behalf of Tamahaki Council of Hapū, Tamahaki Incorporated Society and the descendants of Uenuku Tuwharetoa (Wai 903, 3.3.85), p. 120; 28 September 2009, Closing submission of on behalf of Tamahaki; Uenuku; Ngāti Hinekura; Ngāti Rangitautahi; Tamakana; Ngāti Ruru; Ngāti Pare and Ngāti Tumanuka (Wai 903, 3.3.89), p. 3; 28 September 2009, Closing submission of on behalf of the peoples within the embrace of Uenuku (Wai 903, 3.3.108), pp. 50-51.

scenery preservation purposes and the former Public Domain established in 1892.[470] The iwi of Te Korowai o Wainuiārua did not consider that their involvement was sufficient and this situation continued until the reserves were incorporated into the Whanganui National Park in the 1980s.

18. The Whanganui River Cases and the Tongariro Power Development Scheme

The Whanganui River Case and Te Korowai o Wainuiārua

18.1. The iwi of Te Korowai o Wainuiārua exercised rights and responsibilities in relation to the Whanganui River according to their tikanga. This was at odds with the principles of English Common Law, such as the *ad medium filum aquae* doctrine, which became part of New Zealand law in 1858.[471] Subsequent legislation, such as the Coal-mines Act Amendment Act 1903, vested the ownership of the beds of 'navigable' rivers in the Crown.

18.2. In 1937, following decades of protest and petitions, Whanganui Māori applied to the Native Land Court to investigate what they considered to be their customary ownership of the Whanganui River.[472] The Whanganui River case began at Whanganui on 3 November 1938. At the opening of the case, counsel for the claimants stated "the only question being dealt with at this stage of the hearing is whether the Natives own the bed of the river at the time of the Treaty of Waitangi" and that the applicant "is not making any claim for any particular hapu or individual".[473]

18.3. The iwi of Te Korowai o Wainuiārua were not directly represented at the investigation of title hearings and had no ability to influence the outcome of the case or give evidence as to customary law, use, and management of the river. In 1939 the Court found that Whanganui Māori owned the riverbed in accordance with their customs and usages.[474] The litigation over the bed of the Whanganui River was complicated by the issue of whether there was a 'tribal' title to the whole of the river or if the Native Land Court's award of a land block extinguished the customary title to the riverbed within that block. At the time of the hearings the anthropological expert evidence that would occur in a contemporary case relating to Māori claims to a waterway did not exist. Had it not been for the difficulties created by the Native Land Court's title awards to riverine blocks, the issue of claims to the bed of the Whanganui River would have been much easier to resolve.

18.4. In 1939, the Crown appealed the Native Land Court decision to the Native Appellate Court and the case was heard in 1944.[475] The issue before the Appellate Court was whether native custom

[470] Waitangi Tribunal (2015), *He Whiritaunoka: Whanganui Land Report*, volume two, p. 785.

[471] Lewis Evans, 'Law and the economy - Setting the framework', Te Ara - the Encyclopedia of New Zealand, http://www.TeAra.govt.nz/en/law-and-the-economy/page-1 (accessed 11 March 2020)

[472] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.193-194

[473] Native Land Court (1939) Whanganui Minute Book, No.100, p.165 (3 Nov 1938)

[474] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.203

[475] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.205

recognised exclusive native ownership over the bed of the Whanganui River.[476] The Chief Judge affirmed the provisional or preliminary determination of the Native Land Court.[477]

18.5. In 1949, the Crown took proceedings in the Supreme Court to quash the decision of the Native Appellate Court. The Crown argued that customary title to the river bed had been extinguished *ad medium filum aquae* and, alternatively, that the Crown owned the bed of the Whanganui River in any event as it was a navigable waterway under the 1925 Coal Mines Act (originally the 1903 Coal-mines Act Amendment).[478] The Supreme Court found that the Crown owned the bed of navigable rivers through its legislation, making it unnecessary to decide if the *ad medium filum aquae* rule applied.[479]

18.6. In 1950, the Crown appointed a Royal Commission to inquire further into Māori customary ownership of the riverbed and consider whether compensation was payable.[480] The Commission upheld the claims made by Whanganui Māori to ownership of the river bed and recommended the payment of compensation for gravel extraction.[481] Attempts to negotiate compensation in 1951 were inconclusive.

18.7. In 1951, the Crown promoted legislation in order to refer the Whanganui River issue to the Court of Appeal.[482] In 1955, the Court of Appeal released its decision that Māori were the customary owners of the Whanganui River at 1840.[483] It also recommended the Crown authorise the Māori Appellate Court to consider whether pre-1903 Native Land Court grants of title to riparian land resulted in rights to the centre line of the riverbed under the *ad medium filum aquae* rule.[484] The 1955 Court of Appeal decision had the effects that further evidence was required and legislation was enacted that referred the Whanganui River issue to the Māori Appellate Court.[485] In 1958, the Māori Appellate Court in turn held that any ancestral right to the bed of the Whanganui River was not separate or different from that to riparian lands.[486]

18.8. In 1962, the Court of Appeal considered the issue again and found that, according to the *ad medium filum aquae* rule, customary ownership of the riverbed had been extinguished when the Native Land Court granted titles to the riparian land.[487] The Crown adopted these findings and

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[476] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.205

[477] Appellate Court (1944) Wellington ACMB, No.8, p.36 in Counsel for claimants (undated) *Index, Volume 1: Opening Submissions of Counsel for Claimants* (Wai 167, A77(vol.1, no.3)), pp.1-13

[478] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.210-211

[479] High Court (1950) *The King v Morison* NZLR 247 in Counsel for claimants (undated) *Index, Volume 1: Opening Submissions of Counsel for Claimants* (Wai 167, A77(vol.1, No.4)); Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.211

[480] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.212

[481] Royal Commission (1950) *Report of Royal Commission appointed to inquire into and report on claims made by certain Maoris in respect of the Wanganui River,* AJHR G-2

[482] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.220

[483] Court of Appeal (1955) *Re the Bed of the Wanganui River*, NZLR 419 (CA) in 247 in Counsel for claimants (undated) *Index, Volume 1: Opening Submissions of Counsel for Claimants* (Wai 167, A77(vol.2, no.7))

[484] Maori Purposes Act 1954, s.6; Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.220-221, 224

[485] Maori Purposes Act 1954, s.6; Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.220-221, 224

[486] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.229

[487] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.230

declined to provide remedy to Whanganui Māori.[488] In 1977 Whanganui Māori petitioned the Queen to remove the Crown's title to the riverbed and were declined in 1983.[489]

The Tongariro Power Development Scheme

18.9. From 1955, the Crown began developing plans to divert almost all of the water that flows from te kāhui maunga for hydro-electric power generation in response to a post-World War Two energy shortage.[490] At the time of the construction of the Tongariro Power Development there was no requirement to obtain resource consents as is the case under the Resource Management Act 1991.[491] In 1958, without giving any notice to the iwi of Te Korowai o Wainuiārua, the Crown issued an Order in Council authorising it to take water from the Whanganui, Tokaanu, Tongariro, Rangitikei, and Whangaehu Rivers and their tributaries.[492] Between 1955 and 1964, the Crown held four hui with another iwi but did not include or consult the iwi of Te Korowai o Wainuiārua.[493] In 1964, construction began for the Western Diversion which would divert water from the Whanganui River.[494] Construction of the Eastern Diversion began in 1969 which diverted the waters of the Whangaehu River.[495]

18.10. As a result of this project, a significant quantity of the water flow from the headwaters of the Whanganui and Whangaehu Rivers was directed northwards into Lake Taupō and as a consequence into the Waikato River.[496] The effects of the Tongariro Power Development on water quantity and water quality levels continue to be significant.[497] The iwi of Te Korowai o Wainuiārua consider that they have little voice in the management of the Whanganui River.

19. The Whanganui National Park

19.1. Much of the land the Crown purchased in the nineteenth century and early twentieth century in the Waimarino, Taumatamāhoe and Whakaihuwaka blocks proved to be unsuitable for European settlement and farming.[498] However, much of the land was rugged, steep, and densely forested.[499] Settlers began deserting their farms in the 1920s as the economics of farming such land became untenable during the Depression in the 1930s and

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[488] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.238-239

[489] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.239-241

[490] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report* (Wai 1130), p.1073

[491] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report* (Wai 1130), p.1143

[492] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), p.235

[493] Walzl, T. (2005) *Hydro-electricity Issues: the Tongariro Power Development Scheme* (Wai 1130, A008), p. 18, para. 35; *Tongariro Development – Māori Land Owners: Notes on Meeting Held at Tokaanu, 15 April 1964* in Works Consultancy File PW 92/12/67/6 Part 1 (Wai 084, A007), pp. 205-07; Horan, M. (2005) *The Tongariro Power Development: Selected Issues* (Wai 1130, A051), pp. 32-33; Waitangi Tribunal (1995) *Turangi Township Report,* pp. 38-39, 336

[494] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report* (Wai 1130), p.1288

[495] Waitangi Tribunal (2013) *Te Kāhui Maunga National Park District Inquiry Report* (Wai 1130), p.1135

[496] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.233-234

[497] Waitangi Tribunal (1999) *The Whanganui River Report* (Wai 167), pp.233-238; Walzl, T. (2006) *Environmental Impacts of the Tongariro Power Development Scheme* (Wai 1130, E012), p. 229

[498] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, pp.1195, 1202, 1204; Walzl, T. (2004) *Whanganui Land: 1900-1970* (Wai 903, A51), p.182; *New Zealand Gazette* (1986) no.189, p.5068

[499] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1189; Bayley, N. (2007) *Aspects of the Economic History of Whanganui Māori in the Whanganui Inquiry District (Wai 903) 1880-2000* (Wai 903, A145), p.25

over half of the land was left abandoned.[500] Members of Te Korowai o Wainuiārua continued to make use of unoccupied Crown land and its resources for a number of decades. They hunted pigs, goats, and deer, harvested kererū, fished for eels, whitebait and trout, and cultivated the land.[501]

19.2. In 1980, the Crown began developing a proposal for a national park in Whanganui based on the Whanganui River scenic reserves and the proposal soon came to include the unoccupied Crown land.[502] Between February 1983 and December 1985, the Crown met with Māori several times on marae in the Whanganui region to discuss its proposal.[503] In the early stages of developing the proposal, the Crown considered that the Whanganui River would be included in the national park.[504] At one of these hui in November 1983, a Crown official noted that he considered the park would be "a very "maori" national park" and that there "will be a very large influence of maoriness in the management of the park".[505]

19.3. At a hui in February 1984, Māori of the Whanganui River agreed in principle to the establishment of a national park on three key conditions: that there would be special legislation for the management of the park, there would be three permanent Māori members on the management board, an entirely Māori advisory committee (later named the Whanganui River Māori Trust Board), and that the Whanganui River claim would not be prejudiced by the establishment of the park.[506]

19.4. The proposal for the Whanganui National Park went to the National Parks and Reserves Authority in March 1984 and the proposal did not include the Whanganui River in

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[500] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, pp.1189, 1205; Coutts, D. (2009) *Brief of Evidence of Damian Richard Coutts, Conservator, Wanganui Conservancy, Department of Conservation* (Wai 903, O004), p.6; Bayley, N. (2007) *Aspects of the Economic History of Whanganui Māori in the Whanganui Inquiry District (Wai 903) 1880-2000* (Wai 903, A145), pp.24, 50-51; Oliver, S. (2003) *Taumatamahoe Block Report* (Wai 903, A42), pp.61, 85; Ref for quantity of settlers who abandoned the land and how long it was abandoned for? Marr, C. (2003) *Crown Impacts on Customary Maori Authority over the Coast, Inland Waterways (other than the Whanganui River) and associated mahinga kai in the Whanganui Inquiry District* (Wai 903, A36), p.155; *New Zealand Gazette* (1986) no.189, pp.5062-5068

[501] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1207; Marr, C. (2003) *Crown Impacts on Customary Maori Authority over the Coast, Inland Waterways (other than the Whanganui River) and associated mahinga kai in the Whanganui Inquiry District* (Wai 903, A36), pp.125-126, 225

[502] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1208

[503] Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), pp.33-34; McBurney, P. (2007) *A History of the Whanganui River Maori Trust Board: Claimant Perspective Report* (Wai 903, A133), p.30; 'Whanganui River National Park Proposal Submission [Hearing]' in *Brief of Evidence of Archie Te Atawhai Taiaroa: Index, Selected Documents – Volume I* (Wai 167, B8(a)), p.92; Minutes of Hui with Crown officials held at Ngapuwaiwaha Marae, 23 February 1984. Research Committee, Whanganui River Trust Minute Book in McBurney, P. (2007) *A History of the Whanganui River Maori Trust Board: Claimant Perspective Report* (Wai 903, A133), p.28; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, pp.1212, 1219

[504] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1212; Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), p.72

[505] 'Whanganui River National Park Proposal Submission [Hearing]' in *Brief of Evidence of Archie Te Atawhai Taiaroa: Index, Selected Documents – Volume I* (Wai 167, B8(a)), p.94; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1211

[506] Minutes of Hui with Crown officials held at Ngapuwaiwaha Marae, 23 February 1984. Research Committee, Whanganui River Trust Minute Book in McBurney, P. (2007) *A History of the Whanganui River Maori Trust Board: Claimant Perspective Report* (Wai 903, A133), p.28; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, pp.1212, 1219

the Park.[507] The Minister of Lands and Minister for Māori Affairs failed to gain Cabinet approval for more than one Māori representative on the Board.[508] The Crown did not meet with Māori of the Whanganui River again until after the Minister announced the Whanganui National Park had been approved in principle by Cabinet.[509] On 24 November 1986, the Crown gazetted that the Whanganui National Park would be formally established on 6 December 1986.[510] On the following day, the Whanganui River Māori Trust Board wrote to the Minister to convey that they did "not oppose the dedication of the proposed National Park", however they remained gravely concerned about lands they considered unfairly acquired by the Crown, such as in the Waimarino and Taumatamāhoe blocks, being included in the Park.[511] The Park was formally opened on 7 February 1987.[512]

19.5. In March 1987, the Conservation Act provided for the establishment of the Department of Conservation, which assumed control of the Whanganui National Park.[513] Under the Whanganui National Park Management Plan 1989, the Department of Conservation was required to "consult with and give full consideration to the views of the Whanganui River Maori Trust Board on Park management issues of concern to the Maori people".[514] Fishing and plant gathering was permitted only under specific circumstances for Māori.[515] While the management plan required consultation with the Trust Board, it did not make a provision for formal consultation arrangements or regular meetings.[516] In 1990, the Conservation Law Reform Act replaced the Wellington National Parks and Reserves Board (which had previously administered the Whanganui National Park) with the Taranaki/Wanganui Conservation Board, which continued to include one Māori member.[517]

19.6. A 170-kilometre length of the Whanganui River between Taumarunui and Ātene flows through the 183,429 acres of land in the Whanganui National Park.[518] The Park includes many sites of significance to the iwi of Te Korowai o Wainuiārua, such as thermal springs, marae sites (such as Tīeke, Kirikiriroa, and Mangapapapa) and urupā.[519] The iwi of Te Korowai o Wainuiārua are aggrieved by the way the Crown has utilised these sites for tourism

[507] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1212

[508] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1213

[509] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1213

[510] *New Zealand Gazette*, 1986, no.189, p.5068

[511] Letter from Mr Maurice Takaranga to Minister Wētere, 25 November 1986 in *Brief of Evidence of Archie Te Atawhai Taiaroa: Index, Selected Documents – Volume I* (Wai 167, B8(a)), p.145

[512] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1217

[513] Conservation Act 1987, s.5; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, pp.1207, 1219

[514] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1221; Department of Conservation, *Whanganui National Park Management Plan, 1989*, pp.17-18

[515] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1221; Department of Conservation, *Whanganui National Park Management Plan, 1989*, p.49

[516] Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), p.157

[517] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1220

[518] *New Zealand Gazette* (1986) no.189, p.5068; Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1195

[519] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1224; Haitana, P. (2008) *Brief of Evidence of Paora Haitana* (Wai 903, E6)

purposes.[520] For example, the Crown built a hut at the Tīeke kāinga and urupā in the 1960s which later became the site of protest for Te Whānau o Tīeke.[521]

19.7. The John Coull hut at Puketapu was also rebuilt in 1981 on the site of an urupā.[522] In 1988, members of Te Korowai o Wainuiārua informed the Crown of the nature of the site and requested it be moved.[523] Department of Conservation staff and Te Korowai o Wainuiārua rangatahi (youths) shifted the hut to an alternative site over 1989 and 1990.[524] Tensions over the Whanganui National Park between the Crown and the iwi of Te Korowai o Wainuiārua were also exacerbated by the Crown's introduction of the policy in 1988 of charging fees for public use of the Park's facilities.[525] Te Korowai o Wainuiārua iwi continue to be dissatisfied with their involvement in management of Whanganui National Park.[526]

[520] Haitana, P. (2008) *Brief of Evidence of Paora Haitana* (Wai 903, E6); Southen, W. (2008) *Brief of Evidence of Wai Wiari Southen* (Wai 903, E12), p.7

[521] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1227

[522] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1224

[523] Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), p.103; Haitana, P. (2008) *Brief of Evidence of Paora Haitana* (Wai 903, E6), p.2

[524] Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), p.106

[525] Waitangi Tribunal, *He Whiritaunoka: Whanganui Land Report*, volume three, p.1224; Hodge, R. (2003) *Whanganui National Park: Late 1970s – 2000* (Wai 903, A43), p.108

[526] Bristol, R. (2008) *Brief of Evidence of Rangi Joseph Bristol* (Wai 903, E7), p.7