IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 1040
WAI 745
WAI 1308

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	Te Paparahi o te Raki District Inquiry
AND	
IN THE MATTER OF	A claim filed by Paki Pirihi on behalf of Patuharakeke and a claim filed by Ngawaka Pirihi and others

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BRIEF OF EVIDENCE OF DR GUY GUDEX

Dated this 30th day of September 2013

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Introductory Statement

> **I acknowledge that I am only one person among many and therefore I must pay tribute to those who have gone before me, those who have contributed to this report and those who have shared their knowledge and supported me in this work.**

1. Introduction

1.1 My name is Guy Gudex and I am a member of the Patuharakeke Te Iwi Trust Board Waitangi Claims subcommittee. For the past 10 years I have researched land alienation in the rohe.

1.2 I am of English, Scottish, Irish and French/German descent. My children are Patuharakeke through my wife Daryn Gourlay.

> *Motatau and Te Kamo begat Te Taotahi who begat Whakaariki who begat Te Pirihi Whakaariki who begat Wiki Te Pirihi who begat Paki Pirihi who begat Hurikino Paki Pirihi who begat Ruve Gell Pirihi who begat Daryn Gourlay who begat Te Pirihi Isaac, Joseph Paki, Georgia Donna Maria, Maia Theresa Gabriela, Gabriela Rosa Terina and TakuManawa Guy Noah.*

1.3 I graduated from the University of Auckland with a Bachelor of Medicine and Bachelor of Surgery in 1981 and I am a Fellow of the Royal Australasian College of Obstetrics and Gynaecology.

1.4 Patuharakeke have lived continuously at Takahiwai since the signing of Te Tiriti o Waitangi in 1840, with the Reverend Colenso recording Whakaariki as a tohunga residing at Takahiwai during his visit to Whangarei in 1839.

1.5 The alienation of land in the rohe through Crown action has resulted in less than two percent remaining. The Crown has conceded that iwi in the Whangarei region are virtually landless and that the Crown's failure to ensure sufficient land was retained was a breach of Te Tiriti o Waitangi.

1.6 Less than 1000 acres remains in Maori freehold title in the traditional rohe of Patuharakeke as detailed at Figure 1.

1.7 Alienation of land in the Whangarei rohe was significant by the end of the 19th century, with only 7 percent of land remaining in Maori ownership by 1908 (refer to appendix 1).

1.8 There are examples in the rohe of Patuharakeke of virtually all of the mechanisms by which Crown actions led to alienation-confiscation, excessive Crown purchasing, failure to reserve sufficient lands, failure to protect reserved lands, the impact of Native land laws on tribal structure with fragmentation and individualisation of title, alienation in lieu of survey charges and Public Works legislation.

2. Second cause of action - Nineteenth Century Land Alienation: Confiscation of Te Poupouwhenua

2.1 In breach of Article 2, the Crown through its agent John Grant Johnson confiscated Te Poupouwhenua, a block that includes Marsden Point and some of One Tree Point.[1]

2.2 The circumstances of the confiscation have many similarities to the ceding of Te Kopuru Block as detailed in the Kaipara report.[2]

2.3 The Crown adopted the Maori concept of accepting land as “utu” as a way of compensation for the “outrage”. This method of acquiring land was not consistent with British law and not consistent with the practice at the time of extinguishing Native Title which had to be done by Crown purchase or an Act of Parliament (refer to figure 3 for map).

2.4 The documents connected with the cession have not been found, and it is noted that similarly Commissioner Rogan commented in 1859 when investigating matters concerned with Te Kopuru block in the Kaipara that “I have not been able to trace the documents connected with the cession of this block”[3]

2.5 The exact circumstances of the “outrage” are uncertain but it was alleged that early in 1844 Parihoro, Te Pirihi Koukou and Mate raided and burned the house of a settler named Thomas Millon at Matakana. The background to the raid was apparently that they had hereditary interests in the land that had been sold by Ngati Paoa.

[1] O’Malley V. Northland Crown Purchases,1840 to 1865, July 2006, pg71
[2] Wai674, The Kaipara Report, Old Land Claims in Northern Kaipara, pg96
[3] An epitome of official documents relative to Native Affairs and Land Purchases in the North Island of NZ, No35 Mr Commissioner Rogan to the Chief Commissioner

2.6 Following a further incident in the Bay of Islands in October 1844, Governor Fitzroy issued a proclamation on the 8th of January 1845:

> *I, the Governor, hereby proclaim and declare that until all the property taken away from Mr Hingston at the Bay of Islands and from Mr Millon and others at Matakana, is restored to them, until sufficient compensation is made for the injuries sustained and until the chiefs Parihoro, Mate and Koukou are delivered up to justice, I will not consent to waive the Crown's right of pre-emption over any land belonging to the Kawakawa or Whangarei tribes or to any tribe which may assist or harbour the said chiefs.*
>
> *And I hereby proclaim that upon delivery of therefore said chiefs or any of them into the custody of the police magistrate at Auckland, I will cause the sum of fifty pounds for each said chief or hundred and fifty pounds for all three chiefs to be immediately paid for his or their apprehension and delivery. I also warn all persons, European or Native, that their assisting or harbouring the said chiefs, or other persons concerned in perpetrating outrages, will render themselves liable to be proceeded against according to law. And I further proclaim that the strongest measures will be adopted ultimately in the event of these methods being found insufficient.*[4]

2.7 A further proclamation was issued on the 31st of January 1845:

> *Whereas it has been ascertained that Mate, one of the chiefs named in the proclamation dated 8th of January 1845, was not concerned in the outrage at Matakana, no reward will be paid for his apprehension and delivery.*[5]

2.8 On the 5th of February 1845, the Rev. James Buller visited Whangarei and noted that Mr George Clarke (subprotector) and Mr Meurant (interpreter) were in an official capacity inquiring into the Matakana affair. No record of this inquiry has been found. Mr George Clarke wrote to his son Henry Clarke (employed as a protector of Aborigines) to request that he accompany Mate in the schooner Albert. He further stated:

> *On the Natives acceding to Mate's wishes in compensating the Government by ceding a piece of land, it will be your especial duty to draw up a written agreement stating as near as possible the extent and boundaries of the same, and get it duly signed by the parties and witnessed by Mr Meurant and some Intelligent Native.*

2.9 No copy of this agreement has been found.

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[4] Proclamation 8th January 1845 GBPP 1845(337) vol 5 p23

[5] Proclamation 31st January 1845 GBPP 1845(337) vol 5 p24

2.10 The Crown purchase plan of the adjacent Takahiwai block dated 7th July 1854 shows the Poupouwhenua block described as *'land surrendered to the Government for Parihoro's robbery at Matakana'*. (refer to Figure 4 for map)

2.11 The Crown purchase plan for Ruakaka shows the Poupouwhenua block as 3,900 acres described as 'Govt.' (refer to Figure 5 for map)

2.12 Turton's Deed #101 dated 1854 is entitled "claims of Tirarau and Te Manihera to Poupouwhenua extinguished"[6]. It is clear that this was not a deed of purchase but related to claims by Manihera, Tatau, Te Maremare, Pou, Karakare and Reneti to a portion of Poupouwhenua called Rauiri. The amount of ten pounds was paid to extinguish this claim.

2.13 Poupouwhenua is further mentioned in a letter from Land Commissioner Rogan to the Chief Commissioner dated 5 June 1861:

> *On the Southside of Whangarei Harbour there is a block of land called Poupouwhenua which was ceded to the Government many years ago by the Chief Mate and others in payment for a robbery committed at Matakana, the inland boundary of which is disputed by the Natives. I have examined on the ground the boundary mark and am of the opinion that the Natives are labouring under a false impression as to the boundary of the land and am supported in this view by Mr Clarke who accompanied the surveyor who marked out the boundaries at the time*[7]

2.14 It is noteworthy that the lands selected for cession to the Crown just happened to encompass a portion of the vast estate claimed by James Busby by virtue of his Old Land Claims. Busby informed the government of this fact in March 1854, when he discovered that a local settler Duncan Mackenzie, had employed a surveyor to mark off an 80-acre section prior to applying to the government for the purchase of the land[8].

2.15 As a final footnote to the Poupouwhenua block narrative, the Auckland Star on 7 April 1927 under the headline *"Pakeha Took Too Much So Says the Maori Confiscated lands in the North"* states,

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[6] AUC 403 LINZ Province of Auckland pp137-138 Turton's Deed No 101 in Berghan Supporting Papers vol 6
pp3553-3554

[7] J Rogan to McLean 5 June 1861 AJHR 1861 C-1 p102

[8] Busby to Colonial Secretary 22 March 1855 IA 15/5E Arch-NZ (docs vol 24 p 8235)

To talk about confiscated Maori lands in the year 1927 sounds rather like digging up the Crusades or the Treaty of Waitangi. But a Commission with a judge of the Supreme Court as chairman is actually going through the North Island hearing claims and on Monday next it will sit at Russell to hear the petition of Maki Pirihi and 60 others who think that when the Pakeha "confiscated " big stretches of country after the Heke war of 1845, he took more than he was entitled to and the Maoris now want the difference in hard cash. Most pakehas regard the Treaty of Waitangi as something that actually hangs in a glass case in a museum and is metaphorically trotted out at every tangi and hui, very much as Charles the First's head cropped up in the narrative of Mr Dick. Dickens' character never had half the difficulty with the royal caput that every Maori orator has with the Treat … .[9]

3. Third Cause of Action - Failure to protect the land base of Patuharakeke through Crown purchases

3.1 The Crown has acknowledged that it did not have a system in place to ensure that it did not purchase land that was needed to ensure Hapu and Iwi could maintain themselves and that this breached Te Tiriti o Waitangi. Until 1862 the Crown exercised its exclusive right of pre-emption under Te Tiriti to purchase extensive areas of land in the rohe of Patuharakeke. Donald McLean was appointed Land Commissioner in 1850. As the anti-land selling movement strengthened, he resorted to unscrupulous tactics to buy land that settlers wanted. These tactics included obtaining agreement of sale from parties with a weak connection to the land and then forcing completion of the purchase on legitimate land owners, and also making advance payments to individuals.

3.2 Other issues with the Crown purchasing process included the low price paid, the failure to survey boundaries, to provide adequate or in many cases any reserves and to include all who had an interest in the land.

3.3 The Crown purchased or acquired through the Land Claims process title to almost all the land of the east coast from Auckland to Whangarei by 1854 as evidenced by the table at appendix 2.

3.4 In November 1853, the Colonial Secretary Andrew Sinclair wrote to Land Purchase Officer John Grant Johnson requesting that he,

[9] Auckland Star , volume LVIII, Issue 82 ,7 April 1927, page 10

... immediately proceed to Whangarei to negotiate purchase of as extensive a block of land as possible, including a location fit for the Highlanders, recently arrived in the Colony". He was also told to insert a clause in the deed of purchase "*reserving for native purposes ten per cent of the future proceeds which may be realised from the sale of the land*[10]

3.5 In the case of the Waipu and Ruakaka blocks, Johnson deliberately negotiated with the first groups to come forward and used this to overcome opposition to the purchase. [11] In a letter to the Commissioner he states the obstacles he has encountered in purchasing the Ruakaka block,

> *I would next proceed to report upon the settlement of the two purchases named from the rivers which intersect them, the Ruakaka and the Waipu, which comprise a portion of the enormous extent of country claimed by Mr Busby and inhabited by that party of aborigines who opposed the government in the war in the North. The attempts of Mr Busby to frustrate my operations, together with the efforts of a society which exists among the natives, at the head of whom is the widow of John Heke, for the purpose of preventing the sale of land to the Europeans, caused me much trouble and anxiety and, as it may not be uninteresting, I beg to enclose a copy of a circular letter of the said society at Kaikohe addressed to the Chiefs of Whangarei, which by the native mind is considered a very talented exhortation and which met with great applause when read at the several meetings of the claimants and, had I adopted the usual and safer method of assembling all the claimants before making my payment, the influence of the aforementioned agencies would have been apt to have terminated in preventing the sale of the land; but, bearing in mind the strong desire which his Excellency had expressed to have lands obtained for the settlers, I felt assured that the Government would approve of my obtaining this tract of country, even at some further outlay, than of my relinquishing the attempt from the apparent difficulties which appeared to surround it, and, actuated by this principle, I accepted the offers of the Chiefs who first came forward to sell Ruakaka, and payed to them the sum of 100 pounds for their claims, reserving the sum of 250 pounds to satisfy the other parties with whom I had not yet come to terms. This decisive step showed the opposition that when the real owners of land are disposed to sell to the Government, it is not to be intimidated by the clamour of disaffected factions, exercising very little if any ownership at all over the lands sought to be purchased.*

3.6 The purchase of the Ruakaka and Waipu blocks were critical to opening up that part of the country for settlement and the sale was opposed by many.

3.7 Commissioner Johnson had earlier sent to the Colonial Secretary a copy of a letter to the Chiefs of Whangarei from leaders in Kaikohe, exhorting them to hold on to their land.

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[10] Colonial secretary to Johnson 7 November 1853, in Turton sec C p55
[11] Johnson to Colonial Secretary. 20th March 1854. AJHR 1861 C-1 p58

O Chiefs of Whangarei – let your deliberations be guided by wisdom and do not let your thoughts be averse to our word. The reason we so address you is because we have fought together (against the Europeans) for the land, which was the reason for the message we sent by the Maremare. Let the hill of Manaia stand forever. Let the hill at Whara remain untouched forever: vessels are broken, money is lost, but the land does not fade away. If we were wishing this land for ourselves, you might be displeased with us, but we wish you to keep it for a hearth for your own fires. It is the possession of our land which makes us esteemed. Whether a child, a woman, or a man, if the land goes into the possession of the Europeans, we shall not be so regarded, one man may be esteemed and another may not. If the land is not given away, even the lowest among us can till his ground and obtain tobacco and clothes and all the other articles of the Europeans; but there is nothing that can be obtained from them without payment, nothing at all. Perhaps to the chiefs they may give something. What else have we to depend upon? Therefore we say – holdfast the land, - bye and bye we shall find what value it is, as we have been told by the Europeans who formally lived amongst us. [12]

3.4 The blocks purchased by the Crown within the rohe of Patuharakeke prior to 1862 include: Waipu (40,000a), Ruakaka (14,800a), Takahiwai (1,000a), Te Mata (11,108a), Ruarangi (19,000a) and Te Mahe (1,642a).

3.5 The purchase price paid by the Crown in 1854 for the Ruakaka block was calculated at 6 ½ pence per acre for the 15,100 acres, a total of 420 pounds[13]. This contrasts with the 10 shillings per acre the land was sold to settlers for.[14]

3.6 Payments to Te Pirihi (father of Wiki Te Pirihi) included 10 pounds for extinguishing the claim on a portion of Waipu named Te Paritu, 50 pounds as payment for claims over the Ruakaka block and a further 290 pounds as payment for a claim for relations killed in various encounters at Waipu.

3.7 Survey of the blocks was incomplete as late as 1861- Commissioner Rogan stated to the Chief Commissioner in June 1861[15]

The Chief Arama Karaka, who offered for sale a block of land named Piroa on which an advance of 100 pounds has been made to him, applied for a surveyor, which was complied with, and in traversing the inland boundary, he insisted upon carrying it into the Waipu purchase, and almost over to the East Coast, when the surveyor returned and reported the circumstance. On examining the deed of sale of Waipu, I find that the

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[12] An epitome of official documents relative to Native Affairs and Land purchases in the North island of New Zealand, Enclosure 1

[13] Comparison of land sales to the Crown in the Mangawahi area ,1854-64, The Kaipara Report

[14] Condliffe J.B New Zealand in the Making London 1929 p 100-101

[15] Reporting as to the state of land purchasing operations in the Kaipara district, Turtons Epitome 35

inland boundary has never been surveyed, which is the cause of the present encroachment.

3.8 The Waipu deed of purchase contained no reserves, no 10 per cent provision and no statement of area. A total of 350 pounds was paid to 23 signatories, with a further 10 pound payment to one signatory in May 1854 recorded in a second Waipu deed.

3.9 Although the Ruakaka deed had a rough sketch attached, the Waipu deed had no plan at all and no indication of the area of the block. John Rogan succeeded Johnson as the Land Commissioner for the Whangarei District in the late 1850s and referred in 1858 to "the specimen of sketch plans of Johnson's that are now in this office, you know what I mean, the daubs which look as if a quantity of bullock's blood has dropped accidentally on a sheet of cartridge paper and bespattered it all over."[16]

3.10 A surveyor for the Auckland Waste Lands Board commented in 1855 with respect to the Ruakaka block stating,

> *These Blocks have, I understand never been surveyed nor their boundaries cut or otherwise defined-they are represented in this office by a rough sketch, valueless to either the seller or the buyer of any part of them.*[17]

4. Fourth Cause of Action – Failure to set aside Reserves for Patuharakeke

4.1 The Crown failed to ensure that any reserves were made from some of the purchases, that adequate reserves were made from any of the purchases, and failed to protect the reserves from subsequent alienation.

4.2 In respect of reserves for Maori, McLean wrote to the Governor in May 1857.

> *The next step, and one which is now in successful progress, is to acquire larger tracts of land by purchase from the Natives; out of which blocks, ranging in extent from one hundred to two thousand acres, should be reconveyed under Crown Grant to the principal Chiefs, upon the extinction of the tribal title; such blocks consisting not only of cultivable, but also of forest land, in order to secure to them a continued revenue, proportionable to their rank. In order to do away with the present or future*

[16] Rogan to McLean 12 January 1858 McLean papers , typescript vol 15 MS-1320, ATL in Vincent O'Malley , Northland Crown Purchases p 286

[17] C.P O'Rafferty, memorandum n.d (c September 1855) IA 1/1855/3714 ZArch-NZ (docs vol 2 p 716) in Vincent O'Malley Northland Crown Purchases p 286

dissatisfaction, on the part of the native settled at the price they receive for their lands, as compared with the value it acquires when in the hands of the government- unable, as yet, to comprehend the reasons that influence comparative values- it would be most desirable to expend a certain definitive proportion (and that not inconsiderable one) of the moneys realised by the waste land sales on roads and other improvements, exclusively within those districts from which they have accrued, and from time to time to publish the balance sheets of such expenditure in the 'Maori Messenger. [18]

4.3 None of the Native reserves in the Patuharakeke rohe received any formal protection and none were issued with a Crown Grant at the time. Not one reserve was formally gazetted as a reserve under the Native Reserves Act 1856. They were simply treated as customary land and bought before the Native Land Court in due course and given the status of Maori freehold land without any restriction on alienation. Although the original assumption was that these reserves were for hapu, in law each nominated owner became an absolute owner. Most were sold soon after ownership was determined by the Court.

4.4 Four of the six blocks in the 1854-1858 purchases had no land set aside as reserves. Of all the Crown purchases in the rohe only the Ruakaka and Te Mata blocks had land reserved for the original owners. These reserves were listed in the 1862 Return of Native Reserves submitted to the AJHR and attached at appendix 3.[19]

4.5 The Te Mata block was purchased by the Crown in 1858 (refer to figure 7 for map) with four reserves set aside: Kahuitieke (39 acres), Pokapu (28 acres), Te Totara (36 acres) and Kopuawaiwaha (1558 acres). None of these were protected under available legislation such as the Native Reserves Act 1856 and eventually were passed through the Native Land Court for investigation of title, and in the cases of Kahuitieke, Pokapu and Te Totara sold.

4.6 Kahuitieke (refer to figure 8 for map) was specified in the Crown purchase deed for Te Mata *"There is a native reserve within these boundaries named Kahuitieke, which has been surveyed and marked yellow on the plan attached"*. Investigation of Title occurred in 1895 with korero recorded that it had been a burial site for several tupuna including Te Ngore, with title

[18] AJHR 1862 Cl 355

[19] AJHR 1862 E-10

awarded to a descendant Aterea te Arahi. [20] The block was later alienated by sale in 1899 with transfer of title to William Harrison of Mangapai.

4.7 Te Totara block (refer to figure 9 for map) was passed through the Native Land Court in 1868.[21] In November 1883 Te Totara was again brought before the Native Land Court following an application by the Crown to have its interests defined.[22]

4.8 The block had allegedly been sold to a Mr Ormiston, who had become indebted to the Crown by way of over-payment. Mr Ormiston died and his estate was unable to refund the over-payment hence the Crown sought an assignment of certain properties in part liquidation of the debt, amongst them the purchase of Te Totara.

4.9 The Native Land Court noted that the purchase was not perfected by reason of the transfer of title not having been witnessed, although the signatures of the native owners were present.

4.10 The Crown was assigned Mr Ormiston's interest and instruction was given by the Crown to Mr Mair to get perfect transfer. Two of the native parties refused, the third Renata Manihera agreed and signed the transfer which was witnessed.

4.11 A subsequent petition was made by the widow of William Ormiston in 1884 as attached at appendix 4.[23]

4.12 A subsequent notice was gazetted and stated,

> *To give effect to a recommendation of the Waste Lands Committee of the House of Representatives, dated the 2nd October, 1884, on Petition No 304, Session II, from Eliza Ormiston.*
>
> *Also may issue a Crown grant to Eliza Ormiston aforesaid for all that parcel of land in the District of Whangarei, in the Provincial District of Auckland, known by the name of Te Totara, containing by admeasurement 36 acres, more or less. Bounded towards the North by the Mangapai Estuary; towards the East by Te Totara Creek; towards the*

[20] 5 WH 187-199
[21] 2 WH 87
[22] 3 WH 14
[23] AJHR 1884 Session 11 I -04 p 3

South-west by Allotment No 54 of the Parish of Mangapai, 1676 links; and towards the West by a road-line, 2030 links. The titles to be subject to the provisions of The Crown Grants Act 1883.

4.13 The Pokapu block (refer to figure 10 for map) was passed through the Native Land Court for Title Investigation in 1898.[24]

4.14 The claim was on behalf of Tamihana Timo, stated to be through descent from Ngahere and that "no one lives on it" and that it was leased to a European.[25]

4.15 No reference was made as to status as a reserve set aside from the Crown purchase of the Te Mata block. The Pokapu block was alienated by sale in August 1900 with transfer to Wesley Lee of Mangapai [26]

4.16 The Kopuawaiwaha block (refer to figure 11 for map) was mentioned in the Crown purchase deed for Te Mata when the boundary was described, "*along the boundary of the Ruakaka block until it reaches the Orua thence along the boundary line of Jonah's reserve named Kopuawaiwaha*"

4.17 Title to Kopuawaiwaha (refer to figure 12 for map) was investigated on the 17th March 1865, with the total area defined as 1588 acres[27]. It was listed in the Court minutes as Kopuawaiwaha (*Native Reserve*) A certificate of fee simple was issued to Hona Te Horo and others and amended in 1875 to include one name from each tribe - Hona Te Horo, Hona Kawanui, Te Pirihi Whakaariki, Ripeka Paora and Hemi Hoera. Hona Te Horo stated to the court that he had sold a portion to Mr Thomas Henry, and the court informed the claimants that a grant would be issued to the five named above, but that the grant would be held by the government until the conveyance to Mr Henry was signed.

4.18 The Native Land Court Act 1873 allowed for restrictions preventing alienation to be placed on titles, but not until 1882 could the Court place restrictions at the time of partitioning. [28]

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[25] 7 WH 31-32
[26] Certificate of Title Vol 99 folio 110
[27] 1 WH 36-39
[28] Native Land Court Act 1882

4.19 No enquiry was made by the Court regarding the reserve status of the Kopuawaiwaha block.

4.20 In 1885 an application was made to the Native Land Court for partition[29], with Hona Te Horo stating *"a piece of this land was some years ago sold to Mr Henry (215 acres). I believe those who sold to him will ask the court to cut out for the vendors the piece sold and award to them".* After further enquiry the court awarded a partition comprising 215 acres for Mr Henry called Kopuawaiwaha No. 1, 190 acres called Kopuawaiwaha No. 2 awarded to Wiki Te Pirihi, Arapera, Ripeka Paora and Kopuawaiwaha No. 3 comprising 40 acres awarded to Hona Te Horo and Te Kepa Te Rata with the remaining 1143 acres called Kopuawaiwaha No. 4.

4.21 By 1896 four blocks had been alienated to Europeans.

4.22 One of the partitions was Kopuawaiwaha 4A4 (refer to figure 13 for map), comprising 585 acres with fifteen owners. The Crown made an application to the Court for definition of interests in the block as it had purchased the shares of six of the fifteen owners equivalent to 252 acres.

4.23 The Crown was awarded a share titled Kopuawaiwaha 4A4 East[30]. The legislation that enabled this had been passed by the Crown previously- the 1877 No 31 Native Land Act Amendment Act s6- *the Native Minister may apply to the Court to determine the interest purchased by the Crown in any block of land and the Court may declare a proportionate area of land vested in the Crown*

It is noted that applications as to Kopuawaiwaha No4A No 1,2 &3 totalling over 500 acres were withdrawn as "*none of the owners have sold*". All these three blocks were alienated by sale to Pakeha farmers within the next 10 years however.

4.24 The Waiwarawara block (refer to figure 14 for map) was described in the Crown Deed of Purchase for Ruakaka as "*the portion exempted for us being delineated on the plan on the back here of."* It was marked as Native Reserve on the deed plan and Plan SO40 dated 1862 shows it to border the Ruakaka river, encompassing 1227 acres.

[29] 3 WH 55-59
[30] 6 WH 144

4.25 Commissioner Johnson was under strict instructions to obtain land for the recent immigrants from Nova Scotia, and although a block was reserved in the Ruakaka purchase, this was smaller than the sellers wished. As Commissioner Johnson stated,

> *This block commences at the Wakatarariki, the northern boundary of the block submitted for consideration in my report of the 31st December last, and extends along the coast to the south shore of the Harbour Whangarei and with an average breadth in land of ten miles, and includes both the valleys of the Ruakaka and Waipu Rivers applied for by the recently arrived Highland immigrants. The whole of this block is well wooded and watered, and leads to further available tracts of country on the west coast of this island.*
>
> *The difficulty I had to contend with in this block was confining the natives into a reasonable reserve in the valley of the Ruakaka, as they insisted on keeping the most valuable tract back for themselves, to which I could not consent for Mr McLeod, one of the leading men of the Highlanders having arrived, and our inspecting the valley and district together, he quite agreed with me that, unless the natives could be confined to a limited reserve, the valley could not be made available as their settlement. After much discussion, however, the natives acceded to my idea of the quantity they required for their use, and a reserve was finally agreed upon of one mile frontage to the Ruakaka, and running back to the hills in parallel lines.* [31]

4.26 Having insisted that the Waiwarawara block be smaller than requested by the vendors, Johnson further reduced it's size by 1500 acres (over 50%).

> *I was enabled finally to overcome these obstacles and bring this purchase to a conclusion on the conditions that a certain portion of the block reserved by the natives at the Ruakaka be purchased by the Government for the sum of 70 pounds, that portion being the private property of the chief Mate, who resides at Kaipara and which he does not choose to leave for the use of the Ruakaka natives and as, being a new purchase I propose to make it the subject of a separate communication.*

4.27 Title to the Waiwarawara Reserve was investigated in November 1873, with title awarded to Hona Te Horo, Horomona Te Hana, Parata Te Rata Pou, Ihapera Pomare and Hira Te Taka[32]. There was no enquiry by the court as to the reserve status of the land. Mr Bedlington, a representative of the provincial government present in Court objected to the title investigation claiming "*this land was in the middle of the Busby claim in*

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[31] An epitome of official documents relative to native affairs and land purchases in the north island of New Zealand, Boundaries <http://nzetc.victoria.ac.nz//tm/scholarly/tei-TurEpit-t1-g1-t3-g1-t5-g1-t5.html>

[32] 1 WH 104-105

Whangarei", ignoring the fact that this land was reserved from the Ruakaka Crown purchase nineteen years earlier.

4.28 In May 1973, Mr Ormiston had written to Mr Thomas Prescott, a farmer of Ruakaka who had expressed concern that land he was leasing from the Native owners was to be passed through the Native Land Court.

> *Sir, in consequence of receiving letters from the Crown Lands Commissioner relative to the remainder of the "Busby Lands" at the disposal of the Provincial Government, I waited upon his honour the Superintendent in Auckland last month. Finding that you were already in occupation of a portion of the land in question, he informed me that steps would be taken to secure your continuation thereof. I therefore think that you are perfectly safe in putting in crops for rest assured that the Superintendent Mr Gilles has no other object in view than the settlement of this province by hard working and industrious farmers.*[33]

4.29 In June 1973, Mr Ormiston then wrote to the Superintendent of the Provincial Government in Auckland.

> *Sir, I have the honour to enclose a copy of a letter sent by me to Mr Prescott of Ruakaka. Mr Prescott informed me that sometime ago the natives told him that having sold the 1200 odd acres of land of which Mr Prescott farmed a part, that he must leave in July 1873, and this is in the face of a lease granted to him by the said natives for thirteen years dated the 7th of July 1870. Mr Prescott has already paid on account of the land to said natives before forty and fifty pounds Stirling, he has likewise cleared and fenced and in crop about fifty acres and preparations made for fifty acres more making his case one of extreme hardship. I took the opportunity of informing him that the land leased to him did not belong to the natives but was the property of the Provincial Government and that as the land was well suited for a small party of Special Settlers of the right stamp-that I would take upon myself the responsibility of recommending your Honour to locate five large families in addition to the Prescotts on the said land. I have visited the place several times- the land is quite level and is navigable for good size boats and good size punts along the whole side of the block- the Prescott family all told embracing three strong sons. I shall be most happy to take an interest in a settlement in this block and in this view have included it in the Mangapai Education district. I firmly agree that by settling groups of families on good land and near to older settlements that educational and religious instruction can be best secured at this stage of the colony and general progress secured.*[34]

4.30 Mr Ormiston further wrote on the 12 November 1873 to the Superintendent.

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[33] File of Correspondence dealing with Ruakaka and Waiwarawara Blocks Arc NZ R22425622

Sir, I have the honour to call your honours attention to the block of land known as Waiwarawara, Ruakaka sought to be passed by the Native Land Court to be held at Whanagarei on the 28th of this month (November), claimant Wi Pou, Hona Te Horo, Horomana. This block of land was claimed by Mr James Busby and included in the settlement made between him and the Superintendent of the Province in Auckland. Mr Tole named Mr Bedlington of Whangarei to act on behalf of the government.

4.31 After the Native Land Court declined the Provincial Governments claim and awarded title to the native claimants, Mr Bedlington wrote to the Superintendent,

On the claim being called, I opposed on the grounds that it was within the boundaries of the block known as Busby's Claim now reverted to the Crown. In support I produced the copy of the deed of purchase by Mr Busby from the natives. The court would not admit them as evidence being copy of a copy. The chief judge glanced through the papers and found a copy of the New Zealander June 13 1865 in which the case for Busby versus Mckenzie appears. He seemed to take the same view of this case as the chief justice in that. The court said that Mr Busby's Claim never had being before any land court for investigation, he did not establish any right to this particular piece of land. He then said there was no further opposition and approved of the claimants title to the block.

4.32 The surveyor Mr Wilson stated to the court that he had a claim for survey and and preparing the plan, and Hona Te Horo stated that Mr Henry (Thomas Henry) would pay the surveyor costs. The Waiwarawara block was then immediately sold to Mr Henry with no enquiry by the court regarding the sufficiency of land remaining.

4.33 Thomas Henry was born in Ireland in 1812 and settled in Auckland in 1842 as a store keeper in Queen St. In 1845 he bought 1400 acres from Ngati Whatua, including the area now known as One Tree Hill in Cornwall Park. In 1854 he sold this land to Sir John Logan Campbell and moved to Mangawai where he purchased the Tara block of 3000 acres.

4.34 In 1863 he moved to Ruakaka as he was running "Henry's Inn "at Marsden Point. By purchasing the Waiwarawara reserve he was able to complete his Bellevue Estate, as he had already purchased 9100 acres of the Ruakaka block from the Crown.[35]

[35] Crown Grants 1332 B,1333B, 1335B, 24/1/63

4.35 The consequences of the Waiwarawara block not being deemed a reserve by the court were significant- legislation in 1867[36] deemed that Crown Grants for native reserves shall state the land was inalienable by sale or mortgage, repealed in 1873 to state that reserves were to be gazetted with notice that the lands will be inalienable, except with the consent of the governor.

5. Fifth cause of action - Failure to ensure 10% of future proceeds realised by Patuharakeke

5.1 The Ruakaka purchase deed contained the provision "ten percent of the proceeds of the sales of this Land is to be expended for the benefit of the Aborigines. No provision for this was made in the other crown purchase deeds. There were many protests and petitions over the payment of the amounts, ending in the Sims Commission in 1927 deciding that the government had spent adequate amounts on Maori education and health services.

5.2 The Sim Commission decided that the 10 per cent clause in the Ruakaka deed was intended to benefit Maori in general, rather than the Ruakaka owners in particular and that general expenditure on social and educational services by the Crown had satisfied the historical obligations created by the clause.

5.3 Maki Pirihi, son of Wiki Te Pirihi and sixty others submitted a petition in 1925 requesting that the Ruakaka tenths may be paid over to those legally entitled. [37]

6. Sixth cause of action - Corrupt land purchase practices

6.1 The purchase deed for the Waipu block was signed in February 1954 without a ten percent clause included and without any land being reserved. Commissioner Johnston as Crown agent negotiated the purchase of the Waipu block on terms outside the scope of the original crown instructions, for the benefit of Nova Scotian settlers.

[36] 1867 No 43 Native Lands Act
[37] Partition No. 404/1924, file N.D. 1925/316

6.2 Based on later block area estimates of 30,000 acres the average price paid per acre was 2.4 pence. The crown failed to provide adequate protection to Patuharakeke in allowing it's agent to negotiate an agreement beyond the scope of his authority.

6.3 The practice of negotiating with Maori and making contracts to purchase their land before title had been determined by the Native Land Court was wide spread in the nineteenth century.[38] There had clearly been negotiations for sale to Thomas Henry prior to investigation of title to the Waiwarawara block.

6.4 Title to Te Mata block containing 975 acres, adjacent to the Takahiwai block was investigated in 1868 with Wiki Te Pirihi requesting the Crown Grant be issued in favour of Rata Pou.[39] Wiki Te Pirihi gave evidence "*I know this piece of land. It adjoins the piece called Ruakaka, Mata is on the bank of the Ruakaka. The claimants belong to Patuharakeke.* The surveyor Mr Eiffe stated "*I have no claim, Mr Henry paid me for the survey.*"

6.5 Mr Thomas Henry produced a receipt for the money paid to Mr Eiffe for the survey and the court then explained that Mr Henry's claim of 47 pounds for the survey would remain a lien upon the grant.

6.6 Te Mata block was then sold to Mr Henry.

6.7 Title to the Pokapu Waiorehua block (refer to figure 15 for map) containing 464 acres, adjacent to Te Mata block was investigated in 1868.[40]

6.8 Wiki Te Pirihi requested that the Crown Grant be in favour of Eru Toenga and Wiki Te Pirihi and stated that Mr Eiffe had made the survey. Mr Eiffe gave evidence that the survey produced in court was his and "*I have no claim on it*", implying that he had already been paid for the survey. A receipt for payment of the money was produced by Mr Thomas Henry and the court then explained to the natives who said they understood the purpose of the same and that Mr Henry would retain the Crown Grant. There was no attempt by the court to prevent the sale in view of the pre-sale negotiations.

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[38] Williams, David. *Te Kooti Tango Whenua ,* Negotiations for land before investigation of title Appendix 4 p26.1
[39] 2 WH 41-43
[40] 2WH 46

6.9 When the Native Land Court investigated title or made partition orders, the land had to have been surveyed, often at significant cost to the Maori owners. It has been common practice for the Crown to take land in lieu of outstanding survey charges and this has been acknowledged as a breach of Te Tiriti o Waitangi.

6.10 The Pukekauri block had orders issued in November 1883 creating Pukekauri 1 and 2 each containing 146 acres[41]. In 1907 the crown applied to the Native Land Court for partition orders to cut out a portion of each block in lieu of its outstanding survey charges. On April 17th 1907, Pukekauri 1A and 2A were created totalling 80 acres and vested in the crown.[42]

6.11 The designation of Pukekauri 1a and 2a was subsequently changed to section 1 block VI Ruakaka survey district, and in 1957 sold by the Crown to a local European farmer, Tom Carr. This block was subsequently taken under the Public Works Act for water supply.

7. Seventh Cause of action - alienation of land for the settlement of Pakeha

7.1 The crown has conceded that the operation and impact of the Native Land laws, particularly the award of land to individuals, without reference to Iwi or Hapu, made those lands more susceptible to fragmentation, partition and alienation. This undermined traditional tribal structures.

7.2 A Return in 1891 to the House of Representatives showing lands which had passed through the Native Land Court still held by Maori demonstrates how little productive land remained in the Patuharakeke rohe

7.3 The Mangawhati and Te Wita had 739 acres remaining of which 200 acres were described as used for pastoral or agricultural purpose, and Kopuawaiwaha had 1333 acres left of which 40 acres was productive.

[41] 3WH 4
[42] 6WH 348-9

Pukekauri had 292 acres left none productive, this totals 240 productive acres out of 2364 acres.

7.4 By 1925, a further half of this 2364 acres was sold (410 acres of Mangawhati and 850 acres of Kopuawaiwaha).

7.5 Pukekauri 2B, comprising 103 acres, lies to the east of the catchment taken under the Public Works Act for water supply, with just over an acre of this block included in the taking. This block was what remained of the Pukekauri block land awarded to Hona Te Horo following investigation of title and after the Crown had taken a portion for survey charges.

7.6 In 1946 a local farmer Tom Carr, applied to the Tai Tokerau District Maori Land Court to purchase Pukekauri 2B, stating the objective in purchasing "*was to prevent spread of noxious weeds including gorse from the Maori land onto his farm*". He had taken a case to the court previously seeking a court order compelling the owners to share the cost of keeping a drain on the boundary clear.

7.7 The court registrar annotated the application with a note to the judge "*the land Pukekauri 2B is unused and in the rough- perhaps not likely to be utilised by the native owners at least for a long time.*" [43] A meeting of owners was called to discuss the proposal of sale or lease and the owners, members of the Keepa, Honetana and Panoho whanau were definite "*that they did not wish to sell the block but would agree to lease*". A lease at 1/6d per acre for 21 years was agreed.

7.8 The lease agreement was confirmed in 1946, with clauses added that included the lessee being responsible for clearing the property at 10 acres per year, laying good English grasses and fertilising. These terms made Mr Carr reluctant to take on the lease as agreed, and the court registrar asked field inspector McKegg to inspect and report on what improvements were reasonable.

7.9 Mr Carr lodged a further application to call a meeting of owners to discuss a proposal to sell him Pukekauri 2B for one pound per acre. [44] The meeting took place in April 1948 attended by owners who together held 3.5 shares

[43] BAAI 11466 219c

[44] BAAI 11466 219c ANZA p 4660

out of 6 in total. The resolution was unanimously carried with no attempt by the Court to ask the views of the absent owners or to consider a partition with the remainder allocated to those not voting or present at the meeting. The sale was confirmed in July 1948 at 110 pounds which included 105 pounds valuation and 5 pounds in lieu of one years rent.

7.10 This sale highlights the challenges of multiple ownership created by the Native Land laws and the difficulty Maori owners had in raising development capital. In 1959 Mr Carr applied to the court to purchase the Pukekauri 1B5 block, an area of 38 acres. A meeting of the owners unanimously refused to sell the land. It is note worthy that a significant part of the Pukekauri 1B5 block was subsequently taken under the public works act for water supply.

7.11 Further evidence of the effect of fragmentation of ownership is given by investigation of the alienation of Kopuawaiwaha 4B. This block of 28 acres was created in 1889 by partition and awarded to Te Kepa Te Rata. It was alienated in 1956 by sale to the neighbouring European farmer GC Johns for 600 pounds.[45] Evidence was given by the vendor that "*the land was too small and not able to be developed. Mr Johns asked us to repair the fences and there was trouble over stock as between Johns and Yunkovich our small property intervened. I just wanted my brother Piriniha to buy my shares. I saw him, he holds approximately two thirds, me one third. He said the land is small and not able to be developed by him. He said it is best for us to sell*".

7.12 The court then heard discussion about the indebtedness of the vendors and the inability of one to be able to afford to buy the shares of the other. The court confirmed the sale commenting "*this land is practically the last or only land the vendors have, it would be well for good use to be made of the moneys*".

7.13 Of the original 1558 acres of the Kopuawaiwaha block (refer to figure 16 for map), all that remains are five blocks comprising approximately 150 acres in total, or ten percent of the original.

7.14 The alienation of the Mangawhati and Te Wita blocks demonstrate the effect of the survey charges that were mandatory when blocks were passed for investigation of title or for partitioning. The cost of such surveys was born by Maori owners as provided in section 28 of the Native Lands Act

[45] MLB no 19, page 302

1862. The Native Lands Act 1868 s68 made provision for the court to grant survey liens.

7.15 The Mangawhati and Te Wita block was originally 944 acres and title was investigated in 1867 through the Native Land Court with Reweti Maketu and his sister Te Korehu awarded title.[46] Whakapapa was given in court by Te Pirihi Whakaariki who explained their claim. He stated "*the ancestor was Te Ao Wheonga who married Te Taotahi who begat Nehe, Te Whakaariki, and Te Korehu. Nehe begat Maketu who begat Reweti Maketu*".

7.16 In a korero recorded from the testimony of Hori Rewi and Henare Pirihi in 1903, details of the Mangawhati are included "*Te Taotahi married Te Ao Hei Awa , Mangawhati was gifted by Pukerahi, Puhi and Motatau as a dowry for Te Ao Hei Awa. Then Maketu married Te Hei Raukawa and Te Whakaariki gave Te Wita as a dowry for Te Hei Raukawa. After that came the battle of Ngati Maru and Te Taou at Mangawhati*"

7.17 The Crown Grant for Mangawhati and Te Wita [47] (refer to figure 17 for map) was issued on the 7th May 1866 in the names of Reweti Maketu and Te Korehu with a further Registration on the title dated 1870.

7.18 This was for 205 acres (Conveyance No E976) dated 24th May 1870, from the owners to William Ormiston with a further Registration dated 20th October 1902 conveying the 205 acres from William Ormiston to James David McKenzie. This was the Te Wita part of the block.

7.19 A search of the Block file for Mangawhati reveals the reason for this sale. It contains a letter written at Takahiwai dated 1st July 1866 from Reweti Maketu addressed to the Court Clerk for Mr Fenton, chief judge of the Native Land Court,

> *Friend, Greeting*
>
> *I have seen your letter. I have received it concerning my lands Te Mangawhati and Te Wita.*
>
> *You tell me to fetch the Crown Grants. It is correct. But Friend, I am unable. The inability is that I have no money wherewith to get it.*

[46] 1WH75-77

[47] Crown Grant 3090 BNC

> *Friend, I am considering about it but cannot accomplish it. What am I to do. If you see any whiteman who is desirous for land for himself send him to me, I have some land for him because I will sell a portion of the land, the other portion I will keep, the reason of my wishing to sell a portion is that I may have some money to obtain the Crown Grant but I cannot see a purchaser for that land.*
>
> *But Friend, write to me. I should be very glad if you would write to me that I may know what the custom is regarding the fees for the Crown Grant that remain a long time in the office. This is all.*[48]

7.20 There was a subsequent partition hearing for Mangawhati in 1907 with it being stated that " *the main part not sold to be divided into two"*[49]

7.21 The Te Wita part of the Mangawhati block had been sold, leaving Mangawhati No 1 at the Northern end comprising 14 acres, and Mangawhati No 2 and No 3 comprising 364 acres each in the names of Reweti Maketu, and Kawhena Paki and Warehou Petimana respectively. This totals 742 acres, the balance being the Te Wita part of 202 acres.

7.22 Mangawhati No 2 was alienated in November 1910, the 362 acres sold for 300 pounds to James David McKenzie.[50] Of note there had been a lien for survey charges of 31 pounds on the title.

7.23 Part Mangawhati No 3 was alienated in 1916, the 30 acres sold for 105 pounds 10 shillings to James David McKenzie.

7.24 Mangawhati No 1 was alienated in September 1926, the 14 acres sold to William McKenzie Fraser for 140 pounds.[51] Again of note, a Notice of Release of Lien dated the 6th December 1926 was issued *being the cost of survey charges of 17 pounds 6 shillings.*[52]

7.25 Mangawhati 3C was alienated in 1952, the 141 acres sold to a Pakeha farmer J Erceg. No enquiry was made by the Court with respect to sufficiency of lands remaining.

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[48] Block file Mangawhati in MLC Whangarei
[49] 8 WH 246
[50] Tokerau MLB 1910/140 item no R1264046 BAAI
[51] TK 15463
[52] Block file Mangawhati in MLC Whangarei

7.26 Mangawhati 3 B1 was alienated in 1993, the 170 acres sold to Don and James Fraser for $90,000.[53]

7.27 The only part remaining of Mangawhati in Maori freehold title is Mangawhati 3B2, an area of 12 acres out of the original 966 acres.

7.28 The Takahiwai block comprising 1512 acres had remained papatupu land until 1907. There had been considerable pressure from the Crown to ensure papatupu land had title investigated so it did not remain in customary title.

7.29 On September 30th 1907 the Maori Land Court awarded the 1,512 acre block to 130 owners[54], with a subsequent partition made in 1911 into seven unequal parts.

7.30 Parts of Takahiwai blocks 4 and 7 were affected by the Marsden Point Oil Refinery water supply taking.

7.31 Henare Pirihi and others claimed under Motatau and Puhi as ancestors and as a gift by Tawhiro to them. Peka Rata claimed under Weku as an ancestor.[55]

7.32 In 1900 Parliament delegated to Maori Committees some of the powers of the Native Land Court on investigation of title of papatupu blocks. In a seven year period up to 1908, over 100,000 acres of papatupu land in the counties north of Auckland had title investigated and awarded.

7.33 In the 1908 Interim Report of the Native Land Commission to the Governor it was noted that there were 5,500 acres of papatupu land in the Whangarei County.

7.34 In the 1909 report it was stated,

> *We have already referred to the large area (nearly half a million acres) of Papatupu lands that have not been clothed with any title, and as to nearly one half of the area, lands that have not yet been surveyed for investigation purposes. In our report on Opotiki County (G-1m, 1908) we said- at this advanced stage of the history of New*

[53] 160 WH 59
[54] Berghan, Paula "Northland Block Narratives Vol 7 CFRT ,2006 p 320
[55] MLC 25/9/07 p 202

Zealand there should not be such thing as Papatupu land. If the energies of the Native Land Court and the resources of the Native Department were directed more to these virgin districts and less to the more settled portions of the North Island, settlement would extend more rapidly and with greater benefits to the Dominion.

7.35 The Takahiwai block was partitioned into seven parts in 1911, with subsequent alienation by sale of several partitioned parts. These included Takahiwai 4E2 comprising 101 acres was alienated by sale in 1971, Takahiwai 4C2 comprising 72 acres sold in 1968, Takahiwai 7B2B comprising 89 acres alienated by sale in 1970, Takahiwai 5D3B,5C and 5E1 comprising 55 acres sold in 1921, Takahiwai 5G1 comprising 8 acres sold in 1970 and Takahiwai 3A2 comprising 74 acres.

7.36 The alienation of most of Kopuawaiwaha by 1915 demonstrates the failure of the Crown to protect a suitable area for Maori, notwithstanding this block was designated a reserve on the original purchase of the Te Mata block.

7.37 Of the 1588 acres, at issuing of title in 1875 a block of 215 acres (Kopuawaiwaha 1) was awarded to Thomas Henry for a purchase made by him pre investigation

7.38 Of the 40 acres in Kopuawaiwaha 3, this was sold in 1875 to a Pakeha farmer E. Carter (Snr).[56]

7.39 Of the remaining 1129 acres in Kopuawaiwaha 4, most was alienated by the early 20th century.

7.40 The Crown purchased 252 acres in 1897[57], and several blocks were sold between 1911 and 1912 to Pakeha farmers- 492 acres to C.O Knight and 108 acres to A.E Carter representing over 850 acres of the 1129 that had remained.

[56] DT 6B/518

[57] P/O 24/6/1897