All Interface Submission Supporting Documents

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BOIMMS-1231661

Proposed Te Pēwhairrangi (Bay of Islands) Marine Mammal Sanctuary

4 May 2021

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Submission of:

Richard Hanson

The Proposed Bay of Island Marine Mammal Sanctuary has admirable goals, but is unlikely to be successful in its current form due to the large impact it will have on a small number of people regularly boating in the Bay of Islands area.

Marine Mammal Sanctuary

Given that the majority of close contact with marine mammals is likely to be initiated with vessels having viewing permits there seems no justification for making these vessels exempt from the 400m separation restriction. The commercial operators tend to be a marker for private boats to identify the presence of dolphins. During the summer the visibility of commercial boats in the area is a major contributor to the convergence of private boats looking to interact with the dolphins.

The research does not measure the extent to which commercial fishing in the BOI is affecting Marine Mammal populations.

The majority of problems are created by casual visitors to the BOI who are unaware of the issue, or the limitations imposed by the current regulations.

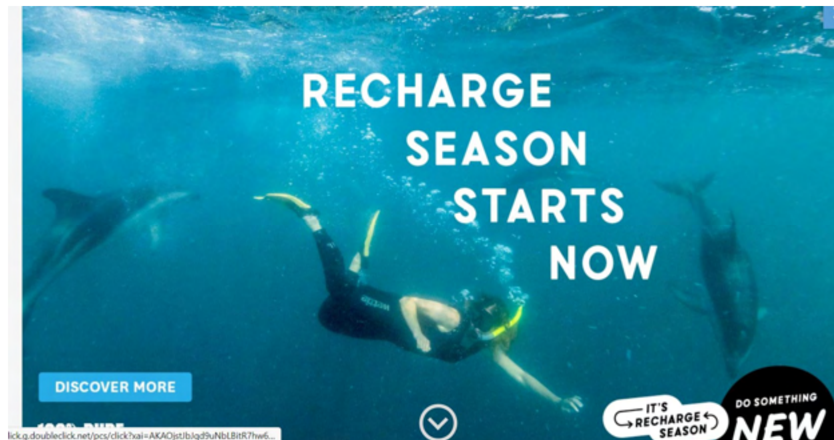
A targeted public education programme based on the current regulations such as that for the fan worm problem may give better results than imposing another layer of regulation.

The requirement for vessels to stop will be difficult to adopt in the context of yacht races and other events that regularly occur within the proposed BOIMMS.

The education requirements of the BOIMMS should be consistent with other government agency messaging. The attached image promoting swimming with dolphins was regularly promoted in the NZ Herald and other websites during the period of consultation. It is inconsistent that areas be targeted for additional restrictions while at the same time the cause of the problem is being promoted with government funding. While this is a Kaikoura based activity, the message is to try new activities and swimming with dolphins is good for you. This advertising campaign has the potential damage dolphin

populations much more than the proposed benefits of the BOIMMS. It also negates the benefit of any education campaign that is undertaken.

1 New Zealand Herald Website: Tourism New Zealand: 29 April 2021



2 New Zealand Herald Website: Tourism New Zealand: 29 April 2021

Marine Mammal Safe Zone

a. The first zone being between Motuarohia Island (Roberton Island) and Moturua Island, enclosed to the North by a straight line running from 174°9.608′E , 35°13.661′S to 174°10.736′E, 35°13.382′S and enclosed to the South by a straight line running from 174°10.672′E, 35°14.177′S to 174°11.617′E, 35°13.960′S;
b. The second zone being sea area between Tapeka Point and Whangaiwahine Point enclosed to the South by a straight line running from 174°7.390′E, 35°14.498′S and 174°11.237′E, 35°14.904′S

My family owns property at Paroa Bay within the Proposed Marine Mammal Safe Zone (MMSZ). As a landowner and user of the area since 1993, we have an intimate understanding of the dolphin patterns in the Bay and the boat traffic in the area. For most landowners in the MMSZ, the presence of dolphins and other marine mammals is not a novelty and there is no desire to investigate their activities or interact with them.

The majority of private dolphin watching occurs in the area just South of Roberton Island, and is usually associated with vessels not normally resident in the immediate area. For these boats it is a novelty.

We have good views over Paroa Bay and are aware of when dolphins and other Marine Mammals are active in the bay. There are long periods when there are no Marine Mammals visible in the Bay. Speed restrictions should not apply during these periods.

Our normal boating activities in the area include, fishing, water skiing, sailing and venturing out to other areas. All of these involve traveling at speeds greater than 5kn. It is important to note that in most cases this occurs when there are no dolphins visible in the surrounding area.

The proposed restrictions of the wider BOIMMS would allow for normal coastal activities to occur without the permanent 5kn restrictions on daily boating activities.

The property owners of the MMSZ are the people most inconvenienced by the proposal, but also least likely to engage in behaviours that put the dolphins at risk.

It is also important to note that prior to this proposal there has been no attempt at communication / engagement with the property owners within the MMSZ. Due to the proximity to the area, the land owners are the people most likely to be able to assist with objectives and the education of other boat owners. Given the high costs associated with enforcing the proposed restrictions it would be better to have local residents supporting the objectives rather than alienated by the regulations.

The 2020 research undertaken by Trioceans does not appear to have entered either Paroa Bay or Manawora Bay as part of its studies. Due to the fact that the proposal draws on this report in suggesting the MMSZ, there is a reliance on data that is not relevant to the subject area.

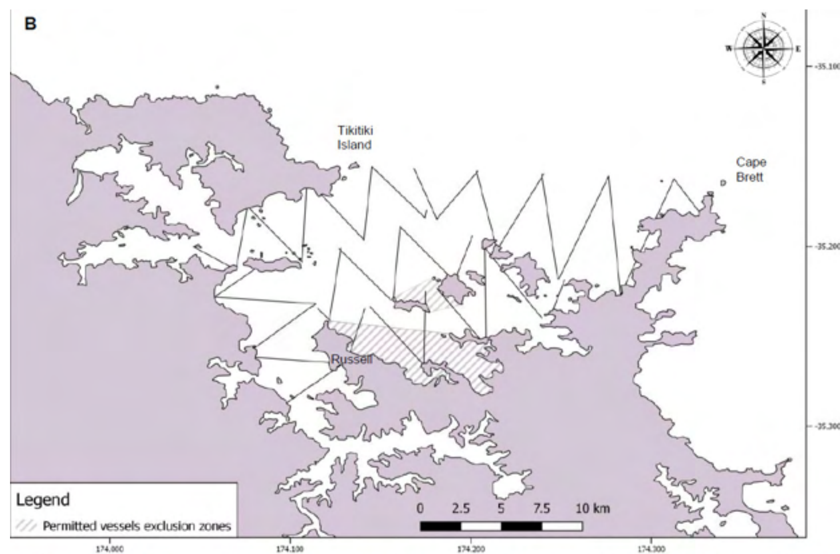


Figure 1: Entire study area (A) and Bay of Islands only (B) and transect lines, New Zealand. The arrows indicate operational limits for permitted vessels. The dashed zones represent the current exclusion zones for permitted vessels.

It is also important to note that if the Dolphin population is to be supported, this should be on a wider basis that incorporates marine reserves. This will protect the food species required.

Over the last 25 years many properties adjacent to the MMSZ have initiated large scale revegetation programs. This has reduced the silt generated in the area. Siltation is an issue which has a dramatic impact on marine ecosystems and should be addressed as a larger view of the regeneration requirements of the region. This is again a situation whereby those individuals who have contributed most are being penalised most.

If a MMSZ is to be adopted it should be limited to the area from Tapeka Point to Oturori Rock to the Northern End of Waitata Bay. This area should also be adopted as a Marine Reserve. This area has limited high speed traffic and is more easily avoided if needed. Similarly there are other locations in the Bay of Islands that would be more appropriate as a MMSZ which would have less impact on local residents.

The challenge you have is uneducated people attempting to interact with Dolphins. The harsh restrictions of the MMSZ does not achieve a solution to this demand. It however inconveniences and alienates those people mostly likely to be able to educate those people that are seeking these interactions.

My submission is that the Proposed Marine Mammal Sanctuary should not be adopted unless the Marine Mammal Safe Zones are removed.

If a Marine Mammal Sanctuary is adopted then it should be supported by an education programme that is consistent with other Government messaging.

If a Marine Mammal Sanctuary is adopted then it should not have exclusions for commercial vessels.

BOIMMS-1251856

BAY OF ISLANDS MARINE SANCTUARY PROPOSAL - SUBMISSION

This submission has been prepared by Captain Francis A. Allica of
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This submission is a personal submission and is not made on behalf of any other organisation.

The proposal in its present form is not supported. Whilst it is evident that there are many fewer dolphins in the Bay of Islands region than in the recent past, the reasons set forward in the proposal document are subjective and not based upon proven fact. The author does not really know why Dolphins are not visiting in the same numbers as previous years. I would suggest that one reason for this is the reduction in the food-chain available to the dolphins in the BOI region. Any local fisherman will tell you that numbers of fish have fallen in the region – it is much more difficult to catch fish than in the past. Consequently marine mammals will seek better hunting grounds elsewhere. This issue has not been discussed in the paper.

New Zealand has very few fishing sanctuaries and those that do exist are so small as to not really have any impact on fish numbers in NZ. I suggest that this would be a valid place to start. Until New Zealand Government introduces more and much larger fishing sanctuaries the problem will only be exacerbated.

I have spent more than 50 years in the maritime industry, 28 as a naval officer in the Royal Australian Navy and the past 22 years at sea as master of a variety of vessels, mainly expedition cruise ships with a team of naturalists who took interested and environmentally passionate clients to many places across the Pacific and Indian Oceans from Alaska to Antarctica, from Mauritius to the Chilean Fjords. Much of my time, particularly in the latter role was spent at sea observing the behaviour of marine mammals. My home for the past 20 years has been in the BOI.

Dolphins are social creatures. They are attracted to vessels, they often follow a vessel for miles at sea. They love this activity. In general they are manoeuvrable enough and smart enough to avoid sustaining any damage from the vessels they follow. While the pressure of this activity will be increased in more populated areas with many more small vessels operating such as the Bay of Islands, the dolphins do have the flexibility and intelligence to make up their own mind whether they say with a vessel or leave. I have sailed along the coast from BOI to Hauraki Gulf several times in the past 6 months and have seen many (the normal amount) of dolphins one might expect to see on this passage. Which suggests to me they have moved out from the Bay probably where there are better food supplies.

Notwithstanding the above I have no objection to establishing a Sanctuary much as proposed. The speed restrictions in the Safe Zones is probably not too onerous for most – in general they are not areas which are transited often by most.

The proposed distance restriction of 400 metres in the Sanctuary region is not supported. It is difficult to see dolphins at this distance. Often they are on you before you see them. I suggest 200 metres is more realistic – even that is excessive when

compared to other countries which stipulate 50-100 metres. Stopping for most vessels is not an attractive option. A reduction in speed to 5 knots is not unreasonable; but most craft on the water will be transiting the region not with the purpose to observe marine mammals but for some other purpose – to enter or exit the Bay, visit the islands, go fishing, starting or finishing a voyage. The marine mammal encounter is incidental. I suggest that 5 knots will not result in significant impact on the dolphin. Many commercial operators have schedules and other time commitments – stopping at the whim of a dolphin is not practicable.

The proposal makes no mention of vessel size. Stopping a cruise vessel entering the BOI Port to anchor is not feasible nor practicable. Yet if they are allowed to proceed, why not others.

Stopping a sailboat is impractical. The sail might be the vessels only means of propulsion. It is not easy to drop sails and then pull them up again. The sail boat when under sail does not cause any harm to the marine mammal. I am totally against sailboats inclusion in this proposal.

The proposal does not make any limitations to sail vessels racing, such as in local weekly sailing/ racing fixtures nor events such as the BOI regatta. Again I recommend sailboats be excused from these limitations. They cause minimal impact on the mammals. For large mammals avoid them by 200 metres, dolphins are just too manoeuvrable and pesky to take such action.

I am not averse to a ban on swimming with dolphins and other marine mammals in the BOI for all – private and commercial.

The proposal in its existing form will be difficult to enforce. It is far too restrictive and will not be supported and therefore observed by most people on the water. Most will support a Marine Mammal Sanctuary but only if it does not unduly affect their operations. At present it only supports one interest group and not the many who are out there. Make it less restrictive. Keep it simple.

In summary, I support the imposition of a Marine Sanctuary in the BOI region. I support the proposed Safe Regions. I disagree with 400 metres and suggest 200 meters for limitations. I disagree with vessels stopping **if transiting the Sanctuary** but they should remain beyond 200 meters if at all possible – 5 knots should be a safe transit speed when within the known presence of marine mammals. **Vessels following the marine mammal activity** should remain if possible at 200 metres from the marine mammal and stop if inside this distance. Sailing vessels under sail should not be restricted in transiting in the presence of dolphins.

Captain F. A. Allica
Opua, Bay of Islands, NZ

6 May 2021

BOIMMS-1301988

Date: 11 05 2021

Submission mammal sanctuary

We acknowledge a decrease in numbers of dolphins in the bay of islands.

We have read the consultation document and we were at the presentation at Scenic hotel 25th February.

The proposal is based on the results of study between December 2012 and April 2015.

The consultation documentation go through the background of dolphins leaving the bay and not coming back as well as high calf mortality. The presentation notifies there are multitude of factors but focus only on one out of the four factors that are mentioned. The focus is 100% on the factor "Human and vessel impact", that was investigated and reported by Massey University in February 2016 with the "Responses of bottlenose dolphin (Tursiops truncatus) to vessel activity in Northland, New Zealand".

Our concerns are that the proposal is based on only one factor and do not consider the other factors listed: **The reduction of fish abundance, change of environment and individual dolphins.** The documentation does not say anything about how much impact those factors may have. The only reason why the only foundation of the proposal is "the human and vessel impacts" seems to be because Department of Conservation and Massey University performed the huge study through 2012-15 covering that factor, but not the others. The other factors are neglected in the documentation, even though they are not without impact. "The human and vessel impacts" factor may or may not have as big impact as one or more of the other factors. There is just a big question mark presented about the other factors.

Our concerns are that the proposal is not solid in means of adequate facts. We would like to see a complete research, including **the reduction of fish abundance, change of environment** (especially the change of environment under the water surface) **and individual dolphins**, before proposing new regulations. Since current study is from 2016 it should be complemented with how the situation/boating has changed up to date.

It is irresponsible to propose new regulations based on incomplete and inadequate facts. A proposal based on only one factor out of a multitude can not be an efficient way to increase and protect the mammals in the Bay of Islands. There are resources spent already on just one of the factors and there are more resources needed to maintain, follow up and police the regulation.

The tourism in Northland has not stopped growing and as business owners we work actively to keep it growing. New regulations must have a solid and sustainable foundation before implementation so that we know that we do the correct changes and spend our resources on the right things to achieve the goals we have in common.

/Katarina Jung

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BOIMMS-1312015

Submission

Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary Proposal

11 May 2021

Dr Rochelle Constantine

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p.

Statement:

I am a marine scientist based at the University of Auckland where I lead the Marine Mammal Ecology Group. I have been involved in research on the bottlenose dolphins in northern New Zealand since late 1993 completing my MSc in 1995, PhD in 2002 and advised four post-graduate students between 2003 and 2012. I worked closely with the Department of Conservation Te Papa Atawhai (DOC) and mana whenua throughout this period of time and know the value of research informed conservation action that strikes the balance between people interacting with wild cetaceans and the welfare of the animals. Over time there have been several changes to dolphin watch/ swim permits, education and outreach programmes, protected areas and the introduction of a moratorium on permits as a result of the research conducted at the University of Auckland. Unfortunately, challenges associated with implementation and enforcement have led to the inevitable decline in habitat quality resulting is less frequent use of once core habitat for many bottlenose dolphins. The mauri of Te Pēwhairangi – Bay of Islands has been diminished with the impacts on the dolphins and the concerns of hapū, kaitiaki of these waters, have not been considered. The population of northern New Zealand bottlenose dolphins appears to be healthy, but this part of their range is no longer important habitat for these dolphins.

Conservation action must be effective, science and/or mātauranga informed and have social license. Unfortunately, the Marine Mammal Sanctuary as currently proposed by DOC is unlikely to effectively protect marine mammals. We all want to see Te Pēwhairangi become core habitat for the bottlenose dolphins again, but this will not occur with the proposal in its current form. A well-designed programme of on-water monitoring, advocacy and

enforcement will be more effective, fiscally achievable and include the communities that use these waters, rather than divide them. As happened in the late 1990s, this could be led through the principles of kaitiakitanga to unite people.

Therefore, I do not support the proposed Marine Mammal Sanctuary in its current form for a few reasons. The reasons outlined by DOC to include all species of marine mammal are flawed and there is misrepresentation of the data available to support this proposal. I recommend there be an independent review of the science used to inform this proposal as there are several misrepresentations of data, potential conflicts of interest and exclusion of important information. The proposed sanctuary is an unenforceable management approach and I suggest that the enforcement of and education about the current Marine Mammals Protection Regulations (1992) would be a more pragmatic and effective approach.

Comments on the proposal:

- **Not supported by evidence of impact on all marine mammals:** There is very little evidence that vessels in Te Pēwhairangi have an impact on marine mammal species other than bottlenose dolphins, therefore a 400m exclusion for all marine mammals is not a reasonable expectation. Early research revealed impact on common and bottlenose dolphins (Constantine & Baker 1997) but permitted operators changed their focus to almost solely bottlenose dolphins in the late 1990s (Constantine 2002). Subsequent research revealed a rapid increase in impact on the bottlenose dolphins, but this largely plateaued around the mid to late 2000s (Constantine 2001, Constantine et al. 2004, Hartel et al. 2014) with little change in bottlenose dolphin response to boats and swimmers over the past 10-15 years (Peters & Stockin 2016, TriOceans 2020). What did change was the inadequate enforcement of the MMPR for all vessels and swimmers, including infringement of the permitted operators' conditions with the inevitable increase in impact on the bottlenose dolphins (most recently see Peters & Stockin 2016). Evidence of impact on other species has not been presented.

  Suggested solution: Any protection should be focused on the bottlenose dolphins with education around behaviour near all marine mammals. Interactions with other species should be quantified to determine potential impact, but this should be a lesser concern if the current Marine Mammals Protection Regulations (MMPR 1992) are enforced.

- **Restricted speed 'marine mammal safe' zones**: There is no evidence to support that travelling at 5 knots through the marine mammal safe zones will have any positive impact on marine mammals. Given the shallow water through there the sound will not attenuate as effectively as in deeper water and if anything, will just prolong the time vessels are in the area where marine mammals might be. It is not clear whether this rule applies for sailing vessels. After the research by Constantine (2002), DOC increased the no-go zones to include Deep Water Cove, and small areas by Urupukapuka and Waewaetoria Islands based on increased resting by the bottlenose dolphins in those areas; this occurred because vessels infrequently went to those areas which enabled the dolphins to rest without disturbance. These small, static no-go areas did not work as the dolphins changed their habitat use again, as was predicted for large animals in a dynamic habitat (see Hartel et al. 2014, Dwyer et al. 2020). It is highly likely that the bottlenose dolphins will continue to change their patterns of habitat use from those recently reported (TriOceans 2020). This will result in the inner islands 5 kt 'protected area' being ineffective as the dolphins will be elsewhere, yet enforcement of speeds will need to be continued as it will be within the Marine Mammal Sanctuary.

Suggested solution: Consider dynamic marine protection and an education programme that would provide the protection required without needing complex permissions (as would be needed with changes to a sanctuary).

- **The proposed sanctuary has a high risk of failure**: The 400m exclusion zone and 5kt speed limit as they are presented in this proposal are unable to be regulated by DOC without a large increase in capacity and upskilling of staff. The estimation of distance at sea is challenging with measurement errors reported for expert observers (e.g., Williams et al. 2007) therefore, determining the distance of 400m is likely to have a high degree of inaccuracy by non-professionals and will require training of DOC personnel who will enforce this distance.
  Monitoring all vessels and swimmers throughout the proposed area - including the middle ground, all coastal areas where fur seals haul out, the inner islands and estuarine areas - is an immense challenge. This proposal will not provide the meaningful conservation action required to mitigate the decades long threats to the bottlenose dolphins when in Te Pēwhairangi. It has a high chance of failure and runs the risk of being a costly and ineffective management approach.

  Suggested solution: Correct enforcement of the MMPR alongside an ongoing and effective public education programme can and will protect marine mammals. This was successful in 1996-1997 with an effective DOC Marine Mammal Ranger who engaged in extensive public outreach with all tour operators (permitted and unpermitted), local boaters and visitors. She enforced the MMPR and dolphin-watch/swim tour operator's permit conditions and devleoped a functioning working relationship between all those who interacted with the dolphins. This stopped when the ranger left and was replaced by an ineffective ranger. In addition, a decision was made to issue more permits after ignoring the research and without local consultation, which dramatically increased impact on the dolphins (see Constantine 2001, Constantine et al. 2004).

- **Bottlenose dolphins are not resident**: It's important to note that the bottlenose dolphins are not resident in Te Pēwhairangi, these waters have always represented only a portion of the ever-changing home-range of this genetically robust population (Constantine 2002, Tezanos-Pinto et al. 2009, Tezanos-Pinto et al. 2013, Hamilton 2013, TriOceans 2020). Mātauranga Māori shows this long before research began. The importance of the dolphins was emphasised at a hui at Rawhiti in February 1994, but the calls for caution to protect these taonga were ignored.
  Bottlenose dolphins are listed as 'Nationally Endangered' due to the fragmented coastal populations (Baker et al. 2019). With their wide-ranging habits and robust genetic diversity, the impact on the bottlenose dolphin population throughout northern waters needs to be put into context and appropriate protection measures enforced. The language used by DOC in this sanctuary proposal is misleading, the bottlenose dolphins are still ranging widely with good connectivity and abundance (Dwyer et al. 2014); it's clear that Te Pēwhairangi is a sub-optimal habitat and has been for a long time.
  It is difficult to determine whether the dolphins in the TriOceans (2020) report are resighted just in Te Pēwhairangi or whether they are sighted in other parts of the Far North as well (referred to in some places as the 'Bay of Islands catalogue' and other places as the 'Far North catalogue'). As '26 individuals' is used as throughout the DOC proposal, I have assumed that the "*…16 frequent users and 10 infrequent users*" are referring to animals only in Te Pēwhairangi and not in other waters further north. Determining where all dolphins range when outside Te Pēwhairangi is important because the connectivity of dolphins to their conspecifics that use other parts of the range means they are likely to remain reproductively and socially

connected. Use of the original catalogue (Constantine 2017) and matching to other areas such as other Far North locations (TriOceans 2020) and the Hauraki Gulf catalogue (curated by R. Constantine and K. Stockin) will improve our understanding of the dolphins' dispersal.
The social Allee effect occurred in Te Pēwhairangi a long time ago, as evidenced by the increased group size from ~12-15 dolphins in 1995 – 2006 (Constantine & Baker 1997, Constantine 2002, Tezanos-Pinto 2009), up to 19-24 dolphins in 2009-2012 (Hartel et al. 2014, Hamilton 2013). This occurs when numbers decrease causing a disruption in normal social function; a complete shift in social structure was documented by Hamilton (2013) and this appears to have remained (TriOceans 2020). There is no evidence of this effect in other areas (e.g. Hauraki Gulf – Dwyer et al. 2014), where the dolphins maintain group sizes and social cohesion similar to Te Pēwhairangi in the 1990s and early 2000s.

- **The dolphins have been displaced for a long time**: Despite conclusive research showing the impact of boats and swimmers on dolphins, DOC actions to mitigate disturbance on this population came too late and consequently, the majority of dolphins that were initially encountered from December 1993 onwards displaced their core habitat to other areas along the east and west coasts of Northland, Auckland and the Coromandel with ~60% of individuals from Te Pēwhairangi seen in the Hauraki Gulf – Tīkapa Moana – Te Moananui-ā-Toi (Hamilton et al. in prep.). The wide-range of this population is documented (Constantine 2002, Berghan et al. 2008, Tezanos-Pinto 2009, Dwyer et al. 2014) and happened primarily during the 2000's as reflected in the rapid decline in the abundance estimate (Tezanos-Pinto et al. 2013, Hamilton 2013).
  It's important to note that the dolphins are likely to increase their use of Te Pēwhairangi if pressure is removed, but that requires changes in human behaviour in the area and that is unlikely to be achieved with this proposal as it currently stands.

- **Misleading information about current abundance**: The abundance of bottlenose dolphins in Te Pēwhairangi declined substantially from the 1990s (Tezanos-Pinto et al. 2013) through until the last abundance estimate using Robust Design models for the period March 2009 – December 2012 (Hamilton 2013; Table 1). The last estimate (Dec 2012; 39 dolphins, 95% CI 33-45) is not included in the DOC information outlining reasons for the sanctuary; instead there is a highly misleading implication that there are 26 dolphins left.
  A count of identified individuals without accounting for unmarked animals is not a statistically robust abundance estimate and DOC has been negligent in not continuing to support the regular abundance estimate work. If they had ensured this work was continued to build upon the publicly available Bay of Islands Bottlenose Dolphin Catalogue started in 1993 and regular updated versions provided to DOC since 1995 (last published version - Constantine (2017) https://doi.org/10.17608/k6.auckland.5417746.v1) it would have been possible to determine further trends in abundance (see Tezanos-Pinto et al. 2013, Hamilton 2013). It's important to note that whilst Hamilton (2013) reported a further decline in abundance, it was not at the rate reported in Tezanos-Pinto et al. (2013) and was a non-significant decrease.
  The dolphins shifted from random to Markovian emigration patterns – suggesting dolphins largely moved away from the area and were less likely to be observed there, rather than true mortality. This movement of individuals in and out of the area still occurs, although with considerably fewer dolphins compared to the 1990s (TriOceans 2020). The statement in the 2020 TriOceans report; *"This indicates a continued localised decline, with a 73% decrease since Peters & Stockin 2016 and a 91% decrease since Constantine 2002"* and "*The bottlenose population has declined significantly, from 278 in 1997 to 26 in 2020.*" as written in the DOC proposal,

highlights a poor understanding of how abundance estimates are calculated and these statements are highly misleading. The Hamilton (2013) estimates from 2009 were higher than in 2012, in concordance with the decline in abundance since 1999; it is important to note the low of 24 dolphins in February 2012 highlighting the natural fluctuation in abundance which is exacerbated by low numbers of animals (Table 1).

Table 1. Abundance estimates of distinctly marked individuals and corrected abundance estimates taking into account the proportion of unmarked dolphins in the Bay of Islands for the best fitting model (constant survival, constant Markovian temporary emigration and full-time variation in capture probabilities). $\hat{N}$ = abundance estimate of marked individuals; SE = standard error; $\hat{N}$ = total abundance estimate.

Date	$\hat{N}$	SE	95% CI	$\hat{N}_{total}$	SE	95% CI
Jun-09	38	6.26	25-50	43	7.15	29-57
Jul-09	52	5.53	41-63	59	6.11	47-71
Aug-09	61	5.49	51-72	69	6.31	57-81
Nov-09	65	6.01	53-77	74	6.89	61-88
Dec-09	83	4.60	74-92	94	5.35	84-105
Feb-12	21	0.00	22-22	24	0.24	24-24
Jul-12	22	0.00004	22-22	25	0.29	24-26
Dec-12	34	2.42	29-39	39	2.81	33-45

Suggested solution: DOC should provide a new abundance estimate in line with previous work in order to detect trends and inform future management plans. There are a number of established research institutes that would provide a more robust science approach than currently being provided.

- **Natural fluctuation in calving rates**: The DOC statement "*75% of all calves die before reaching adulthood*" is incorrect and misleading as throughout a biologically meaningful period of time sufficient numbers of calves have survived to enable the whole population to persist. I fully agree that it's a terrible situation with such high recent calf mortalities, especially given the low number of dolphins using the area, but since research began in late 1993, there has always been fluctuation in calving rates roughly following a ~10-year cycle. As an example, during the late 1990s, the number of neonates varied considerably over a short time-period from 4 (1997), to 6 (1998) and 9 (1999).
  The poor survival of calves has been a feature of this population, with a ~42% mortality rate before one-year of age and a relatively long (4+ year) interbirth interval (Constantine 2002, Tezanos-Pinto et al. 2015). Fluctuations where calf numbers more than doubled, then halved again five years later were reported during the 1990s through to the 2000s.
  The high level of calf mortality reported by DOC in this sanctuary proposal which is exacerbated by the small number of dolphins that now use Te Pēwhairangi is of concern. But analysis of calving success and maternal factors have not continued to be built upon post-2012 (Hamilton 2013, Tezanos-Pinto et al. 2014) so we lack an understanding of the dynamics driving calving success (e.g. Brough et al. 2016).

  Suggested solution: It would be informative to see all of the data associated with calf demographics from late 1993 until 2021 to get a better understanding of the phenomenon of fluctuations in calving and predictors of maternal success.

- **Increase in recreational vessel impacts**: It is clear that the increase in interactions with recreational vessels and swimmers is having a negative effect on the bottlenose dolphins. It is hard to determine the effect as the magnitude may have been

exacerbated by the unbalanced survey effort which is biased towards the summer months when there is an increase in vessel activity (TriOceans 2020). The summer and holiday periods (e.g., Easter, Auckland Anniversary weekend) have always resulted in higher impact on the dolphins (e.g., Constantine et al. 2004, Peters & Stockin 2016) and required closer monitoring by DOC rangers to ensure enforcement.

Suggested solution: DOC could run targeted education to recreational vessel owners focused around those high use periods. A more balanced sample size from the research would facilitate a better understanding of the pressure on the dolphins year-round, rather than focusing on short periods of intensive impact.

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BOIMMS-1322051

Proposed Te Pēwhairrangi (Bay of Islands) Marine Mammal Sanctuary

13 May 2021

Email: boimms@doc.govt.nz

Submission of:

Joan Hanson

The Proposed Bay of Island Marine Mammal Sanctuary has admirable goals, but is unlikely to be successful in its current form due to the large impact it will have on a small number of people regularly boating in the Bay of Islands area.

Marine Mammal Sanctuary

Given that the majority of close contact with marine mammals is likely to be initiated with vessels having viewing permits there seems no justification for making these vessels exempt from the 400m separation restriction. The commercial operators tend to be a marker for private boats to identify the presence of dolphins. During the summer the visibility of commercial boats in the area is a major contributor to the convergence of private boats looking to interact with the dolphins.

The research does not measure the extent to which commercial fishing in the BOI is affecting Marine Mammal populations.

The majority of problems are created by casual visitors to the BOI who are unaware of the issue, or the limitations imposed by the current regulations.

A targeted public education programme based on the current regulations such as that for the fan worm problem may give better results than imposing another layer of regulation.

The requirement for vessels to stop will be difficult to adopt in the context of yacht races and other events that regularly occur within the proposed BOIMMS.

The education requirements of the BOIMMS should be consistent with other government agency messaging. The attached image promoting swimming with dolphins was regularly promoted in the NZ Herald and other websites during the period of consultation. It is inconsistent that areas be targeted for additional restrictions while at the same time the cause of the problem is being promoted with government funding. While this is a Kaikoura based activity, the message is to try new activities and swimming with dolphins is good for you. This advertising campaign has the potential damage dolphin

populations much more than the proposed benefits of the BOIMMS. It also negates the benefit of any education campaign that is undertaken.

1 New Zealand Herald Website: Tourism New Zealand: 29 April 2021

Marine Mammal Safe Zone

My family owns property at Paroa Bay within the Proposed Marine Mammal Safe Zone (MMSZ). As a landowner and user of the area since 1993, we have an intimate understanding of the dolphin patterns in the Bay and the boat traffic in the area. For most landowners in the MMSZ, the presence of dolphins and other marine mammals is not a novelty and there is no desire to investigate their activities or interact with them.

The majority of private dolphin watching occurs in the area just South of Roberton Island, and is usually associated with vessels not normally resident in the immediate area. For these boats it is a novelty.

We have good views over Paroa Bay and are aware of when dolphins and other Marine Mammals are active in the bay. There are long periods when there are no Marine Mammals visible in the Bay. Speed restrictions should not apply during these periods.

Our normal boating activities in the area include, fishing, water skiing, sailing and venturing out to other areas. All of these involve traveling at speeds greater than 5kn. It is important to note that in most cases this occurs when there are no dolphins visible in the surrounding area.

The proposed restrictions of the wider BOIMMS would allow for normal coastal activities to occur without the permanent 5kn restrictions on daily boating activities.

The property owners of the MMSZ are the people most inconvenienced by the proposal, but also least likely to engage in behaviours that put the dolphins at risk.

It is also important to note that prior to this proposal there has been no attempt at communication / engagement with the property owners within the MMSZ. Due to the proximity to the area, the land owners are the people most likely to be able to assist with objectives and the education of other boat owners. Given the high costs associated with enforcing the proposed restrictions it would be better to have local residents supporting the objectives rather than alienated by the regulations.

It appears that the existing commercial vessel exclusion from the Proposed MMSZ area is not respected by the commercial operators. We regularly see commercial vessels in Paroa Bay. As recently as last week an Explore Group vessel came through on a commercial trip.

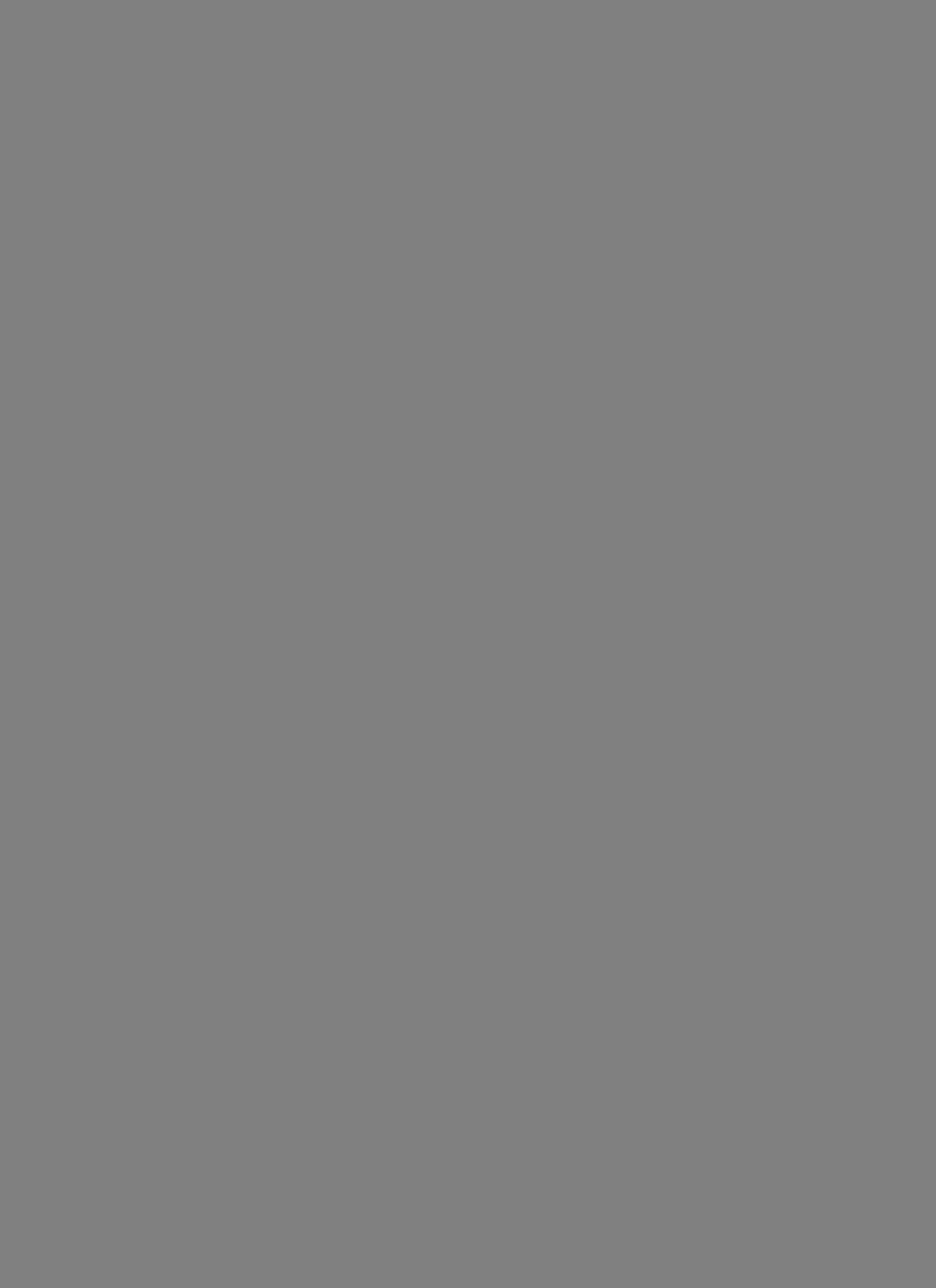
The challenge you have is uneducated people attempting to interact with Dolphins. The harsh restrictions of the MMSZ does not achieve a solution to this demand. It however inconveniences and alienates those people mostly likely to be able to educate those people that are seeking these interactions.

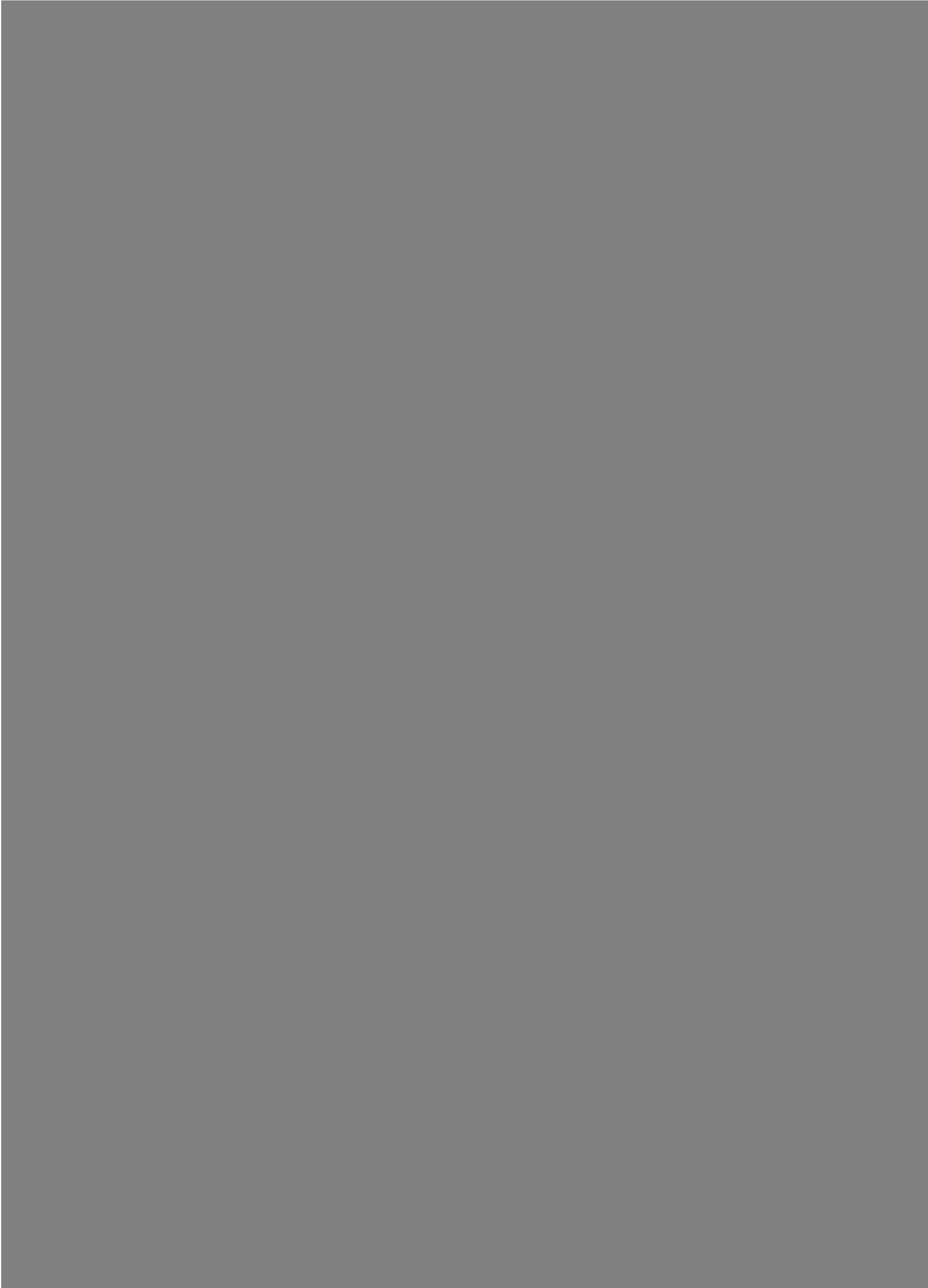
My submission is that the Proposed Marine Mammal Sanctuary should not be adopted unless the Marine Mammal Safe Zones are removed.

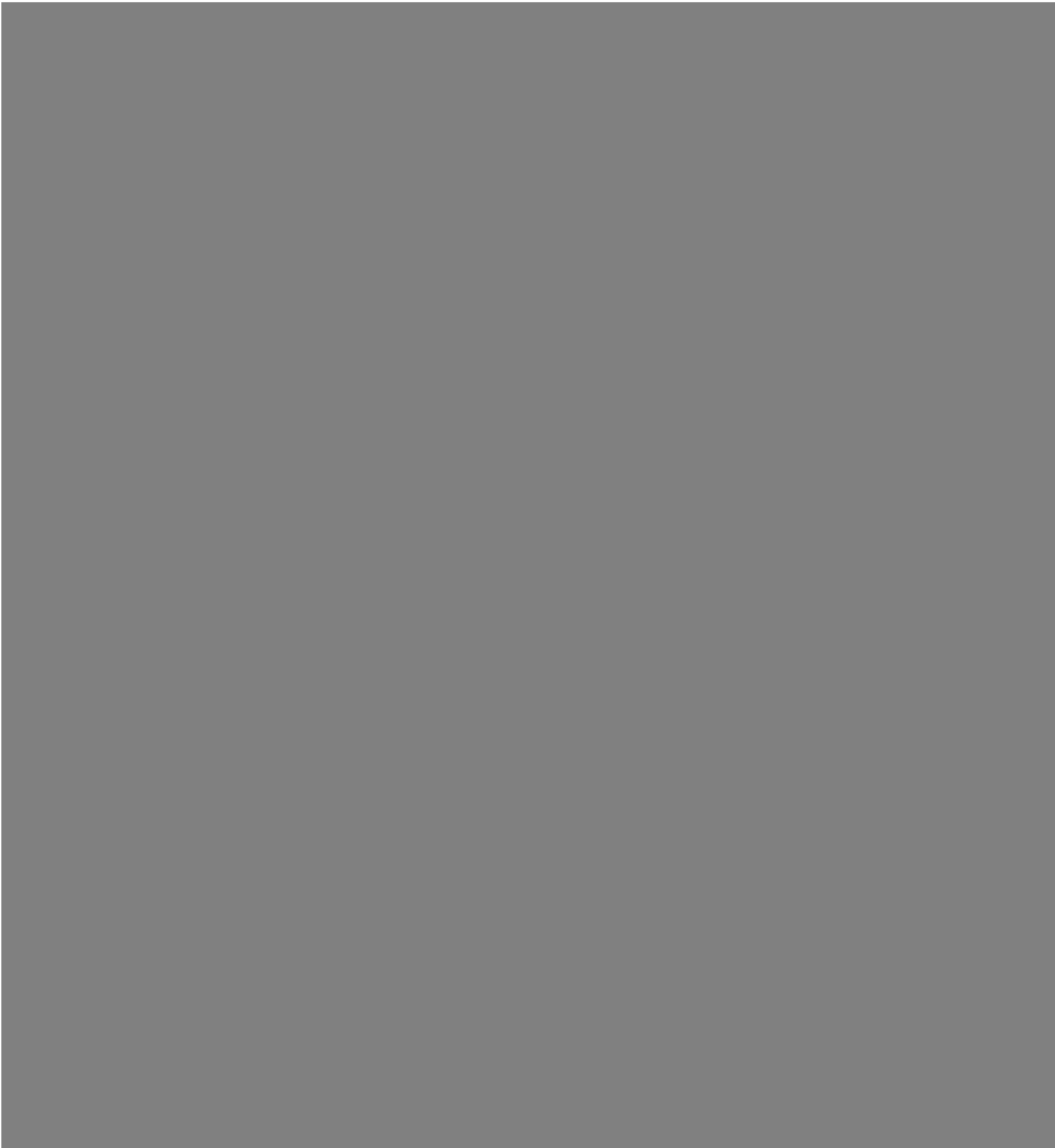
If a Marine Mammal Sanctuary is adopted then it should be supported by an education programme that is consistent with other Government messaging.

If a Marine Mammal Sanctuary is adopted then it should not have exclusions for commercial vessels.

BOIMMS-1342195







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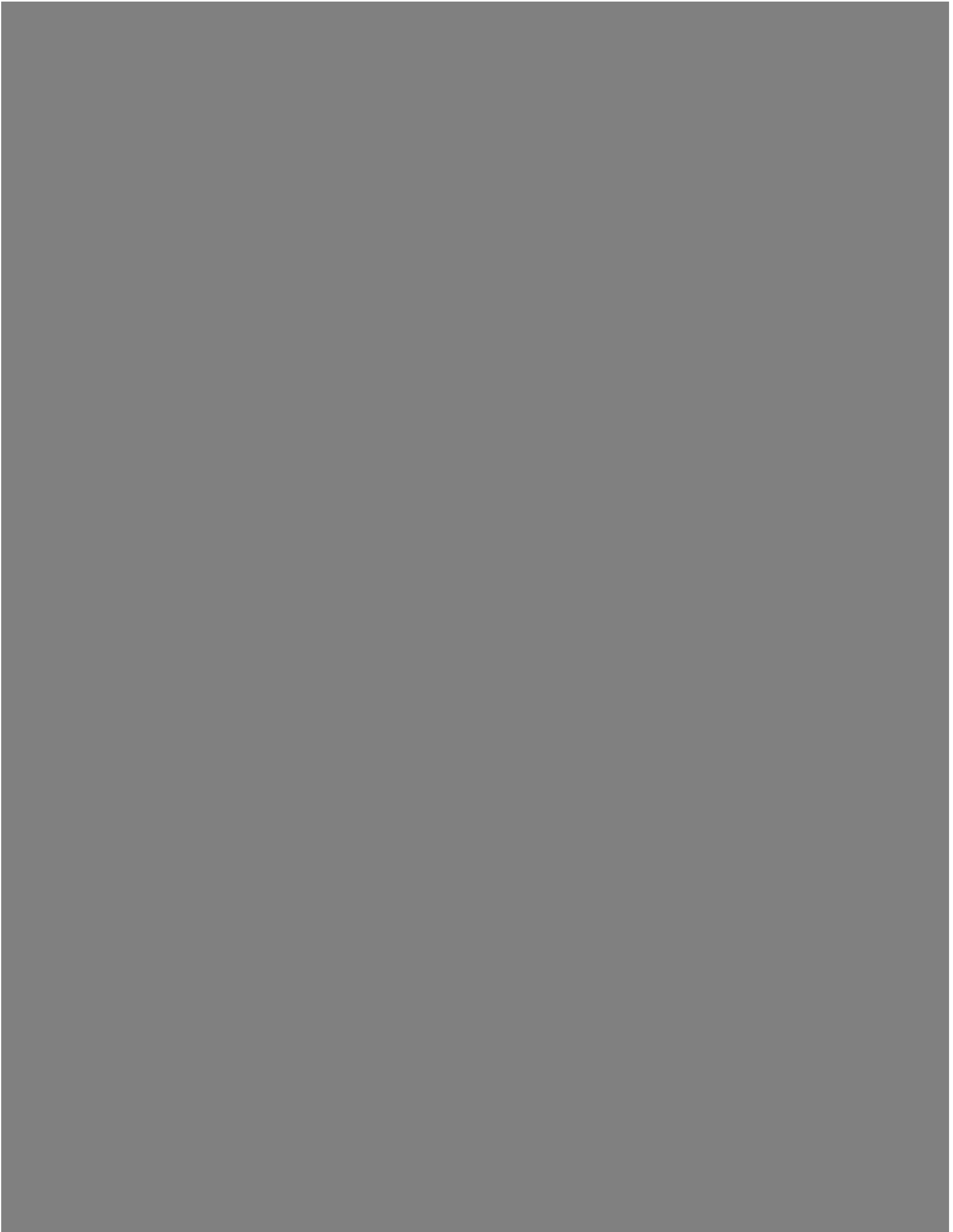

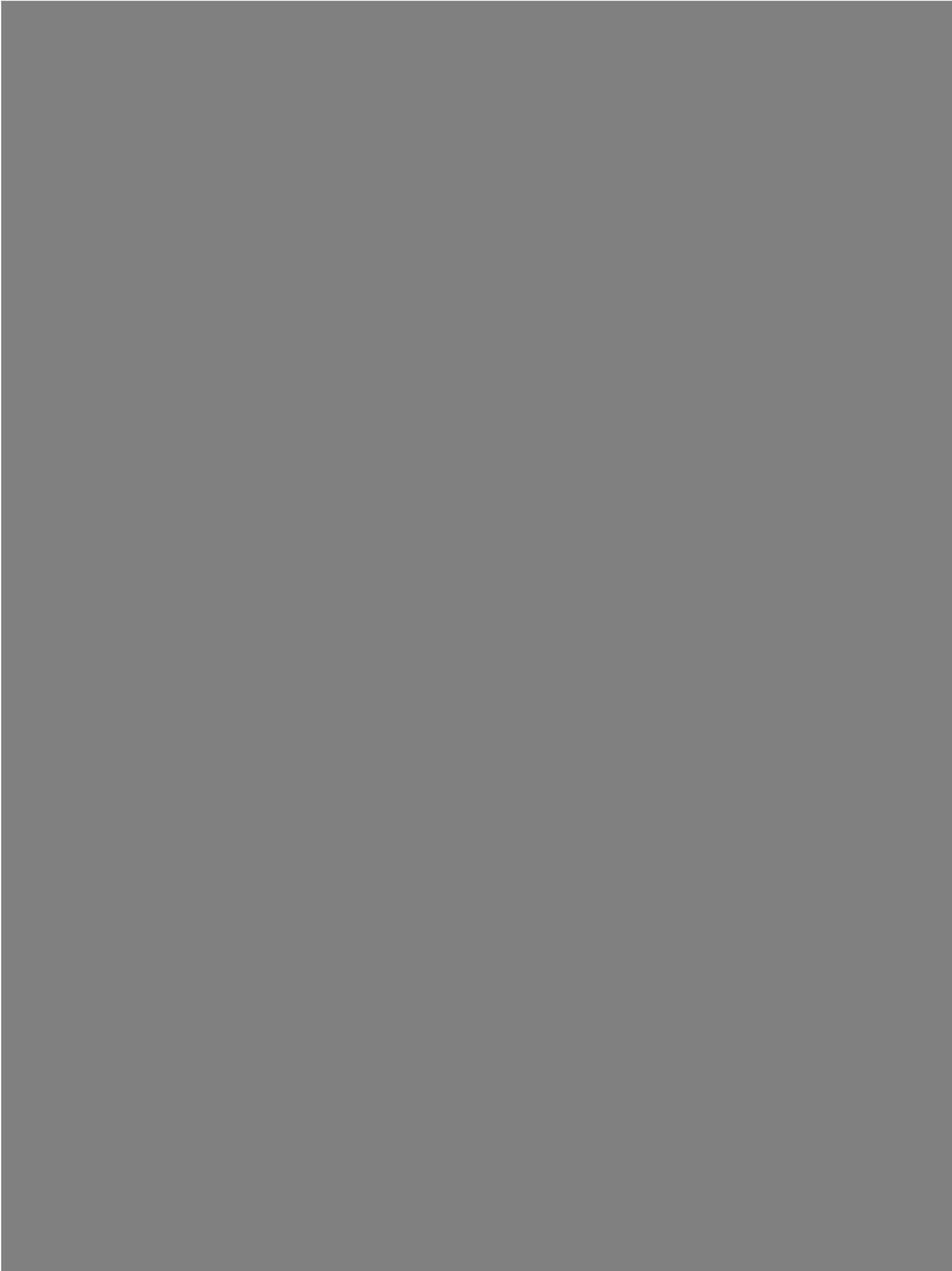

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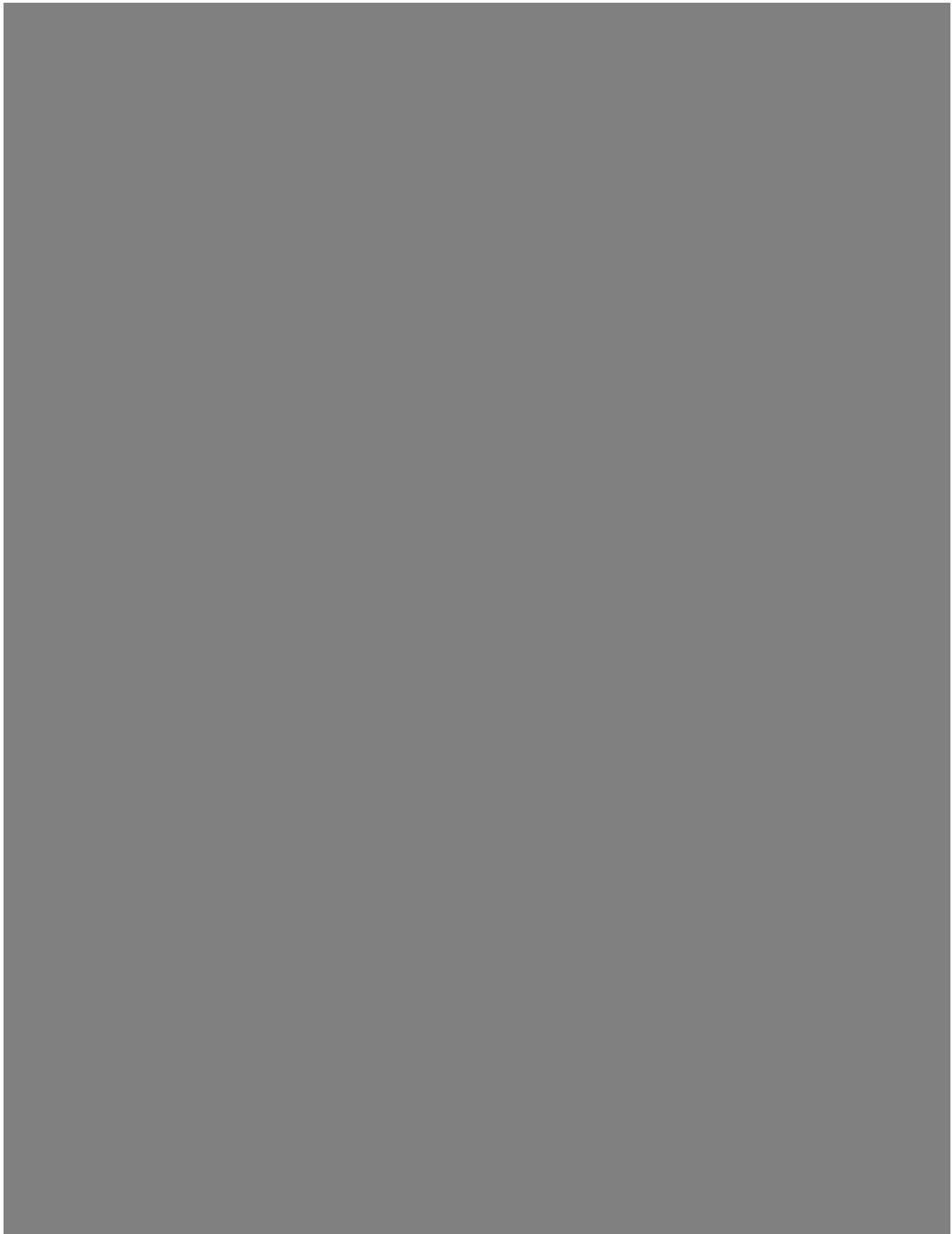

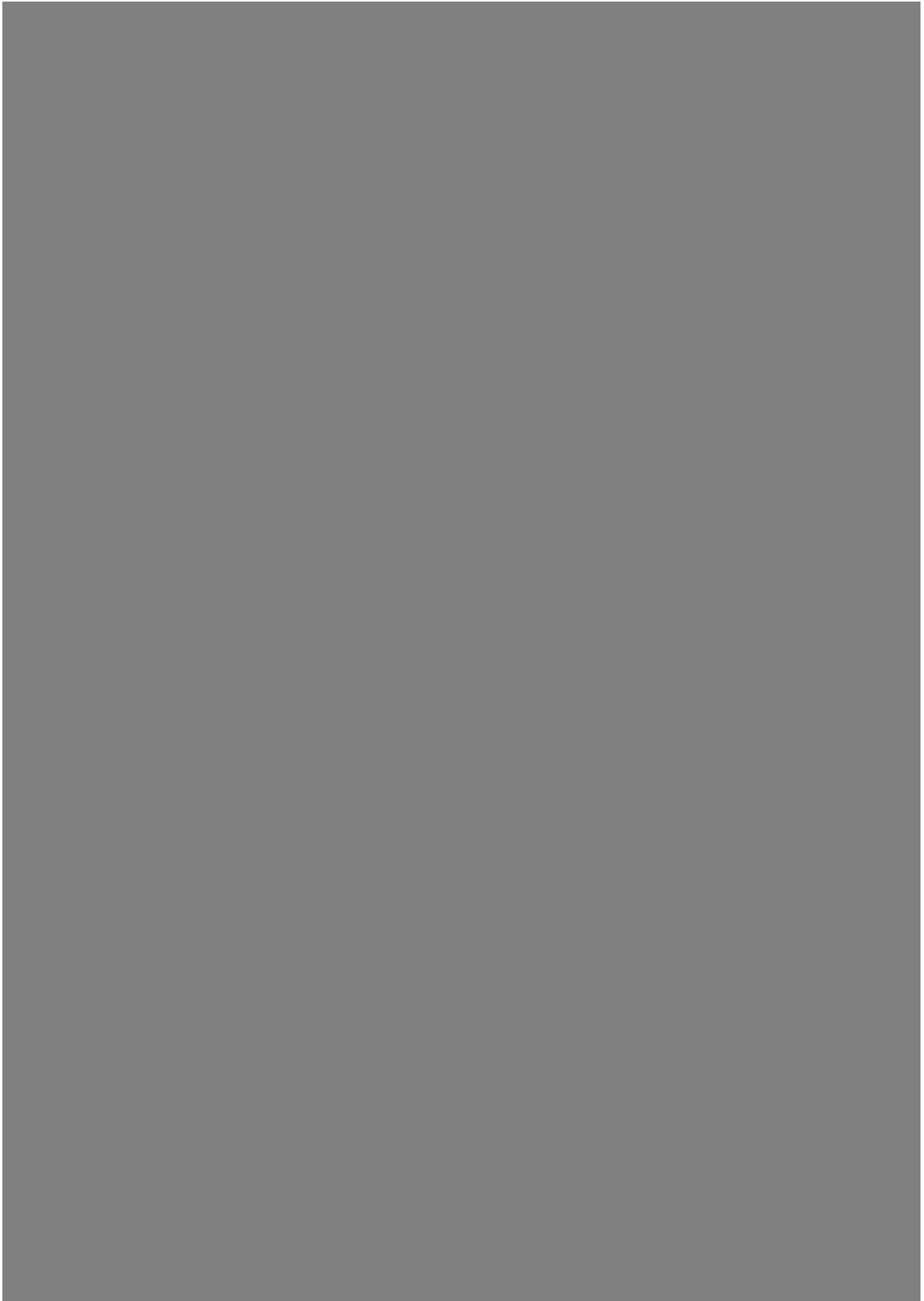

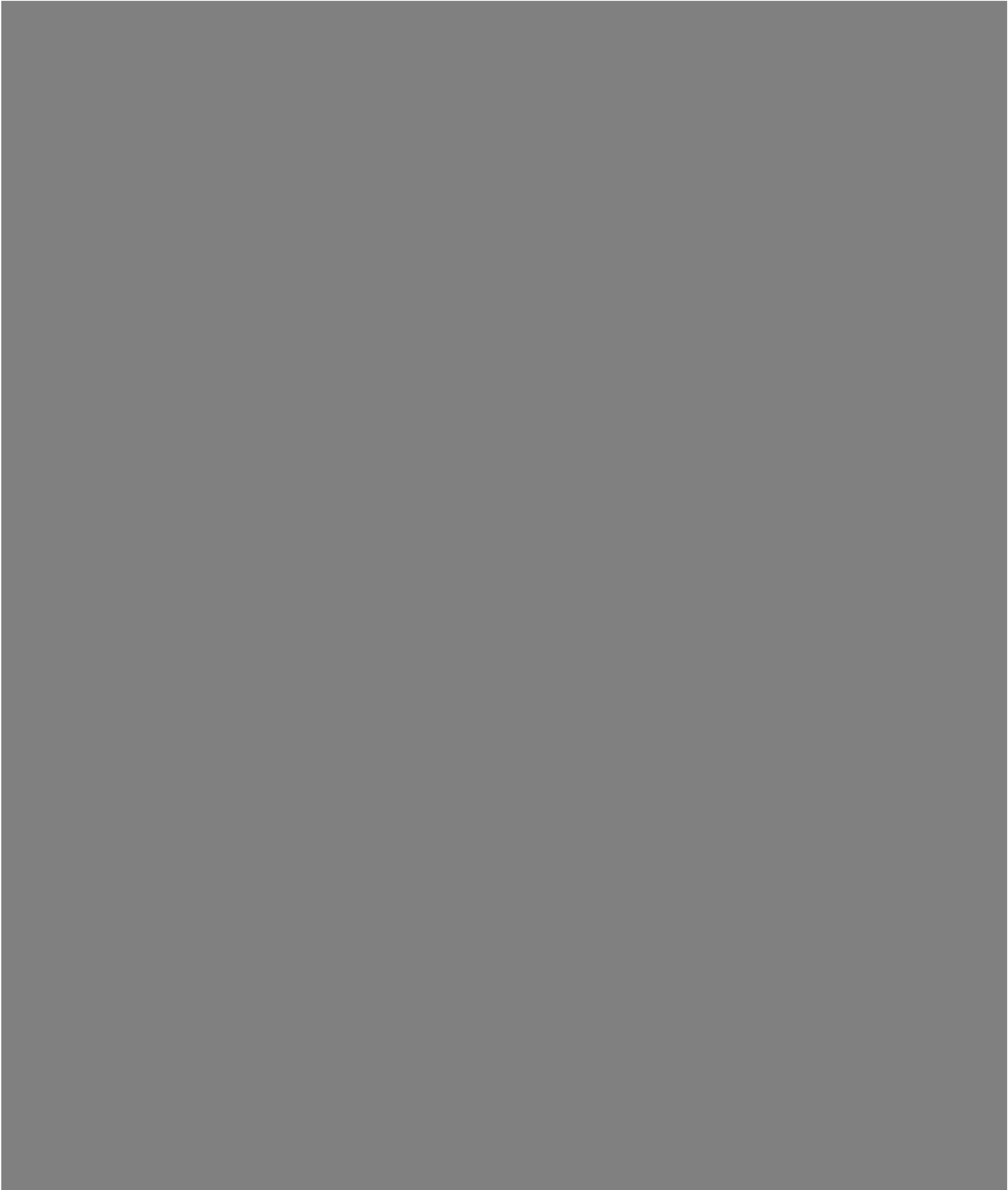

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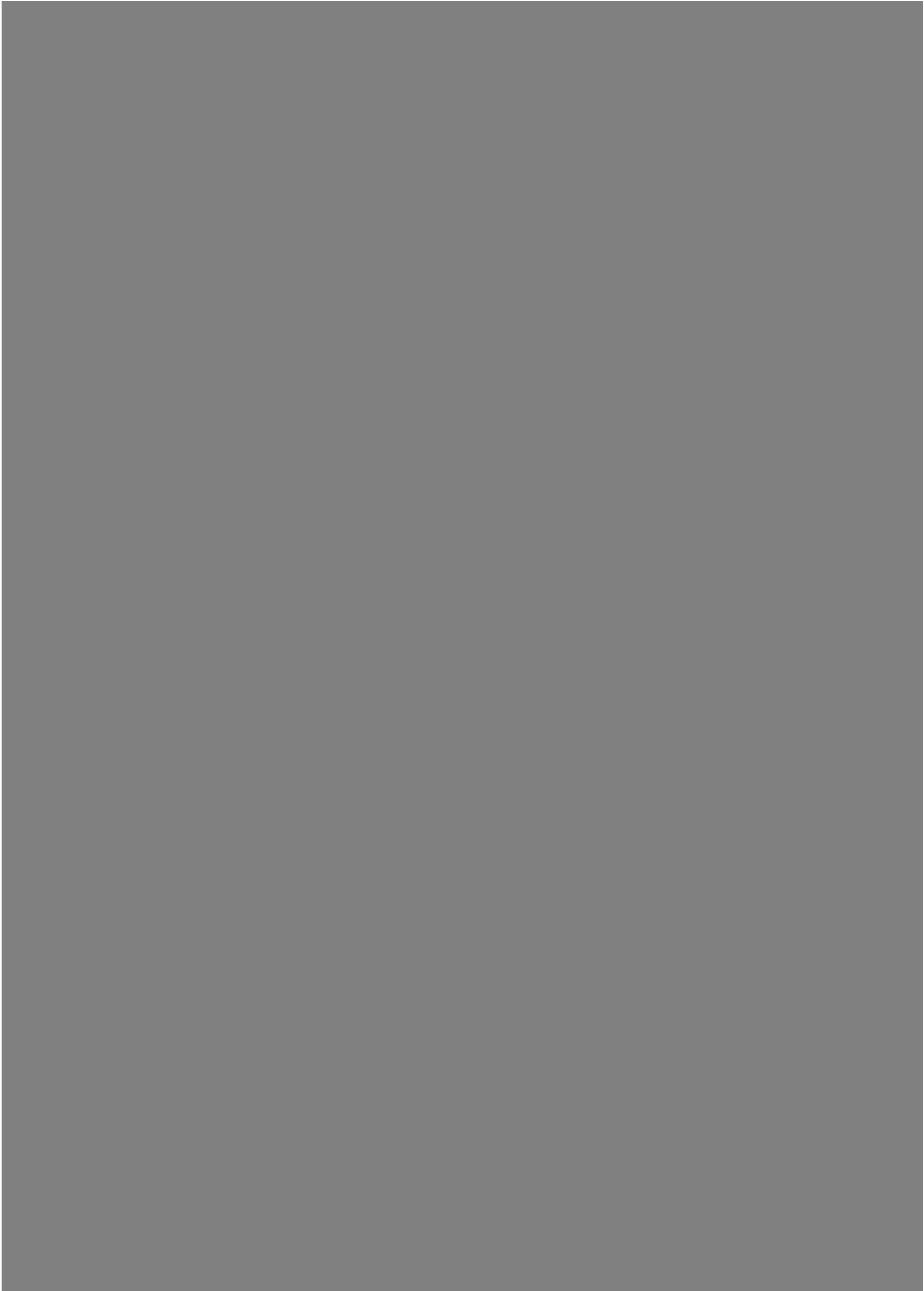

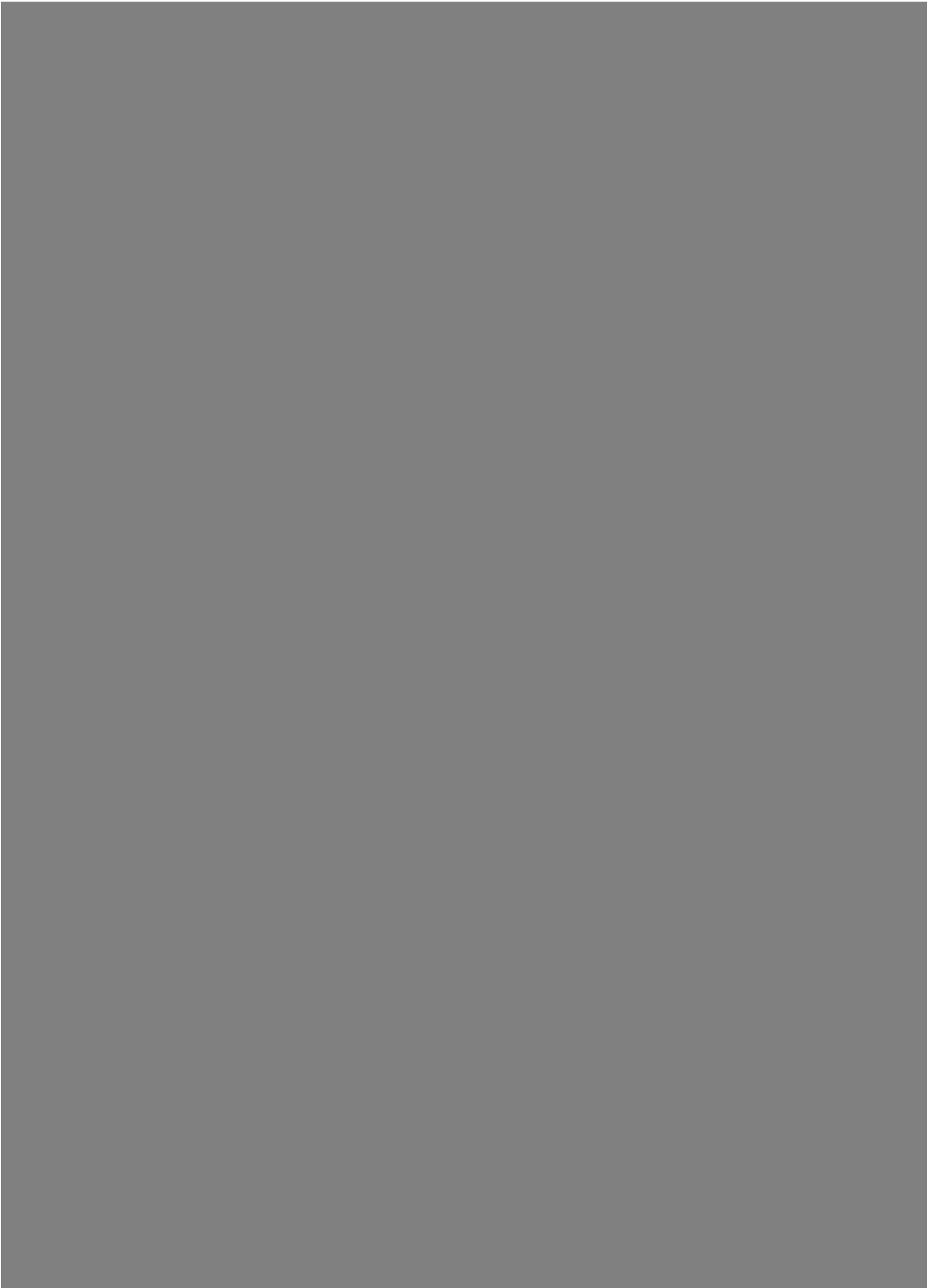

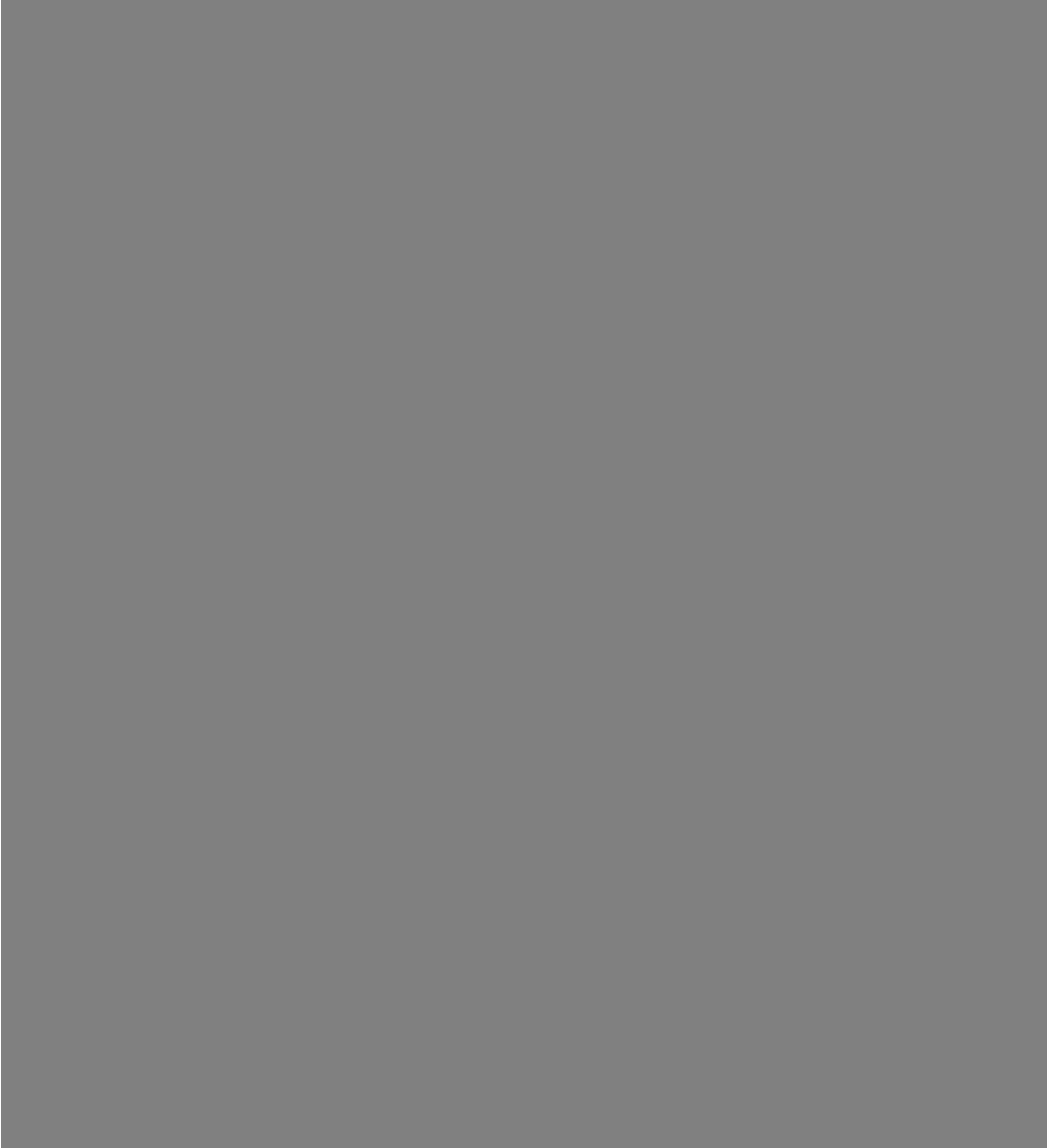

BOIMMS-1352234: 1

BOIMMS-1352234: 2

BOIMMS-1352234: 3

BOIMMS-1362294

Proposed Te Pēwhairrangi (Bay of Islands) Marine Mammal Sanctuary

17th May 2021

Email: boimms@doc.govt.nz

Submission of:

Donald Hanson,

The Proposed Bay of Island Marine Mammal Sanctuary is admirable, but unlikely to be successful in its current form due to the large impact it will have on a small number of people regularly boating in the Bay of Islands area.

Marine Mammal Sanctuary

Given that the majority of close contact with marine mammals is likely to be initiated with vessels having viewing permits there seems no justification for making these vessels exempt from the 400m separation restriction. The commercial operators tend to be a marker for private boats to identify the presence of dolphins. During the summer the visibility of commercial boats in the area is a major contributor to the convergence of private boats looking to interact with the dolphins.

The research does not measure the extent to which commercial fishing in the BOI is affecting Marine Mammal populations.

The majority of problems are created by casual visitors to the BOI who are unaware of the issue, or the limitations imposed by the current regulations. The marine mammals are constantly moving and often hard to visually see. Therefore it will be close to impossible to enforce the 400m rule in a fair way.

A targeted public education programme based on the current regulations such as that for the fan worm problem may give better results than imposing another layer of regulation.

The requirement for vessels to stop will be difficult to adopt in the context of yacht races and other events that regularly occur within the proposed BOIMMS.

The education requirements of the BOIMMS should be consistent with other government agency messaging. The attached image promoting swimming with dolphins was regularly promoted in the NZ Herald and other websites during the period of consultation. It is inconsistent that areas be targeted for additional restrictions while at the same time the cause of the problem is being promoted with

government funding. While this is a Kaikoura based activity, the message is to try new activities and swimming with dolphins is good for you. This advertising campaign has the potential damage dolphin populations much more than the proposed benefits of the BOIMMS. It also negates the benefit of any education campaign that is undertaken.

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Marine Mammal Safe Zone

Our family owns property at Paroa Bay within the Proposed Marine Mammal Safe Zone (MMSZ). As a landowner and user of the area since 1993, we have an intimate understanding of the dolphin patterns in the Bay and the boat traffic in the area. For most landowners in the MMSZ, the presence of dolphins and other marine mammals is not a novelty and there is no desire to investigate their activities or interact with them.

The majority of private dolphin watching occurs in the area just South of Roberton Island, and is usually associated with vessels not normally resident in the immediate area. For these boats it is a novelty.

We have good views over Paroa Bay and are aware of when dolphins and other Marine Mammals are active in the bay. There are long periods when there are no Marine Mammals visible in the Bay. Speed restrictions should not apply during these periods.

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The property owners of the MMSZ are the people most inconvenienced by the proposal, but also least likely to engage in behaviours that put the dolphins at risk.

It is also important to note that prior to this proposal there has been no attempt at communication / engagement with the property owners within the MMSZ. Due to the proximity to the area, the land owners are the people most likely to be able to assist with objectives and the education of other boat owners. Given the high costs associated with enforcing the proposed restrictions it would be better to have local residents supporting the objectives rather than alienated by the regulations.

It appears that the existing commercial vessel exclusion from the Proposed MMSZ area is not respected by the commercial operators. We regularly see commercial vessels in Paroa Bay. As recently as last week an Explore Group vessel came through on a commercial trip.

The challenge you have is uneducated people attempting to interact with Dolphins. The harsh restrictions of the MMSZ does not achieve a solution to this demand. It however inconveniences and alienates those people mostly likely to be able to educate those people that are seeking these interactions.

My submission is that the Proposed Marine Mammal Sanctuary should not be adopted.

If the Proposed Marine Mammal Sanctuary is adopted:

- **The Marine Mammal Safe Zones should be removed.**
- **It should be supported by an education programme that is consistent with other Government messaging.**
- **It should not have exclusions for commercial vessels.**

BOIMMS-1362336

To whom it may concern,

I oppose the proposed marine mammal sanctuary.

I have sat on the Waikare inlet Taiaputi committee, and to the best of my knowledge I am still the marine farmers representative on that group.

These views are my own and are not the views of the Waikare inlet Taiapuri committee.

I have had 20 years of commercial activity in the bay of islands, as well as 15 years prior to that recreational activity.

I oppose the proposed marine mammal sanctuary in its entirety.

I want to keep my points brief and to the point in this submission, therefore reserve the right to elaborate on this submission for clarification at a later date if a hearing is called or clarification is required.

I wish to be heard in person and given the opportunity to speak and elaborate on my views not just in writing.

It is my view that the reports given by DOC in support of their proposal have not identified the major reasons for the decline in the local population.

I believe that these reports focus mainly on the effects of vessels, and do not take into proper consideration the decline in fish stocks (food for dolphins and their prey) or the territorial nature of dolphins (Aggression by dominant residents) . Which have more of an effect on their local decline than interactions with vessels.

Therefore more studies need to be done to prove that vessels have a more significant impact on local numbers than food availability and the behavior of aggressive local dolphins before speed restrictions and boating movements are imposed.

To support this view I give my own first hand evidence below:

Dolphins seek out interaction with swimmers and boats, it is a normal part of their behavior.

I have seen a reduced number in fish catch rates over my 35 years fishing in the bay of islands.

I have seen commercial fishing vessels operating within the bay of islands area, and just outside its limits catching huge amounts of fish that would otherwise be food for dolphins or their prey. They were fishing in a manner that seemed unsustainable to me.

I have interacted with dolphins orcas and other marine mammals on what seems like countless times. At least 100 times maybe close to 200.

I have swam with dolphins and seals at least 30 times.

In my experience dolphins seek out interaction with moving boats and people in the water.

The following are interactions I have had with dolphins in the bay of islands:

I have watched a mother dolphin push its calf in a tight circle around my father when he was surfaced from a cray dive. The pair were within 4 meters of the swimmer who was stationary. The mother swam while pushing the calf on the inside arc of the circle. They swam around at least twice in a tight circle before continuing on their way. In my observation this was clearly the mother showing the calf that this was a safe thing to do.

On a separate occasion while diving for scallops I have witnessed a mother dolphin pinning a small fish to the sea bed and letting the juvenile chase the fish to practice catching the fish. This was done multiple times in front of me while I just sat and watched in awe. Clearly to me the dolphin was not only comfortable feeding in front of me, but was comfortable teaching its offspring to feed in front of me as well. I was within 10 meters of the pair at the time in less than 10 meters of depth.

I have been swimming with dolphins at the black rocks when another aggressive pod came and started harassing and chasing the pod we were swimming with. On this occasion I felt in danger as I could see the aggression happening within 10 meters of me so I backed up to a rock and got into a safer position to observe the interaction. This was a behaviour that I have only seen once. It was clear that one pod were chasing and harassing another. This continued for what felt like 10 minutes or so.

I have had multiple times where dolphins played in our bow wave and or wake from our personal vessel and commercial vessels. On multiple occasions dolphins would alter their course to come and interact with our vessels.

On 2 occasions at Matauri bay I have had encounters lasting more than an hour with dolphins playing with swimmers in the surf and shallow water.

I opposed specific parts of the proposal as outlined below.

My submission to each part is written in red.

1) The marine mammal sanctuary would be established with “marine mammal safe zones” within its boundary.

(2) In a marine mammal safe zone the operator of a vessel would need to ensure that the vessel travels at no more than 5 knots at all times.

This area is used commercially for access to aquaculture areas and a reduction in speed would have a negative economic effect on already struggling northland aquaculture.

(3) Throughout the proposed sanctuary no person would be allowed to be in the water within 400 metres of a marine mammal.

It is extremely difficult to spot a marine mammal that is more than 100 meters away in less than ideal conditions.

If swimmers are already in the water and dolphins approach them it should not be required for the swimmer or diver to leave the water. Dolphins are naturally curious and should be allowed to choose to interact with people already in situ.

Oyster farms in the bay of islands are worked by crews that are required to be in the water. If a dolphin came within 400 meters this would require work to stop and the crew to exit the water. This would have a negative effect on the economics of oyster farming. This would have a negative effect on the health and safety of aquaculture employees. If they had to delay work due to a possible interaction with marine mammals this would put pressure on them to rush harvesting, or rush back to meet a transport deadline. If they had to stop work for extended periods this would cause fatigue with extra time having to be at work while they wait for the dolphins to leave the proximity of the farms, or the area the vessels need to travel through to get home.

There is also the probability that food safety would be compromised if aquaculture vessels were to be held up and oysters were out of the water for too long before they could be loaded into refrigerated transport. Especially during the summer months.

(4) Throughout the proposed sanctuary every vessel operator would need to:

a. Ensure that the vessel it operates keeps 400 metres from any marine mammal.

On an average day marine mammals are difficult to see if they are more than 100 meters away from a low private vessel or commercial vessel.

b. To use all reasonable means to stop if a marine mammal moves within 400 metres of the vessel operator's vessel, to allow the marine mammal to move 400 metres away.

Dolphins often come to interact with moving vessels. They should be allowed to do so if the vessel holds its course.

If a commercial vessel has to stop, this would cause delays in aquaculture crews going to and from work, having a negative effect on fatigue and health and safety.

There is the probability that food safety would be compromised if aquaculture vessels were to be held up and oysters were out of the water for too long before they could be loaded into refrigerated transport. Especially during the summer months.

6. The following vessels would be exempted from all restrictions in the proposed sanctuary:

a. any vessel involved in a maritime emergency or undertaking a maritime emergency role;

b. any vessel undertaking research under the Marine Mammals Protection Act 1978;
c. any vessel undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);
d. any Harbourmaster vessel;
e. any Navy vessel.

If these marine mammal sanctuarys are so important no vessel should be exempt.

In the event that this proposal is approved I submit that this section 6 be removed and all vessels be required to abide by this bylaw or rule change.

7. Any vessel with an existing marine mammal viewing permit under the Marine Mammals Protection Act 1978 as at 20 April 2021 would be exempt from proposed restriction 5(4)(a).

If these marine mammal sanctuarys are so important no vessel should be exempt.

In the event that this proposal is approved I submit that this section 7 be removed and all vessels be required to abide by this bylaw or rule change.

8. The following definition of "vessel" is proposed for the sanctuary conditions:

"**Vessel**" means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes:

a. a barge, lighter, or other like vessel;
b. a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
c. a submarine or other submersible;
d. a seaplane while it is on the surface of the water.

9. I shall consider any written submission on my intention to create this sanctuary or on any of the restrictions I intend to impose if:

a. it is addressed to:
   i. "Proposed Te Pēwhairangi (Bay of Islands) marine mammal sanctuary Department of Conservation, 34 Landing Road, Kerikeri 0230"; or
   ii. Website: www.doc.govt.nz/boimms; or
   iii. Email: boimms@doc.govt.nz ; and
b. I receive it within 28 days after the publication of this notice in the *New Zealand Gazette*, being **18 May 2021**.

10. Under te Takutai Moana Act 2011 , any whānau, hapū or iwi, who consider they exercise kaitiakitanga in a part of the common marine and coastal area affected by my intention to declare the marine mammal sanctuary as set out in this notice may advise the Director-General accordingly, and provide their views on my intent in writing as above within 28 days after the publication of this notice in the *New Zealand Gazette*. I will have particular regard to those views.

Below is a photo of dolphins interacting with a vessel in the Waikare inlet

Ben Warren

BOIMMS-1362369: 1

Te Pēwhairangi Marine Mammal Sanctuary – project team member / hapū representative

POSITION DETAILS

Title: Taku Taimoana hapū representative
Resource: travel, ½ (@$200) and full day (@$400) meeting fee, expenses

CONTEXT (in which the role operates):

The statutory process to establish a marine mammal sanctuary (MMS) in the Bay of Islands (Te Pēiwhairangi) is underway.

Summary:

1. Department of Conservation (DOC) and Taku Taimoana hapū (coastal based hapū in Te Pēwhairangi) recommended a Marine Mammal Sanctuary (MMS) as the most feasible statutory tool to address the declining bottlenose dolphin population in Te Pēwhairangi.

2. The MMS would need to be part of a wider package including a strong compliance regime, and a widespread awareness-raising campaign.

3. A MMS would support efforts to reverse the decline of the local bottlenose population, as well as prevent unintended consequences on other marine mammal species in the region.

4. Consultation with Ministers, agencies and the community will begin immediately.

PURPOSE (of the role):

We are looking for nominations from coastal based hapū in Te Pēwhairangi for representatives to be a part of the project team to progress the statutory process for a proposed marine mammal sanctuary in Te Pēwhairangi.

Hapū representatives will assist in the co-design and development of the MMS, and include engagement with Ministers, agencies and the community.

The project team will work to ensure efficient and effective delivery of the MMS statutory milestones.

Whilst we seek feedback from hapū on what they would like the role of their representatives to be, we suggest that it could include:

- attend engagement, consultation and planning meetings for MMS, providing the project team with an overview of hapū perspectives on the MMS proposal
- assist in developing content for public education and consultation
- work with DOC staff to collectively share and achieve statutory stories and successes
- being the interface between the project and broader Taku Taimoana hapū, helping coordinate updates and other communications with Taku Taimoana hapū - leading engagement with broader hapū on the MMS proposal and discussion document

development;

- developing the discussion document with the rest of the project team - leading input of hapū perspective; and
- providing hapū perspective on day-to-day running of project.

Some desirable characteristics of this role may be:

- desire to work as a team member, who relates well to others and can provide advice and support to people at all levels of the process
- a willingness/ability to travel to key meetings/event

ROLE RELATIONSHIPS:

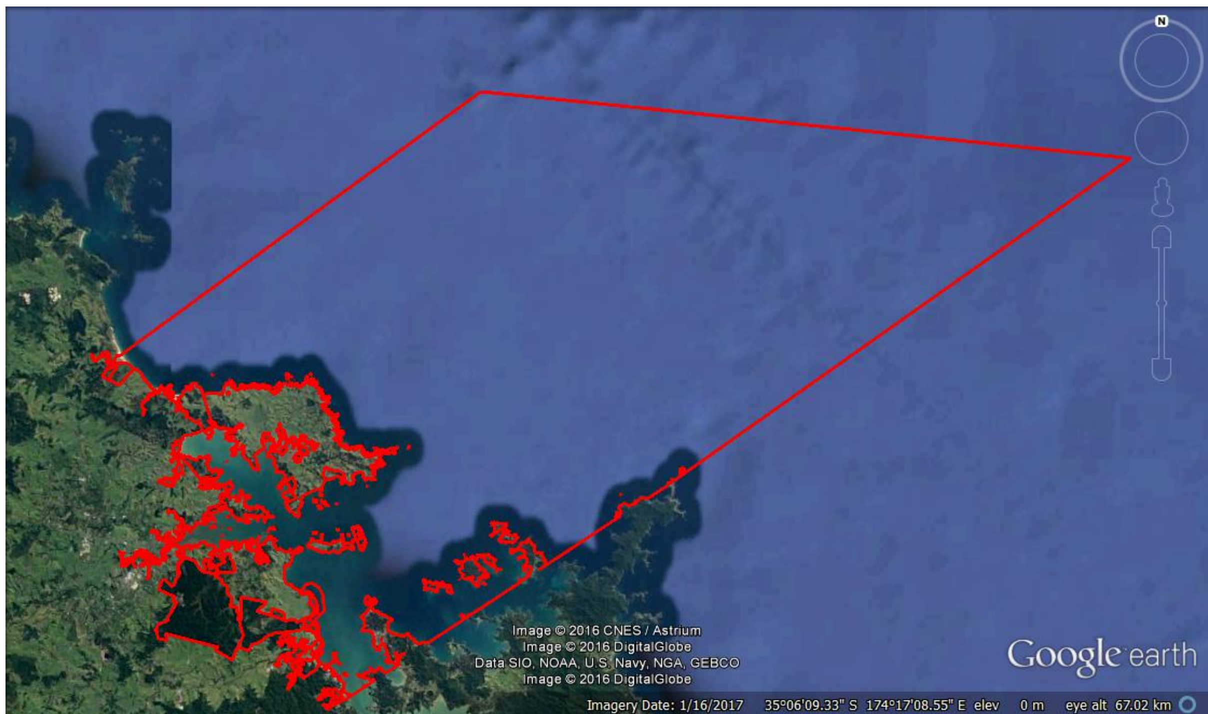
INTERNAL

- **Project Team** : Cat, Claire, Phil, Ritesh, Bronwyn and Kipa and Taku Taimoana hapū representatives.

EXTERNAL

- **Ministers of the Crown** who would be affected by the MMS.
- **Te Pēwhairangi public** – including stakeholders and possibly affected parties
- **National stakeholders**
- **Media**

BOIMMS-1362369: 2



BOIMMS-1362369: 3

Cabinet Office

CO (19) 5

Circular

22 October 2019

Intended for
All Ministers
All Chief Executives
All Senior Private Secretaries
All Private Secretaries
All officials involved in policy development

Te Tiriti o Waitangi / Treaty of Waitangi Guidance

Introduction

1 This circular sets out guidelines agreed by Cabinet for policy-makers to consider the Treaty of Waitangi in policy development and implementation.

Background

2 The Treaty of Waitangi (the Treaty) is one of the major sources of New Zealand's constitution[1].

3 Much has been thought, written and said about the Treaty, the circumstances of its creation, the differences between the English and Māori texts and the consequent difficulties of understanding its meaning and implications in the modern day. The texts of the Treaty (from the Treaty of Waitangi Act 1975 and a translation by Sir Hugh Kawharu) are attached to this guidance as **Appendix 3**.

Te Tiriti o Waitangi/The Treaty of Waitangi

4 The Treaty consists of a preamble and three articles. The influence of the Treaty on New Zealand's constitution has fluctuated in the years since its signing. Since 1975, however, reference to the Treaty has been included in many laws passed by Parliament, and the courts and Waitangi Tribunal have developed a considerable body of Treaty jurisprudence.

5 The Cabinet Manual states the Treaty of Waitangi is regarded as a founding document of government in New Zealand and that it:

> "may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate. Policy and procedure in this area continues to evolve." [Cabinet Manual 2017, p. 2]

[1] Other major sources include The Constitution Act 1986, the prerogative powers of the Queen, the State Sector Act 1988, the Electoral Act 1993, the Senior Courts Act 2016, the New Zealand Bill of Rights Act 1990 and other relevant New Zealand, English and United Kingdom statutes, relevant decisions of the courts and the conventions of the constitution (Cabinet Manual, p. 2).

6 For further discussion see the Te Puni Kōkiri booklet '*Key concepts in the Treaty exchange*'[2].

Context is important

7 The Treaty creates a basis for civil government extending over all New Zealanders, on the basis of protections and acknowledgements of Maori rights and interests within that shared citizenry.

8 Any specific meaning of the Treaty, and its implications for particular issues, is not easy to specify in advance as it depends on circumstances and views that surround any issue at the time it arises.

The Treaty must be considered 'on the whole'

9 No article of the Treaty stands apart from the others. Consideration of how the Treaty applies in any situation will require consideration of the applicability of all articles and the relationship each has to the others.

Existing government guidance on the Treaty of Waitangi

10 There are sources of information about the appropriate policy tools to use in developing policy and the Treaty and its place in the New Zealand constitution that policy makers should be aware of. They include:

10.1 the Department of Prime Minister and Cabinet's Policy Project website, including the policy methods toolbox;

10.2 the Cabinet Manual (the authoritative guide to central government decision making for Ministers, their offices, and those working within government);

10.3 Legislation Design and Advisory Committee's Legislation Guidelines (2018 Edition).

11 Since the government last provided broad Treaty guidance to the public service in 1989 over 70 Treaty settlements have been negotiated between Māori and the Crown. The courts have recognised tikanga Māori as part of New Zealand common law and as a value that informs development of the common law. While their precise impact on the common law and statute will vary, rights at tikanga may have a relevance in legal disputes independent of statutory incorporation of the Treaty.

12 Treaty settlements settle claims relating to, and provide redress for, historical acts and omissions of the Crown. The Māori Crown relationship continues post-settlement, and past conduct (even if settled) may inform what a reasonable and honourable Treaty partner will do in the future.

13 A number of government agencies have guidance about applying the Treaty (and more commonly, its principles) in the course of their work. The New Zealand Productivity Commission reviewed 10 examples in 2014. More information can be found on the Commission's report '*Regulatory institutions and practices*.

Guidance provided by the Courts and Waitangi Tribunal

14 The body of Treaty jurisprudence developed by the courts and the Waitangi Tribunal focusses on principles derived from the Treaty. For more information on this see the Te Puni Kōkiri booklet '*The principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*'[3].

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[2] https://www.tpk.govt.nz/documents/download/179/tpk-treatykeyconcepts-2001-en.pdf
[3] https://www.tpk.govt.nz/documents/download/179/tpk-treatyprinciples-2001-en.pdf

15 New Zealand courts have held that Māori rights might be recognised by the common law, without statutory expression, and a decision maker may be required to weigh the Treaty rights/interest even where there is no Treaty reference in statute. The courts will generally presume that Parliament intends to legislate in accordance with Treaty principles[4].

16 The Waitangi Tribunal plays an important role in providing advice to government on the application of Treaty principles in relation to acts or omissions of the Crown which Māori allege breach the principles of the Treaty.

This guidance

17 While the courts and previous guidance have developed and focussed on principles of the Treaty, this guidance takes the texts of the Treaty as its focus.

18 A glossary of Māori terms used throughout this guidance is attached as **Appendix 1**.

19 This guidance does not:

19.1 rewrite the Treaty. It provides guidance on how the terms and concepts in the texts of the Treaty should be applied by government officials in undertaking their work;

19.2 create new legal obligations on Crown agencies. It should instead guide and support Crown agencies processes and decision-making. Agencies will consider the specific context of the relevant issue, policy or initiative;

19.3 replace all previous government guidance on the Treaty. It sets out questions for policy-makers to consider in developing policy proposals so that the resulting policy appropriately recognises the influence the Treaty should have in the circumstances.

20 Answering the questions in this circular will allow policy makers to demonstrate an appreciation of kawanatanga, rangatiratanga and other key Treaty concepts and their applicability to their work.

21 A quick reference '*Treaty guidance at a glance*' is attached as **Appendix 2** for use when policy-makers are more familiar with the guidance.

22 The courts will continue to have a role in interpreting laws where the Treaty is relevant to a matter.[5]

[4] The Treasury, 'Consistency with the government's Treaty of Waitangi obligations'
[5] Specifically, in relation to the Supreme Court, see ss66(1) and 74(3) of the Senior Courts Act 2016

Article One

23 Put simply, by Article One the government gained the right to govern.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu[6]
Article the First The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.	**Ko te Tuatahi** Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o ratou wenua.	The first The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government[7] over their land.

Questions to guide policy-makers:

1. How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why?)
   1.1. Will the proposal affect different Māori groups differently?
   1.2. What could the unintended impacts on Māori be and how does the proposal mitigate them?
2. How does the proposal demonstrate good government within the context of the Treaty?
   2.1. Have policy-makers followed existing general policy guidance?
   2.2. Are there any legal and/or Treaty settlement obligations for the Crown?
3. What are the Treaty/Māori interests in this issue?
   3.1. How have policy-makers ascertained them?
4. How does the proposal demonstrate that policy-makers are meeting the good faith obligations of the Crown?
5. To what extent have policy-makers anticipated Treaty arguments that might be made?
   5.1. And how does the proposal respond to these arguments?

[6] Sir Hugh Kawharu's translation sets out to show how Māori would have understood the meaning of the text they signed. It was published in the book *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989)

[7] 'Government': 'kawanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent." This view is not universally held. For more discussion of the views and understandings of participants at 1840 see He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, particularly chapter 10 (Waitangi Tribunal 2014).

How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why)?

24 The Treaty may justify different treatment of Māori interests or involvement of Māori in an issue, but it does not confer greater rights on Māori than the government owes to all New Zealanders.

25 This question asks that policy-makers consider whether, having properly assessed the Māori/Treaty interest in an issue, the proposal demands an approach/approaches for Māori that differs to the approach/approaches for other New Zealanders. If it does, then policy-makers should be able to articulate how and why.

26 There are two secondary questions to ask in relation to this question:

26.1 Will the proposal affect different Māori groups differently?

26.2 What could the unintended impacts on Māori be and how does the proposal mitigate them?

How does the proposal demonstrate good government within the context of the Treaty?

27 In a Treaty context, 'good government' means government properly conducted with due regard to the range of obligations a government has to the people it governs, and particularly in regard to Treaty obligations.

28 In essence, this question asks whether work towards the policy under development appropriately acknowledges the right of government to make laws with the right of Māori to retain authority over certain things.

29 There are two supplementary questions to ask in relation to this question:

29.1 Have policy-makers followed existing general policy guidance?

29.2 Are there any legal and/or Treaty settlement obligations for the Crown?

Throughout all phases of a policy project, policy-makers should assemble and review what they know about the economic, social, technical, cultural and other important forces causing or perpetuating the policy problem. The question in paragraph 29.1 above asks whether the existing guidance referred to in paragraph 10 has guided policy development. If it has, then policy-makers can have some confidence that the outcome has accounted for a Treaty interest to an extent.

30 There are other tools available to policy-makers who may be unaware of whether there are existing legal obligations for the Crown to Māori in relation to many issues, among them:

The Settlement Portal – Te Haeata

Te Haeata is an online record of Treaty settlement commitments, to help agencies and settled groups search for and manage settlement commitments.[8]

List of Treaty references in primary legislation

Pages 160-163 of the New Zealand Productivity Commission's 2014 report '*Regulatory institutions and practices*' lists 36 Principal Acts with references to the Treaty or Treaty Principles.

[8] http://www.tearawhiti.govt.nz/te-kahui-whakamana-settlement-commitments/

31 Even where “Treaty clauses” are not present in legislation or regulations, the particular context may require the Crown to have regard to the Treaty.

32 Statutes with references to the Treaty or Treaty principles often contain regulatory provisions and create obligations on a range of parties that are not the Crown (e.g. local government, Crown entities, Officers of Parliament and body corporates).

What are the Treaty/Māori interests in this issue?

33 Identifying the Treaty/Māori interest in a given issue is critical to being able to answer the question of the extent to which Māori retain the right to control and/or implement the policy being developed.[9]

34 The extent of the Māori interest in an issue will vary from issue to issue.

35 There is a secondary question to ask in relation to this question:

35.1 How have policy-makers worked out the Treaty/Māori interests?

36 Following Te Arawhiti’s engagement framework and guidelines will give policy-makers confidence that they have appropriately determined the Treaty/Māori interests in an issue.

How does the proposal demonstrate that policy-makers are meeting the good faith obligations of the Crown?

37 The courts and Waitangi Tribunal have described the Treaty generally as an exchange of solemn promises about the ongoing relationships between the Crown and Māori with qualifications. By signing the Treaty, Māori expected the Crown to act honourably towards them; they expect the Crown to protect their interest in everything it promised to, and they expect the Crown to respect their right to make decisions over matters of significance to them.

38 Put more simply, this question asks policy-makers to consider whether the policy being developed keeps the promise the Crown made to Māori to protect their interests and allow for Māori retention of decision-making in relation to them.

39 Because the Māori Crown relationship is a continuing one, the Crown and Māori should act reasonably and in good faith towards each other, consulting with each other and compromising where appropriate.

To what extent have policy-makers anticipated Treaty arguments that might be made?

40 There is a supplementary question to ask in relation to this question:

40.1 How does the proposal respond to these arguments?

41 Māori have long had recourse to the courts to challenge Crown decisions and actions. The courts have made significant decisions in relation to the application of the Treaty in New Zealand, particularly over the last 35 years. The Waitangi Tribunal is also an important forum where Treaty arguments may be made by Māori and the Crown.

[9] Legislation Design and Advisory Committee, legislation Guidelines (2018 Edition), Chapter 5.1, page 28, http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/

42 In recent years the Courts have indicated they may take particular care where Māori rights and interests are raised in cases, including when interpreting laws passed by Parliament. This reinforces the constitutional importance the Treaty has grown to have in New Zealand. It is important that policy-makers conduct their work in such a manner as to make Treaty consistent decisions. This in turn will assist in any response to litigation.

43 This question requires policy-makers to consider what arguments could be made that their work is inconsistent with the Treaty. When considered early in policy development the answer to this question may lead policy-makers to modify their intended course of action.

44 This question does not imply a Māori right to veto government decisions. It is a means of testing whether the proposed actions/decisions are cognisant of the obligations the Treaty conferred on the Crown. Care must be taken to weigh and balance the relevant considerations in a particular issue.

45 This question points to the importance of a Minister and/or department being able to have confidence that they have appropriately considered the range of relevant factors in relation to a certain issue, and specifically the Treaty/Māori interest in the case of challenge by Māori.

Article Two

46 Put simply, by Article Two the Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu
Article the Second Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.	**Ko te Tuarua** Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.	The second The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise[10] of their chieftainship over their lands, villages and all their treasures.[11] But on the other hand the Chiefs of the Confederation and all the Chiefs will sell[12] land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

Questions to guide policy-makers:

1. Does the proposal allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?
   1.1. Can/should the proposal, or parts of it, be led by Māori?
   1.2. What options/mechanisms are available to enable rangatiratanga?
2. Have Māori had a role in design/implementation?
   2.1. If so, who?
   2.2. If not, should they?
3. Does the proposal:
   3.1. enhance Māori wellbeing?
   3.2. build Māori capability or capacity?
4. Is there any aspect of this issue that Māori consider to be a taonga?
   4.1. How have policy-makers come to their view of whether the issue is a taonga, and is there consensus?
   4.2. What effect does that have on the proposal?

[10] 'Unqualified exercise' of the chieftainship — would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.
[11] The Waitangi Tribunal has stated that "the Māori interest is not absolute. The degree of protection must be decided on a case-by-case basis, and may be overridden in appropriate circumstances following a proper balancing of kaitiaki and competing interests. There may be some circumstances in which access and benefit sharing arrangements cannot be justified even where matauranga Maori is used." (Ko Aotearoa Tenei: Report on the Wai 262 Claim).
[12] Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

Does the proposal allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?

47 Māori were guaranteed rangatiratanga by the Treaty. This promise holds true today. It is the duty of the Crown to respect the right of Māori to control decisions in relation to their lands and the things of value to them. These rights are exercised within the context of the Crown's right to govern.

48 The Crown has, at times in New Zealand history, ignored or denied the right of Māori to control their affairs. Not all such efforts have been based on ignorance of the Treaty – in many cases the government relied on its right to make decisions affecting Māori that it considered would be in their best interests, but without respecting the right of Māori to be involved in those decisions.

49 There are two secondary questions to ask in relation to this question:

49.1 Can/should the proposal, or parts of it, be led by Māori?

49.2 What options/mechanisms are available to enable rangatiratanga?

50 The question in paragraph 49.1 above requires policy-makers to consider the role Māori should have in relation to proposed policy.

51 By way of example, Whānau Ora is a public sector initiative that devolves funding decisions for services to community-based commissioning agencies. It is not limited to Māori but it does put whānau and families in control of the services they need to build on their strengths and achieve their aspirations. It recognises the collective strength and capability of whānau to achieve better outcomes in areas such as health, education, housing, employment and income levels.[13]

52 Similarly, the Māori pathways programme aims to provide a wrap-around service for those leaving prison and greater engagement with whanau and iwi from pre-sentence through to release. The values underpinning the programme are universal, and non-Māori are also able to be a part of the programme.

53 The question in paragraph 49.2 above requires policy-makers to consider existing options/mechanisms to enable rangatiratanga. This can relate to Māori entities that can, together or alone depending on the issue, formulate policy, and it can also relate to Māori entities implementing a properly developed policy.

54 If policy-makers consider the development of policy can and should be led by Māori in accordance with paragraph 49.1, then it will help to answer the question set out in paragraph 49.2 - what options/mechanisms are available to enable rangatiratanga?

Have Māori had a role in design/implementation?

55 The Treaty guarantees and promises apply to all Māori – as individuals, whānau, hapū and iwi. Depending on the issue, it may be appropriate for policy-makers to engage with Māori individuals, whānau, hapū or iwi, or a combination thereof.

56 Because the Treaty guaranteed Māori the control and enjoyment of those resources and taonga, policy-makers must consider what responsibilities Māori already have in relation to the matter. Importantly, Treaty interests are not confined to resources and taonga that Māori have retained possession of. For example, even where land has been alienated Māori interests may still be engaged.

[13] https://www.tpk.govt.nz/en/whakamahia/whanau-ora

57 There are two supplementary questions to ask in relation to this question:

57.1 If so, who?

57.2 If not, should they?

58 The engagement framework and guidelines will help policy-makers answer a question that flows from question in paragraph 57.2 above – if Māori have not had a role in design and implementation, but it is considered that they should, then policy-makers will need to consider who could participate in this.

Does the proposal: a) enhance Māori wellbeing; and b) build Māori capability or capacity?

59 It has been common, in New Zealand history, for government to not recognise or protect the right of Māori to be involved in aspects of government of the country. Increasingly, government is looking to work with non-government parties on issues of common purpose.

60 In thinking about how a proposal can enhance Māori wellbeing and build Māori capability or capacity, the response of the government should reflect the nature and extent of the interests involved.

Is there any aspect of this issue that Maori consider to be a taonga?

61 The scope of things that may be considered taonga, from a Māori perspective, are broad. At its most broad taonga can be said to be anything considered to be of value - including socially or culturally valuable objects, resources, phenomenon, ideas and techniques.

62 For more discussion of the views of the courts and Waitangi Tribunal on taonga see pages 60-64 of the Te Puni Kōkiri booklet '*Key concepts in the Treaty exchange*'[14]. The Waitangi Tribunal report *Ko Aotearoa Tenei* contains important discussion of how laws have side-lined Māori and Māori cultural values from decisions of vital importance to their culture which have left Māori unable to fulfil their obligations as kaitiaki (cultural guardians) towards their taonga –obligations which are central to the survival of Māori culture.

63 There are two supplementary questions to ask in relation to this question:

63.1 How have policy-makers come to their view of whether the issue is a taonga, and is there consensus?

63.2 What effect does that have on the proposal

64 There is not always consensus between the Crown and Māori on whether an issue or thing is a taonga. It is important for policy-makers to be able to demonstrate that they have considered the question openly and considered Māori perspectives in their thinking.

65 Absence of consensus on whether an issue or thing is a taonga need not prevent the Crown and Māori agreeing on how to develop a policy in relation to it.

[14] https://www.tpk.govt.nz/documents/download/179/tpk-treatykeyconcepts-2001-en.pdf

Article Three

66 Put simply, by Article Three the Crown promises that its obligations to New Zealand citizens are owed equally to Māori.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu
Article the Third In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.	**Ko te Tuatoru** Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani	The third For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties[15] of citizenship as the people of England.[16]

Questions to guide policy-makers:

1. Does the proposal aim to achieve equitable outcomes?
2. How does the proposal differ from previous efforts to address the issue?
3. How does the proposal demonstrate that policy-makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?
4. How does the proposal demonstrate that policy-makers have looked at the issue from the perspective of tikanga values?

Does the proposal aim to achieve equitable outcomes?

67 Article Three has an important significance in the implicit assurance that rights would be enjoyed equally by Māori with all New Zealanders of whatever origin. Special measures to attain that equal enjoyment of benefits are allowed by international law.

68 Consideration should be given to how Māori and the Crown define and measure equitable outcomes, and policy-makers must be live to the likelihood engagement with Māori may be required to align views on this.

How does the proposal differ from previous efforts to address the issue?

69 Few challenges faced by government are entirely new or have not been tackled by government before. This question prompts the Minister and/or department to examine how a current proposal to address an issue is different to previous attempts.

70 It is possible (and potentially likely) that previous government attempts to address an issue did not give due regard to Treaty obligations and/or appropriately acknowledge the rights and duties of Māori in the matter.

[15] 'Rights and duties': Māori at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly, this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.
[16] Sir Hugh’s view was that “there is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2.” More recent scholarship suggests that Sir Hugh underestimated the knowledge of British tikanga that some Māori had.

71 In essence this question asks why would the outcome of the current effort be any different to previous outcomes?

How does the proposal demonstrate that policy-makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?

72 Article Three contains a promise by the Crown to extend to Māori all the rights and privileges/duty of British subjects, which can be read today as New Zealand citizens.

73 Considering proposals through the lens of the legal values listed as examples in this question is a means of demonstrating that the Crown is upholding the promises in Article Three of the Treaty.[17]

How does the proposal demonstrate that policy-makers have looked at the issue from the perspective of tikanga values?

74 This question recognises that courts have, in recent years, considered tikanga values to be important to the consideration of matters relating to Māori and should be given appropriate weighting in decision-making.

75 Tikanga values that could offer perspective on an issue include:

75.1 Mana: enduring power and authority that can be derived from ancestry, from possession of lands and acquired by individuals according to their ability to develop skills and gain knowledge;

75.2 Whakapapa: the genealogical descent of all living things;

75.3 Whānaungatanga: relationship, kinship, sense of family connection - a relationship through shared experiences and working together, which provides people with a sense of belonging;

75.4 Manaakitanga: hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others.[18]

76 The courts have recognised tikanga Māori as part of New Zealand common law and as a value that informs development of the common law. The precise impact of tikanga Māori on the common law and statute will vary, however, tikanga may have a relevance in legal disputes independent of statutory incorporation of the Treaty.

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[17] Legislation Design and Advisory Committee, legislation Guidelines (2018 Edition), Chapter 5.3, page 29, http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/
[18] Further discussion of a wide range of tikanga values can be found at Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (particularly chapter 3), Huia Publishers, 2016 edition and Cleve Barlow, *Tikanga Whakaaro: Key concepts in Māori culture,* Oxford University Press.

Appendix 1: Glossary of terms

The Māori dictionary contains the following definitions:

Hapū

(noun) kinship group, clan, tribe, subtribe - section of a large kinship group and the primary political unit in traditional Māori society. It consisted of a number of whānau sharing descent from a common ancestor, usually being named after the ancestor, but sometimes from an important event in the group's history. A number of related hapū usually shared adjacent territories forming a looser tribal federation (iwi).

Iwi

(**noun**) extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor and associated with a distinct territory.

Mana:

1. (**verb**) to be legal, effectual, binding, authoritative, valid.

2. (**noun**) prestige, authority, control, power, influence, status, spiritual power, charisma - mana is a supernatural force in a person, place or object. Mana goes hand in hand with tapu, one affecting the other. The more prestigious the event, person or object, the more it is surrounded by tapu and mana. Mana is the enduring, indestructible power of the atua and is inherited at birth, the more senior the descent, the greater the mana. The authority of mana and tapu is inherited and delegated through the senior line from the atua as their human agent to act on revealed will. Since authority is a spiritual gift delegated by the atua, man remains the agent, never the source of mana. This divine choice is confirmed by the elders, initiated by the tohunga under traditional consecratory rites (tohi). Mana gives a person the authority to lead, organise and regulate communal expeditions and activities, to make decisions regarding social and political matters. A person or tribe's mana can increase from successful ventures or decrease through the lack of success. The tribe give mana to their chief and empower him/her and in turn the mana of an ariki or rangatira spreads to his/her people and their land, water and resources. Almost every activity has a link with the maintenance and enhancement of mana and tapu. Animate and inanimate objects can also have mana as they also derive from the atua and because of their own association with people imbued with mana or because they are used in significant events. There is also an element of stewardship, or kaitiakitanga, associated with the term when it is used in relation to resources, including land and water.

3. (**noun**) jurisdiction, mandate, freedom.

Manaakitanga:

(noun) hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others.

Ōritetanga

(**noun**) equality, equal opportunity.

Rangatiratanga:

1. **(noun)** chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group, domain of the rangatira, noble birth, attributes of a chief.

2. **(noun)** kingdom, realm, sovereignty, principality, self-determination, self-management - connotations extending the original meaning of the word resulting from Bible and Treaty of Waitangi translations.

Taonga:

(**noun**) treasure, anything prized - applied to anything considered to be of value including socially or culturally valuable objects, resources, phenomenon, ideas and techniques. Examples of the word's use in early texts show that this broad range of meanings is not recent, while a similar range of meanings from some other Eastern Polynesian languages support this (e.g. Tuamotuan).

Tikanga:

(noun) correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol - the customary system of values and practices that have developed over time and are deeply embedded in the social context.

Whakapapa:

(**noun**) genealogy, genealogical table, lineage, descent - reciting whakapapa was, and is, an important skill and reflected the importance of genealogies in Māori society in terms of leadership, land and fishing rights, kinship and status. It is central to all Māori institutions. There are different terms for the types of whakapapa and the different ways of reciting them including: tāhū (recite a direct line of ancestry through only the senior line); whakamoe (recite a genealogy including males and their spouses); taotahi (recite genealogy in a single line of descent); hikohiko (recite genealogy in a selective way by not following a single line of descent); ure tārewa (male line of descent through the first-born male in each generation).

Whānau

(**noun**) extended family, family group, a familiar term of address to a number of people - the primary economic unit of traditional Māori society. In the modern context the term is sometimes used to include friends who may not have any kinship ties to other members.

Whanaungatanga:

(noun) relationship, kinship, sense of family connection - a relationship through shared experiences and working together which provides people with a sense of belonging. It develops as a result of kinship rights and obligations, which also serve to strengthen each member of the kin group. It also extends to others to whom one develops a close familial, friendship or reciprocal relationship.

Appendix 2: Treaty of Waitangi guidance at a glance

Treaty timeline

The Treaty

The Preamble

The preamble to the English version states that the British intentions were to:

- protect Māori interests from the encroaching British settlement
- provide for British settlement
- establish a government to maintain peace and order.

The Māori text suggests that the Queen's main promises to Māori were to:

- secure tribal rangatiratanga
- secure Māori land ownership.

	Article 1	Article 2	Article 3
Māori text	Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.	Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.	Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.
English text	The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.	Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.	In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.
Kawharu translation	The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.	The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.	For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.
Simple modern encapsulation	The government has the right to govern	Māori have the right to make decisions over resources and taonga which they wish to retain	The obligations that the Crown has to all New Zealand citizens are also owed equally to Māori.

Treaty Guidance

Article One

1. How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why?)
   a. Will the proposal affect different Māori groups differently?
   b. What could the unintended impacts on Māori be and how does the proposal mitigate them?
2. How does the proposal demonstrate good government within the context of the Treaty?
   a. Have policy makers followed existing general policy guidance?
   b. Are there any legal and/or Treaty settlement obligations for the Crown?
3. What are the Treaty/Māori interests in this issue?
   a. How have policy makers ascertained them?
4. How does the proposal demonstrate that policy makers are meeting the good faith obligations of the Crown?
5. To what extent have policy makers anticipated Treaty arguments that might be made?
   a. And how does the proposal respond to these arguments?

Article Two

1. Does the proposal allow for the Māori exercise of rangatiratanga while recognizing the right of the Crown to govern?
   a. Can/should the proposal, or parts of it, be led by Māori?
   b. What options/mechanisms are available to enable rangatiratanga?
2. Have Māori had a role in design/implementation?
   a. If so, who?
   b. If not, should they?
3. Does the proposal:
   a. enhance Māori wellbeing?
   b. build Māori capability or capacity?
4. Is there any aspect of this issue that Maori consider to be a taonga?
   a. How have policy makers come to their view of whether the issue is a taonga, and is there consensus?
   b. What effect does that have on the proposal?

Article Three

1. Does the proposal aim to achieve equitable outcomes?
2. How does the proposal differ from previous efforts to address the issue?
3. How does the proposal demonstrate that policy makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?
4. How does the proposal demonstrate that policy makers have looked at the issue from the perspective of tikanga values?

Consult Te Arawhiti early for guidance on engaging with Māori

Definition of key Treaty terms can be found in the Glossary of CO circular (19) 5

Examples of agency specific guidelines can be found in the Productivity Commission report Regulatory institutions and practices

Consult Crown Law early to assist identification of interests

This guidance does not create new legal obligations on Crown agencies or override existing statutory obligations or duties. It should instead guide and support Crown agencies processes and decision-making. Agencies will consider the specific context of the relevant issue, policy or initiative.

Appendix 3: The Treaty of Waitangi

	English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu[1]
Preamble	HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.	Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.	Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship[2] and their lands to them and to maintain peace[3] and good order considers it just to appoint an administrator[4] one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands[5] and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents[6] to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.
Article One	**Article the First** The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.	**Ko te Tuatahi** Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o ratou wenua.	The first The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government[7] over their land.
Article Two	**Article the Second** Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.	**Ko te Tuarua** Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.	The second The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise[8] of their chieftainship over their lands, villages and all their treasures.[9] But on the other hand the Chiefs of the Confederation and all the Chiefs will sell[10] land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.
Article Three	**Article the Third** In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.	**Ko te Tuatoru** Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani	The third For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties[11] of citizenship as the people of England.[12]
Post script	Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified. Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.	Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o mātou ingoa o matou tohu. Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki. Ko nga Rangatira o te wakaminenga.	So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus. Was done at Waitangi on the sixth of February in the year of our Lord 1840.

[1] Sir Hugh Kawharu's translation sets out to show how Māori would have understood the meaning of the text they signed. It was published in the book *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989)

[2] 'Chieftainship': this concept has to be understood in the context of Māori social and political organisation as at 1840. The accepted approximation today is 'trusteeship'.

[3] 'Peace': Māori 'Rongo', seemingly a missionary usage (rongo — to hear: ie, hear the 'Word' — the 'message' of peace and goodwill, etc).

[444] Literally 'Chief' ('Rangatira') here is of course ambiguous. Clearly, a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere 'functionary'. Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

[5] 'Islands': ie, coastal, not of the Pacific.

[6] Literally 'making': ie, 'offering' or 'saying' — but not 'inviting to concur'.

[7] 'Government': 'kawanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent." This view is not universally held. For more discussion of the views and understandings of participants at 1840 see He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, particularly chapter 10 (Waitangi Tribunal 2014).

[8] 'Unqualified exercise' of the chieftainship — would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.

[9] 'Treasures': 'taonga'. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, 'taonga' refers to all dimensions of a tribal group's estate, material and non-material — heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.

[10] Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

[11] 'Rights and duties': Māori at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly, this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

[12] Sir Hugh's view was that "there is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2." More recent scholarship suggests that Sir Hugh underestimated the knowledge of British tikanga that some Māori had.

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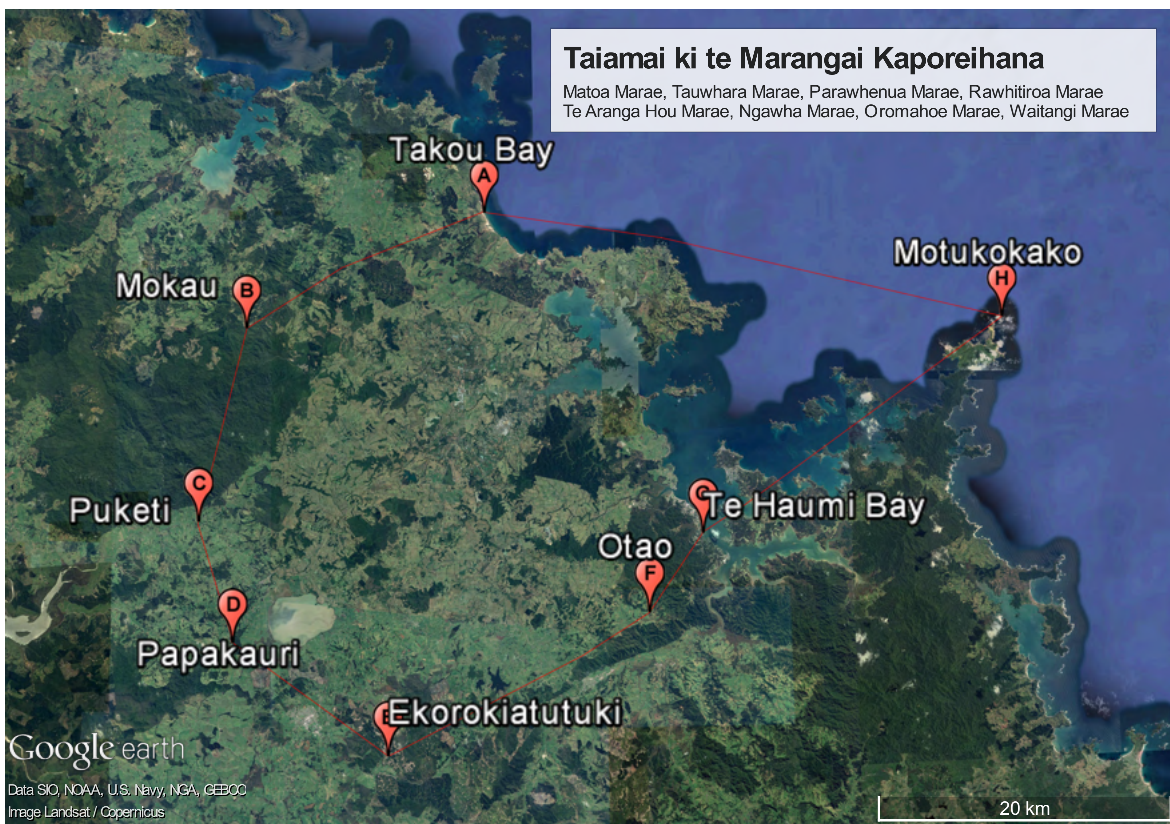
Taiamai ki te Marangai Kaporeihana
Matoa Marae, Tauwhara Marae, Parawhenua Marae, Rawhitiroa Marae
Te Aranga Hou Marae, Ngawha Marae, Oromahoe Marae, Waitangi Marae
Takou Bay
Motukokako
Mokau
Puketi
Te Haumi Bay
Otao
Papakauri
Ekorokiatutuki
Google earth
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image Landsat / Copernicus
20 km

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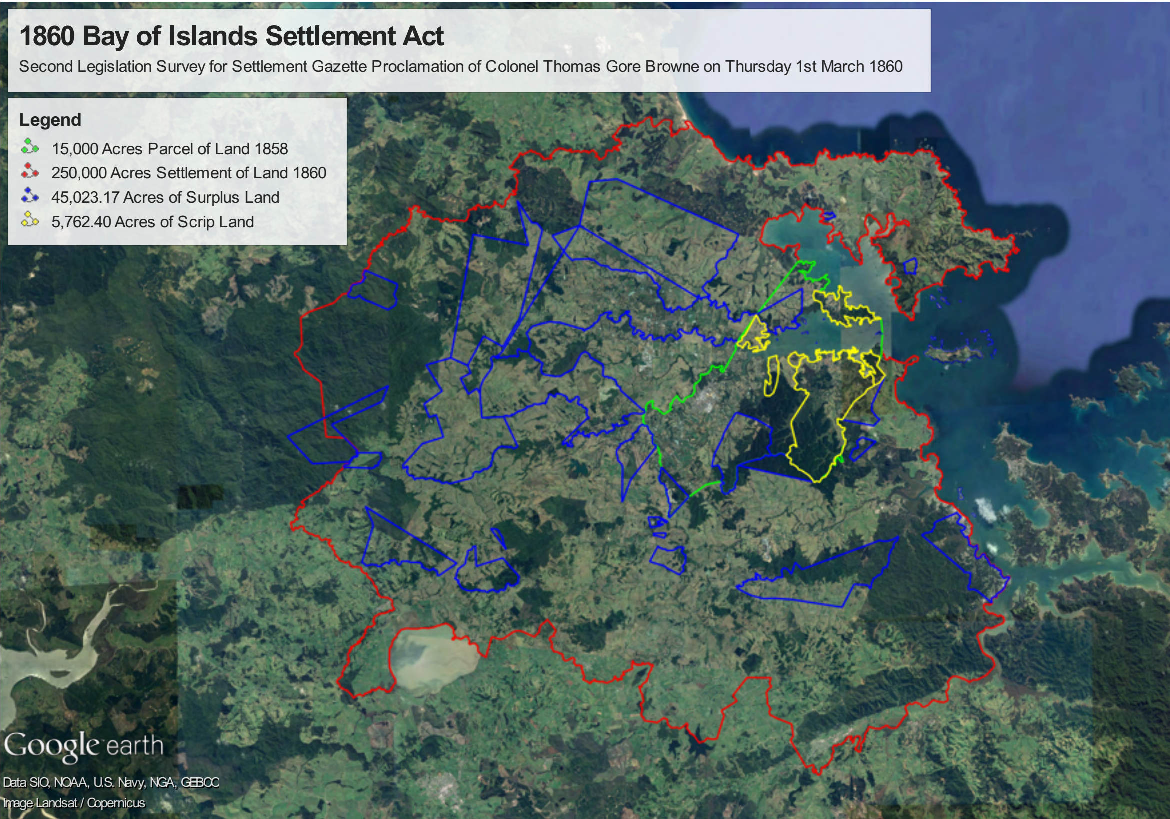
1860 Bay of Islands Settlement Act
Second Legislation Survey for Settlement Gazette Proclamation of Colonel Thomas Gore Browne on Thursday 1st March 1860
Legend
15,000 Acres Parcel of Land 1858
250,000 Acres Settlement of Land 1860
45,023.17 Acres of Surplus Land
5,762.40 Acres of Scrip Land
Google earth
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image Landsat / Copernicus

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Bay of Islands Maori and the Crown

1793-1853

By Dr Grant Phillipson

An Exploratory Overview for the CFRT

August 2005

Bay of Islands Maori and the Crown, 1793-1853

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Appendix of (mostly) key Maori-language documents cited in translation

1. Hone Wiremu Pokai to the Governor, 21 May 1845, G30/7 (with two alternative translations by Protectors Forsaith and Kemp)
2. Hone Heke to John Irving, 11 January 1849, IA 1, 1849/353 (in translation only)
3. Hone Wiremu Heke to Queen Victoria, 10 Hurae 1849, G30/6
4. Makaore Taonui & others to the Governor, Hokianga, 24 March 1856, *Te Karere/Maori Messenger*, vol 2, no 5, 31 May 1856
5. Makaore Taonui & others to the Governor, Hokianga, 24 March 1856, *Te Karere/Maori Messenger*, vol 2, no 5, 31 May 1856 – modern translation by Raniera Sonny Tau, November 2004
6. 'Speeches of the Ngapuhi Chiefs to Governor Grey at the Meeting at Kororareka'; 'Speeches of Maori Chiefs to Governor Grey at the Kerikeri', *Te Karere/Maori Messenger*, vol 2, no 2, 15 January 1862
7. Unsigned letter (from Heke) to Governor, found in Heke's pa at Ohaeawai, G30/7 (in translation only)
8. Hone Heke Pokai to Governor FitzRoy, nd (1844), G30/6
9. Hira Pure to Governor FitzRoy, nd (1844), G30/6
10. Tamati Waka Nene to Henry Williams, 12 October 1847, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, pp 199-200
11. Hare Puataata to Bryce, 22 October 1883, MA 13/80 83/3400
12. Maihi Paraone Kawiti to the Governor, 9 April 1888, MA 13/80 88/694 (in translation only)
13. H Taiwhanga to Minister of Native Affairs, 12 July 1881, MA 13/80 81/2535
14. G Grey to Earl Grey, Auckland, 17 October 1848, G30/14

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The maps were prepared by Noel Harris. The information for Fig 2 was supplied by DOSLI Auckland for the Rangahaua Whanui Project.

Chapter 1 Introduction

1 The Author

My name is Grant Phillipson. I have a Ph D (1992) in History from Otago University. I worked as an historical researcher for the Crown Congress Joint Working Party in 1993. In 1994 I became a Research Officer at the Waitangi Tribunal, working on the Rangahaua Whanui project, the Northern South Island claims, and the Chatham Islands claims. I have written research reports for these regions and presented evidence to the Waitangi Tribunal. In 1995 I became the Tribunal's Research Manager, in charge of its research programme, staff, inquiry strategic planning, research quality assurance, and other responsibilities. In 1997, the title of this position was changed to that of Chief Historian, and it is my current position at the Tribunal. In the year 2000, I took leave to write the following report for the Crown Forestry Rental Trust, as an independent historian. Most of the research was conducted in 2000 and the first draft was completed in 2001. The draft was revised in 2004-05.

During the research for this report, I had able assistance from Ann McCarthy and Harriet Kennedy, Crown Forestry Rental Trust research assistants. I acknowledge their assistance with gratitude and respect.

2 The Report

The Crown Forestry Rental Trust commissioned me to write an exploratory overview report, outlining historical matters of relevance to Treaty claims in the Bay of Islands. The period covered by the report is from first contact with the British Crown in 1793, through to the end of Sir George Grey's governorship in 1853. It tells the story of the unique relationship developed between the Crown and Nga Puhi in that period. Responsible (settler) government and economic problems in the north caused a major revision of the relationship after 1853, which will be the subject of a separate report. This report is exploratory in nature, and designed to provide a narrative and analysis of key issues, rather than exhaustive detail.

The focus of the Bay of Islands claims is outlined in chapter 2. Essentially, the claims raise the following key issues of relevance to the period 1840 to 1853:

- The relationship between Bay of Islands Maori and the Crown;
- The relationship between kawanatanga (the authority of the Crown) and tino rangatiratanga (the authority of Maori);
- Maori authority over their lands, resources, people, and tribal entities, and their rights to self-regulation;
- The alienation of land from Maori ownership and control, especially through the Crown's adoption and enforcement of the Pakeha concept of the Old Land Claims as absolute sales, whereas the pre-1840 transactions were conditional and involved shared authority and use-rights over land;
- Other grievances about the Old Land Claims, especially the Crown's "confiscation" of the surplus land; and
- The Crown's decision to wage war against some Bay of Islands tribes in the 1840s, and the consequences of that decision for those tribes and the region.

These themes and issues are explored in the remainder of the report. It is not possible to do so by starting the historical narrative and analysis at 1840. Treaty claims and the jurisdiction of the Waitangi Tribunal are restricted to claims arising from matters that

took place after 6 February 1840. At the hui with Nga Puhi on 5 February in that year, Governor Hobson promised to investigate the pre-Treaty land transactions and issue grants for valid claims. Land claimed invalidly would revert to Maori ownership. Thus were created the Old Land Claims, one of the primary historical grievances of Bay of Islands Nga Puhi. The investigation of these claims, the issuing of Crown Grants to settlers, and the Crown's assumption of the surplus land, were all matters which took place after 1840. They can only be understood and evaluated, however, in light of the period in which they actually took place – that is, prior to 1840. Secondly, the relationship between Nga Puhi and the Crown was not a new one when the Treaty was signed in February 1840. Instead, the Treaty was the culmination of twenty years of fluctuating alliance between the Crown and Nga Puhi. The deterioriation of their relationship in the early 1840s, to the point where they took up arms against each other in 1845, again can only be thoroughly understood by reference to what took place before 1840. It has been necessary, therefore, to concentrate a great deal on the period prior to 1840 in this report.

One-quarter of Maori land in the Bay of Islands passed into settler or Crown ownership as a result of the Old Land Claims. This was the main form of land and resource loss in the period 1840 to 1853. The antecedents of that loss are explored in chapter 3, which examines the process of culture-change at the Bay of Islands. It explores the Crown argument (in related inquiries) that the Old Land Claims were valid and absolute alienations of land on the British model of land 'sales'. The Crown claimed that Maori understood and adopted what Pakeha meant by sales. Nga Puhi were supposed to have adopted this foreign understanding as a result of social and cultural change at the Bay of Islands in the period 1769 (first contact) to 1839. The degree to which Maori society and culture experienced fundamental change is assessed in chapter 3. The narrative goes beyond the time frame of this report, in order to demonstrate that Maori law and customary institutions continued to operate in the Bay of Islands up to 1870 and beyond. Nga Puhi had not, in fact, adopted British understandings and law with regard to land transactions by 1840, although they were increasingly aware of them.

The following chapter (4) deals with the Crown's investigation of the Old Land Claims. In particular, I assess the degree to which the Crown was aware of Maori understandings of the transactions. Both Governor FitzRoy (1843-45) and Grey (1845-53) were aware that the Old Land Claims were not absolute alienations of land on the British model of a sale. The key period of 1843 to 1853 was one in which these Governors could have acted effectively on that knowledge to put the situation right. Instead, Governor FitzRoy issued Crown Grants to the pre-1840 settlers, on the basis that their understanding of the transactions should be given legal force. The grants were issued in such a way as to leave time for them to mature – for the settlers' understanding to prevail on the ground. Governor Grey was aware of this situation and considered it inappropriate. Nonetheless, his remedies – to appeal to the Supreme Court and Privy Council, and to enact the Crown Titles Ordinance of 1849 – were totally ineffective. He gave no real assistance to his ally, Tamati Waka Nene, in his attempts to resolve the question with the CMS missionaries. Nor did he act on the issues raised by Heke in 1847 to 1849. Instead, he allowed his ordinance to become a dead letter, exposing Maori to the more hostile actions of the Bell Commission in the 1850s. Also, Governor FitzRoy promised Nga Puhi leaders in 1844 that he would return the surplus lands to them. This promise is considered in chapter 7. Taken together, the Crown's failure to honour FitzRoy's promise, and its virtual confiscation of the surplus land and of the land it granted to the Old Land Claimants as absolute private property, are serious Treaty issues indeed.

After exploring the Old Land Claims, the report turns to the overall relationship between the Crown and Bay of Islands Maori, the exploration of Crown authority and Maori

authority, and the culmination of the relationship in the Treaty of Waitangi, its high point of 1840, and the northern war, its low point in 1845 to 1846. In chapter 5, I assess first contact with the British Crown in the 1790s, and the very important meeting between Hongi Hika and King George IV in 1820. The effects of this meeting were long lasting. It marked (from the Nga Puhi point of view) the beginning of an alliance between Nga Puhi and the Crown. The terms of the agreement, as Hongi reported it to his people, were influential in the 1830s (as a base on which to build) and in the 1840s (used by both sides to attack and defend the changed relationship negotiated at Waitangi in 1840). The development of the relationship in the 1830s, especially with King William IV and the Declaration of Independence, provides the necessary context for the decisions made at Waitangi in 1840. Also, the work of Busby as the King's representative, which became an all-important precursor of, and contrast to, kawanatanga, is explored. The detailed negotiations at Waitangi are the subject of chapter 6, which also covers the meaning and effect of the agreement arrived at between the Crown and Nga Puhi. In particular, the Nga Puhi belief that they had retained absolute and independent authority over their own lands and people was paramount, as explained by Felton Mathew, George Clarke, and other Pakeha participants and observers.

Nga Puhi decided to keep and adjust their deepening alliance with the Crown in 1840, by signing the Treaty and accepting the Kawana. The decline of the relationship to the point of war in 1845 is the subject of chapter 7. In this chapter, I explore how the Crown did not keep its promises of economic prosperity in the 1840s, and in fact appeared to have seriously damaged the Nga Puhi economy – an analysis accepted at the time by both Nga Puhi and Governor FitzRoy. Also, the issues of land (including surplus land) and Maori authority, as primary causes of the political crisis of 1844, are considered. The chapter covers Governor FitzRoy's renegotiation of the Crown/Nga Puhi alliance in September 1844 at a hui at Waimate, and the factors which led some Hokianga and Bay of Islands Nga Puhi to support the Government in the northern war. The chapter ends with a brief consideration of the internal politics in the Bay of Islands war, and of its consequences for Nga Puhi. The period ended with a stalemate – the preservation of Maori authority fairly intact over their people and some of their lands, at the same time as the Crown failed to keep its renewed assurances of economic development and prosperity. The Government's virtual abandonment of the north after 1846, save for a magistrate and a few police, was both a boon and a disaster for Nga Puhi. The result was their renegotiation of the alliance again in the late 1850s and early 1860s, and land transactions with the Crown, which will need to be covered in a separate report.

Finally, the report includes an appendix of Maori-language documents, where I have been able to locate them, which have been used in translation in this report. This will enable claimants to compare the translations (most made at the time by Government officials) with the original documents.

Three major things have been omitted from the report. The first is a detailed account of tribal history and rohe at the Bay of Islands. The claimants prefer to tell this story themselves, and I respect that choice. I have included a very short section in chapter 2, for the basic information of readers. Secondly, I have not explored the flaws of the Land Claims Commission process, other than the most obvious one – its acceptance of transactions as absolute alienations. Dr Barry Rigby has already carried out an overview analysis of the other problems involved with the Bay of Islands Old Land Claims – issues of boundaries, survey, prices, and the degree to which all Maori right-holders consented to the transactions.[1] What was missing was an assessment of the fundamental question of whether any land should have been considered as alienated at all, and I have filled this gap. Additional research should still

[1] B Rigby, 'Old Land Claims', in R Daamen, P Hamer, & B Rigby, *Rangahaua Whanui District 1: Auckland*, 1996; & D Moore, B Rigby, & M Russell, *Rangahaua Whanui National Theme A: Old Land Claims*, 1997

be carried out on the detail of each Old Land Claim, but that was not necessary for an overview report.[2] Thirdly, I have not included an accout of the actual events of the northern war, or the detail of the peacemaking that followed it. Professor Belich has covered the events of the war in his groundbreaking book, *The New Zealand Wars*, and there are other full-length accounts available (especially Ralph Johnson's thesis and Buick's book). I did not see a need to add to their work. A detailed analysis of Grey's peacemaking in 1846 should still be done, and that remains as a gap in this report.[3]

3 Maps

The following location map (Figure 1) will assist the reader with prominent place names at the Bay of Islands. In addition, there are two maps in Chapter 4. Figure 2 is a map compiled by DOSLI, showing the land considered to have been alienated from Maori by the Old Land Claims process. Figure 3 is an adaptation of Commissioner Bell's map of Old Land Claims, showing his understanding of their location, and identifying the significant claims of the CMS and private individuals.

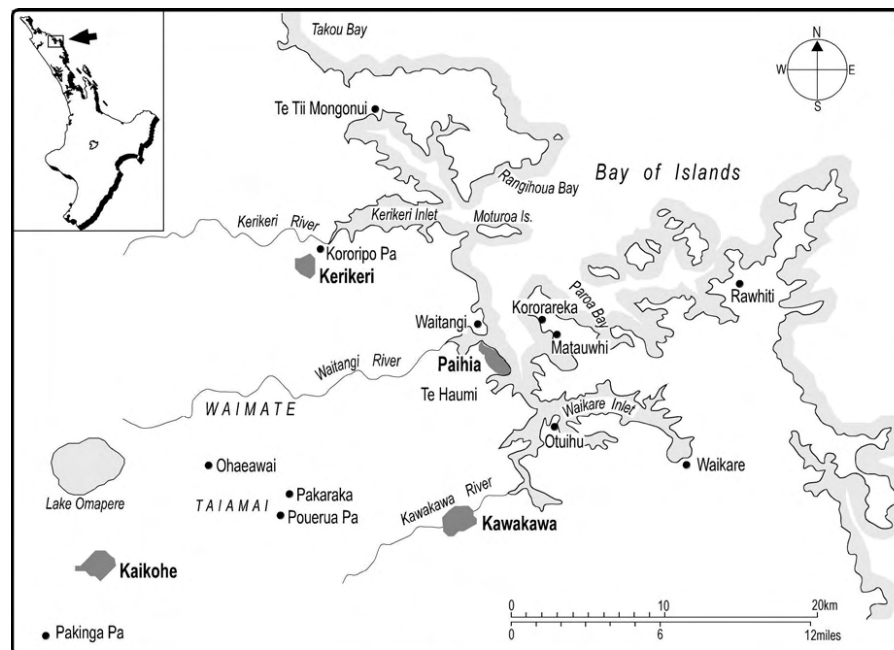

Fig 1 Bay of Islands

[2] Paula Berghan has made a start on this process with her narrative summaries of each OLC (P Berghan, *Block Research Narratives related to Old Land Claims completed for the Crown Forestry Rental Trust's Northland Research Assistance Projects*, June 2005). Bruce Stirling will provide additional analysis in his forthcoming overview project for the Northland Research Programme.

[3] I understand that this additional research will be included in Ralph Johnson's forthcoming report on the northern war for the Northland Research Programme.

Chapter 2 The Bay Of Islands Claims

The Claims

The starting point for this survey of the historical relationship between the Crown and Maori is an examination of the claims registered with the Waitangi Tribunal. So far, Bay of Islands Maori have lodged 69 claims with the Tribunal. These claims range from broad Nga Puhi claims covering the whole of Taitokerau, to hapu claims covering multiple actions of the Crown in the Bay of Islands, to whanau and specific claims about particular sites, or actions of the Crown affecting individuals and families. At issue in one claim might be all the Crown purchases conducted before 1865, for example, while another set of claimants has chosen to highlight the erection of a transmitter on their sacred maunga as their main grievance. The claims thus range in size, issues, and geographical area, for those claimants who are ready to articulate their grievances in an itemised statement of claim. Not all claimants are so advanced, nor will the full range of claims and issues be known until research, especially oral research with the claimants, has been carried out. The Tribunal process allows claimants to amend and add to their statements of claim, in recognition of the point that the full range of historical and contemporary issues is often not uncovered until after the completion of research. The Bay of Islands claims are at an early stage in the process, and hence the statements of claim must be taken as indicative of issues at this point.

Nevertheless, many of the historical issues and grievances have already been listed by the claimants, and the purpose of this chapter is to explore those matters as the claimants have articulated them, and to assess the range and nature of matters at issue between claimants and the Crown. It is important to summarise the types of issues raised by claimants and to describe what they have said about them so far, in order to provide a context for the rest of the report. The claims are not confined to the period covered by this report, of course, but in order to provide an overview of the full range of Bay of Islands claims and issues, all registered claims will be described and analysed.

1. Broad Claims on behalf of Nga Puhi

The tribal structures in the north include Nga Puhi Nui Tonu and its hapu, many of which are represented by trust boards or runanga, with overlaps from more southerly tribes such as Ngati Wai and Ngati Whatua. Most of the claimants state that their claims are on behalf of Nga Puhi, but usually they also specify a whanau trust, local body, or hapu as the more particular claimants. It is not the intention of this report to imply that there is a hierarchy of claims, that iwi are more important than hapu, or that any grouping is a more legitimate form of tribal organisation than any other. Rather, it is my intention to outline the various claims as they have been registered and conceived by the various types of claimant groups. The Tribunal is statutorily obliged to inquire into all claims that have been lodged with it.

Seven claims have been registered on behalf of the whole of Nga Puhi, covering more districts than the Bay of Islands and without citing particular Bay hapu as the primary claimants. The claims are described in the chronological order in which they were filed with the Tribunal. The location map (Figure 1) provided in Chapter 1 will assist the reader with prominent place names.

1.1 Wai 249

This claim was originally filed on behalf of Hokianga claimants only, but it was amended in late 2001 to cover the whole of Ngapuhi Nui Tonu in all their districts, including the Bay of Islands. The claim has been made in the name of James Eruera for his father, Rima Edwards, and for Nga Puhi Nui Tonu. It alleges:

- that sovereignty was not ceded in 1840, but rather the Crown invited to live and work with Maori in New Zealand;
- that the Crown then proceeded to make a unilateral and inappropriate interpretation of the Treaty;
- that pre-Treaty transactions were not sales but customary tuku whenua transactions;
- that the Crown failed to inquire adequately into these transactions;
- that the Crown failed to ensure valid "sales" under FitzRoy's waiver of pre-emption;
- that the Crown's pre-1865 purchases of land resulted in the marginalisation of Nga Puhi from the economy, except as labourers;
- that the Crown failed to investigate customary ownership properly before making these purchases, or to survey and grant the agreed reserves;
- that the Crown failed to provide promised settlements and services, or to involve Nga Puhi in a real partnership of development;
- that the Native Land laws and court were a deliberate mechanism to obtain Nga Puhi land;
- that the Crown failed to ensure that Nga Puhi kept the land they wanted, or sufficient land for their present and future needs, leaving them virtually landless or with land so fragmented as to be unusable;
- that the Crown failed to protect Nga Puhi's interest in sub-surface resources;
- that the Crown failed to protect Nga Puhi from public works takings;
- that the Crown failed to protect Nga Puhi's customary interests in their waterways, including the foreshore and sea;
- that the Public and Native/Maori Trustee did not look after Nga Puhi interests properly;
- that rates forced alienation of Nga Puhi land;
- that waahi tapu have been desecrated, and the natural environment severely damaged;
- and, overall, that the Crown has failed to protect the tino rangatiratanga of Nga Puhi, with consequent economic, social, cultural, and political harm.[1]

1.2 Wai 468

Morely Powell lodged Wai 468 on behalf of the Ngapuhi Whanui Trust on 14 February 1995. Morley Powell's claim for Nga Puhi Whanui covers the whole of Taitokerau from South Auckland to Hokianga. It is mainly concerned with historical grievances relating to the Fairburn purchase (an old land claim in South Auckland) and the Crown's purchase of Mahurangi in the 1850s. Mr Powell also advances a modern grievance against the actions of the Crown in the 1990s, when (he alleges) claimants were excluded from the Crown-Congress Joint Working Party settlement to clear Railcorp properties for sale in central Auckland. He also complains of the Tribunal's endorsement of that settlement as having been made with the correct people. He has not yet specified any grievances for the Bay of Islands region, except to say that the 'actual claim territory extends well beyond the fairburn [sic] Purchase territory – northwards in fact through the large parcels (blocks of land) alienated by various Missionary cum Judge characters from the Colonial past'.[2]

[1] Statement of claim, Wai 249 Record of Proceedings, 1.1(a)
[2] Statement of claim, Wai 468 Record of Proceedings, 1.1

1.3 Wai 549

Rudy Taylor and Haakopa Tangihaere Te Whata lodged Wai 549 on behalf of Te Runanga a Iwi o Ngapuhi on 3 October 1995. The claim is also on behalf of all of the descendants of Rahiri, their eponymous ancestor, and any Nga Puhi hapu who have not yet filed a claim. The statement of claim is very brief. The claimants object to the Native Land Court system which individualised title and ended Crown pre-emption, both of which were in alleged breach of the Treaty. The Crown and the court used individualisation of title to facilitate sales of land and to destroy tino rangatiratanga. The claimants seek various Crown assets as remedies.[3]

In addition to filing this statement of claim, runanga representatives have met with Tribunal staff and have made research funding applications to the Crown Forestry Rental Trust. Although they have not yet amended their statement of claim, the runanga has provided further details. In June 1996, the claimants told Tribunal staff that they see the conversion of Maori land tenure to European titles by various means as the core of their claim, and in August of that year they further refined matters to concentrate on pre-1865 Crown purchases as a primary grievance. According to the claimants, the 'majority of large land blocks in Northland were not in fact "sold" per se, but granted to the Queen (the Crown) for her protection, whilst Maori could continue to reside there'.[4]

In September 1996, the claimants responded to the publication of the Tribunal's Rangahaua Whanui district report, with its chapter on the Bay of Islands Old Land Claims. Hakopa Te Whata suggested that the report 'skirts the kaupapa of Wai 549'.[5] The claimants wanted the Crown Forestry Rental Trust or the Tribunal to fund research on written deeds, especially Maori language deeds, and identified primary areas for claimant research:

- To map Old Land Claim purchase deed areas, identify whanau and hapu involved in the 'cessions', trace their descendants, and thereby identify all current claimants. Having done this, the next step would be to identify 'the nature of titles which existed at the time of cession'.
- To identify whether surveys took place
- To identify which 'tribal area' each deed falls in, and whether 'mana and kaupapa was transgressed to effect the alienation'.
- To retranslate the Maori version of the deeds to check against the English versions for any anomalies
- To identify any current Crown land within the deed areas
- To find out how the Crown became possessed of its current land
- To check the boundaries and make sure that no mistakes were made by the Land Claims Commission
- To carry out the same research for the pre-1865 deeds of Crown purchase.[6]

These proposed areas of research clarify the issues which the claimants see as crucial for the whole Nga Puhi claim as it relates to the Bay of Islands. They concentrate almost entirely on Old Land Claims and pre-1865 Crown purchases, with concerns about whether cessions were genuine sales or 'whether mana and kaupapa was transgressed to effect the alienation'. Included in subsidiary issues are the surveys, the boundaries, the Land Claims Commission investigation, and the actual words used to describe the transaction in the

[3] Statement of claim, Wai 549 Record of Proceedings, 1.1
[4] Meeting with Wai 549 claimants, 12.6.96; meeting with Hori Matua Evans, 30.8.96; Wai 549/4
[5] Hakopa Te Whata to Waitangi Tribunal, 9 September 1996, Wai 549/4
[6] Research Proposal of Te Runanga a Iwi o Ngapuhi, September 1996, Wai 549/4

English and Maori versions of the deeds. In particular, the runanga wishes its kaumatua experts to consider the linguistic issues and identify the full meaning to Maori of the transactions in terms of the written deeds, and of the oral record of the nature of 'titles' at the time the deeds were made. This research would be vital to the Tribunal's inquiry and should be commissioned as soon as possible. In particular, the claimants' oral evidence about the nature of the transactions, and their expert re-translation and reconsideration of the written deeds will provide crucial evidence for the claims. This research would be complementary to the type of documentary research carried out for the present report (see chapter 4), and may well cause me to modify or reconsider any conclusions reached as a result of my research into written, English-language sources. In addition, I have not carried out intensive research into mapping, survey, and boundary issues, since the claimants propose to cover this thoroughly in their proposed research for the whole region. The general nature of the proposed research maintains the focus of this claim on the entire Nga Puhi region and does not specify particular grievances and issues peculiar to the Bay of Islands.

1.4 Wai 712

Kahi Harawira lodged Wai 712 on behalf of Nga Puhi nui tonu on 31 July 1997. The claim covers all regions in which Nga Puhi have an interest, and makes a series of general allegations about actions of the Crown which Mr Harawira feels have prejudiced Nga Puhi in all of those regions. He argues that the Crown has not only failed to make a lawful transfer of property from Maori to itself, but has also failed to prove that it has made such a lawful transfer. In transferring land illegally, the Crown did not give legal recognition to Maori customary ownership, nor did it allow Maori the 'fundamental right to protect and control the use of its own property'. He contrasts this with the Crown's treatment of others in New Zealand, both as individuals and collectivities, to whom he feels it has given that right under New Zealand law. He claims that Nga Puhi have been discriminated against and not had equal treatment under the law. He draws an equation between land and authority:

> All governments have as their fundamental basis, land. By disassociating us from our own land, we have become a people in exile. With the land comes government, the economy, the social order and the cultural characteristics of those who are born of it.[7]

Carrying that equation over in terms of remedies, Mr Harawira wants Nga Puhi nui tonu to be recognised as the 'Landlord' of all land in the north, without disturbing private property or the economy, and the return of all Crown assets to Nga Puhi ownership. He also requests appropriate protection for that ownership, against those 'persons or groups of persons who claim to have a tribal right to sell tribal property'.[8]

In terms of issues and evidence, Mr Harawira refers to the Muriwhenua evidence in support of his claim. This suggests that he sees the issues and factual bases as similar; a conviction evident also in the runanga's claim and in some of the hapu claims (such as Wai 520, discussed below). The question of the links between the way in which the Muriwhenua claims were developed and argued, the evidence put forward by the claimants and the Crown in that inquiry, the connections between the Bay of Islands and Muriwhenua Maori and districts, and the significance of these points for interpretation of the Bay of Islands claims, will be a matter of recurring importance in this report. It is important to note here that some claimants are conscious of such links and assert them clearly in their statements of claim.

[7] Statement of claim, Wai 712 Record of Proceedings, 1.1
[8] ibid; for a fuller exposition of Mr Harawira's views on the points at issue between Crown and Maori, see also his submission to the Tribunal, Wai 406 Record of Documents, C11.

1.5 Wai 774

Kingi Taurua lodged Wai 774 on behalf of Nga Puhi Nui Tonu on 2 November 1998. Although this claim is on behalf of all of Nga Puhi, it is confined to the Bay of Islands region and issues (unlike the other broad Nga Puhi claims considered above). The first part of the claim concentrates on the Old Land Claims, through which 25% of the land in the Bay of Islands was lost, much of it of the best quality, situated near rivers and harbours. Mr Tauroa asserts that the Crown failed to act after 1840 as though New Zealand had really been an independent country before 6 February. He argues that tribes' tino rangatiratanga collectively amounted to sovereignty, and that tribal lore was the law of the land. British subjects were under Maori law, not British law, since New Zealand was ' "not within Her Majesty's dominions"'.[9] This is significant in terms of whose law should govern understanding of the pre-1840 transactions:

> In terms of land, the only valid lore was Maori customary practice and its attendant spiritual beliefs. Therefore, we maintain that at 6 February 1840, all land in New Zealand was Maori land; no land had been sold, in the European sense, to missionaries, settlers or speculators and Deeds of Sale did not confirm the "sale" of Maori land and the transfer of title to Europeans.[10]

Mr Tauroa argues that the Crown prejudicially affected Nga Puhi when Gipps (Governor of New South Wales) and Hobson (prospective Governor of New Zealand) issued proclamations before the Treaty was signed. These proclamations purported to deal retrospectively with Maori land, 'thereby imposing british law upon a period in which the sovereignty of New Zealand was vested in the Maori population'.[11] The Crown then breached the Treaty by passing Land Claims Ordinances (in Sydney and later in New Zealand) to set up bodies to examine the 'validity of "purchases". These investigations 'ignored the complexities of multiple land title and failed to question the validity of "purchases" by British subjects from a Maori perspective. Rather, the Deeds of Sale were treated as conclusive evidence of sale'. As a result, commissioners just focused on how much land purchasers were entitled to.[12]

In addition, Mr Tauroa argues that there are Treaty breaches in the ways in which the Crown dealt with surplus land, by which is meant the land left over from the pre-Treaty transactions after old land claimants had received their maximum grant. He states that Busby, Hobson, and FitzRoy all promised that surplus lands would be returned to Nga Puhi, but instead they became Crown land. The Crown also acquired land by giving the old land claimants scrip (to be exchanged for Crown land elsewhere), leaving the original land in the hands of the Crown. Having stated his concerns about the nature of the transactions, the Crown's interpretation of them as sales, its inadequate investigation through the Land Claims Commission, and its keeping of surplus land and land exchanged for scrip, Mr Tauroa goes on to query the Tribunal's jurisdiction. He believes that Nga Puhi is prevented from bringing evidence about the nature of the relationship between the tribe and 'the missionaries and early settlers they allowed to live amongst them and share their lands before 1840'. This appears to be based on a misunderstanding of the Tribunal's jurisdiction, which does allow it to investigate pre-1840 transactions in light of post-1840 Crown actions.[13]

The Old Land Claims are clearly the primary concern of claimants under Wai 774. In addition, however, Mr Tauroa complains that Nga Puhi were prejudiced by pre-1865 Crown purchases and by later Crown purchases under the Native Land Acts. He also states that

[9] Statement of claim, section 3, Wai 774 Record of Proceedings, 1.1
[10] ibid, section 3i
[11] ibid, section 3ii
[12] ibid, section 3iii
[13] ibid, section 3

public works takings, the establishment of the Queen's Chain, and establishment of public reserves, are all in breach of the Treaty. He complains of the loss of Treaty rights to Waitangi State Forest, Waitangi Estuary, Waitangi River and its tributaries, lakebeds, foreshores, and fishing grounds. In addition to waterways and fisheries, he alleges that the Crown has obtained Ngawha and geothermal resources in breach of the Treaty.[14] Some of these issues fall outside of the time period covered in this report, although every attempt will be made to include waterways, fisheries, and other resources where possible. I note that the Tribunal has already heard and reported on the Ngawha geothermal claim in 1993, although this claim has still yet to be settled with the government.[15] In terms of modern Crown actions, the Wai 774 claimant alleges that the Sealords Deal is a breach of the Treaty, but the High Court has ruled that the Treaty of Waitangi Fisheries Settlement Act precludes the Tribunal from considering such claims.[16] More pertinently, as far as the Crown Forestry Rental Trust is concerned, Mr Tauroa seeks the return of Waitangi State Forest as part of the remedies to settle his claim.[17]

1.6 Wai 966

Gray Theodore, Pereme Porter, and Rangi Marie Maihi have filed this claim (registered in April 2002) for the iwi of Nga Puhi. The claim raises two major allegations:

- firstly, that Te Tiriti o Waitangi (the Maori-language document signed at Waitangi on 6 February 1840) has been displaced, to the detriment of Nga Puhi, by the English-language Treaty of Waitangi, which was signed by Tainui alone; and
- secondly, that the Crown has attempted to destroy both Te Tiriti o Waitangi and Nga Puhi by making war against them in the 1840s, and by promotion of settlement and the imposition of an English system of government on them. Her Majesty's promise of protection, in return for which they became Her Majesty's subjects, has not been honoured.[18]

1.7 Wai 1055

Michael Peti, on behalf of Nga Puhi, had this claim registered in June 2003. It is a general claim covering all Nga Puhi districts, including the Bay of Islands, and it contains many general allegations about the Crown's failure to protect and preserve Nga Puhi's identity and tino rangatiratanga. These include the massive loss of land and resources, destruction of natural resources, damage of taonga, and desecration of waahi tapu. The claim also raises the Crown's failure to ensure that Nga Puhi retained a sufficient economic, political, and cultural base for their prosperity and wellbeing.[19]

1.8 Summary of issues in the broad Nga Puhi claims

There are seven claims registered on behalf of the whole of Nga Puhi, sometimes referred to as Nga Puhi nui tonu, six of which cover multiple districts in the north. The seventh (that of Kingi Taurua) is confined to the Bay of Islands. These claims raise issues of general relevance to Nga Puhi. In particular, they concentrate on:

- Te Tiriti o Waitangi and its interpretation – this issue will be addressed in chapter 6.

[14] ibid
[15] Waitangi Tribunal, *Ngawha Geothermal Resource Report*, 1993
[16] Judgement of Ellis J, CP171/95, Wai 447 Record of Proceedings, 2.47
[17] Statement of claim, section 4, Wai 774 Record of Proceedings, 1.1
[18] Statement of claim, Wai 966 Record of Proceedings, 1.1 and 1.1(a)
[19] Statement of claim, Wai 1055 Record of Proceedings, 1.1

- Old Land Claims – the nature of the transactions under Maori 'lore' and 'law', and the question of whose law would prevail in their interpretation; the contents of the Maori and English versions of written deeds; the Land Claims Ordinances; the investigations of the Land Claims Commissions; surveys and boundaries; surplus land; exchanges of scrip for land; and the overall loss of large areas (including some of the prime waterway sites) – the question of whether pre-1840 transactions were absolute alienations will be addressed in chapter 4.
- The Crown's waging of war against hapu of Nga Puhi in the 1840s (addressed in chapter 7).
- Pre-1865 Crown purchases – the nature of Maori understanding of these transactions, and whether they placed the land under the Queen's protection for both peoples to settle on it; surveys and boundaries; the contents of Maori and English versions of written deeds; and the large loss of land through these purchases.
- Post-1865 land issues – Crown purchases; the native land laws and court; the individualisation of title and subsequent loss of land; public works takings; and the establishment of the Queen's chain.
- The Crown's alleged failure to ensure that Nga Puhi retained sufficient land, and more broadly an adequate social, economic, cultural, and political base.
- Other resources – loss of rivers, lakes, waterways, fisheries, and geothermals
- Modern issues – these include the disposal of the Waitangi State Forest; the Sealords Deal; and the Crown-Congress Joint Working Party settlement of Railcorp lands in central Auckland.
- Autonomy and sovereignty – the nature of the transfer of authority to the Crown in 1840, the question of Maori law and Maori autonomy after 1840, and broad issues of self-determination are very evident in the statements of claim.

2. Broad claims on behalf of Bay of Islands Hapu

Bay of Islands Maori have lodged fourteen broad claims on behalf of hapu groups with the Waitangi Tribunal. These claims cover large areas of land and resources in the Bay of Islands, and raise multiple issues with regard to the Crown's actions in respect of those lands and resources. The hapu involved are:

- Ngati Hine
- Ngati Manu
- Te Kapotai
- Ngati Rahiri
- Ngati Rangi
- Ngaitewake
- Ngati Hau
- Te Uri Karaka
- Te Uri o Raewera
- Te Whiu
- Ngati Rehia
- Te Uri Taniwha
- Ngati Hineira
- Ngati Torehina
- Patukeha

- Ngati Hau
- Ngati Wai
- Te Uri o Hikihiki
- 'the collective hapu from Te Rohe o Whakarara'
- the 15 iwi and hapu of Te Waimate/Taiamai (the descendants of Hare Matenga, Turou, and Pito)
- the approximately 30 hapu of the Waitangi and Kerikeri districts (the descendants of Turou, Waikato, Tuaka, and Te Wakehaunga)

This is not an exhaustive list of Bay of Islands hapu but merely a recitation of those which have filed large, multi-issue claims. Other hapu have more specific or single-issue claims and are considered in the next section of this chapter.

2.1 Wai 49

Sir James Henare filed Wai 49 on 1 December 1988. It was the first Bay of Islands claim to be registered by the Tribunal, and indeed the first Nga Puhi claim to be made against the Crown. Many subsequent claimants have stated that their claims do not conflict with Wai 49 but are complementary to it. The claim is made on behalf of Ngati Hine, Ngati Manu, Te Kapotai, and Nga Puhi (described as Nga Puhi nui tonu in the first statement of claim, but amended to just Nga Puhi at a later date). It is mainly a river and harbour/estuary claim, focussing on the Taumarere (Kawakawa) River, its foreshores, fisheries, waters, and bed, and its confluence at Te Moana o Pikipiko-i-whiti. The claimants assert that the Crown has failed to protect their cultural, spiritual, and economic relationships with these waterways, and failed to recognise the claimants' mana, ownership, and control of them. There is also a specific complaint about the Department of Conservation's consent to reclamations for the Gateway Marina at Opua, and a general objection to Crown consents for various forms of development in the rohe.[20]

2.2 Wai 120

R Kawiti and the Kawiti Marae Committee lodged this claim with the Tribunal on 13 February 1990. It is filed on behalf of the Kawiti whanau, Ngati Hine, Ngati Manu, Te Kapotai, Ngati Rahiri, Ngati Rangi, Ngaitewake, and Nga Puhi. The claimants allege that ownership of land and waterways in the Bay of Islands was 'radically disturbed by Hobson's colonial rule', which interfered with 'undisturbed possession of the lands and waterways'.[21] These disturbances:

> drove back Ngati Hine, and their allies and reduced the ability of these tribes to press for rightful ownership rights from 1846. This reduced the mana of the original and rightful owners of the land. All this had a direct impact on the land sales, gifting of the lands and the rivers.[22]

As a result, the claimants complain that they have been 'deprived of many of our lands in the Bay of Islands'. As an example, they cite the Old Land Claim at Opua: 'Many generations of our family have fought to recover this land from the Crown. We have never relinquished it to the Crown or to any agency of the Crown.'[23] Moving on from land loss,

[20] Statement of claim, Wai 49 Record of Proceedings, 1.1(b)
[21] Statement of claim, section 1, Wai 120 Record of Proceedings, 1.1
[22] ibid, section 2
[23] ibid, section 4

about which few details are asserted, the claimants state: 'We have never relinquished ownership of the rivers and waterways in the Bay of Islands as clearly evidenced by the Heke Wars and the ensuing unrest.' Despite this, the Crown has allowed a marina to be built in violation of the claimants' alleged ownership of waters, seabed, foreshores, and fisheries (this is a clear echo of Wai 49 and its issues, and the same marina is the subject of complaint).[24] A new note, however, is introduced to the Bay of Islands claim with an allegation that the Crown has allowed interference with, damage to, and destruction of 'sacred pa sites and walkways', in many cases despite efforts by claimants to protect them through the Historic Places Trust and its system of classifications.[25]

In terms of relief, the Wai 120 claimants request the Crown to vest ownership of waters, seabed, foreshores, and fisheries back in them again, to return land and reserves, and to enable Maori control pa sites and walkways.[26]

2.3 Wai 246

Mark Tribole filed a claim with the Tribunal on 5 October 1987, which was not registered until 1991 (for reasons which the Tribunal files do not explain). In its first incarnation, Mr Tribole's claim was made on behalf of Ngati Hau in respect of the Puhupuhi Forest lands alone, which were purchased from Maori by the Crown in the 1880s. In 1996, however, the Ngati Hau Trust Board filed an amended statement of claim, turning Wai 246 into a wide-ranging hapu claim in the name of the board's chairperson, Te Raa Nehua Senior, and several others. The area to which the claim relates runs from Kiripaka (east of Whangarei) north to Ruapekpeka, covering customary and Treaty rights to lands, estates, forests, coal and other minerals, and wildlife. All of these resources have either been lost or damaged as a result of alleged actions of the Crown. In addition, the claimants raise modern resource management issues, asserting that the water quality of streams, lakes, waterfalls, and rivers has been damaged by omissions of the Crown (that is, failure by the Crown to carry out actions which it should have done under the Treaty). There is a general complaint against the whole gamut of current local government and resource management laws, which fall well outside the scope of the current report but are nevertheless burning grievances for Ngati Hau. In addition, they feel that the Historic Places Trust and the current laws that govern antiquities do not recognise their interests in pa sites, burial sites, and other immovable physical taonga. In a related issue, they want a review of place names to be carried out, and more adequate acknowlegement of the pre-contact landscape through various reforms. Nor do the claimants feel that modern Maori land laws give proper effect to custom.[27]

Although this claim appears to concentrate mainly on contemporary issues over a wide area, this is partly because the research has not yet been carried out to allow the claimants to particularise their historical claims. As a result, they request an inquiry into the circumstances in which their land and taonga passed out of their ownership and into the hands of the Crown and others, and also into the extent of what was thus lost.[28] It is one of the purposes of this current report to commence such an inquiry from a neutral, independent point of view,and provide historical information on the matters at issue. The claimants have appended a list of about 40 statutes which they argue breach the Treaty, most of them passed after 1865, although some of those have antecedent statutes which are not noted in the

[24] ibid, section 5
[25] ibid, section 6
[26] ibid, sub-sections 1-7
[27] Statement of claim, sections 2,4,6-11, Wai 246, 1.1(a)
[28] ibid, section 14

statement of claim.[29] These statutes will be considered where relevant during the course of this report. In addition to their historical claim of land loss, the Ngati Hau claimants argue that their hapu has undergone social dislocation and disruption as a result of government policies, loss of mana, and in particular shortage of education in the north.[30] No details are given, but these matters are likely to be made the subject of a social and economic impact report in the future, and will not be covered in the current report.

In terms of remedy, Ngati Hau seek the return of Puhipuhi State Forest, Ruapekapeka Pa, Crown land where possible (especially forestry lands), and compensation.[31]

2.4 Wai 354

Arapeta Hamilton filed Wai 354 with the Waitangi Tribunal on 5 April 1993. This claim is on behalf of Ngati Manu, Te Uri Karaka, Te Uri Raewera, Nga Puhi ki Taumarere, and all of the descendants of Pomare II. The claimants note that their claim should be considered as complementary to that of Sir James Henare (Wai 49). The formulation of this statement of claim predates that of the revised version of Wai 246 discussed above. Mr Hamilton asserts that the Crown has constantly failed to recognise the claimants' mana whenua, mana moana, and mana tangata. As a result, tribal estates were 'wrongly alienated by the decisions and actions of the Land Claims Commissions', either by grant to Europeans or to the Crown as surplus land. The claimants specify the following Old Land Claim 'estates':

- Okiato
- Otuihu
- Opua
- Pipiroa
- Omata
- Opanui
- Te Wahapu
- Toretore Island
- Orongo
- Pomare Bay
- Te Uruti[32]

The claimants, having briefly recited their Old Land Claims grievance, move on to pre-1865 Crown purchases. They argue that the Crown had an 'obligation to protect tribal interests in negotiating the purchase of Maori land' but did not do so in:

- the Ruapekapeka purchase (including the bed of the Taumarere River)
- Mahurangi
- Waimatenui
- Whataaruhe
- Puhipuhi no 2;
- Waiotu;
- the south western block of Russell State Forest[33]

The third plank of these claimants' historical grievances is the northern war, or rather a specific event during that war. They assert that the Crown, in an 'unprovoked act of

[29] ibid, Apendix A
[30] ibid, section 16
[31] ibid, sections 13, 15-16
[32] Statement of claim, section 1, Wai 354 Record of Proceedings, 1.1
[33] ibid, section 2

aggression', destroyed the tribal village at Otuhi, Opua in 1845, and has shown no remorse for such 'deliberate and illegal acts of aggression'.[34]

Moving on from the pre-1865 period to the whole contact era and their relationship with the Crown up to the present day, the claimants also complain that the Crown has, over the years, alienated and/or desecrated important tribal taonga, including:

- indigenous forests, fauna and flora, timber rights, and mineral rights;
- the right to impose and collect shipping dues, customs duties, mooring and anchorage fees;
- rights to allocate and manage water resources
- damage to foreshore, seabed, and riverbeds via reclamations within the Taumarere-Opua area;
- wahi tapu and urupa;
- Maori language, culture, and traditions;
- Control of foreshore, river beds, lake beds, and kaimoana, including that the Crown has allowed commercial shellfishing.[35]

As remedies, the claimants seek sufficient compensation and authority to restore their economic and social tribal bases, including the return of all Crown and SOE land, the control and allocation of water resources and fees, the management of the seabed of Te Moana o Pikopikowhiti, the control of custom duties, and the management of all wharfs, moorings, and marinas along their coasts.[36] Thus the claim covers a wide range of historical and contemporary issues and grievances, as well as multiple resources, a desire for the modern expression of rangatiratanga in terms of control over aspects of the resource management regime, and even the ability to control customs duties (presumably an issue since the time of the northern war). It also branches into areas of cultural identity and the ability of tribes to perpetuate their social and cultural structures in a manner of their own choosing, through control of their wahi tapu and urupa, their indigenous flora and fauna, their language, culture and traditions. The crux of the historical grievances, however, remain the Old Land Claims, the pre-1865 Crown purchases, and the northern war.

2.5 Wai 421

John Alexander lodged Wai 421 on behalf of Te Whiu hapu on 26 January 1994. At first, this claim was perceived as relating to a single issue, the Puketotara block in the Kerikeri region. The claimants argued that this block was 'misappropriated' by the Crown after investigating Old Land Claim (OLC) no 595 (the Kemp purchase). When the Native Land Court was set up, the claimants clearly believed that the land still belonged to them as they tried to apply for an award of its ownership as if it was still in customary title; their application was, of course, unsuccessful. After 45 years of costly protests, 2196 acres were returned in 1921, leaving the Crown with 2448 acres. The returned land was not developed but the family drove stock through its old stock route, until the land was declared Crown land again in 1958. At the time of filing their claim, Te Whiu were unaware of any debt on it and did not know how the Crown reacquired the land. The Tribunal has since commissioned research on this block and that material is now available to claimants, who will no doubt seek to amend and particularise those parts of their claim. Nevertheless, even without the benefit of research, the claimants were in a position to maintain that the Crown should not have validated the Kemp purchase in the first place, or have taken the land back in 1958. They

[34] ibid, section 4
[35] ibid, section 3
[36] ibid, sections I-III

want the whole of the Crown's holdings in the former Puketotara block to be returned to them.[37]

In 1998, the claim was changed from a single-issue one to a full hapu claim covering all land and resources south and east of the Puketotara block, described as 'Puketi Forest to Kaeo to Waitangi to Puketi Forest'. The claimants have not yet specified any grievances in relation to this wider area, nor any actions of the Crown in alleged breach of the Treaty.[38]

2.6 Wai 520

Anaru Kira lodged Wai 520 on 7 June 1995. This claim was made on behalf of the Whakarara Maori Committee and the 'collective hapu from Te Rohe of Whakarara' (who are not named). The general claim area is Kerikeri and the northern Bay of Islands. Unlike some of the hapu claims, this one is very specific in its recitation of historical grievances, and concentrates almost exclusively on issues relating to the Kerikeri Old Land Claims. The claimants argue that Hongi Hika and his tribe had 'care and control' over the land in 1819. Samuel Marsden 'obtained' about 13,000 acres around Kerikeri for the use of the Church Missionary Society (CMS):

> Hongi Hika's grant to the church was limited to the use of the land by the missionaries while they were missionaries and not otherwise. The Tikanga of those times was expressed by Hongi Hika on the deathbed,
>
> "The lands which had been made sacred to the children must remain so, they must not pass into others hands."[39]

Other missionaries got similar grants from Hongi's descendants – these were known later as 'the children's land' and became Old Land Claims 734, 735, & 736. These grants were on the 'same Tikanga system, namely, that the grants were for missionary purposes'. The claimants argue, however, that in 1844 the Land Claims Commission recommended 3100 acres be awarded to a former CMS missionary, Kemp, as his private property. This was reinvestigated by Commissioner Bell and 'correctly cancelled' in 1857, along with a grant of 500 acres to Richard Davis (another CNS missionary). But new grants from were awarded in 1856, dividing two estates between seven families of missionaries. Once the land was no longer needed by missionaries or for missionary purposes, it should have 'reverted' to claimants, but the Crown's grants gave it new titles and allowed it to be sold. The Crown's actions meant that the land was no longer 'a conditional grant for specific purpose and use', as Maori had originally intended, thereby depriving 'some 15,000 descendants of Hongi Hika from reversionary interests in such land'.[40]

In remedy for these alleged Treaty breaches, the Whakarara Maori Committee seek the return of any surplus land in OLC 735 (township of Kerikeri) and compensation for land which cannot be recovered by hapu for their 'use, care and enjoyment of their ancestral lands'.[41]

Thus, the Wai 520 claim, whilst covering a fairly wide area in the northern Bay of Islands, is currently focussed entirely on the Old Land Claims and alleged Treaty breaches associated with those claims. These include the Land Claims Commission's investigation of the original transactions and their meaning and effect, its award of land to old land claimants,

[37] Statement of claim, Wai 421 Record of Proceedings, 1.1 & 1.1(a)
[38] Amended statement of claim, Wai 421 Record of Proceedings, 1.1(b)
[39] Statement of claim, Wai 520 Record of Proceedings, 1.1
[40] ibid
[41] ibid

the Crown's issuing of a European-style title, the award of surplus lands to the Crown, and the ultimate outcomes in terms of land loss and economic deprivation. I should note, however, that Mr Kemp and the Whakarara Committee have lodged other claims with the Tribunal, which currently fall outside the proposed Bay of Islands inquiry district (and therefore of this report), but which may end up being included after consultation with claimants about inquiry district boundaries. These claims relate to the Kerikeri, Whakarara, and Whangaroa regions, which these claimants call by the overall name of Muriwhenua Rangiputa, hence their grouping of five claims under the heading of 'Muriwhenua Rangiputa claims'. They cover Old Land Claims and pre-1865 Crown purchases as well as the contemporary issue of draft conservation management plans.[42]

In March 1998, Mr Kira and the claimants submitted a paper to the Tribunal providing a further explication of the issues and historical grievances involved in these claims, and setting out (as the covering letter explained) their view that 'the nature of all transactions between settlers and Maori prior to February 1840 was "tuku whenua"'.[43] This was a reference to the now-classic debate between Crown and claimants in the Muriwhenua inquiry. The paper submitted by the Wai 520 (and other) claimants provided a detailed and important discussion of those issues, as the claimants feel they apply to the Bay of Islands claims. It is worth considering the issues and the way in which the claimants have described them in some detail here, as providing one fundamental lens for the interpretation of the historical events set out in this report. It is also important to keep in mind that this paper was prepared at the conclusion of the Muriwhenua pre-1865 lands inquiry, after the Tribunal had issued its report.

The Wai 520 claimants argue that the pre-1840 transactions were 'effected in accordance with the rules of Maori custom in relation to the transfer of highly prized taonga establishing a relationship of mutual obligation between transferor [later referred to as the kaituku] and transferee'. The essential points of this mechanism for governing land-use rights, which the claimants refer to as 'tuku whenua', were:

- No absolute transfer of title could ever take place
- The tuku was personal to the settler – it could pass only to that person's descendants and nobody else
- Maori retained the right to occupy and use the land alongside the settler
- Customary law and rangatira governed the settler in all matters, including land use
- If the settler failed to maintain occupation, or to keep up the relationship of mutual obligation with the kaituku, the land 'reverted to the kaituku'.[44]

The claimants refer to the details of the transactions themselves in support of this position. They argue that reserves or joint occupation (they seem to see the two as synonymous) were sometimes specified in the recorded terms of the transfer, and that Maori-language deeds 'confirm that the transaction was a tuku in accordance with Maori custom'.[45] In an appendix to the paper, the claimants cite the use of the words 'tuku', 'hoko', 'hokonga', and others, in 12 deeds, to arrive at this conclusion.[46]

Having described their understanding of the customs surrounding land use in a tuku from the hapu to a valued European resident, the claimants proceed to argue that the Crown should have enforced the terms of the transactions according to how Maori understood them at the time. When the Crown arrived in 1840, it should have inquired fully into exactly what the customs meant and it should have recognised them as terms and conditions of the

[42] See Wai 375, Wai 510, Wai 513, & Wai 523
[43] Anaru Kira to Registrar, 25 March 1998, Wai 520/0
[44] Anaru Kira & others, Statement of Issues, pp 1-2, Wai 520/0
[45] ibid, p2
[46] ibid, Schedule 3

transactions. If it had done so, it would then have required the old land claimants to either remain in occupation or pass the land only to descendants, to recognise joint Maori use and occupation, and to recognise the continuing authority of the 'kaituku' over the land and all of its inhabitants (including the settlers).[47]

Putting tuku whenua to one side, however, there is another plank to the claimants' position that the Crown was in breach of the Treaty when it recognised the Old Land Claims as valid transfers of fee simple from rangatira to settlers. According to Mr Kira, there were enough irregularities in the pre-1840 transactions to provide multiple grounds for rejecting the notion that they should have been considered as transference of 'absolute title' to European settlers. These include:

- That the chiefs who signed the deeds did not have the right to transfer the land in any absolute sense, and nor were they the only right-holders; the 'underlying right to land and authority over it, remained with the ancestral community (hapu)'.
- Lack of specific or accurate boundaries (which in itself is also cited in support of the customs of tuku whenua, where strict boundaries were not necessary for a loose arrangement of shared use and occupation on the part of migratory resource users)
- Inadequate deeds, failing to set out properly the nature of the interests being conveyed or the area of land covered, which cast serious doubts on their validity
- Inadequate purchase money and failure to pay even the full amount of the inadequate sums agreed to.

The claimants argue that this combination of faults in the transactions ought to have rendered them totally void when the Crown came to investigate them in the 1840s and 1850s.[48]

The claimants place a great deal of emphasis on the Crown's alleged failure to investigate these transactions properly. They criticise the Land Claims Ordinances and Acts, and the Commissions set up under them in the 1840s and 1850s, because:

- They failed to inquire 'sufficiently or at all' into the *nature* of the transactions, or the intentions of the Maori 'transferors'.
- They failed to inquire 'sufficiently or at all' into all the irregularities cited above.
- As a result, the Crown validated the "sales" and then transformed the land from customary land shared by Maori and settlers under tuku, to land under European title. The new titles were either granted to old land claimants (but with a maximum of 2560 acres each) or kept by the government as Crown land available for purchase by all-comers.[49]

In addition to the Crown's failure to investigate the transactions properly, therefore, the claimants also raise many grievances about the lands considered surplus to the maximum grants allowable to the settler grantees. They criticise the Crown for keeping surplus land for itself, or granting it to old land claimants (on top of the maximum allowable) in compensation for surveys and for other reasons. Again, they base this not only on the Crown's failure to recognise that the transfers were limited customary arrangements, but also on the 'Crown's own standards' of the time, as set forth in the Land Claims Ordinance. The claimants argue that the Crown was supposed to have satisfied itself that a fair equivalent had been paid. They cite schedule B of the ordinance, which set out an ascending series of prices per acre that should have been paid in the years leading up to 1840. Ironically, the schedule was actually intended for calculating a fair award of land to settlers. If settlers had paid a certain amount in goods or money, they would be entitled to a certain number of acres. The claimants' point is that anything left over after calculating such a fair equivalent should have reverted to the vendors, who had obviously not received a fair price for anything over and above what could

[47] ibid, pp2-3
[48] ibid, p3 & also Schedule 4
[49] ibid, pp 3-5

be granted under the schedule. Instead of calculating fair prices in this way, however, the Crown simply kept the surplus for itself. The claimants describe this as 'confiscation' and assert that the Crown should have applied its own standards of fairness, as set out in the schedule. Under this test, the claimants maintain that the Crown would have been compelled to return the surplus land to Maori as not fairly and fully paid for, let alone whether there had been a valid intention to sell it in the first place.[50]

Also, the Crown failed to honour reserve undertakings in the original transactions. By keeping the surplus and overturning reserve arrangements, the ultimate result was that the Crown was 'unjustly enriched' and Maori lost land which they had wished to retain. Moving on from the terms of the investigation and the unfairness of retaining the surplus land, the claimants also maintain that the Crown had a larger duty to ensure that they were not harmed by the process and that they retained sufficient land. They state that the Crown 'failed to consider, investigate or make any provision whatever for a sufficient endowment in land for the present and foreseeable needs to Muriwhenua Rangiputa hapu'.[51]

This duty carried over into the period of Crown purchasing, about which the claimants also allege Treaty breaches. They argue that the Crown 'executed a policy in Muriwhenua Rangiputa hapu between 1850 and 1865 of extinguishing substantially the whole of the native title to the entire Muriwhenua Rangiputa hapu landbase [the Kerikeri, Whakarara, and Whangaoroa/Kaeo areas]'. This was 'in grievous breach of the Crown's obligation of protection of a sufficient economic base for the Muriwhenua Rangiputa hapu for their present and foreseeable needs'. In addition to the overall policy, the claimants argue that there were serious problems with the transactions themselves, in terms of the boundaries of the purchases, the failure to provide adequate reserves, the failure to ensure that reserves were inalienable, and the failure to pay a fair price for the land. They also state that the Crown purchases were viewed by Maori as 'tuku whenua involving the creation of a relationship of mutual obligation between the Crown and the claimants'.[52]

Finally, the claimants consider the Surplus Lands (Myers) Commission of the 1940s and criticise various aspects of its procedures and findings, concluding that it was far to faulty in its operations and outcomes to serve as a proper settlement of their surplus land issues.[53] This commission and its outcomes will not be considered within the ambit of the present report, although I note that they do relate to the investigation of the grievances raised by the events of the period under review.

In summary, therefore, the Whakarara and Kerikeri claimants assert:

- Old Land Claims were customary transfers of shared use rights, called tuku whenua
- The Crown failed to investigate the transactions adequately, uncover their real meaning to Maori, or enforce the Maori understanding of the transactions
- The Crown changed the titles to European-style fee simple, thus depriving the claimants of land that they had been using and sharing in conjunction with the settlers
- The Crown failed to investigate the transactions properly, or else it would have invalidated them on the many grounds of irregularity which existed, including inadequate description of boundaries, poor and invalid deeds, and inadequate prices
- The Crown kept the surplus after calculating what settlers were fairly entitled to under the scale of prices paid, and after imposing a maximum on that entitlement, instead of returning it to Maori; the Crown thus confiscated many thousands of acres of Maori land
- The Crown failed to honour various reserve arrangements in the original transactions

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50 ibid, pp4-5
51 ibid
52 ibid, pp6-8
53 ibid, pp8-9

- The Crown failed to ensure that Maori retained a land base suitable for their present or foreseeable needs
- The Crown then set about purchasing as much land as it possibly could, again without ensuring that Maori retained a sufficient land base for their present and foreseeable needs
- The Crown's pre-1865 purchases were marred by boundary problems, inadequate reserves, failure to protect the reserves by making them inalienable, and payment of inadequate prices
- Maori understood these Crown purchases in a similar fashion to the Old Land Claims, as establishing a relationship of mutual obligation
- The Myers Commission in the 1940s completely failed to provide a proper investigation or adequate redress for the surplus lands issue.

2.7 Wai 654

Te Raa Nehua filed Wai 654 on behalf of the Te Tii (Waitangi) B3 Trust, and for the 'Ngati Rahiri Hapu o Ngapuhi', on 5 November 1996. The contents of the claim are very similar to those of the Ngati Hau claim, lodged by Mr Nehua in the same year and on much the same grounds. The area affected by Wai 654 is described as 'commencing at Waitangi and including all lands to Pouerua at Pakaraka'. Within that region, the Crown has breached the claimants' customary and Treaty rights to lands, estates, forests, coal, and other minerals, both past and present. The Te Tii B3 Trust suggests that the claimants' lost proprietary rights could now be recognised through the 'concept of guardianship', an innovation designed to allow for the expression of rangatiratanga in situations where the land and other taonga have passed into private ownership. In addition to the resources already listed, the Te Tii Trust also asserts that the Crown has failed to recognise Ngati Rahiri's interests and rights in wildlife (again both in the past and still today), and that wildlife have been impaired as a result.[54]

Waterways are also a source of major grievance to Ngati Rahiri. They complain that the Crown has allowed (at the least) damage to the quality of water in streams, lakes, waterfalls and rivers. They argue that the entire systems of local government and resource management are in breach of the Treaty, and that the current antiquities legislation fails to recognise their interests in pa sites, burial sites, and other sites of significance. In addition, they want the opportunity to revise the current names of geographical features in their area. These are all ways in which Ngati Rahiri feel that they have lost forms of control and authority that they used to possess, and would like to see them regained and given appropriate modern expression.[55]

Apart from this loss of authority and general statements about loss of land and resources, these claimants are not yet in a position to particularise their historical grievances. As with Ngati Hau, they seek an inquiry into 'the extent to which and the circumstances in which the original land of the claimants and their taonga passed into other and particularly Crown hands', with restoration of land and compensation for past Treaty breaches to follow. In particular, the claimants want all reserves held by local authorities returned to them (including 'the "Karaka tapu"') and the return of the Waitangi State Forest. They argue, in fact, that the Crown's vesting of lands in the Forestry Corporation was in itself a Treaty breach; all such lands should be returned.[56]

Also in line with the Ngati Hau claim, the Te Tii B3 Trust raise, on behalf of Ngati Rahiri, the social and economic impact of land loss and other Crown actions. They assert that

[54] Statement of claim, Wai 654 Record of Proceedings, 1.1
[55] ibid
[56] ibid

the Crown has disrupted their hapu, caused social dislocation and the loss of mana (with social consequences). They argue that the Crown should now help restore the mana of the hapu and assist in the education of its members.[57]

In an appendix, the claimants list 54 statutes in alleged breach of the Treaty, including (of relevance to this report):

- NZ Land Claims Ordinance 1841
- NZ Constitution Act 1852
- Crown Grants Act 1866
- Native Lands Act 1862 & 1865 (and beyond)
- NZ Government Act 1846
- Waste Lands Act 1858

In addition, the list includes later statutes like the Animals Protection and Game Act 1921-22, which arose out of policies and legislation enacted in the period under review.[58] Wherever possible, due regard will be had in this report to the claimants' specific issues and concerns as noted in these statements of claim.

2.8 Wai 682

Reweti Pomare Kingi Pita Paraone filed Wai 682 on 3 July 1997, on behalf of Te Runanga o Ngati Hine, and all of the descendants of Torongare and Hauahua, and of Hine-a-maru. The runanga describes the claim as an updated version of Wai 49, covering all of the issues and area of the Ngati Hine hapu. The area affected is described as:

> I whakataukitia e Maihi Kawiti ko te rohe potae o Ngati-Hine timata I Nga Kiekie Whawhanui-o-Uenuku titiro ki Pouerua titiro ki Te Rakaumangamanga titiro ki Manaia titiro ki Te Tarai o Rahiri titiro ki Nga Kiekie Whawhanui-o-Uenuku. Ahakoa tenei, tera etahi o nga uri o Ngati-Hine kei nga kati o te rohe nei e hia hia ana kia uru mai ratou me a ratou whenua ki raro I te maru o te Rohe Potae.[59]

The Ngati Hine statement of claim is very similar to those of Ngati Hau (Wai 246) and Ngati Rahiri (Wai 654). As with those two claims, the historical issues are largely undefined and raised in four ways:

- firstly, in terms of a request for an inquiry into the circumstances of how their original lands and taonga passed into 'other and particularly Crown ownership';
- secondly, as an assertion of the negative impact of Crown actions on the hapu, with resultant social dislocation, loss of mana, and lack of education opportunities and achievement;
- thirdly, as a general assertion of land and resource loss and damage, including not just land but also forests, coal and minerals, wildlife, pa sites and other sites of cultural significance, place-names, and Maori customs themselves;
- and fourthly, with a list of 55 statutes alleged to have breached the Treaty over the past 150 years or so.[60]

The claimants seek the restoration of their 'guardianship' over land and resources, in addition to the return of land to form a tribal land base, compensation for past losses, and in particular the return of Ruapekapeka Pa, all conservation estate lands, and three state forests (Puhipuhi, Russell, and Waitangi).They also seek reform of Maori land laws to make them more reflective of (and responsive to) custom. Law reform, they argue, should extend to local

[57] ibid
[58] ibid, Appendix A
[59] Statement of claim, section 2, Wai 682 Record of Proceedings, 1.1
[60] ibid, all sections

government laws, resource management laws, and antiquities laws, to 'bring Maori values into account into New Zealand life'. Law reform should also provide for the recognition of their rights over wildlife, waterways, immovable physical taonga, and place-names.[61] The restoration, in effect, of both a land base, a social base (especially through education), and of authority over resources and taonga to an approximation of what they should have been, are the means of relief which claimants believe will restore their mana and rangatiratanga. The marked similarities between the claims of these three hapu appear to indicate a shared view of how the grievances should be articulated and settled, and how Treaty breaches should be avoided in the future.

2.9 Wai 824

Marama Netana filed this claim for all the descendants of Wiremu Hau. Registered in April 2000, this claim is a general one about land alienation and loss, cultural harm, social and economic deprivation, and loss of tino rangatiratanga on the part of the descendants of the nineteenth-century rangatira, Wiremu Hau.[62]

2.10 Wai 862

Kiharoa Parker, John Alexander, and Terry Lomax lodged this claim for the descendants of Hare Matenga, Turou, and Pito, being the iwi and hapu of Te Waimate/Taiamai. Filed on behalf of 15 hapu of the inland Bay of Islands, and registered in July 2000, this claim concerns the Crown's pre-1865 purchases of land in the Bay of Islands, which are described as purchases made under duress and in violation of Lord Normanby's instructions that they be fair and equal contracts. Also, the claim relates to the actions of the Maori Land Boards and Native Land Court in facilitating further loss of Maori land after 1865. As a result of these processes, Bay of Islands Maori were either rendered virtually landless, or prevented from making proper use of any surviving land, including its forests and other resources. Also, the Crown failed to reserve sufficient land for Maori, and failed to protect the few, inadequate reserves from alienation. In addition to the land issues, the claimants allege that Crown actions have resulted in damage to both the quantity and quality of waterways in the Bay of Islands, and to their freshwater fisheries.[63]

2.11 Wai 869

Registered in August 2000, this claim was filed by John Alexander, Rangimarie Thompson, and Bonnie Craven on behalf of the descendants of Turou, Waikato, Tuaka and Te Wakehaunga. More generally, the claim is on behalf of approximately 30 hapu of the Kerikeri and Waitangi districts. It alleges the same grievances as the Te Waimate/Taiamai claimants of Wai 862 (see above), with the exception of waterways and customary fisheries.[64]

2.12 Wai 1131

This claim was registered in February 2004 and amended in March of that year. It was filed by Hone Mihaka on behalf of Ngati Rehia, Te Uri Taniwha, Ngati Hineira, Ngai Te

[61] ibid
[62] Statement of claim, Wai 824 Record of Proceedings, 1.1
[63] Statement of claim, Wai 862 Record of Proceedings, 1.1
[64] Statement of claim, Wai 869 Record of Proceedings, 1.1

Wake ki te Tuawhenua, ki te Takitaimoana, and Ngai Torehina, 'to the extent that they choose to support this claim'. It relates to three principal issues:

- Firstly, a specific claim about the acquisition of Kororipo Pa by James Kemp in 1838, and the investigation of Kemp's Old Land Claim by Commissioner Godfrey in 1843. The eventual award was a six-acre site. The claimant alleges that Kemp did not conduct the transaction with the rightful owners, and that the Crown failed to investigate it properly, and wrongly validated the title. The Crown then failed to protect the many waahi tapu on the land and allowed them to be desecrated. This also resulted in the loss of knowledge and tikanga about the site, and the loss of access to its mahinga kai and valued resources.
- Secondly, a general claim that the Crown has dispossessed the claimant hapu of their cultural, spiritual, economic, and political base, eroding their ability to exercise tino rangatiratanga and kaitiakitanga. It has also damaged their social structure, their traditional system of tenure, and their environment and natural resources. The Crown has left the claimants with insufficient land and resources to participate in the European economy.
- Thirdly, a general claim about the spiritual and physical degradation of the harbours and waterways of the Bay of Islands, through pollution, erosion, siltation, exotic and noxious flora and fauna, over-exploitation of fisheries, and destruction of significant customary resources (food, medicine, building materials etc).[65]

2.13 Wai 1140

This claim was registered in February 2004. It was filed by Kataraina Hemara on behalf of her whanau and the 'autonomous hapu/tribe Patukeha'. The claim sets out some of the history of Patukeha, and detailed allegations relating to the Crown's:

- suppression of Patukeha's autonomy and identity through various means;
- acquisition of their land and resources, including pre-1865 pre-emption purchases;
- failure to control abuses by the Native Land Court and local government bodies;
- failure to prevent fragmentation of titles and the resultant inability to use land;
- failure to set aside sufficient reserves or ensure the retention of a sufficient economic base;
- imposition of European land tenure systems;
- damage to their environment and natural resources;
- desecration of waahi tapu;
- failure to preserve and protect indigenous flora and fauna and their habitats;
- failure to return land taken for public works when the original reason for the taking no longer applies;
- inadequate provision of education, health, and other services;
- foreshore and seabed policies; and
- failure to investigate and remedy Patukeha's grievances.[66]

2.14 Wai 1148

Arthur Harawira and Te Raa Nehua submitted this claim on behalf of Ngati Hau, Ngati Wai, and Te Uri o Hikihiki in March 2004. Having set out the texts of the Treaty, and

[65] Statement of claim, Wai 1131 Record of Proceedings, 1.1
[66] Statement of claim, Wai 1140 Record of Proceedings, 1.1

the Treaty principles and duties on which the claim is based, the claimants allege that the Crown has failed to recognise, understand, or protect their tino rangatiratanga, laws and customs. It has also acquired their land and maunga without sufficient regard to their tino rangatiratanga and customs. As a result, the claimants have been left with 'grossly depleted' land and taonga. In particular, the claimants are concerned about the role of twentieth-century Maori Land Boards in the administration, control, and loss of their lands, and about the loss of their maunga, Huruiki.[67]

3. Single Block claims

Bay of Islands Maori have filed 35 claims with the Tribunal that relate to single blocks of land. It should be noted that 19 of those claims relate to the subdivisions of a single block of land (Waitangi 1-19). Some of these claims have been lodged by hapu, whanau, or combinations of whanau, usually acting under the umbrella of family trusts. They relate to particular land blocks of concern to whanau or hapu, in which the descendants of the original owners feel aggrieved at the loss of the land, often citing particular actions of the Crown that have been handed down from generation to generation. Some of these claims relate to twentieth-century events, involving the parents of the present claimants, although all are grounded in the context of earlier land loss and the Crown-Maori relationship as it developed in the nineteenth century. All claims are included in this chapter in order to show the full range of issues as raised by Bay of Islands Maori before the tribunal, even where the events concerned will not be covered within the ambit of this background historical report. It is one of the fundamental principles of the claims process, as articulated by Professor Ward in the Rangahaua Whanui *National Overview Report*, that twentieth-century land losses cannot be separated from their nineteenth-century context, as the full extent of Maori grievance about often very small pieces of land can only be explained by reference to the losses that had gone before.[68] In other words, the loss of a few acres in the twentieth century might be a burning issue precisely because they were the only remaining acres of Maori land left after the alienations of the nineteenth century. This point should be kept in mind when evaluating the significance of the single block claims.

3.1 Wai 109

Nita Brougham filed Wai 109 with the Tribunal on 11 December 1989. The claim is on behalf of the Yorke whanau, which purchased four sections in Raurangi Township in the early 1900s (at Waitangi Point) but also had an ancestral title to it. The sections were taken for public works in 1932 (for historic purposes) against the owners' wishes, with the payment of inadequate compensation, to the enduring distress and financial loss of the whanau.[69]

3.2 Wai 111

Jane Llenaghan and Maria Wakelin lodged Wai 111 with the Tribunal on 23 November 1989. The claim was filed on behalf of a particular whanau, which affiliates to 'Ngati Hine, Ngati Manu, Kapotai, and Hikutu tribes'. It relates to 66 acres of the whanau's land at Te Raupo. Six acres were taken for railways use in 1891, against the wishes of the owners (who also objected to the railway itself). The claimants assert that the payment of

[67] Statement of claim, Wai 1148 Record of Proceedings, 1.1
[68] A Ward, *Rangahaua Whanui National Overview*, vol 1, pp 31-36, & passim
[69] Statement of claim, Wai 109 Record of Proceedings, 1.1

compensation does not constitute a purchase and that they understood that the land would be returned if no longer needed. There is also a site of special cultural significance (Pumuka's pa) on the block. The Crown has offered the land for sale instead of returning it to the claimants. In addition, the claimants state: 'That our surplus land in the area originally taken or transferred or owned by our tupuna be considered as part of this claim.' This may be a reference to an Old Land Claim, a point which the claimants should be asked to clarify.[70]

3.3 Wai 200

George Hakaraia and Matutaera Clendon filed Wai 200 in Feburary 1991, on behalf of the trustees of the Hauai block.[71] The trust had wanted to subdivide its Hauai lands but the Crown preferred to reserve the land, and so arranged a complicated swap in the 1970s which ultimately ended disastrously for the claimants. Judge Trapski was appointed by the Tribunal as a mediator in 1991, but the claim went into direct negotiations and was settled in 1993. The Crown vested Hauai 2D8 block in the Hauai Trustees, took back the original swapped land, and provided redress valuing $715,682 in total.[72] This claim was negotiated before the Crown adopted its current policy of regional settlements with large natural groupings.

3.4 Wai 302

R Te Ripi Wihongi filed Wai 302 with the Tribunal on 3 August 1992. The claim is on behalf of six whanau, the former owners of a block of land called Kohewhata, which is situated 3 ½ miles south of Kaikohe. The land was taken for public works during World War II for the Kaikohe aerodrome. Claimants complain about the taking itself, the amount of land taken (far in excess of what was needed) and then leased to farmers, the current leases of that land, an inadequate offer-back of part of it by the Crown, and other issues.[73] The Tribunal has commissioned a research report on the claim which covers these issues.[74]

3.5 Wai 327

Ngaro Hemi Baker lodged Wai 327 with the Waitangi Tribunal on 28 January 1993, on behalf of the Ngati Kopaki/Ngati Te Ara Whanau Trust, which represents the former owners of Motatau no 4 block. The claimants raise concerns about the taking of land from this block for railways purposes in 1904, under the Public Works Act 1894.[75]

3.6 Wai 343

WW Peters filed Wai 343 with the Tribunal on 25 February 1993, on behalf of the Ngati Wai Trust. The claim relates to Otetao A Block at Helena Bay, which was sold in 1915 by a meeting of owners. The sale was confirmed by the Maori Land Board in 1916. The claimants complain that a minority in terms of both numbers of owners and percentage of shares voted for the sale and that the Maori Land Board should not have confirmed it. Also, they argue that the Board did not check carefully enough whether the sale would render

[70] Statement of claim, Wai 111 Record of Proceedings, 1.1
[71] Statement of Claim, Wai 200 Record of Proceedings
[72] See OTS Quarterly Report, 30 June 2004; and the Deed of Settlement between Her Majesty the Queen and the Hauai Trustees, 30 October 1993, both available at www.ots.govt.nz
[73] Statement of claim, Wai 302 Record of Proceedings, 1.1
[74] R Johnson, 'Research Report: Kaikohe Aerodrome', Wai 302 Record of Documents, A1
[75] Statement of claim, Wai 327 Record of Proceedings, 1.1

people landless. When the claim was filed in 1993, 1.8 hectares still belonged to the Department of Conservation, which was then seeking to dispose of it. The claimants wanted it returned to them – the Tribunal has no information at present on the outcome of this proposed sale.[76]

3.7 Wai 352

Titau Rakete lodged Wai 352 with the Tribunal on 25 March 1993, on behalf of the former owners of 'the land the Kaikohe West School is situated on', and on behalf of a local kura kaupapa committee, Te Whanau Whakaiti o te Hauauru. The land was gifted to the Crown for a Maori school in the 1880s, including a rather large area of endowment land, and part of that land is now the site of a mainstream state primary school. The claimants argue that since the land is no longer being used for the purpose for which it was gifted, it should be returned to them as the site for a kura kaupapa, instead of their having to find a new site (as required by the government). Issues include the survival and transmission of te reo Maori, Maori education, and the use of gifted land for the original purposes specified by the donors.[77]

3.8 Wai 435

Sharon Bedggood filed Wai 435 with the Tribunal on 2 June 1994, originally on behalf of the Tamati Te Maru Whanau. The claim relates to Motatau no 5 (22,800 acres), of which the claimants' tupuna (Kuao Karawai) owned 7250 acres in 1909. The block was partitioned and Kuao lost his shares when the land was taken for railway purposes under the Public Works Act in 1911. The railway line was not put through, partly as a result of Kuao's opposition, but nor was the land returned. Wahi tapu were lost as a result, although Kuao kept Motatau 5G (a small block with a wahi tapu). In 1912, Europeans acquired this extra piece but the claimants are not sure how that happened. The claimants want to ensure that burial sites on the island in the middle of Lake Kereru are not desecrated, and complain that their tupuna and whanau's loss of this land breached the Treaty.[78] It should be noted that the claimants intend to amend their claim to make it on behalf of the Ngati Moerewa and Ngati Rangi hapu.[79] The amendment has not yet been filed with the Tribunal.

3.9 Wai 492

T A Kemp lodged Wai 492 with the Tribunal on 25 November 1994, on behalf of Ngati Rehia and other hapu of Nga Puhi Nui Tonu. The claim concerns Kororipo Pa, which was supposed to have been purchased as part of an Old Land Claim, investigated in 1859. Ngati Rehia claim that the chiefs denied that a sale had taken place. The deed was supposed to have been made with Hongi Hika in 1839 and he had died 'some years before'. The claimants continue to deny that a sale ever took place. They argue that the Land Claims Ordinances and Acts prejudicially affected them by allowing an investigation to reach such a faulty outcome. The claimants want compensation and the return of land in settlement of

[76] Statement of claim, Wai 343 Record of Proceedings, 1.1
[77] Statement of claim, Wai 352 Record of Proceedings, 1.1; Tunks to Wellington District Legal Services Committee, 8 April 1993, Wai 352/0
[78] Statement of claim, Wai 435 Record of Proceedings, 1.1
[79] Sharon Bedggood & Robyn Peehikuru-Heke, Personal Communication, 17 January 2005

these grievances.[80] The Tribunal has commissioned a research report on this claim, which is now available to parties.[81]

I note that the Wai 492 claimants have expressed an intention to broaden this claim to cover all Ngati Rehia's lands and issues, but this has not yet been done.[82] At that point, this claim would change from a block claim to a broad hapu claim.

3.10 Wai 593

Jimmy Ruawhare filed Wai 593 with the Waitangi Tribunal on 25 March 1996 on behalf of the Ruawhare whanau. The complaints allege that land was taken for a road from Taraire 1E2 under the Native Land Act 1909 but the road was never made. The statement of claim does not specify whether the whanau objects to the taking of the land or whether they want the road to be made. In either case, they tried to get the problem resolved through the Maori Land Court without success, and therefore complain of Te Ture Whenua Maori Act 1993 as well.[83]

3.11 Wai 605

Terence Lomax lodged Wai 605 with the Tribunal on 25 June 1996 on behalf of Te Uri o Hawato, the descendants of the former owners of Te Waimimiti, and the people of Ngawha marae. The claim concerns the Te Waimimiti block, now known as the Remuera Settlement, near Ngawha. The claimants want it ('especially the summit') returned to them, but they do not specify any grievances or actions of the Crown in breach of the Treaty.[84]

3.12 Wai 606

Philma Phillips filed Wai 606 on 18 March 1996, on behalf of the Phillips, Cooper, Edmonds, and Pou whanau. It relates to Te Pua 2B block, which was subdivided and sold by the Maori Trustee and the Kaikohe Borough Council for non-payment of rates in 1979. The claimants allege a number of problems with this sale, including a failure to inform the owners, to give them an opportunity to pay the rates, or to consent and participate. In addition, the claimants are concerned about the rating regime per se and the fact that it led ultimately to the loss of scarce-remaining ancestral Maori land.[85]

3.13 Wai 642

Elizabeth Mataroria-Legg filed Wai 642 on 10 October 1996, on behalf of the Whanau Pani Trust and its beneficiaries, members of Ngati Hine and Nga Puhi. The claim concerns Motatau 5A2 block, which had this family's marare, wahi tapu, and farm (there were other owners as well). It was reserved in perpetuity in 1919, absolutely inalienable except by will. In 1957, however, a new proclamation changed the status of the land, which the Maori Trustee leased and then sold after some sort of meeting of owners – the claimants are not entirely sure of the legal status of that meeting or the reasons why the government

[80] Statement of claim, Wai 492 Record of Proceedings, 1.1
[81] T Bennion, 'Kororipo Pa: a research report for the Waitangi Tribunal', 1997, Wai 492 Record of Documents, A1
[82] R Parangi to Waitangi Tribunal, 29 June 2000, Wai 492/0
[83] Statement of claim, Wai 593 Record of Proceedings, 1.1
[84] Statement of claim, Wai 605 Record of Proceedings, 1.1
[85] Statement of claim, Wai 606 Record of Proceedings, 1.1; also Affidavit of Philma Anne Phillips, 18 March 1996

was able to hold it in the first place. The claimants' father was not at the meeting, his shares were sold against his will, the Maori Land Court ignored objections, and the Crown did not prevent the sale but rather facilitated it. As a result, the claimants state that they lost their marae, kainga, ana, and mauri. The meeting house was destroyed, wahi tapu cannot be visited now, and access to native plants and animals (weka, kiore, and kokowai) was stopped. The claimants allege that all of these matters are in flagrant breach of the Treaty.[86]

3.14 Wai 752

Charles Tong filed Wai 752 on 29 April 1998, on behalf of the owners of Otuhi 1C1 block. Land was taken from this block for an aerodrome (1942), a railway line, and a shingle reserve (1930). The land is no longer needed for aerodrome or for railway purposes and the claimants want it back. No grievances (other than that the land was taken per se) are specified in the statement of claim.[87]

3.15 Wai 902

Eru Garland and Douglas Taurua filed this claim on behalf of the Te Puna Kahiki Trust, a former section 438 trust which administers an 18-acre block of multiply-owned Maori land at Te Puna Inlet. The claim was registered with the Tribunal in April 2001. It is a contemporary claim relating to the rates levied on the block, the actions of the district council in attempting to obtain payment of the rates, and alleged flaws in the rating laws and Maori land legislation. In particular, the claimants are concerned that too little account is taken of their values and aspirations in both the valuation and rating of land, and that rating is used to prevent Maori from effectively using their land and resources.[88]

3.16 Wai 932

Registered in June 2001, this claim by Denis Fabian is on behalf of his whanau, and concerns a particular piece of land at Kerikeri. The claimant has a very specific allegation that his grandfather, William Arthur Mountain, was excluded from inheriting 400 acres of land at Kerikeri, due to the legislation in force at the time, which defined his birth as illegitimate.[89]

3.17 Wai 1151-1169

Geoffrey Karena filed these 19 claims on behalf of the Kaneihana Wairemana Whanau Trust, the Wairemana Whanau Trust, the Eruera Garland Whanau Trust, and the Wire Mohi Whanau Trust. The claims were registered in April 2004. They relate to the alienation of Waitangi 1-19 blocks in August 1965 to the Crown and European buyers.[90]

[86] Statement of claim, Wai 642 Record of Proceedings, 1.1
[87] Statement of claim, Wai 752 Record of Proceedings, 1.1
[88] Statement of claim, Wai 902, Record of Proceedings, 1.1
[89] Statement of claim, Wai 932, Record of Proceedings, 1.1; and also documents in explanation, Wai 932/0
[90] Statements of claim, 1.1 on Record of Proceedings for Wai 1151-Wai 1169

4. Single issue claims

Bay of Islands Maori have made twelve claims which raise a single main issue for the Tribunal to consider.

4.1 Ngawha geothermal claims

In 1993, the Tribunal heard and reported on three claims relating to the Ngawha geothermal resource:

- Wai 58 (d), the claim of Matilda Saies, Tarawau Kira, and their hapu on behalf of Ngapuhi ki Whaingaroa;[91]
- Wai 123, filed in December 1989 by Charles Brown and Susanne Robertson on behalf of Te Uriohua, and joined for inquiry with Wai 304; and
- Wai 304, filed by Tamehana Tamehana and others on behalf of nga hapu o Ngawha, listed as Ngati Hine, Te Hikutu, Te Uri Taniwha, Te Mahurehure, Te Uriohua, Ngati Rehia, Ngai Tawake, Ngati Hau, Ngati Rangi, and Ngati Tautahi.[92]

The Tribunal found that hapu of Nga Puhi had owned and exercised tino rangatiratanga over the Ngawha hot springs and the subsurface geothermal resource prior to 1840, and that the Crown had acquired part of the ownership of land, springs, and subsurface resource in breach of the Treaty. The hot springs were and are a taonga of the claimants', and both the Geothermal Engery Act 1953 and the Resource Management Act 1991 breach the claimants' Treaty rights with regard to their taonga, and the geothermal resource that sustains and is part of it. The Tribunal recommended that the Crown-owned part of Parahirahi C (now a recreation reserve) should be returned to Maori ownership, and that the RMA should be amended.[93] As far as I have been able to discover, there have been no negotiations between Crown and claimants so far in the wake of the Tribunal's report and recommendations, and the claims remain unsettled.

Since the release of the Tribunal's report, a new issue has arisen with regard to the building of a prison a kilometre or so away from the Ngawha Springs Village. Resource consents were at first declined by the Northland Regional Council, leading the Minister of Corrections to appeal to the Environment Court. The main opponents of the prison were represented by Ronald Wihongi (one of the named claimants in Wai 304) and Riana Wihongi, the Friends and Community of Ngawha Incorporated, and the Ngati Rangi Ahuwhenua Trust. The Minister won his case and the Environment Court concluded, among other things, that the prison would not disturb the geothermal resource under the ground, nor the nearby taonga of the hot springs. Some local Maori, in particular the Te Haara whanau (who were the owners of the site in the 1870s), supported the prison proposal.[94] Opponents appealed to the High Court and from there to the Court of Appeal, but were unsuccessful in overturning the Environment Court's decision at the end of 2002.[95]

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[91] Statement of claim, Wai 58 Record of Proceedings, 1.1(d); I am not entirely sure of the relationship between this amendment to the claim, and the main statement of claim and other amendments, which have different named claimants
[92] Waitangi Tribunal, *Ngawha Geothermal Resource Report*, 1993, pp 7-8
[93] ibid, pp 149-155, & passim
[94] *Maori Law Review*, June 2002, pp 2-8
[95] ibid; and Friends & Community of Ngawha Inc v Ronald Wihongi and Riana Wihongi & Others [2002], NZCA 322, 17 December 2002

4.2 Te Horo development scheme claims

Te Rau Moetahi Hoterene filed Wai 149 on 21 May 1990, on behalf of himself and his immediate family. His claim objects to the creation of the Te Horo Development Scheme at Pipiwai in the1960s, and the inclusion of his whanau's interests against their will. He argues that the claimants lost land, houses, milk sheds, farm equipment, fruit trees, pine trees, and stock. Also, at the end of the scheme, he objects to the transfer of the land to a trust which did not represent the original owners and which, he argues, has mismanaged the land. He asserts that these matters are in breach of the Treaty and should be rectified.[96]

A second claim, Wai 371, was lodged by Hori Hemara Niha on 10 May 1993 on behalf of himself and his whanau. It raises essentially the same issues as Wai 149, but also complains of the alienation of part of the former Pipiwai block, either whilst part of the Te Horo development scheme or after its transfer to the trust.[97] The third claim (Wai 455), filed by Riwi Hone Niha for his whanau on 14 April 1994, complains of the inclusion of Pipiwai C and G in the scheme, the alienation of Pipiwai C, and the formation of the succeeding trust. The issues are essentially the same as those raised in Wai 149 and Wai 371.[98] The Tribunal has commissioned a preliminary research report on the Te Horo scheme which is currently available to parties.[99]

4.3 Foreshore and seabed claims (Wai 1071)

In 2002, the Court of Appeal made a landmark decision which opened the way for Maori to attempt to prove ownership of the foreshore and seabed under customary title, either through the High Court (a bundle of rights approach) or the Maori Land Court (a freehold title approach). The Crown introduced a policy designed in part to prevent Maori obtaining freehold title. Claimants from around the country sought an urgent hearing on the policy and its proposed effects. Some Bay of Islands claimants amended their claims to include this specific policy grievance, and registered their support of the urgent inquiry, although they did not actually take part in the hearings. This approach was adopted by claimants in Wai 421, 862, 869, and 902.[100] Others participated in the full inquiry and presented submissions and evidence – this includes claimants from Wai 966, Wai 304, and Wai 249. Also, Anaru Kira and the Whakarara Maori Committee, and Ngai Ta Wake ki te takutai moana, participated under the umbrella of claim Wai 861.[101] Matutaera Clendon and others, on behalf of Paihia claimants, participated without benefit of a specific registered claim.[102]

In all, there was significant Nga Puhi and Bay of Islands involvement in the foreshore and seabed inquiry. The Tribunal upheld this aspect of the Bay of Islands claims and found the Crown's policy to be in serious breach of the Treaty on a number of grounds.[103] The Crown modified its policy in part but has not carried out the Tribunal's main recommendations, and instead enacted its proposed legislation. Historical foreshore and seabed issues (arising from matters prior to 2002) remain to be considered in the Bay of Islands district inquiry.

[96] Statement of claim, Wai 149 Record of Proceedings, 1.1 & 1.1(a)
[97] Statement of claim, Wai 371 Record of Proceedings, 1.1
[98] Statement of claim, Wai 455 Record of Proceedings, 1.1
[99] A Miles, 'Te Horo Development Scheme', 1993, Wai 149 Record of Documents, A1
[100] G Davis, memoranda, Wai 1071 Record of Proceedings, 2.27 & 2.87
[101] A Sykes & J Pou, Opening Submissions, Wai 1071 Record of Documents, A97(a)
[102] These claimants were represented by Te Kani Williams, but did not have a Wai number of their own
[103] Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, 2004

4.4 Wai 466

Kerei Anderson lodged Wai 466 on 8 July 1994, on behalf of Ngati Hineira and Te Uri Taniwha (hapu of Nga Puhi). This claim is about ownership of islands in the Kerikeri inlet, 'which have belonged to our people always'. Claimants used the islands until the 1940s for cultivations and some for burials, when their ownership was suddenly challenged by the Harbour Board. The hapu took the question to the Maori Land Court for determination. The Harbour Board claimed the islands under the Wastelands Act 1858, the Land Claims Settlement Extension Act 1858, the Bay of Islands Settlement Act and the Act to Repeal the Bay of Islands Settlement Act 1870 (section 3 of which related to waste lands). In 1942, the judge stated that Parliament had contravened the Treaty and that the islands 'undoubtedly should in equity belong to the Natives' but had to rule in favour of the Crown. The cllaimants are very aggrieved by the loss of these islands; they want compensation and the return of the islands to their ownership.[104]

The claim was broadened in 1995 to include OLC 172, involving three sites (10 acres, 1 acre, and 2000 acres respectively) at the Kerikeri River, including its mouth and some islands in the river. The claimants allege that this land was taken under the Bay of Islands Settlement Act, gazetted 1 March 1860.[105]

4.5 Wai 565

Pari Perihopa filed Wai 565 with the Tribunal on 4 September 1995, on behalf of the Waitangi Trust Board, Ngai Tai ki Nga Puhi, Ngati Hine, Ngati Tetarawa, Te Kau i Mua, Te Orewai, Te Uri o Hua, Te Uri Roroi and others. The claimants object to the erection of a transmitter on their maunga, Hikurangi, at Uenuku's pa site on the top of the mountain. The transmitter was put up around 1967 and claimants were not consulted. 'Our tuaha/spiritual identity through our ancestral heritage and whakapapa has been defoiled [sic]'. Claimants have no access, there are flooding problems, and no compensation was paid for the erection of the transmitter. They fear that 'unless we do something about the situation now then we may lose all but a ritualistic verbal association with our maunga'.[106] In a separate letter to the Tribunal, Mr Perihopa also complains about the loss of ownership of the mountain itself, and suggests that it was purchased without the consent of the 'actual rangatira of those times'. The claimants thus lost their rangatiratanga, and the crowning evidence of that is the erection of the transmitter.[107]

4.6 Wai 820

Ronald Te Ripi Wihongi submitted Wai 820 on behalf of the trustees and beneficiaries of Lake Omapere. Registered in March 2000, this claim complains about the lowering of the water levels in Lake Omapere, algae bloom, and pollution of the lake, and seeks remedial action to restore the physical and spiritual health of the lake.[108]

4.7 Wai 974

This claim was registered in June 2002, and an amendment was registered in April 2003. The original claim, filed by Rosaria Hotere, relates to the taking of land for public

[104] Statement of claim, Wai 466 Record of Proceedings, 1.1
[105] Amended statement of claim, Wai 466 Record of Proceedings, 1.1(a)
[106] Statement of claim, Wai 565 Record of Proceedings, 1.1
[107] P Perihopa to Waitangi Tribunal, Auckland, 31 August 1995 (attached to statement of claim)
[108] Statement of claim, Wai 820 Record of Proceedings, 1.1

works at Kaikohe and other places in the Bay of Islands. The claimant alleges that the takings involved the desecration of wahi tapu and were in breach of the Treaty.[109] The April 2003 amendment adds Kaipara issues to the claim.[110]

4.8 Wai 1060

This claim was filed by Eruera Taurua and others for Ngati Kawa and Ngati Rahiri, hapu of Ngapuhi nui Tonu, and registered in June 2003. The claim concerns:

- the Busby Old Land Claims 14-21, which resulted in Commissioners Godfrey and Richmond recommending grants of 3264 acres. The Commissioners 'erroneously reported that Maori customary Title had been extinguished, and that payment in each claim was sufficient'. The Governor then extended the award to 7599 acres, which was increased again to 9374 acres in 1867. The Crown kept the remainder of the land as surplus land. The Crown purchased the land awarded to Busby in 1948 (the Wakelin Farm) and transferred it to the SOE Landcorp in 1991. At the time of lodging the claim, Landcorp was seeking to sell the farm.
- The section 27B memorials against the titles of on-sold SOE land (in this case the Wakelin Farm), which are not a sufficient protection for the claimants.[111]

5 Other Claims

There are two other Bay of Islands claims, which do not quite fit any of the categories above. The first is Wai 68, lodged by Betty Hunapo on 1 May 1987, on behalf of the Ngaro Tirita Whanau Trust, Ngati Hine, and 'all our relatives of every tribe in Aotearoa'. The core of this claim is the block Motatau 1B5B5, and the claimants' grievances over the way in which that land has been administered, but the implications are stated in a much wider and more general way than the other block claims described above. In essence, although this is a claim about a single block, the claimants place it in a broad context and raise many issues of concern to them through this vehicle. They complain of the alienation of Maori land, forests, and fisheries, but more particularly in relation to the State Owned Enterprises Act 1986, and the transfer of Maori 'lands and waters' to State-owned enterprises under that Act. In addition to making this global claim, Ms Hunapo and the trust argue that the Maori Land Court and Maori Trustee do not consider whanau adequately or Maori values in their decision-making. The claimants seek an end to the current Trustee system, which treats Maori as 'childish'. Instead, they argue for the development of whanau trusts, and also the inclusion of the Treaty in New Zealand law as prevailing over all statutes, ratification of the Treaty by the New Zealand government and the United Nations, and the creation of a 'Runanga Ture' to determine laws for Taitokerau. In addition, they request a series of changes to various government departments. The base of the claim, however, is the Maori Trustee's administration and leasing of Motatau 1B5B5 against the claimants' wishes, the Maori Land Court's role in that process, and the charging of rates against the property.[112]

The second claim is Wai 251, lodged by Peti Ahitapu on behalf of the Te Rawhiti 3B2 Investigating Trust, on 5 October 1987. As with Wai 68, this claim appears to have been partly inspired by concerns about the State Owned Enterprises Act and moves by the Crown

[109] Statement of claim, Wai 974 Record of Proceedings, 1.1
[110] Amended statement of claim, Wai 974 Record of Proceedings, 1.1(a)
[111] Statement of claim, Wai 1060 Record of Proceedings, 1.1
[112] Amended Statement of Claim, Wai 68 Record of Proceedings, 1.1(b)

in the late 1980s to divest itself of land and other properties. The statement of claim is described as 'interim' and asserts a claim with regard to both lands and waterways, listing 27 blocks, including several islands. No grievances are specified, however, and the statement of claim also fails to make it clear which hapu are parties to this claim, or in support of the Investigating Trust. Without a clearer idea of the issues and scope of this claim, it is impossible to fit it into any of the broad categories described above.[113]

6 Summary of claims and issues

In essence, the statements of claim and the submissions of claimants indicate that the Bay of Islands claims are about two things:

- loss of land and other resources, including waterways, fisheries, and sub-surface resources;
- and loss of authority over all aspects of Maori life, including land and resources in a more general way but also matters like community regulation, economic relations, culture, language, and tribal affairs.

Both forms of loss are described as losses of rangatiratanga. This vital concept, which occurs in the Declaration of Independence, the second Article of the Treaty, and other Maori language documents of the time, includes both land and resource "ownership" in the Pakeha sense (the English version of Article 2) and the authority of Maori communities to regulate their own affairs. This extended, when they came to share their territory with settlers, to an exercise of authority over both communities in certain matters. As a result of both forms of loss, Maori argue that they have suffered community and hapu dislocation, loss of mana, economic and social deprivation over many generations, and cultural destruction.

Not all claimants are able to recite the particular mechanisms or actions of the Crown by which they suffered the losses described above. Some claimants cite the following mechanisms of loss as key issues in their claims:

- The Old Land Claims, which were (according to some) arrangements of mutual obligation involving the shared use of tribal territory in return for trade and other advantages, but which the Crown transformed into absolute alienations of land
- The Land Claims legislation
- The Land Claims Commissioners' faulty investigations and awards
- The Crown's confiscation of "surplus land" from the Old Land Claims
- The Crown's purchase of land between 1840 and 1865, which was supposed to have been a second attempt at sharing land and creating mutual obligations (according to Anaru Kira and others), but instead was a harmful process by which the Crown attempted to obtain all Maori land, failed to make proper reserves, failed to make clear boundaries, failed to convey the true meaning of the transactions, and failed to pay a fair price
- The Crown's failure to exercise its protective duty to ensure that Maori retained sufficient land for their 'present and foreseeable needs', both when confiscating surplus lands and purchasing land in its own right in the pre-1865 era
- The Native Land Acts and the Native Land Court, which individualised title and facilitated the unwilling transfer of yet more land to both the Crown and private individuals after 1865
- The taking of land for public purposes, especially railways and aerodromes, under a concept and through a system that was allegedly in fundamental breach of the Treaty

[113] Statement of claim, Wai 251 Record of Proceedings, 1.1

- The Crown's distortion of its protective duty into systems like that of the development schemes and the Maori Trustee, where Maori are treated as 'childish' and have no genuine authority over their own lands, with the result that many objectionable decisions have been made
- The Crown's assumption of authority over matters like trade and customs duties, harbours, and other waterways, evolving (eventually) into a system of modern government and resource management which takes insufficient account of Maori values and provides insufficient room for the exercise of Maori input and/or authority; and to the point where even the names of places and the ahuatanga of the landscape itself comes under the exclusive authority of the Crown
- The Crown's assumption, under common law or new statutes, of ownership of certain waterways, the foreshore, and the sea(bed)
- The Crown's assumption of authority (either of ownership or of a legislative right of regulation) over flora and fauna (everything on the land), sub-surface resources (everything under the land), and other resources (including fisheries), to the detriment of Maori and the resources themselves
- The war between the Crown and Bay of Islands Maori in the 1840s over the exercise of authority, leading to a fundamental shift in the ability of those Maori to control their own affairs (and prevent land and resource loss) after 1846
- Related to this, the Crown's interpretation of Te Tiriti o Waitangi in terms of its authority and what was ceded to it
- The Crown's failure to establish proper protection for wahi tapu, pa sites, and other immovable taonga, or to provide for Maori to protect these taonga themselves
- The Crown's failures in providing education for Maori
- The Crown's failure to assist Maori adequately in the protection and preservation of te reo Maori and other cultural taonga

Thus, the claimants argue that they have lost land, resources, and authority in the Bay of Islands over the past 160 years. They assert that these losses occurred as the result of various actions of the Crown or failures to act when it should have done so, as provided for in the Treaty of Waitangi Act 1975, and therefore in breach of the Treaty. They state the effects of these losses and Crown actions, in terms of social and cultural dislocation, economic deprivation, and what they feel to be their almost total powerlessness in the face of current official regimes of government and resource management. They seek restoration in economic, social, and cultural terms, and also a more effective exercise of authority over their taonga, their region, and their entire way of life.

The Claimants: the tribal landscape prior to 1840

7 The Claimants

As at December 2004, the Waitangi Tribunal had 69 registered claims from the Bay of Islands or which had been filed on behalf of wider Nga Puhi groups and which include the Bay in their statements of claim. The previous section outlined these claims. Some have been filed by individuals or whanau, block or tribal committees, or hapu groups. They are of varied size and scope, therefore, and with varying levels of popular support. The number of claims does not necessarily reflect a divided tribal community. Forty-nine relate to very specific block or issue grievances, sitting alongside the broader hapu and big-picture claims. The Crown Forestry Rental Trust has been working with the claimants to assist them to cluster

together for the purpose of jointly developing and presenting their claims. Two claimant clusters have formed, with whose representatives I met in 2003-2005:

- The Te Waimate-Taiamai Alliance, representing many Bay of Islands hapu and also the registered claims Wai 109, Wai 421, Wai 605, Wai 862, Wai 869, Wai 902, and Wai 966 (see above; there are doubtless other claimants now represented by the Alliance);
- The Ngati Hine Alliance, representing Ngati Hine and associated hapu, and also the registered claims Wai 466, Wai 120, Wai 149, Wai 565, and Wai 49 (see above; there are doubtless other claimants now represented by this Alliance).

The Crown Forestry Rental Trust continues to work with claimant clusters in the north. In addition to other district clusters outside the Bay of Islands, a third (Nga Puhi-regional) cluster has been formed which affects the Bay, and the claimants are working together towards the researching and presentation of their claims.

8 Nga Puhi and the Bay of Islands prior to 1826

Having outlined the claims, it is necessary to provide some background information on the tribal history of the claimants. The richness and complexity of Nga Puhi's tribal and hapu histories will only be touched upon here. The full story of the tribes and their relationships with other groups, the land, and the world around them, will be left for the claimants to tell, as is their right. I will present a very summary account, based mainly on published sources of information.

In 1992, Pat Hohepa informed the Tribunal at the Ngawha hearings that Nga Puhi are an enormous iwi, with the largest tribal population in New Zealand, and an enormous 'rohe potae' in the north, including parts of Kaipara, Whangarei, Hokianga, and the Bay of Islands, stretching north to overlap with the iwi of Muriwhenua. He described Nga Puhi as a 'supergroup – a confederation of waka'. The terms iwi and hapu can both be applied to the constituent groups of Nga Puhi, and it is hard to define the overall structure as an "iwi" or even a "waka", because it has many waka, many key ancestors, and many mountains and rivers, with which particular member-groups identify. Even the name Nga Puhi itself has several origins. Mr Hohepa argued, therefore, that Nga Puhi is not an iwi in the usual sense of the word, and that its hapu are larger, older, and more properly to be termed iwi than many tribes elsewhere in New Zealand.[114] This self-description will need to be expanded by the claimants, but it is clear that for the purposes of dealing with the government (both in the past and today) the member-hapu of Nga Puhi could be considered as independent tribes who nevertheless have an important relationship with each other and sometimes act together as a single unit.

The Bay of Islands and Hokianga formed a key subset of Nga Puhi lands in the nineteenth century. The peoples here saw themselves as the "two sides" of Nga Puhi, and their relationship was fraught. According to European observers, there was strong enmity between Hokianga and the Bay, which sometimes manifested itself in war, as well as sufficient solidarity for common campaigns against Ngati Whatua and other enemies to the south. The hostility between key hapu was strengthened by Ngati Pou refugees at Hokianga, and played an important part in some Hokianga hapu supporting the government during the northern war of 1845-6.

Within the Bay of Islands, there was also both hostility and room for combined action. According to the seminal analysis of Sissions, Wi Hongi, and Hohepa, the hapu had formed two broad alliances by the beginning of the nineteenth century. The more powerful of these

[114] Evidence of Pat Hohepa, Wai 304, B25(a)

groupings was the northern alliance, led by Hongi Hika, Rewa, and other powerful rangatira. Its key hapu included:

- Ngai Tawake;
- Ngati Tautahi;
- Te Uri o Hua;
- Ngati Rehia;
- Ngati Rahiri;
- Te Hikutu;
- Ngati Whakaeke;
- and Patukeha.

In geographical terms, this alliance originated in the Kaikohe area, came to dominate the northern Bay (Waimate, Kerikeri, Waitangi, Te Tii Mongonui, and Rangihoua / Te Puna), and eventually took the south-eastern Bay and Kororareka as well. It is northern in emphasis, therefore, rather than in terms of strict geography.[115]

The southern alliance, led by Te Morenga and other important rangatira, originated more in the Pouerua/Pakaraka area. It came to dominate the Taiamai plain, parts of the Pakaraka and Waitangi district, the Waiomio area, Kawakawa, the Paihia coast, and the Kororareka and Waikare regions of the coastal Bay. Its key hapu included:

- Ngare Hauata;
- Ngati Hineira;
- Ngati Rangi;
- Ngati Hine;
- and Ngati Manu.[116]

There are many other hapu names associated with the two alliances, and no doubt claimants will provide further details.

In genealogical terms, there are key splits between the two alliances, depending on which lines they choose to emphasize in their descent from the key ancestors. Claimants will want to provide further detail, correct errors, and explain associations in more depth. In the meantime, a very brief summary of key waka and ancestors, for future reference in this report, is provided here:

- The Matahourua canoe, which brought Kupe to Hokianga, where he lived for many years and became an important ancestor of Nga Puhi.
- The Ngatokimatahourua canoe which brought Nukutawhiti to Hokianga. This ancestor appears to have been the main early ancestor of Nga Puhi, whose importance is stressed particularly at Hokianga.
- The Mamari canoe, which brought Ruanui to New Zealand and, according to some accounts, also brought Nukutawhiti as well.
- The Mataatua canoe, which was sailed to the north by Puhiariki (according to some authorities), where he settled and became the eponymous ancestor of Nga Puhi.[117]
- Puhimoanaariki, in other stories a descendant of Awa and Kupe, who is the eponymous ancestor of Nga Puhi.

[115] J Sissons, W Wi Hongi, & P Hohepa, *The Puriri Trees are Laughing: a Political History of Nga Puhi in the Inland Bay of Islands*, Auckland, 1987, pp 31-43, 51

[116] ibid

[117] For additional detail on these four waka, see the Evidence of Pat Hohepa, Wai 304, B25(a); S P Smith, *The Peopling of the North*, New Plymouth, 1897; and R Daamen et al, *Rangahaua Whanui District 1: Auckland*, Wellington, 1996

- Rahiri, the ancestor who is the focal point of almost all Nga Puhi lines of descent, and the ancestor who (according to Hohepa and others) provides the most genealogical unity to Nga Puhi. Rahiri was the grandson of Puhimoanaariki. His mother was Puhi's daughter Te Hauangiangi. His father, Tauramoko, was a descendant of Nukutawhiti.
- Rahiri's two wives were the origins of the "two sides" of Nga Puhi, through the tuakana son (Uenuku of Pouerua) and the teina son (Kaharau of Hokianga). From the descendants of Uenuku and Kaharau come the hapu of the Bay of Islands.
- Key ancestors in this respect, among the descendants of Uenuku and Kaharau, appear to have been as follows[118]:
    - Maikuku, daughter of Uenuku and Karearīki, who was born at Waitangi and whose marriage to Hua produced key hapu ancestors
    - Uewhati, child of Maikuku, ancestor of Ngati Korokoro and Te Mahurehure
    - Te Ra, son of Maikuku, ancestor of Ngati Rahiri
    - Te Rangiheketini, daughter of Maikuku, ancestor of Ngati Rangi and Ngati Hineira
    - Ruakino, daughter of Maikuku, ancestor of Te Uri o Hua
    - Ruakiwhiria, daughter of Maikuku, ancestor of Ngati Tautahi
    - Torongare, child of Maikuku, ancestor of several tribes
    - Taurapoho, son of Kaharau, ancestor of Ngati Tautahi
    - Hineamaru, daughter of Torongare, ancestor of Ngati Hine[119]

Many other ancestors could be mentioned, and claimants will be able to provide further information to the Tribunal, and correct any errors in the above summary.

The hapu which sprang from these early ancestors were based on a band of territory stretching from coast to coast. In 1770, the Nga Puhi hapu were clustered in the south-east at Waiomio (Ngati Hine), the southern, inland Bay of Islands, (the Kaikohe and Pouerua regions), and at Hokianga. Only Ngati Rahiri, it seems, had significant rights to the north (in the Waitangi district), although it is not clear to me at what point Te Hikutu and Ngati Manu moved into occupation of coastal territory.[120] Te Hikutu were already in occupation of part of the east coast of the Bay, at Whangamumu, at the time of Marion Du Fresne's visit in 1772.[121] Most of the Bay of Islands at this time, though, was occupied by:

- Te Wahineiti;
- Ngati Miru;
- Ngati Pou;
- and Ngare Raumati.

Most commentators describe these four tribes as not belonging to Nga Puhi, although there are differences of opinion about Ngati Pou and Ngare Raumati.[122] Even so, one should beware of always trying to draw neat dividing lines around or between groups. There is evidence that some coastal Bay areas were shared for fishing purposes, especially major fishing spots like the eastern Kerikeri district, and that this resulted in a significant Nga Puhi

[118] I note that this list of ancestors is not to be taken as listing an order of birth or seniority, and that claimants will provide further information about it in their evidence

[119] For additional information on these ancestors, see especially: J Sissons et al, *The Puriri Trees are Laughing: a Political History of Nga Puhi in the Inland Bay of Islands*, Auckland, 1987

[120] ibid, p 81, & passim

[121] A Ballara, *Taua: 'Muskets wars', 'land wars' or tikanga?*, Auckland, 2003, p 175

[122] ibid, pp 171-176, & Sissons et al, p 81; cf to Hohepa, B25(a), pp 13-14, 19-28, & K Shawcross, 'Maoris of the Bay of Islands, 1769-1840: a study of changing Maori responses to European contact', MA thesis, University of Auckland, pp 244-246

coastal presence in the late eighteenth century, no matter who was living in the main pa.[123] Also, as noted above, Te Hikutu were in occupation of part of the east coast of the Bay.

From their southern and *largely* inland base in the late eighteenth century, Nga Puhi gradually conquered the rest of the Bay of Islands in the period from 1770 to 1826. Three waves of conquest and expansion are covered in some detail by Jeffrey Sissons, Wiremu Wi Hongi, and Pat Hohepa in their collaborative work, *The Puriri Trees are Laughing*. This book also explores the broad distribution of the best-known hapu in the 1810s, at the time of the first major missionary visits to the interior. Readers are referred to that work, and to Angela Ballara's account in *Taua*, for the detail of what has been published about the Nga Puhi conquest and occupation of the Bay of Islands. I note, however, that for some tribes (and for Ngati Hine in particular) the Wi Hongi manuscripts do not necessarily represent their traditions and point of view.[124]

In the 1770s, the northern alliance hapu invaded and conquered the Waimate and Kerikeri districts. Led mainly by the rangatira Auha (Hongi Hika's grandfather) and Whakaaria, they drove out Ngati Miru and Te Wahineiti. This, according to the published sources available to me, was a complete conquest.[125] Claimants may need to address that point.

In the 1790s, Kaitara, Matahaia, and Whaingaroa led the southern alliance hapu in the invasion and conquest of the Taiamai and Waitangi districts. According to some accounts, they drove out Ngati Pou, though some may have been allowed to remain in occupation – this point was disputed in the Native Land Court, and information is required from claimants.[126] Gill Parker, the great-grandson of Hare Matenga, informed me that Ngati Pou can affiliate as a hapu of Nga Puhi Nui Tonu, and that they returned under the rangatira Kaitara's protection, but changed their name to Ngati Korohue. Kaitara was married to a woman of Ngati Pou.[127]

At the same time, other areas of the Bay of Islands came under the control of Nga Puhi hapu, although the published historical accounts do not provide details as to how this happened. Native Land Court minute book research and claimant oral histories should provide the necessary information. In any case, at some point before 1800, some of the southern alliance hapu took control of parts of the coastal bay – Paihia, Kororareka, and the Waikare region. European sources show that these hapu were in occupation and control by the time of Te Pahi's visit to New South Wales in 1805, and Samuel Marsden's journeys in 1815.[128] Ngare Raumati, however, remained in control to the east of them.

Also at some point before 1800, hapu of the northern alliance took control of the Rangihoua and Te Puna districts of the coastal bay. Again, European documentary sources show that these people were in occupation and control at the date when one of their principal rangatira, Te Pahi, visited Governor King in 1805, and when Marsden recorded the details of his visit in 1815.[129]

The next major conquest and redistribution of tribal interests took place in 1826, when the northern alliance conquered Paroa, Te Rawhiti, and the eastern coastal islands, driving out the last non-Nga Puhi tribe at the Bay, Ngare Raumati. Sissons, Wi Hongi, and Hohepa give the following list of hapu as involved in the main attack on Ngare Raumati in 1826:

- Patukeha – with its chief Rewa (sometimes called Manu), who were living at Kerikeri.

[123] see examples in Sissons et al, pp 108, 120
[124] Personal communication from Ngati Hine Alliance representatives, 14 July 2003
[125] Sissons et al, pp 88-106; Ballara, *Taua*, pp 171-173
[126] Sissons et al, pp 108-122; Ballara, *Taua*, pp 173-176
[127] Personal communications from Gill Parker, 15 July 2003, 12 October 2004
[128] Sissons et al, pp 13-49
[129] ibid

- Ngati Rehia – led by Titore, grandson of Toko, who were living below Whakataha pa, at or near the village of Titore's uncle Tareha.
- Ngati Rahiri – led by Te Kemara and his nephew, Marupo, who were living at Pakaraka.

These leaders were joined by Hakuene of Ngai Tawake, grandson of the murdered Whakahoe (whose murder was one of the take for the war), and by Rewa's brothers, Wharerahi and Moka.[130] Again, some Ngare Raumati may have remained in occupation with the new residents, as they later advanced claims in the Native Land Court.[131]

By 1826, therefore, over a period of about fifty years, the two major groupings or alliances of inland Nga Puhi hapu had conquered and occupied the entire Bay of Islands. The distribution of hapu after these conquests, and their respective spheres of influence, will be discussed further in the next section of this chapter.

9 The Tribal Landscape, 1826 to 1840

9.1 Looking Outwards from the Bay of Islands

It is important to emphasize the intense outward-looking orientation of Bay hapu in the first half of the nineteenth century. Having conquered most of the Bay of Islands by 1800, and all of it by 1826, they nevertheless focussed attention on fighting groups outside the area in the 1820s and 1830s. Most historians agree that a temporary superiority in the possession of muskets led to the almost constant campaigns in the south, as well as Nga Puhi's unprecedented degree of success. It should be recalled, however, that Nga Puhi had been fighting Ngati Whatua of Kaipara and elsewhere fairly intensely before the arrival of muskets, and had been involved in major waves of military expansion in the second half of the eighteenth century. The conquest of Bay territories from 1775-1795 was much more critical to Nga Puhi than the later so-called "musket war" taua in the south. At the same time, those taua did influence the landscape of tribal and hapu alliances and empathies during the Crown's early administration, right through to the rise of the Kingitanga and the wars of the 1860s. It was one critical factor in the Nga Puhi attitude towards the Kohimarama Conference, Grey's runanga policies, and his war with the Kingitanga.

Balancing the scales against Tainui, Hauraki, Ngati Whatua and others, however, was in some ways less important than the tensions between the "two sides" of Nga Puhi, which (in this period) manifested in strong mutual hostility. This had an impact on events in the 1840s. Although the Hokianga and Bay peoples could and did combine to fight common enemies, they also fought each other in the 1810s and 1820s. According to Shawcross, the Bay hapu at this time were allied to the Kaitaia-based Te Rarawa, as well as those Te Rarawa living at Hokianga. But though they may have thought of themselves as 'all one people' when fighting Ngati Whatua, there was a very strong hostility between some Bay and Hokianga hapu. In 1812-14, Hongi Hika led his allied hapu in attacks on Hokianga people, who made at least one attack in response. In 1818 Hongi was again fighting with Hokianga people, and in 1821 Tareha, one of the other northern alliance leaders, led a taua against Hokianga to settle a number of outstanding Bay of Islands grievances. This conflict spilled over into the war against the government in 1845. According to Shawcross, several Hokianga chiefs (whose hapu had been hostile to those Bay groups associated with Hongi) 'were to be quick to join the British Government in a war against their old Bay enemies'.[132] As discussed below in chapter 7, these "internal" tensions were certainly relevant but their importance can be

[130] ibid, p 131
[131] ibid, p 145
[132] K Shawcross, 'Maoris of the Bay of Islands', pp 197-200

overstated. A rangatira like Tamati Waka Nene, for example, saw himself as a leading man in both regions in the 1840s, and for all Nga Puhi hapu, and competed with Heke to assume the former leading role of Hongi Hika.

The accidental death of an important Bay of Islands chief, Whareumu, united all the Bay tribes behind Hongi in an attack on Hokianga in 1828. Shawcross argued that Hongi's people, who were traditional enemies of Whareumu and the southern alliance, felt greater hostility towards Hokianga than their own Bay relatives. In response, the whole of Hokianga united to resist the Bay peoples. There appeared to be a major political cleavage between the two sides of Nga Puhi in the decades leading up to 1840, stronger than any divisions within the Bay itself.[133] Ballara, on the other hand, agreed that Hokianga and the Bay united against each other in 1828 but sees it as an 'aberration' in their usual relations. It was a 'war that nobody wanted' and therefore the missionaries were brought in and peace quickly and fairly easily restored.[134]

Claimants will need to comment on the accuracy of this perception, which is (as noted) important to the alignment of hapu in the northern war of 1845. It should be remembered that these wars between Hokianga and the Bay, in a sense internal wars, were marked by restraint and few fatalities. Also, according to Wyatt, the wars themselves are to some extent beside the point. The key significance of the musket, she argues, is not what was done with it but the scramble to obtain as many as possible, which became a key determinant of trade with Europeans and the land transactions that eventually became known as the Old Land Claims.[135]

The taua to southern areas were not, for the Bay of Islands hapu, wars of conquest and settlement. To the north, however, they did seem interested in taking new territory and establishing new areas of occupation. In this respect, the battles here were a continuation of the campaigns to conquer Waimate, Kerikeri, Taiamai, Waitangi, and the eastern coastal Bay (Paroa and the islands), rather than raids in the pursuit of mana, utu, and captives to support the burgeoning trading economy of the Bay. Both forms of warfare tailed off by the mid-1830s, when the emphasis was on peace and a more inward-looking orientation, and the hapu landscape of the Bay of Islands became more stable.

The northern alliance of hapu fought Ngati Pou of Whangaroa from time to time in the first quarter of the nineteenth century. The climax of this warfare came in 1827, when a section of Bay Maori led by Hongi Hika conquered Whangaroa and killed or expelled its Ngati Pou inhabitants (although how thoroughly is not addressed in this report).[136] After this conquest, Hongi himself and some of his followers went to 'live on the Whangaroa territory of the defeated tribe'. Thus, the conquest of Whangaroa added a further series of homes and lands to the territory of the northern alliance. Some Ngati Pou survivors fled to the protection of Hokianga relatives, where they added considerably to the tensions between the "two sides", and from whence they helped the British Government against their Bay enemies in 1845.[137]

Finally, in 1823, one of the leading Kerikeri chiefs, Te Wera Hauraki, moved with some of his immediate followers to take up permanent residence at Mahia in Hawkes Bay. They settled on gifted lands, later awarded to them by the Native Land Court. It is not known to the present author whether these people also retained their rights and associations at the Bay of Islands, or whether this was a more permanent withdrawal. Claimants will be able to

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[133] ibid, pp 200-202
[134] A Ballara, *Taua*, p 200
[135] P Wyatt, 'The Old Land Claims and the Concept of "Sale": a Case Study', MA thesis in History, University of Auckland, 1991, pp 7-8, 46-58
[136] A Ballara, *Taua*, pp 198-199
[137] K Shawcross, pp 195-197, 212

provide further information on this point.[138] It should be noted, however, that this apparent total withdrawal was cited as evidence of a permanent alienation of land, in regard to the missionary transaction or "sale" that preceded it.[139] George Clarke, on the other hand, maintained that Te Wera sent his son back to the Bay of Islands to 'take possession of his property', and that their rights were 'universally admitted'.[140]

Thus, looking outwards, the Bay of Islands hapu acted fairly jointly to attack Ngati Whatua, Hauraki, and other tribes to the south, and to engage in a comparatively restrained and controlled conflict with their Hokianga kin. The northern alliance, led by Hongi Hika, conquered and occupied Ngati Pou lands to the north at Whangaroa, but I make no comment on the ultimate effect of this on Ngati Pou and their customary rights.

9.2 Looking Inwards: main areas of association in the Bay of Islands

This section provides some preliminary information on the hapu landscape of the Bay of Islands in the two decades preceding the signing of the Treaty. It divides the Bay into sub-districts, usually referred to by the Maori-place name most used in conjunction with an area, and lists some of the hapu associated with that area. Readers need to recall the multi-layering of rights within and between hapu, and that migratory groups could have rights in distantly separated areas. Also, it needs to be remembered that hapu exercised different types of rights according to the nature of a resource or the depth of their association with a place or a kin group. The main areas of association and resource-use have been suggested for principal hapu groups. This is based largely on the work of Sissons, Wi Hongi, and Hohepa, and on Kathleen Shawcross' thesis in particular. These authors drew their information from European observers of the time, as well as Maori oral traditions, written material, and Land Court minute books. I expect that claimants will have different perspectives and more detailed information, which they should make available through their own research. Nothing in this section should be taken as suggesting exclusive rohe, boundaries, or anything other than a broad statement of main areas of association, as observed at the time.

9.2.1 Internal war and the cession of Kororareka

The most important disruption to the post-1826 occupation patterns took place as a result of the so-called 'Girls' War' in 1830, which led the leaders of the southern alliance to cede (tuku) Kororareka to the leaders of the northern alliance. There had been previous armed clashes between the northern and southern alliances but none so important or with such far-reaching consequences. Most of the land in the Kororareka district was poor, sterile clay, and it was mainly a fishing settlement until its importance increased enormously when it became the principal trading port of the Bay of Islands.

The war was precipitated by some fighting and cursing at the Kororareka beach, between four Maori women (current and former lovers of Captain Brind). The whaler had discarded his first set of women (members of Ngati Manu and relations of Te Morenga) in favour of some younger girls, related to Rewa and Hongi Hika.[141] Thus, insults offered here had the potential to pull in the whole of the northern and southern alliances if matters were not defused. Ballara points out that Hongi (now dead) and his allies had been trying to find a

[138] ibid, p 212
[139] Minutes of Evidence, House of Lords Committee, 1838, GBPP, vol 1, pp 16-17, 50
[140] G Clarke to Colonial Secretary, 17 October 1843, GBPP vol 2, Appendix 9, p 359
[141] S P Smith, *Maori Wars of the Nineteenth Century*, Christchurch, 1897, pp 422-424

way to take the valuable trading centre of Kororareka from the southern alliance since 1826, and sees this as the main purpose of the war, even though it appeared to happen somewhat by accident rather than by successful conquest.[142] Wyatt also argues that the conflict was focused on the competition for mana, one dimension of which involved the control of trade with Europeans, and that Brind's involvement was barely relevant.[143]

The war, as often in the case of Maori battles between near relatives, was marked by considerable restraint and several efforts to make peace. To some extent, the northern alliance combatants were led by Ururoa (also called Rewharewha) of Whangaroa rather than the principal Bay leaders. Rewa himself remained relatively neutral during the conflict (even though he ended up being its main beneficiary). Ngati Manu were outnumbered three-to-one, although it looked at one point as though Te Morenga would become involved and the war might spread to the full range of hapu involved in the respective alliances. Attempts to make peace were aborted when one of the leading northern chiefs, Hengi, was killed in battle on the beach. The gravity of events, and the possibility of pulling in many more combatants, was immediately increased. Ngati Manu placed a tapu on the beach, burnt their homes at Kororareka, and withdrew to the Kawakawa River. Eventually, the Kororareka people ended up at Otuihu with Pomare II. When peace was finally arranged, Kororareka was ceded (by tuku) to the northern hapu as payment for the death of Hengi. The latter's sons were not entirely satisfied with this (indeed, they do not seem to have been the primary beneficiaries), and sought utu in further wars to the south.[144]

After the cession of Kororareka in 1830, about 400-500 of the Ngai Tawake and Ngati Rehia took up residence there. The new occupants included all of the leading Ngai Tawake chiefs, Titore, Rewa, Tareha, Wharerahi, and Moka. Tareha's eldest son, Te Akiro (Hakiro), who achieved some prominence at the Bay in the late 1830s as the leader of the 'first "king movement"', also went to live there.[145] Wai of Whangai may have lived there from time to time too. With the exception of Wharerahi, all the leading Ngai Tawake chiefs seem to have continued to cultivate their old grounds around Waimate in the 1830s as well. In other words, for most of the new inhabitants, this was simply one more place in which they lived from time to time and exercised rights, with the focus at Kororareka being trade and fishing. Wharerahi, on the other hand, began to look to the east instead of the west, and had his cultivations (and sometimes lived) at Paroa from 1831 onwards. These coastal lands had been conquered by his hapu from Ngare Raumati in 1826. This was an important reconfiguring in the right-holding patterns of the Bay.[146] By the 1840s, Rewa and Moka were also being referred to with Wharerahi as Te Rawhiti chiefs.

The cession of Kororareka was not necessarily seen as final by Ngati Manu. Ballara mentions that war nearly broke out again in 1832 and 1834, as the Otuihu people sought a way to recapture their principal trading asset. At the same time, Pomare was developing Otuihu itself as an alternative anchorage for trading vessels. In 1837, war finally did break out, over (so the visiting Hobson recorded) the possession of Kororareka. Pomare did not achieve his aim of retaking that port. The war was indecisive, the disruption to trade was high, and the result was a peace with no important concessions by either side.[147]

In the meantime, however, pressure may have been growing for a peaceful change in occupation. Shawcross suggests that the pressure of the quickly growing European population

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[142] A Ballara, 'Warfare and Government in Ngapuhi Tribal Society, 1814-1833', MA thesis, University of Auckland, 1973, p 245
[143] P Wyatt, 'The Old Land Claims and the Concept of Sale', pp 24-56
[144] J Lee, *The Bay of Islands*, Auckland, 1983, pp 154-160; see also S P Smith, passim, for the southern campaigns
[145] For more detail on Hakiro and this "king movement", see chapter 5
[146] Shawcross, p 241
[147] ibid, pp 202-203

had become so strong that the Ngai Tawake living at Kororareka all moved permanently to the former Ngare Raumati lands in late 1840 or 1841. They thus left Kororareka mainly to the Europeans, although she notes that they did not 'sell' the abandoned village area to them. An abandonment so soon after conquest is significant in customary terms, but Shawcross probably misunderstood the situation. The new Maori 'owners' continued to visit from time to time for trading purposes. Some lived in the houses of "their Pakeha" when in residence. It would be important to know whether they also continued seasonal fishing from their lands there. Claimants may be able to provide information on this point. In any case, Kororareka was never going to be a place for year-round residence, as it was not a favoured site for cultivation.

To the immediate south of Kororareka, Ngai Tawake did not occupy Pomare's pre-1830 settlement at Matauwhi, which had not been ceded to them, but nor did Pomare. It remained unoccupied (although still controlled by Ngati Manu, now based at Otuihu).[148] This area may have formed a buffer zone between the northern and southern alliances.

These changes in right-holding led to a complex situation for both Maori and the incoming settlers to deal with when it came to defining rights for transferring to (or in some versions sharing with) Pakeha. Some settlers occupied on the basis of transactions with Kiwikiwi and other rangatira prior to the Girls' War. The exact nature of these transactions, and whether they would be allowed to stand, became a vexed issue in the 1830s.[149] Nor were matters necessarily more straightforward for those settlers who occupied after 1830, on the basis of transactions with the new Maori right-holders. Ngati Manu and Ngati Hine leaders challenged the Old Land Claimants in the 1850s, and sought what European observers stigmatised as a "second payment" for land which the latter felt had already been bought from its rightful owners.[150]

The Crown had to face such issues head-on after 1840. As an illustration of how such pre-1840 matters became Treaty issues between Maori and the Crown, it is timely to provide here a brief example of disputed rights arising from the Girls' War and the resultant changes in right-holding. In 1854, towards the end of his life, Kawiti urged his relations and the former occupants of Kororareka to press the Crown for payment for their rights at that place, already ceded to settlers by those who themselves received the cession of 1830. Although Kawiti's name and mana were used in support of the claim, the government believed that the main leader was in fact the Ngati Manu rangatira, Hori Kingi Te Tahua.[151]

A large hui was held at Kororareka, with haka and the flaunting of weapons, at which the proposition was put forward that the conquerors had had their 'fair share' of the purchase money, and 'the original owners of the soil, were now *at last* entitled to receive payment, and that they intended to press their demand upon the Government, without interfering with the rights of the Natives who sold to the Europeans'. Feeling that the Crown had set a precedent when it paid for land in instalments (thus apparently more than once) at Whangarei, these chiefs proposed that the Governor would now satisfy them for what they considered to be their unextinguished rights. They argued that their rights still existed despite:

- transactions with settlers prior to 1830;
- cession to other Maori in 1830, who also had acknowledged rights; and
- on-sale (as one might call it) by those Maori to settlers after 1830.[152]

[148] ibid, p 242
[149] J Busby to A Busby, 17 November 1834, Letters to James Busby, 1830-1866, & Letters from James Busby to his brother Alexander Busby, 1830-1839, qMS-0347, Alexander Turnbull Library. See also chapter 4, sections 4.2 & 4.4.
[150] *The Maori Messenger/Te Karere Maori*, vol 1, No 1, 1 January 1855, p 7
[151] HT Kemp to Colonial Secretary, 26 July & 28 August 1854, IA 54/2479 & 54/2464
[152] ibid

It is notable that these groups still recognised the cession and the rights of those to whom it had been made in 1830. Kororareka had fallen to Kawiti in 1845, taken from the settlers whose occupation was forcibly ended, and its Ngai Tawake protectors did not fight for it (or them). But Rewa's people were discouraged from defending the town by the Police Magistrate – the Government was interfering between Maori and "their Pakeha", and the world was no longer entirely a customary one. The northern war was not fought for traditional purposes, except in the general sense of restoring balance with the Crown and settlers, and its engagements do not appear to have given rise to changes in customary right holding. The taking of the town had never been an object, and the settlers were allowed to take away much of their property, and to resume occupation later. Also, Kawiti shared leadership of the assault with Heke, a northern alliance leader but one whose rights at Kororareka had been resisted by Ngai Tawake. The Hokianga people did not press *their* claims in 1846-47, and Kawiti's people similarly did not claim to have established rights at Koroareka by conquest in 1845. They based their position instead on custom rights as if there had been no interruptions from the northern war.[153] The significance of that point will be explored in chapter 7 below.

Here, we should note that Government officials cast Kawiti's and Hori Kingi Te Kahua's claims as troublemaking on the part of Maori who had been involved in the northern war, and enlisted the aid of their ally Tamati Waka Nene to help resolve the situation. The method of inquiring into the claim was to bring some of the senior chiefs into the Resident Magistrate's office and have them state their case in front of Nene and other government supporters, who argued against it. Inquiry was then made of the 1830 victors, who informed the government that the Ngati Manu claim to still have rights was incorrect.[154]

The government land purchase officer, Kemp, concluded: 'The Natives who sold the land in the first instance to the Settlers, have already expressed their disapproval of the demand made by George King and his followers, and indeed, the claim appears to be as unjust, as it is unfounded and absurd.'[155] Rounds of meetings followed, to enlist the support of claimants against counter-claimants, and in the end the Waikare and Kawakawa chiefs allowed the claim to lapse, rather than pursue it by force of arms. Kemp felt that in doing so they acknowledged that they had not had a valid claim in the first place.

Such matters were complex. The cession of Kororareka was almost 25 years old in 1854, but they had been an unsettled 25 years, in which there had been further battles and the 'conquerors' had withdrawn (according to Shawcross) relatively soon after to occupy other lands. Disputed areas nearby, such as Matauwhi, remained unoccupied by either party. Both sides had placed settlers on the land. A large number of the Old Land Claims at issue between Maori and the Crown in the 1840s and 1850s were located there. The question of who had valid rights that needed to be extinguished before a full alienation could take place, is one that is both complicated and fraught with potential conflict (both then and now). One of the key issues in this report will be the way in which the Crown investigated and dealt with such claims, with reference to the complex history of Maori occupation and rights, as illustrated in this section. Was it really fair to say, as Kemp did in 1854, that the claims of Hori Kingi and others were unjust, unfounded, and even absurd? How would such claims be perceived today? The question of these Old Land Claims at Kororareka will be considered further below in chapter 4 of this report.

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[153] See Chapter 7, section 2.2 for Beckham's prevention of Ngai Tawake from defending the town, and section 3.2 for the Hokianga chiefs' relinquishment of their claims. See Chapter 4, section 4.3.2, for Ngai Tawake's resistance to Heke's claims at Kororareka.
[154] ibid
[155] HT Kemp to Colonial Secretary, 26 July 1854, IA 54/2464

9.2.2 Main areas of association

In the mid-eighteenth century, the key centres of Nga Puhi occupation were around Kaikohe (especially Pakinga and Parahirahi) and in the Pouerua/Pakaraka area, stretching east to Waiomio and the lands of Ngati Hine. From these bases, the Nga Puhi conquered large parts of the Bay of Islands in the final quarter of the eighteenth century, as described above. They then expanded further to the north and east in the nineteenth century. Particularly important to note are:

- the conquest of Waimate and Kerikeri by the northern alliance in the 1770s;
- the conquest of Taiamai by the southern alliance in the 1790s;
- the conquest of coastal Bay areas by Ngati Hine, Ngati Manu, and Te Hikutu, which took place some time before 1800 (perhaps well before);
- the departure of Te Wera Hauraki and his people in 1823;
- the conquest of the south-eastern Bay by the northern alliance in 1826;
- the conquest of Whangaroa by the northern alliance in 1827;
- and the Girls' War and the cession of Kororareka to the northern alliance in 1830.

Thus, from being a southern people with inland centres (apart from Ngati Hine and Te Hikutu on the east coast) in the mid-eighteenth century, Nga Puhi came to conquer and occupy the whole of the Bay of Islands by the 1820s.

The patterns of right-holding created by these conquests were relatively recent, therefore, when Maori entered into pre-Treaty transactions with settlers. Also, the lifestyle and resource-use of Maori was peripatetic, based on abandoning old cultivations and breaking in fresh ground for new ones every few years, temporary settlements for fernroot-digging and fishing, and moving between inland forests and the coast on a regular cycle. Defensive, hilltop pa were available for permanent occupation. There were layered rights in Maori society, and different groups could and did share land and resources from time to time (such as Ngawha or Lake Omapere). Some regions were more shared than others; Kerikeri and other places used primarily for fishing, seem to have fallen into this category. Other areas or resources were exclusive, and each hapu (or sometimes groups of hapu) had their particular centres of occupation and resource-use. The nature of the rights acquired and exercised, the degree of exclusivity, and the distribution of hapu on the ground, need to be explored further through claimant evidence and more detailed research.

According to Hohepa, there are over 136 Nga Puhi hapu. Only a few of those have been mentioned, and claimants will need to provide further information, and may wish to correct or alter the conclusions drawn here. In the meantime, according to the work of Sissons, Wi Hongi, and Hohepa, and the research of Shawcross, the main areas of association at the Bay of Islands by 1840 were broadly as follows:

- Rangihoua / Te Puna – Te Hikutu; Ngati Rua

- Te Tii Mongonui – Ngati Rehia

- Kerikeri – Ngai Tawake; Ngati Rehia; Patukeha (& others from time to time)

- Waitangi/Pakaraka/Pouerua – Ngati Rahiri; Ngati Kawa; Te Mataruhuruhu; Ngati Tautahi; Ngati Rangi; Ngare Hauata; Te Uri Kapana

- Waimate – Ngai Tawake; Ngati Tautahi; Ngati Rehia; Te Uri Taniwha

- Mawhe – Lake Omapere was shared by many hapu
- Taiamai, Pukenui, & Tautoro – Ngati Hineira; Te Uri Taniwha (of Ngati Hineira); Ngati Rangi; Ngare Hauata; possibly some Ngati Pou
- Kaikohe – Te Uri o Hua; Ngati Tautahi; Ngati Whakaeke; Ngai Tawake (to the south)
- Te Haumi, Kaipatiki, Whangai, & Paihia – Ngati Rahiri; Te Uriongaonga; Ngati Hine; Te Roroa
- Kawakawa – Ngati Hine; Te Uriongaonga; Te Roroa; Ngati Manu (also sometimes referred to as Te Uri Karaka)
- Matauwhi south to Waikare – Ngati Manu; Te Kapotai
- Kororareka (after 1830) – Ngai Tawake; Ngati Rehia & possibly others
- Waiomio – Ngati Hine
- South-eastern Bay (Paroa, Te Rawhiti, & the islands) – Ngai Tawake; Ngati Rehia; Ngati Rahiri; Te Hikutu; possibly some Ngare Raumati[156]

Having described the claims and some broad patterns of conquest and occupation, it is now necessary to turn in the next chapter to another important element of the landscape; the pre-1840 settlers, their impact on Maori society and culture, and their sharing of land and resources with their hosts-cum-trading partners.

[156] This list is drawn from material throughout Sissons et al & Shawcross – the reader is referred to those works for the detail

Chapter 3 Contact and Culture Change, 1769-1869

This chapter considers contact between Maori and Europeans before 1840, and the degree to which Maori culture changed and adapted as a result of that contact. It also examines the issue from the perspective of social change up to the 1860s, which sheds light on how far Maori social and cultural structures persisted after the initial period of intensive contact. During the presentation of evidence in other Tribunal inquiries, some emphasis has been placed on the Bay of Islands and the nature of contact and culture change in that district. In both the Muriwhenua and Mohaka ki Ahuriri inquiries, for example, the Crown used the history of culture change at the Bay to make points about other regions.[1] In doing so, the Crown put forward an argument that Maori at the Bay of Islands had undergone fundamental shifts in their culture and social practices before 1840. As a result of these shifts, Maori both:

- understood what Europeans meant by land sales; and
- adopted that understanding as their own.

The underpinnings of this adoption of European modes of transacting in land, it was argued, were changes in ideas and practices so fundamental that they transformed Maori society and culture. In the case of Muriwhenua, the Tribunal did not accept the Crown's arguments for that particular district, where contact was in any case less intensive and change, as a result, was less far-reaching.[2]

Due to the nature of claims against the Crown and its position (as articulated so far in other inquiries), discussion of culture contact and culture change in this chapter will focus partly on media and processes of exchange between the two peoples. A critical question for the historian of claims is the degree to which Maori views and laws about what constituted property, and how property could be exchanged, had altered in the period of the pre-1840 land "sales" and afterwards. This was critical to the sharp divergence between Crown and claimant historians in Muriwhenua when they considered the history of the Bay of Islands. The divergence on land "sales" itself will be considered in more detail in the next chapter. For now, the focus is on the nature and overall degree of acculturation at the Bay of Islands.

One reason for this broader focus, as an initial proposition, is the Muriwhenua Tribunal's conclusion that Maori would only have changed their conception of land transactions if they had made fundamental changes to their society and its laws. It is worth quoting the Muriwhenua Tribunal's report in full on this point, as it explains the need for a close analysis of culture-change at the Bay of Islands:

> Essential to understanding the issues affecting the early land transactions is a fact so obvious as to be easily overlooked: that at all times before, during, and after the land arrangements in question, Muriwhenua Maori had their own worldview. They maintained a distinctive social and economic order, which had evolved through a millennium of experience and which was settled and regularly maintained. Accordingly, they enjoyed an independent polity and had no reason to think that, when they entered into the transactions, those transactions would be seen on other than Maori terms or would somehow threaten their independent existence. Likewise, and contrary to the assumptions of some of the early Europeans, Muriwhenua Maori had no cause to consider that their ancestral laws should be abandoned. Although the hapu were later obliged to accept Western law, their own traditions and values were not forsaken and survive today.
>
> In the same way, their independence and freedom from outside domination were things they could treasure. It was natural for them to assume that their own laws and standards would continue without let or hindrance. Indeed, they knew no other law or standards. Whatever may be said about the Treaty of Waitangi and the proclamation of sovereignty as introducing a new legal regime, no such

[1]Closing Submission of the Crown, vol B, Wai 201 X54, pp 15-30
F Sinclair, *Issues Arising From Pre-Treaty Land Transactions*, Wai 45 I3
[2] Waitangi Tribunal, *Muriwhenua Land Report*, 1997, pp 30-52

> regime could have been given serious thought until it could be seen to be established in fact and to be working on the ground. Moreover, throughout the crucial period from first contact to 1865, Maori were by far the majority population in this district. It was their way that prevailed, and it must have seemed to them that their arrangements with Europeans would be determined according to no other laws and customs than their own.
>
> The fact that Maori had their distinctive and time-honoured laws, policies, and methods of doing business needs constant emphasis…The existence of Maori law also needs stressing in the light of official presumptions of the time that Maori had no law worth considering, and therefore transactions could be assessed in European terms alone. Elements of that prejudice survive even today. Outside the academic community, it is still asked, for example, at what point Maori understood the meaning of 'sales', as though on receipt of that intelligence, they would have ceased to act by their own customs and blithely accept those of another country. It needs still further emphasis because, both then and now, a little knowledge of Maori matters has been seen as sufficient for Europeans to make large judgements on Maori affairs. And, commonly, the presumption that indigenous culture has not survived, despite current proof of its resilience, still influences the view that all things should be measured in assimilationist terms. Even now, it is assumed that the age of Maori contracts has long passed, when in fact they are still maintained.
>
> The continuing existence of Maori law is not negated by the lack of informed settler opinion about it…Despite changes in the form of religion, the nature of the leadership, the protocols for trade and many other areas, Maori society remained distinctly Maori. Behind a wealth of new trappings, the underlying value system retained its distinctively Maori flavour.[3]

One test of whether or not acculturation had happened in the Bay of Islands by 1840 is the laws by which Maori governed their communities, including their relations with the Pakeha whom they had invited to settle among them. In this respect, one of the institutions which most troubled settlers, missionaries, and later the government was the taua muru, the institution by which disputes were resolved and offenders "stripped" of property, or permitted to give a hakari or some other recompense to the community for infringement of tapu or loss of mana. Taua muru could sometimes result in fighting within communities, or even war between groups. It was a mainstay of Maori social organisation. It is my contention that Nga Puhi communities continued to govern themselves largely through their own institutions and customary law, both before and after 1840. This was still the case in 1869 as it had been in 1769. The significance of the continuation of Maori law after 1840, of which taua muru were an example, will be explored in section three of this chapter. The ultimate purpose of such a study is its significance for pre-1840 land transactions.

A focus on "exchange", on the other hand, would include the exchange of:

- Knowledge (useful arts, literacy)
- Ideas (religious, cultural)
- Goods (moveable property)
- Services (labour)
- Land ("real" property – the subject of the next chapter)
- People (marriage, prostitution, slaves, clients/patrons – settlers as the property of chiefs)

Exchange of these six key "commodities" dominated early contact and culture change at the Bay of Islands in the decades before the signing of the Treaty.

In the opening section of this chapter, I will outline the growth of settlement and trade, and the opportunities and practices of exchange. In the second section, I will consider more detailed examples of change in terms of material culture, religion and ideas, social and political organisation, the economy, and modes of communication. After this more detailed analysis, it should be possible to reach initial conclusions about the degree and significance of change at the Bay of Islands by 1840. In the third section, I then explore the decades after 1840, to consider whether there is evidence that a fundamental shift in cultural and social structures had in fact occurred before the proclamation of sovereignty.

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[3] ibid. pp 1-4

1. Modes of Contact and Exchange

The history of culture contact at the Bay of Islands, and the growth of settlement and trade, has been well rehearsed in secondary sources. In particular, the reader is directed to Jack Lee's book, *The Bay of Islands*, and Kathleen Shawcross' thesis, for more detailed accounts. Very recently, Dr Angela Ballara published a new history of Maori warfare in the period 1800 to 1845, which also considers the degree of culture change, adaptation, and accretion in this period. More generally, scholars like Belich, Salmond, and Metge, while not focusing on the Bay per se, have explored themes of contact and culture change. Finally, the *Muriwhenua Lands Report* gives one Tribunal's perspective on the nature of change in pre-1840 New Zealand. It is not necessary here to do other than summarise the history of contact, while exploring in some detail the agencies and processes of exchange that it entailed.

1.1 Ship Visits and the Development of Trade

1.1.1 First contact – Cook and Marion du Fresne set a pattern

In November to December 1869, Captain Cook's Endeavour visited the Bay of Islands. This was the first European contact with the peoples of the Bay, and it involved both cultural misunderstandings and the beginnings of barter and trade between the two peoples. At first, argues Shawcross, the Bay Maori thought that they were engaging in traditional gift-exchange, which involved the passage of time between reciprocation, and the use of hints and indirect negotiation to establish what would be acceptable as items of exchange. An interior hapu might bring some kumara, forest products, and other valued resources to the coast, for example, or alternatively present them to visitors for them to take away with them. Some months later, a return visit by the coastal hapu might involve the gifting of dried fish and other coastal delicacies. Reciprocation (utu), preservation or enhancement of mana, and the acquisition of goods that the people sometimes could not supply for themselves, were the goals of this Maori form of trade. The leading people in the process were the rangatira, who were especially responsible for the delivering of oblique and subtle messages about what the community might desire in return from their hosts/visitors. The practice of hinting at appropriate gifts continued long afterwards. In letters to settlers and officials, for example, Hone Heke hinted at acceptable gifts but stressed that the 'thought' (whakaaro) was with the giver. Captain Irving was asked to come and meet with Heke, and 'with you will rest the thought for some sugar – mau te whakaaro ki te huka'.[4] Major Bridge was invited to Paihia to resolve various land questions with him; 'for you is the thought for some flour Rice and Sugar for us (to enable us) to finish the difficulties of Waitangi'.[5]

From the very first encounter in 1769, the Bay peoples learnt that European goods-exchange followed a different but recognisable model. It was conducted in a crude manner, as it had to be on the beach or boats between people who knew next to nothing of each other's actual goods or language. Communication was possible partly because of the services of Cook's Tahitian travelling companion, Tuapaia, who was able to translate.[6] Maori discovered that their strange visitors expected exchanges to be simultaneous, not necessarily of what appeared to be equal "value", and to involve direct bargaining about what was wanted (so far

[4] Hone Heke to Captain Irving, Paihia, 8 January 1849, IA1, 1849/353
[5] Hone Heke to Major Bridge, 6 January 1849, IA1, 1849/353
[6] A Salmond, *The Trial of the Cannibal Dog: Captain Cook in the South Seas*, London, 2003, pp 116-138

as this was possible through the language barrier). At first, Cook's party thought that the Maori were trying to cheat them when they sought to leave without immediate reciprocation of goods in return for "gifts". Punishment followed on the spot, including the firing of guns, the wounding and even killing of one person, and later the digging up of a tapu kumara plantation. In addition, without actually meaning to, the Endeavour's buoy disturbed a tapu shellfish bed, leading to Maori attempts to remove it without precipitating a violent response. One final element of exchanges needs to be considered. As the visit progressed, the Endeavour's crew sought sexual services from the local population, and this was arranged with due regard to Maori sexual mores. In this Maori-controlled encounter, unmarried girls were made available for relatively private liaisons, in return for the giving of small European trade goods.[7]

In this first encounter, therefore, new patterns of behaviour were developed on both sides. Maori modified their traditional gift-giving exchanges to accommodate European preferences, bringing the transaction more into line with European-style barter trade than had been traditional in the pre-contact economy. They also exchanged services for goods – again, this was not unprecedented, as Maori from particular tribes with unique skills, such as the East Coast carvers of Ngati Porou, would do carving for other tribes in exchange for gifts of great value. What was different was the immediacy of the exchange and the nature of the services.

On the whole, the first encounter between Bay Maori and Europeans leads the historian of culture contact to the following conclusions:

- Maori modified traditional gift-giving to fit into a European model of barter trade. Firth argues that this was no great stretch for the customary model, which was close enough in form and concept for a different type of barter to be recognisable and relatively easy to adopt and adapt.[8]
- Maori discovered that Europeans would exchange goods in return for services, including prostitution.
- The language barrier was not insurmountable for these types of exchange, and no fundamental alteration in the culture of either party was necessary for them to occur.
- Further evidence from Nga Puhi claimants, on the nature of traditional gift-giving and trade, and the ways in which this differed from or was similar to European-style trade, would be very useful.

The second ship visit to the Bay of Islands took place in May 1772. By this time, there had been sufficient contact between the peoples in other parts of the island for news to have reached the Bay that the white-skinned visitors, while in possession of strange taonga, were not atua but human beings like themselves. The second ships were two French vessels, the *Mascarin* and the *Marquis de Castries*, under Captain Marion du Fresne. Already, by the time of his arrival, Bay Maori had confirmed the immense usefulness of the iron implements that they had obtained from Cook, and showed an intense desire for further iron goods and (to a lesser extent) European cloth. For the period until 1815, this desire for iron was paramount in relations between Maori and Pakeha at the Bay. Fish, shellfish, and game (quails, ducks, and wood pigeons), supplemented by kumara, were the main Maori items of exchange for axes, adzes, nails, and fishhooks, but as they became more comfortable with their visitors, there were increasingly daring thefts of iron goods from the ships. Trade items were modified for traditional Maori use once they had been obtained – nails were sharpened and used as wood and even tattooing chisels; red cloth was picked apart and used in traditional weaving, especially in the borders of ceremonial cloaks. Muskets continued to be perceived as

[7] K Shawcross, 'Maoris of the Bay of Islands, 1769-1840', pp 6-55; A Salmond, *Two Worlds: First Meetings Between Maori and Europeans, 1642-1772*, London, 1990, pp 219-234
[8] R Firth, *Economics of the New Zealand Maori*, Wellington, 1959, pp 401-432

mysterious and dangerous things – it was not until around 1810 that Maori began to show a major desire to own and use them.[9]

At first, Maori canoes went out to inspect the ships but showed great fear, until the dropping of presents into the canoes seems to have reassured them of the friendly intentions of the visitors. For a few days, visits were exchanged on board the ships as they anchored off Cape Brett, and eventually Du Fresne sailed into the Bay and anchored off the south-eastern islands, where two shore camps were established. Throughout May 1772, the two parties traded with each other whilst the French crew repaired their ships. Communication seems to have taken place via hand signals and the use of the Tahitian dialect, which had enough similarity to te reo Maori to allow limited communication.[10]

The growth of 'theft' from the ships set another early pattern that was to be repeated in later years. The new people were not part and parcel of Maori society. As such, they were not necessarily subject to its laws or treated the same as a Maori offender might be if the laws were broken. The modification of Maori laws and punishments in their application to the visitors became much greater in the 1820s and 1830s, as will be discussed below. At the time of Marion's visit, however, the beginning of this process worked against the French interests, as they were not protected by the traditional safeguards against theft that were in operation between Maori (both intra- and inter-group).

Shawcross and Firth suggest that theft (something quite different from muru) was fairly rare in Maori society because it had no extremes of wealth and poverty. Those in genuine want could expect assistance from their kin groups, in the form of hospitality and gifts (all to be reciprocated in the future). Ballara demonstrated how hapu or whanau or even individuals could simply leave an area or community (as a last resort) and seek assistance in the form of gifted land or shelter from great rangatira.[11] Theft as a shortcut to obtaining desired goods was punished severely. Slaves could be killed or beaten, a free man would be plundered of all his movable possessions by the relatives of the offended party (if they were friendly); or it could precipitate a war between groups (if there was no tradition of friendly interaction). If it led to this type of war, a person's own relatives were then likely to muru him or her in any case. A weaker group not able to retaliate with force was likely to respond by makutu. Overall, theft was fairly successfully discouraged in traditional Maori society. Shawcross explains the growing theft from the French in May 1772, therefore, as something non-traditional, permitted by a decreased fear of the consequences. It did not, therefore, alter Nga Puhi views about theft from each other, but petty theft of small items from Europeans later became an accepted institution. This was, as noted, part of an approach which modified custom to accommodate the new situation, with its threats and opportunities.[12]

Salmond, on the other hand, finds it harder to distinguish between 'theft' and muru in such cases. With regard to accusations by Cook's men of 'theft' in Tahiti, she points out that the Endeavour's crew helped themselves to fresh water, timber, fruit, and fish, and thus opened themselves up to retaliation.[13] Similarly, Du Fresne's people fished, gathered shellfish, shot birds, felled trees, and took other resources without necessarily realising that Maori had customary rights over such resources and that an equivalent was required. Some apparent theft was also, as Maori later explained, to obtain compensation for violations of tapu of which the French may not even have been been aware.[14]

[9] K Shawcross, pp 56-86
[10] ibid, p 88
[11] A Ballara, *Iwi*, pp 161-214
[12] K Shawcross, pp 94-97; R Firth, *Economics of the New Zealand Maori*, pp 346-348
[13] A Salmond, *The Trial of the Cannibal Dog*, pp 78-79
[14] A Salmond, *Two Worlds*, pp 386, 388-89

In June 1772, the so-called Maori theft escalated to larger, more valuable goods, eventually taking the form of raids. Du Fresne's party retaliated by burning down an empty kainga and kidnapping a chief, who was later released after having been kept in irons, a major violation of his mana and tapu. In addition to this retaliation, Maori traditions record that the French had already offended the Bay peoples by violating tapu places, seizing an "abandoned" war canoe (which was returned), and perhaps most importantly by establishing a camp on Moturua Island, using some Maori whare that were not in occupation at the time. Although welcome as a source of goods, this taking up of occupation may well have been seen as a serious infringement. [15] The most important reason for the attack on the French that followed, however, was probably a very serious violation of tapu that forced retaliation, complicated by conflict between the offended party (Te Hikutu) and the group accompanying Marion Du Fresne at the time of his crime (Ngare Raumati or Ngati Pou). Either Te Hikutu or Ngare Raumati had to take action and restore the balance.[16]

In mid-June, the Ngare Raumati hapu of the south-east Bay launched surprise attacks on the shore camps and on Captain Du Fresne – they succeeded in killing the captain and various other sailors, but not in taking the camps or the ships. The French retaliated by attacking and sacking Paroa pa, and killing many of its inhabitants, after which the kainga of Moturua Island were deserted and the Maori population retreated to their pa. The two peoples avoided each other for about another month, while the French continued to repair their ships, with occasional sporadic encounters and fighting. Shawcross suggests that a large number of Maori fighting men were killed in mid-June 1772, and that Ngare Raumati were seriously weakened by the encounter. Ngare Raumati's relations among the Bay Nga Puhi were also involved or affected.[17] The incident had lasting repercussions in the north. It shaped early hostility to the French, known afterwards as the "tribe of Marion". Te Hikutu were the party offended by Du Fresne's major violation of tapu, whereas the French had allied themselves more closely with the threatened Ngare Raumati (or, as Salmond argues, Ngati Pou).[18] This key encounter in 1772 cast a long shadow and was a potent factor in Nga Puhi relations with the British Crown in the 1830s (see chapter 5).

1.1.2 The decades of minimal contact, 1772-1802

For the next thirty years, there was almost no contact between Bay of Islands Maori and European ships. From 1772-1792, no vessels are known to have been in the vicinity of far northern New Zealand. The sealing and whaling trades in New Zealand waters did not really take off until after 1800. Only one of the ships recorded as visiting the north in the 1790s, made a call at the Bay. Instead, the few ships involved tended to call in at the Thames and trade with Hauraki tribes. The exception was the *Daedulus*, which in late 1793 kidnapped two young men whilst off the coastal Bay. The particulars of this incident, and its impact on the relationship between Bay Maori and the Crown, are described in the next chapter. In terms of trade and contact, however, we need to note here that Governor King of Norfolk Island, who instigated the kidnapping, made presents of potatoes, other plants, and pigs to northern Maori.[19]

[15] K Shawcross, pp 103-112
[16] A Salmond, *Two Worlds*, pp 386-87, 395. Accounts of Marion Du Fresne's visit, collected by John White from Nga Puhi in the 1850s, identified this tribe variously as Ngati Pou and Ngati Wai, while twentieth-century Maori accounts identified the group as Ngare Raumati, whom Salmond calls a Ngati Wai descent group (p377).
[17] K Shawcross, pp 113-123; see also Salmond, *Two Worlds*, pp 359-429
[18] A Salmond, *Two Worlds*, pp 395, 402
[19] K Shawcross, pp 125-136

Cook does not appear to have introduced crops or animals at the Bay in 1769, and although the French planted gardens there in 1772, the use of European plants did not become common amongst Maori at that time. According to Te Pahi's statements to Governor King in 1805, it was the latter's introduction of the potato in the 1790s that led to its rapid spread through the Bay of Islands. Potatoes were reported as common during John Savage's visit there in 1805. Pigs did not take off in the same way. They were rare at the Bay in 1804 but in the following year Governor King gave 26 sows and four boars to Te Pahi, a rangatira of Rangihoua Te Puna, and by 1814 Kendall reported that pigs were common in the Bay. Similarly, maize did not become a popular crop until 1806, when Te Pahi began to grow it at Rangihoua Te Puna. By 1815, most Maori groups at the Bay were growing a little maize, and by the 1820s they were growing much larger crops of it. Some other European vegetables were growing in the wild by this time (especially cabbages), but from 1806 onwards, Maori became interested in growing crops other than just potatoes for trade with Europeans.[20] This laid the basis for patterns of culture contact over the next forty years. There was a revolution in Maori agriculture, resulting in a burgeoning trade with shipping and eventually resident settlers. Basically, from 1802-40, Maori traded food and services (labour and prostitution) for valued goods.

1.1.3 Regular contact, 1802-1840

Every year from 1802, there were ships in northern New Zealand waters, and from 1804, at least some ships visited the Bay every year. From 1807, the majority of vessels in the area appear to have called at the Bay. Most of these ships were whalers, with a few sealers and traders after 1807. Whalers found the Bay a convenient place to replenish their supplies of wood and water. From 1802, they could also buy potatoes and a limited quantity of the vegetables of which King had gifted seed varieties in 1793. From 1805, the Bay was the most popular place for whalers to shelter and replenish casual supplies until more specialised wants could also be met by European traders in the 1830s.[21] The Boyd massacre and the Anglo-American war of 1812 kept ships to a minimum in the 1810s, but whaling visits increased in the 1820s. The growth of American whaling led to a massive increase in ship visits in the 1830s. Flax and timber were not significant in this – food was the main export from the Bay.[22]

In terms of the distribution of contact as between the tribal groups of the Bay, most of these ships traded with Te Pahi and his people in the Rangihoua Te Puna area for the first decade of the century. This rangatira was incorrectly blamed for the *Boyd* massacre, however, and trade became more evenly divided with Ngati Manu at Kororareka in the early 1810s. After that, it was Ngare Raumati's turn to secure the lion's share of commerce, when their south side of the Bay, between the islands and Paroa, became the most popular anchorage. After 1820, however, the focus shifted again to Kororareka, which had a more sheltered anchorage. By 1827 it was the main centre of trade, and in 1830 Marsden even spoke of it as if it were the only place where ships anchored in the Bay.[23]

From 1830, there was a massive increase in the number of ships visiting the Bay, most of them American whalers. Maori had had to supply and service about two or three ships per year in the early 1800s, which grew to about 25 per annum in the 1820s. By the late 1830s, there were well over 100 ships visiting each year, and a small population of Pakeha

[20] ibid, pp 139-142
[21] ibid, pp 147-149
[22] ibid, pp 150, 249-251
[23] ibid, p 252

settlers offering specialised services as well.[24] Some ships in the latter period exported whole cargoes of Maori-grown food, as opposed to taking on supplies like the whalers. As might be expected, this growth in demand produced something of a revolution in Maori agriculture, which in turn affected aspects of culture and social organisation. These effects will be explored in section two of this chapter. In the meantime, it is necessary to add here that the degree of pressure in the 1830s was temporary in nature. The whaling trade declined in the 1840s, and the Bay of Islands' economic boom collapsed at least in part because of it. This exacerbated problems in the Nga Puhi-Crown relationship and contributed to the northern war. The Crown and in particular its customs duties were blamed for the Bay's sharp decline as a busy port.

Alongside the growth of whaling, there was an expansion in the New South Wales food trade. Some of the extra ships visiting the Bay from 1833 were in search of whole cargoes of food for export to Australia. Shawcross notes that there were 18 in 1833, 25 in 1836, and 34 in 1839. Despite this growth in trade with the neighbouring British colony, there was a rejigging of relations between Maori and the European nationalities during the late 1830s. This had ramifications for the political relationship between Maori and the British Crown. In particular, Americans became important as sources of alternative advice and information in the late 1830s and 1840s.[25]

The growth of "useful" settlers at the Bay also played a part in making it more attractive to shipping in the 1830s. This will be explored more below, but here it is important to note that from 1831, traders established shops selling vital equipment, and ship repair yards were built and maintained by skilled craftsmen. It was no longer necessary for captains to go further afield for essential equipment and repairs. On the other hand, there was a risk of damaging crew morale – the establishment of grog shops could result in desertion or alcohol-related mutiny. Some captains began to avoid the Bay, preferring ports where desertion and drink problems were not so prevalent. Even so, the number of ship visits continued to grow steadily.[26]

In terms of distribution of contact, trade became fairly evenly divided between the northern and southern alliance's coastal hapu in the 1830s. This is ironic, since Wyatt argues that the northern leaders took Kororareka from Ngati Manu and their allies in 1830, precisely to take over their domination of trade.[27] From 1831, however, the mouth of the Kawakawa River attracted almost as many ships as Kororareka. Whalers favoured it because the repair docks and most of the ship-chandlery stores were located there. Also, the Americans favoured JR Clendon's establishment after his appointment as US consul. The water was deep enough for the largest vessels, which had to anchor there instead of Kororareka because the latter place was too shallow. Paroa Bay was no longer used much; these two were the main anchorages. Pomare II, Kiwikiwi and the southern alliance thus recaptured a large part of the trade lost by the cession of Kororareka. This was not a loss to the northern chiefs in absolute terms, because the trade available to both sides more than doubled as a result of the increased ship visits. Kororareka had a slightly larger share of trade, but European goods and less tangible effects (new ideas, new customs, new pathogens) must have been fairly evenly distributed throughout the coastal Bay.[28]

[24] ibid, p 331
[25] ibid, p 332; J Belich, *Making Peoples*, Auckland, 1996, pp 137-139
[26] K Shawcross, p 333
[27] P Wyatt, 'Old Land Claims', pp 24-56
[28] K Shawcross, pp 334-335

1.2 Contact through Maori travel and whaling

Maori obtained European goods, and also experienced European culture and ways of doing things directly, by travel overseas. During the period from 1805, when Te Pahi visited New South Wales, and 1830, several important leaders travelled to Australia and European countries. Also, a growing number of Bay Maori worked as crew on whaling ships, and saw certain types of European cultural and social organisation first-hand in the process. Included among the rangatira who visited New South Wales or Britain, were Te Morenga, Pomare, Titore, Hongi Hika, Waikato, and Taiwhanga. Although the extent of travel and working on the ships in the 1820s is not known, there was talk of 'many' Bay Maori being involved, and Shawcross concluded: 'travel overseas became an increasingly important means for the Bay Maoris to acquire European goods and knowledge.'[29]

There is clearer evidence for the 1830s that many whaling ships employed Maori as sailors. According to Markham, there were usually 8-10 Maori employed per whaler, and by 1839, there were apparently many more Maori than 10 employed on each ship. Whaling in small boats, Blackett told the House of Commons Committee in 1840, was almost entirely carried out by Maori, with only about two Europeans per boat.[30] Since the crew of a small boat was usually about 8 or more, and each whaling ship would have two or three small boats in action at a time, then whalers may have been employing up to 20 Maori each by 1839. In 1838, Polack claimed that several hundred Maori from the northern districts, most of whom would have been from the Bay of Islands, were employed on board whalers.[31]

1.3 Contact with Resident Europeans

From 1815, missionaries became residents at the Bay of Islands. Before this, there had been a scattering of convicts and runaway sailors. By 1829, there were about 75 adults and 50 children making up the European population of the Bay. The missionary population dominated the resident Europeans until the early 1820s. After that, the numbers of missionary and non-missionary adults were about equal, with both growing slowly. There was only one non-missionary family (the Hansons) – all the other non-missionaries were single men. According to Shawcross, the British lower classes predominated, with runaway convicts and sailors, mechanics or artisans (mainly ship-wrights), missionaries (almost all lower middle class people without much education), and one "respectable" trading family. Settlement was concentrated at Rangihoua, Kerikeri, Paihia, (the missionaries) and Kororareka (almost everyone else).[32] There are many secondary works available which outline the history of the CMS mission in the Bay of Islands, and readers are directed to those works for the detail of when and where stations were established, their progress in their mission, and the various policies and personalities involved. There is also a helpful index of missionary biographies available.[33]

Shawcross suggests that Maori communities had a monopoly over trading rights with their resident Europeans. Even so, Ngati Rehia of Te Tii Mongonui had contact with the missionaries at Kerikeri, presumably through relatives. Similarly, the people of Kawakawa

[29] ibid, p 255
[30] GBPP, vol 1, House of Commons Select Committee, 1840, Minutes of Evidence, p 68
[31] K Shawcross, p 348; see also Polack, *New Zealand: being a Narrative of Travels and Adventures*, London, 1838, vol 2, pp 330-331
[32] K Shawcross, p 254
[33] P Lineham, 'Biogrpahical Index of CMS Missionaries and Workers', in R Glen (ed), *Mission and Moko*, Christchurch, 1992

and Waikare were able to trade with the shipping and residents at Kororareka because of their connections with Ngati Manu. The inhabitants of the south-east Bay had a small share of the shipping. The Waitangi Maori were 'least well off in point of regular European contact' but still had access to the Kerikeri missionaries for trading purposes. Thus, most of the coastal Bay Maori had regular points of contact with Europeans between 1815 and 1829.[34]

As with the shipping, the relationship was focused partly on trade in goods and the provision of services. Maori provided both missionaries and traders with food, labour, and timber in return for various goods and services, which will be described further below. Also, the relationships with residents and non-residents could both be long-term. Ship captains made repeat visits, had their favourites among the women, and built up relationships with particular hapu and chiefs. The relationship between Maori and residents, though, was in many ways closer and more sustained. Pakeha Maori usually married into the tribe, shared its resources, and were expected to conform to its laws and customs. Missionaries, on the other hand, held aloof from marriage with the local people, and offered specialised services and forms of interaction, including medical aid. They gathered a party of people to live and work with them (multi-hapu in make-up), and adopted specialised means of communication – preaching, schools, books, and other forms of spreading their message. The relationship between Maori and these residents was both more constant and intense, resulting in many opportunities for the transmission of more than just goods between the cultures. In particular, some missionaries made an effort to learn the language, and understand Maori concepts and modes of thinking, the better to customise their message to its indigenous audience. The really skilled linguists, though, such as Robert Maunsell and William Williams, did not arrive until later in the period. Communication was thus something of a hit-and-miss affair, leaving plenty of opportunities for misunderstanding.[35]

In the 1830s, the adult missionary population remained fairly constant, always numbering between 30-40. It was based at four stations: Rangihoua (the earliest), Kerikeri, Henry Williams' base at Paihia, and the new inland station at Waimate (largely run by Richard Davis). The addition of a few Catholic priests in 1839 did not alter the static missionary population much. The number of so-called "respectable" settlers grew slowly till 1836, and then rapidly. It consisted of people who had come to ply a trade, set up shops, or farm land. There were some comparatively wealthy merchants like Gilbert Mair and JR Clendon, who owned businesses with a number of employees. On a smaller scale, there were "middling" merchants like JS Polack, who employed a clerk and an assistant or two. The bottom of the trading hierarchy was occupied by small storekeepers with no employees. In addition to these people, whose main focus was mercantile activity, there were a couple of doctors and teachers, a few farmers, the British Resident, some clerks, and a 'host' of craftsmen employed in the various shipping services.[36]

The less "respectable settlers" included some runaway sailors, grog sellers, and some beach-combers. This element dropped off with the arrival of Busby but then grew rapidly in the mid-30s, only to decline again in the late 1830s.[37]

Overall, the European population grew slowly till around 1836, then grew rapidly (with fluctuations) till 1840. Most of them lived in one corner of the Bay, in the Kororareka district and the adjacent Kawakawa coast. The main centre was Kororareka itself with several thriving minor settlements around the big trading stations. The Kawakawa estuary coast was

[34] K Shawcross, pp 254-255
[35] These aspects of mission-Maori contact, and of missionary work in general at the Bay, are covered in numerous studies. See especially LM Rogers, *Te Wiremu*, R Glen, *Mission and Moko*, and L Hamilton, 'Christianity Among the Maoris'.
[36] K Shawcross, pp 351-352; J Lee, *The Bay of Islands*, pp 146-202
[37] J Lee, pp 146-202

dotted with lots of small cottages belonging to innkeepers, craftsmen, and traders. Outside of this trading enclave were the four mission settlements, and one or two settler families – the Hansons, Busbys, and Dr Ross. In the interior, there was the Waimate mission station, a few pakeha-Maori, and a handful of European farmers (mainly the adult children of missionaries). The coastal settlement of Pakeha was fairly evenly divided between the northern and southern alliances, allowing for exchanges of useful goods, services, and less tangible things fairly equally among Bay of Islands tribes.[38]

The settler community was not a homogeneous one. Men like Clendon and Busby were seen by Maori as gentlemen or rangatira Pakeha. Protecting chiefs established client/patron relationships with them on the same model as with the missionaries. Both groups were distinguished from Pakeha-Maori by their greater quantity of possessions and their refusal to marry into the tribe, thus becoming less absorbed into Maori traditional society. In the early 1830s, Maori extorted goods from their rangatira Pakeha as they had from the missionaries in the 1820s. Even the Resident experienced theft and intimidation, and was subject, like all people living in New Zealand, to taua muru. Shawcross says that he had prestige as the representative of the King but, unlike New Zealand chiefs, did not have a body of armed followers. In the absence of a supporting party, Busby and other Pakeha were subject to extortion. Evidence given to the House of Lords Committee in 1838 shows that Clendon, Mair, and other large-scale merchants had groups of European and Maori employees to back them up, and so were less liable to this type of treatment.[39]

Thus, pockets of European settlement developed in the 1820s and 1830s on very different bases. Pakeha-Maori like Maning married into a tribe and became a part of its structure.[40] The missionaries established stations and gathered their own, non-traditional communities to live there. Traders, shopkeepers, and artisans (for shipping repairs and services) established small stations or congregated in a single "town", less absorbed into Maori society than Pakeha Maori, and taking up a stretch of coast between Kororareka and Kawakawa. There was hardly any emphasis on European farming or fishing – everyone was involved in trade or services of one kind or another. This was the community which acted, along with the regular ship visits, as the agency for transmitting European goods, knowledge, customs, and genetic material into the Maori population. The actual items being exchanged, the modes of exchange, their impact on Maori culture, the rate and degree of change, and the extent to which Maori controlled these things, will be examined in the next section.

2. Culture Change

2.1 Material Culture

Maori material culture changed rapidly and permanently between 1800 and 1840. Trade with Europeans introduced new objects into Maori society, some of which led to changes in the economy, social organisation, and belief systems. Others had no discernible impact at all. This may be because many of the new items fulfilled functions that had existed previously – the eating of fruit was much the same whether one consumed indigenous berries or introduced apples. It was not entirely straightforward, even then. Some berries had important healing properties – their gathering and consumption was not always for nourishment. In addition, if a significant change took place in the methods and duration of gathering as a result of introduced fruits, then lifestyle changes took place. These in turn

[38] K Shawcross, pp 252-253
[39] ibid, pp 363-364
[40] T Bentley, *Pakeha Maori*, Auckland, 1999, pp 21-28, 193-206

might or might not lead to culture change. Growing potatoes, for example, was less time consuming than the gathering and preparation of fern root. The two foods were equivalent, in the sense that they served the same purpose as a staple in the Bay of Islands diet, supplemented by fish and kumara. But if cultivation of potatoes allowed significantly more free time than gathering and preparation of fernroot, then the question must be asked: how did Maori choose to spend the time thus saved? If they simply continued other traditional pursuits more intensively, then the overall effect of the introduced item would be minimal in terms of culture change.

Most new items had traditional equivalents of the kind described above, but had varying impacts on the economy and society. Also, during the period under review, Maori selected which items they would adopt and use, and how they would use them. Thus, they saw nails as useful items for carving and even fighting, a far cry from their purpose as building materials in European culture.[41] The history of contact in the Bay of Islands is full of similar examples, where Maori adopted an introduced item and made it serve an existing purpose.

The main material items adopted by Maori in this period can be classified under the following headings:

- New foods and beverages for consumption (which partly led to new forms of food preparation)
- Addictive drugs (including tea, tobacco, and to a lesser extent alcohol)
- New crops (requiring new agricultural practices, and possible modifications to right-holding)
- New domesticated animals (which could lead to new types of rights)
- New tools
- New building materials
- New weapons (especially the musket but also axes and even cannons)
- New forms of clothing and textiles

As noted above, some of these new introductions may be regarded as having a culturally neutral effect. This was certainly Wyatt's view of the matter.[42] The eating of new foods, and their preparation in iron pots, did not necessarily change anything significant about Maori society. Even the smoking of tobacco, which did not have a traditional equivalent, became indigenised so quickly and completely, that Shawcross commented that it was 'virtually universally adopted by men and women at the Bay, quickly became, in fact, as normal a part of everyday life as if it had been a custom of centuries' standing in Maoriland'.[43] What had changed, perhaps, was the introduction of new wants which could not be met through any other way but trade with Europeans. As members of a consumer-focused society, we take it for granted that advertisers will constantly make us aware of new wants, or new ways of meeting old wants, and that we must then satisfy those wants by the consumption of new products. The origins of this modern commercialism lie partly in nineteenth-century industry and trade, but their introduction to New Zealand created something new and different in Maori society.

The supreme example of the impact of new items is the musket, which will be discussed further below. At this point, however, we need to note that for thirty years (1810-1840) the Bay of Islands society and economy was geared towards producing goods to trade for muskets. As a matter of strategy and ultimately of survival, Bay Maori had to get enough muskets to ensure their military superiority over, and later parity with, their enemies. By the

[41] J Belich, *Making Peoples*, pp 148-151
[42] P Wyatt, pp 37-38, 47, & passim
[43] K Shawcross, p 267

end of the 1830s, while muskets were still a key “want”, Nga Puhi had also moved to the wearing of European clothes, the eating of European foods (that they could grow themselves), and the smoking of European tobacco. These were things that they could no longer do without, and they had adjusted their economy and social organisation in order to obtain them.

On the other hand, new clothing and textiles per se may have had relatively limited impact. They did not, of themselves, cause people to think or act differently, abandon cherished beliefs, or adopt new ones. Prior to the 1820s, Maori had generally not liked to wear European clothes at home amongst their own people. In 1820, Maori working at the mission stations began to ask for clothes in return for services rendered. This remained restricted to the stations and those living nearby, and disappeared after 1823, absorbed in the growing desire for blankets. Not until after 1830 did a widespread desire for European clothing become evident at the Bay. In the meantime, blankets became increasingly popular as items of clothing. This is an example of a European good adapted to an indigenous purpose – Nga Puhi began to wear ready-made and relatively cheap blankets in the way that they had once worn mats and cloaks, except on important or ceremonial occasions. By 1834, the majority of Bay peoples were wearing blankets instead of mats.[44]

Towards the end of the decade, there was another shift in taste and trade, in which blankets were replaced in their turn by actual European clothing. Polack and other commentators suggest that by 1840 the Bay tribes had universally adopted European clothing as everyday dress – only some of the old people still wore traditional garments. There was an accompanying change in hairstyles – Maori women began wearing European combs in their hair (previously, only Maori men had worn combs in their hair). Young men began to keep their hair short and to shave with European razors.[45] When Tareha turned up at Waitangi in 1840, he was wearing an old dirty floor mat and waving fernroot around, in order, as Colenso put it, to ‘ridicule the supposition of the New Zealanders being in want of any extraneous aid of clothing, etc., from foreign nations’. ‘Dost thou think,’ declared Tareha to Governor Hobson, ‘we are poor, indigent, poverty-stricken – that we really need thy foreign garments, thy food? Lo! note this. (Here he held up high a bundle of fern-roots he carried in his hand, displaying it.) See, this is my food, the food of my ancestors, the food of the Native people. Pshaw, Governor! To think of tempting men – us Natives – with baits of clothing and of food!’[46]

But Nene, in his reply to Tareha’s points, suggested that it was too late to turn the clock back in 1840, that the point of no-return had already been passed when Maori had accepted the traders and settlers among them. In the view of Waka Nene and others, however, such changes had made no real difference to Maori society, and the key issues were the respective roles and authority of rangatira and kawana.[47]

So how significant was the change to European forms of dress? Did it have a cascade effect in terms of causing changes to mores, beliefs, or social activities? There appears to have been an expectation among Maori that European clothing would reflect status, just as traditional forms of dress did, and that rangatira Maori would wear rangatira Pakeha dress. Mana was mana, whether it was asserted through wearing an army uniform gifted by the Governor of New South Wales, or a beautifully woven cloak and pounamu ear ornaments. And Europeans would be judged in similar terms – some missionaries were not taken as seriously, for example, if they were not decked out in what Maori considered to be the dress of a gentleman. Changes in clothing did not cause re-evaluation of social attitudes or Maori

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[44] ibid, pp 268, 340
[45] ibid, pp 335-336
[46] W Colenso, *The Authentic and Genuine History of the Treaty of Waitangi*, Wellington, 1890, pp 24-25
[47] See below, chapter 6

mores, but were simply adapted to them. This was partly because, unlike in the warmer Pacific island nations, the missionaries did not have to oppose nudity as a custom in its own right. Complete nudity was not common in everyday life, except for certain social purposes, such as demonstrations intended to overawe an enemy. Blankets or European costume were just as easily divested for these purposes as traditional costume, and the missionary papers give plenty of examples of sudden disrobing to perform haka and other challenges, whether the participants had been wearing indigenous or introduced dress.[48]

On the other hand, the preparation of clothing and textiles was significantly affected. Young girls and women often learnt to sew from the missionaries, but the new skill does not appear to have replaced traditional weaving practices at this time. There was a definite decline in the production of indigenous mats and cloaks. This work had been very labour-intensive, so married women were now free to spend some of their time in alternative pursuits. According to Shawcross, their labour was redirected into the traditional economy, growing new crops with traditional methods for trade and (to a much lesser extent) consumption.[49] Whether this in its turn was a significant cultural change is considered in the section on the economy below.

New foods, therefore, and new forms of dress, served equivalent purposes to traditional Maori items, and did not necessarily lead to major changes in culture.[50] Other new items of material culture, such as tools, crops, and animals, will be considered below as part of overall economic change. Before moving on from such items, however, which could be culturally neutral when adapted for indigenous purposes, it is necessary to look further at the most controversial introduction; the musket.

Historians of contact differ on their interpretation of the extent of social and cultural change that followed the introduction of this new weapon. Earlier writers, such as Shawcross, adopt the traditional view that muskets gave Nga Puhi military superiority and led to a decade of intensive warfare (1815-1829), in which food production, trade with Europeans, and all social and economic activities were designed to obtain muskets and to support military campaigns. 'As a result, notable revolutions took place in Maori methods of warfare, in the economy, material culture, and social life of the Bay of Islanders, and in the Bay Maoris' attitude towards, and treatment of, Europeans.'[51]

Belich does not really quarrel with any of these details, but, writing many years later, has a very different view of their effects. Most historians today would probably agree with Belich. He argues that the changes and convulsions brought on by European contact and the musket wars have been exaggerated for the period 1800-1840: 'Some European tools and techniques were adopted in commerce and agriculture, but production was still organized and distributed for Maori ends in a Maori way.' He posits that there was minimal disruption from European contact, trade, religion, disease, and muskets/musket wars. In particular, he does not accept that depopulation, whether from musket warfare or disease, was as enormous and far-reaching as commentators believed at the time. As a result, he does not see the sort of dislocation and cultural collapse that would follow such stresses, as put forward in the classic interpretation of culture change offered by Harrison Wright.[52] Head is something of a lone voice, when she argues that the musket wars were unparalleled modern conflicts and that

[48] See L Rogers, *Early Journals of Henry Williams*, passim
[49] K Shawcross, p 347
[50] A Ballara, *Taua: 'Musket Wars, 'land wars' or tikanga? Warfare in Maori Society in the early nineteenth century*, Auckland, 2003, p 412
[51] K Shawcross, p 248
[52] J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, 1986, p 20

Maori were acting as Pakeha capitalists, accumulating personal wealth for non-traditional purposes.[53]

Specifically on the musket itself, Belich argues: 'Though it had incorporated a borrowed technology in the form of the musket, the Maori system of war in 1845 remained essentially indigenous: it was intended purely to cope with local enemies of roughly equal resources.' The new weapons certainly created new fighting techniques, such as firing of volleys and the need to make changes to pa defences.[54] Also, they were incorporated in the ceremonial aspects of war and life – paraded in the haka, fired in welcome or approval, used in demonstrations that might previously have involved performance with a mere or taiaha. But Belich argues that the types of battles fought (both open and siege), as well as the reasons for fighting them, remained the same in basic ways (including the haka beforehand and the cannibalism afterwards).

Although he does not reject it explicitly, Belich's argument leaves no room for the possibility that muskets revolutionised military power and had cascading effects on social institutions, in which one might expect changes to the forms of political and military power/leadership. European commentators of the time saw figures like Hongi and Te Rauparaha as bent on European-style conquest and power, backed by the new musket. They were the "new Napoleons". While Marsden hoped that Hongi might make himself a king, and establish peace and good order in New Zealand, the great Nga Puhi leader continued to pursue warfare for the same ends as if he were still using mere rather than muskets as his main weapons. That, according to Belich's interpretation, is the key consideration; not the tools that were being used, but the ends to which they were being put. Maori remained non-professional, part-time warriors who were all needed to work in the subsistence economy, the heart of Maori culture and society, hence warfare could not change into long, sustained campaigns unless a whole people were in the process of relocation.[55]

Although he does not consciously see it in those terms, Belich gives a further example of this type of thinking for the 1840s, when he argues that changes to pa design and defence during the northern war were 'modifications rather than radical changes'.[56] Johnson, in his study of the northern war, considers that Belich located these changes rather later than he should have, but agreed that warfare remained 'characteristically Maori in motive and manner'. Heke's tactics were the same, whether he was fighting Nene or the British.[57] Behaviour which baffled Europeans, such as the failure to destroy crucial infrastructure or to raid vulnerable supply lines, was explained by contemporary observers as Christian ethics or native chivalry. Johnson, however, sets out an alternative view in which every detail of the war was structured according to Maori rituals of encounter and tikanga.[58] Ballara has recently published a major work on Maori warfare in this period. She also argues that there had been accretions, new technology, and new ways of looking at killing, cannibalism, and slavery, but that war was fundamentally fought in the same way and for the same reasons in 1845 as in 1800.[59]

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[53] L Head, 'The pursuit of modernity in Maori society: the conceptual bases of citizenship in the early colonial period', A Sharp & P McHugh (eds), *Histories, Power and Loss: uses of the past – a New Zealand commentary*, Wellington, 2001, pp 99-103
[54] J Belich, *The New Zealand Wars*, pp 22-25
[55] ibid. For Marsden's desire to see Hongi made a "king", see chapter 6 below. For chiefs as "Napoleons", creating European-style kingdoms, see G Butterworth, 'Review of Mitchell Research', Wai 102 A 15, pp 34-43, 71-73
[56] J Belich, *The New Zealand Wars*, p 49
[57] R Johnson, ' "Ko te pu o te Pakeha": A History of Intercultural Encounter in the Northern War, 1844-6', MA thesis, University of Auckland, 1995, pp 50-55, 69, 91-95
[58] ibid, pp 20, 41-43, 46-47, 50-54, 72, 75, 86-90, 95, 108, 110, 115-117, 121, 125, 132, 137, 140-141, 150-152
[59] A Ballara, *Taua*, p 163

Modification of certain practices in an existing institution, such as warfare, did not in themselves amount to significant cultural change. If, on the other hand, almost all institutions were modified in some way, and these modifications led to changes in social and economic practices, the effect in toto might be significant changes to the way people think and act, their beliefs and worldview, that is, fundamental cultural change.

We need to consider, therefore, the major changes to the Maori economy and society which followed in the wake of contact, trade, and changes to material culture. To give a brief example of a cascade effect from the introduction of the musket; the Nga Puhi campaigns of the 1820s and 1830s were much more successful than previous ones, which led to the taking of an unprecedented number of slaves, which in turn transformed the population, labour force, and economy of the Bay of Islands. When this was added to the explosive mix of the new religion and government, with their demand that wars cease and slaves be freed, there was clear potential for cultural ferment and further social and cultural change.

2.2 Economic change

The traditional Maori economy has been described in detail by Best in his various works, and by Raymond Firth in his classic account.[60] Although published in the 1920s and republished in 1959, it has not yet been effectively replaced by a major modern work, as Metge notes.[61] In addition, Kathleen Shawcross has written an excellent description of the growth of new wants in the Bay of Islands in 1800-40, and the resultant transformation of the Maori economy there. These works are the main secondary sources for economic changes, and their social and cultural consequences, at the Bay of Islands. In considering the items exchanged, and the economic transformation necessary to produce them, it is also important to assess the modes of exchange. Both factors are relevant to an overall assessment of culture change.

The pre-contact economy consisted of subsistence horticulture (mainly kumara), fishing, hunting and gathering. In addition, there were exchanges of services, in which certain crafts were the domain of specialists, such as carving, tattooing, and rongoa. Sometimes, such services were sought outside the hapu, or offered to other groups. Food and resources, such as dried seafood, and manufactures (cloaks and jewellery) would also be exchanged between groups, particularly as between inland and coastal groups. The whole process of providing services and goods, as modern economists would term it, was controlled via Maori customary forms of reciprocal gift-giving. These were referred to briefly at the start of this chapter, in relation to Captain Cook's visit and the beginning of European-style barter as a new form of exchange, and have been described in detail by Firth and others.

By 1840, the Maori economy in the Bay of Islands was still recognisable in many ways, but had been rejigged for the production of increased quantities of new crops and new animals. Horticulture and pig-farming were the main activities in terms of trade, although fishing and gathering remained important for subsistence. Shawcross provides an excellent account of how this rejigging was achieved, and that will be summarised here.

[60] See E Best, *Maori Agriculture* (and others); R Firth, *Economics of the New Zealand Maori*
[61] J Metge, *Cross-Cultural Communication and Land Transfer in Western Muriwhenua, 1832-1840*, Wai 45 F13, pp 87-88

2.2.1 Imports

The musket became the primary import from 1815 to 1835. The whole Bay of Islands economy was designed to acquire these weapons. In 1815, most warriors did not have a musket, and only extremely important chiefs had more than one. It had also, by this time, become the good clearly preferred over previous trade favourites like axes and other iron goods. By 1820, Maori were refusing to trade with resident missionaries and the shipping for anything other than muskets, except in rare circumstances. The increase in shipping after 1820 made it easier for Maori to bypass the unwilling missionaries. The number of muskets at the Bay of Islands rose from about 500 in 1820, to 1500 in late 1821, with part of the influx coming from Hongi's visit to England. By the end of the decade, Richard Davis reported that Bay Maori had several thousand muskets. The evidence of various European observers indicated that each of these muskets cost about 8-10 pigs or anywhere between 120 and 200 baskets of potatoes. For a people used to growing enough food for their own consumption and a surplus for traditional gift-giving and manaakitanga, this represented a very significant increase in the scale of food production.[62] This is not to say that customary demands for a food surplus were negligible. A hahunga in 1835, for example, involved Bay of Islands Maori in producing 2000 baskets of kumara for their manuhiri.[63]

By the late 1820s, though, there were enough muskets for the pressure to ease and trade to refocus partly on other imports. This was evident from 1827 with a growing desire for blankets, which (used as clothing) became the most popular import. Iron goods were now already being obtained from resident Europeans as gifts and taken by taua muru. From May to July 1823, for example, the missionary Butler gave out as wages for services, as gifts, and in trade, 52 axes, 29 hoes, 9 adzes, 2 spades, 27 pairs of scissors, 18 knives, and 845 fish-hooks. Axes (as weapons) and hoes (for their more traditional European use) were the most popular.[64] At the same time, part of the new wants developing among Maori, which made it so hard for them to turn back the clock and send the Kawana away in 1840, were European foods, cooking, and especially tobacco. Boiling food became common in the 1830s, and everyone wanted missionary 'stirabout', and flour, sugar, and tea.[65]

2.2.2 Exports: a "revolution" in the Bay of Islands economy?

In 1815, fern root was still the staple food of the Maori diet. Maori cultivation of potatoes for trade, and of European vegetables for themselves, must have led to some increase in the amount of cultivation at the Bay from 1800-1815. Nevertheless, after 1815 the Bay peoples made enormous increases (comparatively speaking) in the amount of land under cultivation. Their main motive was the acquisition of muskets and powder, as described above. Europeans required such large amounts of pigs and potatoes to provision their ships, that the price for each musket was quite high in terms of quantities of food. A related point is that Maori also liked some of the new foods and began to grow a small amount for their own consumption. Also, there is no evidence that kumara were sold to Europeans, and yet kumara cultivation was observed to increase markedly in the 1820s. Gradually, the domination of fern root in the Bay of Islands diet was reduced.[66]

[62] K Shawcross, pp 255-260
[63] W Williams, journal, 27 May 1835, qMS 2249, Alexander Turnbull Library
[64] K Shawcross, pp 262-264
[65] ibid, pp 265-267
[66] ibid, p 270

Maori cultural mores militated against growing too much in the way of extra food for a community's own use. Storing of more food than was needed for everyday needs, hospitality to visitors, and occasional ceremonial feasts, 'was severely frowned upon in Maori society'. Basing this on Bruce Biggs' analysis of Maori marriage, Shawcross argues that any family suspected of storing more food than was necessary for these needs, was liable to be the subject of a taua muru. The expansion of the economy was directed to traditional ends – feeding the hapu and providing for traditional gift-giving and manaakitanga – and to the non-traditional end of trading for weapons.[67] Belich agrees with this interpretation of the agricultural "revolution", though it should be noted that later in the 1830s and 1840s, trade was directed more towards getting blankets, clothing, and tobacco, a major shift in emphasis. Also, Belich points out that there were no important shifts in thinking involved in moving from the cultivation of one root crop (kumara) to another (potatoes). No cultural change took place in using 'the techniques and values of kumara cultivation' to grow potatoes.[68] The interaction between a nineteenth-century market economy and traditional Maori society could take place without doing too much violence to the mores and structure of the latter. The increase in horticulture was market-driven (what Pakeha wanted to eat, and in what quantities), within the bounds of Maori traditional society (what Maori themselves liked to eat, thought was enough to eat, and thought was a good reason for growing a surplus beyond this – muskets and trade goods). In this equation, Shawcross notes that missionary advice and knowledge played very little part. Wheat, the lodestar of the missionary civilisation, was largely ignored until mills made it a more practicable crop.[69]

The increase of food-production was not based on any really significant changes to social structures. Firstly, it was partly based on the availability of a large influx of 'slaves' to do the work. The taking of war captives was a traditional custom. That it could happen on a large scale in pre-musket times is shown in Hauraki, for example, where Tai Turoa said that there were enough displaced people and slaves to form their own hapu in the late eighteenth century, gradually growing as they absorbed more and more war captives.[70] Nga Puhi's scale of taking captives may not have been particularly new. Pre-musket conquerors tended either to settle, in which case defeated communities would enter into a complicated and sometimes fairly independent relationship with the new residents, or they would take captives home with them – sometimes both. The Bay of Islands 'slaves' (who were mainly women and children) worked alongside the other women of the community, who were more available for horticulture as blankets and European clothes became staples. The heavy digging work was done by the men before they left for the fighting. In the 1830s, as some war captives were returned to their people (with a nice influx of reciprocal gifts), the taua to the south halted and men were more available to work in horticulture. In essence, apart from the fact that there was more work to do and it was slightly redistributed, it appears that the new horticulture was accommodated within the existing social structure and mores.[71]

The main crops grown by these means were potatoes, corn (maize), and kumara, and a variety of vegetables. Other than an increase in hoes, these did not require any significant change in the way things were done or conceptualised. William Colenso noted that a key limiting factor was the Nga Puhi reluctance to use fertiliser (which was in fact for cultural reasons as strong in the 1840s as it had been earlier). This meant that the main mode of production continued to be intensive cropping on cleared land, followed a few years later by a move to a new area of cleared land. This remained the case throughout the period 1769 to

[67] ibid, pp 270-271
[68] J Belich, *Making Peoples*, p 145
[69] K Shawcross, p 271
[70] Tai Turoa, 'Nga Iwi o Hauraki', Wai 686 A6, pp 50-51
[71] K Shawcross, pp 272-273

1869. What was potentially revolutionary, therefore, was not the increase in horticulture but the introduction of a new kind of farming – the keeping of livestock. Previously, Maori had hunted for birds and rats, and had kept kuri (dogs). The main change to this was the introduction of pig farming to the Bay, and on a scale necessary to supply the hungry shipping.

Early in the 1820s, there were not enough pigs to prevent their basically being sold out as a result of European trade. Also, Butler remarked at that time that Maori did not actually carry out pig breeding. Soon after 1821, Nga Puhi must have begun to actively farm their pigs because there was never a shortage again, despite the steady demand from the shipping. By the early 1830s, Bay Maori were observed to take pig farming very seriously, both in terms of breeding new stock and caring for the herd.[72] In the interior, pigs were taken out to browse on the good quality fern root, where the type of bush was suitable for the easy rounding up of the pigs.[73] Williams noted that pigs were not raised anywhere near large, important cultivations. Instead of fencing these, Maori watched the pigs carefully each day. Pigs were largely reserved for trade – they did not form an important part of Maori food supplies. At the same time, their foraging among the fern root did not affect Maori much, since from 1820 Bay Maori were cultivating enough food for them not to have to rely on fern root as the staple part of their diet.[74]

In terms of transactions with Europeans, pork was not treated differently from fish or vegetable crops, which were communally farmed and harvested by whanau and hapu. Even when Pakeha took part in hunting for wild pigs, they had to pay the Maori owners. Ensign Best, for example, gave a blanket in exchange for a pig he helped to capture in 1840.[75] Wild pigs, like wild introduced fruits and vegetables, were considered the property of Maori.[76] According to Clarke, rights over pigs were exercised in the same way as rights over birds, rats, fern root, flax, and other ‘natural productions of the woods and open country’. Pigs were communally owned, and the rangatira remained the representative of the community.[77] In 1848, there was a dispute between a settler named Petingale and Hone Heke’s sister, over some pigs which the former had killed. There were several levels of rights in these pigs. At an individual level, they were mainly considered to belong to Heke’s sister, although a Whangarei chief also claimed one of them. Hone Heke referred to the pigs as the ‘pigs of my sister, my daughter, of my brothers, and of my children’, in other words of his extended family group. As the rangatira, even though his sister had had charge of the pigs, he also referred to them as ‘my pigs’. More broadly, the Whangarei people with whom his sister appears to have been living at the time, also had an interest in the pigs.[78]

New crops, new animals, both as cultivated/husbanded or in the wild, were added to the existing system of rights over resources. Even muskets were communally owned. Although he saw matters through his own cultural lens, George Clarke appreciated how communal work and lifestyles generated communal systems of right-holding:

> This common right and title to property is not confined exclusively to land, but embraces almost every description of property. A canoe generally belongs to a family, and sometimes to a “hapu,” in consequence of each individual assisting in its formation, or advancing a proportion of their property for its payment. A cow or horse may have 20 claimants; and it was not an uncommon thing, a few years ago, for an axe or spade to belong to three or four individuals, and a musket to ten or twelve; each

[72] JS Polack, *New Zealand: being a narrative of travel and adventures*, vol 1, pp 311-314
[73] K Shawcross, p 276
[74] ibid, pp 143-146, 176, 277-278
[75] NM Taylor, ed, *Journal of Ensign Best, 1837-1843*, p 255
[76] K Shawcross, p 344
[77] G Clarke to Colonial Secretary, 17 October 1843, GBPP vol 2, Appendix 9, p 357
[78] Hone Heke to Petingale, Chinese Tartary (Tautoro), 10 October 1848; Hone Heke to Major Bridge, Tautoro, 9 December 1848; & other letters in this group; IA1, 1849/351

> individual having contributed something towards the purchase of these articles. A blanket bought with the proceeds of a child's farm would be recognized as the property of the child, although appropriated to the use of the parent; and any attempts to alienate such property without the concurrence of all concerned, would be resisted as unjust and oppressive…[79]

Why it matters is partly that Fergus Sinclair argued for the Crown, in the Chatham Islands case, that the introduction of new domestic animals led to major changes in modes of Maori right-holding over resources. He suggested that the introduction of sheep farming encouraged an individualisation of rights, in which chiefs owned each sheep as their personal property, and the traditional system was modified accordingly.[80] The Chathams Tribunal did not accept this argument, judging that the balance of corporate and individual rights had not changed markedly on those islands by 1870, the date of the Native Land Court sitting that turned customary rights into British freehold property.[81] Sheep and cattle farming did not take off in the Bay of Islands during the period under review. Pig farming was the major innovation and it was incorporated into the existing social system. Clarke observed specifically in 1843 that whanau ran pigs on their 'common' tribal lands and that it made no change to how rights in those lands were conceived.[82] Firth concluded that there had been no major change in how Maori exercised right-holding in their communities: 'among themselves the former Maori system of exchange and distribution of goods, of ownership and acquisition of property remained practically unaffected'.[83]

Changes to the economy were largely ones of intensification in the 1830s. More ships, more acres planted, more pigs herded, more food exchanged for goods, but no revolutionary changes.[84] In terms of imports, the musket declined in relative importance. Tobacco, blankets, clothing, and foodstuffs rivalled the musket, especially after the end of major campaigning in 1833. There were new goods on offer – books, musical instruments, and money became popular, but the most widely used currency was actually tobacco in the 1830s. Bay of Islands Maori wanted a large and constant supply of it.[85] A few Maori communities at Mawhe, Waimate, and Kawakawa tried cattle farming, but it remained uncommon. There was not much grassland at the Bay of Islands. Some Kawakawa Maori had to pen their cattle and feed them by hand on young branches and leaves. This was too difficult to allow cattle farming on a large scale. There were a few horses, kept not for agriculture but for riding.[86] The Europeans' main contribution to farming was in the area of cattle, and this intensified in the decades following 1840, while Maori continued to grow food crops and had relatively little involvement in pastoralism.[87]

This, then, was the economy in operation when the Crown arrived in 1840. Its disastrous collapse in the 1840s, and the share of blame that Maori ascribe to the Crown, will be considered further in chapter 7 of this report. Here, we need to note that the economic changes were large and significant, but not necessarily of the type that led to a major reorganisation of society or revision of its values. In terms of acculturation, therefore, much of this economic change must be considered to be "neutral", an expansion of existing practices and modes of organisation, rather than significant departures. Chiefs and their wives continued to direct the labour of the community. Horticulture was carried out communally and co-operatively. Crops were planted with karakia, protected by tapu, and only planted on

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[79] G Clarke to Colonial Secretary, 17 October 1843, GBPP vol 2, Appendix 9, p 357
[80] F Sinclair, *Evidence on the Native Land Court*, Wai 64 L1, pp 8-17
[81] Waitangi Tribunal, *Rekohu Report*, 2001, pp 190-201
[82] G Clarke to Colonial Secretary, 17 October 1843, GBPP vol 2, Appendix 9, p 357
[83] R Firth, p 444
[84] K Shawcross, p 341
[85] ibid, p 340
[86] ibid, pp 345-346
[87] ibid

pieces of ground for a few years before moving on to a fresh spot. What was new was the production of such a large volume of produce, the increase in slave and women's labour, and the destination of the produce as barter goods rather than part of the traditional economy of consumption or reciprocal gift-giving with other Maori communities. Firth concluded, after examining Maori communal horticulture and trade during this period, that nothing vital had changed by 1840, and that 'the normal economic structure of the people was preserved'.[88]

2.2.3 Provision of services, barter, and gift-giving

One definite change to Maori ways of doing things, or tikanga, appears to have come with the nature of services required by Europeans in the new economy. In pre-contact times, Maori appear to have provided each other with specialised services, such as carving, tattooing, and rongoa, that were paid for by the individuals and communities concerned. Payment could take the form of reciprocal services, or gifts of food, cloaks, waka, and other taonga. Firth and Best provide detail on these points.[89] After 1815, the nature of services for which Europeans were prepared to pay varied from those required in the traditional economy. Firstly, the concept of paid long-term labour was foreign to free Maori. Communities gathered together at various times to fish and carry out the agricultural work or fighting that demanded large numbers or a joint approach. The idea, however, that some members of the community might always be available to provide labour or service, which Europeans expected of their Maori employees, 365 days a year, approximated closest to the role of taurekareka, or "slaves".

Missionaries, traders, merchants, and shipwrights took Maori people into new communities and expected them to work in the same way as labourers in Britain. Often, chiefs directed slaves or others into this work and shared the payment for it. Frequently, Europeans complained that they could not get service for an extended period of time. William Colenso, for example, trying to get workers for the dull and difficult work of running his printing press at Paihia, found that he could not keep people for very long before they would simply decide to leave. Indoor work, involving standing still in one place for long periods of time, was too different from traditional Maori work for them to adapt to it readily.[90] More common, however, were the occasional jobs, such as building, bearing, or cutting timber, in which larger numbers were provided for a shorter time. This type of labour could be made to fit into approximations of traditional ways of doing things and of paying for them. There are many examples of this in the missionary papers, Polack, and other published accounts.

The biggest innovation of all, apart from a tiny permanent labour force living with the Europeans or working on the whaling boats, was the development of prostitution. This may be an extension of customary practices with regard to visitors. The sources, especially missionary ones, are fairly coy on sexual mores. Claimants may be able to provide further information on this point. But from the time of ship visits, sexual services were provided to Europeans in exchange for goods. Shawcross provides a fairly detailed analysis of this new institution. Based largely on Biggs' account of Maori marriage and mores, she concludes that it was a very significant departure from custom. Harrison Wright argued, on the other hand, that prostitution at the Bay simply placed traditional sexual freedom on a commercial basis. Belich tends towards this view as well.[91] Shawcross maintained that Maori girls were not free

[88] R Firth, p 444
[89] R Firth, passim
[90] W Colenso to CMS, 7 January 1836, Colenso Letters, qMS-0491; W Colenso, *Fifty Years Ago*, pp 12-13, 18-19, 23
[91] J Belich, *Making Peoples*, pp 152-154

to indulge in whatever sexual relationships they liked. They had to respect betrothal arrangements and, to some extent, distinctions of rank and social status.[92] The practice of Maori in the 1820s and 1830s with regard to the shipping represented, according to Shawcross, 'fundamental changes from the closely traditional conventions which had characterised Maori sexual relations with the explorers of 1769-72'.[93] It was a profitable business in the 1820s and 1830s, and may have represented a significant change to traditional ways of doing things.[94]

Ballara, on the other hand, suggested that chiefs and parents commonly commanded their young women to entertain visitors (especially rangatira), hoping a child might result and create kin ties. She concluded that 'for early nineteenth-century Maori it was an uncomplicated step to extend this service to visiting Europeans'.[95] Similarly, Salmond argued that manaakitanga entailed offering senior young women as sexual partners to visitors of high rank, and slaves to everyone else.[96] These authorities do not comment on whether the visitors gave these women gifts. In any case, there was a range of behaviours in this as in other forms of encounter.

The motives of profit and trade led to other innovations in custom. If Europeans wanted something as a trade good, and it could be accommodated by minor adaptations of traditional mores, as possibly with prostitution, then some Maori communities agreed to provide it. A trade developed, for example, in cultural artefacts. From earliest contact, taonga would be gifted as part of interchanges with Europeans and to seal agreements – there was nothing new there. But in the 1830s, innovations developed like the very small-scale trade in preserved heads.[97]

Thus, Maori society demonstrated remarkable economic adaptability in this period. Still working largely through traditional structures and for traditional ends (whanaungatanga, manaakitanga, reciprocity and balance (utu), and mana), Nga Puhi carried out an agricultural revolution. They grew new crops and on a larger scale than was customary. They also adapted their society to provide new types of services required by Europeans, and for which the latter were willing to pay. As part and parcel of these adaptations, new modes of exchange were introduced. Firth gives an example of how a typical exchange worked. Maori lined up their baskets of potatoes on the beach, and the European concerned then placed a stick of tobacco and a farthing coin on each basket.[98] Gift and counter-gift were laid out up-front and immediately, so that both parties could assess the value of the exchanges, and decide whether or not to go ahead with the transaction. This represented a marked change to customary forms of behaviour, with possible implications for the "exchange" of land, products of the land other than crops (especially timber), and goods. Sometimes, the rate of exchange would be agreed upon in advance, especially for services like the cutting of timber. The modified process of exchange, however, took place within a relationship between Maori and traders, sometimes a very personal and ongoing relationship. The nature and degree of modifications necessary to make these relationships work will be considered in the next section.

It should be noted, however, that there were many variations on this example of straight-up trade on the beach. Sinclair argues that not only did missionaries resist being drawn into cycles of gift-giving with their host and other Maori communities, but that all

[92] K Shawcross, pp 280-281
[93] ibid, pp 282-283
[94] ibid, pp 288-289
[95] A Ballara, *Taua*, p 399
[96] A Salmond, *Two Worlds*, pp 175-176
[97] K Shawcross, pp 289-291; F Sinclair, *Issues Arising From Pre-Treaty Land Transactions*, p 83
[98] R Firth, p 441

exchange at the Bay of Islands was put on a purely commercial footing by the late 1830s. He states: 'There is very little evidence to suggest that the Maori attempted to incorporate Europeans into gift-exchange relationships in the 1820s. There appears to have been no question about this by the late 1830s.'[99] While it is clear from the evidence he cites that missionaries had tried to resist these cycles and their consequences, it is not feasible to accept his conclusion that the Maori-Pakeha relationship was one of trade only, without an important dimension of gift-giving. His corollary – that land transactions were no different qualitatively from other forms of trade – is discussed in the following chapter.

Edward Shortland explained how a rangatira forced a gift of pigs on him so that he could get reciprocal gifts during a visit to the European town.[100] Customary behaviour continued and Pakeha had to be reminded of their obligations under the Maori way of doing things. In 1834, for example, Te Morenga sent William Yate a gift of 18 birds as he prepared to depart for England, 'for you to eat on board the man-of-war'. The chief described this as a 'gift-for-nothing'. But at the end of his letter, Te Morenga added: 'Let my men, who carry the fowls for you to eat on board the man-of-war, carry me back one fig of tobacco, as my pipe is empty'.[101]

Similarly, Ate wrote to Yate to remind the missionary of his part in the reciprocal obligations of relationships and gift-giving:

> Sick is my heart for a blanket. Yes, forgotten have you the young pigs I gave you last summer? My pipe is gone out, and there is no tobacco with me to fill it; where should I have tobacco? Remember the pigs which I gave you: you have not given me anything for them. Forgotten have you the ornaments that I took off my boy's neck, and threw at your feet? Mr. Yate, I do not forget you: my pipe is empty, there is nothing in it: give some tobacco to me, and give me a blanket also. I am your friend, and you are my friend: and I fed you with sucking-pigs: therefore, I say, do not forget.[102]

Pakeha had to be reminded of their obligations, especially in the 1840s when some thought that they did not have to conform to Maori customary practices any more.[103] The result was an increase in muru to restore the balance. Hone Heke, accused of "plundering" settlers in 1843, wanted customary gift-giving relationships with settlers to be carried out according to Maori law:

> It was through me that the [settlers'] houses of Mongonui and Taipa were saved. I only asked them for potatoes for my tribe, and they gave me some from Taipa and Mongonui. I asked for them; had they been withheld I should have been angry; ask them, they will tell you the same. I will not try and hide it; do you suppose that I am afraid? When they are niggardly I get angry, but when they are generous, I say, "treat the Europeans well."[104]

FE Maning was a man with an understanding of his obligations. As a dependent of a patron chief, he was part of a less Pakeha style of "trade":

> His [the rangatira's] idea of trade was this: He took them, and never paid for them till he took something else of greater value, which, whatever it might be, he never paid for till he made a third still heavier haul.[105]

Although we have to make allowances for Maning's sense of humour and his exaggerations, it is clear that he felt at a disadvantage in the traditional gift-giving version of exchange:

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[99] F Sinclair, *Issues Arising From Pre-Treaty Land Transactions*, p 106 & passim
[100] E Shortland, *Traditions and Superstitions of the New Zealanders*, pp 214-217
[101] Te Morenga to Yate, 1834, in W Yate, *Account of New Zealand*, pp 261-262
[102] Ate to Yate, no date, in W Yate, *Account of New Zealand*, pp 271-272
[103] R FitzRoy, *Remarks on New Zealand*, p 11
[104] Hone Heke to G Clarke, May 1843, GBPP vol 5, p 274
[105] FE Maning, *Old New Zealand*, Auckland, 1973 (1st pub in 1860s), p 9

> to keep up kindly general relations, my owner should from time to time make me small presents, and that in return I should make him presents of five or six times the value: all this to be done as if arising from mutual love and kindness, and not the slightest allusion to be ever made to the relative value of the gifts on either side. (An important article).[106]

This ongoing exchange of gifts took place alongside a more Pakeha form of exchange, in which Maning purchased his host hapu's produce, again emphasising that he felt he had to pay higher than the goods were worth.[107] As time went by, both sides modified their customs and behaviour, operating from each other's modes, in order to keep the relationship a successful and mutually beneficial one. The values of each, however, as Maning's frustration is eloquent testimony to, persisted on both sides.[108]

2.3 The 'Middle Ground': Modifications of custom and behaviour to make the relationship work

2.3.1 Maori Treatment of Europeans (and the gradual modification of customs as applied to interactions between Europeans and Maori)

By 1815, Maori had learnt two important things about Europeans: serious attacks on them could lead to vengeful retaliation that had to be taken seriously; and could also deter trade, which Maori now wanted for goods of value to their way of life. During the 1820s, violence towards Europeans 'came to be severely frowned upon amongst most Bay Maori leaders'. According to Marsden, Hongi had let it be known that he would personally punish any Maori who harmed visiting Europeans. Also, from the accounts of Marsden, Cruise, and others, there was a notable absence of recorded retaliation for European cheating and insults (kanga). It seems, from these records, that by 1819-20 the Nga Puhi leaders at the Bay of Islands had decided that it was best to ignore crimes committed by European visitors, except for the killing of people who were not slaves, or the injuring of a chief. Shawcross gives examples from Marsden's papers of successful threats made against Europeans who planned such crimes. She could find no recorded examples of Bay Maori having attacked Europeans who violated tapu in the 1820s, although an example is cited below.[109]

This, of course, may also relate to a growing European awareness of, and healthy respect for, waahi tapu and the risks attendant on infringing them. Compensation (utu) was still a requirement for infringements, as the missionary papers of the period demonstrate. Official records also show the operation of muru and compensation for infringement of tapu still in the 1840s. In 1829, a large taua rushed armed into the Paihia mission station as a result of the burning of some old whare that were tapu. A large hakari given by the offenders was considered sufficient compensation.[110] This did not stop with the spread of Christianity – Richard Davis and Bishop Selwyn both had to pay compensation for infringement of Bay of Islands waahi tapu in the 1840s.[111]

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[106] ibid, pp 168-169
[107] ibid
[108] See also J Polack, *Manners and Customs of the New Zealanders*, vol 1, pp 40-46
[109] K Shawcross, pp 291-292
[110] R Davis to J Coleman, Paihia, 16 April 1829, in J Coleman, *Memoir of the Rev Richard Davis*, pp 121-122
[111] For Bishop Selwyn, see HW Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, vol 1, London, 1879, p 150. For Davis, see Major Bridge to Colonial Secretary, Russell, 15 October 1848, & Governor Grey's note about this letter, IA1 1848/2600

Both sides, therefore, had to find a way to deal with infringements of tapu. In the 1820s, theft and bullying (as Pakeha saw it) were also a significant problem.[112] According to Cruise, Te Koki, the principal chief of Kawakawa, prevented his people from extortion and theft. Hongi Hika, Rewa, and Tareha, the three great northern alliance chiefs, always protected Pakeha from any "bullying" that they came across, but tribes in the Kerikeri and Rangihoua-Te Puna areas were notorious for their bad treatment of Europeans. They had been influenced in this by their successful bullying of the resident missionaries from 1815 onwards. The lesson here was that if they stopped short of actual physical violence, the Europeans would tolerate their behaviour if they had sufficient motivation to remain at the Bay.[113]

Attitudes began to change by the mid-1820s. Shawcross suggests that the levelling out of the number of ships visiting the Bay gave Maori pause, and indicated that too harsh or vigorous exploitation of Europeans would not be good for trade in the long run (even though this was not the cause of the halt in shipping growth). In 1823, for example, Whareumu protected a party of shipwrecked Europeans from 'the plundering to which a strict adherence to the Maori law governing spoil from wrecks would have laid them open'. Citing Colenso's opinion, Shawcross states that 'according to Maori law … any craft drifting on shore near a Maori settlement was regarded as becoming from that moment the property of the Maoris of that settlement'.[114] She suggests that Whareumu feared retaliation by this time, as more and more ships made Kororareka their main port of call. By the time Earle visited the Bay in 1827-8, Whareumu had a very clear policy of overlooking insults from sailors, and had stopped any theft or bullying, and was also willing to step in and stop others as well. Earle and Williams suggest that this changed behaviour became widespread among coastal Bay Maori. In 1828, a chief who was knocked overboard by a ship's mate took no action, and another group did nothing when a ship sailed off with some unwilling Maori women on board.[115]

This growing forbearance towards the shipping was also reflected in treatment of resident Europeans. The first CMS missionaries were welcomed by Ruatara and others in 1815 as sources of goods and skills.[116] The missionary religion was not of real interest until the mid-1820s. The period 1815-22 was the one in which Bay Maori and the missionaries worked out the model for a relationship between a chief and his European settler of substance, which then became applied to non-missionary settlers (as described by Maning).[117] From the beginning, Shawcross says that it was 'understood by the Maoris, at least, that chiefs who sold or gave land to Europeans acquired by this act certain proprietary rights over their European settlers, whilst at the same time undertaking the responsibility of protecting their new "tenants" against the depredations of other Maoris.'[118] By these means, Pakeha became members of Bay of Islands communities. We should not over-emphasize the levels of violence in those communities. Even in the early 1840s, when some Pakeha were the subject of quite punitive "stripping", balance was commonly restored through korero and kai. William Cotton offended Heke, for example, by ejecting some of his followers from church for improper dress. Heke 'said Mr. Cotton ought to have been shot because he spoke in such

[112] K Shawcross, pp 293-294
[113] ibid, pp 294-295. See also J Lee, *The Bay of Islands*, passim
[114] Citing W Colenso, 'On the Maori Races of New Zealand' in the Transactions of the NZI, vol 1, 1868, pp 24-25; Henry Williams noted the same custom law in his journal, 12 Feb 1828, in L Rogers, *Early Journals*, p 102
[115] K Shawcross, pp 53, 296-297
[116] ibid, p 298
[117] See F Maning, *Old New Zealand*, pp 167-173, & passim
[118] K Shawcross, p 299

a harsh manner to the principal man (Wickliffe)'. But, noted Bambridge, this 'will all terminate in flour and water & sugar I suppose, as everything else does'.[119]

2.3.2 Two-way modifications of custom

The creation of a patron-client relationship marked a modification of behaviour on both sides, more the European one than the Maori, and was extremely significant. As described in Maning's classic account, patron chiefs acquired certain rights over their resident Europeans:

- They expected to be able to monopolise trade – the settler had to buy whatever the chief wanted to sell, and at whatever price the chief decided (exaggerated by Maning, as primary evidence of the incredibly high price of muskets clearly shows).
- Other Maori understood, especially those outside the chief's community or hapu, that they were not allowed to trade with that chief's settler(s) without the chief's permission. Thus, the missionaries were reliant on their chief for firewood, building timber, and food. They were forced to buy these at sometimes exorbitant prices, and not allowed to buy at better prices from other hapu. They were even forced, in some instances, to pay for these things with muskets or face starvation.
- The settler had to make presents to their protecting chief, especially if particular articles were requested.
- The protecting chief could come and stay as a guest in the settler's house whenever he wanted. (This was still the case in 1855, much to the fury of Thomas McDonnell.[120])
- If the settler failed to live up to their end of the bargain in terms of hospitality and gifts, they would be punished by a string of 'unpleasant occurrences'.
- According to Maori custom, the chiefs from time to time made their settlers return presents, usually of food.
- Also under Maori custom, the "protected" could leave, abandoning home and land, and take up residence with a better chief, a deep disgrace.[121]

There is an example of the "ownership" of missionaries in the 1820s, when James Shepherd left Rangihoua to join the Wesleyan mission at Whangaroa in 1823. The Te Hikutu people went and forcibly carried him back to Rangihoua.[122] A less extreme example of the relationship in action is the missionary Butler, who often entertained the leading Kerikeri chiefs, Rewa, Hongi, and Tareha, to breakfast (their favourite time for turning up at his house). He readily met their occasional requests for axes and other goods. In return, they provided very effective protection. Matters did not go so well between the Rangihoua chiefs and their missionaries. Sometimes, according to Maning, protecting chiefs turned a blind eye while friends and relatives "robbed" their settlers, and then secretly obtained their share of the spoils. Alternatively, the chief would get the articles back for the settler, but at a price.[123] The Rangihoua chiefs Wharepoaka and Waikato frequently allowed their followers to take stuff from the mission. Hongi also sometimes did the same to the Kerikeri mission, although Rewa and Tareha did not, and also did not usually press for payment when they recovered goods for the missionaries.[124]

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[119] W Bambridge, Journals, vol 3, 27 September 1844, MS Copy Micro 0501
[120] T McDonnell, Hokianga, to Colonel Wynyard, 24 August 1855, BAVX Series 4817, Folder 4a
[121] F Maning, *Old New Zealand*, pp 167-173, & passim. See also K Shawcross, pp 299-302
[122] K Shawcross, p 324
[123] F Maning, pp 169-170
[124] K Shawcross, pp 301-302

What this demonstrates, in effect, is that resident Europeans, and their "property" were in fact subject to Maori law. In all human societies, the possession of property is never absolute but always circumscribed by the laws of the community in which the property is possessed. In contemporary New Zealand, for example, one cannot do whatever one wishes with real estate if it breaches the Resource Management Act or the plethora of local plans spawned by that Act. Similarly, a building cannot be changed without meeting various building codes, fields cannot be left unfenced; there are a host of laws and conventions which govern the use of property. The same was true of New Zealand prior to 1840, except that here there was a mixture of European and Maori law applicable to property as "owned" by Europeans.

An instructive example of what this meant in practice, may be taken from an incident at the Paihia mission station in 1823. The rangatira who was the "patron" of the Paihia mission, Te Koki, instructed Mrs Williams that his slave (hired out as a mission servant) was never allowed to drink from the cup that he had just used. The missionary Fairburn explained that if Te Koki 'heard of its being allowed, and that he were afterwards taken ill, he would kill the girl'.[125] Mrs Williams was surprised to discover that her cups and other domestic property (including her servants), as well as she herself, were in effect subject to Maori laws of tapu, and the rangatira responsible for them. In New Zealand of the 1820s, a patron or host rangatira could expect to have his authority obeyed. Missionaries were allowed some leeway in debating matters, but in the end a chief like Tareha just picked up his missionary and deposited him in his house, with instructions to stay there.[126] Wyatt has detailed some of these occasions when rangatira simply asserted their authority over missionaries in the 1820s.[127] Of course, it depended partly on the characters involved. Henry Williams was not easy to browbeat, and some missionaries were more skilled than others in negotiation and were sometimes successful in acquiring the outcome that they wanted. Maori decision-making was often inclusive and based on hui and korero;[128] the missionaries, therefore, usually had their say and sometimes carried their points.

Maning suggests that the application of Maori law to Pakeha and their domestic property was widespread before 1840. He gave examples of situations in which rangatira broke cups from which they had drunk, or took them away, in order to prevent breaches of tapu, much to the annoyance of their European hosts.[129] When he himself was placed under a tapu as a result of disturbing a waahi tapu and touching the bones of the dead, it had to be removed by a tohunga who broke all his dishes and kitchen implements because Maning had used them in the meantime. The trader had no choice but to acquiesce in this destruction of his property.[130]

Another example can be given from a period twenty years later, widely separated in time and social change from the Bay of the 1820s, and not involving tapu. Hone Heke turned up at the Kaikohe mission station during the absence of Richard Davis in 1848 and demanded of Mrs Davis the use of the missionary's horse. Under European property law, Hone Heke had no right to demand the use of private property in this manner. Under Maori law, he considered himself entitled to make use of this community asset, being housed by "his" missionary on "his" land. In terms of which law could be enforced, Heke was there with his followers and Mrs Davis did not feel that she could deny him the use of the horse, although she wanted to do so. Though widely separated in time, these two incidents suggest a

[125] H Carleton, *The Life of Henry Williams*, 1874, vol 1, p 31
[126] R Taylor, *Te Ika a Maui*, p 316
[127] P Wyatt, pp 92-118
[128] A Salmond, *Hui: A Study of Maori Ceremonial Gatherings*, Auckland, 2004, pp 12-18
[129] F Maning, p 114
[130] ibid, pp 122-128

continued expectation on the part of Maori that their laws applied to European-"owned" property, even where conventions about the use of private property differed between the cultures. Of course, Richard Davis was away and he might have been more successful in resisting the incursion.[131] It may be that such actions were well in the minority by this time, but they indicate a persistence of attitudes and concepts, in situations where these could still be enforced.

The application of the social institution of muru to "private" property may stand as the best example of this type of situation. Maning gives a vivid account of how muru of European property could take place before 1840, and according to the evidence of Richard Davis, the custom continued to be applied to settler property in the following decade as well, wherever Maori held the upper hand or were not persuaded to act otherwise.[132] This will be considered further below in section 3.

Even so, it was well understood by the 1830s that a settler who was too closely "plucked" could end up abandoning "his" house and land, and moving elsewhere in search of another protector. This was regarded as a deep disgrace to the patron chief, who would both lose the source of goods and also be unlikely to get a second settler after acquiring a "bad" reputation. In 1815-22, the missionaries did not attempt to relocate themselves, almost their only sanction in the relationship. As a result, there were many recorded instances of theft and intimidation. There were even occasional assaults. Interaction was based on Maori custom. During preparation for campaigns, when large groups of warriors were gathered together, the mission stations would sometimes be raided for items that might be useful in the forthcoming war (especially axes).[133]

In more peaceful times, Maori sometimes 'went through the form of trumping up against the missionaries some charge of an offence which would justify a taua muru to exact compensation in the form of property'. This is how Butler (and presumably Shawcross) interpreted muru, in the belief that such matters were "trumped up" rather than genuine; this may reflect cultural misunderstandings. In behaving this way, Shawcross stresses that this was a customary community interaction which now included missionary residents: 'In this respect the Maoris treated the missionaries in exactly the same way as they occasionally treated other Maoris who were suspected of hoarding rather more food and goods than they were accustomed to lavish upon others on occasions requiring demonstrations of generosity.'[134] Bruce Biggs provided early support for this interpretation of the Maori-missionary relationship.[135]

Shawcross argues that the main reason why the missionaries did not exercise a customary Maori sanction and move to the protection of other chiefs was that Marsden had refused permission for them to relocate. They do not appear to have been influenced by the idea that having bought land, they ought not to give it up. Rather, Hongi was considered to be the most powerful protector, and the loss of his patronage, it was suspected, might lead to rather fatal retaliation from him. In 1815, Hall moved to Waitangi but was badly assaulted by a visiting party from the interior and moved back to Rangihoua at once. Since the missionaries were required by Marsden to live in the northern Bay under Hongi's protection, and they were not in a position to leave altogether, many local Maori continued their customary forms of interactions in terms of muru and what missionaries thought of as theft, although always stopping short of life-threatening violence. Shawcross feels this is also partly because only Marsden seemed to be a person of note to Maori and the local missionaries to

[131] R Davis to J Coleman, 17 March 1848, in J Coleman, p 345
[132] F Maning, pp 101-103; J Coleman, pp 286-287
[133] K Shawcross, pp 302-303
[134] ibid, p 303
[135] B Biggs, *Maori Marriage*, Wellington, 1960, p 49

be men of low status, a situation that changed markedly with the arrival of Henry Williams.[136] The growth of missionary mana in the 1820s and 1830s, and their increasing independence from Maori control, led to some marked modification of customary behaviour towards them. That was the case for all Nga Puhi, and not merely those who adopted the new religion in the 1830s. Conversion and the spread of new ideas will be considered further below. Here it is necessary to note the economic nature of the relationship between Maori and missionaries, and the growing modification of custom to ensure its success.

This depended partly on changes to custom, law, and behaviour on both sides. A missionary like Colenso and a trader like Polack both had to accept Maori powhiri and hongi as forms of welcome and greeting in which they had to participate. It is clear from the accounts of both men, very different in their outlook, that they carried out the hongi as required by Maori custom. It is also clear that they did not understand its full meaning in Maori terms, and that they did not incorporate those parts that they did understand into their own belief systems. Polack, for example, noted that he acted according to the 'courtesy prescribed by the native *ton*', and thought that the hongi expressed 'affection and regard'.[137] Thus, Colenso and Polack demonstrated modified behaviour, and carried out a Maori custom, without changing their own underlying cultural beliefs. It is important to weigh this type of evidence against apparent Maori acceptance and adoption of European ways of doing things, in terms of barter in both goods and land. There was no meeting of the minds when Colenso and Polack performed the hongi; it did not mean the same thing to both parties involved.[138]

A lack of understanding (in some cases) or belief did not prevent Europeans from adopting Maori custom where necessary to secure their own goals, or to operate more effectively in a Maori context. In the 1840s and 1850s, for example, Robert Maunsell erected rahui between opposing armies to try to prevent fighting.[139] William Colenso carried a boiler used for cooking pork onto a tapu road to make it noa.[140] Henry Williams relied on the tapu of the mission stations at the Bay to preserve them from hostile Maori. Williams was also careful to pay compensation for breaches of local tapu by those Maori who settled with him at Paihia. In 1832, for example, some of the Paihia Maori violated a waahi tapu to cut firewood. It was a burial ground under the authority of Tohitapu, who was paid an iron pot in compensation, and the mission workers were fined a week's pay. Although presumably on mission land, Williams stated that he allowed Tohitapu to set up a rahui there to indicate the tapu status of the land.[141]

Most missionaries respected tapu associated with places and people, although they also preferred to launch frontal assaults from time to time, and always preached against it. In 1829, William Yate's canoe was turned back from Rangihoua because a tapu had been placed on the sea, during the preparation of a new net on the beach. The missionary decided that he could not accept this exercise of Maori authority over the sea; 'it will never do to allow them, without opposition, thus to tapu the sea and block up our way'. He tried again the next day, and was at first opposed and then allowed to pass along the river. The boat violated the tapu and crossed the sea to the beach at Rangihoua, where the Maori crew were attacked and injured by the local Te Hikutu people. The sails were torn and set on fire, and various mission goods taken from the boat. In the end, however, the goods were returned, representatives came to mend the sails, and restitution for the attack was made. Two weeks later, Ngai

[136] K Shawcross, pp 304-305
[137] J Polack, *New Zealand: being a narrative of travel and adventures*, vol 1, pp 75-78, 116
[138] ibid; W Colenso, *Excursion in the Northern Island of New Zealand*, p 16
[139] H Garrett, *Te Manihera: the Life and Times of the Pioneer Missionary Robert Maunsell*, Auckland, 1991, p 145
[140] A Bagnall & G Petersen, *William Colenso*, 1948, pp 207, 220
[141] L Rogers, *Early Journals of Henry Williams*, p 267

Tawake preparing their nets at Kerikeri permitted Yate to approach them and even touch their work. They had decided, according to this missionary, that 'all their tapus may, for the future, be disregarded by Europeans with impunity'.[142]

While Yate's conclusion was certainly an exaggeration, Henry Williams was permitted to observe a tapu ceremony in 1832, after first being turned away, 'under the plea of my being a white person'. Maori expressed themselves as very pleased that Williams had abided by the tapu before the ceremony and not had any breakfast.[143] Nor did such accommodations cease in 1840. Bishop Selwyn, while careful to reassure his English correspondent that he 'refused to recognise their heathen customs', nevertheless paid compensation for ducks shot on a tapu waterway in 1843.[144] Both sides were making adjustments to keep the relationship working.

Similarly, the missionaries ate fernroot and traditionally prepared Maori foods when they were travelling or visiting pa. Eating Maori foods and working with or around Maori tapu did not make them any less committed as Evangelical Christians. The point here is that modifications of behaviour, and operating through the customary modes of another people, do not necessarily mean a change to one's own beliefs, laws, and worldview. It is all a matter of degree. There is a world of difference, for example, between the capture of Thomas Kendall by Maori society and culture, and the careful study and manipulation of Maori ideas by Robert Maunsell.[145] It is not enough, therefore, to point to Maori adoption of European barter in a specific context and deduce from that fundamental changes to Maori thinking about the nature and exchange of property. Such changes may well have come, but it is difficult to discern them in the 1820s and 1830s. If Pakeha used Maori forms of interaction and abided by customary law in this period, we have clear evidence as demonstrated above that they did not adopt it as their own. We should be wary, therefore, in thinking that Maori who made accommodations with Pakeha forms of interaction and law were adopting them as their own.

Although I have not made an intensive comparison between the Bay of Islands and other colonial 'frontiers', I note that historian Richard White posits that similar situations existed elsewhere on the 'periphery' of empire. Throughout North America, where the worlds of native Americans and Europeans overlapped, and there was a balance of power and mutual need, peoples had to accommodate each other rather than assimilating or attempting conquest. In his seminal book, *The Middle Ground*, White argues:

> In this story, the accommodation I speak of is not acculturation under a new name. As commonly used, *acculturation* describes a process in which one group becomes more like another by borrowing discrete cultural traits. Acculturation proceeds under conditions in which a dominant group is largely able to dictate correct behavior to a subordinate group. The process of accommodation described in this book certainly involves cultural change, but it takes place on what I call the middle ground. The middle ground is the place in between: in between cultures, peoples, and in between empires and the nonstate world of villages. It is a place where many of the North American subjects and allies of empires lived. It is the area between the historical foreground of European invasion and occupation and the background of Indian defeat and retreat.
>
> On the middle ground diverse peoples adjust their differences through what amounts to a process of creative, and often expedient, misunderstandings. People try to persuade others who are different from themselves by appealing to what they perceive to be the values and practices of those others. They often misinterpret and distort both the values and the practices of those they deal with, but from these misunderstandings arise new meanings and through them new practices – the shared meanings and practices of the middle ground.

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[142] W Yate, pp 244-246
[143] L Rogers, *Early Journals of Henry Williams*, pp 228-229
[144] GA Selwyn to Lord Powis, Kerikeri, 9 October 1843, cited in HW Tucker, vol 1, p 150
[145] J Binney, *The Legacy of Guilt*, Auckland, 1968, cf H Garrett, *Te Manihera*

> This accommodation took place because for long periods of time in large parts of the colonial world whites could neither dictate to Indians nor ignore them. Whites needed Indians as allies, as partners in exchange, as sexual partners, as friendly neighbours. The processes of the middle ground were not confined to the groups under discussion here. Indeed, a middle ground undoubtedly began among the Iroquois and the Hurons during a period earlier than the one this book examines. The middle ground was not simply a phenomenon of the *pays d'en haut*, but this mutual accommodation had a long and full existence there.[146]

The creation of a 'middle ground' could in itself be a catalyst for change. Ballara argues: 'Once it had been gradually and generally accepted that there was one set of rules for Maori and another for dealing with Europeans, a conceptual door had been opened for further change.'[147] The main evidence of this was religious conversion, to which we now turn.

2.4 Religious and Ideological Change

In terms of their economic relationship, Maori and Pakeha tended to respect and sometimes adopt each other's way of doing things as a form of pragmatism, to keep the relationship working. Polack did the hongi, Rewa shook hands, and both sides were happy. There were more fundamental changes, however, to Maori religion and ideology in the 1830s, with new forms of communication, new knowledge and ideas, and in particular the partial adoption of a new religion. As part and parcel of the changes to religion and ideology in this period, various social and political changes took place. As with the adoption of new material items and new trading crops, there could be cascade effects from the change of a single idea, having flow-on consequences in unexpected aspects of Maori behaviour or thinking. At this stage, much of the modification (if not all its effects) was done by deliberate choice. The only thing over which Maori had no control was the rate and spread of disease, with its consequent impact on Maori population, and on systems and ideas of health care (see below).

From 1830 (with only three baptised adults), the process of conversion to Christianity began at the Bay of Islands, becoming a relative flood by the late 1830s. The missionaries were as surprised as anyone else by this sudden reversal of earlier Maori attitudes. The conversion was accompanied by a new form of communication, the written word, which allowed the transmission of ideas through the printed books of the New Testament. Missionary mediation in disputes, and provision of medicines and health care, were also factors in the spread of the new religion. By 1840, it is estimated that around half of the Nga Puhi at the Bay of Islands had become Christians, most of them drawn from inland hapu.[148]

The process of religious conversion at the Bay of Islands, and its significance for culture change, has been discussed or commented on by many historians. In particular, the reader's attention is directed to Lila Hamilton's thesis, Bronwyn Elsmore's two books, and the various mission histories and biographies that are available.[149] Most attention has been focused on the "genuineness" of conversion and change, measuring Maori Christianity against missionary tenets and the practices which the Evangelical churches wanted indigenous peoples to discard on the one hand, and adopt on the other. The actual process of conversion required Nga Puhi individuals to be tested on their knowledge of doctrine, the

[146] R White, *The middle ground: Indians, empires, and republics in the Great Lakes region, 1650-1815*, Cambridge, 1991, p x
[147] A Ballara, *Taua*, p 416
[148] K Shawcross, pp 357-359; see also Lila Hamilton and other texts on missions
[149] L Hamilton, 'Christianity Among The Maoris', Ph D thesis, Otago University, 1970
B Elsmore, *Like Them That Dream*, Auckland, 2000
B Elsmore, *Mana From Heaven*, Auckland, 1999

Bible, and the Anglican liturgy. If they proved sufficiently knowledgeable and sincere, then converts were baptised by a clergyman and adopted an English name. Candidates for baptism were required to relinquish certain customs, such as warfare, violent resolution of disputes, and polygamy, as a pre-requisite for admission to the Anglican Church. After a period of time, instruction, and further testing, baptised converts would eventually be confirmed and allowed to take communion.

The missionaries were conscientious in their work, and many people were turned down for baptism. Even so, almost all historians agree that the actual process of conversion to Christianity involved the combination of Christian, Judaic, and indigenous beliefs and practices into a uniquely Maori Christianity. Sometimes, this took the form of rejection of the missionaries and their institutions of religion, as with adjustment cults like Papahurihia.[150] More commonly in the Bay at this time, it took the form of enthusiastic adoption of the means of communication that underpinned the new religion, and adaptation of its forms and ideas to Maori culture. Thus, literacy became part and parcel of the new religion. It was a two-edged sword and could be used to convey all sorts of messages, as William Williams discovered when he visited Ohaeawai in 1836, and found a message scrawled on the door of a whare that it was dedicated to the 'gospel of Satan'.[151] Maori were soon writing letters and messages to each other as well as to Europeans, and as the printing of the bible accelerated in the 1830s, public readings took place and whole books were memorised and recited. The fashion for reading has been explored in several articles.[152] One theory is that it was seen as an almost magical avenue to European knowledge. So long as the missionaries printed material in Maori, and confined most of their work to the bible, there was a limit to the amount and type of information conveyed.[153] Even so, the Old Testament proved revolutionary in its impact on Maori politics and religion, as Bronwyn Elsmore has showed, although this came well after 1840.[154]

Maori commandeered the Pakeha means of communication. Books spread rapidly, missionaries appointed official teachers, and there were many unofficial Maori missionaries as well. The new institution of the Native Teacher began to take on some of the trappings of the rangatira and tohunga – and indeed, was sometimes the same people. Inevitably, the message as preached by Maori teachers was not exactly the same as that conveyed by Pakeha missionaries. In addition, missionary command of the language was not very sophisticated before the 1840s, and many words were used to convey English concepts which carried very different meanings to Maori. The use of 'atua' for 'God' and 'tapu' for 'holy' are obvious examples.[155] When Jesus was described as a Kingi, an ariki, and a person with rangatiratanga, what exactly did that mean to Nga Puhi of the 1830s?

The missionaries were sincere in their belief that they had made genuine converts, just as some Nga Puhi were sincere in their desire to join the Anglican Church and adopt various Christian customs as their own. A primary point that needs to be made here, however, is that missionaries required alteration of certain practices and customs before they would baptise converts. None of these alterations affected Maori concepts of property or rights over land and resources in any way. It is certainly the case that many missionaries wanted to destroy Maori communal living, break up the pa and hapu-based lifestyle, and establish nuclear

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[150] B Elsmore, *Like Them That Dream*, pp 107-122
[151] W Williams, journal, 14 June 1836, qMS 2249, p 444
[152] See especially CJ Parr, 'A Missionary Library. Printed Attempts to Instruct the Maori, 1815-1845', JPS, 1961; DF McKenzie, *Oral Culture, Literacy & Print in early New Zealand: the Treaty of Waitangi*, Wellington, 1985
[153] B Elsmore, *Like Them That Dream*, pp 28-30
[154] ibid, passim
[155] J Metge, *Cross-Cultural Communication and Land Transfer in Western Muriwhenua, 1832-1840*, Wai 45 F13, pp 52-54

families on individually-owned agrarian farms. But although they had this intention and preached this message, entry to the Church was not made conditional on any of those things. Thus, the adoption of new customs and relinquishment of old ones did not change Maori patterns of right-holding directly.

Nor were the changes that did take place confined to Christian converts. Other rangatira and hapu began to experiment with social change in the 1830s, allowing certain practices to end and utilising the missionaries and their new symbols and icons to bring it about. It should also be noted that some of these changes were short-lived. A good example of both points is the Nga Puhi decision to discontinue hahunga, the ceremony of holding a feast for stripping and reinterring the bones of the dead, which the missionaries opposed. In 1835, the Bay of Islands chiefs made a deliberate decision to stop their huge annual ceremonies for the removal of the bones of the dead. William Williams noted:

> This is to be the last and from this time they intend to bury their dead according to our customs. Rewa expressed a wish to have a flag hoisted on the occasion with a native bible and a slate and pencil attached to it, to signify to their friends from Hokianga that they thenceforth give up the customs of their fathers and take the word of God as their guide. This man is no christian nor has he much pretension to be called one, but this circumstance may be taken as a proof of a general change.[156]

A week or so later, the Waimate Maori assembled for the ceremony with their Hokianga relatives. The Christian chiefs had already given up the practice, and it may be that the burden was falling unfairly on the remainder, because it has

> now become a state question among those who are not under the influence of christian principles. Persons of this character are weary of the practise because it is attended with much trouble and expense, and they are glad to avail themselves of our assistance to get them out of the difficulty. Rewa the principal man on this occasion has been to us to propose our interference and to request that we will speak to the effect that this feast is to be the last, and that no return is to be made for it by the people of Hokianga.

When the missionaries arrived, they found 2000 baskets of kumara and 50-60 pigs ready for the feast, with a flag hoisted at each end of the food (300 yards in length) and one in the middle. Attached to the flags were 'placards desiring the natives of Hokianga not to make any return for this entertainment and informing them that from the present time the removal of bones is to cease'.[157]

The missionaries were triumphant at this decision to stop the hahunga, but their triumph was short-lived. In the 1840s, when a reaction against both missionaries and government was souring Maori Christianity, William Williams reported that Bay Nga Puhi had come to the East Coast to remove the bones of the dead. They adroitly avoided meeting with him to account for their revival of this custom.[158] In the Bay itself, Richard Davis noted a return to this and other customs, like tattooing, which the missionaries had hoped were permanently abandoned in the late1830s. Hone Heke returned to polygamy and took a second wife, young warriors were getting tattooed again, and the practice of warfare, which had been partially abandoned in 1833, was revived partly so that Nga Puhi chiefs could gain mana through battling the Crown and each other.[159] Cultural change, and the motivations that led to it in the 1830s, was still rooted deeply in traditional Maori values and the customary way of doing things. As a result, it was not quite what it seemed to the missionaries, and in some cases did not last very long.

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[156] W Williams, journal, 18 May 1835, qMS 2249
[157] ibid, 27 May 1835
[158] F Porter, *The Turanga Journals*, Wellington, 1974, pp 543-544
[159] J Coleman, pp 292-301, 311-313, 319-320, 324-325, 353-356

The question of whether or not there had been a fundamental shift, quickly done in the late 1830s and then quickly reversed, is vital because of the timing of the pre-Treaty land transaction 'mania'. George Clarke later argued that:

> In the Bay of Islands much was done to neutralize and weaken the power of Tribal rights [over land], but Heke's war, and afterwards the revival of old customs, such as Hahungas, Hakaris, and Tapus, led them [Bay of Islands Maori] back to ancient usages.[160]

A close reading of missionary and official sources for the period 1839 to 1845, however, suggests that though certain customs like tattooing and hahunga might have been temporarily given up and then revived a few short years later, the shift was more superficial than Clarke believed. The behaviour of Maori rangatira and communities in terms of how they managed their affairs and dealt with infractions of their laws, for example, does not appear markedly different before and after Heke's war. Their attitude to settler infractions was, if anything, more determined in the enforcement of customary law in the mistrustful years just before the northern war than it was afterwards.[161]

The customs which missionaries did insist on Maori abandoning before baptism included warfare and polygamy. These matters, which had far-reaching cascade effects, will be considered below under the category of social and political changes. Complex concepts like tapu were partially adopted and adjusted by the Church, rather than abandoned, with interesting results. Ballara argues that converts were supposed to 'change their whole outward and visible lifestyle', but the most important change was for rangatira, who had to give up their karakia and their personal tapu. Not surprisingly, rangatira and tohunga were among the main opponents of the new religion at the Bay of Islands.[162] And though missionaries became like new tohunga, and sought to cure the sick with their introduced medicines, the old ways survived well past 1840, even among practising Christians.[163] Indeed, the need for Parliament to pass a Tohunga Suppression Act in the twentieth century demonstrated the strength and survival of traditional practices and concepts. When Maui Pomare embarked on his crusade for health reform in 1901, sixty years after the signing of the Treaty, he wrote in his first report:

> It was with a heart full of fear and trembling that my mission was undertaken. Fear and trembling, did I say? Yes, for the deeply rooted superstition of ages – the stronghold of tohungaism, the binding laws of tapu, the habits and practices of centuries, the mistrust of the pakeha – these were the Goliaths in the way of sanitary progress amongst the Maoris. For what did all this mean? It meant the dissolution of time-honoured customs, the tearing-down of ancestral habits and teachings, the alteration of Maori thought and idea; in fact, a complete change in their socialistic, communistic, and private life . . . Yes; it meant the introduction of things entirely new and foreign to the Maori mind and life. Who can change the customs of a nation in a day? No; not in a month, nor a year, nor a generation could they be changed, for progress is a plant growing.[164]

Similar views were expressed by Te Rangihiroa a decade later, when he commented in 1910:

> The greatest factor which retards the progress of the Maori in health matters, is the influence of the past. Though every tribe is under the influence, more or less, of Christianity, though tapu and makutu do not loom so large upon the horizon and though there are Native Schools throughout the land, the

[160] G Clarke, *Remarks upon A Pamphlet by James Busby*, Auckland, 1861, p 19
[161] See, for example, the letters of William Colenso from this period (qMS-0491) or the various Resident Magistrate papers and IA/1 correspondence for the years 1840 to 1847.
[162] A Ballara, *Taua*, pp 423, 430-433
[163] See for example, F Maning, pp 134-135
[164] M Pomare, cited in D Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices*, Wai 262 K3, p 37

> Maori has not altogether divorced his mind from the terrors of the past. The parents and grandparents of the present generation, are influenced by the teaching and current opinions held in the days of their youth.[165]

David Williams used this and other evidence to argue that despite the supposed snowball changes caused by alterations to material culture and religion, Maori culture survived with at least some aspects fully intact, a hundred years after the signing of the Treaty.[166] This was partly because the new Christian religion was adopted in ways that served Maori needs in the 1830s and afterwards, and modified or discarded where it did not. It has been argued in many scholarly works that the Bay Nga Puhi were sick of warfare, and a degree of depopulation in its wake, and used the missionaries and their mediation to save face in the seeking of peace. There may be some truth to this position, but the fact remains that Nga Puhi did not really make a deliberate decision to give up warfare altogether in 1833. As more and more Christians refused to go on the big southern campaigns, and the balance of power was restored with the wider spread of muskets, the incentive for new campaigns became correspondingly less. Nga Puhi had enough slaves, and indeed the converts were beginning to return war captives to their old homes. But there were desultory wars in the Bay itself, such as the conflict of 1837, and lesser clashes between rangatira. War was never entirely given up either before or in the decades immediately after 1840, any more than traditional forms of knowledge and medicine were (at this time).

On the other hand, the Bay Nga Puhi had entirely given up cannibalism before 1840, and it was not revived with some other customs later in that decade. Christians and non-Christians alike stopped the practice, which they at first flaunted in the face of Europeans, but eventually gave up voluntarily. This custom, like that of barter-trade itself, was one of the few situations where Europeans of all denominations and backgrounds tended to be of one mind. L Head argues that conversion itself was driven by this type of European pressure. The presence of Europeans led to what she sees as non-traditional musket wars, followed by a determination to preserve trade and create Pakeha forms of wealth. Together, these imperatives led to the need for a value system that would end warfare. The result was Christian conversion and pursuit of a more Pakeha form of political and social organisation.[167] She concluded:

> While these [the musket wars] were modern wars, they were also the chief obstacles to the pursuit of civil modernity – that is if one takes civility as an expanded and increasingly personal ownership of wealth created by trade with foreigners. War and its ethos threatened civility. The incompatibility between the honorific values of the revenge cycle and the drive for modernisation meant that, by 1830, northern Maori consciousness was deeply split. Both intrinsic and extrinsic factors prompted the search for a value system that would delegitimise inter-group fighting – one that would create the conditions for the development of a civil society which repressed warfare.[168]

I am unable to see such a cause or effect at the Bay of Islands. Certainly there were some accommodations of behaviour and custom so as not to inconvenience Europeans to the point where they felt compelled to leave or stop visiting. Taua muru were more important in this respect, yet they persisted well after 1840 (see below). The main inter-group warfare at the Bay of Islands happened before 1800. The Bay tribal landscape was transformed in the final decades of the eighteenth century. Most of the warfare that resulted in conquest, redistribution of peoples, and new patterns of occupation at the Bay of Islands, came *before*

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[165] Te Rangihiroa, cited in D Williams, p 179
[166] See D Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices*, passim
[167] L Head, 'The pursuit of modernity in Maori society: the conceptual bases of citizenship in the early colonial period', pp 99-103
[168] ibid, p 102

the musket. The exception was the conquest of Ngare Raumati in 1826. In the 1820s, war and the so-called 'revenge cycle' was the *reason* for trade (to get muskets), and not an impediment to it. Muskets dominated trade until 1835 and remained important after that. The bringing of war captives from the south helped keep the Maori economy functioning during the campaigns, and was more important to it than any supposed insecurity of Pakeha residents or visitors. Inter-group warfare was not a significant threat to the accumulation of Pakeha-style wealth at the Bay of Islands in the 1830s*, if one accepts that that was the cultural imperative causing Maori to barter*. Trade was not much interrupted by the 1830 war, for example, especially with the subsequent development of Otuihu as another trading centre. Tribal war and trade with Europeans were quite compatible. It was not until the destruction of Kororareka in 1845, when Europeans felt compelled to abandon the Bay, that trade was seriously affected by local warfare. So it is difficult to see the kind of direct correlation posited by Head. I do not doubt her view that there was an intense engagement between Maori, missionaries, and Christianity, but am unable to attribute it to a Maori 'drive for modernisation', meaning the personal accumulation of wealth on western terms and for western purposes.[169]

Modification or abandonment of customs, supplemented by the adoption of some new ones, was one practical outcome of Christian conversion. Historians like Belich and Shawcross, however, argue strongly that the Christian atua was simply added to existing beliefs and practices.[170] Angela Ballara mainly concurs with this view.[171] In 1844, Bishop Selwyn's chaplain, William Cotton, noted a long-running dispute:

> whether it is lawful to give food to dogs over which grace has been said. The controversy runs very high amongst the natives on this point. The word "w[h]akatapu" is generally used in the graces. This, tho adopted as the rendering of the word consecrate, connects itself naturally in the mind of a native with the superstitions of their old Tapu. For they often take our ideas as supplemental & not as superseding their own. (Hence the great danger of retaining any word which has been used in connection with their old superstitions.)[172]

The result was an indigenised religion that remained Maori in many of its customs and values, and the beginnings of reactive movements like Papahurihia.[173] The question of whether Maori values and beliefs were fundamentally altered by Christianity in the short-term is a very difficult one. On the whole, we have to rely on what European observers reported of Maori thoughts and behaviour. The letters from converts to Rev W Yate, for example, which he published in his book on New Zealand in 1835, repeat the evangelical language and ideas of the missionaries of the day. Clearly, belief in the Christian heaven and hell, and the need for a new "heart" and new forms of behaviour, had been sincerely adopted by at least some converts.[174]

In terms of observable behaviour, it is very striking that Maori Christians gave up warfare and the pursuit of mana through this means (at least for a few years).[175] Utu, on the other hand, and muru (castigated as "plunder" by Europeans) persisted both as values (the need to reciprocate and recompense) and in institutionalised form. Christians sometimes sought alternatives to taua muru – in particular hui or runanga reinventing themselves as

[169] ibid, pp 99-103
[170] K Shawcross, pp 353-362; J Belich, *Making Peoples*, pp 164-178, 217-223
[171] A Ballara, *Taua*, pp 412-435
[172] W Cotton, Journal, 22 October 1844, qMS 0568, ATL
[173] For Papahurihia, see J Binney, 'Papahurihia, Penetana, ? – 1875', *Dictionary of New Zealand Biography*, updated 7 July 2005, http://www.dnzb.govt.nz
[174] W Yate, *An Account of New Zealand*, pp 250-281
[175] Warfare was not entirely given up – indeed, it was always a potential outcome of taua muru, which persisted. Intertribal conflict between Christians continued, such as the fighting at Oruru in 1843.

Church committees (komiti). Slaves were given up in some instances but slavery as a concept, and in particular the treatment of war captives who remained with their host community, was modified but not entirely. Violent behaviour in intra-community relations was also modified. Though some converts were not proof against the persuasions of their non-Christian relatives, there are many examples of Christians refusing to participate in warfare, and seeking non-violent resolution to disputes or the punishment of crimes like adultery.[176] This had a spill over effect into social change, as new forms of social control were required. Mana continued to be sought through different avenues, of course, and non-Christian tribes also became less likely to wage war as a solution to inter-hapu problems.

Furthermore, warfare was revived briefly in 1837 and again in the early 1840s, though practised somewhat differently and with respect for the Ra Tapu. According to Davis, almost two-thirds of the Bay of Islands Christians abandoned the Church (some temporarily) in the mid-1840s, amid a great revival of customs only recently set aside.[177] Even so, in 1849, he noted how a Waimate chief who used to kill slaves regularly had written a letter to a pa where fighting appeared likely to break out, saying, 'My children, let him throw the first stone, yea, the second stone, before you attempt self defence. Trust not in your guns. Look only to God.'[178] I think it is possible to see a very real change of values here, in some tribal leaders and their followers. Aspects of Maori culture were transformed as the people converted to Christianity; noting always the provisos outlined above, that about half of the tribal population at the Bay remained officially non-Christian, many converts abandoned the new religion and revived recently discarded customs in the 1840s, and Christianisation was *to some extent* an addition of extra beliefs and practices on to an existing framework. As we will see below, armed skirmishes among Bay Nga Puhi continued into the 1860s and beyond. Traditional dispute resolution persisted. Customary law and fundamental Maori values continued alongside (or as part of) Maori Christianity, at least for the period covered by this report.[179]

2.5 Social and Political Change

The modification of customs as a result in the first instance of contact with Europeans, and then increasingly with conversion to Christianity, had cascade effects that resulted in social and political change. The decline in polygamy and slavery were important in their own right, but there is a question as to whether they led to significant changes in the political role and authority of chiefs. In particular, did they alter the degree to which they could provide gifts to followers and visitors? Religious changes altered the authority and roles of rangatira and tohunga in various ways, and created new sources of authority in the missionary and Native Teacher. The inclusion of the Kawana and his officials after 1840, and their apparent alliance with the Church, took this further. The apparent end of warfare and of feasting at hahunga reduced the number of traditional avenues for enhancing mana and restoring balance, though these were replaced partly by the new mission feasts and school examinations as occasions on which elaborate feasting and gift-giving to manuhiri would take place. Acquisition of Europeans, and the mana of transacting land with them (especially contested land), became a new part of the age-old competition for mana.

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[176] There are several examples in the missionary journal and letter collections.
[177] J Coleman, pp 294, 301, 309, 347
[178] R Davis to J Coleman, 1 April 1849, in J Coleman, p 346
[179] See also A Ballara, *Taua*, pp 412-443

An excellent example of the type of challenges to Maori law and social organisation posed by culture change may be found in the oft-quoted letter of a Waimate chief, Wiremu Hau, to Marsden in 1837:

> Sir, - Will you give us a Law? This is the Purport of my Address to you. 1st, If we say let the Cultivations be fenced, and a Man through Laziness does not fence, should Pigs get into his Plantation, is it right for him to kill them? Do you give us a Law in this Matter. 2d, Again, - should Pigs get into fenced Land, is it right to kill or rather to tie them till the Damage they have done is paid for? Will you give us a Law in this? 3d, Again, - should the Husband of a Woman die, and she afterwards wishes to be married to another, should the Natives of unchanged Heart bring a Fight [taua] against us, would it be right for us to stand up to resist them on account of their wrongful Interference? Will you give us a Law in this also? 4th, Again, - in our Wickedness, One Man has Two Wives, but after he has listened to Christ he puts away one of them, and gives her to another Man to Wife. Now, should a Fight be brought against us, and are we, in this Case, to stand up to fight? Give us a Law in this. 5th, Again, - should Two Men strive one with the other. Give me a Law in this. My (Ritenga) Law is, to collect all the People together and judge them for their unlawful fighting, and also for wrongfully killing Pigs. Therefore I say, that the Man who kills Pigs for trespassing on his Plantation, having neglected to fence, had rather pay for the Pigs so killed. Will you give us a Law in this? Fenced Cultivations, when trespassed on, should be paid for. These only are the Things which cause us to err; Women, Pigs, and fighting one with another. 6th, But here is another, - should a Man who is in the Church come in a Fight against us? Give us a Law in this. Another Thing which we are afraid of, and which also degrades us, is this, Slaves exalting themselves above their Masters. Will you give us a Law in this also?[180]

Political and social control had thus been disturbed by culture change in some communities. In this particular Waimate community, new items of material culture and economic change, namely the introduction of pig farming and the practice of fencing pigs out and cultivations in, had created new social problems or “crimes”. The rangatira, having converted to Christianity, was not sure what types of penalties were appropriate for dealing with damage to cultivations by pigs, or slaughter of pigs by the victims of trespass. The traditional mechanism of social control was still operative – the rangatira assembled the people concerned and instructed the trespass victims to pay compensation for the slaughtered pigs, if they had not built fences around their cultivations. The community had formulated an idea that pigs should be fenced out by crop-growers, but this did not have widespread support, allowing people to be punished for infractions on either side. The pig-owners had to pay compensation for where their animals managed to get into fenced cultivations. What was sought from Marsden, in this instance, was confirmation that the adaptation of Maori law to this new circumstance was appropriate for Christians.

The community did not appear so agreed, however, on the basic value change noted in the previous section of this chapter; that settlement of matters with violence as an ultimate sanction was no longer appropriate under any and all circumstances. Firstly, non-Christian taua sought to challenge community decisions by force. Secondly, Christians sometimes participated in such taua. Thirdly, there were occasional outbreaks of fighting within the Christian community. The chief and community were uncertain as to how to punish such crimes against the new way of doing things, and whether it was consonant with Christianity to fight in self-defence.[181] These were complicated questions that have puzzled Christian philosophers and theologians for centuries. There were no easy answers.

Ballara noted an important assessment of Maori society by the perceptive missionary, Octavius Hadfield, in 1845.[182] He asserted that Maori law (tikanga and ritenga) was still so

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[180] Unnamed chief [Wiremu Hau] to Marsden, Waimate, 14 May 1837, Minutes of Evidence to House of Lords Select Committee on NZ, 1838, GBPP vol 1, p 272

[181] ibid

[182] O Hadfield, ‘System of Government among the New Zealand Tribes’, 1846, GNZ MS 17, Grey Collection, Auckland Public Library

predominant that any tribe in New Zealand could 'predict accurately what the conduct of another tribe will be in any given circumstances'.[183] Ballara accepted Hadfield's opinion that customary law within Maori communities was still unchanged, including methods of dispute resolution through taua muru and (ultimately) war. She argued that Wi Hau's letter was in fact evidence of this, demonstrating that the old laws were still actually in force. Hau was beginning to question taua muru and looking at repalcing it, but in 1837 Christians were still a small minority in the Bay of Islands. The fact of Hau appealing to an outsider for advice, and in writing, was nonetheless evidence of the beginnings of change.[184]

In terms of types of social change and their implications, however, it is instructive to look in some detail at the final matter raised in Wi Hau's letter: 'Another Thing which we are afraid of, and which also degrades us, is this, Slaves exalting themselves above their Masters. Will you give us a Law in this also?'[185] The Maori custom of enslaving war captives or subject communities was an integral institution of both traditional Maori society and the new trading economy, and one to which missionaries were ambivalent in their responses. Although missionaries purchased slaves (who were then freed) or hired them from their masters, they did not insist on the freeing of slaves as a pre-condition for baptism. They urged it as a general Christian duty, and definitely opposed the killing of slaves for offences (whether their own or others'), but did not launch a full frontal assault on the institution.[186] As a result, many slaves were freed in the late 1830s as an accompaniment to conversion, but some Christian hapu kept at least some of their slaves. In those cases, the slaves may have had an improved status and become 'Part of his [the chief's] Tribe', as JD Tawell put it.[187] At the same time, as European trade became more and more important to Bay Maori, JS Polack suggested that there was a general improvement in the treatment of taurekareaka or mokai. Rangatira (including non-Christians) became less likely to kill slaves, because 'they know that the Europeans will not trade with them if they do'.[188]

As a traditional institution, the evidence of European observers suggests that slavery in the Bay of Islands consisted mainly of the taking of war captives and their removal from their homelands to the Bay. There may have been some small surviving subject communities of Ngare Raumati and others in the south-east Bay and the Taiamai area – more research would be required on that point, and they may have been allies by marriage and tuku, rather than mokai.[189] On the whole, taurekareka were people captured in war and brought back to the Bay. The majority of captives were women or children, and they were put to work by the rangatira and their wives. Some important slave women became minor wives of chiefs in their own right. According to observers, the agrarian expansion at the Bay, described above, was mainly possible because women's work was directed more into growing the new crops, and because of the huge numbers of slaves taken by Nga Puhi in their successful campaigns. Also, the provision of services to Europeans, both in terms of labour and prostitution, involved the use of slaves (whose payment was shared with the chiefs). From the mid-1830s, however, there were no new campaigns and the number of slaves became static, and then declined sharply as Christian chiefs started to release slaves and send them home. The impact that this might have had on the Bay economy was, however, and quite coincidentally, negated by market changes, as will be noted in the next section.

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[183] A Ballara, *Taua*, p 428
[184] ibid, pp 428-429
[185] Unnamed chief [Wiremu Hau] to Marsden, Waimate, 14 May 1837, Minutes of Evidence to House of Lords Select Committee on NZ, 1838, GBPP vol 1, p 272
[186] W Yate, evidence to Aborigines Committee, 1836, Wai 64 F4, vol 7, pp 1114-1115
[187] Minutes of Evidence to House of Lords Select Committee on NZ, 1838, GBPP vol 1, p 121
[188] ibid, p 84
[189] See above, chapter 2

The adoption of Christianity was not the only reason for the freeing of slaves. The missionaries noted that slaves were 'frequently' returned to their homes because they were related to their captors, because Nga Puhi had made peace with the people concerned, or because their own tribe offered compensation for their return. By 1839, the CMS felt that Bay chiefs barely had enough slaves for cultivation and other economic purposes. At the same time, the casual killing of slaves was 'every year becoming less frequent'.[190] Although chiefs possessed 'unlimited power over the lives and liberties of their slaves', the newly converted rangatira were finding it difficult to maintain this authority, as noted in the letter to Marsden above.[191] Although William Yate suggested that Christian slaves were more obedient, there is little corroborating evidence for this assertion.[192]

Slavery was still in practice at the Bay of Islands though undergoing a sharp decline. At the same time, polygamy was also being abandoned by Christian converts, while there was a Bay-wide decision to give up the great southern campaigns of the 1820s and early 1830s. The results of these changes were, according to some commentators, a diminution in the authority and power bases of the chiefs. Much of a tribal leader's personal ability to entertain guests and give gifts rested on the labour of multiple wives, children, and slaves. A reduction in this type of work, while not necessarily impacting on the community as a whole, was supposed to have adversely affected the chiefs. Partly, European observers looked for feudal institutions from their own past, and expected the chiefs to have personal power bases that therefore appeared to be in decline. Rangatira were community leaders, and continued to direct the work and gift-giving of the community relatively unchanged.[193] Mana from the successful conduct of war, and the ability to overawe friends and foes alike by fighting prowess, might have been affected by the end of the southern campaigns. But such an effect would not have been very immediate. It was into this situation of social ferment, in which new ideas were being considered, old customs abandoned, and the basis of political authority possibly shifting, that the Crown attempted to set up a new government and system of land law in 1840.

Again, however, there is little evidence that Maori customary laws were significantly revised as a result of these changes. People, whether settlers, slaves, or slave-wives, could be considered "property" in various ways. But this was always a limited conception. There are many accounts of slaves and masters working side by side, of slaves being allowed to cultivate their own crops after completing work for their "master", and of keeping part of the payment for their services. Slaves had to work hard, of course, had a lot less freedom of action than free people, and, most importantly, could be killed to fulfil various social obligations.[194] But their release did not change customary rules with regard to property. They were never considered possessions in the way that slaves were in the United States, for example, and traditional society allowed for their release or enfranchisement with their "hosts" under various circumstances. Although the scale of releases and the reasons for them may not have been traditional ones, they nevertheless made no impact on customary views of property at the Bay of Islands. Further research would be necessary to determine the proportion of slaves sent away, and how those who remained were eventually accommodated within the system of right-holding in terms of land. Formerly, slaves were allowed to

[190] Minutes of CMS Sub-Committee, 19 February 1839, Wai 64 F4, vol 6, doc 70
[191] ibid; see also above
[192] W Yate, evidence to Aborigines Committee, 1836, Wai 64 F4, p 1114
[193] A Ballara, *Iwi: The dynamics of Maori tribal organization from c1769 to c1945*, Wellington, 1998, pp 219-233
[194] A Gould, *Evidence (Historical report concerning slavery)*, Wai 64 F3, pp 7-21; see also the various documents in Wai 64 F4

cultivate small plots even before their full freedom; how were they allowed to do so, and on what grounds, after 1840?

It is clear that culture changes like new economic practices and the adoption of Christianity led to spin-off effects on social and political organisation. Throughout the 1840s and 1850s, missionaries and officials bewailed the weakened state of the chiefs. They also claimed, from time to time, to have abolished Maori customary practices and the role and authority of tohunga. Nevertheless, Europeans were sometimes expecting to see ruling "chiefs" on overseas models, into which rangatira did not fit. At the same time, new sources of authority (through Church and State patronage, and land "sales") were supporting the mana of the chiefs. Also, the passage of the Tohunga Suppression Act in 1907 indicates that it was premature to celebrate their demise in the nineteenth century. The 1840s became a period of turmoil, in which old customs were 'revived' and new ways of doing things explored. The evidence from the post-1840 period, which is considered below in section 3, indicates that rangatira remained the effective leaders of their communities, and those communities continued to govern themselves by their own institutions, much as before.

Some things, however, were on their way out for good. It is notable that slavery was not included in the revival of customs. As far as I am aware, the civil war within Nga Puhi in the mid-1840s did not involve the taking of war captives as slaves. This kind of war between close kin may not have involved taking of slaves traditionally anyway, except in instances like the conquest of Ngare Raumati by Nga Puhi. Claimants should be able to provide further information on this point.

2.6 Health and Demography

In the 1960s and 1970s, it became common to view the Bay of Islands as the centre of a population crisis in the pre-1840 period. Attributed by some to the growth and intensity of warfare, and by others to European diseases, the Maori population was supposed to have undergone a marked decline. This phenomenon was noted by missionaries and other European commentators, and duly reported to the British Government. Partly, these observers saw what they expected to see; the fatal impact of European diseases and guns on an indigenous population. In his classic book on the subject, Harrison Wright argued that the population decline led to cultural dislocation on the part of Nga Puhi, who then adopted Christianity and its western ideas and medicines in an attempt to replace the aspects of Maori culture that no longer "worked".[195] This thesis has been challenged, most recently by Pool, Belich, and Ballara. The demographer Pool argues that warfare had little impact on the pre-musket mortality rate, and that although introduced diseases had some impact, it was relatively minor because the Maori population was too widespread, and points of physical contact too few, for major depopulation. He allowed for regional variations, however, at points of high contact like the Bay of Islands.[196]

In terms of the Bay of Islands, Shawcross argued in the 1960s that Maori warfare and European diseases led to a 'spectacular depopulation' there in the 1830s. She does not address the question of how this was consistent with an ability to sustain ever larger crop-growing during and after the departure of many slaves. According to Shawcross, the European sources suggest that although the Bay Maori won most of their campaigns, they had relatively high casualties, especially from 1826 onwards. After 1830, as the armament of the different tribes evened out, there was more firing from covered positions, less hand-to-hand combat, and much fewer fatalities. Also, the great successes of the past were over and

[195] HM Wright, *New Zealand, 1769-1840; Early Years of Western Contact*, Cambridge, 1959
[196] I Pool, *Te Iwi Maori: A New Zealand Population Past, Present, & Projected*, 1991, pp 29-58

Bay Maori became less and less keen to continue their southern expeditions. Shawcross suggests that an anti-war movement developed at the Bay in the 1830s, partly as a result of the recent lack of success, but also because Christian Maori gave up war as part of their conversion.[197]

It is difficult to see a general disillusionment with fighting, though, of the type that Shawcross suggested affected non-Christians and Christians alike. In particular, the argument that the 1837 skirmishing at the Bay disrupted trade and that this minor affair somehow led to mass conversion or an end of warfare cannot be accepted.[198] It came too late to affect the raids on southern tribes, which had already ended, and which were by far the dominant form of warfare interdicted by Christianity at the Bay of Islands. Intra-group fighting at the Bay had always been a relatively contained affair, often arising from taua muru, and these continued among non-Christians and drew Christians in as well (as Wiremu Hau complained in 1837).[199] Looking outwards, restoration of balance between groups was as much about competitive gifts and periodic marriage ties as it was about war. The late 1830s saw relations among Nga Puhi and between Nga Puhi and others move more to that end of the traditional spectrum. This happened periodically in Maori society. In the late 1830s, it had a particular impetus because of missionaries and the question of conversion. When the great northern alliance rangatira debated Christianity in 1839, for example, its adoption was considered in conjunction with moves to restore the balance (peacefully) with Kawiti and other southern alliance rangatira. Those moves were going to happen regardless of whether the Waimate tribes went on to adopt Christianity.[200] Peace and Christianity were linked but the former was not dependent on the latter.

Marsden and other sources record three or four serious epidemics of European diseases at the Bay up to 1825. Though relatively few, they were destructive in their impact. Diseases swept the Bay much more often after 1826. In a society where only a few isolated individuals had occasionally fallen seriously ill of a disease, the effect of large numbers all in the same area falling sick at the same time, must have been frightening. It is thought that epidemic diseases were unknown to Maori before contact – the few mortal illnesses suffered pre-contact (tuberculosis and an unusual leprosy-like disease) were never widespread. Pulmonary complaints were common but not usually fatal. Lacking resistance and living in communal conditions favourable to the spread of infection, large numbers of Bay Maori died each year in epidemics from 1826 to 1840. The newness and severity of this situation must, it would seem, have had unsettling cultural and social effects. Some traditional cures, such as immersion in cold water, made matters worse, and those who did recover were often weakened when the next epidemic came along. In 1838, Richard Davis wrote to the CMS that 'there are not more than half the people to be found in the Bay and its vicinity that were found here 14 years ago'.[201]

Disease affected both interior and coastal populations at the Bay, although due to migratory resource-use these were in fact much the same. Some European observers suggested that Maori living at the highest points of coastal contact were in fact freer of sickness than the interior populations of the Bay. The same people suffered more, however, from venereal diseases, which lowered resistance to other illnesses and may have reduced fertility. Prostitution also had another unexpected side-effect – Henry Williams suggested that

[197] K Shawcross, pp 365-366
[198] ibid. See also L Head, 'The pursuit of modernity in Maori society'.
[199] [Wiremu Hau] to S Marsden, Waimate, 14 May 1837, Minutes of Evidence to House of Lords Committee, 1838, GBPP vol 1, p 272
[200] R Davis to J Busby, 29 June 1839, qMS 0352
[201] K Shawcross, pp 367-368

by the late 1820s many young Maori women were finding it so profitable that they refused to marry and settle down to raise families. There is no empirical evidence on this point.[202]

If one's population was halved in ten years, as Richard Davis suggested, then that must have had profound effects on society and culture. But the missionary may have included departed slaves and not accounted for the effects of mobility in his estimate, which is unlikely to have been accurate in any case. Belich claimed: 'Drawn themselves from classes experiencing increasing life expectancy and high fertility, missionaries mistook high but not grossly abnormal Maori death rates and low birth rates for something catastrophic'.[203] While rapid population decline at the Bay became a matter of popular opinion at the time, Belich suggests that this was largely misconceived. Partly, estimates of the original Maori population size were too high, and accounts of the impact of disease and warfare too exaggerated. Further research is needed on this point, to determine whether the Bay of Islands should be considered an exception to the general models proposed by Pool and Belich. Given the latter's assessment of Christian conversion and culture change, however, he clearly does not consider that there was major social and cultural dislocation among Nga Puhi, nor a rapid and thorough process of cultural change at deep and fundamental levels, before 1840.[204]

2.7 The Overall Degree of Culture Change – an interim conclusion

The religious historian, Bronwyn Elsmore, who focused on religious change, argued of the period 1830-1850:

> These twenty years must be the time of greatest change that the Maori of New Zealand have ever gone through. Many encountered Europeans for the first time, and all were subjected to great changes regarding culture, spiritual beliefs, health and well-being.[205]

Authorities as diverse as Belich, Ballara, and the Muriwhenua Tribunal saw this period very differently, as one in which Maori selected and adapted aspects of the European culture and grafted them on to their own, avoiding major social and cultural dislocation in the process. Either way, there were significant changes to institutions and beliefs, such as warfare, dispute resolution, marriage, slavery, the role and authority of rangatira and tohunga, religious concepts, tapu, ideas about the afterlife, economic practices, and so on.

The evidence covered in this chapter has explored some of the alterations to material culture, such as the adoption of blankets and then European dress, muskets, new crops, and iron goods. These were accompanied (and enabled) by an agricultural revolution, in which Maori greatly expanded the types and quantities of crops under production, and rejigged the working lives of women and slaves to accommodate these increases. A new economy came into being, in which the focus of Nga Puhi activity was the growing of potatoes, maize, and pigs for European-style barter with the shipping and increasingly with settlers. Fishing and cultivation of kumara continued to provide staples for the Maori diet, but the gathering and eating of fern root was gradually abandoned as a principal economic activity.

Both the means of production and the mode of exchange involved modifications to traditional Maori practices; cultivation of root crops in the first instance, and reciprocal gift-giving in the second. It is the judgement of Firth and Belich, widely separated in time, that these changes did not require transformation of Maori culture or values. Particularly, the new economy does not appear to have created new imperatives – it was geared to the satisfaction

[202] ibid, pp 368-369; L Rogers, *Early Journals*, pp 54-55
[203] J Belich, *Making Peoples*, p 174
[204] ibid, pp 140-178
[205] B Elsmore, *Mana From Heaven*, p 21

of wants (food and clothing) and the acquisition of mana, in recognisably Maori ways. Nor does it appear to have altered Maori systems of authority and rights. The new crops and the labour to produce them were accommodated within the traditional hapu system, as was animal husbandry and rights to pigs.

If changes to material culture and the economy did not lead to major social or cultural changes, then what of the adoption of new ideas, a new religion, and the abandonment of selected customs? The 1830s was a decade of rapid change, in which about half of the population of the Bay of Islands became Christian converts. Baptism involved the learning and recitation of new religious ideas, and the renouncing of warfare, more casual fighting, polygamy, tattooing, the haka, the hahunga, and in some instances the keeping of taurekareka. These were major modifications to tikanga, Maori law, and the traditional way of life. They were accompanied by the enthusiastic adoption of new European forms of power, including literacy and missionary karakia and medicines.

Many historians assert that these changes were superficial. They argue that the Christian atua was merely added to the other Maori atua, and that tapu, makutu, rongoa, and the customary worldview continued without fundamental alteration. There is plenty of evidence in the missionary papers to support this view. Richard Davis, for example, noted in 1845 that Christian Maori at Kaikohe were blaming an epidemic on makutu, and that Christians elsewhere were still 'under the influence of their native superstitions', despite regular church attendance.[206] There was also the reversal of the 1840s, in which customs like the hahunga, tattooing, and warfare were revived (in modified form), and many converts rejected the missionary Church, though in some cases this was a temporary rejection.

Were there major or permanent changes in customary values? It seems clear that some customs, like cannibalism, polygamy, the casual murder of slaves, and even slavery itself, were on the way out despite the reversals of the 1840s. The idea that one should triumph over one's enemies in certain ways was altered, though the enhancement and maintenance of mana remained a principal motivator in Nga Puhi affairs. Most importantly, it is possible to detect changed values in terms of violence and warfare, and an enthusiastic adoption of aspects of Christian morality that had no parallel in traditional Maori ethics. Although the missionaries were ultimately frustrated in their desire to transform Maori religion entirely into Victorian English Christianity, there were definite and substantive alterations to Maori law and ethics as a result of the conversion process. The practice of "Christian warfare" in the 1840s was, according to the observations of missionaries like Davis, very different to what had happened in the past.[207] What matters more, perhaps, is that it was carried out in a controlled way by Maori communities for their own purposes and according to their own laws, especially after 1846. Taua muru with occasional armed skirmishes regulated affairs between Bay hapu after the northern war, well into the 1860s.

In addition, the changes to material culture, the economy, and religion had a few flow-on effects in the social and political organisation of Nga Puhi at the Bay of Islands. Institutions such as polygamy and slavery had important economic functions, and were mainstays for the mana of gift-giving chiefs, just as the practice of rongoa and customary karakia were vital to the work and mana of tohunga. Similarly, the refocusing of a warrior culture towards permanent peace, in which mana and the balancing of accounts between communities would no longer be obtained by force (ever), ought perhaps to have led to changes in the nature of leadership and authority. As noted, however, the revival of warfare and other customs during the stresses of the 1840s limited the nature and extent of these changes.

[206] J Coleman, pp 303-306
[207] eg J Coleman, pp 294, 301; although note the alternative interpretation of Ralph Johnson, discussed above in section 2.1

The primary agent of change, according to the traditional interpretation of Bay of Islands history, was the depopulation caused by warfare and disease. This scenario involves a major population decline and a resultant cultural dislocation, in which distraught tribal groups turned to new solutions, adopted the European religion and medicines, gave up warfare, and underwent significant social transformation. More recently, historians like Belich reject this interpretation, arguing that the population decline was much less extreme during this period than had been posited, and that Maori culture remained strong and relatively intact. Choices to make modifications were deliberate and Maori-controlled, as in the example of the hahunga described above, so long as political control of Pakeha and their ways continued to rest with the hapu concerned. The introduction of the new government in 1840, under this scenario, was a key innovation with major implications for Maori loss of control of the nature and rate of social change. At heart, this involved questions of rangatiratanga and kawanatanga that will be considered further in later chapters.

Ultimately, claimants and the Crown are most interested in these questions in terms not merely of authority over social change, though that is important, but with regard to authority over land, resources, and self-governing Maori communities. Did the social and cultural changes prior to 1840 revise Nga Puhi systems of right holding and their laws with regard to control and use of property? Although the main focus on this question will come later in the report, here it is possible to say that the nature and extent of cultural change described above appears to have had minimal effects in this area. The new mode of exchange, barter of goods and services, appears to have been close enough to Maori practices of gift-giving for it to be adopted by Maori in their dealings with Pakeha. At the same time, more traditional tuku (gifts) continued as part of the relationship between Maori and "their" Pakeha, as with the Yate examples cited above, and between Maori tribes and leaders themselves. Firth's judgement is that nothing fundamental was altered in the move to these aspects of the new economy.

Rights over property, and the application of Maori law to the property of both Maori and Pakeha, continued to be exercised in traditional ways. The custom of muru, for example, was applied to both peoples, though it was modified as the need to conciliate and keep the settlers gained strength in the 1820s and 1830s. We can see many such modifications of behaviour, and "exceptions" made for Europeans. Even so, muru survived into the 1840s and beyond at the Bay of Islands, though it sometimes took different and more "polite" forms, as Maning put it.[208] One of its most important triggers was tapu. Waahi tapu continued to be protected by tapu unless or until Maori decided to remove it. At the same time, missionaries would have preferred their converts not just to abandon tapu but also to terminate their communal lifestyle and establish nuclear families on individually-owned farms. But baptism was conditional on none of these things, and Bay of Islands Maori did not do them. Instead, Pakeha crops and animals became part of the traditional system of right-holding. Their introduction did not change how Maori conceived their rights to resources and land.

Settlers themselves were incorporated into a complex relationship with patron chiefs, involving reciprocal obligations under Maori law, though some missionaries were resisting this successfully by the 1830s. Concepts of property, and exercise of rights over resources, do not appear to have altered substantially by 1840. One possible exception to this was the mass freeing of slaves in the 1830s and 1840s, but there were traditional circumstances under which this could occur, and nothing had necessarily changed except for the scale of the releases as part of the peace-making process. Otherwise, the community continued to hunt, fish, and grow crops, organising itself in much the same way as it always had, and adding the new crops, fruit trees, and animals to the existing complex of customary rights. On the whole,

[208] F Maning, pp 107-108. This issue will be considered more in the following section.

therefore, one cannot point to the changes of the pre-1840 period to create a context that *automatically* or *necessarily* involved alterations to Maori beliefs about right-holding and customary laws of property. If there were such alterations, then they need to be accounted for separately and specifically. This matter will be considered further in Chapter 4.

3. Culture-change in the Government Era: the persistence of custom law, utu, and taua muru

Ballara and Wyatt have both considered taua muru in depth in relation to their discussion of culture change before 1840. Wyatt basically accepted Ballara's view (expressed first in her masters thesis and largely reaffirmed by her recent book) that taua muru were a fundamental institution in Maori society. They functioned in a variety of ways, as the main mechanism for punishing offences, reconciling offenders to their communities, and recompensing the community (and restoring balance). From these sources, and the accounts in primary documents, it is possible to make a number of general observations about the institution. The taua (sometimes translated by the missionaries as a "fight"[209]) would arrive at the pa or kainga of the offender. Europeans were perpetually puzzled and annoyed by Maori use of kin-ties, sometimes incomprehensible to the Europeans, to decide that apparently uninvolved people were the "offenders". There would usually be forewarning of the taua's arrival, allowing the community time to prepare a feast and gifts as compensation. The arriving party would be challenged ceremonially, and compensation might be worked out by mutual agreement. The ceremonies were followed by 'stripping' or 'plundering' of property, or sometimes gift-giving, and then there would be a feast. Occasionally, the feast itself was considered sufficient compensation. Alternatively, there could be ritualised forms of combat, and sometimes real differences of opinion leading to physical punishment and possibly a skirmish (not really a "war"). The main difference between Ballara and Wyatt was the degree to which they thought the institution was a fundamentally peaceful and stable one (Wyatt) or one which might more easily lead to war (Ballara).[210]

The application of taua muru to settlers appears to have been as common in the 1840s as previously, though harder for Europeans to put up with now that they had a government which they considered should be "protecting" them. Missionary sources such as the letters of Richard Davis refer to taua muru, small "wars", and occasional murders, all of which were regulated by Maori authorities according to custom.[211] At the end of the decade, Henry Williams reported the departure of many settlers due to 'stripping' by Maori at 'any trifling circumstance'.[212] Official correspondence from the 1840s suggests that northern Maori were also punishing adultery and witchcraft with death – admitted to be the case by Tamati Waka Nene – and were regulating disputes among themselves (and to an extent with settlers, especially over cattle trespass) by customary norms.[213] Of course, the 1840s were an unsettled decade for the Bay of Islands. The police magistrate's (and later Resident Magistrate's) correspondence indicates the settlement of disputes according to Maori custom during that decade, and involving muru of settlers, which government officials and missionaries then tried to adjust by securing the return of goods in exchange for officially-regulated compensation.[214]

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[209] meaning a party coming or going somewhere with the purpose of fighting
[210] P Wyatt, pp 1-29, cf Ballara's thesis (on which Wyatt comments), and also A Ballara, *Taua*, pp 82-163
[211] J Coleman, pp 286-287, 292,, 294, 298-301, 346, 354, 383-386
[212] H Williams to CMS, 30 January 1850, CN/O 94(c)
[213] See correspondence, GBPP vol 6 [1002], pp 93-102
[214] See correspondence in IA/1 for the 1840s, with many examples

The Resident Magistrates' Court took on a more settled and regular aspect in the 1850s, at least as it concerned cases involving Maori. Taua muru largely disappeared from view as a source of complaint for Europeans. In the cases mentioned in the inwards letters in the 1850s, most of those involving Maori were about settler allegations of theft by Maori, charges of assault, or violations of agreement (often European failure to pay properly for Maori produce). There were still occasional cattle trespass cases, and cases involving women – adultery, marriage with former slaves (requiring payment to masters) and suchlike. As the 1850s proceeded, disputes were increasingly about the felling of timber, and settler failure to pay the right amount to the right people for timber. The 1860s included cases about sales of liquor, and continuing problems with cattle trespass on Maori crops, and various other petty disputes. Serious crimes, involving loss of life, were very rare.[215] There were land disputes in which Maori occupied settler-claimed land (or vice versa) but these seldom made it into court.[216]

Some disputes involving muru and utu (compensation for infringements of custom law) took place on a low-key level, involving a small number of people instead of whole communities. In one case brought to the Bay of Islands court in 1855, a settler named Cochrane complained that a local chief, Tamati Kotaha, had demanded payment from him for the Maori woman living with him as his housekeeper:

> I asked why he [Tamati Kotaha] demanded payment, he answered that she had made a slave of me by refusing to become my wife. He said if I did not give him payment he would have me as such. I told him the woman was there and if he had any demand upon her to take her away.

The chief refused to take the woman but, after demanding payment unsuccessfully on a couple of occasions, threatened to kill Cochrane and took his best cow. Cochrane was suing for return of the cow. Tamati Kotaha told a very different story, and said 'he [Cochrane] had to pay for cattle trespass done by the cow – and if repaid he would give up the cow'. Resident Magistrate Clendon ordered the cow to be returned.[217] The case is emblematic of the very different cultural norms and laws still operating in Maori and settler communities in the Bay of Islands in the 1850s.

It might seem from the court cases, however, as if taua muru on a larger scale had ceased to operate after the 1840s. But this was not in fact the situation in the Bay of Islands. The Resident Magistrate's reports indicate that most matters were resolved internally by Maori communities by their own institutions, with only rare cases being referred formally to the magistrate's court.[218] One exception to this was a case involving gift-giving in 1858, which was still operating in a customary way but with a distortion in this case that led to a rare resort to the magistrate. As part of a taua muru in that year, various articles were taken. One particular chief wanted to obtain a European coat, and tried to get the owner to accept a dogskin mat as a present (in exchange). But when the owner refused to part with the coat, he was eventually pressed to take the mat anyway:

> Kira came to me with the Dog Skin Mat. He offered it four (4) times & I refused saying I had nothing to pay for it. He said, oh, why do you wish to pay for it. I said I do not want your Dog Skin Mat, I have one of my own. He answered, I should like to have had your coat but as I did not get it, you had better take the mat. I again said I had nothing to pay for it. He said take it you are a relation. The Mat was then dangling on my shoulder. I said I will take it, but shall commit myself by so doing. After the Mat

[215] Correspondence and court papers, BAVX Series 4817

[216] See, for examples, E Stephenson to Civil Commissioner, 9 January 1865, BBIW Series 4808, Folder 3b; & T McDonnell, Hokianga, to Colonel Wynyard, 24 August 1855, BAVX Series 4817, Folder 4a

[217] Case of SB Cochrane, 1855, BAVX Series 4817, Folder 3c

[218] Barstow reported that this was the case, for example, in his Report of 13 October 1862, BBIW Series 4808, Folder 1c

> had been in my possession for one month, I recd. a bill from Kira for £5. I thought it a very high price, but intended to pay for it. According to Native Custom, I knew that he had made me a present and I intended to have made him a present. I recd. another Bill, £3, when at Wi Hau's. I meant then to have answered his letter but Wi Hau prevented me.[219]

There had been some change to the internal institutions of Maori communities in the 1840s. As whole (or parts of) communities became Christian in the late 1830s, the missionaries presided over committees (komiti) to regulate behaviour and resolve the kinds of problems raised in Wi Hau's letter. At first, they were called 'kooti whakawa' and were mainly a form of inquiry into infractions of the mission rules, and a means for the missionaries to debate and resolve matters with their congregations in a hui-based format. From 1840, the komiti began to operate whether or not the missionary was present, and the word was also used to describe similar meetings among non-Christian communities. Despite the adoption of the English word 'committee', Ballara argues that these institutions were in fact identical to the korero that took place with taua muru, but that the speeches were the business themselves rather than a preliminary to action (either a hakari, compensation, or "stripping"). In other words, hui-based forms of dispute resolution were taking on some Pakeha trappings.[220] William Cotton, for example, called the Waimate hui of July 1844, convened by Bishop Selwyn for the Nga Puhi rangatira to resolve how to deal with the chopping down of the flagstaff, a komiti.[221]

Komiti combined elements of Maori custom with some modified practices in the 1840s. As Ballara points out, however, taua muru and even war operated alongside komiti as forms of dispute resoltuion. Taua muru continued as a functioning institution in the 1850s, as the government's occasional efforts to intervene reveal. When Wi Hau accidentally set fire to some tapu bush in 1855, his pa at Waimate was raided and he allowed some horses and other property to be taken off. When Wi Hau's son retrieved the horses, the rangatira wanted them restored to the party who had carried out the muru. Rewa and the hapu living at Rawhiti were not satisfied and also came to muru Wi Hau, which resulted in complicated negotiations and ceremonial confrontations between the tribes. When the government interpreter was blamed for a pig being given up, he was threatened by Te Puhi until the matter was settled by a ceremonial combat between Te Puhi and Tango of Ngati Manu. The original infringement of tapu was resolved by the groups through their own customary institutions without significant government involvement.[222]

The Resident Magistrate, however, demanded compensation for the insult offered to his interpreter, and was successful in obtaining a cession of land from the offender. There was no question of a trial or European forms of punishment for the assault.[223] At the same time, the magistrate reported that he relied heavily on rangatira like Mohi Tawhai, Arama Karaka, and Pene Taui, who were settling disputes between Maori and 'compelling natives to make restitution for aggressions upon Europeans'. Although two of the three were Assessors at the time, and also worked with Clendon in negotiating disputes like the Mawhe one of that year, the indication is that they were adjusting disputes between communities on their own.[224]

Insitutions like the komiti assisted the Assessors and other rangatira in this task. O'Malley describes the komiti as drawing on missionary codes of behaviour, indigenising and selectively appropriating aspects of it into a 'hybrid, but still fundamentally Maori, code

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[219] BAVX Series 4817, Folder 5c
[220] A Ballara, *Taua*, pp 436-442
[221] W Cotton, Journal, 19 July 1844, qMS 0567
[222] Duncan to Clendon, Wahapu, 13 February 1855, IA 1, 1856/260
[223] Clendon to Colonial Secretary, 11 April 1855, IA1, 1856/260
[224] Clendon to Colonial Secretary, 17 July 1855, IA1, 1856/26

of dealings better served to meet the colonizers on the "middle ground"'.[225] Such insitutions were no less 'authentically Maori', and this applied even more to the runanga, both official and unofficial, that developed in the 1850s and 1860s. Runanga were a pre-contact hui-based institution, in which the entire community met to discuss and resolve issues. To an extent, the name was used interchangably for komiti, but O'Malley argues that they took on some Pakeha forms of organisation and record-keeping. By the 1860s, they were becoming standing bodies with a smaller, fixed membership, and often with a written set of rules or laws. This was especially so with the official runanga established by the Government (the New Institutions). Nonetheless, O'Malley concludes that the Government's runanga applied Maori law and Maori forms of decision-making to the situations facing tribal communities, and were not ' "Maori-fied" means of applying Pakeha law'.[226]

The continued functioning of Maori customary law and of taua muru is best revealed in the official record by the government's attempts to change, end, or in some cases tolerate it. In 1862, George Clarke, then the Civil Commissioner for the north, instructed the Waimate Resident Magistrate to deal informally with matters that were "crimes" under Maori custom but with which he could not deal formally in his court as infringements of New Zealand law. Clarke noted that they were nevertheless very important to Maori, and if access to the Resident Magistrate was denied, they would continue to settle them themselves by adopting 'some Native mode of redress':

> Some of the cases I am especially alluding to so difficult to manage in Courts as now constituted are:
> Incontinency
> Criminal Sin
> Abduction
> Native Curses
> Tapus
> False Accusations
>
> …Heavy demands [for compensation] for what we may deem small offences but which are in the estimation of the Natives of a grave Character cannot be done away with at once but they may be corrected and systematized and brought gradually within the Jurisdiction of our Courts and Legalized. Indeed any Native Custom not immoral or excessive in its demands should be entertained by the Bench as being in accordance with the Treaty of Waitangi which guarantees to the Natives such Customs. This would obviate many difficulties which often perplexes the Magistrate. The great object to be kept steadily in view is to prevent a breach of the peace to introduce order and respect for the Law and to establish confidence.[227]

Clarke noted that there were many 'self-constituted Runangas' in the district, which were replacing 'Native Tauas' but actually making such heavy demands for reparation that they were 'subjecting the offender to greater inconvenience than the Native Tauas'. Clarke instructed Williams to bring these runanga under the official government system and control.[228]

Grey's experiment with government-sponsored runanga was enthusiastically adopted in the Bay of Islands in the 1860s, and a district runanga at Waimate in 1862 passed a resolution 'that all Maori tauas should cease and any person instigating or joining in the same would in future be fined for so doing'.[229] Clarke's hope of that year, therefore, that taua muru were already being replaced by Maori-regulated compensation via negotiated agreement

[225] V O'Malley, 'Runanga and Komiti: Maori institutions of self-government in the nineteenth century', Ph D thesis, Victoria University, 2004, p 32
[226] ibid, pp 33-59; the quotation is on p 53
[227] G Clarke, Civil Commissioner, to EM Williams, RM, Waimate, 1 August 1862, BAFR 10869, Folder 1b
[228] ibid
[229] E Williams, RM, Waimate, to G Clarke, 21 April 1863, BAFR 10875, Folder 1a

(itself part of the tradition of muru), was clearly premature. In 1863 the Resident Magistrate had to remonstrate with a party who led a taua,[230] and in 1866 a group of senior chiefs demanded compensation from the whanau of a 'lunatic' who had said that 'certain Ancestors were food for himself, and horse'. The Mongonui Resident Magistrate appealed to Williams for assistance at the Bay, noting that a 'large meeting was held at W[h]angaroa last week, and it is reported to me that "Arama Karaka", "Hongi Hika", Titi, and other powerful Chiefs, after having killed the Lunatic's horse, demand payment from his relations, and if not given, will make war upon them'. The government did what it could, by taking the 'lunatic' off to an asylum in Auckland.[231]

In 1864, one man shot another in a case involving adultery at Te Tii. The Civil Commissioner had to interview the principal chiefs to 'learn their general feeling relative to giving up the aggressor to be dealt with in accordance with English usage before I ventured to express an opinion on the case'. The chiefs of the district refused to give up the offender for trial and imprisonment, but offered instead to pay any fine imposed by the court. Tamati Waka Nene was among the rangatira who refused to give him up. As a result, the Civil Commissioner recommended to the Resident Magistrate that the case be treated as a civil one instead of a criminal one, and a fine imposed.[232] The government approved the idea of not trying to get the man for trial, but instead imposing a fine.[233] Both sides made accommodations, therefore, and Maori customs of utu and compensation continued to operate in new circumstances.

This was partly about power; in the 1840s and again in the 1860s, the government was not in a position to enforce English law over the continued operation of Maori customary law. In 1867, a murder at Kaikohe was treated by the chiefs as 'confined to the Maoris and is a matter for them to arrange'. Although the government did not like this approach, they accepted that they could not actually intervene with force to seize the murderer.[234] There was also, during this year, a minor war between the 'Ngarehauata and the Uritaniwha tribes' with fighting and three fatalities.[235] Nga Puhi themselves were concerned about this situation, and in 1868 a petition about it was sent by 74 of their leaders to Parliament. The petition asked that the law be enforced from then on, both with regard to murders, and any other crime involving imprisonment instead of fines, and that Maori and Pakeha be treated exactly the same under the law. It also requested that Maori Assessors help the magistrates, and that Maori be called upon officially to help soldiers enforce the law when required.[236]

On the surface, this appeared to be a turning away from Maori institutions and customary law to the government. Frederick Maning, however, advised the government that Nga Puhi's intentions were actually quite different. They wanted 'soldiers', but they wanted them to be enlisted from their own hapu. This was partly about getting money, and partly about official assistance for Maori self-regulation. Then, if extra assistance was required over and above the Maori soldiers, the government should call upon the rest of the tribe for it. Maning advised the government to test the sincerity of the chiefs' intention to help enforce English law, and noted that attempts to arrest murderers (with a possible death penalty) were still likely to meet armed resistance from Nga Puhi.[237]

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[230] ibid
[231] WB White, RM, Mongonui, to EM Williams, RM, 18 June 1866, BAFR 10869, Folder 1f
[232] G Clarke, Civil Commissioner, to EM Williams, RM, Waimate, 1 July 1864, BAFR 10869, Folder 1d
[233] G Clarke, Civil Commissioner, to EM Williams, RM, Waimate, 16 August 1864, BAFR 10869, Folder 1d
[234] W Rolleston, Under Secretary, to RM, Waimate, 28 June 1867, & Rolleston to RM, 7 December 1867, BAFR 10869, Folder 1g
[235] ibid
[236] Petition of 74 Nga Puhi to the General Assembly, Hokianga, 29 July 1868, BAFR 10869, Folder 2a
[237] FE Maning to H Halse, Assistant Under Secretrary, Hokianga, 9 Nov 1868, BAFR 10869, Folder 2a

This is not to say that there had been no change at all by the 1860s. In 1850, Hone Heke led a taua against a hapu which had defied his wish that one of their members marry one of his own followers. The taua fortified a place just 200 yards away from the woman's kainga. In the end, her relatives gave her up rather than fight, and the marriage took place.[238] We can compare this to a taua in 1863, where a young woman was taken from her father's home so that she could marry a young man (of her own choosing). Maori of Keao adjusted this dispute through their own mechanisms and the girl was returned to her parents, but the marriage then took place anyway. What was different about this situation, compared to Heke's, is that the leader of the taua agreed with the magistrate's after-the-fact remonstrances that it should not have happened (especially in light of the 1862 Waimate runanga).[239] More importantly, for the purpose of this report, the continuing use of taua was still a live issue in the north in 1863.

By the end of the 1860s, therefore, the government was still chipping away at customs supposedly abandoned as a result of Christianity. This was part of a deliberate policy to change and assimilate Maori society by example, persuasion, and patronage. Chiefs became salaried assessors, and government officials worked behind the scenes to accelerate the process of culture-change. In 1863, for example, Resident Magistrate Barstow reported that the Ngare Hauata at Whananaki 'seemed to place much more reliance upon Maori than European remedies, of which prejudice I endeavoured to disabuse them.'[240] The diplomacy of George Clarke, the occasional medical assistance of a state-paid doctor, the mediation (in and out of court) of the magistrate, salaries and gifts, all played their part in the government's gradual assertion of authority, New Zealand law, and British custom. But the evidence from official sources suggests that Maori communities in the Bay of Islands were still governing themselves under their own institutions and laws in the 1860s. How much less, then, could those institutions and laws be said to have ceased operating by 1840.

How had Maori society, which had seemed under so much pressure in the 1830s and 1840s, proved so resilient at the Bay as to maintain its working institutions, its laws and customs, thirty years later? Partly, it was because the inducements of wealth and settlement that were part of the acceptance of the Treaty in 1840, proved to be a mirage. Te Kemara signed the Treaty, thinking he was going to get the Kawana for his very own at Waitangi. The idea of a government town, of increased settlers and trade, and consequent prosperity for Nga Puhi, never eventuated. The decision to remove the capital to the territory of Ngati Whatua was a blow to the Bay of Islands, and a very serious grievance for those who had welcomed the Kawana in 1840. Added to this, the institution of customs dues and the collapse of the whaling trade in the 1840s, actually reduced the amount of shipping and trade at the Bay by a very significant degree. The Old Land Claimants could not get secure titles, and so failed to get finance and some left the district. Other settlers left because of the northern war. Trade was disrupted and reduced still further by these departures and by the war. The income from land "sales" to Pakeha also disappeared from 1840, until the Crown was in a position to start buying land in the 1850s.

The result was the stagnation of the vibrant economy that had reached its peak in the 1830s. Some settlers began the task of developing cattle farming, but Maori were not able to own more than a few cattle in this period. They continued instead with the practice of cultivating discrete areas for a few years and then moving on to another spot, supplemented by fishing and the produce of the forests. The fewer slaves available hardly mattered in this situation. Eventually, Bay Maori turned to timber in the 1850s and then to kauri gum in the 1860s, as well as land transactions with the Crown, to try to sustain their communities.

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[238] R Davis to J Coleman, 6 May 1851, cited in J Coleman, *Memoir*, p 354
[239] E Williams, RM, Waimate, to G Clarke, 21 April 1863, BAFR 10875, Folder 1a
[240] Barstow, Half-yearly report, 16 February 1863, BBIW Series 4808, Folder 1d

Under these circumstances, with relatively few settlers and a stagnant economy, there was less pressure on Maori to abandon traditional lifestyles and ways of doing things. The northern war had the effect of keeping government power (and, to an extent, assistance) out of the district, no matter who won the war. Resident Magistrates were circumspect, and settlers largely left to their own devices. This was especially so in the 1860s, when the Crown was fighting a war on many fronts and wanted to keep the north 'quiet' while it did so. The missionaries were fewer on the ground in the 1850s and 1860s, and the Bay Church never entirely recovered from the blow dealt it by the northern war. Bishop Selwyn's change of mission schools into a tiny handful of secondary boarding schools had a significant effect on the scale of assimilative education in the north. The Crown gave some support to these schools with its Education Ordinance and then the civil list, but did not begin its own programme of assimilative education in the north until later. With no hospitals, a tiny number of overly specialised boarding schools, a relatively small number of settlers, and few officials, the tools for assimilation were weak in the Bay of Islands at this time.

At the same time, there was a determined and vigorous Nga Puhi leadership, jockeying for status and mana, and continuing to regulate the affairs of their communities in conjunction with their people, in many ways as before. Missionary and official concerns about the collapse of chiefly authority were premature, and in any case partly based on an expectation that chiefs would be petty kings, and a continuous disappointment that they were not. This does not mean that there were not serious stresses on Maori institutions and law at this time. The 1868 petition of Nga Puhi leaders to Parliament, and the adoption of the state-sponsored runanga, showed potential accommodations with the settler state and its laws. Maori wanted settlers, wealth, and development. The key to getting them, in the wake of the northern war, was their relationship with the Crown and its officials. This became a focus for Nga Puhi leaders when they looked outwards from the Bay of Islands, and the intricate development of this relationship requires careful elucidation. Here, I simply note that the Crown and settlers had not been in a position to transform Maori society and culture at the Bay of Islands in the decades after 1840. Maori institutions and laws were still functioning, and this has clear implications for the nature of land transactions conducted prior to that time. In effect, the conclusion to be drawn from section 3 of this chapter is that the Bay of Islands meets the Muriwhenua Tribunal's test of whether customary law and institutions were still operating on the ground. We turn to the more particular question of land transactions in the next chapter.

Chapter 4 Culture Change and Land: Pakeha sale or customary transaction?

1. The Bay of Islands 'Old Land Claims'

In the period from the first missionary settlement in the Bay of Islands (effectively 1815) to 1839, there were around 244 separate transactions between Maori and Pakeha. It was by far the most transacted area in the country, although conversely it did not have 'monster' claims to millions of acres (the New Zealand Company and speculative transactions in other districts). The largest Bay of Islands claim before the Godfrey and Richmond Commission was for 7000 acres, although some proved larger in the aggregate upon survey. In 1840, Governor Hobson issued a proclamation that all such transactions would require to be confirmed by a Crown title. A prior investigation of the validity of the transactions was a feature of government policy in the 1840s, and a promise made by Hobson to the chiefs who signed Te Tiriti. The investigations were carried out by a Land Claims Commission in the early 1840s. The Commission's recommendations resulted in the issuing of Crown Grants to some settlers. The transactions became known as the 'Old Land Claims', but the grants to the old land claimants were not surveyed at the time, and later contested by the government itself in the courts. Eventually, a new commission sat in the late 1850s to arrange properly surveyed grants for the old land claimants. At the same time, the Crown's 26 land transactions in the Bay of Islands overlapped the pre-Treaty transactions and "completed" some of them.

When the picture became clear after the Bell Commission and the overlapping Crown transactions, 60% of Maori land at the Bay of Islands had become Crown land, which was gradually granted to settlers. According to Rigby, this 60% of the land was the most valuable, and it had passed out of Maori ownership by 1865. Breaking this down further, Rigby calculated that 25% of the Bay of Islands district was alienated from Maori ownership via the Old Land Claims.[1] Jack Lee thought the figure less than a quarter.[2] Dr Rigby's estimates are based on a DOSLI mapping exercise and quantification of land awarded to claimants or kept by the Crown as surplus. If we rely on Rigby's calculations, Maori lost title to about a quarter of the Bay of Islands as a result of pre-Treaty transactions. The maps and calculations on which this figure is based can be found in two reports, largely authored by Dr Rigby, to which the reader is referred for further detail.[3] Two maps are reproduced here. Figure 2 is the DOSLI map of Bay of Islands Old Land Claims, showing the land awarded to settlers or kept as surplus. Figure 3 was adapted by Noel Harris for the Rangahaua Whanui project, and is based on Bell's map of Old Land Claims, which was prepared by the Commissioner in the early 1860s.

One of the most important Treaty claims in relation to the Old Land Claims is – that the transactions were conditional ones carried out under Maori customary laws of resource allocation and transfer. Not a single acre, in other words, was alienated absolutely from Maori ownership. An outcome, therefore, in which a quarter of the district passed out of Maori ownership is seen as a serious violation of Maori rights. The Crown's responsibility in this respect was that it appointed commissioners to investigate whether valid 'sales' had taken place, and then granted freehold titles to settlers as a result. The empowering legislation

[1] B Rigby in Daamen, Hamer, & Rigby, *Rangahaua Whanui District 1: Auckland*, 1996, pp 146-152, 215
[2] J Lee, *The Bay of Islands*, pp 296-301
[3] Daamen, Hamer, & Rigby, *Rangahaua Whanui District 1: Auckland*, 1996; and Moore, Rigby, & Russell, *Rangahaua Whanui National Theme A: Old Land Claims*, 1997. Both reports are available from the Waitangi Tribunal.

required the commissioners to set aside strict legal forms and to examine the equity and good conscience of the case, and to certify whether valid alienations had occurred.

The resultant awards, however, were restricted to 2,560 acres per claimant. This was not because too little had been paid or transactions were invalid, but because the Colonial Office had somewhat draconian ideas about preventing absenteeism and speculation. The Colonial Office was also determined to prevent lots of land coming under the "dead hand" of the Church, so the missionary societies could not expect special treatment.[4] Even so, Governor FitzRoy set aside these restrictions and made increased awards to some claimants in the mid-1840s. As noted above, however, what settlers actually got on the ground was not sorted out until the 1860s. Even with FitzRoy's extension of grants, a lot of land was left over. According to the Crown, it had been alienated validly from Maori but was too excessive to be granted to individuals. This land became the property of the Crown to be used for settlement. This was one of the things which disturbed Maori most, both at the time and since. They have objected to the Crown's taking this 'surplus' land for the past 160 years.

There are tables of Bay of Islands Old Land Claims in the 1863 appendix to the Bell Commission report, in appendices to Jack Lee's book *The Bay of Islands*, and to Rigby et al's report, *Old Land Claims*. It is not proposed to reproduce those tables here, nor the many helpful maps available in Daamen et al's report, *Rangahaua Whanui District 1: Auckland*. There are also pertinent issues with regard to:

- Whether pre-Treaty transactions were valid in the sense of having been conducted with all (or any) of the correct Maori right-holders;
- Whether pre-Treaty transactions involved, at the time of investigation by the Crown or since, sufficient payment (given that the Crown interpreted them as 'sales');
- Whether oral agreements and 'reserve' arrangements were honoured sufficiently (or at all) when land was finally granted to settlers or kept as surplus by the Crown;
- Whether boundaries were sufficiently defined (or at all) in the transactions, to enable definition of what should be granted to settlers, and what should be kept by Maori.

These issues have, to an extent, been covered by Dr Rigby and others, and are likely to be the subject of detailed research in the Crown Forestry Rental Trust's forthcoming Northland research programme.[5] They are subsidiary to the fundamental question: should any freehold titles have been granted to settlers at all? In other words, did the Crown effectively confiscate 25% of the Bay of Islands district when it concluded that absolute alienations had taken place prior to 1840, and then either granted that land to settlers or kept it for itself? It is this fundamental question which will be the subject of this chapter.

[4] G Phillipson, 'The Thirteenth Apostle', p 91
[5] See especially Daamen, Hamer, & Rigby, *Rangahaua Whanui District 1: Auckland*, 1996, pp 55-152

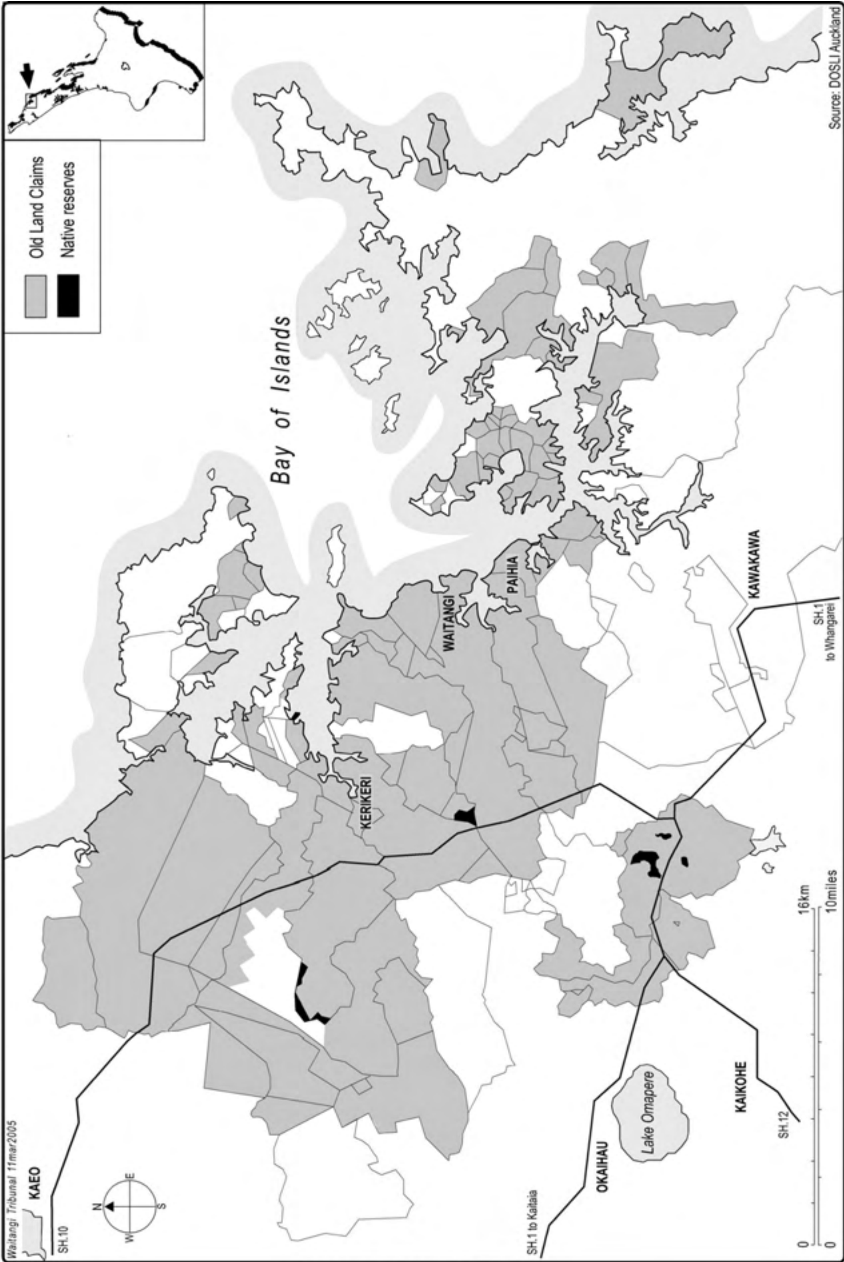

Fig 2 Old Land Claims

Fig 3

2. Issues arising from Treaty claims

The fundamental issue is one of confiscation. If, under Maori law as understood and enforced by Maori institutions, the pre-1840 transactions were not absolute alienations but rather conditional 'gifts' with an underlying Maori title, then the Crown confiscated many thousands of acres when it granted them to settlers or kept them as surplus. This is a very serious claim indeed. I have already traversed the allegations made by claimants in chapter 2. It is helpful, however, to summarise the claimants' allegations here before discussing the evidence.[6]

- Wai 120, on behalf of the Kawiti Marae Committee, Ngati Hine, Ngati Manu, Te Kapotai, Ngati Rahiri, Ngati Rangi, Ngaitewake, and Nga Puhi, raises concerns about the gifting of land and rivers, especially the foreshore, and the Opua Old Land Claim, which has been a very longstanding grievance for the Kawiti whanau.

- Wai 249, on behalf of Ngapuhi Nui Tonu, alleges that pre-Treaty transactions were not absolute alienations but customary tuku, and that the culmination of these arrangements was an invitation for the Crown itself to live and work with Nga Puhi.

- Wai 354, on behalf of Ngati Manu, Te Uri Karaka, Te Uri Raewera, Nga Puhi ki Taumarere, and all of the descendants of Pomare II, alleges that their tribal estates were 'wrongly alienated by the decisions and actions of the Land Claims Commissions', either by grant to Europeans or to the Crown as surplus land.

- Wai 421, on behalf of Te Whiu hapu, alleges that the Puketotara block in the Kerikeri district was 'misappropriated' by the Crown after investigating Old Land Claim (OLC) no 595 (the Kemp purchase). When the Native Land Court was set up, the claimants clearly believed that the land still belonged to them as they tried to apply for an award of its ownership as if it was still in customary title. The Crown was wrong, they argue, to have validated the Kemp purchase.

- Wai 466, on behalf of Ngati Hineira and Te Uri Taniwha, claims that the lands involved in OLC 172 (Edmonds) were improperly taken from Maori by the Crown under the Bay of Islands Settlement Act in 1860, after the titles were submitted to the Bell Commission.

- Wai 492, on behalf of Ngati Rehia and Nga Puhi Nui Tonu, claims that Ngati Rehia chiefs denied the sale of Kororipo Pa to James Kemp in front of Commissioner Bell. The deed, they argue, was supposedly made with Hongi Hika in 1839 and he had died 'some years before'. The claimants continue to deny that a sale ever took place. They argue that the Land Claims Ordinances and Acts prejudicially affected them by allowing the Commissioners' investigation to reach such a faulty outcome as to grant the land to Kemp.

- Wai 520, on behalf of the Whakarara Maori Committee and the 'collective hapu from Te Rohe of Whakarara', makes allegations about the Kerikeri and the northern Bay of Islands Old Land Claims. Mr Kira alleges, for the claimants, that the pre-Treaty transactions were conditional grants to specific people (and their families) for a specific purpose and use. They were not 'sales'. They should have reverted to Maori once the

[6] All references for this claims material are contained in chapter 2 of this report.

mission no longer needed them, but instead the Crown issued freehold titles, alienating the land from Maori. The pre-1840 transactions were 'effected in accordance with the rules of Maori custom in relation to the transfer of highly prized taonga establishing a relationship of mutual obligation between transferor [later referred to as the kaituku] and transferee'. The essential points of this mechanism for governing land-use rights, which the claimants refer to as 'tuku whenua', were:

- No absolute transfer of title could ever take place
- The tuku was personal to the settler – it could pass only to that person's descendants and nobody else
- Maori retained the right to occupy and use the land alongside the settler
- Customary law and rangatira governed the settler in all matters, including land use
- If the settler failed to maintain occupation, or to keep up the relationship of mutual obligation with the kaituku, the land 'reverted to the kaituku'.[7]

The claimants allege that reserves (which they see as joint occupation) were sometimes specified in the recorded terms of the transfer, and that Maori-language deeds 'confirm that the transaction was a tuku in accordance with Maori custom'.[8] The Crown, they argue, should have enforced the terms of the transactions according to how Maori understood them at the time. If it had done so, it would then have required the old land claimants to either remain in occupation or pass the land only to descendants, to recognise joint Maori use and occupation, and to recognise the continuing authority of the 'kaituku' over the land and all of its inhabitants (including the settlers).

- Wai 549, on behalf of Te Runanga a Iwi o Ngapuhi, has raised concerns about the nature of pre-Treaty transactions, and whether their interpretation by the Crown as absolute alienations has transgressed the mana of the claimants.

- Wai 654, on behalf of Te Tii (Waitangi) B3 Trust and Ngati Rahiri, alleges that the Land Claims Ordinance 1841 was in breach of the Treaty of Waitangi.

- Wai 712, on behalf of Nga Puhi Nui Tonu, alleges that the Crown has taken land not lawfully belonging to it, in the same manner as in Muriwhenua.

- Wai 774, on behalf of Nga Puhi Nui Tonu, alleges that:

> In terms of land, the only valid lore was Maori customary practice and its attendant spiritual beliefs. Therefore, we maintain that at 6 February 1840, all land in New Zealand was Maori land; no land had been sold, in the European sense, to missionaries, settlers or speculators and Deeds of Sale did not confirm the "sale" of Maori land and the transfer of title to Europeans.[9]

The Crown, alleges Mr Taurua, acted in breach of the Treaty when it failed to investigate the Old Land Claims properly, failed to ascertain that there had been no absolute alienations of land, and then granted the land or kept it as surplus.

- Wai 1060, on behalf of Ngati Kawa and Ngati Rahiri, alleges that the Land Claims Commission investigated Busby's Old Land Claims and 'erroneously reported that Maori customary Title had been extinguished, and that payment in each claim was sufficient'. The Crown, as a result, granted a large amount of land to Busby, and kept the surplus.

[7] Anaru Kira & others, Statement of Issues, pp 1-2, Wai 520/0
[8] ibid, p2
[9] Statement of claim, Wai 774 Record of Proceedings, 1.1, section 3i

- Wai 1131, on behalf of Ngati Rehia, Te Uri Taniwha, Ngati Hineira, Ngai Te Wake ki te Tuawhenua, ki te Takitaimoana, and Ngai Torehina, 'to the extent that they choose to support this claim', objects to the Commissioners' validation of Kemp's purchase of Kororipo Pa. Mr Mihaka argues that Kemp did not conduct the transaction with the rightful owners, and that the Crown failed to investigate it properly, and wrongly validated his title. The Crown then failed to protect the many waahi tapu on the land and allowed them to be desecrated. This also resulted in the loss of knowledge and tikanga about the site, and the loss of access to its mahinga kai and valued resources

Not all claimants have as yet specified their grievances about the Old Land Claims, but the above allegations represent a general concern that pre-Treaty transactions were customary arrangements, not absolute alienations, and that the Crown breached the Treaty when it took the land and granted it as European freehold titles. There appears to be particular concern about the transactions of James Kemp (for which, see section 5.2 below).

3. Context: contemporary scholarship

A great deal of relevant material has already been made available in other reports. The main reports which discuss the question of English-style 'sale' versus Maori-style 'tuku', with specific reference to the Bay of Islands, are two reports filed for the neighbouring Muriwhenua inquiry. The first is a thesis prepared in 1991 by Philippa Wyatt, who became one of the claimants' historians and wrote an additional report on Muriwhenua Old Land Claims.[10] The thesis is the only report to deal solely (or even mainly) with Bay of Islands Old Land Claims and the question of whether they were absolute sales. The principal response to this report, focusing to a large extent on the Bay but also on Hokianga, Muriwhenua, and elsewhere, was Fergus Sinclair's report for the Crown. Both of these reports will be summarised here, due to their critical contribution to the debate. In researching this chapter, I have had to go beyond both of them in terms of primary sources, so my conclusions are based on a wider extent of material than was available to Wyatt and Sinclair. Also, in focusing on the degree of knowledge available to the Crown in the 1840s, and the Governors' crucial views and actions with regard to the Bay of Islands claims in that decade, I have covered a different topic from those considered in depth by Wyatt and Sinclair.

3.1 Claimant Historian – Philippa Wyatt

Wyatt's thesis on the subject of Bay of Islands Old Land Claims was a groundbreaking piece of work, and I acknowledge my debt to it. Beginning with the Girls' War of 1830, Wyatt describes taua muru and the complicated political and social institutions of the Bay of Islands at that time, and concludes that a system of Maori law based on tapu, utu, and the authority of rangatira, was in firm control of the lives of both Maori and settlers. The Maori view of the world, based on the values underpinning their systems of law and authority, continued uninterrupted by the values of settlers. Maori desire for trade, especially muskets, was geared towards traditional competition between groups, acquisition or preservation of mana, and sheer survival.[11] This was the context for the land transactions in

[10] P Wyatt, 'The Old Land Claims and the Concept of Sale: A Case Study', MA thesis in History, University of Auckland, 1991, Wai 45 E1
[11] ibid, pp 1-56

1830 and 1831, which followed immediately upon Ngati Manu's loss of Kororareka to the northern alliance.[12] These particular land transactions, in which Pomare sought to obtain particular Europeans and to restore his lost opportunities for trade and muskets, are the focus of the thesis.

With regard to the land transactions, Wyatt argues that:

- Traditional Maori systems of exchange were based on gift-giving (tuku)
- Gift-giving was a cycle involving delay, reciprocation, competition, and ongoing relationship
- Land could be transferred by gift as part of peace-making, marriages, to reward allies, or to people who wished to settle with the hosts. Such gifts were conditional, and ultimate 'ownership' remained with the hosts. In situations where the newcomers wanted to settle with a more powerful tribe, they were considered members of the host community, with allocated use-rights, and had to make regular tributary gifts. It was in this form, argues Wyatt, that Maori understood their transactions with incoming settlers. Both groups, under this model, lived in the area and used the resources, although there would be areas of whanau and individual exclusivity within it, and all would ultimately be at the direction of the host rangatira and community.[13]
- Maori culture remained primarily an oral one, certainly in 1830-31, and oral agreements, not written deeds, encapsulated the transaction from the Maori point of view. In any case, a textual analysis of the Maori-language deeds indicates that the word tuku was primarily used, and that the concept of a sale was not conveyed in them at all.
- Relying in particular on FitzRoy's evidence to the 1838 House of Lords Committee, and also evidence in missionary sources of continued Maori authority over 'sold' land, and continued Maori occupation of it or use of its resources, Wyatt concludes that attempts to explain or enforce 'sales' had failed. Maori continued to understand them as conditional tuku, in which *they* were the masters, in the 1830s and 1840s. Any specific reserves for Maori in the deeds were simply Pakeha concessions in writing of a larger, continued customary right.
- Resident Europeans were expected to be conduits of trade, employ Maori services, make regular gifts, and keep up their side of the relationship. In return, the host communities provided protection, reciprocal gifts, and use-rights. This, Wyatt saw as further proof that the arrangements were customary tuku. Europeans, including missionaries, sometimes attempted to evade their responsibilities, exclude Maori from acts of occupation or use, and enforce their view of the 'sale'. Nga Puhi, however, retained the power to enforce their own understanding of the transactions, and used it.[14]
- The transactions of Clendon and Mair are used as particular case studies of these ideas, although there is not actually a lot of primary material relating specifically to them.

The primary dilemma for Wyatt in putting forward this model is the Land Claims Commission of 1840-42. Appearing before it, both the Old Land Claimants and their rangatira witnesses affirmed that absolute alienations of land had taken place, for which Crown Grants could be awarded. Wyatt has to grapple with whether this involved deliberate deception on the part of so many Old Land Claimants, and either incomprehension or a change of heart on the part of Maori witnesses. Ultimately, she concluded that the government did insufficient to explain the purpose of the inquiry, and that it was hardly safe to leave the claimants to explain it to their witnesses. She also argues that the investigation was pro forma in cases supported by Maori. They answered in the affirmative to a series of

[12] The Girls' War, and the transfer of Kororareka, has been described above briefly in chapter 2
[13] P Wyatt, pp 59-76
[14] ibid, pp 77-134

simple questions. Given the words probably used (tuku whenua, as in the deeds), the rangatira probably did not understand what they were affirming in at all the same way as the commissioners and claimants did. The protectorate, which should have stood between the parties and ensured Maori understanding, was staffed by mission affiliates who had too much to lose if things went the wrong way.[15]

As a result, at some unspecified time between the work of the commission and the outbreak of the northern war in 1844-45, Bay of Islands Nga Puhi came finally to understand exactly what it was that Europeans were claiming. The catalyst was the Crown, despite its promises of protection, taking their side. Growing conflict over land in the south was accompanied by a realisation of the Crown's intention to take the 'surplus' land, and that the Europeans' view of the transactions – that the land was 'gone' and all were 'slaves' – was about to prevail. The result, Wyatt concludes in agreement with Governor Grey, was that the Bay of Islands Old Land Claims caused the northern war.[16]

Other claimant witnesses, such as Metge, Mutu, and Salmond, provided additional detail but, as their reports are focused on Muriwhenua and its sources, and as their conclusions are in broad agreement with those of Wyatt, they will not be addressed here.

3.2 Crown Historian – Fergus Sinclair

Ms Wyatt's thesis was placed on the Record of Documents for the Muriwhenua inquiry. Although other reports in that inquiry often referred to or touched on the Bay of Islands in response, the Crown's main report in reference to Ms Wyatt's conclusions was a substantial one prepared by Fergus Sinclair.[17] Ostensibly about Muriwhenua, Dr Sinclair's report draws much of its material from the Bay of Islands and Hokianga. Using mainly missionary papers and occasionally other sources, Dr Sinclair argues that the missionaries and other European settlers rapidly freed themselves from the relationship entailment of gift-giving. Placing their dealings with Maori on a purely commercial footing, they confined themselves to strict barter or trade. Maori accepted this quickly and became shrewd traders and hard bargainers, abandoning traditional gift-giving with little evidence of regret. His main conclusion, in this respect, is that dealings for land were indistinguishable from trading for goods and services. Maori bartered for land in the same way as for other goods, and their object was not to secure settlers or allocate use-rights to new members of the community, but to transfer property absolutely; the motive was the payment.

Maori, he argued, were thus acting outside custom in land sales. His primary evidence for this is documentary accounts of sales, and in particular of the hard bargaining of Maori 'vendors', and their keenness to make sales and to make them for high prices. Missionaries, alarmed at the prospect of grog sellers as neighbours, and fearful that Maori might lose all their best land, began to warn Maori about the consequences of indiscriminate land-selling from the mid-1830s. The nature of "sales" must have been appreciated by those who listened to the missionaries, argues Sinclair. Rangatira themselves were worried about the nature and extent of land loss, according to comments like those reported by Colenso at the Treaty signing. The concept of absolute alienation, the European understanding of sale, was one which Maori therefore understood and accepted as the interpretation of what both sides to the transaction were doing. The missionaries repeatedly asserted that it was so. The occasional contrary evidence, such as FitzRoy's evidence to the 1838 House of Lords Committee and

[15] ibid, pp 198-220 (re the protectorate, see pp 216-218)
[16] ibid, pp 227-257
[17] F Sinclair, *Issues Arising From Pre-Treaty Land Transactions*, Wai 45, I3

Ernst Dieffenbach's book, either did not come from people who knew New Zealand well, or has been misunderstood.

Wyatt's evidence of continued Maori occupation and resource-use on "sold" land is not denied by Sinclair. Instead, he argues that it was either done to annoy the missionaries or to extort additional payments, or it was done with the permission of the new owners. The missionaries actively encouraged converts to separate themselves from their hapu and live on mission land, isolated from temptation and trouble. In particular, the complex question of whether missionaries or Maori were actually in control, and who was occupying with whose permission, is one of the major points of dispute between Wyatt and Sinclair. The former argues that Maori occupation and resource-use arose from their continued rights over the land, and their arrangement to use it alongside the Pakeha whom they had incorporated into their community. The latter maintains that the missionaries permitted occasional occupation on their own terms, and sometimes for a nominal rent, and that it conferred no rights (or expressed no rights) on the part of the Maori occupants. Wherever explicit reserve provisions have survived into the historical record, Sinclair sees them as proof of otherwise absolute alienation. He also queries the idea that reselling the land to other Europeans meant that it had never been permanently alienated to the first European for his or her exclusive occupation. He attributed it instead to assertions of rights by Maori owners who had been missed out of the first transaction, or to a natural response to the first purchaser's absenteeism. Sinclair did not challenge the prospect that Maori felt they could resell (their?) land if the first purchaser failed to occupy it.

Another facet of the transactions was the evidence that some purchasers later had to make additional payments. Sinclair argued that the evidence about these later payments was sketchy, but that some of them were made to satisfy owners left out of the original transaction, or to buy small pieces inside the "boundaries" but allegedly excluded from the deal. Extra payments could be extorted or even made as goodwill gestures, without implying any right on the part of the recipient to a series of customary payments. A customary tuku was not akin to a lease, although the word was used that way in deeds. The use to which words were put in deeds is discussed at some length, but Sinclair's conclusion is that the real explanation is to be found in other primary documents. He queries whether there was really a strong or widely practised custom of transferring land by tuku, and maintains that acculturation and contact were intense at the Bay of Islands. On the basis of this material, he concludes overall that Maori adopted European modes of transacting land, for the purpose of getting payments, and that they understood and accepted these transactions as absolute and exclusive alienations.[18]

Other reports by Crown historians touch on matters relevant to the Bay of Islands, but their focus is more exclusively on Muriwhenua. They will be mentioned as appropriate in later sections of this chapter. I note here that I have not taken much notice of the linguistic evidence advanced (by either the Crown or the claimants). I am not a linguist, I have no expertise in that field, and in any case, the Muriwhenua Tribunal decided that it was the historical context in which words were used, rather than the words themselves or their particular shades of meaning, which mattered the most.[19] I turn now to the findings of that Tribunal.

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[18] Any short summary of a 300-page report runs the risk of telescoping and not doing full justice to the arguments contained in it, and the evidence used to substantiate them. This summary is drawn from the report as a whole, but Dr Sinclair's main conclusions are summarised at pp 295-303 of his report. The reader is recommended to consult this report in full. Copies may be obtained from the Waitangi Tribunal or the Crown Law Office.

[19] Waitangi Tribunal, *Muriwhenua Land Report*, 1997, pp 73-77

3.3 The *Muriwhenua Land Report*

The Muriwhenua Tribunal issued its report on land claims in 1997. In the matter of whether pre-Treaty transactions were customary and conditional in nature, or alternatively absolute and exclusive, the Tribunal found in favour of the claimants. In doing so, it noted that the oral evidence of such experts as the Rev Maori Marsden and Rima Edwards was in broad agreement with that of scholars from many disciplines. These included anthropologists, such as Metge and Salmond, Maori Studies scholars, such as Mutu, and documentary historians like Wyatt. The debate was not one of oral evidence versus written sources. Rather, there was a divergent interpretation of the documentary evidence, in which the claimant historians' interpretation was in broad agreement with, and therefore corroborated by, the oral historical evidence (and vice versa). Sinclair, Armstrong, Metge and Wyatt all used missionary and official files but came to markedly different conclusions from the same documents.[20]

In noting its acceptance of the evidence of Maori Marsden, Rima Edwards, and Ross Gregory, that the transactions 'were not sales, and could not have been sales', the Tribunal stressed the agreement between the claimants' oral history and the reports of Wyatt and Metge:

> While those views [claimant oral evidence] are not independent opinions, as the witnesses belong to the claimant group, we accept them as likely. They accord with the established laws and traditions of the Maori people, and there is no or no sufficient evidence or compelling circumstances to suggest that Panakareao was moved to contract on some foreign legal terms. The almost certain position is that he did not. The same conclusion was reached by the claimants' historian, P Wyatt. Anthropologist Dr Dame Joan Metge concurred, noting how Maori and Pakeha imagined entirely different results from the same deal.[21]

In reaching its conclusions on the meaning of the pre-Treaty purchases, the Tribunal noted its particular debt to Ms Wyatt. Her thesis on Bay of Islands transactions (supplemented by her Muriwhenua research) appears to have been a key influence.[22] The Tribunal's findings, therefore, have relevance to the Bay of Islands, even though all parties agreed that the degree of contact with Europeans, and the possible impact of culture change, must have been less in Muriwhenua. The conclusions of the Muriwhenua Tribunal will need to be tested against the documentary sources relevant to the Bay of Islands. I note here that I have already concluded, in the previous chapter, that, as with Muriwhenua, Maori law and institutions for self-regulation continued relatively intact in the Bay of Islands for at least three decades after 1840. This should be borne in mind when considering the Tribunal's findings, as summarised below.

The Tribunal's main findings with regard to the meaning of the pre-Treaty transactions were:

- Maori generally did not see the transactions as land sales in the European sense.
- It is pointless, therefore, to inquire as to *when* Maori understood how Europeans saw the transactions, since Maori had not accepted any power structure or law before 1840 that could have displaced their own interpretation of the transactions, and did not imagine that they would ever have to do so.

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[20] See for example, P Wyatt, *Issues arising from the Evidence of F Sinclair (Doc #I3), D Armstrong (Doc #J3), D Armstrong (Doc #I4), and D Armstrong and B Stirling (Doc #J2) in reference to Pre-Treaty Land Transactions*, Wai 45 L6
[21] Waitangi Tribunal, *Muriwhenua Land Report*, 1997, pp 68-69
[22] ibid, p 54

- Despite the use of deeds and money, and outward appearance of culture change, the fundamental value system underpinning Maori law was not affected. The transactions were therefore ones in which Maori cemented relationships with useful people whom they invited to live among them, and allocated them conditional rights of resource use. Some modification was appropriate in dealing with Europeans, but Maori did not give them an exclusive right to use all resources in a defined parcel of land. Use rights were conditional upon regular contribution to the community, and acceptance of its authority and norms.
- As part of the contract between the European and the community, the rights allocated could only pass to heirs of the blood; other assignees would need the approval of the community.
- Opinion of Europeans at the time that Maori understood 'sales' was probably subjective, self-serving, and based on an inadequate comprehension of Maori tradition. In particular, what the Europeans saw as a 'price' or payment, Maori saw as about mana; a European of mana should be able to give generously, and the gift should be sufficient for the mana of its recipients and the importance of the occasion. The key to Maori understanding was relationships and incorporation of a person or persons into the community. The key to English understanding was a sale in which people need not know one another either before or after, and in which there was no ongoing obligation to the community. There was not necessarily anything sinister in this; Europeans who saw the transactions as sales from their own cultural vantage then interpreted Maori actions through this lens, not really understanding what they were seeing.
- For so long as Maori law applied (both before and after annexation), then the transactions could not legally have been sales. Even when English law came to prevail, the transactions should still have failed as absolute alienations due to the lack of contractual mutuality. Rangatira only had the authority to allocate, not to effect a sale in Western terms, and the deeds only represented the English purchasers' view of the arrangement. If settlers gave new meanings to Maori words, it does not follow that Maori understood them in the same way. The missionary trust deeds came closest to capturing Maori expectations of the contracts. The Land Claims Commission and the government, therefore, failed in their Treaty obligations when they accepted the transactions as permanent and exclusive alienations of parcels of land.[23]

3.4 Other Districts

In addition to the reports dealing with Muriwhenua (with references to the Bay of Islands), a great deal of historical research has been carried out for other districts. Although the results of research in one district are not always transferable to another, I think sufficient work has been done to reveal a very strong pattern in pre-Treaty transactions. This is the case regardless of whether the district had a low, medium, or high degree of contact with Europeans. In part, I can rely on my own research into Old Land Claims in the northern South Island and the Chatham Islands.

James Coffee's Old Land Claim on the Chathams, which was not investigated until the 1860s, revealed that he was a sealer who had married into a Moriori tribe and been gifted land for the maintenance of his family. Three months later, he gave the Moriori 'head men' six sealing knives, six tomahawks, and two shirts. When Taranaki Maori invaded the islands

[23] ibid, pp 11-108. The Tribunal's conclusions are summarised on pp 106-108, and p 392

in 1835, they took Coffee as 'one of their Pakeha' and he married into the Kekerewai hapu. Again, he was given (the same) land, though with a new wife, but he left it when he moved away with Kekerewai sometime before 1840, and had not been back since. He nevertheless tried to claim it in his own right in the 1860s, when Maori claimed it in the Native Land Court. He claimed it on the basis that he had purchased it and he should 'get what I considered my own land back again'. The Resident Magistrate rejected Coffee's claim, judging that the evidence 'shews but faintly that he had any bona fide transfer or gift made to him of the land he now claims by the Aborigines [Moriori]'. At the same time, the Kekerewai leader Pamariki Raumoa recognised that Coffee was not entirely without rights, and offered to convey a portion of the land to him if he [Raumoa] was granted it by the Native Land Court. In the event, this proved unnecessary as Coffee's son, who was very highly connected within the tribe, became a significant grantee in his own right. On the Chathams, therefore, which had had resident Pakeha for as long as the Bay of Islands by 1840, but where the balance of power lay entirely with the Maori transactors, no pre-1840 transactions were turned into freehold settler titles. Coffee's was the only claim to even make it to investigation.[24]

In the northern South Island, the balance of power was different from the Chathams in the 1840s and 1850s. There had been whalers and traders (some of them resident) in the Marlborough and Kapiti coast districts for some years, but the great Old Land Claim in the district was the New Zealand Company's 'purchase' in 1839. The evidence was pretty overwhelming that neither the resident Maori nor the Ngati Toa rangatira who signed the original deed had understood or intended that there be an absolute alienation of land. The evidence of the Ngati Rarua rangatira Te Iti, and of Te Rauparaha and Rangihaeata, was that Pakeha settlers had been given rights to occupy some places and use resources, alongside their Maori hosts. Captain Wakefield made a series of presents to the residents when he arrived in 1841, initiating a cycle of gift-giving for the land and a relationship with the rangatira. Te Iti told Commissioner Spain that Captain Wakefield had said to him, 'don't be afraid this will not be the last payment you will have from me'. Captain Wakefield had no choice but to insist that he was not paying for land but giving presents 'upon settling', as private purchases were by that time illegal.[25] Te Iti was clear that he was ceding a right to settle:

> Q. Did you consent on that occasion on receiving those goods to allow the occupation of the land by the settlers when they arrived?
> A. Yes – on that occasion I did consent for the Europeans to settle but not to take all the land.[26]

The attempts to explain the pepper-potted tenths reserves reinforced this belief. The view of Rev Whiteley, the local Wesleyan missionary, was published in the Parliamentary Papers in 1844:

> The plan of native reserves has been greatly lauded; and it has been asserted that the natives made it the principal consideration in the disposal of their lands. I venture to say that they could not possibly understand the plan. They might get hold of the idea that they were to Noho tahi, "Sit or live together with the Pakehas;" and this would please them, because they would never dream of losing their authority and chieftainship, but would satisfy themselves with the vague notion of all things common, and themselves (as the original proprietors of the soil) lords and chiefs of all.[27]

[24] G Phillipson, *Preliminary Report to the Waitangi Tribunal on Matters Arising from the Chatham Islands Hearing of 16-19 May 1994*, 1994, Wai 64 F5, pp 3-13
[25] G Phillipson, *Northern South Island District Report (District 13)*, Part 1, 1995, pp 45-66
[26] Te Iti, 21 August 1844, OLC 1/46, 907, cited in G Phillipson, *Northern South Island*, p 58
[27] J Whiteley, Kawhia, 20 July 1843, in GBPP vol 2, Appendix 4, p 182

Te Iti told the commission that it was some years before he understood what was meant by the tenths. It is not, perhaps, surprising when the company's interpreter, the local whaler Dicky Barrett, explained them as 'our [Pakeha] Side or part of this Land as a Seat for yourself, and all your Children, there is land enough for the whole of you and the White People'.[28]

The local CMS missionary, who had arrived in 1842 and was not a purchaser of land like his northern brethren, stated in 1845 that Maori custom meant the transactions with the Company could not possibly have been sales. This is important because he is the only CMS missionary that I am aware of who expressed such a view. He had come to New Zealand with Bishop Selwyn and was never a part of the mission "establishment", nor had the same kind of personal ties with them, as other missionaries (like Hadfield) who did not buy land. Reay informed the CMS that 'it is not consistent with their practice to alienate their lands in perpetuo; but only during the life-time or during the convenience or occupancy of the party to whom it may be conveyed'. It was impossible, then, for Maori to have 'ceded absolutely and without reservation the rights in question'.[29] I concluded, on the basis of this and other evidence, that the New Zealand Company purchase of land in the northern South Island could not have been an absolute alienation of land, although clearly some kind of transaction involving settlement and use-rights had been *commenced*.[30] Subsequent research by other historians, especially the very detailed study of the sources by Tony Walzl, has confirmed me in this view.[31] Commissioner Spain partly saw it this way too, but by the time he reported he was focused on paying compensation and arranging matters so that what he saw as 'partial' purchases could be completed and the settlers' rights preserved.[32] This became the overriding goal of the government in the 1840s, whether under FitzRoy or Grey's administrations. The Crown's historian did not comment on what he called the 'tukuwhenua analysis'. He accepted that the Company's transaction had not been a proper 'sale' by anyone's reckoning, and focused instead on Commissioner Spain's switch from investigation to completion of the 'sale'.[33] Nor did the Crown's submissions comment on the nature of the Company's transaction.

The meaning of pre-Treaty transactions, and whether they were absolute alienations or customary and conditional cessions, has also been researched in the Kaipara, Hauraki, and Tauranga Moana district inquiries. I note firstly that the Kaipara and Hauraki Tribunals have not yet reported on pre-Treaty transactions. I will not address these inquiries further here, but turn instead to the Tribunal's Tauranga report, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*. I note that the Crown argued in Tauranga that the findings of the Muriwhenua Tribunal could not simply be taken and applied in other districts, as ' "some kind of binding precedent that obviates the need to consider all sources relevant to the transactions in this [district] inquiry"'.[34] The Tribunal agreed (and so do I), but nevertheless noted that, on its own investigation, the same values and principles of customary law operated in many Maori communities, in Tauranga just as in Muriwhenua (or the Bay of Islands, as I have demonstrated in the previous chapter).

In Tauranga, the Tribunal in both its majority and minority reports took the view that Archdeacon Brown's 'purchase' of land for the CMS in 1838 and 1839 was a customary tuku and not an English-style alienation. The Tribunal accepted O'Malley's conclusion on this

[28] R Barrett, 10 February 1843, OLC 1, 46, 908, cited in Phillipson, *Northern South Island*, Part 1, pp 51-52
[29] CL Reay to CMS, Nelson, Feast of St Michael, 1845, CNO/73, Micro MS Coll 04-58, ATL
[30] G Phillipson, *Northern South Island*, Part 1, pp 45-66
[31] T Walzl, *Ngati Rarua Land Issues, 1839-1860*, Wai 785 A50, pp 12-160
[32] G Phillipson, *Northern South Island*, Part 1, pp 45-66 pp 67-110
[33] A Gould, *The New Zealand Company and the Crown in Te Tau Ihu*, Wai 785 S5, pp 81, 57-100
[34] Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, p 213

point that the transactions were not unconditional alienations. The Tribunal further compared the CMS Te Papa purchase with the Te Ngae purchase at Rotorua and the nearby Matamata purchase from Te Waharoa. It rejected the Crown's argument that Te Ngae was more isolated from European contact, and that Matamata had been an absolute alienation. It pointed to the clear evidence of Maori views of these transactions as their obtaining the missionary as a person (and a source of trade), and establishing a continuing relationship between the missionary and the tribes. In all these transactions, Maori expected to keep using the land and its resources. Brown's own papers demonstrated this for Te Papa. As Te Waharoa put it at Matamata, the goods would soon be 'broken, worn out, and gone, but the ground will endure forever to supply our children and theirs'.[35] Maori customary law was still operating and the Crown should not have turned these conditional, customary transactions into a freehold title for the CMS.[36] Dr Bassett agreed, stating in his minority report that the Crown had 'failed to ascertain and acknowledge the conditional nature of the original 1830s CMS transaction concerning the Te Papa blocks, and it wrongly granted title to those blocks to the CMS, then unfairly acquired them in 1867'.[37]

Finally, I note the relevance of research carried out for the Wairarapa district, where Maori leases were brought to the attention of the government in the 1840s. These leases have been the subject of research by claimant historians Walzl, Stirling, and Smith. In common with pre- and post-Treaty 'sales', the leases were tuku arrangements, and involved similar problems for settlers in terms of expectations of further gifts, Maori belief that they could continue to use the land and resources, and ultimately Maori power to enforce their own understanding of the transactions. All of these things were reported to the government.[38] Smith has also described how Maori, in their letters of the time, used words associated with the fishing line of Maui, and with whakapapa, to conceptualise how they would hold the land close (pupuri whenua) or release it (tuku whenua); in either case, the line remained in their hands and their ancestral connection with the whenua was unbroken.[39] This language was used to conceptualise both 'sales' and leases. The difference, it seems, was how closely the land would be held, not the ultimate relationship and right. Officials and missionaries at the time did not appreciate the distinctions, but the problems with supposed Maori interference with the leases, and the rights Maori considered they still held over leased land, were certainly made clear. We turn now to the question of what the Crown reasonably should have known about the pre-Treaty transactions when it made its crucial decision to turn some of them into freehold grants for settlers.

4. What should the Crown reasonably have known?

A key question for this report is: if Maori customary law was still operational in the Bay of Islands as at 1840, and transactions with settlers were conditional customary arrangements rather than 'sales' under that law and in the eyes of Nga Puhi, should the government reasonably have known this? If so, then it knowingly acted to grant Maori land to settlers, or keep it as surplus, in violation of its promises to Maori and its guarantees of 'exclusive and undisturbed possession' and tino rangatiratanga in Te Tiriti o Waitangi. The period 1840 to 1854 is crucial in this respect. There was a window of opportunity for the governors to resolve the matter at the same time as they sorted out the faulty transactions of

[35] ibid, p 217
[36] ibid, pp 203-218
[37] ibid, p 413
[38] T Walzl, *Land Purchasing in the Wairarapa*, Wai 863 A44, p 123
[39] T Smith, *Tukuwhenua and Maori Land Tenure in Wairarapa*, 2001, Wai 863 A45, pp 23-24, & passim

the New Zealand Company. The Bay settlers, especially in the wake of the northern war and the departure of many of their number, were prepared to come to terms. Maori likewise did not want to lose 'their Pakeha' and sought a fair adjustment of the situation. Once responsible government was granted and a settler ministry took power from 1855, a fair outcome for Maori was less likely. This much is obvious from comparing the Godfrey/Richmond commission to the Bell commission.

Section 4 of this chapter, therefore, will consider the sources of information available to the government in the 1840s, the views of the various 'authorities', and reports from its officials of the situation on the ground. This will be compared with additional reports to the government from the 1850s and 1860s, to establish whether the Nga Puhi view of the transactions was a transient thing confined to the 1840s, or of longer standing. In the following section (5), I will assess what the governors, in particular FitzRoy and Grey, who were the key players, did with the information that was available to them. Crucially, both FitzRoy and Grey became convinced that the pre-Treaty transactions at the Bay of Islands were conditional arrangements and not absolute alienations. Equally crucially, they failed to act sufficiently on that view, with the result that Bay of Islands Maori lost possession of a quarter of their land, taken from them without consent or adequate compensation.

4.1 The House of Lords Committee, 1838

The first major parliamentary inquiry into the affairs of New Zealand was the House of Lords Committee inquiry of 1838. It was one of the most important government investigations for the purposes of this report, because the committee had a strong interest in the question of whether Maori had understood and carried out permanent alienations of land to settlers. Several witnesses were questioned on this issue.

- JL Nicholas

With experience of the very first year of settlement (1814-15), Nicholas offered the opinion that the CMS purchase was a clear sale, and the chief had understood that and placed the land under a tapu for the missionaries: 'he gave the People about him to understand that the Land was tabooed; that it belonged to the Missionaries, and that they had a full and perfect Right in it, and were not to be disturbed in their Possession of it'.[40] By the tapu, he meant the kind of prohibition that prevented anyone other than right-holders from going on to their cultivations.[41] The Committee asked:

> You say there was some land purchased; do you think it is quite certain that the Chief knew that he never again would have any Right over that Land?
>
> I think he understood it perfectly.[42]

- J Watkins (a surgeon who visited New Zealand in 1833-34)

Watkins had never observed a land transaction but believed that Maori kept strongly to bargains with the original European purchaser. He had had land offered to him several times – a Kawakawa chief offered him a piece of land, and to build him a house on it, without any payment at all, so that he would live among the tribe and teach and provide medical service and knowledge. He had heard a chief say:

[40] Minutes of Evidence to House of Lords Select Committee on NZ, 1838, GBPP vol 1, p 6
[41] ibid, p 9
[42] ibid, p 8

> that the Land he had sold to the English was not any more the Land of the Natives; it was for the English; and it was the Case at the Waimati[sic], at the Purchase of the Missionary Farm. The Chief called their Attention to that Point; he told them distinctly it was never to return to them again, or their Sons, or their Children after them.[43]

Watkin cited the example of Kerikeri as one where the people had left the area (Te Wera Hauraki's people), and took this to be proof of absolute alienation. On the other hand, and somewhat in contradiction of his earlier evidence, Watkin informed the committee that he had heard of instances in which Maori sought to 'regain possession' of land they had sold, and that 'the Natives can traverse the Land sold like any other Spot', which was in substantial agreement with FitzRoy's later evidence. Although he firmly believed in absolute alienations, therefore, his evidence on the point was actually mixed. He knew of examples that he interpreted as Maori trying to 'regain' possession, and he believed that they could continue to go onto the land as if it had not been sold.[44]

- John Flatt (CMS missionary, 1834-37)

Flatt informed the Committee that if land at the Bay of Islands was sold to settlers but not occupied and used, then Maori considered they had the right to either reoccupy and use it themselves, or sell it to another. The person who failed to use it was considered 'as dead', even though in two cases these were missionaries (Shepherd and Fairburn) still living in New Zealand. Flatt's evidence on these points was questioned closely by the Committee:

> There is no Form, no Taboo, to Europeans; that is confined to the Natives; it becomes British Property and they look upon it as such; they may hold it as Taboo so far to Europeans for a short Time, during a short Absence from the Country, but if the Europeans were to leave it for several Years, and not to cultivate it, I would not be bound to say they would not sell it to a Purchaser after a fe Years; they would look upon the former Purchaser as dead.
>
> Supposing a Purchaser to take possession and cultivate the Land, do you consider that the Native feels he is giving up all Title to that Land?
>
> He is looking forward to become a Gentleman; he first receives Payment, and then he is employed upon the Land; consequently he is richer, he considers, than he ever would be without that; they get a Payment for the Land and another for working upon it, they say.
>
> ***
>
> Are you aware of any Instance in which land has been bought by Europeans from the Natives and afterwards sold again by the Europeans?
>
> I do not recollect an Instance at present. The Natives have wanted to take it back again.
>
> Was that the native Chief who sold it?
>
> No; the Son, because it was not taken possession of. Mr. Shepherd bought an Island in the Bay of Islands, of a Chief at the Bay; a European from New South Wales arrived, and offered to give Four Times as much, after this Land had lain dormant a considerable Time; this Land had been purchased a considerable Time before this European arrived. The young Chief took Part of the Payment, as much as he had received for it, to Mr. James Shepherd the Catechist, and laid the Payment down at his Door, which consisted of Blankets, Axes and some Tobacco, and a few other Trifles.
>
> Mr. Shepherd had not occupied the Land?
>
> He had merely been and looked at it. He told the young Chief that it belonged to him, and nobody else could have it; but the young Chief told him if he did not occupy it himself somebody else should do it.
>
> What was the result?
>
> Mr. Shepherd objected to take back the Payment, stating that, according to European Purchase, it was his, and he should not take the Purchase Articles back again. The Chief said he should; he, Mr. Shepherd, said that was not according to the European Custom, nor theirs, to take it back after it had been parted with. The Chief said he had not given the Value for it, or why did the other give him Four Times as much; and he said if he did not take it back he would take off his Head, but that was

[43] ibid, p 18
[44] ibid, pp 19-27

only a Threat; then he, the young Chief, went away, and left the Price, and he has since sold the Land for Four Times as much.

Did Mr. Shepherd give it up?

Yes; he was obliged to do it, or something serious might have occurred.

***

Do you recollect any Instance in which the Land had been occupied and cultivated by the Purchaser in which the Natives reclaimed it?

No; I know another Instance where a Native began to cultivate with the Intention to take it back, provided they were permitted. It is the native Custom to go and fix on any Part of their Country, and plant it; if they keep it that Year it belongs to them ever after; it becomes their Property….he [the Native] said his Blankets were worn out, and his Payment gone, and he should take his Land back again, as it was not occupied. [Fairburn objected to Busby, who called a "Committee" of chiefs to decide the matter. Busby threatened to call a warship to shell the chief's pa and kill him, and the chief finally agreed that, if given a feast by the Europeans, he would give up his cultivations and allow the purchase to stand. Fairburn had had the land for several years without cultivating it, and was allowed to retain it.]

***

If the Purchaser does not proceed fairly to cultivate it, then he [the Maori seller] thinks he has a Right to sell it again?

Yes. I have been informed, not only by Natives but Europeans, that the Land at Tamaka[sic] had been purchased several years before; but the Purchaser not having used the Land, the Party considered him or them as dead.[45]

- JS Polack (trader, traveler and Bay of Islands Old Land Claimant, resident in New Zealand from 1831 to 1837)

Polack informed the Committee that he had made several small land purchases, which he believed were absolute alienations and understood by Maori as such.

> The first Piece I acquired I requested the Chief to sell to me; the other Pieces I bought the Natives requested me to purchase, and at the same Time they told me, "Now, remember you are going to get our Land; this descended from our Forefathers; do not think to give us a mere Trifle for it; give us that which we should have. See that Stream; so let your Payment be; it goes in various Creeks, and refreshes all the Land about it; so must your Payment refresh all concerned." Then again they would say, "The Things you give us are nothing like the Value of the Land; that will last for ever; but what will become of your Blankets? They will become sick or dead by-and-by. What becomes of your Tomahawks? They will all be sick or dead. Glass and iron are brittle; you are going to steal our Land from us." (They are fond of joking.) "Your Payment must be good to us."
>
> They held out that the Equivalent which you gave for the Land must be of a valuable Nature?
>
> Yes. "There is this Tree; look at it; if one Branch falls there will come another; it will remain to your Children; but what will become of my Children when these things are worn out?" They have a full Knowledge of the Value of the Land.[46]

Polack described the function of 'payments' in Maori culture and society. The Bay chiefs distributed the payment as gifts among their family and people: 'The Feeling of Pride [mana] he has in giving it away gives him more Pleasure than any thing he gets, unless it is a double-barrelled Piece.' Pollack also noted that, in addition to the purchase goods, there was ongoing gift-giving. He later gave significant presents to the chiefs, but also 'a Quantity of Trifles; that even the Slaves on the Land, or born on the Land, might say "I have smoked his Tobacco," or "I have had his Tomahawk."' As part of the cycle of gift-giving, he himself was given part of the "payment" for a land transaction, by a chief who specifically asked him to stop for the purpose.[47]

Polack made a curious addition to his evidence on land transactions. He informed the Committee that if New Zealand was colonised and brought under British law:

[45] ibid, pp 39-41
[46] ibid, p 80
[47] ibid, p 83

> I have written out to the different Chiefs of whom I have purchased Land, stating that in the event of the Place being colonized I will allow them every Year an annual Stipend; and I hope every other European will take the same method.

The Committee, somewhat puzzled by this, inquired on what principle he would 'grant an Annuity when you have purchased the Freehold'. Polack replied by referring to the relationship forged with the chiefs, stating that 'they have looked up to me as a respectable Man, and I should wish to keep up that Respectability'. He spoke grandly of esteem. Not greatly enlightened, the Committee asked if the chiefs would expect to have to perform some service in return for this 'payment'. Polack's reply was telling:

> No; they know very well I have acted perhaps differently from other Europeans in general. I have said, "Now, I have bought your Land:" (it was offered me by the Natives, and it was their Wish that I should purchase it;) "but I shall give you something more." I bought the Land to trade on, instead of their coming over to me a long Distance.[48]

Wyatt's assessment of this was scathing. In her view, Polack was thinking ahead about how to protect his interests if British law did end up being established in New Zealand, and he had to put customary transactions with Maori on a more British footing (to prevent, no doubt, their repudiation). He had even gone, so he told the Committee, to the trouble of leaving letters for the chiefs to that effect with the Wesleyan missionaries. Wyatt wrote:

> Amidst what is both a nonsensical and unquestionably untruthful explanation for his actions, the essential point would seem clear that, by seeking to grant an annual return to his purported Maori 'sellers' – a system of annuities to ensure (presumably) his continued right to use the land and in recognition, then, of their continued rights of ownership – Polack, for one, clearly understood that Maori held a different understanding of what constituted the agreements to that emphatically stated by all such traders.[49]

The essence, presumably, with which the House of Lords Committee had to be satisfied, was: 'Now, I have bought your Land…but I shall give you something more.'

- Rev Frederick Wilkinson (visited New Zealand for three months in 1837)

Wilkinson visited New Zealand for three months in 1837. His view, based on what little he had been able to learn of Maori custom, was that chiefs did not actually have the right to make permanent sales of land: 'suppose a Man sold his Land, and after his Death his Son was strong enough, he would go and take that Land again; that is their Law. A very little Title would do for them, if they are strong enough.' He gave an example of Hongi taking Whangaroa, which he had claimed for a long time but not been strong enough to enforce, and noted that if it had been sold in the meantime to a European, Hongi's right would still have remained. But, on the other hand, 'if you wish to settle among them they would give you a Piece of Land, and would be happy that you should remain there, and would respect your Property, and not go across it.' Europeans who claimed to have purchased square miles of territory were making a mere pretence.[50] Maori who had sold land with the intention of getting settlers in the Bay of Islands, however, moved off it on to their other lands. Some even had to go and live with Pomare because they had sold all their land.[51] Even so, in cases where they had made 'bad Bargains', they might simply move back onto the land and

[48] ibid, pp 81-82
[49] P Wyatt, 'Old Land Claims', p 173
[50] Minutes of Evidence to House of Lords Committee, 1838, GBPP vol 1, p 102
[51] ibid, p 105

reoccupy it when they thought the settlers had 'made enough out of' a particular resource like a kauri forest.[52]

This was all appeared quite contradictory, and the Committee questioned him closely about whether chiefs could make permanent alienations, and whether Maori sought to resume land they had sold.

> When you said that the Son in some Instances had come and resumed the Land his Father had parted with, was that in Cases where he conceives that the Consent of all Parties interested had not been given?
>
> I cannot tell what the Reason might be. I think it is from a Sort of Idea that the Father cannot alienate the Property.[53]
>
> ***
>
> You have alluded to some Law in the Island, when you spoke of the Son having the Power to resume the Land?
>
> I spoke only of what I could gather from the History of the Country.
>
> Do you mean that there is a general Law which prohibits a Father from alienating?
>
> I do not know any. There is no written Law; it is all Custom; but they will, when strong enough to do so, resume the Land. I believe they think the best Title of a Man is of very little Consequence if they are strong enough.[54]
>
> ***
>
> Do you think that where they have resumed the Land they resumed it on any Principle?
>
> They had some Claim to it; but they did not balance the Claims to it much, I believe.[55]

From this evidence, therefore, the Committee was informed that there was customary law (but, in the view of the witness, not a very strong one). And under that law, chiefs could not sell land permanently, and the next generation might well resume control and occupation of it. In some cases, this would happen when they felt their settler had obtained enough benefit out of a particular resource like a kauri forest. On the other hand, if they really wanted a settler to live with them, they would happily give some land, protect the settler, and maybe move off the land. Land that had been purchased by settlers could still change Maori hands, such as at Whangaroa.

- Captain Robert FitzRoy

On 11 May 1838, Captain FitzRoy, the future Governor of New Zealand, gave evidence to the Committee. His evidence is crucial to the debate on the nature of the pre-Treaty purchases. Wyatt relied on it heavily in her thesis as one of the strongest pieces of evidence in support of her position. Sinclair, conversely, wrote it off because he believed it to be contradictory on some points, to have confused sovereign authority with land ownership, and to have been motivated by political ends. By that, he meant that its purpose was to support the missionary stance against the New Zealand Company (as it was eventually called). Most importantly, he dismissed it because FitzRoy was not very long at the Bay of Islands (only about a week), and must therefore have drawn heavily on the opinions of those he met – namely, the CMS missionaries and Busby.[56] He also argued, based on some statements in FitzRoy's later account of the Beagle, but more importantly on his later actions in New Zealand, that FitzRoy did not truly believe the transactions to be conditional.[57]

I find it difficult to discount FitzRoy's testimony for Sinclair's reasons. In the first place, if it was drawn from the missionaries and Busby, and designed to support their

[52] ibid, p 107
[53] ibid, p 106
[54] ibid, p 107
[55] ibid, p 108
[56] F Sinclair, pp 212-219
[57] ibid, p 218

opposition to systematic colonisation, then it made a very poor job of it. For Busby and the Bay missionaries, one of their fundamental points was that they had made English-style purchases of land. His testimony called that into question, and the CMS representative (Coates) did not know quite what to say when questioned on it later. The key point, perhaps, is that FitzRoy argued for continued Maori authority over the land they had transacted. The CMS missionaries worked with this, in his view, whereas the Company wanted to extinguish sovereignty. Thus much was politically motivated, but does not make it less correct. In terms of the fundamental confusion Sinclair saw in this evidence, it does appear that FitzRoy was equating sovereign authority with land ownership. Panakareao later did the same. FitzRoy's evidence showed that where this was *Maori* authority, it involved land in ways that a British exercise of 'sovereign' authority would not normally do. This probably makes it more relevant to the points at issue, not less. Also, the evidence recited in section 5 below indicates that FitzRoy's later actions in New Zealand did not contradict his evidence to the Committee – quite the reverse.

Given the importance of FitzRoy's evidence, I have set out the questions and answers in a fairly full way, although some material has inevitably been left out for space and relevance:

> And if he [a land-selling chief] further disposed of his Rights of Sovereignty over his Land, his Rights of Sovereignty would pass to the Person to whom he disposed of them?
>
> I apprehend they would at first, but whether that would be held good Twenty or Thirty years hence would be a different Question; for those Natives do not understand parting with their Rights in Perpetuity; at present that would hold good, I have no Doubt.
>
> ***
>
> When you say that the native Chiefs do not understand that they are alienating Land entirely for successive Generations, with respect to the Purchases made now by Europeans, have the New Zealanders any Sort of Notion, in your Opinion, that the Land will ever revert to their Tribes?
>
> I think they consider it as their Country; they consider the People who come there as we considered Settlers in this Country in former Times, the Lombards, Flemings, or others. We had no Objection to their coming, provided they did not take away from us any Part of our Territory, for they would increase our Resources. If a piece of New Zealand where the English have settled themselves was to be transferred to the British Crown, and the Natives were no longer to have any Right to that Soil or Territory, I think it would put quite a new Face on the Matter.
>
> Have the New Zealanders any Notion that the Compact is not final, that the Land will ever revert again to their Descendants; do not they consider it vested in Law?
>
> I do not think they do, because they consider that when a European purchases their Land, he is taken from that Moment under the protection of their Tribe. All the Purchases have been with the Understanding that the Settlers are to be protected by the Chief from whom they purchased the Land, which appears to me very much like their considering that they still have a Sovereignty over the Land, though they allow those People to make use of it.
>
> Do you know whether those Persons have ever done any Act of Infeudation to the former Possessors of this Land? [ie hold it under feudal tenure]
>
> The Settlers have made Presents to the protecting Chief, the Chief under whom they live.[58]
>
> ***
>
> Do the New Zealanders sell Land one to another, and when purchased does it become the Property of the Purchaser and his Heirs?
>
> Certainly; they can exchange Properties in their own Tribes, but not out of their Tribes.
>
> They have correct abstract Notions of buying and selling?
>
> Yes; but still the Sovereignty remains in the Chief of the Tribe.[59]
>
> ***

[58] Minutes of Evidence to the House of Lords Committee, 1838, GBPP vol 1, p 171
[59] ibid, p 172

You cannot say what would become of a Tribe who had disposed of all their Territory, whether any other Tribe would harbour them?

They must remain upon the Territory; I see no other Course. Large Purchases have been made by the Church Missionary Society for Farms, and the Natives have been allowed to remain upon them; that Transfer has not interfered with their Right of Common.

You are not aware whether the Members of the Church Missionary Society consider that the Sovereign Authority still rests with the Tribe of which they Purchased their Land?

I know that they do so consider.[60]

***

The Church Missionaries consider that they hold their Lands purchased on Sufferance?

Yes.

From which you believe them to contemplate the Possibility of their being taken away?

Decidedly; and I apprehend they consider that they hold their Property entirely at the Mercy of the Natives; that their Tenure in that Country depends solely on the Goodwill of the Natives.

Of course it does, generally speaking, but do you suppose them to be of opinion that the New Zealanders themselves consider them to hold the Lands they have purchased on Sufferance?

It is a Sort of conditional Sale, such as "We sell them to you to hold as long as we shall permit you." I apprehend it is considered that they hold those Lands under the Authority of the New Zealand Chiefs; that they settle upon them as their own Property; but under the Protection and Authority of the Chiefs, and that they look up to the Chiefs as their Protectors, and, in fact, as their Masters.

Do you conceive at the Time that the Purchase is made there is not an Understanding between the Missionaries and the New Zealanders, that the land is entirely given up for a positive Consideration?

The Use of the Land is certainly; but as the Missionaries have never wholly taken away the Ground from the Natives, but have always allowed them the Run of the Land, the Right of Common as it were, I do not think they at all apprehend at present, that a Day will come when they will not be allowed to go about the Land as they have hitherto done; they consider it their Country while it is not transferred from them to the Sovereignty of another Power.

Are you aware that the Missionary Society in all their Arrangements speak of that Land as Possession in Perpetuity, and that they recommend to the Missionaries to purchase such Quantities of Land as Provision for their Children?

Yes, I am quite aware of that; what I have meant is that they have a Right to hold that Land, or to make Use of it for their own Benefit; and that they may Act as they please upon the Land as long as they acknowledge the New Zealand Chiefs as the Authorities under whom they hold it.[61]

From FitzRoy's evidence on 11 May, therefore, may be drawn the following points about Bay of Islands land transactions, at least as he understood them:

- Sovereignty and authority over land and the people who lived on it were indistinguishable to Maori
- Maori did not cede their rights over land in perpetuity
- Settlers were seen as increasing Maori resources, and welcomed by them on that basis
- Maori retained political authority not only over the land but also the settlers; they were the veritable 'masters', but settlers had use-rights
- Maori provided protection to the settlers, who were taken into the tribe
- Settlers made ongoing gifts to the protecting chief
- The CMS had made large 'purchases' but Maori had continued to live on the missionary land and use its resources; FitzRoy partly equated this to the English rights of 'common'
- The missionaries knew that they lived on the land in 'sufferance', that it could be taken away from them
- 'It is a Sort of conditional Sale, such as "We sell them to you to hold as long as we shall permit you."'

[60] ibid, p 173
[61] ibid, pp 173-174

FitzRoy was followed by the secretaries of the Church Missionary Society (CMS) and Wesleyan Methodist Missionary Society (WMS), who were somewhat perturbed at the tenor of his evidence.

- Dandeson Coates, Secretary of the CMS (who had never been to New Zealand)

Coates was of the view that the CMS transactions were as absolute as they could be, but conceded that the point he had made about the New Zealand Association's proposal would apply equally to the missionaries' purchases; that is, that it simply was not possible to explain to Maori the full meaning and consequences of permanent alienation. The missionary transactions, however, were better in principle because they did not also involve alienation of sovereignty.[62]

- Rev John Beecham, Secretary of the WMS (who had also never been to New Zealand)

Beecham had to inform the Committee that he did not know much about land transaction customs. In terms of settlers on-selling land which they had bought from Maori, he referred to a letter from Turner to the effect that they had had to ask the consent of the chief who had made the transaction with the original settler. On the whole, though, as the Wesleyan mission had not purchased much land nor tried to resell it, Beecham thought it was too soon to tell whether the transactions were truly permanent or not. It is an interesting point.

> When you have purchased the Land you possess do you conceive it is inalienably separate from the Natives; that you have bought the Fee Simple?
>
> I do not think we should instruct our Missionaries to sell it without consulting the Natives of whom it is bought. I speak with Hesitation upon the Subject, because I do not recollect any Case having occurred in the History of our Mission to which I could refer. If I am asked my Opinion, I would say that I rather lean to the Conclusion that the Natives have no very distinct Idea of the total Alienation of their Lands, but may cherish the Notion of resuming them at some future Period under certain Circumstances, but there is nothing in the History of our Mission which would enable me to produce a Fact in Illustration. Certainly the Language employed by Mr. Turner here strengthens the Opinion that the Natives do consider that they have something to do with the Re-sale of their Lands.[63]

On 21 May, the Committee recalled Captain FitzRoy to clarify points in his earlier evidence. Again, because of the importance of this material, I reproduce it at some length:

- Captain Robert FitzRoy (recalled)

> You stated an Apprehension that the Natives would be forced away form their Lands that border on the Sea into the Interior, and that by that Means they might be deprived of their ordinary Means of Subsistence; are not the Grants that have been obtained from the Natives in the Neighbourhood of the Sea or the Harbour principally?
>
> Yes; they extend along one Side of the principal Harbour [at the Bay of Islands], and occupy portions of other Inlets; but the Natives can still have Access to them and the adjacent Waters in all Directions; they have a Right of Common which, if taken away from them, I should suppose would change their Opinion of Settlers entirely. They may now go wherever they please; their having sold Land does not prevent their fishing from its Shore, or crossing it in any Direction.
>
> Is not the Land in the Island, with the Exception of the small Enclosures made for Cultivation, used in common by every body?
>
> In common by all the Natives of one Tribe. It is as nearly like our own Commons as possible. I suppose on one of our Commons any of those who have the Right of Common might pitch a Tent for a Time, - might feed their Cattle or otherwise use it temporarily, but would not be allowed to make away with any Part of it; and it is much the same in New Zealand; the Inhabitants are entitled to use it, but not to make away with any Portion without the Consent of the whole Tribe.

[62] ibid, p 256
[63] ibid, p 297

At present are not the Lands on most of the good Situations about the Bay of Islands for many Miles in Extent alienated from the Natives?

Yes, they are.

But notwithstanding that Alienation of Land, the Natives are able to land upon the Shores, and use them for the Purposes of fishing, without Molestation?

On every place except one Island; there was that one Place which was an Exception to the general Custom when I was there; it belonged, I was told, to Two Americans. Except on that Island, the Natives might make use of the Land in any Direction, so that the Country was as useful to them in every point of view as if there had been no Settlers.

Do you recollect the Name of the Island?

Motou-roa.[64]

***

[FitzRoy stressed that in his view Maori lived mostly on seafood, supplemented by fernroot and kumara crops. He therefore stressed the need to ensure continued access by Bay of Islands Maori to the foreshore, the sea and their fisheries.]

Should you suppose that any System of Colonization could be applied that could prevent the Access of the Natives to the Seas and the Bays?

An Englishman settling in that Country, with Ideas of Property learned in England, might think it very strange that a Tribe of Natives, or any Number of Natives, should cross his Property whenever and wherever they liked, and one of the first Points he would urge would be, that it was his Land, and that they must not trespass upon it.

Down to Low-water Mark, probably?

I should suppose that would be the Limit.[65]

***

You said there was One Island in the Bay of Islands that was the Property of Two Americans; is that a large Island?

It is an Island of about Fifty Acres.

Do they reside there?

Yes; they live on the Island.

Did they purchase it of the Natives?

Yes; I was informed that they had done so.

Do they prevent either Natives or British Subjects from going upon it?

They do not prevent them, for the Natives do not understand being prevented from going upon the Land; but I was present myself when Objections were made by those Two Persons to a Party of Natives landing at the Time I landed. They said that they trod upon their Crops, and did a great deal of Harm; and one of them asked me, if he, having purchased the Island, had not a Right to keep it for himself. I of course could not interfere in any way; but I advised him to be cautious in his Dealings with the Natives.

Do you know whether they had purchased the Island in the same Way as many British Subjects have purchased Pieces of Land?

Yes; by the same Process.

[FitzRoy also refers to grog-sellers and that kind of settler simply building houses at Kororareka with no titles at all.][66]

From FitzRoy's recall, the following additional points about Bay of Islands land transactions emerge:

- The 'right of common' Maori had retained included the right to live temporarily on the land, feed livestock on it, traverse it, and use the foreshore for fishing – 'the Country was as useful to them in every point of view as if there had been no Settlers'.
- English concepts of property saw this as 'trespass' – on one of the Bay islands, the purchasers wanted to keep Maori out, complaining of damage to their crops, but had not the power to do so.
- Some settlers were living on Maori land without actually making transactions with English formalities like deeds at all.

[64] ibid, pp 336-337
[65] ibid, p 337
[66] ibid, pp 340-341

Thus, the House of Lords Committee heard a large body of evidence, some of which was concentrated on the nature of land transactions and, in particular, whether or not they were permanent alienations. There was no other investigation which focused on this until the Land Claims Commission in 1841-44, and some would say not even then. There is, of course, other evidence of FitzRoy's 'right of common' in the missionary papers cited by Wyatt and Sinclair, although differently interpreted by them. My reason for placing so much weight on the Lords' Committee, however, and less on the grumbling about trespass in the journals of Henry Williams, is that the material presented to the House of Lords was known to the British Government. It was printed in the Parliamentary Papers and available for future officials to study. It is also important because of FitzRoy's views. As noted by Sinclair, they are mainly second hand (though not entirely, since he himself visited the island on which the 'right of common' was a source of complaint) and based on a short acquaintance with New Zealand. We will consider below whether he changed his mind after taking on the governorship. Here, it is sufficient to note that the House of Lords Committee's investigation put the Government, and also the CMS London authorities, on notice that the question of permanent alienation was an important and disputed point.

4.2 The British Resident

The other main source of information available to the government in the 1830s was the reports and correspondence of the British Resident. The creation of the Resident's position and his political role and significance will be addressed in the next chapter. Here, we are concerned with Busby as a man who transacted land with Bay of Islands Maori, and who reported that matter and other transactions to the British Government. He came to the Bay of Islands in 1833 and was of course involved in an early transaction to acquire land for a residence. Busby's transactions were fairly modest until the land mania of the late 1830s took hold, and he came to realise that British annexation was likely but not with him at its head. He then negotiated large land transactions with Maori at Whangarei and elsewhere, although his focus was partly on the land he claimed at Waitangi, which he hoped to sell profitably for a capital.

Busby believed firmly that his transactions were absolute alienations of land on the part of Maori. Though they needed pressure (sometimes unavailing) to keep to their part of the bargain, they had nonetheless made an English-style 'sale'. His reports to the New South Wales government were based on this belief. His letters in 1839 refer to a rush of land speculation, and of missionary purchases to reserve land for Maori. There is nothing in his correspondence to suggest anything other than that he saw all these land transactions as absolute alienations. So much for what Busby believed, and what he reported that he believed.

There is a countervailing theme, however, in his correspondence. In 1833, for example, William Hall sold Busby 'his' land at Waitangi. He informed the Resident that the deed would hold good as against other Europeans, but that Busby would probably have to pay Maori again for the land when he tried to take it up.[67] Soon after his arrival in New Zealand, Busby discovered that the Girls' War of 1830 had created problems for the European residents of Kororareka. Ngati Manu leaders had ceded Kororareka to the northern alliance chiefs without reference to the Europeans to whom they had 'sold' some of the land. It did not occur to them that that land was no longer theirs to give. Nor would the new Maori right-

[67] William Hall to James Busby, Black Town, 15 April 1833, qMS-0347, ATL

holders necessarily respect the previous arrangements. A settler named Poyner had 'purchased' land at Kororareka in 1824:

> The Tribe from whom he made the purchase was driven out of the district by a rival tribe, who have ever since (1829) [sic] been in possession. One of the Chiefs of the latter established himself in the Enclosure of Poyner, and kept him out of possession till the day of his death [1834].[68]

Busby succeeded in getting the chief to offer him some compensation for the settler's interest.

Other settlers were able to make arrangements with the new Maori 'owners', and their cases were not reported by Busby, although they were later revealed to the Land Claims Commissioners. Alexander Grey, for example had 'purchased' an acre of land on the beach in 1826, where he had built his home. W Wilson testified that 'afterwards the purchase was confirmed by the Native Chiefs Akiro, Tareha & other as per deeds'.[69] Hakiro's evidence clarified the point:

> About three years ago I & Tareha & others sold & confirmed to the late Alexander Grey, a piece of land on the Beach at Kororarika which he had formerly bought from Kiwi Kiwi - & which we had conquered from the said Kiwi Kiwi. We had a right to sell this land…[70]

Tareha agreed:

> Mr Grey had bought it before from Kiwikiwi but we had conquered it & had a right to sell it – and we agreed to give it to Mr Grey.[71]

Not everyone had as smooth a time of it as Grey. Disputes arose at Kororareka and were reported by Busby to his superiors. In 1835, he had to try to resolve a conflict between Polack, who had transacted with Tohitapu's wives and with Heke, and the rangatira Titore. The latter moved on to Polack's land and planted potatoes, leading to lengthy negotiations between Polack, Williams, Titore, and Busby. The Resident was unable to effect a settlement satisfactory to Polack. He reported to the government: 'I myself and I believe every person here has been forced to temporise with the natives, and to avoid pushing our claims, as far as strict justice might warrant.'[72]

In 1836, Busby's brother referred to the fact that the Resident could not leave New Zealand, even temporarily, without endangering his title to the land that he had purchased.[73] The reason for this is not difficult to uncover in Busby's correspondence. Sinclair describes how, in 1835, Busby reported to the government that he had, as an 'act of good will', asked Maori not to stop using their whare on his land, which they used seasonally for fishing but did not otherwise occupy. On perceiving his enemy Rete among them, however, Busby waited until they had left and then burned the whare.[74] The passage is worth quoting in full:

> About three weeks ago I was passing some fishing huts upon the Land which I purchased within the above distance of my house when I found the party of Natives to whom the Huts formerly belonged, including Rete, sitting there. I passed on without making any observations; but on the departure of the party I burned down the huts. – On purchasing the land I had requested the natives not to abandon their huts but to continue to occupy them as before when engaged in fishing. There was no such reservation in the purchase; but it was altogether an act of good will towards them which I considered the party

[68] J Busby to A Busby, 17 Nov 1834, qMS-0347, ATL
[69] Evidence of W Wilson, 22 September 1842, OLC 1, 764
[70] Evidence of Hakiro, 21 September 1842, OLC 1, 764
[71] Evidence of Tareha, 21 September 1842, OLC 1, 764
[72] J Busby to Colonial Secretary, 18 March 1835, qMS-0345, ATL
[73] Alexander Busby to James Busby, Sydney, 16 Sept 1836, qMS-0347, ATL
[74] F Sinclair, p 181

> who thus accompanied Rete to my own Land rightly deserved to forfeit. – I have understood however from the Missionaries that much ill will has been excited by this proceeding; and that retaliation has been threatened. – Several of the natives whom I have always considered well disposed have come to me to remonstrate; but I have told them, that if Rete visits any other hut upon my Land I will burn it also; and that I will not allow any person to have a hut upon my Land who continues to befriend him. – The Missionaries strongly, I think entertain the opinion that having once invited and permitted the natives to occupy their huts I had no right to burn them down; even under the circumstances I have mentioned; and they have rather encouraged, than combatted the idea of the natives that the latter have a right to look to me for compensation.[75]

What Sinclair saw as grace on the part of Busby, Wyatt interprets (as with the Polack testimony cited above) as making a virtue of necessity. Certainly, Busby notes that there were other 'huts' upon his land as well as the ones he destroyed, and the prospect of more being built. The missionaries' support of Maori 'rights' was also instructive. Later that year, Busby informed the government that the land ceded to him by Rete's people would probably be reoccupied by them and planted. It might not happen, but if it did, the Resident 'thought it a necessary policy under existing circumstances to remain ignorant if possible of any such attempt'.[76] Land he had purchased was occupied by Maori seemingly at will (without disturbing him), while land ceded to him as compensation for an attack was outside his control altogether.

In 1837, Busby reported that the 'insolence and encroachments of the natives continue also to increase'. As an example, Maori from whom he had purchased his land had reoccupied it to cut down timber, burn off the land, and plant their potato crops. This was a different order of occupation than temporary residence for fishing. Busby went to the most 'influential chief of the neighbourhood' and managed to get most of the occupiers to leave, with the exception of one whanau (again, Rete). The situation of settlers was 'in the highest degree precarious'.[77] While Busby exaggerated the risk to settlers, especially in terms of the security of their lives, he was clearly troubled by repeated Maori use of what he saw as his land. It is significant that in the same year, Busby adopted the practice of making formal reservations for Maori occupation. In his transaction for Te Puke at the Bay of Islands, he noted:

> I am to secure to them and their children (there are only three or four families) the possession of the land they have in cultivation as long as they choose to cultivate it, but they are of course to leave [have] no power to alienate it. And when my cattle extend so far they are to fence it in.[78]

In 1840, Busby's brother reported his practice in this respect to the House of Commons Committee on New Zealand. This committee, unlike the 1838 House of Lords Committee, heard hardly any evidence from New Zealand itself. It mainly examined New Zealand Company witnesses who had not actually been to the country, and the secretaries of the two missionary societies. The main witnesses who had been to New Zealand were a young naval lieutenant, named John Blackett, and Busby's brother, Alexander. The emphasis of these two men was that land disputes at the time were mainly caused by the same piece of land having been sold to three or four European claimants. The reasons given were that Europeans tended to make incomplete purchases from only some of the legitimate right-holders, and that there were language and communication problems.[79] The whole question of the nature of the title being conveyed, other than of dealing with the right 'vendors', was not raised in the same way that it was by the House of Lords Committee.

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[75] J Busby to Colonial Secretary, 11 May 1835, qMS-0345
[76] J Busby to Colonial Secretary, 25 September 1835 [date wrongly copied as 1841], qMS-0345
[77] J Busby to Colonial Secretary, 28 March 1837, qMS-0345
[78] J Busby to Alexander Busby, 5 May 1837, qMS-0347
[79] House of Commons Committee on New Zealand, 1840, Minutes of Evidence, GBPP vol 1, pp 60-69, 130-132

Nonetheless, Blackett's evidence was nuanced and, in some cases, contradictory. He had spent a year travelling in New Zealand but did not speak Maori, and so was reliant on how Pakeha explained matters to him. He thought that Maori and Pakeha were both 'perfectly satisfied' with their land transactions so far, as Maori had not yet begun to feel a scarcity of land, except for some 'petty chiefs' at the Bay of Islands who had supposedly sold the whole of their land and were having to live off prostitution. Some transactions were invalid because of faulty and even fraudulent deeds, but also because Maori and Pakeha simply did not understand each other. The best transactions in that respect were those of the missionaries, who had the greatest grasp of the Maori language. Blackett noted that Maori had 'sold' the same land over and over to different Europeans, and that generally 'purchasers' left Maori in possession of the land. In one instance, this had been the case for sixteen years, although Blackett thought that Maori would still 'give them [the lands] up' if the purchasers ever actually arrived to take possession. The Committee's questions on that point were mainly focused on the New Zealand Company; the members were clearly concerned at the idea that Maori had not removed themselves from purchased land nor 'altered their mode of dealing with it'. Blackett was unable to enlighten them on Colonel Wakefield's transactions.[80]

He had, however, observed two other significant points about the missionary land transactions. On the one hand, theirs was the only land occupied by Europeans at the Bay of Islands in terms of actually cultivating it. On the other hand, when asked if the missionaries rented any of their land to Maori, he replied:

> Not any. The missionaries hold a great quantity of land; they perceive that the natives are selling their land, and they hold a great quantity of land in their possession to prevent its being sold, but still belonging to the natives.[81]

This appears to have been a reference in part to the missionary trusts and the way in which at least some Maori had continued to live on parts of the mission lands as if, as Blackett notes, they were 'still belonging' to them.

The other witness to the Committee who had visited New Zealand was Alexander Busby. He informed the Committee that his brother had, in his purchases:

> regranted to the natives a portion of land for their use for ever, so long as they please to occupy it. He has drawn deeds of grant in their favour, at the rate of 30 acres a man, conveying to them those portions of the land which he has purchased upon which they have their settlements. He has granted formal deeds of those lands to them, and they and their children are entitled to use them as long as they please; of course they are not to have the power of transferring it.[82]

James Busby's response to Maori reoccupation and use of his land, therefore, was at first to make informal arrangements for it, and then later to try to formalise the situation at the commencement of transactions. He could not, as he very well knew, keep Maori out without constant negotiation and effort, and even then he was a realist enough to know that he could not always succeed, any more than the missionaries could. Wyatt and Sinclair have both cited examples from the letters and journals of Bay of Islands missionaries, showing Maori use of resources on their land at various times. In particular, Maori were most successful in their efforts to police waahi tapu on the land that they had transacted. Europeans were the most likely to bow to this, even missionaries. As Maning put it: 'it was stipulated that I should fence it round and make no use of it, though I had paid for it'. Maori were reluctant to tell him the exact boundaries and location of the waahi tapu, however, and Maning attributed the

[80] ibid, pp 59-62, 65
[81] ibid, p 65
[82] ibid, p 131

whole thing to cupidity.[83] Nevertheless, waahi tapu on 'sold' land remained a live issue for decades after the transactions were first made. Wyatt rightly saw this as clear evidence of Maori seeing their authority persisting over the land they had ceded to settlers.[84]

The letters and journals of Henry Williams, the leading CMS missionary at the Bay of Islands, reveal frequent "incursions" by Maori on mission land, some tolerated but mostly resisted. These matters were reported to the CMS in London. Some of them have been cited by Sinclair and Wyatt.[85] In 1841, Williams made two very contradictory statements on the matter to his superiors:

> Moreover in the purchases of the Missionaries reserves were unnecessary, the natives reserving to themselves great abundance of their best lands – and in no instance have the natives been disturbed from any land purchased by the Missionaries as none were residing on them at the time of purchase.
> ***
> The land in connection with all our Settlements except those in Cooks Straits is considerable to admit of the natives locating around us and also to keep Grog Shops at a distance. In connection with Paihia we have water frontage of 3 or 4 miles which has been regarded as neutral ground where the natives have been in the habit of sitting for the purpose of fishing or trade.[86]

It is worth taking a moment to consider this Paihia fishing spot and station, as there was nothing formal (in a British sense) in Williams' arrangements, and it became the source of controversy about fifteen years later, when the CMS tried to interfere with Maori occupation for the first time. Firstly, Williams described how he resisted constant Maori attempts to use the place:

> From the year 1824 I had been required to exercise my utmost influence to preserve the various settling places by the seaside from the intrusion of other parties, desirous of locating there without authority for various purposes, as being conveniently situated for the shipping, and I have succeeded.[87]

Some Maori, on the other hand, did occupy the land. They had built whare on and cultivated it for decades, and now the CMS wanted to charge them rent. Hemi Tautari complained to Williams, who in turn complained to the CMS that these people had lived there and made a present of a kete of potatoes to him each year. According to Williams, the occupation was at his invitation and permission:

> I maintain that as a native he is entitled to the privilege of continuing in undisturbed possession in common with others who were invited to take up their abode at Paihia and its neighbourhood; the only exaction required was, good behaviour, and a "kete" of potatoes, from those who had cultivations, as preserving our title over the land, which fee, has formed part of the sick fund.[88]

The fact was that many Maori Christians had lived and cultivated on mission land throughout the Bay of Islands, although the indication is that they were from the local right-holding community (unless slaves or refugees). In other words, not just any Christian Maori could live with the missionaries at the particular district stations. I have not made a close study of this question, but it appears to be the case from the missionary papers. Due to the non-conversion of many important chiefs, however, they are most often cast in the role of intruders. Occasionally, a local rangatira like Rawiri Taiwhanga took up residence on mission

[83] F Maning, *Old New Zealand: a tale of the good old times, together with a History of the War in the North of New Zealand against the Chief Heke in the Year 1845 as told by an Old Chief of the Ngapuhi Tribe, also Maori Traditions*, reprint, 1956, pp 71-72
[84] P Wyatt, 'Old Land Claims', pp 157-159
[85] See, for example, F Sinclair, pp 173-201
[86] H Williams to CMS, 21 October 1841, CN/O 94(b) Henry Williams Letters, 1835-47, ATL
[87] H Williams to R Burrows, Paihia, 26 February 1856, CN/O 94(c), ATL
[88] ibid

land. Local Christian Maori seem to have moved on and off the land at their convenience, though Williams attempted to maintain his authority over it and them. What he resisted was non-Christian Maori, who constantly (as the letter notes) pressed their claims, not always successfully. Despite Maori resistance and the representations of Williams, the CMS decided that Maori in occupation of mission land as at 1856 would have to pay rent, because the land belonged to the Society by a Crown Grant, and its title was absolute.[89] Matters had come a long way since 1824.

4.3 The Korero at Waitangi: transactions on the 'middle ground'

From the House of Lords' Committee's investigation of 1838, and Busby's correspondence and reports, the government would have been aware that:

- Some settlers believed that Maori had made English-style absolute alienations to them
- The British Resident also believed so
- The mission societies and others believed that land sales had gotten out of control, and Maori were at risk of parting with too much land
- The Resident and others believed that a lot of Maori behaviour over land transactions was explained by settlers not having paid all of the 'owners' when they made their purchases
- Some Europeans had nonetheless highlighted countervailing evidence:
    - that Maori believed that the land reverted to them if it was not quickly occupied
    - that the settlers' title rested on Maori permission and customs
    - that settlers lived with Maori under the protection of a chief
    - that settlers made gifts to their chiefs after the initial transaction
    - that Maori believed they had the right to resell land when it suited them
    - that there was doubt about whether Maori could, or believed they could, alienate land permanently
    - that Maori continued to traverse the land, use their fishing spots, police their waahi tapu, and sometimes occupy it temporarily for cultivating or resource-use
    - that settlers sometimes resisted continued Maori access and resource-use, and at other times tolerated it or tried to formalise it in deeds as a right flowing from the settler to Maori
    - that the mission lands were occupied by Christian Maori

This was the state of knowledge when Hobson arrived in New Zealand to negotiate the cession of Maori sovereignty. The negotiations at Waitangi will be covered in depth in chapter 6. Here it is necessary to note Colenso's account of the korero, his advice to the Governor, and the discussion of pre-Treaty transactions which took place in front of Hobson. The impression made on the Governor must have been significant, and it is also a useful opportunity to consider the apparently disinterested views of Colenso on the matter.

4.3.1 William Colenso and the Korero at Waitangi

Before the rangatira began to make their speeches on 5 February, Busby addressed the hui and informed them that the Governor had not come to take away their land, but to protect them in what they had not sold. Any 'land not duly acquired from them' would be returned to

[89] R Burrows to CMS Secretary, 1 April 1856, Correspondence between NZ Mission Secretaries and Home Secretaries, 1851-69, CN/08(c), Micro-MS-Coll-04-05, ATL

them by the Governor. This set the scene for much of the discussion. According to Colenso's account, Te Kemara arose 'suddenly' after Busby had said this, and asked the Governor to leave. If equal to Te Kemara, he could stay, but otherwise he would have to go. He then addressed the point Busby had been making:

> O Governor! My land is gone, gone, all gone. The inheritances of my ancestors, fathers, relatives, all gone, stolen, gone with the missionaries. Yes, they have it all, all, all. That man there, the Busby, and that man there, the Williams, they have my land. The land on which we are now standing this day is mine. This land, even this under my feet, return it to me. O Governor! return me my lands. Say to Williams, 'Return to Te Kemara his land.' Thou" (pointing and running up to the Rev. H. Williams), "thou, thou, thou bald-headed man – thou hast got my lands.[90]

Rewa spoke next and requested the return of his lands, 'taken by missionaries', and leaving him only with his name. The land was gone but nevertheless the chiefs were still 'the Governor', and Hobson was asked to leave. Rewa's brother Moka supported him, demanding the return of his lands from the missionary Baker. But if the Governor agreed to return his lands, would anyone actually listen to him? Hobson replied that 'all lands unjustly held would be returned'. Moka then advanced to the official party at the front of the hui and stood in front of Baker, as close as he could get. 'Come, return to me my lands', he demanded, and awaited a reply. Baker responded: 'E hoki, koia?', which Colenso translated as, 'Will it, indeed return?' Moka then accused both Baker and Hobson of being 'false'; 'The lands will not return to me.'[91]

There was a brief interruption after Moka's confrontation of Baker. One of the settlers accused Williams of not translating a great deal about land and missionaries, to which Williams replied that the commissioners would investigate titles, and he would be able to show good and honest ones. Busby also spoke to deny that Te Kemara and Rewa had accused him of robbing them of land. The word robbery had not been used, he said. He pointed out that in all his purchases he had 'reconveyed to the Natives both habitations and cultivations, by an unalienable deed of gift, according to the number of persons thereon'.[92]

The leaders of Ngati Kawa, Ngai Tawake, and Patukeha thus raised the issue of their lands, and demanded their 'return'. Tareha, the leader of Ngati Rehia, also proclaimed that their lands were gone, but then denied it in the next breath:

> What is there here for thee? Our lands are already gone. Yes, it is so, but our names remain. Never mind; what of that – the lands of our father alienated? Dost thou think we are poor, indigent, poverty-stricken – that we really need thy foreign garments, thy food?[93]

Tamati Waka Nene also referred to the land being gone in a general sense, as covered in foreigners, but the question of land transactions was not raised again until Te Kemara rose to conclude the hui. He told the Governor that he could stay if he ordered the Pakeha to return his land, and so long as he was equal in rank and power with the chiefs. 'Besides,' he asked, 'where art thou to dwell? There is no place left for thee.' When Busby announced that his own land would be occupied by the Governor (that is, that Te Kemara would get the Governor as his Pakeha), the rangatira rushed up to Hobson and proclaimed dramatically that he would never be put in handcuffs, before vigorously shaking his hand and welcoming him.[94]

[90] W Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*, p 18
[91] ibid, pp 18-19
[92] ibid, pp 20-21
[93] ibid, p 24
[94] ibid, p 29

So what did Rewa and the others mean by the 'return' of land? The answer is found in evidence presented to the Land Claims Commission for the claims of JI Montefiore and Captain Clendon. The Commission heard Montefiore's claim for 343 acres of land at Manawaora Bay in January 1841. Wharerahi told the Commission that his brother, Rewa, had 'sold' the land first to Clendon (in 1830), and that he (Wharerahi) had then sold it to Montefiore (in 1836). But the Ngai Tawake tribe were still living on the land in 1841.[95] They had been cultivating it all along, as Montefiore admitted (though he claimed it was with his permission).[96] Another Pakeha, William Manery, had been installed on the land as well by Montefiore. Manery noted that 'no objection has been made by the Natives to my living there – they have always been upon good terms with me', and the reverse seems to have been true as well.[97] In any case, Ngai Tawake were still living on the land and cultivating it. They nonetheless acknowledged the 'sale' to Montefiore.

But the transaction with Clendon (3000 acres, including the portion transacted with Montefiore) was a different story. Clendon testified that the people had not given up their pa and had continued to live on the land. The arrangement seems to have been fine from 1830 to 1839, and Clendon does not appear to have objected to the introduction of Montefiore to the land. But in 1839, the crucial year in which doubts about land transactions seem to have surfaced, Clendon had to enter into a new arrangement with Ngai Tawake. He engaged to 'return' a large part of the land, reducing his claim by 1200 acres. He made this agreement in 1839 but it was not written down for eighteen months.[98] The coincidence of the deed (15 January 1841) and the testimony of the rangatira in favour of his remaining claims is obvious. In the deed, Clendon made a conditional transfer – Wharerahi's people could use it 'for ever' but were not allowed to sell.[99] Nonetheless, he did not actually pursue a claim to that part of the land before the Commission.[100] This, then, was what Rewa and others meant when they sought the return of land in February 1840.

It seems to me that Wyatt's argument, that Bay of Islands Maori had not yet comprehended what Pakeha meant by 'sale', cannot be sustained in the face of this evidence. It is quite clear that Te Kemara, Rewa, Moka, and perhaps Tareha, were aware of what the missionaries and settlers were asserting as the meaning of the transactions. Sinclair's recitation of the disputes between some of these rangatira and Williams and Busby supports this position. Maori were less in control of the settlers by the late 1830s, and there were attempts by men like Williams to prevent Maori occupation and resource-use on 'their' land. Wyatt sees these as demonstrating each side's incomprehension of the other. Sinclair preferred to explain them as Maori trying to get more goods or annoy people to whom they nevertheless had made absolute sales.[101] Neither explanation is satisfactory. The chiefs' appeal to the Governor at Waitangi indicates that they thought they were in the right. Their attempts to use land and resources should not be resisted by their Pakeha. Te Kemara stated that the land at Waitangi, the very land under his feet, was both his and Busby's. Busby had 'stolen' it, it was still 'mine', but it nonetheless needed to be 'returned'. This is, I think, a classic representation of the problem. For Te Kemara did not want Busby to leave. He warned the Governor that if he could not enforce the Maori view of those transactions, then he was not welcome. When Moka confronted Baker, the latter said: "Will it, indeed, return?" Moka feared that it would not, that Hobson and Baker were alike false, and he asked the

[95] Evidence of Wharerahi, 25 January 1841, OLC 1, 13
[96] Evidence of JI Montefiore, 25 January 1841, OLC 1, 13
[97] Evidence of William Manery, 25 January 1841, OLC 1, 13
[98] Evidence of JR Clendon, 30 January 1841, & C Baker, 2 February 1841, OLC 1, 13
[99] Deed of transfer, 15 January 1841, OLC 1, 13
[100] See OLC 1, 114-121
[101] F Sinclair, pp 173-205

Governor to go back to England. Much would depend on how the Governor's promise that land not duly acquired would be returned to Maori, was carried out.

The test for that lay in the future. Here, we should note Sinclair's argument that Maori themselves were very concerned about the land in the late 1830s and early 1840s. He recounts examples of missionaries discussing land alienation with Maori, and making a series of 'trust' arrangements in which deeds were signed purporting to convey Maori land at Kawakawa and elsewhere to the missionaries to hold in trust for their Maori occupants. Sinclair's evidence is convincing that Maori were concerned that they might lose control of the situation.[102] The several trust deeds cannot have helped improve understanding of 'sales', however, since they involved missionaries making the usual payments and getting deeds signed, but with the apparent intention that nothing would change rather than the reverse. On the other hand, Colenso and other missionaries observed a change in the pattern of Maori occupation. They were living less near the main mission stations. Colenso attributed this to their moving away because of sales. Maori occupation and resource use was always itinerant, and a lot depended on how necessary the main defensive pa were at any particular time. Also, Nga Puhi territory had expanded significantly in the near past with the addition of the Rawhiti lands, of Whangaroa, and of Kororareka to the lands of the northern alliance. The addition of Pakeha settlers, now using certain lands, building their homes, and running their cattle, was a new element in the patterns of occupation. Maori population decline may also, as Sinclair observed, have been a factor.[103]

That Maori were concerned about some land transactions, about the behaviour of certain Pakeha settlers (including missionaries), and that they might lose some of their control, seems beyond doubt. I cannot accept Sinclair's conclusion, though, that this was because Maori believed they had sold much of their land in the form of absolute alienations. One of the examples cited by Sinclair seems in fact to say the opposite:

> Kaikohe is likely to become a most populous district. The Natives in the Bay have sold themselves out and do not, I believe, possess at present a spot of ground on which to build a house without the liberty [permission] of the European inhabitants – and such is the overbearing character of the Natives there can be no doubt that they will be driven from them, or the greater part of them, when the Europeans get the upper hand. In this case those people will have to fall back, many of them on the Kaikohe District as their landed possessions lie in that quarter.[104]

Richard Davis made this observation in 1839. What it in fact shows is that he (and other Europeans) thought that sales had been made which required Maori to leave the land. Davis had no doubt that this would be the effect in the end. What was *happening*, though, was that Maori were stilling living on the lands in large numbers, ostensibly by permission of the Europeans – and would continue to do so until Europeans got the 'upper hand' and could drive them away. Davis made a similar observation in 1840, informing the CMS that many Maori were living on European-owned land. They were there 'on sufferance' but 'it was evident that they could not long remain in that position'.[105] In other words, Davis believed the settlers would soon get what in 1839 he had called the upper hand. Sinclair sees this as evidence of Maori living on settler land with the latter's permission. It hardly seems to me to bear this construction. Maori were still living on the land, settlers had to put up with it in the meantime, but British law had arrived and with it the chance of enforcing what the settlers believed to be their absolute and exclusive possession of the land. Maori, just as clearly, had a different view.

[102] ibid, pp 144-172
[103] ibid, p 156
[104] R Davis to CMS, 1 March 1839, Richard Davis, Letters & Journals, vol 2, MS-1211/2; F Sinclair, p 158
[105] F Sinclair, pp 180-181

The Colenso quote that Sinclair produces is also capable of quite a different interpretation than he puts on it.[106] Speaking in 1840 mainly of the Kerikeri district, Colenso commented that there were only two or three villages on the coast:

> And, even those Native Villages will, like many others, soon become abandoned, the land having been just purchased by Europeans. Natives will not, (in fact, as they are they cannot) live on land which they have sold. So that a Tribe, which for years has been residing on the shores of this Bay, may, tomorrow, be found leaving for some other place on the coast, or some one of their possessions in the Interior, 10, 20, 30 miles off.[107]

The important thing to note about Colenso's statement is how prospective it is, and the extent to which he saw the choice residing with the Maori "vendors". Firstly, he states that Europeans have just purchased the land but Maori are still living on it. Secondly, he argues that Maori will not, indeed because of the way they are, they *cannot*, continue to live on land which they have sold. What Colenso is saying, in effect, is that they otherwise would have done so. He predicted that they would choose to move off the land. But they might not. The European purchasers, by implication, did not have much say in the matter.

Davis, William Williams, Henry Williams, George Clarke, and many other missionaries, from their own observations, nevertheless believed that Maori had made absolute alienations of land. William Colenso's interpretation of the korero at Waitangi is significant in this respect. He noted, with regard to Te Kemara's speech:

> And yet it was all mere show – not really intended; as was not long after fully shown, when they gave their evidence as to the fair sale, etc, of their lands before the Land Commissioners, I myself acting as interpreter.[108]

Colenso's opinion is useful because he was one of the few northern missionaries who did not either purchase land, or develop strong ties of friendship and loyalty with those who had done so. If he acted as interpreter to the Land Claims Commission in the case of Te Kemara, his understanding of custom on these matters is even more important. The minutes of the Commissioners' inquiries are missing from the relevant (Busby) OLC files. Colenso may have been referring to the fact that he witnessed deeds and gave evidence in support of them at the Commission. In the case of the 'bald-headed man' whom Te Kemara had also confronted at Waitangi, the chief did indeed appear as a witness before the Land Claims Commission in support of Henry Williams' claims.[109] Colenso gave evidence as a witness to the deeds, testifying that the deed was read out and explained before Maori signed it, and 'they appeared to understand its purport perfectly and were satisfied'.[110] The interpreter in that case was Protector HT Kemp, missionary scion and a direct beneficiary of Old Land Claims.

Even so, Colenso was a determined critic of missionary land purchases, and had very poor personal relations with Williams and other missionaries, although he claimed Busby (also somewhat at odds with the Paihia establishment) as a friend. Another factor to bear in mind in Colenso's diatribes against mission land purchases, is that he was seeking fulltime missionary employment. He wanted to ditch the press and get out in the field, and one of his main arguments was that single men without land made much better missionaries.[111]

[106] ibid, p 158
[107] W Colenso to CMS, 24 January 1840, qMS-0491, ATL
[108] W Colenso, *The Authentic and Genuine History of the signing of the Treaty of* Waitangi, p 18
[109] Te Kemara appeared as a witness in support of Henry Williams' claims in OLC 1, 522-524
[110] eg. Evidence of W Colenso, 16 November 1841, OLC 1, 523
[111] See, for example, W Colenso to CMS, 24 January 1840, qMS-0491; & G Phillipson, 'Missionary Printer: William Colenso at Paihia, 1834-52', in Stenhouse & Thomson, eds, *Building God's Own Country*, Dunedin 2004

A close search of Colenso's letters to the CMS during his years at the Bay of Islands reveals that he did not often comment on the land purchases. When he did so, he certainly saw them as English-style sales. In 1841, he wrote to the Society that a missionary should never own land. It embroiled the Bay of Islands missionaries with their neighbours over cattle trespass. Or if the land was so extensive that the shifting cultivations of Maori were not disturbed by missionary cattle, then:

> Yet, even in this case, there would often be heard, some such expressions as – "You have got all our best land – You have got the Lands of our Fathers – You have got our Lands for nothing – Our fathers foolishly sold their Lands to you – You, who profess to have come hither for our interest, have taken advantage of our Ignorance – You coaxed them to part with their Lands, when they said, No, No, etc, etc." – which, as I before observed, would, to say the least of it, have a tendency to destroy all such a person's exertions for their spiritual good; however disinterestedly he might endeavour to act in the matter.[112]

Nor does Colenso appear to have changed his mind in the Wairarapa and Hawkes Bay, where he himself had to try to transact land with Maori to obtain a house and station. He occasionally reported a gulf of views between Maori and Pakeha. Te Hapuku, for example, gave vent to his astonishment that if Colenso died or had to leave the mission, then the house and station actually belonged to the CMS and would not remain his or his family's.[113] The personal nature of these transactions was clearly brought home to Colenso, but he does not appear to have altered his view that they were absolute alienations. The question was not so much whether Maori and missionary understood each other by this time, but whose view would prevail.

4.3.2 Transactions on the 'middle ground': when did Bay of Islands Maori understand the full import of "sales"?

If, as I have argued, some Bay of Islands rangatira were aware by 1840 of how Pakeha understood land transactions, the question arises: when did they arrive at that understanding, and did it alter their own conception of the transactions? According to Captain Bolger, they arrived at this understanding some time between 1830 and 1835.[114] Sinclair considers that there was a difference between the 1820s and the mid to late 1830s. Although he discerns new patterns in the late 1830s, he nonetheless argued that Maori understood, accepted, and adopted European modes of exchange from the start. Maori were certainly hard bargainers over price. Sinclair argues that there was no difference in this respect between land sales and other trading transactions.[115] But transactions on the middle ground had to take on some of the trappings of the ceremonial and interactions of both peoples. According to Sinclair, 'there was clearly a preoccupation with the size of the payment and an urgency to receive it at the earliest opportunity'.[116] This was, he argued, part of a phenomenon in which the negotiations had 'features which did not conform with the protocol that is said to have surrounded transfers of land in the traditional environment of "gift exchange". The behaviour of the Maori vendors is consistent with a perception that they were entering into a deal similar in kind to their ordinary commercial exchanges with Europeans'.[117] Again:

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[112] W Colenso to CMS, Paihia, 15 January 1841, qMS-0491
[113] T Smith, *Tukuwhenua and Maori Land Tenure in Wairarapa*, 2001, Wai 863 A45, pp 75-76
[114] Board of Inquiry, 1856, Minutes of Evidence, GBPP vol 10, p 536
[115] F Sinclair, pp 71-78, 99-101, 107
[116] ibid, p 117
[117] ibid

> In all of this, it is difficult to discern any essential discontinuity between Maori behaviour in the negotiation of land sales and their conduct in other types of commercial exchange. Both types of transaction were accompanied by hard bargaining and the Maori vendors were clearly adept at communicating the terms which they wished to impose.[118]

We should expect this kind of reported behaviour in a transaction negotiated on what White calls the 'middle ground'. As White put it:

> Because the French and Algonquians were trading partners and allies, the boundaries of the Algonquian and French worlds melted at the edges and merged. Although identifiable Frenchmen and identifiable Indians obviously continued to exist, whether a particular practice or way of doing things was French or Indian was, after a time, not so clear. This was not because individual Indians became "Frenchified", or because individual Frenchmen went native, although both might occur. Rather, it was because Algonquians who were perfectly comfortable with their status and practices as Indians and Frenchmen, confident in the rightness of French ways, nonetheless had to deal with people who shared neither their values nor their assumptions about the appropriate way of accomplishing tasks. They had to arrive at some common conception of suitable ways of acting; they had to create what I have already referred to as a middle ground.[119]

Under White's model of cultural interaction, therefore, we should expect to see accommodation and some use of each other's forms of behaviour in land transactions, alongside the possibility of some fairly fundamental misunderstandings. As discussed above in chapter 3, Maori began to trade in agricultural surpluses for immediate payment, while the British and Americans in their turn had to use barter trade and pay with goods instead of money (for much of the period). At the same time, Pakeha had also to adapt to Maori gift-giving processes, which continued alongside barter trade as part of the relationship. The adapted behaviours of this type of interaction were extended in part to land transactions. When Ruhe described his arrangements with Richard Davis in 1849, he wrote that they were not a 'secret sale' ('tuku tahae') but that 'an assembly – a Committee – took place – the matter was carefully discussed' ('he huihui he komiti he mea komiti…').[120] He characterised the hui in the language and terms of both peoples. As noted above, in chapter 3, the English word 'committee' was used to describe hui-based decision making in which the missionaries participated and sometimes presided over; this was the middle ground.

For Sinclair, though, these transactions took place 'in a mercantile setting where the creation of a solemn union of the parties was seemingly less significant than the immediate commercial advantages. These types of transaction, which were far more common in the north, must surely have influenced the way that Maoris conceptualised the nature of a sale by the time of the Land Claims Commission.'[121] Sinclair confuses European reports of negotiations, in which the behaviour of Maori took place in a manner designed to accommodate Europeans (and vice versa), with fundamental conceptual change by just one party to the negotiations.

This is too narrow a view. Sinclair does not observe the dimension noted by Parsonson and Monin, for example, in which such transactions (and the amount of goods involved) were critical to mana – both in terms of the value of the 'payment', and as a recognition of rights and status in the competitive world of Maori rangatira.[122] Whilst every "bargain" on the middle ground appeared to Sinclair to be a straight commercial transaction for gain, operating from a European mode, Monin points out that there was a Maori

[118] ibid, p 118
[119] R White, *The Middle Ground*, p 50
[120] Ruhe to Major Bridge, Waimate, 25 April 1849, OLC 1, 773, Repro 1682
[121] F Sinclair, p 130
[122] P Monin, *This is My Place: Hauraki Contested, 1769-1875*, Wellington, 2001, pp 94-100; A Parsonson, 'The Pursuit of Mana', in WH Oliver, ed, *The Oxford History of New Zealand*, Wellington, 1981, pp 142-150

dimension with purposes and intentions springing from Maori cultural imperatives and not European ones.

This was particularly so at Kororareka, often conceived as a Pakeha-controlled space and a crucible for assimilation. Minute transactions took place there to satisfy what Pakeha wanted, and at the same time reflected the contest between rangatira that followed the cession of 1830. Tohitapu asserted his claim by putting Henry Williams on the beach. After Tohitapu's death, Williams said that he was actually 'forced' to cultivate and maintain his claim by the chief's relatives.[123] Tohitapu had been unhappy with the actions of Ururoa and had refused to participate in the attack on Pomare, so his rights were not recognised by the Whangaroa chiefs after his death. They put William Baker on the same land. Heke, who claimed Tohitapu's rights, then put Polack on the land. Polack ended up having to pay Williams, Heke, Tohitapu's wives, and later many other Nga Puhi rangatira.[124] This went on for many years. Rewa described this competition for mana thus:

> Mr Polack was twice brought by Heke to settle at Kororareka and [Heke] having no possessions here, we expelled him [Polack] both times and destroyed his house. Mr Polack has since returned with our permission.[125]

These were not brown-skinned Pakeha conducting purely commercial transactions, no matter how one characterises the behaviours of accommodation and communication on the middle ground.

What is even more important, perhaps, is the power dynamic in the transactions between Pakeha and Maori, and the extent to which each side believed its own understandings would prevail. As Robert Maunsell put it in 1839:

> Often, and more frequently, there will be many "takes" [right-holders], and one of them will sell without consulting the others. They, in their simplicity, take no proper steps to resist; the European, the grand object of their desire, comes to reside; the thing is hushed up, and they lose their land. There are other difficult points connected with this question: e.g. a tribe will give a spot of land to another, either as a marriage portion, or to induce them to reside etc. The former are still "takes", but the latter may, if they like, sell, only they generally hand over the payment to the former, reserving for themselves the honour [mana] attendant on transfer. The latter again, if they be powerful, will sell without consulting the former; all being regulated by the relative power of the two parties; at the same time, I consider that to a valid document both parties' names should be attached. Neither is it a difficult matter to satisfy the others, when the main "take" if he be a man of rank, has given his consent.[126]

Maori were prepared to make some accommodations to obtain 'the grand object' of resident Europeans, they were willing to go through European forms of transaction, they were sometimes willing to overlook irregularities, because the key to the arrangement for them was 'honour' (mana) and relative power, which, I maintain, they held the balance of until very close to 1840 and, to an extent, after. Sinclair agrees with Wyatt that the 'collateral advantages derived from the proximity of Europeans' were an important part of Maori motivation, but secondary (he argues) to price, and not an 'enforceable term of such agreements'.[127] The question of whether Maori expectations and understandings were enforceable depended, at first, on the balance of power and later on government policy. It was certainly not ruled out by 1840. Sinclair is correct, however, that these transactions did not

[123] Evidence of Henry Williams, 20 November 1841, OLC 1, 548-551
[124] See the evidence presented to the Land Claims Commission, 'Case no 256', January 1841, OLC 1, 548-551
[125] Evidence of Rewa, 5 October 1842, OLC 1, 638
[126] R Maunsell to CMS, 28 December 1839, cited by D Coates, House of Commons Committee on New Zealand, 1840, Minutes of Evidence, GBPP vol 1, p 85
[127] F Sinclair, p 142

correspond in all respects to traditional transfers – no transaction negotiated on the middle ground could have done so.[128]

The middle ground was rife with misunderstanding and conflict. This is a pattern set from Cook's first visit, as Salmond shows in her account of it.[129] White argued that at first the parties would transact matters through a process of creative and expedient misunderstandings. This certainly seems a good explanation of how Maori and Pakeha transacted land from 1815 to 1835, and each, to an extent, seemed to get what they wanted out of it. Eventually, 'from these misunderstandings arise new meanings and through them new practices – the shared meanings and practices of the middle ground'.[130] The endpoint of new, shared meanings and practices had not yet developed in the Bay of Islands by the time of the Treaty. Instead, each side was still accommodating the other to an extent (which played out in front of the Land Claims Commission) but with fundamentally different views of the meaning of the transactions.

The late 1830s saw changes and developments in the process of transacting land. Change was in the air. As described above in chapter 3, some Bay of Islands communities adopted aspects of Christian custom and practice, new komiti and 'kooti' were adopted, there was some political experimentation (as shown in chapter 5), and some resident Europeans were better situated to resist Maori 'incursions' on 'their' land. By mid-1839, it was known that Captain Hobson was on his way. At the same time, the number of transactions increased significantly. This 'mania' for selling land, as the missionaries put it, became a cause of concern to them from as early as 1835.[131] Apparently large quantities of land were pressed on missionaries. Two points should be noted. Firstly, Davis attributed this in part to mission family farming:

> We acknowledge those purchases as in a few cases extensive and we regret they were not more judiciously made. They were in some cases pressed upon us by the Natives in consequence of our Cattle which they would not allow to run on their waste lands without those lands being paid for.[132]

Secondly, Busby argued that the Maori objective in forcing large areas of 'worthless' land on already resident Pakeha was 'to give a greater number of natives a share of remuneration'.[133] In terms of including descent groups with overlapping rights, as well as satisfying and enhancing mana (the 'honour attendant upon transfer', as Maunsell put it), there were various motives for Maori to seek a wider distribution of goods. I see no reason to doubt that the goods were nonetheless important in their own right, and Sinclair identifies what he considers to be a growing economic reliance on this form of "income".[134]

I have not made a detailed study of the individual transactions in 1839.[135] Paula Berghan's Northland block histories, which provide a narrative summary of the Old Land Claim files, became available just before the completion of this report.[136] A preliminary analysis of the information collated in Berghan's narratives suggests that over one-third of the Bay of Islands claims were for ten acres or less. Over half of the claims pursued before Godfrey and Richmond were for up to 50 acres. Close to two-thirds of the claims were for

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[128] ibid
[129] A Salmond, *Trial of the Cannibal Dog*, pp 108-151
[130] R White, *The Middle Ground*, p x
[131] F Sinclair, p 119
[132] R Davis to CMS, 10 September 1840, Micro-MS-Coll-04-44
[133] F Sinclair, p 124
[134] ibid, pp 124-125
[135] Detailed research on the OLC transactions will be the subject of a forthcoming study by Bruce Stirling for the Crown Forestry Rental Trust.
[136] P Berghan, *Block Research Narratives Related to Old Land Claims completed for the Crown Forestry Rental Trust's Northland Research Assistance Projects*, June 2005

100 acres or less, and almost three-quarters were for up to 200 acres. Only a tenth of the claims were larger than 1000 acres, and there was only one claim greater than 5000 acres. This suggests to me that the great majority of transactions were for relatively small areas. The pattern for 1839, in terms of areas claimed, fits this overall pattern. The percentages are very similar, with differences concentrated in the 51-100 acre claims (higher in 1839) and the 501-999 acre claims (lower in 1839). Otherwise, the percentages are practically identical. Of course, the claims were loose guesses in terms of area. Some ended up being much bigger, others much smaller, when they were finally surveyed.[137]

Table 1: Bay of Islands Old Land Claims

Acres	1815-1840	%	1839	%
Up to 1	45	18	13	17
2-10	43	17.5	13	17
11-50	41	16.5	11	14.5
51-100	27	11	9	12
101-200	19	8	10	13
201-500	34	14	11	14.5
501-999	11	4.5	1	1.5
1000-5000	26	10.5	8	10.5
5001-10000	1	0	0	0
	247	100	76	100

The nature of transactions may not have changed much for Maori in 1839, therefore, other than in volume. Of course, the increase in number was significant. Fifty-four claims arose from transactions between 1815 and 1834. A further 184 claims were generated in the next five years, of which 76 originated in the single year of 1839. Nine more claims were added as a result of last-minute transactions in January 1840. A preliminary set of figures is offered in the tables below. It should be noted that I have only included claims pursued before the Godfrey-Richmond Commission, as there is no way of knowing whether Maori would have accepted any validity to the 49 abandoned claims. Also, transactions from the 1820s are under-represented in the claims, because some had lapsed with the death or departure of the Pakeha concerned, were absorbed in more recent claims, or were disrupted by the change in the underlying Maori rights to Kororareka in 1830. Claims arising from multi-year transactions are counted only in the year in which the transactions were initiated.

[137] The patterns identified in this paragraph, and the figures in the following tables, have been collated from information in P Berghan's block narratives for the Bay of Islands.

Table 2: Bay of Islands Old Land Claims arising from transactions in 1815-34

Acres	1815	’19	’23	’25	’26	’27	’28	’29	’30	’31	’32	’33	’34	
Up to 1			1			2		1	3			1	2	10
2-10			2	1	1	1	1					2	3	11
11-50						1	1			1			5	8
51-100	1									2	1	1		5
101-200											1		1	2
201-500									1	2			2	5
501-999		2							2	2			1	7
1000-5000										2	1	2		5
5001-10000													1	1
	1	2	3	1	1	4	2	1	6	9	3	6	15	54

Table 3: Bay of Islands Old Land Claims arising from transactions in 1835-40

Acres	1835	1836	1837	1838	1839	1840	Total
Up to 1	8	2	1	11	13	0	35
2-10	1	4	7	5	13	2	32
11-50	3	4	4	9	11	2	33
51-100	4	2	2	5	9	0	22
101-200	2	2	0	2	10	1	17
201-500	3	6	2	3	11	4	29
501-999	1	1	1	0	1	0	4
1-5000	5	5	0	3	8	0	21
	27	26	17	38	76	9	193

Sinclair argues that a number of transactions were made in the late 1830s with Europeans who were relatively new to Maori, and that a prior relationship was not needed so much as the ability to pay and a willingness to engage in further trade after settlement.[138] This is correct, although the majority of transactions were still conducted by Pakeha known to Bay of Islands Maori. The efforts of Richard Davis and other missionaries to keep people whom they considered undesirable out of the Bay of Islands interior showed two important things; Europeans wanted to settle among Maori in the late 1830s; and missionary opposition was as much about that as about land loss per se. Maori wanted people to settle and to trade, but Davis preferred upright Christians such as his own family to some of the other people on offer.[139] An exchange between Davis and one of Heke’s supporters in 1846 shows that the

[138] F Sinclair, p 127
[139] R Davis to CMS, 20 March 1839, MS 1211/2

lessons of missionary occupation had been the provision of useful goods – both as part of the purchase price and as a supply afterwards – and the provision of new and useful skills.[140]

What was new in the late 1830s was the number of people apparently seeking to settle or to arrange for others to settle, not the Maori attitude to getting more of what by the 1830s was their 'grand object', resident Europeans. It is worth noting in this respect that the Kororareka Land Company, the most organised of the speculators, filed over 10% of the Old Land Claims arising from 1839. Of its nine successful claims, only one was negotiated by a newcomer. The remaining eight were transacted by Thomas Spicer, a long-term Kororareka merchant and resident.[141] We do not know what promises he made as part of his negotiations, but we do know that he had a successful prior relationship with Maori for many years, and that the Company transferred land to settlers fairly quickly.[142]

A preliminary analysis of information in the Berghan block narratives suggests that 76 Old Land Claims arose from the transactions of 43 individuals in 1839. Of these individuals, 23 had transacted land in the Bay of Islands in previous years. These 23 people generated 47 (just under two-thirds) of the 1839 claims. Of the 20 Europeans who had not transacted land previously, three had signed the 1837 petition to William IV and were therefore resident in New Zealand before 1839.[143] A fourth (Captain Roberton) was a well-known whaler. The activities of these four Europeans resulted in a further 6 of the claims, which means that 53 (almost three-quarters) involved Europeans who were known to Maori, either as ship captains, missionaries, or resident traders. An in-depth analysis of the OLC files would show how many of the 1839 newcomers actually took up residence and began to farm and/or trade with Maori. Additional research could also establish whether any of the 16 Pakeha (whom I have tentatively classified as newcomers) had a prior relationship with Bay of Islands Maori.

An impression that strangers were buying large quantities of land would be quite misleading. Most transactions in 1839 were conducted by residents or people known to Bay of Islands Maori, and involved relatively small quantities of land. In their aggregate, the quantities were significant if interpreted as absolute alienations, and did sometimes prove to be much larger than expected upon survey. Sinclair presents convincing evidence that missionaries worked hard in the late 1830s to explain the European view of these transactions, and to warn Bay of Islands Maori against the dangers of landlessness. He concludes that: 'We may be fairly confident, therefore, that in areas where the missionary presence was strong, many Maoris would have had the implications of selling land spelt out to them in very unambiguous terms'.[144] Critically, however, Sinclair does not address the question of how the missionary trust deeds of the late 1830s, which accompanied their efforts to exclude undesirable settlers, were understood by Maori.[145] All the paraphernalia of a transaction on the middle ground was used, including hui, a written deed, collection of signatures, and payment of goods – all so that the missionaries' names would be added to the land but Maori would live on it entirely as before. The British theory was that these deeds created trusts, which later proved to be unenforceable at law, but how did the addition of these transactions to the mix in the late 1830s, influence Maori views of how Pakeha understood matters?

In one sense, these trusts cannot have seemed very different from how missionaries explained their other transactions. Richard Davis defended missionary land purchases in this way:

[140] R Davis to CMS, 29 August 1846; cf R Davis to CMS, 16 November 1846, MS 1211/2
[141] P Berghan, *Block Research Narratives*, pp 520-531
[142] ibid; & J Lee, *The Bay of Islands*, p 212
[143] J Lee, *The Bay of Islands*, pp 301-306
[144] F Sinclair, p 152
[145] ibid, pp 152-153

> Most cordially do I agree with the Church Missionary Society that Missionaries ought not to have made large purchases of land, with a view to aggrandize, either themselves or their families. It is but too true that purchases of an extensive nature have been made but even in some of them, I can have no doubt but the people who made them had the double end in view viz, of providing for the Natives as well as for their own families – for **let it not be forgotten** that previous to the arrival of the Governor – Land Speculators were buying up the Country, and some of the Natives were so infatuated with the mania of selling, that there appeared but little chance of a sufficiency being reserved for the future use of the Aboriginal Tribes. Many of the people do not now possess a foot of land on which to cultivate for their existence. Could your Missionaries – or ought your Missionaries – to have looked on in sullen silence? Certainly not. In the first place they did all they could to hinder the Natives from selling their lands, and in some cases they succeeded but when they could not succeed they made the purchases themselves, as I before observed, in order to secure a future interest for the Aborigines as well as to provide for the maintenance of their own family.[146]

By their own account, missionaries were the main mediators in explaining the meaning and demonstrating the effects of land alienation. Intention needs to be judged against action, of course, but Maori certainly lived on the Davis family's land ('by permission', he argued).[147]

Probably the main argument that Maori had come to understand and also to accept the Pakeha view of land alienation is the suggestion that Maori communities moved away from their land in the late 1830s after selling it. I have touched on this above in section 4.3.1, but it needs to be reiterated here because it has been stated by several historians. Relying mainly on the evidence of Richard Davis, Sinclair and Shawcross both believed that Maori communities had to relocate at that time as a result of a new wave of extensive sales.

Shawcross referred to a brief mention in the evidence of Lieutenant Blackett before the 1840 House of Commons Committee on New Zealand. He had spent a year travelling in New Zealand, did not speak Maori, but had been told that some Bay of Islands Maori had no land left at all and could not grow any food. When asked by the Committee how they survived, he stated that they had to make their living entirely from prostitution, supplemented by other 'trade'.[148] In the absence of any corroborating evidence that any groups were wholly dependent on prostitution, this evidence is simply not credible. Otherwise, Shawcross drew her view from the letters and journals of Richard Davis.[149] Sinclair relied on this Davis material, and also some observations by Colenso. Their interpretations, in my view, take these missionary statements too much at face value. As noted above, both missionaries were *predicting* that "sellers" would have to move, whilst noting that in fact they were continuing to live on their "sold" land, in theory by permission, but that they would have to move as soon as (currently consenting) Europeans were in a position to force them to do so. This is not evidence that Maori communities had to move away from land that they had sold, but quite the reverse. It shows the ingrained Pakeha expectation that their own understandings would eventually prevail, that there were temporary (middle ground) accommodations of Maori views, and that Maori clearly must have understood things differently from Pakeha.

Ballara also mentioned briefly her view that there had been large sales of land at the Bay of Islands before 1840:

> Running out of fertile land was thus already a source of worry in the Bay of Islands, and was a factor in Hone Heke and Kawiti's wars with the government in the 1840s. The major effect of land sales in the Bay of Islands, for the purposes of this study, was to drive many of the people inland from their coastal villages and force them to stay there. Already there was nowhere else to go.[150]

[146] R Davis to CMS, 17 June 1840, MS 1211/2
[147] F Sinclair, p 256
[148] House of Commons Committee on New Zealand, 1840, Minutes of Evidence, GBPP vol 1, p 60
[149] K Shawcross, pp 372-373
[150] A Ballara, *Taua*, p 455

Ballara did not provide a source for her view that Maori communities had to relocate before 1840 because of land sales. She appears to have relied primarily on the concerns expressed by rangatira about land at the end of the 1830s.[151] While I agree with Ballara that land was a major cause of the northern war, the issue of any pre-1840 relocations and their relationship to land transactions would benefit from further research. Nothing that I have seen so far supports the view that Maori had to leave any 'sold' districts before 1840 because of land transactions.

This brings us to a second argument for Maori understanding (though not acceptance) of Pakeha views of land transactions. Sinclair notes the formation of two anti-selling movements, as he characterises them, at Hokianga and the inland Bay of Islands in the late 1830s and early 1840s. For the Bay of Islands, he relies on Davis' account of a land league in the interior Mawhe and Kaikohe districts. The Maori leaders involved in this 'movement' were concerned that too much land was being alienated, that they were losing control, and that the expected benefits were not occurring. In particular, Sinclair argues that if Maori understood themselves to have retained title and control, why would they be concerned?[152] Concern that they were losing control of the situation, and that the expected benefits were not occurring, is consistent with a different reading of this evidence.

In May 1838, Davis reported his efforts with the Christian rangatira Broughton to prevent land sales in the Mawhe and Kaikohe districts.[153] On the coast, he argued:

> the white people are already so numerous, that the Natives may be considered to be comparatively in a subdued state. Kororareka is already in the possession of the Europeans and, from their superior judgment and combined strength, the Natives can no longer be considered as possessors or Governors of that place.[154]

In the interior, however, he was planning to help build a mill to make flour and promote the growing of wheat. There, the Maori communities had 'formed themselves into a kind of confederacy, not to part with their land'.[155] They had held three hui by mid-1839. In December of that year, Davis reported:

> This morning I have held a meeting with the Natives of my District in order to put them on their guard and to advise with them as to what steps had better be taken in order to secure to them their own possessions. They seem to be aware of the danger to which they are exposed but they are at a loss to know what means to adopt for their security. Such is their want of order that if one person wishes to sell land, he sells a tract of country which in many instances would rob others of their patrimonial inheritance. This may be the case in the splendid District of Kaikohe. A Chief, one of the principal proprietors, lives still at Kororareka and they are very jealous least he should effect a sale in that part where he has a share without giving them notice, and should this prove the case, the whites will get a footing and the country will be sold piecemeal. To remove this danger I have proposed to them that we should immediately purchase the Chief's possessions and that they should, all of them, enter into a compact not to sell their country – that a written agreement should be drawn up and signed by every proprietor of land and that it should be binding upon the whole of them; that no person should be at liberty to sell his land without the consent of a majority but should he attempt to do so without the consent of the majority, even the attempt should subject him to the forfeiture of his Estates. To this they agreed. They have already formed a compact amongst themselves and of many parts of the District we hold a kind of Deed but I fear it is not sufficiently secure.[156]

[151] ibid
[152] F Sinclair, pp 159-164
[153] R Davis to CMS, 25 May 1838, 5 June 1838, MS 1211/1
[154] R Davis to CMS, 6 December 1838, MS 1211/1
[155] R Davis to CMS, 1 June 1839, MS 1211/2
[156] R Davis to CMS, 19 November 1839, MS 1211/2

This 'confederacy' was still in existence in 1843, when Davis tried to obtain land for a mission station at Kaikohe. The Christian Maori called a large hui but their proposal was rejected, not because the non-Christians did not want him – 'the hostile party is perfectly willing for me to continue my visits as heretofore' – but because of their determination not to enter into land transactions. Davis was not convinced:

> I hope to be able to spend much time among them and so live down the prejudice they have imbibed that should they sell me a piece of land to build my house on, the sale of that land will endanger their fine country. This they give as a reason but I do not receive it. Had it not been for me, part of their lands would have been disposed of years ago – this they are obliged to acknowledge. It is true they have formed a compact with our Chiefs not to sell their lands but that is not the obstacle. The plain fact is, a great Chief, a very wicked man, who has for many years lived at Kaipara, is returned home. This man is still in his former way of thinking and he has formed the party in connection with another chief and they wish to make their party as large as possible to support their dignity.[157]

By 1839, it seems clear that missionary explanations, the influx of Europeans, and the behaviour of some of the best-established European residents, such as Williams and Busby, had alarmed many Maori leaders. Some had called a halt to all land transactions and were working together to prevent them. Others were seeking the 'return' of land. Most wanted to keep 'their' Pakeha. Although they did not accept the Pakeha view of land transactions, they showed the Governor at Waitangi that they were beginning to understand it, and that they did not accept it. Their question to the Governor was: what was he going to do about it?

4.4 The Land Claims Commission

The original New South Wales Land Claims Act 1840 and its New Zealand successors set up a commission to investigate whether valid transactions on 'equitable conditions' had been made. If so, then the commissioners were to recommend an award of land to the purchasers, but on a scale acceptable to the government (eventually set at a maximum of 2,560 acres per claimant). The purpose of the latter policy was to prevent the tying up of large tracts of land in the hands of speculators, and to provide the Crown instead with a base of land for settlement. The 'surplus' land, meaning that which had been purchased validly but not awarded to the claimants, was therefore to become the property of the Crown.[158] Governor Gipps instructed the commissioners to obtain 'proof of conveyance according to the custom of the country and in a manner deemed valid by the inhabitants'.[159]

The key features of the Commission's work and findings in the Bay of Islands are:

- Maori rangatira, usually where they had an ongoing relationship with their Pakeha, and after the receipt of gifts, appeared before the Commission and affirmed that the transactions had taken place, and that they had sold the land
- the examination of the chiefs appears to have been a series of brief answers to set questions, or to have been reduced to such in the minutes
- where Maori evidence was unavailable or disputed the transaction, the Commissioners would not make an award without a very compelling reason
- the Commissioners were entirely dependent on the Protectorate for their understanding of Maori custom, and for interpretation of evidence
- CMS missionaries filled in if Protectors were unavailable, and the Protectorate's work for the commission was staffed by members of the mission families

[157] R Davis to CMS, 23 June 1843, MS 1211/2
[158] D Armstrong, *The Land Claims Commission, Practice and Procedure: 1840-1845*, Wai 45 I4, pp 3-25
[159] ibid, p 23

- As a result of their examination of witnesses and protectorate advice, the Commissioners judged that absolute alienations of land had taken place
- Nevertheless, it was not possible to award precise parcels of land, due to the amount of land being entirely unknown and the boundaries unclear; awards would need, therefore, to actually be confirmed on the ground by Maori and claimant, followed by survey
- the missionary and many other Bay of Islands Old Land Claims were upheld
- the Commissioners recommended awards, often less than the 2560 acres
- Commissioner Godfrey later noted that the restriction of awards was not simply because of the ordinance, but also reflected what the commissioners believed had actually been purchased
- The Commissioners recognised that in 'innumerable' instances, Maori had continued to use the land as if it had not been sold, and that the purchasers had allowed or even encouraged it
- As a result, the Commissioners recommended that all Maori kainga, cultivations, fishing spots, and waahi tapu be reserved for them, and that the awards not be turned into Crown titles until this had happened
- Specific reserves in the Commissioners' awards, however, were usually limited to ones arising either from a *written* agreement, or from a Maori witness denying a 'sale'
- The Commissioners noted that Maori had sometimes sold the same land multiple times – each sale was valid in custom and therefore had to be accepted, and the land divided on the ground between the Pakeha claimants
- The evidence before the Commission established that some Europeans had made multiple payments for land to the same group over a number of years

The main full-length study of the Commission was prepared by David Armstrong for the Crown in the Muriwhenua inquiry. In this helpful report, Armstrong argues that Commissioners Godfrey and Richmond were dependent on George Clarke, the other protectors, and the CMS for all their information and advice about custom and the transactions. This is critical, due to Clarke, his family, and the families of the other missionary protectors and interpreters, having a vested interest in the outcome of the commission. The official role of interpreting evidence and advocating for the interests of Maori vendors/counter-claimants was vested in George Clarke and the protectors. His son George Clarke Junior became the protector attached to the commission investigating the New Zealand Company claims in the south. HT Kemp, son of CMS missionary James Kemp, was the protector attached to the northern commission. Occasionally, when a protector was not available, Henry Williams himself attended the commission and played that role, and on another occasion the role was performed by James Davis, son of Richard Davis. James Kemp, Richard Davis, and George Clarke were all Old Land Claimants on behalf of themselves or their sons – and those sons included HT Kemp and James Davis. This reliance on the CMS and members of mission families was specifically endorsed by the government. Armstrong argues that the commission was strongly influenced by Clarke in particular.[160] Rigby concludes that this was a serious conflict of interest for Clarke and the protectorate.[161] Arsmtrong does not, however, mention any involvement by Colenso. Rigby states that no Maori evidence from Te Kemara (or other Maori witnesses) is recorded in the OLC files for Busby's claims, until the Bell Commission of the late 1850s, where Te Kemara disputed parts of the Busby and Davis claims.[162] Further research would be useful on whether Colenso ever interpreted for the Commission.

[160] ibid, pp 41-56
[161] B Rigby in Moore, Rigby, & Russell, *Old Land Claims*, pp 19-21
[162] B Rigby in Daamen et al, *Auckland*, p, 75, 77

In any case, Armstrong notes that Clarke himself was critical of transactions made by peoples who did not understand each other's languages and customs (omitting the missionaries from that category). Given the critical role of Clarke and his influence, Armstrong poses the question:

> If the Maori were not selling land in a European sense prior to 1843, but were instead operating under the tenets of what the claimants have described as "*tuku whenua*", would Clarke have been able to perceive the difference? Was he sufficiently aware of Maori custom with respect to land sales to have accurately briefed the Commissioners on this subject – and those members of his department who attended the Commissioners' court to defend Maori interests?[163]

Armstrong does not pose the question of whether Clarke could reasonably have been expected to give disinterested advice, or of the propriety of one party to an inquiry (effectively) both advising the court and acting as counsel for the other party. Instead, he notes Clarke's transactions as though they were a great *bonus* in his ability to tender proper advice:

> Clarke also possessed considerable experience in purchasing land from the Maori, both on his own account and on behalf of the C.M.S. Not one of the claims with which he was personally involved appear to have been disputed by the vendors at Godfrey or Richmond's courts, suggesting that he had followed the necessary procedures.[164]

On the other hand, we have information from both Bishop Selwyn and CMS missionary Burrows that Maori did not in fact speak frankly about land transactions when in the presence of those missionaries who were land claimants.[165] How fully, therefore, did their views come out in the presence of Clarke or HT Kemp? And, a humanitarian governor like FitzRoy (see below), thought that Maori would grow to accept the European interpretation of their transactions, and that *this was a right and proper thing to happen*.[166] How much less, then, could even the most selfless of people have resisted the temptation to stress the arguments and evidence that appeared to favour their view of the transactions? It is not necessary for men like Clarke, Kemp, and FitzRoy to have been liars or cheats, for a false impression of the transactions to have been created. There may have been an essential double standard operating here. HT Kemp, who had been attached to the northern Commission, later investigated Kawiti and Hori Kingi's claim to Kororareka, where they requested a 'second payment' for the land their northern alliance opponents had transacted with settlers. Kemp made a telling observation; Tamati Waka Nene and Pene Taui

> spoke in the most decided manner, explaining their own views as to the injustice of the claim even as a mere native case…[167]

In other words, Kemp looked at the claim to Kororareka on two levels. It might be correct or incorrect 'as a mere native case', meaning a dispute between two Maori groups over customary rights. But there was another level in the case; that European settlers had paid for Kororareka, and might have their possession disturbed as a result of the claim. On this level, custom could not be the only determinant – the European transaction had to be included and

[163] D Armstrong, *The Land Claims Commission*, p 68
[164] ibid
[165] Report of the Bishop of New Zealand to the CMS, 15 June 1843, qMS-2237; R Burrows to CMS, Waimate, 8 May 1848, Robert Burrows Letters, 1838-80, CN/027(a), Micro-MS-Coll-04-49, ATL
[166] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 626
[167] HT Kemp to Donald McLean, 26 August 1854, IA1, 1854/2749

respected. It was protecting this transaction, not obtaining justice for either Maori group in the case, that provided Kemp's overwhelming motivation.[168]

It seems to me, therefore, that the Protectorate may have applied a double standard to these transactions, especially given the extent of their interest in the outcome. HT Kemp certainly did so in an equivalent case in the 1850s. Governor Grey went further and basically accused Clarke of deliberately abusing his position to protect his interests and those of the CMS missionaries and their families (which will also be addressed below).[169] Clarke himself, made an at best disingenuous description of the missionaries' role in the Commission:

> At length a commission was appointed to adjust the Land Claims. The minds of your Missionaries were thereby relieved. They knew that the insinuations which at this time had been made as to their land having been obtained otherwise than honorably would soon be refuted and it now stands upon public record that they were most upright purchases, and that according to the Land Claims Ordinance that they were entitled to much more land than they ever claimed. Your Missionaries would have nothing to do with the decisions of the Commissioners and whether their award had been one hundred or one thousand acres they were bound to feel satisfied.[170]

Nevertheless, at the least it is possible to say that Clark's views were more nuanced than Armstrong allowed. Firstly, Clarke stated twice in 1841 that the majority of Old Land Claim transactions had been carried out by people who had not understood each other, and were not in fact capable of making themselves understood to each other. Although the primary consequence of this for Clarke, was that Europeans failed to understand or identify who actually had rights in the land, its other implications are obvious.[171] According to Clarke, the encroachment of Europeans on land which had 'not been acquired according to the Maori view of the matter was "a very general subject of complaint"'.[172]

Also, writing about the New Zealand Company transactions in August 1841, Clarke stated:

> it never was the custom of the natives to alienate a tract of country upon which they were living, unless they intended migrating or altogether abandoning it. The primary object of a New Zealander parting with his land is not only to obtain the paltry consideration which in many cases is given them for their land, but to secure them the more permanent advantages of finding at all times a ready market for their produce with their white neighbours; but this important end is at once defeated upon the assumption of a total alienation, as claimed by the New Zealand Company…[173]

It is difficult to see how these comments would not have applied equally to the smaller areas of land at the Bay of Islands, especially the coastal ones, where Maori were living at the time of the transaction and continued to live and cultivate, and to occupy and itinerate inside the boundaries of the transactions long after 1840, as the evidence clearly shows. Nevertheless, Armstrong concludes that:

> nowhere in Clarke's writings on this subject does one detect any hint that the parties to these transactions took away from them radically different perceptions of what had transpired. He is thus unlikely to have briefed the Commissioners in terms any different from those reproduced here.[174]

In addition to Chief Protector Clarke, the views of Edward Shortland are worth considering. Shortland was a protector of influence, the brother of Colonial Secretary (and

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[168] ibid. See also HT Kemp to McLean, 26 July 1854, IA1, 1854/2749
[169] G Grey, marginal comments on G Clarke to Colonial Secretary, 30 March 1846, GBPP vol 5, p 563
[170] G Clarke to CMS, 9 November 1847, q-MS-0464, ATL
[171] D Armstrong, *The Land Claims Commission*, pp 49, 70-71
[172] ibid, p 71
[173] ibid, p 70
[174] ibid, pp 83-84

later Acting Governor) Willoughby Shortland, and a man whom Te Maire Tau suggests was perceptive of Maori culture. Armstrong concludes that Shortland held the same views as Clarke. This is important because Shortland had no personal interest in the outcome. In his book *Traditions and Superstitions of the New Zealanders*, Shortland suggests that there were a number of misunderstandings between the purchasers and the vendors in the Old Land Claims, but he does not include the possibility of conditional versus absolute alienation among them. He notes that Maori had two motives: to get the goods offered by the purchaser, but moreso to obtain a resident settler for purposes of trade. He also maintained that Maori did not really sell land in which they were vitally interested. Problems had arisen because the transactions were either "secret" in the sense that only some of the correct right-holders sold their interests, leaving people with valid interests who had not sold; or that Maori had sold their contested lands for reasons of mana, without sacrificing their main lands. From these points, and the mutual lack of understanding of language and customs, Shortland believed the problems with the Old Land Claims arose. But there is no hint that he thought the sales were not intended by Maori to be absolute alienations. It seems to me impossible that if he thought this was an issue, Shortland would not have mentioned it.[175]

Even so, the idea that the transactions might not have been seen by Maori as European-style sales was clearly widely known in New Zealand. To give two very different examples, the Port Nicholson settlers knew of it and tried to use it to support an argument that Maori had no right to the 'waste' lands:

> With respect to their bargains with Europeans [the Old Land Claims], we have no doubt that their original notion of a sale was that of admission to the privileges of a tribe, and that, having once permitted a European to land and reside among them, they could not conceive of any more reason for debarring him from the use and occupation of as much land as he required, than for putting a restriction on his consumption of air or water. They had a notion, which might be termed intuitive, that they had a right to all the fruits of their labour, in whatever way it had been impressed upon or blended and incorporated with the soil, and that they had a right to secure this, as well as the safety of their persons, by repelling their enemies beyond some natural boundary. And these primitive sentiments of right and wrong [ie customary tenure] have been respected, and, if we may so speak, consecrated, by the British Government.[176]

From a very different perspective, the idea that Maori had not understood or intended an absolute alienation was also put forward by the respected scientist, Ernst Dieffenbach, in his book *Travels in New Zealand*, published in 1843. Armstrong dismissed his views as unreliable, mainly because he had not attended a Land Claims Commission hearing, and believed incorrectly that the Commissioners would put too much weight on the written deeds. Given that he had examined matters at the Bay of Islands and, indeed, all over the country, and was an acute and perceptive observer, I think it is worth quoting Dieffenbach's published views at length:

> A far more important question for the Administration to settle is that of the territorial rights of the natives. I have shown that they are perfectly aware that they possess such rights. They disposed several years ago of the larger part of the islands to Europeans, and they acknowledge the titles of those who have purchased from them. It has been said that the natives are now strangers on the soil, that they have sold all their land, and that nothing remains to them. This is not quite the case. Well acquainted with the nature of their country and the capabilities of the soil in the different districts, they have generally retained such parts as were best suited for cultivation; but in some instances they have not made any such reserve. According to European law, the new proprietor would in these cases be entitled to remove the native inhabitants from their land; such, however, can never be allowed in New Zealand, and this point calls for the special interference of Government. The deeds of purchase have almost always been written in a foreign language and in a vague form, and the purchases were often conducted

[175] E Shortland, *Traditions and Superstitions of the New Zealanders*, pp 270-288, 298-299
[176] Memorial from the Landowners of Port Nicholson to Lord Stanley, n.d. (late 1844), GBPP vol 4, p 625

without a proper interpreter being present. Where the natives had made no particular reserve for themselves, the land was sold by them with the implied understanding that they should continue to cultivate the ground which they and their forefathers had occupied from time immemorial; it never entered into their minds that they could be compelled to leave it and to retire to the mountains. There was, perhaps, an understanding between the parties that the seller should not be driven off by the buyer; but this was verbal only, and not recorded in the written document. It would indeed be sad were the native obliged to trust to humanity, where insatiable and grasping interest is his opponent, and where the land has gone through ten different hands since the first purchaser, who perhaps bought it for a hundred pipes, and where not one of the buyers ever thought of occupying it. In transferring land to Europeans the natives had no further idea of the nature of the transaction than that they gave the purchaser permission to make use of a certain district. They wanted Europeans amongst them; and it was beyond their comprehension that one man should buy for another, who lived 15,000 miles off, a million of acres, and that this latter should never come to the country, or bestow upon the sellers those benefits which they justly expected.

The most vital point in regard to the native inhabitants, where they occupy part of claimed land, and are inclined to retain it, is that the extent of such disputed land should be fixed by legal titles and boundaries, and that they should be protected in the possession of it against the cupidity of the Europeans.[177]

This type of evidence suggests that the point ought not to have been opaque to the Commissioners. They certainly recognised the element of power at work in the transactions, and that Maori had expected *their* view of the transactions to prevail. I think that this was still the case in 1841-42, hence the rangatira's support for "their Pakeha" before the Commission. Disaffected Europeans were telling them that the government would take their lands and that they were slaves. Maori appearance before the commission, after receiving the kind of presents from their Pakeha that indicated the pre-1840 relationships were still in place, was an act of faith in the alliance with the Governor. It was not until the idea that the government would keep the surplus land took hold, that leaders like Heke came to believe the reports about the government and that their lands were taken.

This issue will be explored further below in chapter 7, but here we should note that Busby and others claimed Bay of Islands Maori were indignant that the Crown was not granting settlers the full extent of land claimed.[178] FitzRoy repeated this to the Secretary of State, arguing that Maori were concerned on behalf of their Pakeha.[179] I have no reason to doubt that Bay of Islands Maori supported their resident Pakeha and wanted to preserve their relationships with them. But it must be remembered that Maori did not ask the Governor to return the surplus land to the Old Land Claimants. Instead, they argued very hard, as Rewa and others had at Waitangi in 1840, that the land must be returned to *them*. The Nga Puhi leadership insisted on this at the Waimate hui in 1844 and Governor FitzRoy agreed.[180] This is difficult to explain if they believed that they had given up all rights to their land forever.

In the meantime, the Commssioners reported about the large speculative transactions:

The aborigines appear for many years, to have had no objection to cede a whole district to an individual presuming that he could not by possibility dispossess or inconvenience their greater numbers. At the present time they are more enlightened upon the matter, and we find them frequently disputing both the extent of, and the entire alienation of such land as the claimants presumed, or allege they had acquired. The next Class of Claimants are the Church Missionaries; who have, in general, taken such pains to have every boundary so distinctly described, and their rights of perfect and continued possession to themselves and children so correctly written in the Maori language in every deed of sale, that the natives they have brought before us for examination, have very rarely objected to their titles.[181]

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[177] E Dieffenbach, *Travels in New Zealand*, London, 1843, vol 2, pp 142-144
[178] J Busby to GW Hope, London, 17 January 1845, GBPP vol 4, p 517
[179] R FitzRoy to Stanley, 15 October 1844, GBPP vol 4, p 409
[180] See below, chapter 7
[181] Godfrey & Richmond to Colonial Secretary, Auckland, 12 March 1842, IA1, 1842/467

Other early settlers were less fortunate with their deeds, but Maori agreed there had been a transaction of some kind, 'tho' occasionally disputing its absolute extent'. The boundaries of the 'exact spots they intended to have sold' would need to be identified by Maori before titles could be issued.[182]

In a report of May 1842, the commissioners noted the problems with boundaries and multiple sales. Neither claimants nor Maori could identify distinct parcels of land, with clear boundaries, or any indication of how much land had actually been included. The problem was complicated by multiple sales of the same land: 'the natives have repeatedly sold portions of land twice or thrice over, and can generally assign some native usage for such acts; the last European claim may – except in point of time – have been just as fairly acquired as the first'.[183] This ought to have been cause for concern. The Commissioners were finding, according to the equity of the case, that Maori had intended an absolute alienation of land, and yet the land could not be defined, its boundaries were unclear, its quantity unknown. Furthermore, Maori had, acting under their 'native usages', entered into multiple contracts over the same land. This was especially a problem at Kororareka.[184]

It does not appear to have caused the Commissioners to inquire closely into those native usages for an explanation as to how or why that was possible. Armstrong asserts that *different* right-holders were making the later transactions, not the same ones, but there is nothing in the Commissioners' report to justify this as as an exclusive interpretation.[185] It was certainly one reason. I have not made a study of all Bay of Islands OLC files, but there are frequent instances of tribes 'selling' the same land to different Pakeha. Rewa and his people, for example, sold land to Clendon in 1830 which they later sold to Montefiore.[186] In another case, Dr Ross claimed to have purchased 1600 acres in the mid-1830s. Busby testified to the Bell Commission that the Maori vendors continued to cultivate that land for a further four years after selling it to Ross, after which they moved to cultivate elsewhere and then sold 6-700 acres of it to Busby.[187] John Wright's evidence was, however, that this group was in fact still living on part of it in 1839, after both sales.[188] Although this evidence about continued Maori occupation came later, the fact of the 'sale' of the same land to two Pakeha was established before Godfrey and Richmond. Boundaries being what they were, these kinds of re-sale were not always obvious. Gilbert Mair interpreted a deed for John Wright, not realising that part of the land described in the deed was actually inside his 350-acre estate, Te Wahapu.[189] According to Pukutuku, this was no accident for the Maori concerned – he had asked at the time, 'how can we do so [sell to Wright] when it has been sold to Mr Mair.' The tribe did not agree with him and the transaction proceeded.[190]

JS Polack's claims have also been mentioned in the previous section. There was a complicated mosaic of overlapping claims at Kororareka, both for settlers and those Maori groups who participated in the cession of 1830. Polack transacted land with Titore, that the latter had earlier 'sold' to Captain Duke.[191] There was more than one settler claim overlapping Polack's. William Baker transacted for this land after Polack left for England. This was an example of land known to have been sold, but in this case by different right-holders. Baker got his Whangaroa protectors to put him on this land. Commissioner

[182] ibid
[183] Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721
[184] ibid
[185] D Armstrong, *The Land Claims Commission*, p 120
[186] Evidence of Rewa, 27 October 1841, OLC 1, 114-121
[187] J Busby to Gore Browne, 25 February 1861, OLC 1, 227-230
[188] Evidence of John Wright, 3 April 1858, OLC 1, 227-230
[189] Evidence of Gilbert Mair, OLC 1, 537
[190] Evidence of Taratikitiki & Pukututu, 21 October 1841, OLC1, 306
[191] Evidence of W Powditch, 3 January 1842, OLC 1, 638

FitzGerald had to inquire further into these overlapping claims in 1844. JR Clendon testified that he had warned Baker not to buy Polack's land: 'for any white man to repurchase the land, which he was perfectly aware had been bought by another European years previously, was setting a bad example to the natives, who rarely refuse payments when offered to them.' Baker reportedly replied: 'it was usual for people in New Zealand to purchase lands that were known to have been bought before, and he should therefore do the same.'[192] This evidence is consistent with some of the examples cited to the House of Lords Committee in 1838. The brief minutes and limited Maori evidence in the Land Claims Commission probably conceal other examples of this common practice.

One dimension of these "re-sales" is that Maori considered that they still had rights after placing settlers on the land. If the Commissioners needed further evidence of this, they could have referred to the Kororareka claim of Alexander Grey, discussed above. Most of the Kororareka claims were sourced to transactions after Pomare's cession of land to the northern alliance in 1830. Alexander Grey, however, had 'purchased' an acre of land on the beach from the rangatira Kiwikiwi in 1826, where he had built his home. The cession of Kororareka changed the underlying Maori title, as northern alliance rangatira took possession of the beach and established their authority over it. Grey had to enter into a new transaction with Tareha and his son Hakiro. Hakiro testified to the Commissioners:

> About three years ago I & Tareha & others sold & confirmed to the late Alexander Grey, a piece of land on the Beach at Kororarika which he had formerly bought from Kiwi Kiwi - & which we had conquered from the said Kiwi Kiwi. We had a right to sell this land…[193]

Tareha made a similar statement:

> Mr Grey had bought it before from Kiwikiwi but we had conquered it & had a right to sell it – and we agreed to give it to Mr Grey.[194]

But the Commissioners do not appear to have inquired into the customary implications of this evidence – how and why Tareha and Hakiro had acquired a 'right to sell' what had already been sold.

A preliminary analysis of the Berghan block narratives suggests that the same issue also arose in OLCs 100, 469, and 796, where pre-1830 transactions at Kororareka were featured. In OLC 100, Captain Duke had transacted with Whareumu for land on the beach in 1829. When Duke transferred land to Clayton in 1839, the latter had to make a new transaction with Wai and others of the Te Rawhiti chiefs. He also had to build a house on the land for "Ewari" (Wharerahi?). The same 1829 transaction gave rise to OLC 796.[195] In 1827, John Johnson transacted Kororareka land with Kiwikiwi. In 1838, despite having onsold this land to Mair (who in turn had sold it to Turner), Johnson had to enter into a fresh arrangement with Rewa and Moka.[196] Johnson's new deed was called a 'supplementary agreement'.[197] These transactions resulted in OLC 469. As with the Grey claim (OLC 764), there is no suggestion that the Commissioners tried to unravel the customary significance of these multiple transactions.

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[192] Evidence of JR Clendon, 4 October 1844, OLC 1, 638
[193] Evidence of Hakiro, 21 September 1842, OLC 1, 764
[194] Evidence of Tareha, 21 September 1842, OLC 1, 764
[195] P Berghan, *Block Research Narratives*, pp 70-71. The date of 1829 is likely an error, as Whareumu died in 1828.
[196] ibid, p 301
[197] *Maori Deeds of Old Private Land Purchases in New Zealand, from the year 1815 to 1840, with Pre-emptive and Other Claims, together with a List of the Old Land Claims, and the Report of Mr Commissioner F Dillon Bell*, Wellington, 1882, pp 63-64

Nor did the Commissioners inquire into why some claimants made a series of payments over years, sometimes in satisfaction of different right-holders, but sometimes to the same people with whom they made the original transaction. Again, I have not examined all the relevant OLC cases, but there were certainly admissions by settlers that they had done so. JR Clendon said that he had made three payments for one of his claims, two of them (in 1830 and 1832) to the same people.[198] Gilbert Mair was asked for a second payment for Te Wahapu. A Maori witness in that case, Taratikitiki, told the Commissioners that 'The Natives frequently demand a second payment for land.'[199] John Wright entered into a transaction in 1831, took up residence on the land with his family, and made three payments for the land over time.[200] The missionary John King said that he had made more than one payment in three of his claims, including a 'further [second] payment to Tareha of Goods'.[201] Polack made more than one payment to Titore for land at Kororareka (after the original transaction, which was not with Titore, and had caused many problems).[202]

These are some examples where claimants made more than one payment to the same people. This was but one of the practices that settlers adopted when transacting land on the middle ground, but its significance was not apparent to the Commission. This may be because it was not a point either settlers or Maori dwelled on, as far as we can tell from the brief minutes of evidence. John King, for example, said in his evidence that he made a second payment to Tareha.[203] But Tareha's evidence (six days later) states that the land in the deed was sold for the money and goods stated in the deed. There was no mention of the second payment that King stated he had made to Tareha.[204] The Maori evidence (as recorded) was patently not the full story. We will return to this point below.

The Commissioners thus missed the significance of people having supposedly 'sold' the same land more than once. They missed the way that underlying Maori rights persisted in custom, as, for example, in the rights ceded by Ngati Manu to the northern alliance chiefs over 'sold' land at Kororareka. They also missed the point of some claimants admitting to have paid several times for their land, sometimes to different right-holders, but sometimes to the same people. There are instances of these practices coming out in the evidence but we are hampered by its brief and formulaic recording. Many important details have been obscured or omitted. One vital point that the Commissioners did note was the continued Maori use and occupation of the land in the Bay of Islands and other northern claims that they had heard:

> It is also our duty to point out, that from the little value attached by the purchasers – before the Crown took possession – to the vast blocks of land they bought; in instances innumerable, the natives have been allowed, and frequently encouraged, to remain upon the lands; with an assured promise, or understanding, of never being molested. Their cultivation, and fishing, and Sacred Grounds, ought, therefore, to be in every case reserved to them, unless they have, to a certainty, been voluntarily and totally abandoned. If some express condition of this nature be not inserted in the grants from the Crown, we fear the displacement – under this authority – of natives, who, certainly, never calculated the consequences of so entire an alienation of their territory.[205]

This is very strong evidence of the accommodations that Pakeha had made to meet Maori views when transacting land. White wrote:

[198] Commissioner's Report, 12 April 1844, OLC 1, 114-121
[199] Evidence of Taratikitiki, 21 October 1841, OLC 1, 306
[200] Evidence of John Wright, 15 October 1841, OLC 1, 357
[201] Evidence of John King, 17 November 1841, OLC 1, 603-605
[202] Memorandum, Particulars Relative to Payment given by Mr JS Polack, n.d., OLC 1, 638
[203] Evidence of John King, 17 November 1841, OLC 1, 603-605
[204] Evidence of Tareha, 23 November 1841, OLC 1, 603-605
[205] Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721. The word 'vast' in this context should not be taken to mean 'enormous'. This is not a reference to the so-called monster claims, but to the large number of blocks of land that had remained virtually unoccupied by their 'purchasers'.

> On the middle ground diverse peoples adjust their differences through what amounts to a process of creative, and often expedient, misunderstandings. People try to persuade others who are different from themselves by appealing to what they perceive to be the values and practices of those others. They often misinterpret and distort both the values and the practices of those they deal with, but from these misunderstandings arise new meanings and through them new practices – the shared meanings and practices of the middle ground.[206]

On the 'middle ground', the Pakeha characterisation of Maori understandings, of which they were not entirely unaware, is that there were 'reserves' (either oral or written) or that Maori continued to occupy and use resources by permission of the new owner. These 'innumerable' arrangements were how Pakeha conceptualised the Maori rights that they had had to accept on the middle ground. It might have been better translated between cultures as lease agreements, but the British wanted freehold and avoided leases until the Government banned direct purchasing in 1840. Nor were leases an exact match. Maori intended their arrangements to be conditional but also in some cases semi-permanent. Much might have been resolved equitably if these arrangements, and the rights that underlay them, had been properly investigated, enumerated, and excluded from Pakeha awards by the Commissioners in the 1840s. The opportunity thus lost was lost forever, as was demonstrated by the events of the Bell Commission and after.[207]

In his discussion of the Commission, Sinclair argued for the Pakeha understanding of the transactions. He stated firstly that the Commission's reports on particular claims showed that arrangements for informal reserves and continued occupation were 'rather less' than the 'innumerable' put forward in their general report. He did not address the fact that the Commissioners were unable to identify them fully and wanted a process of identification with Maori on the ground. I agree with Sinclair, however, that a detailed study of all OLC files would be helpful, and that the Commissioners' awards made far fewer reserves than might have been expected if Maori were still in occupation in 'innumerable' cases.[208] From the files that I have reviewed, it appears that the Commissioners recommended a general reservation of certain rights in 1842, precisely *because* they were aware of them but had not captured them in their awards. I will return to this point below.

Secondly, Sinclair argued for the Crown that every single incident of Maori occupation and resource use was either by the free and voluntary permission of the Pakeha owner, or was designed to annoy Pakeha or elicit further payments, or was the result of some owners not having been paid. He did not accept that there was a single instance in which Maori, after signing a deed of sale, retained a single right that was not somehow at the discretion of the new owner.[209] This may well have been how some Pakeha viewed their newly acquired rights, but it only takes into account the Pakeha half of the middle ground, and underestimates (in my view) the extent to which the primary evidence says otherwise.

As a rule, Commissioners Godfrey and Richmond only excepted land from their awards that had been reserved by written agreement, or sometimes areas which Maori witnesses denied had been included in the transaction. But when Maori witnesses said they were still in occupation but admitted a 'sale' (as with Montefiore's claim), or claimants said that Maori still occupied through oral agreements (as in several others), no exceptions were made in the Commissioners' awards or the ensuing Crown Grants. And sometimes, no mention was made of such oral arrangements at all, but they came out next time around (too late) in front of Commissioner Bell, as with the Shepherd and Davis family grants.

[206] R White, *The Middle Ground*, p x
[207] see below, section 4.5.2
[208] F Sinclair, p 186
[209] ibid, pp 173-205, 298-299

It is worth considering this point in some detail, as it is a vital one for the Bay of Islands Treaty claims. If we consider the case of James Busby, the only exceptions in his awards were two reserves that he had made in writing in his deeds (in OLC 20 & 21).[210] But we know from Busby's letters that Maori 'vendors' had continued to occupy his land seasonally for fishing, building whare for that purpose as required. This important right was thus lost.[211] Seasonal occupation of this type was either not reported to or not recognised by the Commission, except in their general recommendation that fishing spots should be identified and reserved. This is what makes their general recommendation so important, and also the point that it was, as Sinclair noted, much broader than the reserves made in their individual awards. Similarly, one of James Leitch's deeds recorded that Patanui was still in possession of Waikato's people, and this was accordingly made an exception in Leitch's award. This transaction was later disputed by the Maori community living on the land, but the full 550 acre award had been granted with that one exception because it had been recorded in a deed.[212]

In one of JR Clendon's claims, the Commissioners recommended an award of 60 acres 'excepting all that portion claimed by the Native Chief Kohowai and called Kokawau'. This is an example of a reserve that came from the evidence of a Maori objector, rather than a written deed.[213] If Maori accepted that a 'sale' of their interests had taken place, however, then their continued occupation was not protected in any way by the Commissioners' awards. In the case of land sold to Clendon and then to Montefiore by Ngai Tawake, they were still living on the land and were cultivating it. Montefiore also had 'undisturbed and peaceable possession'. He testified that Maori had cleared ground and cultivated it in 1836-37, but he could not remember if they had asked permission. More recently, they had, as he put it, asked his permission.[214] Wharerahi admitted a 'sale' to Montefiore.[215] As a result, the Commissioners awarded Montefiore 343 acres without any exceptions.[216]

JS Polack's claim to land containing two waahi tapu is another example of how the Commissioners recommended specific exceptions only if Maori objected to the 'sale' itself. Polack's first transaction was with Heke and the relatives of the late Tohi Tapu. Heke testified that the large waahi tapu (a burial ground which took up most of the 9 ½ acres claimed by Polack) was not included in the transaction, whereas the smaller waahi tapu was inside the boundaries.[217] Charles Korokoro, a relation of Te Kemara, added that 'the small Wahi Tapu also on the beach, we understood Mr Polack would not use.' [218] Powditch thought that both had been included but that Polack was not to use the land until Maori decided to remove the tapu.[219] Rewa, for the Kororareka rangatira who opposed Heke's claim and had made their own arrangements with Polack, stated that the waahi tapu were not sold.[220] William Korokoro agreed that the 'Chiefs of Ngapuhi' objected to the inclusion of the waahi tapu in the transaction, and had later objected to the Governor's building a Custom House on part of it, which the Government then moved.[221] As in other cases, the Commissioners' award reserved the part that Maori did not admit to have been sold, but made no mention of the

[210] Commissioners' reports, OLC 1, 14-24
[211] See above, section 4.2
[212] Commissioners' Report, 23 March 1843; Deed, 10 October 1835, OLC 1, 278
[213] Commissioners' Report, 2 May 1842, OLC 1, 114-121
[214] Evidence of JI Montefiore, 25 January 1841, OLC 1, 13
[215] Evidence of Wharerahi, 25 January 1841, OLC 1, 13
[216] Commissioners' report, 2 May 1842, OLC 1, 13
[217] Evidence of Heke, 24 November 1842, OLC 1, 638
[218] Evidence of C Korokoro, 3 January 1842, OLC 1, 638
[219] Evidence of W Powditch, 3 January 1842, OLC 1, 638
[220] Evidence of Rewa, 5 October 1842, OLC 1, 638
[221] Evidence of W Korokoro, 23 September 1842, OLC 1, 638

small waahi tapu admitted to be inside the boundaries. Despite the evidence of Powditch and Polack himself, that he was not to use any tapu land until Maori had lifted the tapu, and Korokoro's explicit statement that Polack was not to use the small waahi tapu inside the boundaries, the Commissioners' report only reserved the large one because its 'sale' had not been admitted.[222]

Nor did the Commissioners reserve areas occupied by oral agreement if they were not formally reserved by deed. CB Waitford, for example, claimed 600 acres north west of Kerikeri. Titore said: 'We have permission to cultivate on the Northern part of the land from Mr Waitford.'[223] But this oral agreement, described in the minutes of Titore's evidence as by 'permission', was not recorded in the Commissioners' report, which recommended 391 acres (later reduced to 244 ½ acres, as a result of changes to the scale of what the Commissioners were allowed to award.)[224] Any remaining land would, of course, become surplus land of the Crown and not revert to Titore's people.

Occasionally, the Old Land Claimants themselves referred to oral agreements for continued occupation. In one of the CMS claims, Henry Williams informed the Commission: 'I have given permission to the Natives to sit down from time to time at the Kotikatinga for the purpose of fishing – but they have no right to sell any of the Land again.'[225] In another claim, he testified: 'The Natives have been allowed from time to time to cultivate at the "Karaka" and to sit there for the purpose of fishing – which right I still leave with them, but they have no right to sell any of the land again.'[226] Regardless of whether Williams characterised the rights correctly in the way that Maori would have conceived them, neither of these admitted oral arrangements were mentioned in the evidence of the Maori witnesses, nor included as exceptions in the Commissioners' reports. Such rights only got recorded occasionally in the evidence and they were not protected in the Commissioners' awards. The practice seems to have been that, unless they were formalised by written deeds or arose from Maori objections to a sale having taken place, the Commissioners made no reserves. Nonetheless, Godfrey and Richmond became convinced that such arrangements were 'innumerable' and must be preserved and protected by the Crown. Many more must have been mentioned or apparent, one assumes, than had been recorded in the evidence. The question of how adequately the Crown addressed their recommendations will be considered in section 5 below.

It is clear from the minutes and reports of Commissioner Bell that there were instances of continued occupation of this kind that were not recorded in the minutes of the Godfrey-Richmond Commission. Nevertheless, all three Commissioners agreed that absolute alienations had taken place. I do not intend in this report to analyse each Land Claims Commission hearing for over 240 Bay of Islands claims. The general outcome is not in dispute. Wyatt principally blames the pro-forma examination of chiefs for what she sees as the latter's continued misunderstanding of what was happening. She argues that the Maori-language deeds, especially through the use of the word tuku, were affirmed by the witnesses. The same language would have been used in the questions about sale. Thus, the chiefs would remain convinced that their Pakeha and their view of the transactions would both be maintained.[227]

Maori felt much loyalty towards their Pakeha. Rewa and Moka both supported C Harris' claims in Hokianga, he having married into the tribe, whereas a new settler who had

[222] Commissioners' Report, 25 May 1843, OLC 1, 638
[223] Evidence of Titore, 27 September 1842, OLC 1, 872
[224] Commissioners' Report, OLC 1, 872
[225]OLC 668: Evidence of Henry Williams, 6 January 1842, OLC 1, 660-2,3,4,8, & 9, Repro 112
[226] OLC 669: Evidence of Henry Williams, 6 January 1842, OLC 1, 660-2,3,4,8, & 9, Repro 112
[227] P Wyatt, 'Old Land Claims', pp 209-220

purchased Harris' Kororareka land found himself left high and dry: 'they would not appear unless I gave them an extra payment (the value of the land and House included) which I of course refused'.[228] On the other hand, relationships could be good with new Pakeha who were placed on the land by the old ones. When Dr Ross sold his land to WGC Hingston in 1837, things were rocky at first. The local Maori 'got in a passion with us' and refused to point out the boundaries. Eventually, however, the leading rangatira (Toua) who made the original transaction seems to have adopted Hingston as his Pakeha. He supported Hingston's claim before Godfrey and Richmond. John Wright noted later that Toua 'lived a good deal at Mr Hingston's and died there'.[229]

My interpretation of the Land Claims Commission differs from Wyatt's in one key respect. I agree that the Commissioners failed to detect a quite divergent Maori/settler understanding of the contracts. I also think that there were clear indications in their own reports of issues that should have alerted them to this problem, regardless of the protectorate's advice that these were absolute alienations. They knew that Maori witnesses were paid to appear. They missed (as claimants like Brodie did not) that this could be an additional payment for the land, possibly viewed by Maori as a cycle of regular gifts for the right to stay on the land. The Commissioners also knew that distinct parcels of land were not conveyed – the boundaries, descriptions, and ignorance of quantities on *both* sides made this clear. The transactions were not absolute conveyances of pieces of land per se, as Maori often continued to live on them and use them as before; they must, therefore, have been something else.

The Commissioners also knew that Maori custom involved an underlying right of a kind that allowed people to 'sell' land after they had already sold it once, or twice, or even more times. Finally, they recognised that in 'innumerable' instances, Maori continued to live on, use, or visit the land. There were kainga, cultivations, fishing spots, and waahi tapu, which Maori still believed they owned. They had not intended to alienate them, they still possessed them, and there was a risk that if the grants were not very carefully executed, they would lose these things that they had never intended to alienate. Furthermore, the settlers knew this also and some had promised Maori that they would never be disturbed.[230] Taken together, it is difficult to see how the Commissioners could have accepted that there had been, in all cases that they approved, an absolute alienation of a piece of land. It is equally difficult to perceive how Maori could have testified to such, believing (as the Commissioners reported) that they could still live on and use it.

This is one of the most puzzling aspects of the Commission. It makes more sense if Wyatt's explanation could be accepted; that is, that the Maori witnesses did not realise that their evidence was being taken as supporting absolute alienations, because they themselves did not realise this was how Europeans saw them.[231] Given the confrontation at Waitangi between Busby and the missionaries on the one hand, and the rangatira Rewa, Moka, Te Kemara, and Tareha on the other, it is hard to believe Wyatt's premise. These rangatira clearly knew what Pakeha were about by 1840, and were equally clearly determined that their own interpretation of the transactions would prevail. The Commissioners themselves noted that Maori had entered on the transactions believing that they could not possibly be dispossessed or inconvenienced as a result of them. Theirs was the power to enforce the rules. They, as FitzRoy put it, were the masters. The real question at Waitangi was whether the Governor would change that situation. Nga Puhi decided, on faith, that he would not. Hence,

[228] W Brodie to Hope, London, 14 June 1845, G1/14/1845
[229] Evidence of John Wright, 3 April 1858, OLC 1, 227-230
[230] Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721
[231] P Wyatt, 'Old Land Claims', pp 209-220

in the belief that the Governor would, as they had asked him, 'return' their lands, Nga Puhi went to the Commission.

In 1845, Hone Heke explained how this had changed:

> Is it [the kindness of the Europeans] in the enslaving of the Natives, and the desecrating of their sacred places? It is in this we have been wronged, we have been cajoled to sell our produce and our Land, and the Europeans now taunt us with these things[;] those of Hokianga, of Wangaroa, of Kororareka, of the Wahapu, of Otuihu, they explained it. "Your Lands will be seized by the Governor, and afterwards you will be destroyed, look at Port Jackson, at China, and all the other islands, and such will be the fate of this Island. The Ensign (or Color) takes possession of the Land. The English commenced this system [ie the taunts], then the French and afterwards the Americans. Therefore I acquiesced in these words – four years was this work going on, and on the fifth year these frequent speeches of the Europeans to us were believed, and we at once approached that Flagstaff, and cut it asunder that it might fall.[232]

For me, the clash between cultures and understandings was exemplified in the case of JI Montefiore's claim, already referred to above. Montefiore's evidence came first. He said that he had purchased the land from Wharerahi and other rangatira in 1836. They cleared and cultivated the land in 1836-37, but Montefiore could not remember whether they asked his permission that time. They had also planted potatoes in 1840, but in that instance they had asked his 'permission'.[233] William Manery testified as well, stating:

> The Natives have told me since I lived on the land that it belonged to Mr Clendon & not to Mr Montefiore. At other times they have told me it was Mr Montefiore's & not Mr Clendon's. I have lived on the land about five months & no objection has been made by the Natives to my living there – they have always been upon good terms with me. I think the Natives told me the property was Mr Clendon's only when they wanted to annoy me a little.[234]

Wharerahi's evidence followed. Montefiore had explained the deed at the time and Wharerahi 'thought it was to make a sale of or letting go the land…he says he sold the land not knowing it had been previously let go to Captain Clendon. Manu or Rewa [Wharerahi's brother] sold it to Captain Clendon as a Possession…' Wharerahi added that his tribe was Ngai Tawake, 'about sixty men, women and children – Says they are living on the land sold to Mr Montefiore. The Tribe have no other land at all.'[235] Following this evidence, the interpreter (James Davis, missionary scion and Old Land Claimant as a beneficiary of the Richard Davis and CMS Families claims) felt it necessary to intervene: 'The Interpreter then explains to this Witness that Mr Montefiore claims the Land as his own for the payment of the twenty pounds and the Witness says that is correct.'[236] Charles Baker, who interpreted for Clendon in his 'return' of land by deed to these people, stated: 'The Natives even now would sustain Mr Montefiore's claim & I do not think that they consider this deed to give back to them any right over the land they intended to sell to Mr Montefiore.'[237]

Thus, although Wharerahi had 'let go' the land to Montefiore, his people were still living on it and clearly thought they had a right to do so, and intended to continue doing so. Nonetheless, they supported their Pakeha, Montefiore, before the Commission. The interpreter's intervention was crucial, presumably, in convincing the Commissioners that a sale had nonetheless taken place. Wharerahi seemed to agree that it had. Rewa, his brother, later testified in the hearing of Clendon's claims that he had been involved in both

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[232] Heke Wiremu Pokai to the Governor, 21 May 1845, G30/7. The Maori-language version of this letter is Document 1 in the Appendix, with two contemporary translations (by Protectors Forsaith and Kemp)
[233] Evidence of JI Montefiore, 25 January 1841, OLC 1, 13
[234] Evidence of W Manery, 25 January 1841, OLC 1, 13
[235] Evidence of Wharerahi, 25 January 1841, OLC 1, 13
[236] Minutes of Evidence, 25 January 1841, OLC 1, 13
[237] Evidence of Charles Baker, 2 February 1841, OLC 1, 13

transactions, with Clendon and Montefiore.[238] Clearly, Wharerahi and Rewa did not understand the transactions in the same way as Montefiore. Equally clearly, the Commissioners failed to probe the significance of what seems, on reading this evidence, an obvious difference of views about the meaning and effect of the transaction. In the face of this evidence, it seems that there must have been a fundamental divergence between Maori and Pakeha regarding what these transactions were all about. This is obscured in other cases because of the paucity of evidence and the formulaic approach to its recording. The minutes of the Spain Commission for the Port Nicholson inquiry serve as a useful contrast. There, where the claims were contested, the evidence was more extensive and better recorded. Here, where the claims were in fact supported, there can have seemed little point to recording the detail of what was said. As a result, it is now impossible to arrive at an understanding of what Maori really said (or meant) in their evidence to Godfrey and Richmond.

In most cases, even where claims were contested, the recording of evidence was brief and formulaic. There are hints that proceedings were much more colourful, and that crucial exchanges were not recorded. In the case of the waahi tapu on Polack's land, R Hookey noted:

> That this Deponent stated these facts to Commissioner Godfrey, and on mentioning the said purchase of Mr Polack, included the tapu land, the Commissioners replied "That be damned, the natives never sold tapued land in those days."[239]

This exchange, of course, was not recorded in the minutes.

For an example of the formula followed in either ascertaining or (more likely) recording the Maori evidence, we may refer to the appearance of witnesses in support of Charles Baker's claim to 30 acres of land at Kororareka. Moka, who had had such a dramatic exchange with Baker at Waitangi, gave the following unlikely evidence:

> That is my Signature to the deed shown to me (of 20th November 1835). The deed was read to us before we signed it. About six years ago we sold the land described in the deed to Mr Baker, and we received the payment stated in it for it. The Land was ours & we have never sold it to any other person. We were satisfied to part with the land.[240]

On the same day, there appeared Hakiro:

> That is my signature to the deed now shown to me (dated 6 Nov 1835). I sold the land described in it to Mr Baker and received the payment named in the deed for it. The land was ours and we were satisfied to sell it and have never sold it to any other person. The deed was read to us before we signed it.[241]

And Pakiro:

> That is my signature to the deed now shown to me (dated 6 Nov 1835). It was read to us before we signed it. We sold the land therein described to Mr Baker & received the goods for it therein named. We had a right to sell this land and have never sold it to any other person.[242]

And Toki:

> I, Tinana & Ihiri sold about six years ago the piece of Land described in the deed now shown to me and we received the goods named in it as payment. The Land was ours and we have never sold it to any

[238] Evidence of Rewa, 27 October 1841, OLC 1, 114-121
[239] Evidence of R Hookey, 12 October 1844, OLC 1, 638
[240] Evidence of Moka, 9 November 1841, OLC 1, 546
[241] Evidence of Hakiro, 9 November 1841, OLC 1, 546
[242] Evidence of Pakiro, 9 November 1841, OLC 1, 546

> other person. That is my signature to the deed which was read to us before we signed it. Tinana is dead.[243]

Thus, the formula usually involved statements to the effect that the witness:

- had signed the deed;
- had heard it read out;
- had understood it;
- had seen the others sign it;
- had received the goods mentioned in the deed;
- had a right to sell the land;
- had never sold it to anyone else;
- and had not had their rights to the land challenged by either Maori or Pakeha.

Minor variations on these bare statements formed the great bulk of Maori evidence to the Commission. Sometimes, the statements also included varieties of the phrase: "we understood that we were parting with it forever". I have not made a systematic study of all Maori evidence to the Commission, but it seems that this phrase was often omitted.[244]

An example of the formula with the latter phrase included is the evidence of Tareha in the claims of the missionary John King. Tareha, a rangatira whose oratory was so steeped in Maori lore that none of the missionaries could translate his speech at the Waimate hui, is recorded (in English) as having said:

> That is my signature to the Deed now before the Court. About 5 years ago I with the others whose names are to it sold the lands therein described to Mr King for the money and Goods stated, which we received. The Land belonged to us and we had a right to dispose of it. We understood that we parted with the land for ever to Mr King. The boundaries are correctly described in the Deed. It was read and explained to me before we signed and I perfectly understood it and was satisfied. This Land has never been sold to any other Person nor been disputed by other Natives.[245]

Over-use of the formula led to obvious inaccuracies or mistakes, even within its own limited framework. In this case, Tareha is supposed to have said that he sold the land for the money and goods stated in the deed, when in fact Mr King had testified that he had made a second payment of goods to Tareha. In the hearing of JS Polack's claim to an island in the Waitangi River, transacted with Te Kemara, the rangatira was recorded as saying: 'I with the rest of the Natives whose names are affixed sold the land therein described…' But the phrase 'with the rest of the natives whose names are affixed' had to be crossed out later, because Te Kemara was the only signatory to the deed.[246] Other Maori signed as witnesses, not 'vendors'. Clearly this was a formula that distorted the evidence of the Maori witnesses, especially in its briefest form (for non-contested cases).

What is clearly happening here is that the person recording the evidence is rationalising and reconceptualising it into brief formulaic statements that expressed, in English, the essence of what Pakeha believed Maori were saying. Even so, an absolute divergence of views could still be briefly exposed and then submerged again, in rare cases like that of Montefiore and Wharerahi. So what, therefore, were the chiefs actually testifying to in front of the Land Claims Commission? George Clarke's description of the process, with regard to the land claimed by the mission families in the Bay of Islands, suggests that the goal was to ensure the retention of the settlers, and their ongoing contract and relationship:

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243 Evidence of Toki, 9 November 1841, OLC 1, 546
244 It was not included, for example, in the Maori evidence recorded in OLCs 278, 306, 341, 353, 452, & 546
245 Evidence of Tareha, 23 November 1841, OLC 1, 605
246 Evidence of Te Kemara, 1 January 1842, OLC 1, 641

> It will be remembered that at this time [the time of the purchases] the Natives were most of them Heathens carrying on their destructive wars with each other but though they were but little disposed to attend to religious instruction they greatly respected your Missionaries and their Children as will appear from the circumstance of their being chosen as Mediators between contending Tribes. The Chiefs had some of them at this time sold lands to other parties and they wished to see the Children settled among them, and when consulted upon the propriety of our Children having land they universally approved of it, and our great difficulty was to determine whose lands should be purchased for all offered land and all wanted the Children and the only mode of pacifying them was by promising to extend the purchases as the Children came of age. **Many of these Chiefs are now living and still anxious that the Children should remain with them and they did testify before the Land Commissioners that they were perfectly satisfied, both with the Children, and the consideration given them** [emphasis added]… it is but too apparent that in the highest quarters everything has been done to destroy the moral influence of these Children, and to make the Natives dissatisfied with them, they still maintain their high standing, and are appealed to in all difficulties and consulted in all dangers, and while the Government is scarcely able to protect their Towns with a large Military and Naval force they were still pursuing their peaceful occupations unmolested by the Natives at a distance from all possible protection and in the full confidence of the Natives.[247]

With the Commission itself reporting that Maori were still in occupation of these lands, with kainga, cultivations, fishing spots, and waahi tapu, none of which they had intended to alienate, it is hard to know what more could have been done by Maori to demonstrate the meaning of these transactions under Maori customary law, and that they were not conceived by Maori as absolute alienations.

4.5 Continued Maori Authority, Use and Occupation, 1840s to 1860s

After the Land Claims Commissioners made their recommendations in the early 1840s, the situation did not change abruptly on the ground. The government was faced with frequent evidence of continued Maori use and occupation of the land. This supports Godfrey and Richmond’s conclusion about the promises settlers had made in this respect, and Wyatt’s view that Maori continued to assert their customary understanding that they still had rights in the land. Because government officials in the north were primarily concerned with the settlement of disputes, most of the reports to government arose from situations of complaint or conflict. Similarly, the matter does not tend to get mentioned in mission papers unless there was a problem. The peaceful occupation by Maori of mission land at Paihia, for example, might have been lost to the written record had the CMS not started trying to make them pay rent in 1856. Thus, we should note the Commissioners’ conclusion that there was a lot of peaceful resource-use going on, and that this most likely continued. The governor confirmed this to the Colonial Office in 1846. What we have from the government and mission records in the 1840s through to the 1860s is mostly the record of where Maori occupation and resource-use led to trouble. After the Bell Commission and the implementation of Crown Grants on the ground, the weight of complaint shifted from settlers (complaining of Maori occupation) to Maori, who began a long and ultimately unsuccessful campaign to get title to these lands through the Native Land Court.

4.5.1 The 1840s

The 1840s was a turbulent decade in the north, especially in the years 1844 to 1846, and the war left matters disturbed for some years. Kororareka was taken (again, as it had been

[247] G Clarke to CMS, 9 November 1847, qMS-0464

in 1830), some settlers left permanently, but others continued in peaceful occupation of the land. Nevertheless, Governor Grey, speaking of both the Old Land Claims and FitzRoy's pre-emption waivers, warned the Colonial Office:

> It is a mistake to suppose that, because in some instances large tracts have been disposed of to Europeans, and the natives have not yet contested the sale, that they will never do so. In most of these circumstances the natives are yet allowed the free use and occupation of the greater portion of the land, and no possession has been taken of it by Europeans, nor have any other European purchasers appeared; but I am quite satisfied that so soon as a re-sale of these lands is attempted by Europeans, and new settlers go upon them, that the natives will resist the occupation of them, and that if a title has been given by the Crown, the duty of repelling the natives and of protecting the occupants would be devolved upon Great Britain, and must be executed by a British military force. However apparent the errors of this system may be, it will now be found very difficult to put an end to it…It is, however, my duty to state plainly my entire conviction that in all cases where large nominal purchases of land have been made from natives, and where those lands have not been occupied by a large European population immediately after the purchase, that when the Europeans proceed to occupy these tracts, wars will in every instance ensue.[248]

A few days later, he repeated the view that closer occupation of the Old Land Claims, which were in fact occupied by Maori, would lead to contests and war. In particular, those Maori with legitimate rights who had not in fact been paid would 'invariably spring up and contest the purchase when Europeans go upon the land. This evil may slumber for years…'[249] He singled out James Kemp's Bay of Islands claim (9276 acres), where there were no reserves of pa and cultivations 'which they may have had on those lands, or of any reserves which might be necessary for themselves or their descendants'.[250] Grey's political motivations for these statements will be considered below, but here it should be noted that in 1845 he had found it necessary to try to persuade Bay of Islands Maori that 'purchases' required them to remove from the land:

> You can sell your lands to the Crown, or not sell them, just as you think proper; but, remember, that when once you do sell them, they must be promptly and justly given up.[251]

The CMS missionary Robert Burrows, who was present, also thought this worthy of notice:

> His address to the Natives was short but to the point & very decisive. He assured them in the name of Her Majesty that the Treaty of Waitangi would be binding on the part of the British Government – that no portion of their lands would be alienated without their free & full consent – that they were at liberty to sell or retain their lands as they thought proper, but they were to remember that when once sold it was gone forever.[252]

This point had to be made, presumably, because the Governor knew that Bay of Islands Maori had a contrary view.

The evidence of that view, and of continuing Maori occupation of Old Land Claims land, must have arisen partly from Governor Grey's own knowledge of matters on the ground. In addition to his own observations, the government was under some pressure from its most important northern ally, Tamati Waka Nene. In 1847, Grey reported to the Colonial Office:

> there was another strong reason why I should do so [challenge the grants], which was, that upon application being made to me by Walker Nene to allow natives to occupy certain lands within the Bay

[248] G Grey to WE Gladstone, 21 June 1846, GBPP vol 5, p 576
[249] G Grey to Gladstone, 23 June 1846, GBPP vol 5, pp 581-582
[250] G Grey to Gladstone, 24 June 1846, GBPP vol 5, p 591
[251] Address of Governor Grey to the northern chiefs at Kororareka, 28 November 1845, GBPP vol 5, p 354
[252] R Burrows, Journal, 28 November 1845, CN/027(b), Micro-MS-Coll-04-49

> of Islands, which they claimed as their property, although it was asserted that this land was included within the boundaries of one of the Church Missionary land claimants, I, upon applying to the Surveyor General to certify whether this land had or had not been granted by the Crown, found from that officer that the whole of the grants had been drawn in such a form that none of the officers of the Government knew what lands had been conveyed by the Crown…[253]

In the 1850s, Nene was keen to establish a settlement in the Kerikeri district. He informed Grey that the missionaries had 'given him all the land, from their station at the head of the Keri Keri river as far as the Waimate', and that he wished the government to form a settlement there.[254] The Resident Magistrate reported that Nene was mistaken – the chief had 'repeatedly applied to Mr Kemp and Mr Clarke to give up their lands' for a settlement, but they had refused.[255] Eventually, Nene asked the government to survey the lands claimed by Kemp and Shepherd: 'The Natives say that these Gentlemen claim far more than was ever sold to them by the Natives, & state that they will not allow them to retain possession'.[256] Nene had believed that the authority over the lands was his, and that the missionaries would have to 'give up their lands' for his planned settlement. He even told the Governor that they had done so. British law, however, said that the land belonged to the missionaries.

Nene was in a difficult position between the missionaries and the Governor. He had forged strong relationships with Henry Williams and others, but also later with Grey. Interestingly, he wrote an unambiguous statement about land 'sales' as 'hoko'. In a letter to Henry Williams, from October 1847, he used the word 'hoko' (not 'tuku') to assert that the land was 'sold' and 'gone' (riro). But he also asserted that it was because they now believed the land was gone, that some Nga Puhi had decided to fight. This was not, Nene assured Williams, the missionaries' fault. The 'fault and folly was with the chiefs, themselves'; Maori 'ignorance' of what had been happening, not Pakeha 'fraud', led to war.[257] In 1846, Richard Davis reported the following exchange between Nene and Turau:

> [Turau]: "This evil, meaning the war, originated with the Missionaries. They came to teach us, and while they were thus engaged we were in the habit of receiving from them blankets, fish-hooks and other articles; these things came out now and then during their teaching. At length their children grew up and they wanted land for them and property was exhibited and given as payment. People then began to sell their land in order to possess themselves of those things, and this brought Europeans into the country. Thus the evil commenced with the Missionaries…"
>
> [Nene]: To Turau he said you should not have put the evil on the Missionaries, it did not originate with them, it originated with us. It is true enough that the evil arose from our having alienated and sold our lands. But did we not force our lands on the white people to possess their property? Did they not say, we only want so much? And did we not say, you must take it so far? Did they not then ask, can you part with so much land without injuring yourself? And did we not in return say, We have extensive tracts at such a place? We must blame ourselves for the alienation of the lands, not the white people".[258]

Nene's views were complex. There is a fundamental ambiguity running through them. They can be read as an affirmation that the gift-giving reciprocal relationship was the fundamental dimension of the transactions, and that Maori still had authority and some rights over the land. But they can also be read as an indication that Nene understood the middle

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[253] G Grey to Earl Grey, 1 September 1847, GBPP vol 6 [1002], p 117
[254] G Grey to Wynyard, Wellington, 5 July 1851, IA1, 1851/1640
[255] Clendon to Colonial Secretary, Russell, 20 August 1851, IA1, 1851/1640
[256] Tamati Waka Nene to the Governor & Major Nugent, Kororareka, 13 May 1854, IA1, 1854/1550; CL Nugent, Native Secretary, Memo on Nene's letter, 18 May 1854
[257] Tamati Waka Nene to H Williams, 12 October 1847, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, pp 199-200. A copy of this letter has been included as Document 10 in the Appendix to this report.
[258] R Davis to CMS, 16 November 1846, MS 1211/2

ground better than most, especially the Pakeha view that there had been an absolute alienation for an (unfair) price. At the Kohimarama Conference in 1860, he referred to the centrality of the relationship with his Pakeha and the reciprocal benefits and gifts that flowed from it and were still flowing from it:

> If we do what is evil, let me remind you that my wife does not know how to weave garments. Wherefore I say, let the Europeans weave garments for me; and I in consequence will be kind to the Europeans…These things and these houses are not of our manufacture, no, they are of European origin. Chiefs of Whanganui, be kind to the Europeans, that we may eat pleasant food. Shall we again feed upon the roots of the wild convovulus, fern root and the pollen of the bulrush?…I have fed the Europeans that they might be a people for myself, for ever! ever! ever![259]

Nene had also been concerned at the way in which land transactions appeared to have gotten out of hand, and at the Pakeha view that the land was theirs (alone) for a pittance:

> If the Governor had not been drawn ashore (the Queen's protection solicited) then our lands would have become the Pakeha's by purchase. Each man would have said, Here is my land. He would have had a knife as payment, and the land would have become the Pakeha's. But when the Governor came, the land was placed under the protection of the law, as it was enacted that he alone should purchase…My object in accepting the Governor was that I might have a protector…[260]

But although Nene understood the Pakeha view of things, and sometimes appeared to accept it, he still had reservations in 1860. For him, his Pakeha were central. On the one hand, he had been cheated – the 'payment given for my Lands was scissors and pipes'. On the other hand, the Pakeha were still there, the gifts and benefits were still flowing, and above all the land was still there; 'The land has not been put on board their ships and carried away. It is still here with us.' His speech (translated) is worth considering in detail, in conjuction with the extracts above:

> When the Governor came we began to cast about and to think, perhaps we shall lose our lands. But no, the Pakeha said, Friends, let a portion of your lands be for us. The land has not been put on board their ships and carried away. It is still here with us. Perhaps the taking away of my friend [Te Wherowhero] is connected with this. If they (the Europeans) had gone and fetched Tamati Waaka, or Potatau, to clear the land for them [ie made them slaves], then I would have said this is an evil Governor. But the Pakeha came with his own spade. Therefore I say no wrong has been done to us. According to my notion, now that Potatau is dead, this work of Waikato should be put an end to. He uttered not evil words, nor any words about fighting. His only word was good-will and kindness. This was his word, wash me that I may be clean. And I say let that name be washed out; let each tribe cherish its own Pakehas. You say the Governor is doing wrong in taking the land; my opinion is that it is Te Rangitake who was wrong. He desired the things which were given as a payment for Taranaki. You talk about the Governor's wrong. Listen, all of you, the payment given for my Lands was scissors and pipes. These lands (at Taranaki) I hear were paid for in silver. Perhaps this conference is thinking, pshaw! His talk indeed, what is the talk of this man brought here for? This is the way I propose to destroy evil – by kindness, kindness to the Pakeha, even to the end, even as I cherish my Pakehas. This is all I shall say.[261]

In 1847, Governor Grey cited Nene publicly as the source of comments that the missionary lands were in fact the cause of the war.[262] Williams was 'revengeful' and Nene

[259] Tamati Waka Nene, 13 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, pp 33732-33733

[260] Tamati Waka Nene, 24 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, p 33812-33813

[261] Tamati Waka Nene, 20 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, pp 33786-33787

[262] For example, G Grey to Earl Grey, Auckland, 2 August 1847, GBPP vol 6 [1002], p 111

torn by the contest.[263] Kawiti described an exchange between Grey and Nene over the proposed Kerikeri township in September 1847:

> This is what I understood from Waka, when he and the Governor went to the Keri Keri to look for a site for a town. They both ascended Pakepoke (a hill); the Governor asked Waka, Whose land is that? It belongs to Williams. Whose is that land? It belongs to Williams. Whose is that hill? It belongs to Williams. The Governor replied, What, does Williams alone own the land? I shall fight with the missionaries to return a portion of the land to the natives; we shall have a paper war.[264]

The irony is that Henry Williams had not actually claimed (nor been granted) the land referred to.[265] He was the rangatira of the missionaries, though, and it was presumably in that sense that Waka referred to the land as Williams'. To Nene, it was his, it was Williams' (to neither of whom it belonged under the law) and it was the missionaries'. But their refusal to go along with Nene's claim to the land moved the contest to a request from that chief for surveyors, since Nene clearly believed that the missionaries had a right to at least part of the land. It was these kinds of contests over the Old Land Claims that Grey feared would lead to war.

Other such contests were reported occasionally to the government, especially where there was a risk of 'outrages'. In 1844, a settler was assaulted over a foreshore dispute. Thomas Sheering, who lived at the mouth of 'Tareha's River', discovered that three porpoises had washed into the shallow water opposite his house, so he waded out and killed them. Then the tide came in, he brought them 'up to his own door' of his beachfront house. He had skinned one, when two Maori arrived and claimed the other two, one for the chief Tareha, and one for themselves. Sheering 'told them they should have none for they came ashore upon his beach, that he had killed them and considered them his property, and accordingly removed them into his house'. He went off to get a neighbour to help – while he was away, a party of Maori came, assaulted his wife (who attempted to interfere), broke into his house and took one of the porpoises, but no other property. [266]

Richard Taylor, in his book *Te Ika a Maui*, suggests how tenacious Tareha was in defending his foreshore rights – Taylor gives an account of how Tareha camped out with a beached whale on a Sunday to ensure that no one else killed and ate it before he got his share, and also how he ate most of the oysters being acquired by a party of visiting Europeans.[267] The share of a chief like Tareha to beached whales and porpoises was part of Maori customary law. Colenso called them 'royal fish'.[268]

Bay of Islands Maori continued to assert their rights over the whole of the foreshore and its fisheries for many decades to come, against the countervailing view of settlers. Partly, Maori were determined to resist the settler view that the foreshore and fisheries were the common property of both peoples. In 1885, the Resident Magistrate's clerk reported:

> The Natives continue to occupy and waste much of their time at meetings to discuss political, ie, "Treaty of Waitangi" questions. A large one is to be held at Te Tii, Waitangi, on the 23rd instant, at which Tawhiao and a number of Natives from Waikato are expected to be present. The principal subject for discussion is the expediency of Waikatos and Ngapuhis jointly sending another embassy to England to lay their alleged grievances before the Home Government; great expectations from this are

[263] Tamati Waka Nene to G Grey, Kororareka, 21 October 1847, BAVX Series 4817, Box 1a
[264] Statement of Kawiti, witnessed by Hemi Tautari, Appendix F in H Williams to Earl Grey, Paihia, 1 November 1848, GBPP vol 6 [1120], p 85
[265] H Williams, covering note, Appendix F in H Williams to Earl Grey, Paihia, 1 November 1848, GBPP vol 6 [1120], p 85
[266] Affidavit of Thomas Sheering, Russell, 21 October 1844, IA 1, 1849/158, Reporting Disturbances with Natives, 1844-49, Part II
[267] R Taylor, *Te Ika a Maui: New Zealand and its inhabitants*, London, 1855, pp 317-318
[268] W Colenso, *On the Maori Races of New Zealand*, 1865, republished 2001, p 26

> entertained by many, such as the return of all confiscated lands, also the foreshores, and various other rights, which they consider they are entitled to under the provisions of the Treaty of Waitangi, and of which they have been wrongfully deprived…one constant source of irritation between Natives and Europeans – they, the Natives, contend that the rocks from which the oysters are taken fronting lands still held under Native title, or under Crown grants to themselves, are their's [sic], and object to their European neighbours taking them without payment, this view of the question appears just and fair, although there may be a doubt as to its being law, it would settle a great deal [of] dissatisfaction if the law officers of the Crown were asked to give an expression of their opinion thereon.[269]

The claim was put more widely by the Resident Magistrate, as one to the whole of the foreshore and its oyster fishery: 'The constant gathering and wholesale destruction of the oysters on the foreshore of the Bay of Islands is causing a considerable amount of uneasiness; the Natives asserting a claim to the shell-fish under the Treaty of Waitangi'.[270]

In addition to the Sheering incident in 1844, part of a long-running battle over ownership of the foreshore, there were challenges to Maori authority over the Old Land Claims lands in the late 1840s. In 1848, the Resident Magistrate reported incidents involving the Davis family and Busby. One involved land at Waitangi, which Busby had sold to Mair in 1839, and which Mair had recently sold to Captain Irving. When Irving tried to move onto the land to establish a boat-building business, Heke and others intervened and told him he had to leave. They also went to see Busby, and asked him to move Irving off the land and give him a section elsewhere. Despite the fact that the land had changed hands twice since their original transaction with Busby, the local Waitangi chiefs told him:

> Mr Irving should not be allowed to live on the allotment above referred to, nor should this land be for any other but *myself [Busby] my children and my relatives*.[271] [emphasis in original]

The same point was made again during a meeting between Busby, Irving and the chief Haratua:

> Haratua, a Native of some note in the late War, went yesterday, accompanied by about twenty other natives, to Mr Irving, and desired him to carry his boards off the land to the other side of the water for he would not be allowed to build his house there. Mr Irving, who with his son was at work under a temporary shed, which he has erected, took no notice of this request, nor the threatening attitudes with which he made a show of enforcing it, but took from him a piece of timber which he had laid hold of. Mr Irving sent one of his sons to request that I would go down, and I had a simultaneous message to the same effect from Haratua. I was there told that Heke had resisted the Governor's wish to have a town at Keri Keri and at Waitangi, and I must send this man away as Heke would allow no town on this side of the Water, and his house if put up would be the root of the evil. I replied that I had no right to interfere with him as the land was his own. They said I must restore him his money and send him away; that the land was sold to me for myself and my children and relations only. I said if they would accompany me to my house, I should show them that they had forgotten that part of the agreement; this they agreed to do. I there gave one of their number the Native title deed, which he read aloud.
>
> I observed with reference to the words that the land was conveyed to me "for myself my children and heirs for ever, to live upon to sell or to deal with as we might deem fit" that they were all present and ratified the deed when it was read to them before the Commissioners, to this they assented. Haratua then said if I rightly understood him that this agreement was of old, and that the fall of the flag staff and the flight of every family [conquest and abandonment?] had altered the case. I observed that Mr Irving was a peaceable man, and would not interfere with them. They said they had no objection to the man it was the root (putake) of the evil they were striking at. One of them observed that I had sold land to others whose names he mentioned. I said that I had not sold the *wahi tapu*. I had not cut down the trees [of the waahi tapu] nor did I intend to cut them down. Haratua replied that I might do as I judged right in that matter; but unless the man carried away his things quietly before he (Haratua)

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[269] JH Greenway, Clerk, RM's Court, Russell, to Under Secretary of Native Dept, 16 April 1885, AJHR 1885, G2, p 5

[270] JS Clendon, RM, Whangarei, to the Under Secreatry of the Native Dept, 27 April 1885, AJHR 1885, G2, p 7

[271] J Busby to Colonial Secretary, Victoria, 12 October 1848, G30/14, p 959

> returned to the Bay, he would sweep them all into the sea. He afterwards – as I was informed – returned to Mr Irving and used similar threats towards him.[272]

Busby's reference to the waahi tapu is significant, because it was right next to the land in question, and Busby's cattle had strayed on it in the past. He had paid extra money to have the tapu lifted, and although Haratua told him that he could do as he thought right, Grey believed that it was still an issue for some of the tribe:

> It still however appears that Mr Busby claims the burial place as his property, having as he states, paid to the Natives, the sum of five pounds as an indemnification for their feelings and prejudices. Although I fear that the younger members of the tribe are not likely to regard the payment as sufficient, or to think that the Government have paid a proper attention to their interests in allowing this place to be taken from them.[273]

In any case, the Governor refused to allow the Resident Magistrate to get involved. He consulted the Attorney General on the question of Busby's grant, and ascertained that it was too indefinite to settle any question of disputes arising from it. He ordered his officials to instruct Major Bridge to prosecute any European who tried to occupy this disputed land.[274] Bridge did not do so, partly because of the initial confusion in the Governor's mind that the objection involved the waahi tapu itself.

In January 1849, Heke came to Waitangi to settle the matter. In reporting this development, the Resident Magistrate noted that Heke's objection was not to building on a waahi tapu, which was not going to be the case, but to a possible township on that side of the Bay, and fearing that one European would be followed by others. He also invited all the chiefs of the Bay, but only Hori Kingi (Ngati Manu), and Paratene from Kawakawa and Waikare, attended. The magistrate refused to answer a peremptory summons, and thereby recognise Heke's authority to summon him, but Irving (not unnaturally) went to the hui. Heke, supported by Hori Kingi, then negotiated a settlement with Irving. Bridge described this as 'making a virtue of necessity, by giving him permission to remain at the Waitangi, at the same time giving him a rather singular document to keep, as a licence or permit.' Kingi announced that if Heke went to war with the Government again, he would 'be his Chief Mate'.[275]

A copy of Heke's 'licence' was sent to the government:

> Friends, the many Europeans, I have come to John Irving to know his thoughts (or intentions) whether they are good or bad but the days are yet to come when, if I see no fault, I shall be well pleased with him. I shall say this is my true European friend. Let none of the many interfere with him whether Europeans or Natives. Whoever interferes with him shall be in fault. Hear ye European Chiefs, ye Magistrates, ye Missionaries, ye Gentlemen, ye Colonels, ye Majors, ye Governors, likewise ye Maori – chiefs of the world, be all ye kind to that one house of that European because I have spoken about the place for the erection of his house it is good. But let there be no more Europeans, let no other seek to come here, let John Irving be the last himself, Busby and Hingston. Let the other Europeans remain at Kororareka. Because the sea is the boundary of the Town of the Europeans that was arranged at the end of the war between the Governor and myself. Should this not be adhered to my good intentions to either will be ended…But Irving I am pleased he should build his house here and remain in [?] at Waitangi.[276]

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[272] J Busby to Colonial Secretary, Victoria, 29 December 1848, G30/14, pp 898-902
[273] G Grey to Earl Grey, Auckland, 12 February 1849, G30/14, p 889; cf J Busby to Colonial Secretary, 28 November 1848, G30/14, pp 895-897
[274] Governor Grey, File Note on Bridge's letter, 15 Nov 1848, IA1 1848/2600
[275] Major Bridge to Colonial Secretary, Russell, 15 January 1849, IA1, 1849/353
[276] Hone Heke to John Irving, 11 January 1849, IA1, 1849/353. Unfortunately, I do not have a copy of the Maori-language original. The full translation of the licence is Document 2 in the Appendix.

Heke thus granted Irving a conditional right to occupy the land, until it should be proven whether he was 'good or bad'. In the meantime, no one (either Maori or European) was to interfere with Irving's occupation. The old settlers, Busby and Hingston, could also remain but the other Europeans were to keep out. The Colonial Secretary ordered the Resident Magistrate to quietly ignore the whole affair.[277]

Heke's view was that the Land Claims Commission either had not, or ought not to have, changed anything. He wrote to Queen Victoria in 1849, informing her that her matua King George had told Hongi Hika that he would send missionaries, and Maori were to befriend them:

> They asked us, "will you not give us some portions of your land." Our generosity induced us to consent, and we divided it with them – giving them part and retaining part ourselves. We thought that they were the only people who were to live in this country; but no, there were many thousands of others – but it was when we were foolish that we thought this.

Heke wanted his Pakeha to remain, the land and the Pakeha both under his authority as before:

> The missionaries, the gentlemen, and the common people [ie not Governors and soldiers] are all that I am well pleased should live here, in order that we and they may die and live together here. But I say to you, that although they are living on this island [and] I also, still the management of my island remains with me, and although they have obtained possession of part of it, still the adjustment of the pieces which they have acquired remains with me…[278]

It was on this basis that Heke continued to assert his authority over land 'sold' to the Old Land Claimants. In the same year that he forbade Irving to settle at the mouth of the Waitangi River, James Davis (the son of Richard Davis) got into trouble with Heke when his workers lit a fire and cooked food on a waahi tapu named Te Ahu. This waahi tapu was on Davis' claimed land. Major Bridge was not very sympathetic to Heke and called this 'an imaginary grievance'. Neither Richard nor James Davis reported the matter to the Resident Magistrate, but he had found out about it from Waka Nene and Taiwhanga. Bridge informed the Governor:

> Mr Davis remonstrated with him [Heke] stating that his Shepherds had set fire to the bush which had accidentally extended over this Tabou'd ground but that the land was his own and that he had paid him for it years ago. Finding he was inexorable, Mr Davis remarked that him being a Chief he was surprised at his behaviour, and that he ought to set a better example. When Heki flew into a violent rage and told him he had cursed (or insulted) him – and demanded a further payment for that – he said he must have £15 for burning the Tabou'd spot and a Horse for the insult.

Davis paid the required fine and did not report it to the magistrate or seek any government intervention.[279]

According to Davis, the waahi tapu was a new one. Maori living on the Davis family land ('by permission') had buried their dead on it and created a burial ground after the original transaction, but the missionary and his people still had to respect the tapu.[280] Davis' account for the CMS was somewhat confused, as he claimed that he paid Heke to purchase the waahi tapu (not compensation for the desecration of it), and he seems to have mixed it up with another waahi tapu at Waimate associated with Hongi Hika.[281] There was also trouble

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[277] A Sinclair to RM, Russell, Auckland, 2 February 1849, BAVX Series 4817, Box 1a
[278] John William Heke to Queen Victoria, 10 July 1849, GBPP vol 6 [1280], p 17. The Maori-language version of this letter is Document 3 in the Appendix.
[279] Major Bridge to Colonial Secretary, Russell, 15 October 1848, IA1 1848/2600
[280] R Davis to CMS, 7 December 1850, cited in F Sinclair, p 256
[281] ibid

over the latter site in 1843, involving a taua muru because Davis had not recognised the mana of a rangatira with relatives buried there. The chief carried his point (by carrying off a horse).[282]

Grey was furious, but with Bridge and Davis, not with Heke. In his file note on Bridge's letter, the Governor pointed out that there had been animosity between Heke and Bridge's informants, Waka and Taiwhanga. He also noted that Davis' grant had been extended by FitzRoy, and that the government did not accept it as valid. Davis' workers had gone onto a burial ground, lit a fire there, and cooked food on a grave, 'all of which circumstances are regarded by the Natives as the greatest desecration which can be committed.' Nor had the Crown 'acquired such an interest in the burying place as would have enabled it to grant it – as also that it is entirely repugnant to the policy of the British Govt to offend the feelings and prejudices of the inhabitants of those countries which it may occupy, by granting away their burial places for purposes which could admit of their desecration'.[283]

When he forwarded Busby's correspondence on the matter to the Colonial Office, Grey noted the dispute as proof of the dire predictions of his infamous "Blood and Treasure" despatch (of which more, below). The grants were in excess of the original commissioners' awards, the boundaries were never pointed out on the ground by Maori and surveyed, and certified by a Protector, as the commissioners had expected. Also, 'no reservations had been made of the pahs, cultivations, or burial places of the Natives'. The Commissioners remonstrated against this, warning the government that when the lands actually came to be occupied by settlers, 'the Natives would resist such occupation, if they were strong enough, or that if they were the weakest party they would suffer injustice'. Grey reminded the Secretary of State that he had warned of 'future disputes and war'. He was also certain 'that the Natives never intended to sell their burial places, and that had the decision of the Commissioners been carried out [the reservation of all places of occupation and use] this would have been made apparent'.[284]

The government, it would seem, was fully aware of the nature of the Old Land Claim transactions, and that Maori were still either occupying the land and using its resources, or claiming authority over it. Private records underscore this fact. In 1849, for example, well after the end of the war, the CMS was not free to use its land as it saw fit. Richard Davis informed the local CMS secretary, Robert Burrows, that the mission simply could not risk putting a new and unknown Pakeha tenant on its Waimate farm. Davis agreed that leasing the farm to a European tenant would get the best return, but 'from the jealousy manifested by some of the leading Chiefs, it would not only be injudicious, but even dangerous to introduce such a person until such feelings shall have subsided'. In that situation, Davis strongly recommended the use of the farm and its produce to train and support Maori teachers for the Church instead. Although not the best use in financial terms, it was the wisest for other reasons.[285]

If the CMS was not able to have its way at Waimate, it was more successful at Paihia. In May 1850, Henry Williams received news of his dismissal from the CMS, with instructions that he vacate its mission station at Paihia. Tamati Pukututu, ally of the Crown and Williams' protecting chief at Paihia, was furious. He pointed out to the missionary that the latter could not simply leave Paihia without consulting him, and threatened to burn the

[282] W Bambridge, Journal, 1 April 1843, MS Copy Micro 0501
[283] Governor Grey, File Note on Bridge's letter, 15 Nov 1848, IA1 1848/2600
[284] G Grey to Earl Grey, Auckland, 3 November 1848, G30/14
[285] R Davis to R Burrows, Kaikohe, 9 January 1849, Correspondence between Missionaries & NZ Mission Secretary, CN/07, Micro-MS-Coll-04-44

Paihia station so that no one else could live there. In the end, the Kawakawa people consented to Williams' removal inland to Pakaraka.[286]

> Tamati said, - "It was Te Wiremu, not the Committee, that he and his tribe settled and protected at Paihia; and now, after all these years, he finds that they have let Paihia go to people that "drive Te Wiremu away."[287]

For the first time, the Maori 'sellers' discovered that Williams considered himself to have no rights at Paihia. 'Such,' comments Carleton, 'had not been their understanding; but it was too late to complain.'[288] Mrs Williams described how the local Maori planned to plant crops and build houses at Pakaraka, just as they had done at the mission station at Paihia, for their visits to the new mission.[289]

The position at the end of the decade was summed up by Henry Williams. He informed the CMS that the mission families were the only ones that had been able to stay on their land in the interior of the Bay of Islands. Europeans were subject to the custom of muru, but more importantly their tenure was still by permission of their host communities. Given Williams' staunch defence of his titles, his admissions are striking:

> The value of this [mission family-owned] land of which so much has been said is less than nominal, as all in this District, certainly, occupy alone by sufferance, subject to the will of any turbulent set of boys. The more capital therefore under existing circumstances that may be expended upon this land, in the way of buildings, general cultivation & improvement, the greater the risk. The late war establishes this fact. The character of the people in the field is ably expressed by Gov Grey in his Despatch. In this District no persons are cultivating the ground, or holding stock, but the Sons of the Missionaries. There is no location of Settlers for the above reason, the uncertainty of tenure. Any trifling circumstance may lead to the stripping of a settler, to his utter ruin, and no protection can be afforded by the Govt either to person or property.[290]

Ironically, the balance of power was to shift dramatically in favour of the settlers by the end of the next decade.

4.5.2 The 1850s

The situation remained uncertain on the ground in the 1850s, though there was no outbreak of war as Grey had feared. As noted above, Nene continued to attempt to assert control over the mission lands at Kerikeri, and to get the missionaries to 'give them up'. In fact, so sure was he of his authority over the land, he informed the government that they had in fact done so. Partly, the maintenance of peace was because of forbearance on both sides, and because the government did nothing in response to settler complaints. In 1855, for example, over in Hokianga, Nga Puhi were continuing to occupy the settlers' land and occasionally their houses, to the great but unfruitful wrath of Thomas McDonnell. This aspect of the customary transactions, where the protecting parties felt themselves entitled to make use of the settlers' houses, was described in the preceding chapter. The redoubtable McDonnell, once British Resident in Hokianga, fulminated to the Acting Governor:

> The Natives are imbued with the notion that this district is too distant from the seat of Government to be thought of & that therefore they can run a muck [sic] of crime through the land without incurring its

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[286] M Williams, Journal, 29 May 1850, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, pp 237-238
[287] M Williams to Mrs Heathcote, Pakaraka, 18 June 1850, reproduced in H Carleton, vol 2, p 249
[288] H Carleton, *The Life of Henry Williams*, vol 2, p 249
[289] M Williams to Mrs Heathcote, Pakaraka, 18 June 1850, reproduced in H Carleton, vol 2, p 249
[290] H Williams to CMS, 30 January 1850, CN/O 94(c), Micro-MS-Coll-04-61

> penalty. The conduct of the Natives here towards British Subjects cries aloud for justice, - they take possession of our houses, gather their fern, & make their beds in them & occupy them as sleeping places as they have repeatedly done with mine, leaving their filth & remain in attestation of their right to do so. Surely your Excellency it will no longer be suffered that the Natives these firebrands should stalk through our homesteads without one single effort being made to extinguish them… who so worried & tormented Mr Francis White & his family as to oblige them to abandon their homestead to seek shelter where they could be within the pale of justice.[291]

In the same year, a complaint arose which required the Bay of Islands Resident Magistrate to investigate. Maori had occupied part of the land claimed by McDonnell and planted kumara. This was done against McDonnell's protests. The complaint arose not from this, however, but because McDonnell's animals broke a fence and damaged the crop, causing the Maori to take a mare as compensation – the source of the complaint. Although this case arose in Hokianga, it was symptomatic of the friction caused where Maori continued to assert their authority and use-rights in the Old Land Claims lands.[292]

In 1854, Kawiti, his son, and nephew called on the Resident Magistrate and informed him of their intention to 'ask for payment from the Europeans of Kororareka'. Kawiti died soon after. At a second meeting on the matter, with Mongonui present (described by Clendon as the 'principal chief who formerly possessed Kororareka'), the intention was renewed. Mongonui objected that the 'land was theirs by conquest – sold by them to the Europeans – and that he objected to a second payment being given'. Kawiti's son, Te Kuhanga (Maihi Paraone Kawiti), responded that the application for payment would be made to the Governor, not to the Europeans or the leaders of the northern alliance.[293]

Donald McLean, who was basically in charge of Maori affairs after the departure of Grey, sent HT Kemp to investigate. He reported that the claim rested on the argument that 'the land had formerly belonged to them, and that the "Ngapuhis", who came into possession by conquest, had received their full share of it'. It was being pursued because it was 'the dying injunction of Kawiti to his people, viz, "That payment should be got from the White people"'. Kemp believed, however, that Hori Kingi Te Tahua was the real instigator. The hapu involved assembled at Kororareka in a large body, armed but with women and children present, and danced 'war dances'. They held a meeting, at which the chiefs stated that they, 'as the original owners of the Soil, were now *at last*, entitled to receive payment, and that they intended to press their demand upon the Government, without interfering with the rights of the Natives who sold to the Europeans'. There was some confusion over whether Crown purchase instalment payments were the kind of subsequent gift-giving typical in custom, and they were used to support the idea that the Crown would make a 'second' payment for the Old Land Claims at Kororareka. Hori Kingi and the claimants sought a payment of £4000.[294]

Kemp called a meeting of three rangatira, Tamati Waka Nene, Pene Taui, (formerly on opposite sides in the war), and Mauparaoa, a chief connected with Kawiti's people. These chiefs carefully discussed the merits of Kingi's claim and were opposed to it on all points. They then met with Maihi Paraone Kawiti and the Ngati Hine and Ngati Manu leaders to discuss it further. Unfortunately, Kemp did not record the discussion. According to Kemp, Nene and Taui 'spoke in the most decided manner, explaining their own views as to the injustice of the claim even as a mere native case', and criticised them for going around armed. After 'a great deal of discussion on both sides, it was finally agreed that the claim should be withdrawn, and all further demands cease'. After that, it was necessary to visit the Waikare Maori, who were 'part of George King's party' and troublesome. The Resident

[291] Thomas McDonnell, Hokianga, to Colonel Wynyard, 24 August 1855, BAVX Series 4817, Folder 4a
[292] Andrew Sinclair, Colonial Secretary, to Bay of Islands RM, 4 Sept 1855, BAVX Series 4817, Folder 4a
[293] Clendon to Colonial Secretary, 4 July 1854, IA1, 1854/2749
[294] HT Kemp to Donald McLean, 26 July 1854, IA1, 1854/2749

Magsitrate, Taui, and Kemp went to Waikare and were able to get their agreement, largely through 'Pene Taui's influence, which at that settlement is considerable'. Having reduced the support for Kingi and the other leaders, Kemp also visited the northern alliance rangatira and obtained their support against the claim. The 'prevailing desire', Kemp reported, 'is for peace and the acquisition of wealth'.[295] In the meantime, the rangatira observed the Crown's instalment payments and continued to believe it a welcome return to custom. The Resident Magistrate reported the chiefs as saying that, if the Kororareka claim had been met, 'they should have asked for payment for every piece of land that has been purchased by Europeans'.[296] What Clendon could not understand was that they thought they had a right to do so.

The sequel was a notice in *Te Karere*, reporting that Bay of Islands Maori had requested a:

> second payment for land which was ceded to the Europeans [mo nga whenua i tukua ki nga Pakeha i mua] thirty years ago. A little reasoning with the natives shewed them the fallacy of the claim, and they at once abandoned their object. We take this opportunity of acquainting our readers that, as a rule, one payment only will be given by the Government for land…[297]

Two years after the Kororareka claim, the new Governor appointed a Board of Inquiry to investigate aspects of Maori affairs and advise him on issues like land purchase and administration of justice. Although the pre-Treaty transactions were not included in the matters under review, some of the witnesses examined by the Board referred to them anyway, especially in conjunction with land purchasing. One of the most important witnesses in that respect was Captain Bolger, a Bay of Islands settler who had lived in the country for 35 years, mainly on shore and trading at the Bay:

> For a long time after I had been in the country, the natives had an idea that the land sold by them would in a short time revert to them.
>
> They did not appear to have an idea of an alienation of their land for ever.
>
> My experience all through the South Seas is the same, namely, that what a European considers a sale of land is considered by the natives as a mere right of occupancy.
>
> Between the years '30 and '35, the natives became more intelligent, and then learned that the Europeans expected the land for ever.
>
> They did not seem to have any objection to sell their lands for ever. The inducement to sell was created by the desire of securing Europeans among them as settlers.
>
> Under the idea of obtaining white men among them, they did not object to alienate their lands for ever.[298]

Bolger's evidence, therefore, was that Bay of Islands Maori had not understood Pakeha conceptions of sale until sometime between 1830 and 1835. In Bolger's view, mutual comprehension on the point was not even possible until then. It is no coincidence, perhaps, that Bolger's first land purchases were made in 1835. His interpretation of the transactions after that year was that the goal of having settlers living with them overrode Maori objection to selling their lands forever. Whilst I agree that the overriding goal was to get Pakeha resident among them (and not the so-called payment), the evidence cited in this report indicates that Maori did not believe that they were carrying out absolute alienations after 1835. As Godfrey and Richmond noted, Maori thought they still had the power to enforce their understanding of these transactions. On the most conservative reading of Bolger's evidence, Nga Puhi were not aware at all of the Pakeha view of the transactions before 1830,

[295] HT Kemp to Donald McLean, 26 August 1854, IA1, 1854/2749
[296] Clendon to Colonial Secretary, 7 August 1854, IA1, 1854/2749
[297] *Te Karere / The Maori Messenger*, vol 1, no 1, 1 January 1855, p 6
[298] Board of Inquiry, 1856, Minutes of Evidence, GBPP vol 10, p 536

and gradually became aware by 1835. For even the most stringent, this must cast doubt on the transactions conducted before 1835.

Of the 34 witnesses to appear before the Board, 10 addressed the nature of the pre-Treaty transactions. Captain Bolger's evidence has already been considered. The Maori witnesses did not talk about the pre-Treaty transactions. Six of the Pakeha witnesses stated that there was some doubt of whether Maori had understood the concept of sale, although they did not agree on how long this lasted. Four witnesses (all 'old' settlers) maintained in contrast that the Old Land Claims were absolute alienations and understood by Maori as such. Bishop Selwyn referred to the practice of 'resuming' possession if the purchaser did not take up occupation, and cited some CMS land as an example of this. He also referred to the wording of the deeds, explaining that it 'has been usual to insert in the documents conveying land to the missionaries words to the following effect: Ekore hoki mai kia au," it will not revert to me. It would seem by this that the natives had an idea, that the lands bought should become theirs again when left unoccupied for a certain time.'[299] In his private correspondence a decade earlier, Selwyn had understood the transactions as absolute alienations, although he maintained that a second 'payment' was *always* required.[300]

Bishop Pompallier also referred to circumstances in which Maori would resume total possession, to the exclusion of the settler. This would happen if the settler concerned left, or where 'in some other cases, the price given for the land was also consumed by the use'.[301] In other words, the relationship with the settler ceased because the person had gone, or it was no longer considered equivalent in terms of gifts. Pompallier considered that Maori understanding of British property rights was still 'not as yet quite sound', despite efforts to teach them.[302]

The Wesleyan missionary Whiteley also raised the issue of the resumption of land by Maori, although he did not think a departure or on-sale to another settler would be sufficient grounds. Instead, if the relationship was severed by the death of the settler with no family to succeed, then Maori would resume total possession:

> Generally speaking, the natives were willing to sell land when I first came into the country; their ideas were not very clear on the point of alienating their lands for ever; if they sold to a person who died and had no children, they considered that they were at liberty to take back the land again; in the case of a person buying land, and going to another country, it would be different – the land would be considered his, and he might dispose of it as he thought fit.[303]

William White of Hokianga, who had lived in New Zealand for over 35 years, spent his first six years at Whangaroa, near the Bay of Islands. He stated that: 'At first they had no idea that they were alienating the land for ever, and from not knowing the language, it was impossible to convey that meaning to them in the commencement of such transactions, and in the early period of our intercourse.'[304] Finally, William Searancke, who came to New Zealand as a surveyor for the New Zealand Company, noted that 'the natives, when selling their lands, in the early periods of the colonisation of these islands, did not suppose they were selling the fee simple of the land'.[305]

The possibility that Maori had made less than absolute alienations was clearly both known and a source of some confusion to these long-term New Zealand residents. Busby, on

[299] ibid, p 545
[300] HW Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, London, 1878, vol 1, pp 141-142, 151
[301] Board of Inquiry, 1856, Minutes of Evidence, GBPP vol 10, p 568
[302] ibid
[303] ibid, p 548
[304] ibid, p 562
[305] ibid, p 537

the other hand, whilst stressing the importance of the relationship between settler and Maori as part of the transactions, considered very clearly that absolute alienations had taken place. He thought that the recent Kororareka claim had only arisen because the government had made a second payment for Old Land Claim land at Whangarei.[306] Of the other witnesses, Joshua Thorpe (a Hauraki settler) stated that the 'natives, when they sold the land to me, knew they were disposing of it for ever'. The same view was expressed by a Bay of Plenty settler, Mr Black, and by a Waikato resident, Mr Marshall.[307]

The Board's report concluded:

> When the natives first came into contact with the Europeans in the relative position of sellers and buyers of land, the evidence of which before the Board extends as far back as 1822, it has been shown that the natives in disposing of their land intended only to convey a title similar to that which they, as individuals, hold themselves; - the right of occupancy. They did not imagine that anything else could be wanted. Their desire for Europeans to settle among them was very great; and in selling a piece of land to one of these early adventurers, they not only were prepared to hold his title, such as it was, inviolate, but considered his personal safety a matter of the deepest interest. He, in fact, was considered as one of the tribe, among whom he had cast his lot.
>
> They soon, however, ascertained, when a knowledge of their language had been sufficiently acquired by the Europeans, that this sort of tenure was unsatisfactory; and in all subsequent transactions of the kind, gave written titles in perpetuity, with the right of transfer.
>
> This same wish for the location of Europeans among them increased rather than diminished up to a very recent period.[308]

Donald McLean agreed with this conclusion, stating that 'the natives have of themselves no original idea of a transfer or exchange in perpetuity, and that this idea has only of recent years become fully intelligible to them as a matter of bargain and sale'.[309] The Board preferred the evidence of those who believed that Maori had come to both understand and accept the European conception of transactions fairly early, over the evidence which cast doubt on that view. There is no discussion of the evidence in their report, to illuminate why the Board came to this decision, although the fact of written deeds seemed to weigh with them. In any case, the issue was clearly still known and still a live one in the mid-1850s.

The Board's inquiry set the scene for the Bell Commission of the following year. In 1857, a notice appeared in *Te Karere*, setting out the government's interpretation of the pre-Treaty transactions. The settler Parliament stood poised to sort them out through the Bell Commission:

> **A Word to the Ngapuhi.**
>
> When the Europeans first arrived at this island, the Maoris were an upright people and for those lands which were purchased by Europeans no second payment was ever demanded. When the claims of the old settlers, who were living among the Ngapuhi, were investigated, they manifested no desire to conceal the boundaries of the land they had sold, but on the contrary, the particulars of any transaction were fairly and truthfully stated, both as regarded the boundaries and the payment; nor did they desire to withhold anything that had been justly sold by them at a former period.
>
> And now, O Ngapuhi, Mr. Bell, the Land Claims Commissioner, is about to proceed to your district, for the purpose of investigating the claims of some of the old settlers: – and do you now follow the example set you by your fathers during the former investigations: – let the right be upheld, but let there be no demanding a second payment for what has already been properly settled: – let not that be practised by you. You are the people who first received Europeans, and now do you still continue to adhere to that which is right, and hold fast the last words of your fathers who are dead.[310]

[306] ibid, p 570
[307] ibid, pp 535, 544, 554
[308] Board of Inquiry, Report, GBPP vol 10, pp 511-512
[309] D McLean to Private Secretary, Auckland, 4 June 1856, GBPP vol 10, p 581
[310] *Te Karere / The Maori Messenger*, vol 4, no 7, 31 August 1857

This is significant in part because the Bell Commission, as with the Godfrey-Richmond Commission some 17 years earlier, revealed to the Government that OLC land was still in Maori occupation. I have not made a detailed study of the Bell Commission's minutes, but my preliminary investigation showed Maori still in occupation of parts of the lands of the CMS, the Davis family, the Shepherd family, the Kemps, and many others.[311] Sometimes, Bell discovered such occupation by accident. Because of a claimant's inability to produce a deed for disputed boundary land on the Waikare River, Bell had to go and visit the Maori living there. After arranging the boundary dispute, he recorded: 'As I left the place another set of Natives raised a dispute on the subject of a small piece of land they have been cultivating in another part of the claim: but this time the place was within the Boundaries of one of the Deeds, and I dismissed the objection.'[312] No reserves or exceptions had been made in either Godfrey and Richmond's award or FitzRoy's 1844 Grant, yet Bell found Maori in occupation of parts of the land. His dismissal of their right to be there without any investigation, nor the concern that Godfrey and Richmond would have shown, is typical of the differences between the two commissions.

It is not my intention to deal with the Bell Commission in this report, other than to emphasize its importance in highlighting continued Maori occupation of OLC land in the 1850s and early 1860s to the government of the day. A full investigation of both the original Land Claims Commission hearings and the Bell Commission hearings would be useful for the claims, but is not required for the purposes of this chapter.[313] Dr Rigby's analysis of the Bell Commission shows that Bell basically refused to hear objections about the validity of the awards recommended by Godfrey and Richmond. If the original Commissioners had judged a sale as 'valid', it could not be reopened in front of Bell. The defects mentioned above in section 4.4 were therefore simply replicated in Bell's decisions. Dr Rigby's report reproduces Bell's notes of his hearing in October 1857, where Clarke's, Williams', and Davis' claims were disputed by Nga Puhi:

> At a little before midnight the Comr. gave his decision, overruling all their objections upon the proofs afforded by repeated references to the old papers in the several claims. They were asked whether it had ever happened that Government had taken from them and given to a European, any land stated to be their property by the former Commissioners; and in what light they would regard the present Court, it at the request of a European made 13 years after the former adjudications any land reserved for them were taken away? Equally, they could not expect that after such a lapse of time I should listen to the claims of Natives to get back portions of land awarded Europeans by the former Commissioners; and that although I had in accordance with my invariable practise heard all they had to say, I should certainly not give back an area which had been validly sold by those who in those days were really empowered to sell, nor allow the claim of anyone who had failed to bring his objection forward at the original Inquiry…At the conclusion they expressed themselves perfectly satisfied, & went up to Mr. Williams & Mr. Davis & apologised for having raised the objections they did.[314]

In March 1858, Nga Puhi tried again. Tamati Waka Nene and others lodged objections to Clarke's and Shepherd's grants, and also the Crown's acquisition of surplus land, at the Commission's Kororareka hearing. Bell simply referred to the records of the 'original boundaries', overruled all the objections on the basis that the validity had been decided by Godfrey and Richmond, and advised them to ask the Governor if they wanted him to grant them some of the surplus land.[315]

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[311] More detail is provided on some of these claims in section 5 below
[312] FD Bell, Memorandum, Russell, 3 April 1858, OLC 1, 126-127
[313] Bruce Stirling's forthcoming report on Northland Old Land Claims is likely to provide such a study
[314] Notes of various Sittings of the Court, 13 October 1857, cited in Moore, Rigby, & Russell, *Old Land* Claims, p 45
[315] ibid, pp 46-47

Having largely stymied Nga Puhi's efforts to obtain a Crown-recognised title to at least part of the Old Land Claims and the surplus land, Bell's Commission proceeded to get land surveyed and to concretise the displacement of Maori from occupation, at least on paper and at law. Dr Rigby has showed how the Crown transacted land at the same time, overlapping the Old Land Claims, paying some whose rights had never been "extinguished", and tidying matters up to the satisfaction of families like the Williams'.[316] This was partly possible because of a change in Nga Puhi leadership. Heke and Kawiti were both dead, and Kawiti's son was seeking to re-erect the flagstaff and renew the alliance with the Crown. The economic decline of the Bay of Islands was still a factor, but it was clear that the Government could not be removed from New Zealand. In the late 1850s and early 1860s, therefore, led by people like Waka Nene and Maihi Paraone Kawiti, Nga Puhi sought to reassert the long-standing nature of their alliance with the Crown, and above all to obtain settlement and economic prosperity for the Bay. They wanted to engage with the Crown, transact land, and get a large town as a market in their midst.[317] The Bell Commission could do its work in this period in a way that would not have been possible only a few years earlier. Taking up the Pakeha way of fighting battles, Nga Puhi sought instead to prove their rights to the Old Land Claims in the new Pakeha forum, the Native Land Court.

4.5.3 The 1860s to the 1880s

The OLC land between Paihia and Kawakawa seems to have been particularly disputed in the 1860s, and to have been one of the primary areas that Maori tried to prove their ownership of in the Native Land Court. In April 1864, Parata Puriri wrote to Governor Grey, requesting the 'return' of CMS lands at Te Haumi and other places.[318] HT Kemp reported:

> Natives of different hapus have been allowed to sit upon this land, but I am not aware as to whether the permission to do so has been given for any specified time. Taken in connection with the proposed Settlement on the Kawa Kawa, it seems to be of the greatest importance, that no part of this land would be held by Natives, who really do not require it…I recommend its being done at once, as other more influential Natives are looking out for a share of this Block, believing as they do that no Grant has yet been issued.[319]

The CMS accepted that Puariri and others were in occupation of its lands, but argued that their small presents of food to the mission had been in recognition of its ownership.[320] Henry Williams stated that he had purchased the land from Tohitapu and the resident Te Roroa (who, it seems, were still resident). Puariri, he said, was 'noisy' and the only objector, though he had lived there for 30 years and been present 'at each purchase of the Haumi'.[321]

Hirini Taiwhanga and Renata Te Pure brought these Paihia lands to the Native Land Court in 1872. The Church Missionary Society defended its title, arguing that it had purchased the lands, built houses on it and leased it, but had allowed Maori to live on it in

[316] Daamen, Rigby, & Hamer, *Auckland*, pp 71-152
[317] This important shift in Nga Puhi policy can be seen in *Te Karere Maori / The Maori Messenger*, vol 2, no 5, 31 May 1856; *Te Karere Maori / The Maori Messenger*, vol 5, no 4, February 1858; "Notes of Native Speeches, Feb 1861", MA 1/1 – 1/3 1861/18; *Te Karere Maori / The Maori Messenger*, vol 2, no 2, 15 January 1862; & AJHR 1870, A-7. See also the speeches of the Nga Puhi rangatira at the Kohimarama Conference, RDB, vol 88. And see also Kene Martin, 'Kawiti, Maihi Paraone 1807-1889', *DNZB* (online)
[318] Parata Puariri to Governor Grey, 6 April 1864, OLC 1, 658-699 Repro 1707
[319] HT Kemp, report, 29 April 1864, OLC 1, 658-699 Repro 1707
[320] R Burrows to E Shortland, 27 May 1864, OLC 1, 658-699 Repro 1707
[321] H Williams to R Burrows, Paihia, 21 June 1864, OLC 1, 658-699 Repro 1707

return for 'rent, in produce'. As well as those cultivating, some influential chiefs had 'trespassed' (unexplained) but 'did not make any claim of ownership'. In other words, this land was being used by more than just the people who were making gifts of food to the mission. Maori witnesses told the court that the land had never been purchased 'or the native title extinguished', but that if, in fact, a purchase had taken place then it was from people who were not the correct owners. Judge FE Maning accepted the CMS evidence and rejected the claim.[322]

It was not only CMS land that was taken before the court. The Williams family lands were also the subject of claims in the Native Land Court. These were 'disallowed on the ground that the native title was effectively extinguished by the late Archdeacon H Williams'.[323] It would be useful to have additional research (of the minute books) to establish how many Old Land Claims were in fact claimed as Maori customary land in the Court. In going thus to the Native Land Court, Maori faced something of an alliance of Old Land Claimants. The Resident Magistrate, E Williams (son of Henry Williams) wrote to warn the government of the claims to settler and Crown surplus land being filed with the court. His warning was passed on to Judge Maning, another Old Land Claimant. Maning wrote to Williams to assure him that Nga Puhi soon gave up on that strategy in Hokianga, 'seeing that it is of no use' and only entailing expense for themselves. Maning was able to act from his own knowledge:

> I am pretty well informed of the Claims made by the natives which are not bona fide ones, perfectly informed I may say as to this side of the district and Waimate, but you are doubtless better informed than myself as to the encroachments attempted at the Bay and about Waikare and the Kawa Kawa, and would take it as a favour if you would be kind enough to take the trouble to let me know which are the Claims you suspect to be false ones as it will save me time and be in every way a service to me… No one need for a moment think that any native can in any way move me to allow him to encroach where he has not right. All I require is *information* and I do hope that any parties [ie European purchasers] having any just rights to any land claimed by natives will not be backward in stating those rights in Court as by so doing they would help more than anything else to discourage the dishonest proceedings of the Natives & enabling me to deal in a decided and summary manner with the Claim.[324]

Nga Puhi did not give up. Another Resident Magistrate reported twenty years later:

> A matter which has been for some time attracting attention in every direction amongst the Natives, is what is known as "surplus land." The Maoris have a fixed idea that it is possible for them to recover possession of these lands, and in some cases considerable sums of money have been collected in order to enable these claims to be prosecuted. I do not think, however, that anything has been done in the matter, beyond bringing an occasional case before the Native Land Court.[325]

Occasionally, Nga Puhi were successful in getting surplus land 'slipped' through the Native Land Court and awarded to them, as Under Secretary Lewis complained in 1885.[326] Dr Rigby has shown how Te Whiu and other hapu continued to pursue such claims in the Native Land Court in the 1890s and beyond, and through petitions to the Crown.[327] Rowan Tautari has also outlined Te Whiu's struggle over the Puketotara block.[328]

Maihi Paraone Kawiti's efforts to regain control of Opua and other surplus land involved a long, drawn-out series of letters and petitions to the government. Kawiti objected

[322] Judge FE Maning to S Woodhouse, 22 April 1872, OLC 1, 658-699 Repro 1707
[323] H Williams (jr) to FD Bell, Pouerua, 17 January 1872, OLC 1, 521-526
[324] FE Maning to Williams, 8 August 1866, BAVX Series 4817, Folder 25b
[325] HW Bishop, RM, Mangonui, to Under Secretary of Native Dept, 30 April 1885, AJHR 1885 G2, p4
[326] TW Lewis, File note, September 1885, MA13/80, 85/3161
[327] R Daamen, B Rigby, & P Hamer, *Auckland*, pp 94-99
[328] R Tautari, 'Report on Land Previously Owned by Te Whiu Hapu Puketotara/Puketi (inland Bay of Islands) Registered as part of Wai 421', Wai 421 A1, 1999

to the government that Opua and other such lands had never been sold, and that Maori continued to use them – until the railway line came along and the Crown's claim to ownership was revealed.[329] Kawiti challenged the Crown to produce his father's signature on a deed for Opua.[330] The government sent Clendon to investigate. He looked into the CMS transaction and found out from one of the Williams family that there had been some occupation by CMS tenants, who built a store. Clendon decided that the purchase had in fact been 'recognised' by Kawiti and other rangatira during their lifetime, and that this was 'sufficient to show that the alienation had been complete and that he [Maihi Paraone Kawiti] could not have any real claim to it'. Clendon failed to see that the chiefs' recognition of the transaction might have meant something else altogether.[331] The question, according to Hare Puataata, was whether 'we are in the wrong, and the pakehas who purchased from our parents are in the right, so that the acquirement of that land by the Government may be free from difficulty'.[332] Significantly, he referred to it as 'o taua whenua'; our lands, both Maori and the Crown's.

In 1888, Kawiti explained to the Governor how gifting of land worked under Maori custom. He himself had 'restored to Her Majesty the Queen the "mana" of her sovereignty' when he re-erected the flagstaff. As part of that restoration, Kawiti 'gave my land away as a gift in honour of the occasion', to 'signify, according to the Maori custom, the establishment of peace and a sign of respect for the Queen – and peace to both man and the land'. The flagstaff was named 'Te Whakakotahitanga (the Union) of the two races, Pakeha & Maori'. Kawiti's gift was Nga Puhi's lands – 'probably two million acres, more or less as a free gift to Her Majesty'. But in fact Kawiti's mana persisted as the giver of the gift, and the land was still just as much his as before, though now shared with the Queen. Hence his claim to Opua and land dealt with in both pre- and post-Treaty transactions.[333]

There was confusion about the original transaction. In 1881, Hirini Taiwhanga, who was also claiming Opua and other surplus land, recounted the oral traditions relating to Henry Williams' transaction:

> The Government can only claim Opua as surplus land but Opua is not surplus land, because our parents have told us that the goods paid to them by Mr Williams for Opua, Ongaruwai, Te Awakapa extending as far as Takauere at Te Haumi where the boundary of the land of the missionaries ends, were given so as to secure the land from being sold to the Americans, but when Mr Williams found out that it was the intention of the Church Missionary Society to return the surplus land to the natives, he gave the land extending from Takauere to Opua to the Government.[334]

Taiwhanga also challenged the whole basis on which the Crown claimed surplus land. He put forward the interesting argument that half of the goods used in the pre-Treaty transactions had actually been sent out from England as 'a gift for our parents', and were never the property of the missionaries who gave them to Maori. In Taiwhanga's view, this invalidated the missionary transactions, as the gifts had not come from them in the first place.[335] Taiwhanga's first claim related to an alleged arrangement to prevent some Americans getting an entrée to the land. Detailed research is needed on this question and the strong and enduring

[329] MP Kawiti to Whitaker, October 1883, MA13/80 83/3455
[330] MP Kawiti to Rolleston, 12 November 1881, MA13/80 81/4029
[331] Clendon to Lewis, Whangarei, 10 October 1887, MA13/80 87/2192
[332] Hare Puataata to Bryce, 22 October 1883, MA13/80 83/3400. This letter is reproduced as Document 11 in the Appendix.
[333] MP Kawiti to the Governor, Waiomio, 9 April 1888, MA13/30 88/694. There is no original Maori version of this letter on the file, only a translation, which has been reproduced as Document 12 in the Appendix.
[334] H Taiwhanga to Minister of Native Affairs, Kaikohe, 12 July 1881, MA13/80 81/2535. This letter is reproduced as Document 13 in the Appendix.
[335] ibid

grievance arising from the Opua lands. Over forty years after the transaction with Williams, Maori accounted for it in different ways. The one overriding conviction shared by Maihi Paraone Kawiti, Taiwhanga, and the others who put forward claims, was that Opua had never been sold. It was still Maori land.

There is not space here to discuss the many features of the Opua claims. Nevertheless, the Native Department Under Secretary recognised that Maori would continue to claim Crown land like Opua so long as the government did not use it or on-sell it to settlers.[336] The government was determined to resist such claims as the one to Opua, and indeed Nga Puhi's claim to the whole of the surplus lands.[337]

In the meantime, evidence continued to flow to the government in the 1860s of Nga Puhi occupying 'sold' land and using resources, just as they had before. The government was not always in a position to do anything about it. Maori attempts to use land and resources could be very general, such as the claim mentioned above to the foreshore and oyster fishery, or very particular. One of the general claims related to the digging of kauri gum. In 1863, the Resident Magistrate reported that Bay of Islands Maori considered themselves entitled to go and dig for gum on settler and Crown land: 'they have an idea that they are at liberty to dig upon any unenclosed land, Government or European, and have occasionally done damage to roads, but I have warned them to desist from such behaviour'.[338] The Bay of Islands was still largely a world without fences, and this contributed to a similar Maori 'right of common', as FitzRoy had put it, for their few cattle. Settler cattle trespass had damaged Maori crops, but the Pakeha defended themselves by saying that the free range of cattle had been a 'mutual benefit': 'Their [Maori] stock if anything, have run more on the lands of Europeans than on their own'.[339] The question, of course, was whether any *rights* were considered to lie behind the use of settlers' land in this way.

Maori occupation and resource-use could also be very particular. At Whananaki, Maori remained in occupation of their kainga, which had been included in the OLC award of Salmon, and then swapped by him with the Crown for land elsewhere, and therefore now belonged to the Crown. Salmon's claim for 7000 acres was the largest single Bay of Islands claim heard by the Godfrey-Richmond Commission. The Protector had opposed it on behalf of the Kawakawa tribes, who had entered into a CMS trust transaction over the same land. Godfrey and Richmond had examined the deed (signed by the rangatira Waikato) and decided that the area should be surveyed and any portion admitted by Maori to have been the sole property of Waikato should be awarded to Salmon's estate. In September 1843, John Salmon asked to take land in Auckland instead, and Acting Governor Shortland authorised him to select 2196 acres at Papakura. Governor Grey later returned to the idea that there still needed to be an investigation to determine if Salmon actually owned any Bay of Islands land before he could be granted scrip. In 1850, the Resident Magistrate investigated and found the land still in the possession of the tribe, which denied any sale at all.[340] Somehow, the Salmon family managed to get grants of 2400 acres in 1854-55, and the rest of their claim presumably became surplus land.[341]

Maori were still in occupation of Whananaki in 1863, living on it and cultivating it despite its award to a settler and then the Crown. They accepted that the chief who made the original transaction had a right to sell a small piece of land, but not the area that they were

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[336] TW Lewis, File note, 23 May 1883, MA13/80 83/940
[337] TW Lewis, File note, 10 September 1881, MA13/80 81/3099
[338] Half-yearly report, RM's Court, Russell, 14 July 1863, BBIW Series 4808, Folder 2a
[339] John Adamson & others to Civil Commissioner, Waikare, Bay of Islands, 24 February 1863, BBIW Series 4808, Folder 1d
[340] Report on Claim no 206, George Cooper for Estate of David Salmon deceased, n.d., OLC 1, 408
[341] P Berghan, *Block Research Narratives*, p 254

occupying. Barstow, the Resident Magistrate, thought that it might not be a problem as the pieces of land in occupation were quite small, but he noted that they took up all the available waterfront, and would therefore make the rest of the block useless to settlers. He also noted that, despite having admitted a 'sale', 'the Natives occupy two small cultivations in the part they admit to be Pakeha property'. What was at work here, therefore, was not only a disputed right over who made the transaction, but a belief that Maori could continue to live on 'sold' land. This is important because sometimes Maori occupation and use was based on a dispute over the rights of the original 'vendors'. The example of Whananaki was clearly both.[342]

An example which is not so clear is the problems that Eleanor Stephenson reported to the government in 1865 (ironically relating to land also transacted by Salmon). After a visit to Auckland, she returned to Moturoa Island to find the rangatira Ruhe in occupation:

> with a party of Natives twelve or more with three or four children located near our house with three huts and one tent erected, with fires burning daily on our grass land. Also four Dogs and four Pigs. One Horse feeding on our grass. This land was bought at a high price and I am about selling sheep for want of grass. Certainly it is a hard case for Natives to come and steal and burn it. They are consuming quantities of firewood and before long I shall have to buy fuel in consequence. If these Natives are left unmolested in this act they will soon procede [sic] to worse. An answer informing what must be done will oblige, Eleanor Stephenson, Occupier of Moturoa.[343]

The Civil Commissioner, George Clarke, was not sympathetic to Ruhe but advised Stephenson that the government could not act unless she brought a claim to court, where the law would support her.

It is not possible to say from this information whether this particular occupation and resource-use arose from a disputed title or an assertion of the customary nature of the original Old Land Claim transaction. But this may have been the same island (which FitzRoy called 'Motouroa') that was discussed by the future Governor and the House of Lords Committee in 1838:

> You said there was One Island in the Bay of Islands that was the Property of Two Americans; is that a large Island?
>
> It is an Island of about Fifty Acres.
>
> Do they reside there?
>
> Yes; they live on the Island.
>
> Did they purchase it of the Natives?
>
> Yes; I was informed that they had done so.
>
> Do they prevent either Natives or British Subjects from going upon it?
>
> They do not prevent them, for the Natives do not understand being prevented from going upon the Land; but I was present myself when Objections were made by those Two Persons to a Party of Natives landing at the Time I landed. They said that they trod upon their Crops, and did a great deal of Harm; and one of them asked me, if he, having purchased the Island, had not a Right to keep it for himself. I of course could not interfere in any way; but I advised him to be cautious in his Dealings with the Natives.
>
> Do you know whether they had purchased the Island in the same Way as many British Subjects have purchased Pieces of Land?
>
> Yes; by the same Process.[344]

In any event, it shows that this kind of thing was still happening on the ground in the 1860s, almost thirty years later.

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[342] RC Barstow, RM, to Civil Commissioner, 10 May 1863, BBIW Series 4808, Folder 2a

[343] E Stephenson to Civil Commissioner, 9 January 1865, BBIW Series 4808, Folder 3b. As far as I have been able to discover, Ruhe was not involved in the original transaction with Salmon for Moturoa Island. (see OLC 1, 409)

[344] Minutes of Evidence to the House of Lords Committee, 1838, GBPP vol 1, pp 340-341

Fifteen years later still, in 1880, Maori occupation of OLC land was still being reported to the Government when it generated conflict. WGC Hingston wrote to the Commissioner of Land Claims that he had had 'quiet possession' of his Kerikeri lands until the Bell Commission. Two of his grants had been surrendered but not replaced as the land came under the Bay of Islands Settlement Act:

> In consequence of my grants being in the possession of the Government, the Natives commenced digging gum on the land, harassing and destroying my cattle, obliging me to sell the latter at a sacrifice, some of them that I killed had bullets in them. All this, and various other losses and inconveniences have I suffered…[345]

This land had been 'purchased' 44 years earlier, in 1836.

For at least twenty years after the awards of Commissioners Godfrey and Richmond, therefore, Maori had continued to assert their authority over 'sold' land, and to attempt to occupy parts of it and use its resources. This can be documented in specific instances, as provided above. General claims, such as the right to the foreshore and fisheries, to go onto any 'sold' land and dig kauri gum, and to depasture cattle on settler and Crown land as if it had not been sold, persisted alongside more specific acts of occupation, resource-use, and the policing of waahi tapu. The government could not have failed to notice all this activity. Indeed, I have concentrated on matters that were reported to it, often by its own officials.

Private records like the CMS papers confirm the type of thing that was happening on the ground. A lot of these records are piecemeal and have been generated because a dispute or contest arose over the particular resource or act of authority. Nevertheless, we have Godfrey and Richmond's report that Maori continued in occupation in 'innumerable' instances as at the early 1840s, and confirmation of this by reports from both Governor FitzRoy and Governor Grey to the Colonial Office. The squeezing out of Maori on the ground really began to take effect from the late 1850s, with the work of the Bell Commission, the government's purchases, and the Nga Puhi leadership's attempts to reach an accommodation with the Crown. Even then, battles continued to be fought long after in the Native Land Court. But the fact remains that the crucial period when a fairer solution might have been implemented, before the settler Parliament and its Bell Commission, was during the governorships of FitzRoy and Grey. According to Professor Oliver, for example, the Bell Commission was an instrument of settler interests and colonisation.[346] It is to the Crown colony government of New Zealand, and the Governors' view of the nature of the pre-Treaty transactions and of justice for Nga Puhi, that we now turn.

5 Crown Colony Government: FitzRoy & Grey

5.1 FitzRoy

To FitzRoy fell the unenviable task of sorting out the Old Land Claims. His predecessor, Governor Hobson, had been hampered by his illness and had died in September 1842. The Colonial Secretary, Willoughby Shortland, took over as Acting Governor until December 1843.[347] In the meantime, the Commissioners had been making their recommendations on the Old Land Claims, but their 'awards' had not been surveyed on the ground, and little account could as yet be taken of the qualifications to some of them.

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[345] WGC Hingston to Commissioner of Land Claims, 4 February 1880, OLC 1, 227-230

[346] WH Oliver, *The Crown and Muriwhenua Lands: an Overview*, Wai 45 L7, pp 15-22

[347] Shortland's official designation was: Officer administering the Government, rather than Acting Governor

Armstrong has shown that the Muriwhenua awards included reserves of pa and cultivations, where these had been mentioned to the commissioners' during their inquiry. It is clear from section 4.4 above that this was not the case in the Bay of Islands. The Commissioners' awards only recommended exceptions if land had either been reserved formally by deed, or if Maori objected to the inclusion of land, or denied that a 'sale' had taken place. In instances where Maori continued to occupy land and had pa and cultivations on it, but admitted a 'sale' or did so by oral agreement, the Commissioners awarded the land to settlers as if an absolute and unconditional alienation had taken place. There were no reserves of Maori pa and cultivations (or any other access or resource-use) in such cases. Rigby has also given examples of the failure of the commissioners to uncover Maori occupation at the Bay of Islands at all, let alone mentioning it in their awards.[348] All of this could be could be fatal, when Bell took the awards as read in the 1850s.

Nonetheless, Commissioners Godfrey and Richmond were aware of 'innumerable' instances of continued occupation that were not protected in their awards. That is why they made a crucial recommendation in 1842:

> …in instances innumerable, the natives have been allowed, and frequently encouraged, to remain upon the lands; with an assured promise, or understanding, of never being molested. Their cultivation, and fishing, and sacred grounds, ought, therefore, to be in every case reserved to them, unless they have, to a certainty, been voluntarily and totally abandoned. If some express condition of this nature be not inserted in the grants from the Crown, we fear the displacement – under this authority – of natives, who, certainly, never calculated the consequences of so entire an alienation of their territory.[349]

This recommendation was still before the Government when FitzRoy arrived as the new Governor in 1843. Hobson and Shortland had notified their approval of some of the Commissioners' 'awards' in the Gazette, but Shortland had not issued any Crown Grants during the 17-month interregnum, leaving this for the new Governor.[350] FitzRoy quickly decided that grants could be issued on the basis of a written description of boundaries and an 'eye-sketch'. In May 1844, he informed the public that it was impossible for the Government to survey the OLC awards 'without causing such extreme delay as would be ruinous to the parties intended'. His plan was to issue Crown Grants that would simply replicate 'such descriptions of the Lands and their boundaries as are furnished by the Commissioners in their reports'. He urged the claimants to survey the lands themselves as soon as possible, in order to 'avoid future doubts and litigation'.[351] This meant that the Commissioners' reservation of Maori interests, arising either from a deed or a denial of sale, would be reproduced word-for-word in the Crown Grants.

FitzRoy's decision was based in part on a shortage of surveyors and funds to pay them. It resulted in Crown Grants that quickly brought on the doubts and litigation that he had predicted. He also amended the Land Claims Ordinance so that a single commissioner could make recommendations. Having changed the law, FitzRoy appointed a new commissioner, Robert Fitzgerald, to read the papers of the previous commissioners and extend the awards of deserving claimants. This category included the Chief Protector, George Clarke, who was considered to have paid for much more land than the limit of 2560 acres permitted, and also Williams and other missionaries. One by one, FitzRoy brought these cases before the Executive Council and got its agreement to extending the awards. The Williams family award, for example, was increased to 9,000 acres. Henry Williams, the

[348] B Rigby in Daamen, Rigby, & Hamer, *Auckland*, pp 74-99, 137-141, & passim
[349] Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721
[350] R FitzRoy to Stanley, 15 October 1844, GBPP vol 4, p 409; G Grey to Earl Grey, 24 June 1846, GBPP vol 5, p 590
[351] New Zealand Gazette notice, 9 May 1844, cited in J Busby to Gore Browne, 29 February 1856, OLC 1, 227-230

Governor told the Council, had spent enough to justify a much larger grant, and had besides 'done far more for the advancement and improvement of the aboriginal race, and in fact for the general interests of the colony at large, than any other individual member of the missionary body'. He was, therefore, 'highly entitled to favourable consideration'.[352] The Council agreed.

In all, FitzRoy extended the various grants of nine Bay of Islands claimants. Six of these were people connected with the CMS: George Clarke; Henry Williams; Richard Davis; James Kemp; Samuel Ford; and John King (and Kemp and Davis as trustees for the 'CMS Families' claims). The other three claimants were Busby, Clendon, and Mair.[353] Acting on the basis of the royal prerogative, the Governor issued these men with grants in excess of the 2560-acre limit set by the Land Claims Ordinance. The tortuous process involved was for him to request approval of the Council, the Council to agree, that endorsement to be sent to Fitzgerald, Fitzgerald to then recommend it back again, after which FitzRoy would finally approve it. His approval was not automatic, though, and he sometimes altered or rejected Fitzgerald's recommendations.[354] FitzGerald's reports were mainly brief and lacking in detailed reasoning. His recommendation to extend the awards of John King, for example, was only a half a page.[355]

Grey was extremely critical of this process. Commissioner Godfrey had protested it at the time. Godfrey pointed out that he had actually heard the evidence, that the awards were not limited simply by the ordinance but also represented the amount he thought fairly acquired (a crucial point), and that it would be dangerous to simply extend them on the basis of the papers. Godfrey's position was remarkable, given that he was supposed to have judged so many transactions as valid. In fact, they were not. The main problem, in his view, was that there were unpaid Maori owners whom the purchasers knew about and indeed had made them promises of future payment. To grant the actual claimed land rather than the commissioners' awards, therefore, would lead to grantees being expelled, or, if Maori 'be weak or isolated', injustice for Maori.[356] If Godfrey was correct, then the Commissioners had committed a very dangerous, almost unconscionable act. They must have known that they were judging whole transactions to be valid. Any acres not awarded to a claimant within the bounds of a 'purchase' would be Crown land, not unsold Maori land. In any case, Grey agreed with Godfrey's reservations. He also noted the further problem that awards made after a hearing were overturned without informing Maori, giving them an opportunity to be reheard, or to be represented by someone 'appointed to watch the proceedings on their behalf'.[357]

These new, extended recommendations, as well as many of the old ones, were turned into Crown Grants and issued to settlers. The Old Land Claimants at last had a paper title. These were not, however, surveyed and their legal effect was uncertain. On the face of it, the grants vested the fee simple of the land in the grantees. In other words, settlers became freeholders and their titles were enforceable at law.[358] But FitzRoy himself later queried this (see below). Despite any doubts, the Grants were considered a secure enough freehold title to be bought and sold or mortgaged. To take some examples:

- In 1845, Captain Brind (of the Girls' War fame) sold part of his 440 acre grant (OLC 554) to AV De Sentis, and mortgaged the rest in 1847.[359]

[352] Minutes of the Executive Council, 12 June 1844, GBPP vol 4, pp 316-317
[353] CW Ligar, List of Land Claimants, GBPP vol 5, p 583
[354] A Sinclair, Memorandum, 23 June 1846, GBPP vol 5, p 584
[355] Commissioner's Report, 7 September 1844, OLC 1, 603
[356] Commissioner Godfrey to Colonial Secretary, 8 June 1844, GBPP vol 5, p 584
[357] G Grey to Gladstone, 23 June 1846, GBPP vol 5, pp 581-582
[358] See, for example, James Kemp's Crown Grant, 22 October 1844, GBPP vol 5, p 585
[359] FD Bell's report, 21 August 1861, OLC 1, 554

- In 1848, Thomas Bateman sold 22 acres (granted for OLC 56) to James Dodson. The latter's daughters then sold the land to Clendon in 1855.[360]
- In 1849, Thomas Bateman sold 1200 acres at Kerikeri (OLC 59) to William Grahame.[361]
- In 1848, George Greenway sold 200 acres on the Waikare River (OLC 202) to CB Waitford.[362]
- In 1848 and 1855, B Nesbit sold parts of his 106 acre grant at Waimate (OLC 353).[363]

Two of these grants had exceptions recorded on them. Bateman's Crown Grant for 1200 acres at Kerikeri, which he sold to Grahame in 1849, had the following wording:

> Bounded on the West by Reed's land; on the South and East by land belonging to the Church Missionaries to Mr Small and Mr Edmonds and the River Kiri Kiri, and on the North by the River Tareha. Excepting the 20 acres claimed by John Reed, and all the portion claimed by Wiremu Hau – and the part reserved for the Native (name unknown) which can be pointed out by the Chief Kamera.[364]

Greenway's grant was for 200 acres, 'excepting any portions belonging to Hokia'.[365] This grant was a rare instance where the Commissioners' exact wording was not reproduced in its entirety, as they had added the phrase 'which is supposed to be very trifling', which was left out of the grant.[366] Despite the extraordinary wording of these grants, they were considered saleable titles.

Not all of the grants were for the land actually transacted with Maori. Settlers had the option of taking up scrip and swapping their claims for land elsewhere, leaving the abandoned claim as yet more surplus land for the Crown. Some Bay of Islands settlers took this option.

Also, the non-survey of the land enabled the Governor to escape the vexed question of what to do with the surplus land. The Colonial Office had all along expected it to be used to obtain revenue for the government and land for settlement. FitzRoy, however, did not touch the surplus land in the Bay of Islands. No attempt was made to survey or sell it. This was partly because FitzRoy himself did not believe in the justice or prudence of selling the surplus in the face of Maori and settler discontent. He simply let it lie.[367] In terms of promises, however, he actually promised Maori to return it to them. In any case, FitzRoy's claim that 'all the old land questions were settled, in the northern parts of New Zealand, before the arrival of Governor Grey' was hardly true.[368]

One must ask, in light of FitzRoy's issue of Crown titles to the Old Land Claimants, and indeed his very significant increase of the amount of land granted to some of them, whether he had changed his mind since appearing before the House of Lords' Committee in 1838? Had closer acquaintance with New Zealand, the greater information available to him, and his own personal observations, altered his view of the transactions? At first sight, it would seem that it must have done. This was certainly Sinclair's conclusion.[369] FitzRoy acted as if the pre-Treaty transactions were absolute sales of land. He issued hundreds of Crown Grants that apparently settled that question in law. Henry Williams' family was now the owner of 9,000 acres of freehold land. 5500 acres of that land had no caveats. Two grants (for

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[360] Evidence of JR Clendon, 18 March 1858, OLC 1, 56
[361] FD Bell's report, 16 May 1862, OLC 1, 59
[362] FD Bell's report, 12 September 1861, OLC 1, 202
[363] FD Bell's report, 15 April 1859, OLC 1, 353
[364] Crown Grant, 24 July 1844, OLC 1, 59
[365] Crown Grant, 19 July 1844, OLC 1, 202
[366] Commissioners' Report, Auckland, 23 March 1843, OLC 1, 202
[367] R FitzRoy to Stanley, 15 October 1844, GBPP vol 4, p 409
[368] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 625-626
[369] F Sinclair, pp 217-218

1500 acres in total) excepted some waahi tapu. Apart from these waahi tapu, therefore, the Williams family had an absolute and unconditional title to 9000 acres.[370] Likewise, Busby, the Clarkes, Clendon, Mair, and the other claimants now had titles that they could sell, mortgage, or (in theory) enforce in court. Maori, it would seem, were dispossessed. Gone was the 'right of common', the cultivations, the fishing spots, and the authority over the land and settlers, which FitzRoy had referred to in 1838.

One of the problems with FitzRoy's actions is that he did not report very fully on them when in office. The Secretary of State, in fact, complained of a lack of information from FitzRoy.[371] Fortunately, we have an account of his intentions prepared later in 1847, in response to criticism of himself and the Old Land Claimants. Governor Grey had levelled a series of criticisms at FitzRoy's Crown Grants. He knew, for example, that Maori were still living on and using the land in many cases. He singled out Kemp's large claim of 9276 acres. He pointed out that the rights of all Maori interested in the land should have been considered, especially because there were no reserves of pa and cultivations 'which they may have had on those lands, or of any reserves which might be necessary for themselves or their descendants'.[372]

FitzRoy's response was that British ideas of landed property were 'prejudicial' to understanding the situation on the ground. Of course, he argued, all the pa, cultivations, and burial grounds were excepted from the 'sales' of land. This had been done either by deed or more often by oral agreement. Where the Commissioners' awards had mentioned reserves, these still held good for the meantime. But FitzRoy believed essentially that his grants were perfectible. Maori would gradually become convinced to accept the European view of a sale, and eventually they would make a 'willing and permanent cession' of those areas inside the Crown Grant that still belonged to them. All that was needed was an unspecified period of time, in which Maori would become 'civilised' and *reduced in numbers*, for the transactions to cease to preserve their original form. This, FitzRoy believed, was in the best interests of both Maori and settlers.

It is worth reproducing his reasoning in full, as it is critical to understanding his policy:

> When once the land is validly transferred by its aboriginal owners to European purchasers and surveyed, the main difficulties are overcome [a future state, after survey]. It is a mistake on the part of Governor Grey to suppose that native pahs, cultivations, and burial grounds were not generally excepted from the sales of land to early settlers. This is just one of those points on which the authoritative interference of British ideas of landed property may be most prejudicial. The old settler, on friendly terms with his aboriginal neighbours, makes his way by degrees, and gradually obtains a willing and permanent cession of even those places, after he has succeeded in establishing a general right to a certain piece of land. But he never attempts to take land by force. To do so would be his ruin, by raising a host of enemies.
>
> The pahs, sacred places, and favourite resorts, for whatever purpose, were either reserved by the natives verbally when they sold the land, in most instances, or they were specially mentioned in the deed or agreement.
>
> The adjustment of all these matters should be left chiefly to private arrangement and the mutual self-interest of the parties concerned.[373]

In order to allow time for the grantee to 'make his way by degrees', FitzRoy prepared the wording of the grants very carefully. He believed that they did not in effect grant freehold title, but rather shut out anyone else from obtaining it in the meantime, until the transactions had matured to the point where they could be surveyed as absolute sales. Maori and settlers

[370] Crown Grants, 22 October 1844, OLC 1, 521-526
[371] See, for example, Stanley to FitzRoy, 3 February 1845, GBPP vol 4, p 211
[372] G Grey to Gladstone, 24 June 1846, GBPP vol 5, p 591
[373] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 626

would continue to live on the same land for 'a term of years', until the settler could either persuade Maori to make a 'willing and permanent cession', civilisation taught Maori the meaning of absolute sale, or (regrettably) their numbers and power had diminished to the point where the grant had matured anyway and could be safely surveyed. The government would not intervene to preserve Maori rights – all would be left to private arrangement and the mutual self-interest of the parties to the original transaction.

Again, FitzRoy's justifications for issuing Crown Grants for land that had not been fully and permanently alienated need to be reproduced in full:

> This may be a convenient place for remarking that the wording of all these deeds of grant [ie Crown grants] for unsurveyed lands was most studiously guarded. As I could not indefinitely delay the settlement of these land-claims, and had neither men nor money enough to survey them, even in a few years (setting aside the doubt as to involving the Government in private questions); moreover, as I believe, from the best information, that land purchases, properly made, never had been nor were likely to be seriously disputed; and as the claimants themselves generally sought titles, as against the Crown, rather than the aborigines, on whose good faith and traditional usages they could then depend, I resolved to extricate all parties from their perplexing dilemma by undertaking the responsibility of issuing such grants as would avoid compromising the Government, and yet answer the object of the several claimants for, at least, a term of years, during which interval accurate data might be obtained, and the civilization, as well as the diminution of the number of natives would continue. I allude to this diminution with regret; but the fact is undoubted, and irrespective of war on the one hand and all the efforts of man to arrest it on the other. It is most striking and rapid in the immediate neighbourhood of our own settlements, however peaceful, where the influence of the missionary clergyman is so much slighter than in the native villages.
>
> These grants were intended to effect exactly what I now observe Governor Grey to do with respect to certain purchases of land, of which the boundaries may be uncertain and the title doubtful for a time, namely, to give (in the deeds of grant) "no guarantee or warranty of the title to the lands, save only so far as to engage that the grant shall be considered as barring the title of the Crown to such lands, and as transferring to the grantee any right to the lands which at or previously to the date of the grant may have been vested in the Queen."[374]

FitzRoy argued, therefore, that his intention was to give claimants a grant as against the Crown, not Maori, without surveyed boundaries for the meantime, because the settlers could continue to rely on the 'good faith and traditional usages' of Maori.

This was a remarkable policy, and one that was ultimately to the severe detriment of Bay of Islands Maori. It soon became known to settlers that they need not jump through the hoops necessary to obtain a pre-emption waiver, but could simply proceed to deal with Maori and obtain further cessions inside their grants. JS Polack, whose Kororareka claim for 9 ½ acres was (as discussed above) mainly taken up by two waahi tapu, wrote to the Colonial Secretary in January 1844:

> His Excellency the Governor having done me the honour to signify his intention not to interfere in any just and amicable arrangement that may have been pending between Her Majesty's Subjects, British and Aboriginal, relative to land that may have been purchased by the former of the latter previously to the Colonisation of 1840 – I beg to request that His Excellency will allow me to complete the purchase of the Tapu land, fronting, and wholly surrounded by my Claim No 288(a) Kororarika and originally purchased by me in March 1833. The Chiefs being now willing to rescind the prohibition (tapu) (the ground as a cemetery being long disused) on my paying them a present for the same.[375]

FitzRoy's view of the matter had already become public this early in his administration. He instructed the Colonial Secretary: 'I have no objection to Mr Polack's purchasing off the "tapu" by which he has been prevented from making use of his land.'[376] The Surveyor

[374] ibid, p 625
[375] JS Polack to Colonial Secretary, 5 January 1844, OLC 1, 638
[376] R FitzRoy to A Sinclair, 13 January 1844, OLC 1, 638

General noted the significance of this in 1849: 'With reference to the tapued land it appears by a minute of Governor FitzRoy that as soon as the claimant had satisfied the natives and that they had removed the tapu, the government would consider Mr Polack as entitled to it.'[377]

The Old Land Claimants 'made their way by degrees' from this time on, and the exceptions in their Crown Grants were not in any way a legal protection of Maori rights. This was mainly because Commissioner Bell accepted whatever progress claimants had made in further 'purchasing' their grants, rather than insisting that the caveats had legal force. A full study needs to be made of Bell's recommendations in light of the 'exceptions' in the cancelled grants. Here, we may note that one of Clendon's grants had excepted 'all that portion claimed by the Native Chief Kohowai and called Kokawau'. Commissioner Bell reported that Clendon had paid the chief in 1854 (in theory an illegal violation of Crown pre-emption), so he awarded the full 222 acres then claimed by Clendon.[378] Similarly, Gilbert Mair advised Bell that he had sought to 'purchase the deficiency of my grant'. In other words, he had had to buy land inside his grant but to which Maori 'made some unfair opposition', since withdrawn.[379] Other examples will be considered in more detail below.

These exceptions in the Crown Grants were the only legal protection for Maori rights, even though FitzRoy argued that the Grants only held good as against the Crown. As we noted above in section 4.4, Maori occupation by oral agreement (where it was reported to Godfrey and Richmond, which was not always) did not even receive this much protection. The Commissioners did not except it from their awards. Instead, they asked the Government to make a general reservation of all cultivations, fishing grounds, and waahi tapu. They knew that there were pa, cultivations, fishing spots, and waahi tapu inside the boundaries of their awards, and that these had not been ceded. Seeing it from the European perspective of the middle ground, Godfrey and Richmond thought that continued Maori occupation of these places had been allowed and encouraged by settlers with the promise of 'never being molested'. Maori, of course, saw it the other way around. In any case, the Commissioners warned that if an express condition reserving all such places was not inserted in the Crown Grants, that Maori would lose rights they had never intended to alienate.[380]

It was open for FitzRoy to accept their recommendation and insert a saving clause in all the Bay of Islands grants. At the very least, he could have done what he did in his New Zealand Company grants for Wellington and Nelson. These included exceptions to the effect:

> Saving and always excepting as follows:–
> All the pahs, burial-places and grounds actually in cultivation by the natives, situated within any of the said lands hereby granted to the New Zealand Company as aforesaid, the limits of the pahs to be the ground fenced in around the native houses or huts, including the ground in cultivation or occupation around the adjoining native houses or huts without the fence; and the cultivations being those tracts of land which are now used by the natives for vegetable productions, or which had been so used by any aboriginal natives of New Zealand since the establishment of the colony:– And also excepting the 39 native reserves…[381]

This general exception shows the kind of thing that was possible, although it would not have met all of the concerns of the Commissioners. The making of reserves (on top of exceptions) would have gone some way towards meeting Grey's criticisms as well. It could be objected that many grants, such as the small ones for Kororareka sections, need not have been

[377] CW Ligar, Report on Mr Polack's Claims, 28 June 1849, OLC 1, 638
[378] FD Bell, Decision in Court of Claims, Auckland, 22 November 1859, OLC 1, 114-121
[379] G Mair to Land Claims Commissioner, Whangarei, 20 June 1856, OLC 1, 306-307
[380] Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721
[381] Port Nicholson Crown Grant, 29 July 1845, GBPP vol 5, p 331; see also Nelson Crown Grant, 29 July 1845, GBPP vol 5, p 332

burdened with such a general exception. With boundaries undefined on the ground, and oral agreements still in effect, there is no way to be sure – which is, of course, the point.

FitzRoy did not act on Godfrey and Richmond's general recommendation. Neither did Hobson or Shortland, who gazetted the awards with the Commissioners' exceptions but no other, more general saving of Maori rights. But the key decision was FitzRoy's because he turned the awards into Crown titles. Many grants had no exceptions at all, other than in favour of the Crown (no grant could include land within 100 feet of highwater mark). To give some examples:

- John Edmonds (OLC 172) was granted 2112 acres on the Kerikeri River, with no exceptions – on survey, his claim was shown to be 3962 acres;
- Samuel Ford (OLC 701-704) received four grants totalling 400 acres, with no exceptions;
- Thomas Black and W Green (OLC 67) were granted 1000 acres with no exceptions;
- The CMS Families (OLC 734-736) were granted 3100 acres near Kerikeri and 500 acres near Waimate with no exceptions;
- F Reid (OLC 393) was granted 335 ½ acres on the Waikare River with no exceptions;
- Henry Swain (OLC 452) was granted 300 acres at the Waikare River mouth without exception;
- JR Clendon (OLC 114-121) received a grant for 544 acres 1 rood 1 perch with no exceptions, a grant for 1800 acres with no exceptions, and a 60 acre grant 'excepting all that portion claimed by the Native Chief Kohowai and called Kokawau';
- John Barber (OLC 52-55) received Crown Grants for 370 acres at Paroa Bay with no exceptions;
- Richard Davis (OLC 773) was granted 3000 acres at Waimate without exceptions;
- Henry Williams (OLC 521-526) was granted 5500 acres with no exceptions, and a further 1500 acres with the exception of waahi tapu;
- John King (OLC 603-606) received four Crown Grants for a total of 5150 acres without any exceptions – on survey, this claim was revealed to contain 21226 acres;
- and WGC Hingston (OLC 227-230) obtained grants for 300 acres, 500 acres, and 1600 acres with no exceptions – one of his grants, for 300 acres, had the remarkable description "No boundaries stated'.[382]

Many other examples could be given. In terms of Pakeha law, therefore, Maori lost all rights – whether to land or resources, or of access, or of authority over waahi tapu, or other – in the areas thus granted to settlers by the Crown. One of the most interesting and controversial examples is the Crown Grants of George Clarke, which Governor Grey challenged in the Supreme Court and Privy Council. In May 1844, FitzRoy told the Executive Council that Clarke had paid over £3000 for his land and in improvements, which entitled him (under the appropriate scale) to 26,000 acres, whereas he had only claimed 5,500 acres.[383] The Council agreed that Clarke was a deserving case, and FitzRoy eventually signed grants for 4000 acres (Whakanekeneke) and 1500 acres at Waimate. The Commissioners' reports had excepted 'the part belonging to the chief John Hake' for Whakanekeneke, and a two-acre reserve for the chief Piripi Hamangi at Waimate. Both exceptions were faithfully reproduced in the Crown Grants.[384]

Governor Grey challenged the validity of these grants in the Supreme Court, which will be discussed in more detail below. Here, I reproduce the full wording of one of the grants as an example:

[382] These Crown Grants are contained in the respective OLC 1 files
[383] Minutes of Executive Council, 5 May 1844, OLC 1, 634
[384] The Crown Grants for both OLC 633 and OLC 634 are contained in the OLC 1, 634 file

> Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth:
>
> To all to whom these presents shall come, greeting:
>
> Whereas one of our Commissioners appointed to hear, examine, and report upon Claims to Land obtained by Purchase from the Aboriginal Inhabitants of the Colony of New Zealand, have reported that George Clarke of Auckland New Zealand is entitled to receive a Grant of (4000) four thousand acres of Land, particularly mentioned and described in Claim No. 286(a) of George Clarke
>
> Now Know Ye, That We, of Our Special Grace, for Us, Our Heirs and Successors, do hereby Grant unto the said George Clarke, his Heirs and Assigns, all that Allotment, or Parcel of Land, in our said Territory, said to contain (4000) four thousand acres more or less, situated between Waimate and Hokianga, and of which the Boundaries are reported to be as follows,
>
> "On the East by land claimed by the Children of the Mission, divided by a Road called the great Mawe road, on the North by a Stream of water called Mangakaretu until it reaches Mr. Shepherd's boundary line on the Road to the Puru, crossing that road down to the Waihoanga, continuing down that Stream till it reaches the main steam called Wakanekeneke, and on the West by the Wakanekeneke, up that Stream till it reaches the Ngatete, continuing up this Stream till it reaches Taumauta Pararoro, from there to the Mawe Road."
>
> Excepting, the part belonging to the chief John Hake.
>
> With all the Rights and Appurtenances whatsoever thereto belonging; To hold unto the said George Clarke his Heirs and Assigns for ever.
>
> In Testimony Whereof, We have caused this Our Grant to be Sealed with the Seal of our said Territory.
>
> Witness, Our Trusty and Well-beloved Robert FitzRoy Esquire, Governor and Commander-in-Chief of Our said Territory and its Dependencies, at Government House, Auckland, in New Zealand, aforesaid, this sixteenth day of May in the seventh year of Our Reign; and in the year of Our Lord one thousand eight hundred and forty four.[385]

While Grey sought to overturn this grant in the Supreme Court and Earl Grey in the Privy Council, Clarke continued to 'make his way by degrees'. The Privy Council declared his grants invalid in 1851 but Clarke's family (and local Maori) remained on the land. He failed to acquire the interests of Hake's people, which were therefore left out of the survey when he surrendered his grants to the Bell Commission for reconfirmation.[386] Bell took the view that that the Quieting Titles Ordinance had 'given validity to all Grants' so he ignored the fact that the Privy Council had already made these grants null and void. Instead, he considered them repealed and replaceable under the 1856 Act.[387] Maori were still living on this land in 1858 so Clarke asked the Commission to set aside a 411 acre Native Reserve (unrelated to Hake's land).[388] This continued Maori occupation had not been protected or reserved in any way by Godfrey and Richmond in the first instance, or FitzRoy in the second.

But it was by no means all that Maori felt they were entitled to. Tamati Waka Nene was involved in the original transactions and had testified in support of Clarke before the first Commission: 'We were aware that we parted with the land forever.'[389] Sixteen years later, Maori were still in occupation of at least part of the land granted by FitzRoy to Clarke. In October 1857, five months before the hearing, Bell recorded a note that Waka disputed the

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[385] Crown Grant, 16 May 1844, OLC 1, 634
[386] Evidence of HT Clarke, 24 March 1858, OLC 1, 634
[387] F Dillon Bell's report, Auckland, 15 April 1859, OLC 1, 634
[388] ibid
[389] Evidence of Tamati Waka Nene, 27 October 1842, OLC 1, 634

original transactions, saying 'he did not sell any of it to Mr Clarke'.[390] On 19 March 1858, Nene met with Bell and objected to the inclusion of various places in Clarke's grants. The Commissioner then read the deeds and Nene's 1842 evidence to him. 'After hearing this,' Bell reported, 'Nene seemed anxious not to *dispute* the sale, but to "rapu tikanga" ("find out", or discover) who received payment.'[391] Nonetheless, Nene, Pirika and other leaders appeared in court on 23 March 'for the purpose of discussing objections raised to the Survey of the 1500 acre and 4000 acre Grants'. Once again, Bell relied on the evidence taken in 1842. He dismissed all the objections, which were not detailed. They must have included a persistent claim to the surplus land, as Bell added: 'The Natives were then informed that under the law, as they had been *repeatedly told* [emphasis added], the Surplus Land reverted to the Crown: and that if they desired the Government to make any Reserve out of the same for their use, they must at once address the Governor, with whom the decision on such a request rested.'[392]

On 24 March, Bell wrote two file notes, one to the effect that Maori attended his sitting but made no further objections to Clarke's grants, and a second stating that 'Waka insists on a small piece of land at Waiohanga', which he therefore kept out of Clarke's award (but as surplus land for the Crown). On survey, Clarke's 4000 acre Whakanekeneke grant actually contained 8957 acres. The Clarke family kept 5539 acres of this, Maori kept 411 (and that, at Pakeha law, by the grace of George Clarke).[393]

The family of Richard Davis had also taken advantage of FitzRoy's perfectible grants to gradually secure their position. On 22 October 1844, Davis was granted 3000 acres 'more or less' at Waimate, 'with all the Rights and Appurtenances whatsoever thereto belonging', with no exceptions. The boundaries were a series of streams, roads, rivers, a fence, and a hilltop. The actual quantity of land was surveyed as 4761 acres, of which 4308 acres was awarded to Davis and his family by Commissioner Dillon Bell. We know from events in the 1840s, described in section 4.5.1 above, that there were at least two waahi tapu on Davis' Waimate lands, and also a Maori community living on them ('by permission'). None of this had come out in front of the Godfrey-Richmond commission, and would not have been reserved by them in any case (it all being by oral agreement). Maori continued to exercise authority over their waahi tapu in the 1840s.

So how far had the Davis family succeeded in perfecting their grant by the late 1850s? James Davis wrote to Bell in July 1858 to ask him to accept an adjustment to the survey, adding nine acres that had been inside the Crown Grant but left out (at first) of the survey:

> …having had a little annoyance about it we made up our minds to give it up rather than fall out with the natives however since I gave over the plan of the land to you, I have given the natives a mare in order that we may settle the thing and although it is an enormous price to give for ones own land yet it rectifies that discrepancy between our survey and Grant and makes the matter complete on that side. I hope we shall be able to recover the other piece which Kemara's folks obliged us to leave out at the other end at some future time.[394]

As FitzRoy had intended, the Davis family were still extinguishing Maori title and paying for 'ones own land' well after he signed their grant in 1844. Te Morenga Kemara was holding on to about 300 out of 4761 acres. Otherwise, Maori occupation seems to have been excluded, and the fate of the waahi tapu is unknown. The Davis' absolute title to the land was reconfirmed by Commissioner Bell and extended by an extra 1008 acres.

[390] FD Bell, File Note, 12 October 1857, OLC 1, 634
[391] FD Bell, File Note, 19 March 1858, OLC 1, 634
[392] Minutes of Court, Kororareka, 23 March 1858, OLC 1, 634
[393] FD Bell, File Notes, 24 March 1858, OLC 1, 634
[394] J Davis to FD Bell, Waimate, 26 July 1858, OLC 1, 634

In addition to this land, the Davis family had a share of the 'CMS Family' land, also known as 'The Children's Land'. James Kemp had received a Crown Grant for 3100 acres at Kerikeri, in trust for some of the mission children, and Davis had received a Waimate grant of 500 acres for the same purpose. Both grants had been absolute, without any exceptions. In 1847, when Grey was attempting to recover land from the missionaries, he considered siting a town for military settlers on this land (to help cement the 'peace' in the wake of the northern war). Busby, one of the staunchest advocates of the Pakeha view of the middle ground, recognised the personal and conditional nature of these 'sales':

> He [Grey] proposed to settle a Battalion of pensioners in this neighbourhood and the Surveyor General applied to the Trustees of certain land which had been purchased many years ago for the children of certain Mission families to know whether they were willing to dispose of it for that purpose. The answer from the majority if not from the whole was that it should be at the disposal of the Govt. on whatever terms indifferent person[s] should say were equitable, provided the natives from whom it was purchased for the occupation of the children should consent to such an appropriation of it.[395]

Richard Davis, one of the two trustees, was willing to consent to the establishment of military settlers on this land, so long as the 'parties concerned gave their consent also. The natives, of course, formed one of the parties.'[396] Heke wrote to Davis, asking him to meet and discuss the matter at Waimate:

> Soon our words will be divided, as well as our bodies, and my love removed from off you, and yours perhaps from me, perhaps not. Yes, it will, because you have agreed that soldiers shall be settled at Kahikatea, at the Waterfall, at Keri Keri, at the Wiringatau, at Tuoetoe, at Waimate bridge, and in Waimate valley. This is good. But what of us? Must we fly? Yes, we must fly like stars. (As the country would thus be full of settlers, he meant there would be no road for them to go to the Bay.)[397]

Davis met with Heke and they debated the merits of a township, with Davis pointing out the commercial advantages in the form of trade. 'But what will it open besides?' Heke retorted. He was, according to Davis' report, concerned that his tribe would lose their ability to cross this land to the sea, and that there would be friction between Maori and Pakeha. This was just another way for the Governor to take land. Davis informed Heke that he had 'heard that it was the Governor's intention to return the surplus lands to them, which certainly was a mark of his goodwill towards them'. Heke preferred to keep the current arrangement with the missionaries to having the surplus land along with the Governor's soldiers: 'None of the lands could be received back,' was his response.[398]

Heke then met with Davis and Kemp at Waimate to further debate the matter. Davis' account of Heke's speech at the hui reveals the continuing Maori view of their transaction with the mission families. It also shows the survival of the middle ground of the 1830s into the 1840s at the Bay of Islands:

> After going over what he said yesterday, he said, 'The lands which had been made sacred to our children must remain so; they must not pass into other hands. Now they and the children had things in common. The children went on their lands, and the natives on theirs. If they passed into other hands, they, the natives, should not be able to walk or sit on them without walking or sitting on needles, and if they went to get firewood their hands would be tied.' He was told, that our fathers [the CMS] had heard that blood was likely to be shed about those lands, and that they requested that they may be given up. 'That no blood should be shed,' he replied, 'was good, but the lands could not be received back.'[399]

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[395] J Busby to JC Colquhoun & to CMS, Victoria, 10 January 1848, qMS 0352
[396] R Davis to J Coleman, Kaikohe, 19 October 1847, in J Coleman, *Memoir of Rev Richard Davis*, p 334
[397] H Heke Pokai to R Davis, cited in R Davis to J Coleman, 19 October 1847, in J Coleman, p 335
[398] R Davis to J Coleman, Kaikohe, 19 October 1847, in J Coleman, p 336
[399] ibid, p 337

These lands were granted absolutely to the mission families in 1844, and the Crown Grants were surrendered to the Bell Commission in the late 1850s. In 1847, Heke had asserted continuing Maori authority over the land. He opposed Grey's proposal for military settlers, and maintained that the land must remain with the mission families. Maori would continue to occupy it, use resources, and pass over it to the Bay, as before. Ten years later, Bell arbitrated a division of the lands between the King, Hamlin, Davis, Shepherd, Kemp, Clarke, and Baker families. On survey, the 3,600 acres granted by FitzRoy was revealed to contain 6786 acres, of which 5397 acres went to the mission families in 1859, and 1353 acres became surplus land.[400] None remained with Maori. Eventually, the subdivided lands were sold and the middle ground of the 1830s passed out of existence because it had been given no legal expression and no legal protection. As Nola Easdale put it:

> The land was subdivided among the mission progeny and with the passing generations sold to others. The old understanding between Maori and missionary was forgotten.[401]

Occasionally, FitzRoy's policy worked in favour of Maori. George Greenway sold his 200 acre grant on the Waikare River to CB Waitford in 1848. The grant excepted 'any portions belonging to Hokia', which Godfrey and Richmond had characterised as 'very trifling'. Nonetheless, Waitford found a strong Maori presence on 'his' land. In 1860, he informed Commissioner Bell that he had 'submitted to a large curtailment of the original purchase in order to prevent dispute with the Natives in their present excited state respecting their lands as well as in future'. He agreed to a reduced amount of land – 117 acres.[402] Bell made no mention of Waitford's concession in his report, stating instead that the land was shown on survey to be 117 acres.[403] So sometimes the perfectibility worked in favour of Maori, when they were able to carry their point. Such instances were rare, but it would be helpful to have a complete breakdown of all the OLC results. Rewa and his people were not so fortunate, for example, when Kemp left land out of his survey – Bell insisted that it be included and become surplus land.[404]

FitzRoy's policy of perfectible, unsurveyed grants solved many of his problems in the short-term, but left him with one remaining headache. What about the surplus land, which was to pay for colonisation? When he arrived in New Zealand, FitzRoy discovered that northern Maori were dissatisfied with government interference between them and their Pakeha. This dissatisfaction was 'greatly heightened among the natives by their having heard that the lands actually bought by settlers, but not to be retained by them under the new order of things, were to be taken by the Government and eventually resold to other parties'.[405] This would have been disastrous for FitzRoy's solution. It would have required early surveys and the introduction of settlers not chosen by Maori themselves. It would have overturned the oral agreements whereby Maori were still in occupation of the land, whether permanent, seasonal, or occasional, and plunk new Pakeha down in the midst of a large and well-armed community before 'willing and permanent cessions' had fully taken place. Surplus land, therefore, must wait until the grants had matured into genuine freehold titles and could be surveyed as such.

Governor FitzRoy did not completely abandon his initial understanding of the pre-Treaty transactions, as outlined by him to the House of Lords' Committee. He believed that the settlers had acquired a 'general right' with the title 'doubtful for a time', but that further time and work would eventually extinguish the persisting Maori rights. So he evolved a plan

[400] P Berghan, *Block Research Narratives*, p 465
[401] N Easedale, *Missionary & Maori: Kerikeri 1819-1860*, Lincoln, 1991, p 93
[402] CB Waitford to FD Bell, 21 May 1860, OLC 1, 202
[403] FD Bell's Report, 12 September 1861, OLC 1, 202
[404] Minutes of Court, Kororareka, 26 March 1858, OLC 1, 596
[405] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 624-625

to grant titles that were not fully, as he put it, British 'landed property'. His Crown Grants secured settler titles as against other Pakeha, but were to be left unsurveyed while they matured into absolute alienations. The surplus land was similarly left undefined and unallocated in the meantime. The plan was based on a conviction that the settler/Maori relationship was close and strong, that each Old Land Claimant would 'make his way by degrees', and gradually secure an actual permanent cession of pa, waahi tapu, and places of 'favourite resort', which were inside the grants but had not been sold. Time, civilisation, and the reduction of the Maori population would do this work. In the end, the settlers would have a surveyed grant that was actually a freehold title. By then, presumably, the Crown could move to define and sell the surplus land.

Although apparently well-intentioned, FitzRoy's policy was remarkably cynical. What he saw as perfectible, others saw as 'imperfect and probably invalid'. The Select Committee appointed to examine Old Land Claims petitions in 1856 concluded:

> The Governor nevertheless proceeded to issue grants for these lands, unsurveyed and imperfectly described as they are. In the notice published in the "Gazette" of May 23rd, 1844, announcing his intention, the reason adduced for the issue is the impossibility of getting the land surveyed without causing such a delay as would be ruinous to the parties interested. These grants are full of defects; such as recitals entirely the reverse of the facts, stating for instance that the quantities of land conveyed were those awarded by a Commissioner, while in fact the grants conveyed double or treble the quantities; or that recommendations had been made, while in the fact the claims had never been heard by a Commissioner; some of these purported to grant more land than had been originally claimed, and most of them contained no particular description of the specific portions of land intended to be conveyed.[406]

The latter point, at least, was part of a deliberate policy by FitzRoy to leave the grants unsurveyed and the descriptions imperfect until enough time had passed for the Old Land Claimants to acquire the full title to the land concerned. Litigation on the validity of the grants turned on particular legal points about them, and did not assess their effect on the ground in terms of Maori interests admitted to have survived within their bounds. It would be very helpful to have an analysis of the grants by a lego-historian, such as Professor Boast, to assess the legal meaning and effect of FitzRoy's grants, and to provide expert opinion on whether they were suitable vehicles for his policy objectives.

One thing is certain. The warnings of Dieffenbach and Commissioners Godfrey and Richmond had gone unheeded. In 1843, Dieffenbach wrote:

> The most vital point in regard to the native inhabitants, where they occupy part of claimed land, and are inclined to retain it, is that the extent of such disputed land should be fixed by legal titles and boundaries, and that they should be protected in the possession of it against the cupidity of the Europeans.[407]

FitzRoy's grants did the opposite of this. The year before (1842), Godfrey and Richmond had warned that Maori had not alienated the pa, cultivations, fishing grounds, and waahi tapu inside the bounds of their "absolute alienations" to settlers, and that the Government must take care to reserve them. 'If some express condition of this nature be not inserted in the grants from the Crown,' they wrote, 'we fear the displacement – under this authority – of natives…'[408] Again, other than repeating the limited exceptions in their awards, FitzRoy did the opposite and the Commissioners' fears came to pass. Maori continued to argue for and assert their own understandings of the transactions. But from 1844, they were dependent on the settlers continuing to respect their authority and rights. In particular, they had to rely on

406 Report of Select Committee, 16 July 1856, GBPP vol 10, p 623
407 E Dieffenbach, *Travels in New Zealand*, London, 1843, vol 2, p 144
408 Godfrey and Richmond to Colonial Secretary, Auckland, 2 May 1842, IA1, 1842/721

oral promises and agreements surviving new generations and new circumstances. Ultimately, they did not.

5.2 Grey

FitzRoy left New Zealand in 1846 with most (but not all) of his grants signed and issued. This was the situation awaiting George Grey when he arrived to take up his governorship in November of 1845. The immediate crises awaiting his resolution were the northern war, the financial chaos of an empty treasury and FitzRoy's debentures, and the latter's waiver of pre-emption. It was after the restoration of peace in the north, and as a result of his early interactions with the northern missionaries, the protectorate, and other Old Land Claimants, that Grey launched a frontal assault on FitzRoy's grants. The Colonial Office wanted the Governor to sort out the New Zealand Company's claims and resolve them favourably. It also wanted the government to obtain land for colonisation, and to prosecute settlement vigorously. At the same time, the Governor was to scrupulously fulfil the Treaty of Waitangi and act with justice towards Maori. It was not an easy task. He restored pre-emption, made peace with Heke, Kawiti, and the Nga Puhi tribes, and began the task of getting land for settlement. One of his primary goals was the amalgamation of Pakeha and Maori, living together in peace and equality, by which he largely meant the cultural assimilation of Maori and their retention of sufficient reserves for their traditional economic pursuits until these were replaced by participation in the new economy.[409]

One of Grey's primary characteristics, as noted by his biographer Rutherford and others, was a tendency to exaggerate his successes by discrediting his predecessors. FitzRoy and Grey engaged in a war of words in 1845 to 1847. At stake, for Grey at least, was the continuing support and patronage of his Colonial Office bosses. Drawn into the affray on FitzRoy's side were Chief Protector Clarke and Henry Williams. In addition, Grey wanted to be master in his own house. The Chief Protector was unpopular with settlers, and very identified with FitzRoy's policies (many of which he had originated). Nor did Grey think he actually *needed* the protectorate to manage Maori affairs – whether Maori needed protectors was not something he seems to have considered. Instead, he thought the protectorate to be expensive and, he told the Colonial Office, negative in its impact. He wanted schools, hospitals, and useful institutions in pursuit of his goal of amalgamation.[410] For all these reasons, the Colonial Secretary informed Clarke in February 1846 that the protectorate would be abolished. The government would spend 'such portion as the Colony can afford of the large sum that establishment has hitherto cost annually upon schools, hospitals, and other Institutions for the Natives; as such a change in His Excellency's opinion will produce more practical and lasting benefit for the Aborigines than are likely to flow from the Protectorate Establishment as at present constituted'.[411]

The Governor offered to transfer Clarke to the Colonial Secretary's department, where he would report to the Secretary with a salary drop of £150 per annum. His son, also a protector, was offered the post of interpreter. Clarke wrote furious letters to the Colonial Office. He refused to accept the demotion, thereby saving the Governor from 'resorting to other Measures to remove from his Government an individual whose misfortune it may be to differ from him in opinion as to the policy which should be observed towards the Natives'.[412]

[409] G Phillipson, *Northern South Island*, Part 1, pp 128-132; G Grey to Earl Grey, Auckland, 9 July 1849, CO209/72; G Grey to Earl Grey, Wellington, 7 February 1852, CO209/102
[410] J Rutherford, *Sir George Grey*, pp v, 95-100, 119-141
[411] A Sinclair, Colonial Secretary, to G Clarke, 5 February 1846, qMS-0464, p 256
[412] G Clarke to Stanley, Auckland, 24 February 1846, qMS-0464, p 272

That difference of opinion was waged in a propaganda war in which Clarke was an easy target. All Grey had to do was suggest the Secretary of State that the protector had used his position to persuade the Governor to increase his land grant.[413] But Grey also developed a theory that the missionary and other large Old Land Claims had caused the northern war.

On 30 March 1846, defending himself from the outgoing Chief Protector's criticisms, Grey advanced the explanation later to be famous in his June "Blood and Treasure" despatch. Clarke wrote in his protest that the Bay of Islands chiefs had supported the Old Land Claimants, and considered the government's restriction of them to the limit prescribed by the ordinance (2560 acres) to have despoiled them. Grey challenged this, and though he blamed the missionaries' purchases, the real target by implication could as easily have been the Crown's acceptance of the transactions as 'sales' and its then-known intention to keep the so-called surplus:

> All Mr. Clarke's views on this subject must be received with much caution. He had been a large land purchaser, together with some few of the Church missionaries; and, although these are their doctrines, the most influential chiefs in the part of the country alluded to gave me a totally opposite account of their feelings and sentiments. I believe that the desire to recover from some of the missionaries the large tracts of land they claimed was the cause of the revolt of many of the natives. I believe the large pretended purchases of some of the missionaries to have been the chief cause of the disaffection of the northern chiefs.[414]

In part, Grey developed this explanation in responding to earlier attacks on the Roman Catholic missionaries. FitzRoy, Clarke, and the CMS had charged the Catholics with causing the war. Grey's motives in attacking the reputations of the northern missionaries and the Chief Protector were partly political, as outlined above. Most historians have condemned him for it, both in terms of his suggestion that the Old Land Claims caused the war, and his subsequent attempt to get FitzRoy's grants overturned. In particular, Grey and Selwyn's demand that Williams and the others surrender their grants in 1847 has drawn strong criticism.[415] The present author, in a thesis based on research conducted in the early 1990s, also saw Grey's motives as political in nature.[416] Wyatt has been something of a lone voice, in suggesting that Grey might have been correct.[417]

For a start, three matters have to be separated. Firstly, Grey accused the missionary (and other large) purchasers of causing the northern war. This is a complicated question, and not one that can be answered in the compass of this chapter. If Grey was right, then it was not the missionaries whom Maori wanted to attack. As Heke noted above, they wanted to keep their Pakeha and the old arrangements. If this was a cause of the war, and it seems likely to have been one of several causes, then it was the Crown's transformation of the pre-Treaty transactions into freehold titles, and its stated intention to keep the surplus, that was actually the contributing factor. Secondly, there has been a lot of discussion by biographers and historians about the events of 1847, and the battle between Grey, Selwyn, and the CMS London Committee on the one hand, and Williams, Clarke, and some CMS missionaries on the other, over whether the missionaries would voluntarily surrender their grants to the Crown. The mission itself was split on the issue and the legacy of bitterness had an effect on it for years to come. This issue, whilst important as part of the context in which Grey formed

[413] G Grey to Gladstone, 23 June 1846, GBPP vol 5, p 582
[414] G Grey, marginal comments on G Clarke to Colonial Secretary, 30 March 1846, GBPP vol 5, p 563
[415] See, for example, J Rutherford, *Sir George Grey*, pp 126-141; WP Morrell, 'Selwyn's Relations with the Church Missionary Society', in W Limbrick, ed, *Bishop Selwyn in New Zealand*; N Benfell, 'Martyr to the Cause? Henry Williams and his Tribulations', in R Glen, ed, *Mission and Moko*. See also B Rigby in Moore, Rigby & Russell, *Old Land Claims*, pp 36-40
[416] G Phillipson, 'The Thirteenth Apostle', pp 302-329
[417] P Wyatt, pp 220-257

his view of the pre-Treaty transactions, need not be recounted at length here. There are many secondary accounts that can be consulted, and it was mainly a side-show in terms of the key issue for this report.

That key issue is Grey's attack on the fundamental basis on which the pre-Treaty transactions had been turned into Crown grants of freehold title. They were not, he argued at length for some years, absolute alienations. After considering Grey's despatches and writings on the pre-Treaty transactions, and an analysis of his principled objections to them, I have to revise my 1992 conclusions on Grey's motives.[418] I did not, at the time, see the fundamental flaw in the Old Land Claims that Grey so clearly saw and (unfortunately) so ineffectively acted upon. Nor was I aware of the extent to which FitzRoy essentially had the same view, and had come up with a system of perfectible grants to try to leave it to time and 'private arrangements' to achieve a 'willing and permanent cession'. It is to Grey's views on this matter, developed from 1846 to 1849, that I now turn. They are the crux of this chapter, and of the Crown's responsibilities as the government saw them in this crucial period when a fair solution might yet have been found.

Grey's views on the subject were first expressed in 1846. He began to make comments about the missionaries having made 'pretended purchases' (March 1846), and 'large claims to lands, *said to have been* purchased from the natives (and which claims will yet give rise to native wars, if not to disputes between the Government and the natives)' [emphasis added].[419] In late June, he sent four despatches in five days (21-25 June), launching his first main assault. Again, the focus was still on the missionaries and the role that their dubious purchases had played in the northern war, or as a likely cause of war in the future. On 21 June, he attacked both FitzRoy's waiver purchases and his OLC grant extensions. Grey argued that in both cases, the land was still occupied by Maori and that settlement was not sufficiently close on the ground for them to have actually been dispossessed, with all that would entail from a large, well-armed Maori population. He argued that the Hutt war was the kind of conflict that would inevitably ensue.[420]

On 23 June, Grey transmitted Commissioner Godfrey's 1844 objections to the OLC extensions. These included, as described above, the view that some claimants had made arrangements with unsatisfied right-holders, promising payments later if they did not show up in court to object. Also, the size of the original awards had not just been a result of the limit in the Ordinance – importantly, Godfrey considered the awards to be all the claimant had legitimately acquired. Grey also repeated the view that closer occupation of the grants, which were in fact occupied by Maori, would lead to contests and war. In particular, those Maori with legitimate rights who had not been paid would 'invariably spring up and contest the purchase when Europeans go upon the land. This evil may slumber for years…' He also included an attack on Clarke, who had benefited personally from the extensions, after advising the Governor to dismiss Godfrey's objections.[421]

On 24 June, Grey switched the focus of his attack to the dispossession of Maori. Taking Kemp's extended award as an example, he noted that the rights of all Maori interested in the land should have been considered before the grant was made. This was especially so because there were no reserves of pa and cultivations 'which they may have had on those lands, or of any reserves which might be necessary for themselves or their descendants'.[422] It was this criticism of Kemp's award which led to FitzRoy's admission that he knew that

[418] G Phillipson, 'The Thirteenth Apostle', pp 302-329
[419] G Grey, marginal comments on G Clarke to Colonial Secretary, 30 March 1846, GBPP vol 5, p 563; G Grey to Stanley, 2 June 1846, GBPP vol 5, p 552
[420] G Grey to Gladstone, 21 June 1846, GBPP vol 5, p 576
[421] G Grey to Gladstone, 23 June 1846, GBPP vol 5, pp 581-582
[422] G Grey to Gladstone, 24 June 1846, GBPP vol 5, p 591

Maori were in fact still in occupation of their pa, waahi tapu, and favourite places inside the grants, and that this had been the subject of mainly oral agreements in the original transactions.[423]

On 25 June, Grey sent his famous 'blood and treasure' despatch, which so deeply distressed the missionaries, but in fact it said nothing that he had not already been saying in the earlier despatches. He informed Gladstone that the extension of the OLC grants and the pre-emption waiver grants were 'not based on substantial justice to the aborigines', nor to settlers, and would require 'a large expenditure of British blood and money' to put the grantees in possession.[424] The Old Land Claimants were outraged, and pointed out that they had been in peaceful possession of their claims for many years. Grey definitely over-stated his case here, but the theme of anxiety which ran through his letters for some years, that closer settlement would lead to conflict, was a genuine one.

In any case, the missionaries did not actually find out about Grey's accusations until the following year (1847). Benfell has outlined the sequence of events in which the London Committee of the CMS responded to Grey's accusations by asking the Governor and Bishop to adjudicate on what land the missionaries should be allowed to keep. Grey declined to act officially but used Selwyn to try to get the missionaries to surrender their grants in August 1847.[425] In the meantime, Grey had already decided to overturn the grants through the courts. In April, he informed the Secretary of State that he had decided to test the grants in the Supreme Court, reminding Earl Grey that:

> The general tenor of my Despatches…was to acquaint Her Majesty's Government that, at the time I wrote them, the natives were yet left in ignorance that these large tracts of land had been granted to Europeans, and that the paucity of the European population had prevented any actual possession being taken, or, at least, of any actual use being made of these tracts of country; but that I feared, that so soon as the population spread out over the country, and new settlers went upon these lands, sanguinary contests would take place.[426]

In August, however, he tried to secure a voluntary settlement instead. It would not affect the largest grants, which had been to Clendon and others, but it would deal with the particular large missionary grants. On 30 August, Grey asked the Bishop to secure the voluntary surrender of all land in excess of the original Godfrey/Richmond award. Importantly, this land would be vested in the 'original native owners or their heirs', not the Crown. Grey reminded Selwyn that the grants were, 'to the best of my deliberately informed judgment, opposed to the rights of the natives'.[427] Maori would therefore be the beneficiaries of the adjustment. Missionaries like Taylor were happy to pursue this course. But the whole question became caught up in the publication of Grey's "Blood and Treasure" despatch, and the determination of Williams and others to defend their honour. Not a jot of land would be returned to Maori until the Governor either proved or withdrew his accusations. Since Grey either could not or would not do this, and Selwyn was unable to force a settlement, the solution of a voluntary surrender failed. Grey returned to the idea of testing the grants in the Supreme Court, which he did in January 1848.

It should be noted that by now Grey had a better knowledge of the Maori view of the transactions. Voluntary surrenders or even the invalidation of the grants would only affect the large ones. Many other Bay of Islands settlers had grants for the awards recommended by the

[423] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, p 626
[424] G Grey to Gladstone, 25 June 1846, GBPP vol 6, [1120], pp 78-79
[425] N Benfell, 'Martyr to the Cause? Henry Williams and his Tribulations', pp 97-109
[426] G Grey to Earl Grey, 17 April 1847, GBPP vol 6, [892], p 27
[427] G Grey to Bishop Selwyn, 30 August 1847, GBPP vol 6, [1136], p 209

original Commissioners. At the beginning of August 1847, Grey wrote to Earl Grey that he suspected the transactions were in fact personal and limited ones, not absolute alienations:

> I should here state (as will be seen from the accompanying deed of a sale to Mr. George Clarke), that the natives frequently only sold the land to the missionary and his children for ever, and that it is by no means clear that they understood that they gave an absolute title to the land such a Crown title conveys, and that as these lands were, in many instances, not sold until it was known that emigration to New Zealand was about to commence, it was to be anticipated that so soon as the natives had expended the trifling and comparatively useless property they had acquired, they would repent the bargains they had made, form a bad opinion of the missionaries, and become discontented at seeing their lands claimed by a missionary who had no capital to cultivate them himself, but who by claiming them, destroyed their utility as a field of emigration, and shut the natives out from a market for their produce. I attach the more weight to the probable soundness of these arguments, from the fact of their being acquiesced in by some of the missionaries of the Church Missionary Society, and by the whole of the missionaries of every other denomination but the Church of England.[428]

Again, at the end of September, he stated that he wanted to set the land grants aside because they were ‘opposed to the rights of the natives, who, I believed, might yet in some cases be the rightful owners of the land’. Tamati Waka Nene, the Crown’s ally, had raised the issue with him. Bay of Islands Maori wanted to occupy certain lands ‘which they claimed as their property, although it was asserted that this land was included within the boundaries of one of the Church Missionary land claimants’. Grey checked with the Surveyor General, only to find ‘from that officer that the whole of the grants had been drawn in such a form that none of the officers of the Government knew what lands had been conveyed by the Crown…’[429]

These were themes that Grey was to return to the following year, after the defeat of Selwyn’s initiative and a rebuff from the Supreme Court. In June 1848, the Court delivered its decision in the Queen v Clarke. The government’s case had been based on the legal point that FitzRoy acted in contravention of the Land Claims Ordinance, and therefore his grants were not valid. There was no reference to the content of the grants or the nature of the original transactions. Clarke did not contest the case, and left it entirely to the Attorney General for the Crown, and the court. The judges’ decision was that a Crown Grant was the best and highest title that a subject could have to a parcel of land. Other than some specific legislation, nothing could set it aside. FitzRoy’s grants were legal.[430]

As soon as the decision was announced, the Governor made it clear that he planned to challenge the whole substance of the grants, and the nature of the transactions on which they rested. In 1846 he had referred to ‘pretended purchases’. In 1847, he had mentioned his view that the transactions were personal and conditional. Now, in the wake of the Supreme Court decision, Clarke’s lawyer, F Merriman, wrote to inform him of the Governor’s decision to appeal to the Privy Council.

> The Governor says that the Judges have overlooked the most essential points in the case!!! He also says that you only purchased a life interest from the Natives and not the fee simple. I much fear that His Excellency allows his personal feelings to blind his judgement. This is the mildest way of looking at the case.[431]

Henry Williams soon found out about this, and wrote to Earl Grey about it. He claimed that this was a ‘new objection’, and does not seem to have been aware of Grey’s earlier doubts on the matter:

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[428] G Grey to Earl Grey, Auckland, 2 August 1847, GBPP vol 6 [1002], p 110
[429] G Grey to Earl Grey, 1 September 1847, GBPP vol 6 [1002], p 117
[430] J Rutherford, *Sir George Grey*, pp 138-139
[431] F Merriman to G Clarke, Auckland, 10 July 1848, G Clarke, Letters & Journals, vol 2, qMS-0464

> Since the judgement of the Supreme Court was given, June 24th, 1848, in favour of the Crown grants issued by Governor FitzRoy, it has been stated, though not officially to me, that His Excellency has put forth as grounds for his appeal to the Privy Council, a new objection to the original deeds signed by the natives, "that they signed they knew not what – that the missionaries and their children had only a life interest in those lands."…I merely state that the deeds signed are in the native language – copies of which are in the Colonial Office, with translation, and these original deeds were thoroughly examined by the Land Commissioners, who did not discover this objection. [the very point!]
>
> The wording of the deeds is as follows: -
> "We, the undersigned chiefs, let go and sell to , to his children, to his offspring, for ever, for ever, for ever, to dwell upon, to work, to sell, or to do what they will with, that piece of land called ".'[432]

Although the Attorney General was talking of an appeal in July 1848, Grey did not actually write to the Colonial Office to ask for one, as far as I have been able to discover, until 17 October 1848. The trigger for his taking this action may have been the flare up of conflict over land at the Bay of Islands, involving Captain Irving and Richard Davis (discussed above in 4.5.1). Busby's letter to the government is dated 12 October 1848. Grey's file note, and his specific letter to Earl Grey about it, are dated November. The information may well have been reported to him much earlier, though he did not mention it in his 17 October despatch. The pertinent details were that the contest between Heke and his people on the one hand, and Busby, Irving, and Davis on the other, involved (so Grey believed) waahi tapu inside Crown granted land. It later turned out that only the Davis case involved a waahi tapu, although Grey still believed it an issue in the Busby/Irving case. Also, in Busby's account of the incidents, he reported how the Waitangi people came to him about it, because the transaction was supposed to have been with no one other than 'myself my children and my relatives'. To them, it did not matter that the land had changed hands twice in a British legal sense since their arrangement with Busby. The land was still his, it was still theirs, and it would not be Irving's.[433]

In any case, Grey wrote to the Colonial Office on 17 October 1848, setting out his detailed reasons for why FitzRoy's grants must be set aside, and Maori interests protected. He set out his view of the pre-Treaty transactions as conditional and based on Maori custom. The letter is critical to understanding Grey's reasoning, and appreciating the degree to which he espoused the idea that the pre-Treaty purchases were not absolute alienations, and that the Crown had a duty to ensure that Maori rights were therefore protected. Since it has not been published in the Parliamentary Papers, I reproduce most of it here:

> I entirely concur in the arguments upon which the Attorney General relies in support of his opinion, in favour of an appeal, but I think that still stronger grounds may be urged as rendering it probably a duty upon behalf of the Crown, towards the Aboriginal population of this Country, to do its utmost to support their rights in this case, which will establish a precedent for the disposal of a very large amount of property which, in as far as my own power of understanding the subject goes, the Crown ought to take from one class of its subjects to give to another.
>
> The reasons which have led me to form these conclusions are:
>
> That previously to New Zealand being declared a British Colony, many persons had made purchases or pretended purchases of lands from the Natives, which were conveyed by Deeds of various forms, the deeds frequently conveying the lands named only to the original purchasers, his children and their relatives.
>
> The Titles so obtained were in all cases wholly distinct from a Crown Title in a British Country; the lands purchased were, I believe, in no instance surveyed, the seller produced no Title deeds, and in no way proved that he was the real owner of the property.
>
> No person protected the rights of minors or absentees. The purchaser had no guarantee that he would be supported in possession of the property, and in the vast majority of the cases, the purchases or

[432] Henry Williams to Earl Grey, Paihia, 1 November 1848, GBPP vol 6 [1120] No 35, p 86
[433] J Busby to Colonial Secretary, Victoria, 12 October 1848, G30/14, p 959

pretended purchases so made were mere speculative bargains, and even in the best cases for the purchaser, the title could not I think be regarded as more than simply an adoption into the tribe, and a right of holding the land upon the same terms as the Natives themselves hold lands. Clearly a barbarous people in their condition, could have no notion of a tenure of land, other than that recognized in the Country.

The contracting parties to these bargains were also but imperfectly acquainted with their respective languages, and the Natives possessed that reckless desire of immediately acquiring European Goods, with that perfect disregard for the future which is common to all barbarous minds.

When New Zealand became a British Colony, a mode of adjusting the various claims to property which had arisen was provided by a local Ordinance **, by which the Governor was empowered to appoint Commissioners to hear, examine, and report on claims to Grants of land in New Zealand, which Commissioners were to be guided by the real justice and good conscience of the case, and they were authorized to recommend under certain restrictions, that grants of land, to a certain extent, should be made to the claimants, but they were not to be permitted to recommend a grant of land in excess of that extent unless specially authorized thereto by the Governor, with the advice of the Executive Council. Other checks were by the same Ordinance imposed upon the authority of the Commissioners.

The Government in assenting to the Law I am referring to stepped in between two classes of its subjects to interfere arbitrarily for the settlement of certain questions.

The Europeans put forward certain claims to lands, and perhaps all that the Crown ought, in strict justice to have done, would have been to have issued to the Europeans in such cases, as it thought proper, a confirmatory Crown Title which would have simply barred the right of the Crown to such lands, but which would have given no guarantee or warranty of the Title; so that the real owners, or those who were minors, or absent at the time of the Sale, might have preserved intact any rights which they had not parted with.

It was however determined and I think very wisely to create a Court for the settlement of these claims, but from the foregoing considerations I think it clear that the various requirements made by the Law, which were to be fulfilled before a grant could be issued, were intended in a great degree to prevent the Crown from unjustly, or without due consideration, taking the Natives' property from them, and giving it to an European.

This point is a very important one in the cases now under consideration, because as the requirements demanded by the law were in many instances to be fulfilled by the Government, I understand the Supreme Court to hold, that as it did not rest with the grantees to fulfil these requirements, therefore – as the omission was no fault of theirs nor procured by them – the grants ought to be held good, notwithstanding that a most important requirement of the law was not fulfilled, whereas I cannot bring myself to concur in this doctrine.

It might have been good, if the Crown had been disposing of its own property, but it was disposing of the property of others and before it did this certain things were to be done, which meaningfully ought to have been done, for the protection of those whose property was to be granted away.

If therefore the Government omitted to do these things I cannot help thinking that those whose property was thus disposed of are entitled to the benefit of the omission, and that the grant is void, and that it is not sufficient to say that he who takes the property was not the person who was required to fulfil certain conditions, or to take [word unclear] that they were fulfilled, and that therefore notwithstanding the nonfulfilment of these, the grant is to be good.

I can indeed on the contrary come to no other conclusion, than that the intention was that the property should not be taken from the original owners until certain conditions had been fulfilled, and that therefore until these were fulfilled, any taking of it from the Natives Owners was an illegal taking.

The next circumstance connected with these cases which make me think it desirable that the most mature and deliberate consideration of the highest Court should if practicable, be given to them is that the cases were originally heard publicly by the Commissioners appointed for that purpose, who in no cases recommended that a grant for more than two thousand five hundred and sixty acres should be made; the awards of these Commissioners were approved by the Governor for the time being in the manner required by law, and the nature of the awards and the Governor's confirmation of them were publicly notified in the most formal manner in the Government Gazette, so that the question of property appeared in conformity with the Law, to have been set entirely at rest.

…I ought to add that I have heard it maintained here, that the cause of the Maoris requires no further interference on behalf of the Government for the following reasons.

Firstly, that the Commissioners who originally heard the claims, reported in the majority of instances that the purchase made by the European, was a bonâ fide purchase.

Secondly, that if the Crown has wrongfully granted away lands the property of any Natives, they can apply themselves to the Courts of the Country, who can decide which title is the best, the Crown Grant held by the European, or the alleged native title.

On the first of these points, I should state, that I understand the report of the Commissioners, that the European had made a bonâ fide purchase, to amount simply to a statement that the transaction had not upon the part of the Europeans, been a simular [an archaic adjective meaning fraudulent or counterfeit] one; and it will be seen from the letter of Colonel Godfrey, the original Commissioner, dated 8th June 1844, which is enclosed in my despatch No 65 of 23rd June 1846, that when he found that the Government were about to issue the grants now in dispute, he protested against the course about to be pursued, warning the Government that he had frequently regulated the amount of the grants he had recommended, by the quantity of land, which making fair allowance for the claims of opposing native rights, it had appeared probable to him that the Native Sellers were free to dispose of, and for other reasons, he at the same time warned the Government that the proposed course could not be pursued without great injustice to the Naitves; as the tracts of land claimed were also extremely extensive, had never been surveyed, were only defined by imaginary boundaries; which were, it is believed in nearly all instances wholly unknown to the Commissioners, it was clearly impossible therefore that they could ascertain whether or not a valid purchase had been made of such tracts, and the papers to which I am referring will show that they did not pretend to have done so.

On the second of the foregoing points, I should remark

Firstly, that the natives are too poor to contest their rights in a Court of Law.

Secondly, that they have no knowledge that they possess such rights, against the Crown, nor of the steps by which they would enforce them.

Thirdly, that they cannot have much confidence in the decision of our Courts on such a subject, nor do I think many of them would now resort to them, after having come in the first instance at their own cost before the Commissioners whose decisions have been set aside, without any notice whatever, having been given of the reopening of cases long previously decided.

Fourthly, that such questions would be submitted only to an European Jury.

Fifthly, that there is no one in the Country to protect the rights of minors, and other similar persons, and – Lastly – that from the undefined nature of the boundaries named in the grants, in the majority of cases, no one knows what land has been granted.

Upon the whole, no better mode of dealing with this case has presented itself to my mind, unless it should be opposed to some regulations with which I am unacquainted, than that of the Government engaging on behalf of the Natives … Counsel in England, to be paid from funds applicable to Native purposes, and permitting him after a full consideration of the papers connected with the case, more particularly of the enclosed Memorandum of the Attorney General, and of my despatch of the 23rd June 1846, to determine whether the interests of the Natives now demand that the case should be carried before the Judicial Committee and whether there is a fair prospect of carrying it successfully before that tribunal, and if he should be of opinion that the appeal ought to be prosecuted on behalf of the Natives, that then this Act of justice should be performed, all the requisite steps prescribed by law having been already taken in this Country.[434]

To summarise, Grey argued that the Crown had a duty to support Maori rights in this case, otherwise a very large amount of land would be taken from them by the Crown, and vested in settlers. This was his cardinal conclusion. In justification, he set out the following features of the pre-Treaty transactions as he had come to understand them:

- They were 'pretended purchases' with deeds which only conveyed the land to the original purchaser, his children, and family
- The majority of these pretended purchases were speculations, and none of them were recognisable by British law
- In the 'best cases', the title acquired was in fact an adoption into the tribe, and a right of holding land upon the same terms as Maori held land
- Maori could have had no understanding of a tenure of land other than their own
- In any case, Maori would have recognised no land tenure other than that of their own country

[434] G Grey to Earl Grey, Auckland, 17 October 1848, G30/14, pp 962-983. Due to its importance, this letter is reproduced as Document 14 in the Appendix.

- The contracting parties were imperfectly acquainted with each other's languages

The pre-Treaty transactions, therefore, were governed by Maori land tenure, and conditional in the sense of conveying something only to a particular person and family. They involved an incorporation of the settler into the tribe, to hold land on the same basis and law as the rest of the tribe. This was a more sophisticated and deeper understanding than that of FitzRoy, although both Governors came to the same conclusion: Maori had not intended to make absolute alienations of land, and had not in fact done so. FitzRoy's solution – unsurveyed, perfectible grants – were unjust to Maori and had left Grey with a serious problem.

Grey argued that the government, in strict justice, should have issued some kind of title that would debar the Crown from claiming the land, but which did not actually guarantee settlers a title. That way, the 'real owners' – Maori – would have preserved intact any rights with which they had not parted. (FitzRoy's rejoinder, of course, was that this was what he had actually done, but for the purpose of letting settlers continue to extinguish Maori interests privately.) Grey also noted that not only were the transactions not absolute, but there were many Maori with rights who were not consulted or paid. Their interests also had to be protected. The Land Claims Commission, in Grey's view, had done nothing more than determine that the grantees had not been dishonest or fraudulent in their transactions, not that there had actually been valid alienations. In any case, with land unsurveyed, boundaries unknown to the Commissioners, and very large tracts of land at issue, how could the Commissioners possibly have known 'whether or not a valid purchase had been made'. According to Grey, the papers of the Commission showed 'that they did not pretend to have done so'.

In all, it was a damning indictment of the Crown's handling of the pre-Treaty transactions, and a recognition that something must be done to avert injustice to Maori. Otherwise, as Grey put it, the Crown would simply have taken land unfairly from one class of its subjects and given it to another. He accepted that Maori could not afford to contest a whole series of the Crown's grants in the New Zealand courts, even if they were inclined to use that kind of forum. Instead, he envisaged a Privy Council case in which Maori would have representation, and in which the broad issues in his despatch would be traversed.

The Governor followed up this October despatch with additional arguments, following the Irving and Davis incidents. Major Bridge, the Resident Magistrate, thought that Heke 'now bears the character of a Freebooter rather than a Patriot & the Champion of his Country, as he was once considered'. He wondered if it might be possible to take some form of action against him. Grey referred Busby's Crown Grant to the Attorney General for a legal opinion. Swainson replied that the boundaries were in fact impossible to determine from the Grant. Grey's decision on the matter was that the Crown had never acquired the kind of interest in the land that actually enabled it to grant it. Given that premise, and also that the grants had been extended beyond what had been recommended by the original Commissioners, the government simply would not accept them as valid. Added to that, the Crown would not allow Maori to be dispossessed of their waahi tapu in circumstances that allowed them to be desecrated. He therefore instructed that the Resident Magistrate prosecute any European trying to occupy land disputed by Maori in such instances.[435]

In a despatch to Earl Grey of 3 November, the Governor pointed to these incidents as proof of the predictions in his Blood and Treasure despatch. He again reiterated Godfrey's criticisms of FitzRoy's actions. He stressed that Maori had not intended to alienate their places of occupation and waahi tapu, and that the Commissioners had known this. He also reminded the Secretary of State that he had offered rewards for the surrender of the grants,

[435] Governor Grey, File Note on Bridge's letter, 15 Nov 1848, IA1 1848/2600

but without success. 'I am also quite satisfied,' he wrote, 'that the Natives never intended to sell their burial places, and that had the decision of the Commissioners been carried out [that is, surveys and identification of boundaries on the ground, certified by a protector] this would have been made apparent.' Such outrages would either lead to war or to injustice for Maori. The Governor thought it more important than ever to appeal to the Privy Council as 'an Act of Justice to the Native Race'.[436]

As it turned out, Major Bridge did not prosecute Irving. Nor did he attend the meeting with Heke, because he felt the latter's summons was an affront. Heke sorted the matter out himself in January 1849 without Bridge's participation. In reporting the outcome to Earl Grey, the Governor noted that Busby still claimed to own the waahi tapu next to the proposed boat building yard. The younger members of the tribe were not inclined to accept this view of matters, and Grey warned that it could lead to further disturbances. Maori did not seem inclined, he said, to 'appeal to the British Authorities on this subject', ignoring the fact that they had done so once and Bridge had declined to meet with them. In any case, Grey argued: 'as far as I can understand the case I think that by the grant of this land to Mr Busby the Natives rights were injured'. Grey felt that he was caught in a bind. If he did nothing to interfere and suppress conflict over these issues, then Maori would think he was afraid of them, rather than trying not to act unjustly. On the other hand, if he did intervene in such affairs, he thought it would escalate 'to renewed disturbances of a very extensive and troublesome kind'.[437]

The outcome of this bind was that Grey in effect did nothing on the ground and instead tried another case in the Supreme Court to see if a different, more faulty grant could be overturned. This time, he used the grant of Kawau Island to James Beattie. Commissioners Godfrey and Richmond had recommended that Beattie should not get a grant, and this award was gazetted by Shortland. In 1844, however, FitzRoy reversed their decision and issued a Crown Grant for 5,000 acres. Beattie had since on-sold his title to John Taylor. The Crown challenged this grant on a number of grounds, but the Supreme Court once again upheld the validity of a Crown Grant issued by the Governor. Grey's loss in the Queen v Taylor convinced him that another strategy had to be tried. He decided not to wait for the two years or so that it would take to appeal the Queen v Clarke to the Privy Council. Even if the Crown won the appeal, it would mean that two years had gone by with matters 'as far from a general settlement as ever'.[438]

Although he was not sure if this was the kind of thing that needed to be reserved for the British Parliament, Grey decided to act in the wake of the Queen v Taylor, and introduce legislation in New Zealand. Advised by Swainson, the Governor's view was that the court cases did nothing more than prove the validity of the two grants involved. There were so many different problems with other grants that they might fail, or a different bench of judges might concur with the contrary opinion of the Crown's law officers. Settlers would still not have valid titles, therefore, even if the government accepted the cases as resolving the issue. On the other hand, Grey claimed that he was reluctant to act because it would mean interfering in private property, and once and for all 'taking land from one class of the Queen's subjects [Maori] to give it to another [settlers]'. It would also cost a lot of money and possibly disadvantage a lot of people. In the end, it was necessary for there to be a 'speedy general and conclusive settlement of the whole question'.[439]

That being the case, Grey introduced the Crown Titles Bill in the Legislative Council on 15 August 1849. It was enacted as the Ordinance for Quieting Titles to Land in the

[436] G Grey to Earl Grey, Auckland, 3 November 1848, G30/14, pp 947-953
[437] G Grey to Earl Grey, Auckland, 12 February 1849, G30/14, pp 889-893
[438] G Grey to Earl Grey, Auckland, 24 July 1849, GBPP vol 6 [1280], pp 1-3
[439] ibid

Province of New Ulster (Crown Titles Ordinance) on 25 August. In his speech to the Council, Grey outlined how he had tested two of the worst grants in the courts and both had been upheld, but there was still a need to legislate for all the rest. He also made a cryptic comment that the government was doing a lot more than simply validate the titles concerned, and this was because doubts different than the ones he had expressed (which had included Godfrey's criticisms) hung over the validity of 'nearly all the grants that were issued in the early days of the colony'. This doubt was serious and called into question nearly all the Old Land Claim grants. But Grey would not specify what this other doubt was – he left it hanging. Given his recitation of everything except his doubt about the validity of the entire class of transactions, as expressed in his 17 October 1848 despatch, he may have been referring to that. It is not possible to say with certainty, since Grey did not say what he meant.[440]

In any case, the Ordinance was designed 'so to adjust the question as to inflict the least possible amount of injustice on the natives, at the same time that it affirmed the validity of the Crown Grants which had been issued to Europeans'. This was a curious wording, and seems to mean that it was impossible to avoid some injustice for Maori – again, this may reflect Grey's view that really none of the titles were truly valid. One of the main features of the Ordinance was that a Supreme Court judge would investigate whether Maori title had truly been extinguished. In cases where it had not, the judge could award monetary compensation to Maori. The government would pay it up front but the grantee would eventually have to meet the charge. In 'extreme' cases, where Maori refused to accept compensation, and 'forcibly retains possession of his lands which have been granted to another party by the Crown', Maori would be able to keep the land. The European grantee would receive compensation in the form of Crown land elsewhere.[441] Provision was also made to reserve waahi tapu and other pieces of land for Maori, but only where these were mentioned in the original grant. A Commissioner would investigate these reserves and ensure that they were properly defined and surveyed.[442]

On paper, this looks like it might have been a relatively fair solution for both Maori and settlers. Nga Puhi would have at least an opportunity to revisit the decisions of the original Commissioners, and also the extended grants issued by FitzRoy. They would have to prove their case to a Supreme Court judge, and Grey had already noted that Maori did not have the resources to pay for litigation. How they would pay for it, and whether the government would provide assistance, was not specified. A lot would depend also on the ability, knowledge, and cultural empathy of the judges. With Chief Judge Martin, it might have worked very well. Ultimately, if they insisted, Maori could regain the land itself. In other cases, where they wanted to keep their settler, they would have to accept monetary compensation set by the judge. Potentially, arrangements of benefit to both Maori and settler would be affirmed, while others could result in the return of the land to Maori. With Grey's enormous Crown purchase programme underway, the Crown would have no problem compensating settlers with land elsewhere. No settler would ultimately lose out, although they might have to move.

Two years later, the news arrived in New Zealand that Earl Grey had sent the Queen v Clarke to the Privy Council on appeal. The case does not appear to have been conducted in the way Grey wanted in his October despatch. There was no reference to the broad question of whether absolute alienations had taken place, and whether any grants at all could therefore be valid. Instead, the comparatively narrow legal point decided by the Supreme Court was the focus of the Privy Council, which overturned the Supreme Court decision. According to

[440] Governor Grey's opening address, 15 August 1849, GBPP vol 6 [1280], pp 28-30
[441] G Grey to Earl Grey, Auckland, 3 October 1849, GBPP vol 6 [1280], p 67
[442] Crown Titles Ordinance, s12, GBPP vol 6 [1280], p 70

Rutherford, the law lords were wrong in both the facts and the law.[443] The Privy Council decided:

> …whatever the authority of the Governor might be, this is not a grant professing or intended to be made, as a matter of bounty or grace, from the Crown, but it is only intended as a confirmation of that report, which was made under the authority of the Ordinance. The grant is founded upon the report, and the report is founded upon the Ordinance. It is clearly contrary to the terms of the Ordinance, and, therefore, the grant must fall, and the judgment upon the scire facias must be for the Crown.[444]

In any case, the decision had no practical effect. Clarke turned up a few years later at the Bell Commission with his invalidated Crown Grants and received a new title for the same land anyway (or, rather, for even more land). Since Grey had already passed the Crown Titles Ordinance, the Privy Council decision was irrelevant. There was now a mechanism to validate all the Old Land Claim grants. As noted above, Commissioner Bell took the view that the 1849 Ordinance had 'given validity to all Grants'. His responsibility was just to cancel and replace them under the authority of the new Act.[445] Carleton suggests that the Privy Council overturned its own decision anyway in a later ruling on another case.[446] The point is an academic one.

The problem for Grey was that having (apparently) won in the Privy Council and legislated a potentially fair solution for both settlers and Maori, he had in fact achieved nothing. Armstrong and Sinclair, in their report on surplus land for the Crown, explained that the Ordinance failed because it was permissive rather than compulsory, and yet offered no real incentive to claimants to use it. In other words, the Supreme Court having upheld titles each time he had tested them, Grey should not have expected a flood of people seeking to survey their lands. The inducement in the ordinance was extra land (to an equivalent of one-sixth of their grant) if the claimants got their land surveyed and their grants regularised. But since this would expose them to an inquiry as to whether Maori title had been fully extinguished, and since they would lose the surplus land to the Crown, almost no one came forward to use the Ordinance. They preferred to keep their old grants, now declared valid by the Ordinance, and hope for more generous treatment in the future.

As Busby put it, submitting a case under the Ordinance would require him to:

> …surrender the grants which I hold for the whole of my land, in this neighbourhood and receive grants for part of my land, leaving the remainder as demesne lands of the Crown. I do not see the necessity of such an alternative. I have looked into the Land Titles Ordinance No 4 Session 10, and I have not been able to find that any of the doubts it professes to settle applies to my land. But were it otherwise, I could not admit the authority of the Government or of the Local Legislature, to set aside the obligation of existing contracts.[447]

Having given an insufficient inducement, Grey had offered no penalties. There was no date set by which claimants must bring their titles in for confirmation and survey, or lose them. That being the case, they preferred to wait and see.[448] Dr Rigby and Professor Oliver concurred that the Ordinance was a dead letter.[449]

It is not clear to me whether Maori could initiate cases before the Supreme Court under this legisation, or if it had to be the settler claimant. In any case, it is unlikely that they

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[443] J Rutherford, p 139
[444] HF von Haast, ed, *New Zealand Privy Council Cases, 1840-1932*, Wellington, 1938, p 520
[445] FD Bell's report, Auckland, 15 April 1859, OLC 1, 634
[446] H Carleton, *The Life of Henry Williams*, vol 2, pp 214-215
[447] J Busby to Colonial Secretary, Victoria, 18 September 1852, OLC 1, 227-230
[448] D Armstrong & B Sinclair, *Surplus Land, Policy and Practice: 1840-1950*, Wai 45 J2, pp 43-55
[449] B Rigby in Moore, Rigby, & Russell, *Old Land Claims*, p 40; WH Oliver, *The Crown and Muriwhenua Lands: an Overview*, Wai 45 L7, p 15

had the resources or inclination in the early 1850s to go to the Pakeha Supreme Court of their own volition. Grey himself explained some of the reasons for this in his October 1848 despatch (see above). Resort even to the local magistrate, with that official's relatively informal procedures and the aid of Assessors, was still rare in the 1860s, as the preceding chapter demonstrates. The alien and distant Supreme Court was an unlikely place for Nga Puhi to turn. Rigby also came to this conclusion.[450]

In 1850, Sydney business interests and Maori appealed to the Governor over a disputed survey and title on Great Barrier Island. All he could do was invoke his Ordinance and suggest that they take the matter to the courts.[451] In the same year, Henry Williams wrote to Robert Maunsell, querying why, if Grey's motive all along had been to return disputed land to Maori, he had not returned any land to them in the intervening three years since his attack on the missionaries in 1847? It was a valid question. Williams concluded that Grey's motives had been political, and hinted at dark conspiracies. He maintained that Grey could not return disputed land to Maori because none of it was in fact disputed.[452] On this, at least, he was not borne out when the Bell Commission sat in the late 1850s. Also, Tamati Waka Nene was attempting to get government attention to his challenge to missionary claims in the Bay of Islands, as outlined above in section 4.5.1. At first he tried simply to assert his authority and to get the missionaries to accept it, but by the 1850s he was requesting a surveyor to sort matters out on the ground. The 1849 Ordinance, presumably, was the mechanism to resolve this conflict, and yet the government did not use it for that purpose. There is no record that I could find of the government advising Nene (or offering assistance) to take his case to the Supreme Court.

In 1849, Grey had informed the Secretary of State that a 'speedy general and conclusive settlement' was necessary, and that he had found one which would do the least injustice to Maori. For many years previously, he had been writing to the Colonial Office about the significant injustice to Maori arising from the Crown's treatment of the pre-Treaty transactions. His persistence over time shows his determination on this point. But the failure of the 1849 Ordinance seems to have passed without his notice or rectification. It was a dead letter – obviously so after about a year – and yet Grey did nothing. His promising solution was allowed to fail. A simple amendment could have made it compulsory, increased the incentives, or imposed penalties for non-compliance. Government assistance and information to Maori could have encouraged them to try it out, although I am not sure of whether they could initiate cases. None of these things happened, and Grey departed New Zealand about four years after its enactment, without having tried to solve its failure. FitzRoy's perfectible grants were still in place when Grey left, as they had been when he arrived.

In the late 1850s, it was the turn of the settler Parliament to attempt to regularise the grants and get them surveyed, and the surplus land into the hands of the Crown. Unlike Grey's ordinance, their solution was, according to Professor Oliver, more dominated by settler interests and designed to further those interests at the expense of Maori. An important opportunity for justice had been missed, and Nga Puhi suffered the consequences. One of the clearest examples of this is the Crown Grants of James Kemp, which Grey had singled out for attack in an 1846 despatch to Gladstone. Kemp's case serves as a fitting end to this discussion, as it encapsulates the key points of Grey's ineffective attempts to reverse FitzRoy's grants and obtain justice for Maori, and their ultimate fate at the hands of Commissioner Bell.

[450] B Rigby in Moore, Rigby, & Russell, *Old Land Claims*, p 40
[451] G Grey to Earl Grey, Auckland, 18 July 1850, GBPP vol 7, [1420], pp 26-27
[452] H Williams to R Maunsell, Paihia, 1 January 1850, Correspondence between Missionaries & NZ Mission Secretary, CN/07, Micro-MS-Coll-04-44

The Governor had reported to the Secretary of State that Kemp's awards were unjust to Maori, especially because there were no reserves of pa and cultivations 'which they may have had on those lands, or of any reserves which might be necessary for themselves or their descendants'.[453] A long struggle followed over the next two years, in which Grey tried to get Kemp to surrender his grants and accept in their place a maximum award of 2560 acres. The Governor informed Kemp that he would 'not be allowed to include in the blocks I [Kemp] may select, any lands to which the Natives may establish a just claim, or which may be required for the use of the Natives'.[454] Kemp objected to this reopening of the question of ownership, pointing out that the Commissioners and the Governor in Council had declared Maori title to be 'totally now extinct'.[455] Grey maintained his doubts on that point.

The Governor also remained of the view that 'that Great Britain stands without parallel in all that is great, honorable and just, and that it is this very feeling that induces me to wish that the British Government should not permit any person illegally and unjustly to deprive the Natives of land to which they may be entitled, more particularly in the case of persons who were sent to this country with the most holy objects and purposes – and not first to acquire an influence over the natives and then to deprive them for a merely nominal consideration of large tracts of land which might now afford them the means of raising themselves and their children to comfort and to the luxuries of life'.[456] But although the Attorney General was instructed to challenge Kemp's Grants (and also Shepherd's) in the Supreme Court in 1848, it appears that the Crown's defeat in the Queen v Clarke led to the abandonment of further litigation.

During his correspondence with the Government, and defending himself against the charges that his grants were unjust to Maori and deprived them of their pa and cultivations, Kemp stated:

> No Natives have ever been compelled to leave their cultivations on the land but on the contrary have been encouraged to reside and cultivate and cut timber as they might require, a system universally adopted in all purchases of the Missionaries. His Excellency cannot deny a right to the families of the Missionaries freely admitted by the Aborigines to persons of New Zealand birth long before the Govt appeared in this Country, or ever contemplated such a movement.[457]

This situation continued in the 1850s, the arrangements of the middle ground persisting as mission families and Maori used the land and resources. When Kemp surveyed his grants for the Bell Commission at the end of that decade, he appears to have left out at least some of the land that was in Maori occupation. But the absolute ownership of the Kemp family was reiterated and confirmed by Bell. On 23 March 1858, a large group of Maori appeared in court to contest Kemp's Bay of Islands claims, led by Rewa, Pirika, Hare Hikairo, and others. Bell noted:

> After a long discussion it was found that the Survey had proceeded in accordance with the original sales…and all the objections were overruled by the Commissioner. The objections were in fact raised by young men chiefly, and were on the whole without any foundation.[458]

Rewa was a very senior rangatira, and one of the original "vendors" in the large Kerikeri transactions with Kemp and his family. He returned to court on 26 March to lead further opposition:

[453] G Grey to Gladstone, 24 June 1846, GBPP vol 5, p 591
[454] J Kemp to Colonial Secretary, 11 October 1847, OLC 1, 595
[455] J Kemp to Colonial Secretary, 14 February 1848, OLC 1, 595
[456] G Grey to A Sinclair, 3 December 1847, OLC 1, 595
[457] J Kemp to Colonial Secretary, 26 January 1848, OLC 1, 595
[458] Minutes of Court, Kororareka, 23 March 1858, OLC 1, 594-602

> A long discussion took place. The original Evidence and Deeds of Sale being read, it appeared not only that the Survey had not encroached upon the original Boundaries but that Mr Kemp had left out of his Survey a considerable portion of those Boundaries…The Commissioner after explaining the law to the Natives, overruled all their objections. And with regard to the land left out, he announced that it would be taken possession of for the Government, as it could not for a moment be allowed that a claimant should return to the Natives any portion of the land originally sold. Manu [Rewa] & others thereupon requesting that the Govt might give them back a small portion, were desired to address the Governor fully upon their wish, and he would decide.[459]

Grey had maintained that these grants were unjust to Bay of Islands Maori. He had wanted to ensure that Maori title really had been extinguished, and to reserve land not only in their immediate occupation, but also for their future needs. But he accomplished nothing. Kemp's 5363 acres of land at Kerikeri and Waimate turned out to be 7125 acres on survey.[460] As a result of Bell's dismissal of Rewa's objections, 7125 acres of land got a legal title that took it out of the middle ground and placed it entirely in the hands of one party to the original transactions. If Maori occupation were to continue, it now truly would be 'by permission'. The Pakeha understanding of the transactions had prevailed.

[459] Minutes of Court, Kororareka, 26 March 1858, OLC 1, 594-602
[460] FD Bell's report, 20 April 1859, OLC 1, 594-602

Chapter 5 The Relationship between Nga Puhi and the Crown, 1793-1839

Treaty issues in the Bay of Islands are informed by the critical context of events and issues as they developed in the 1820s and 1830s, immediately prior to the discussions and signing of the Treaty at Waitangi in February 1840. In essence, Nga Puhi's alliance with the Crown, and their expectations of the Crown, began well before 1840. From 1820 onwards, they believed that they had entered into an alliance with King George IV, which was confirmed and extended in the 1830s with his successor, William IV. The Nga Puhi of the Bay of Islands also developed personal relationships with various Crown officials, especially the British Resident, James Busby, and acquired a view of the monarch and the Crown which persisted into the 1840s and beyond.

In the Bay more than anywhere else, therefore, the relationship between Maori and the Crown predated the Treaty itself. That relationship, and the conception of the Crown's intentions which contributed to the acceptance and meanings of the Treaty, were shaped by the ways in which the Crown had been represented to Maori prior to February 1840. Thus, for the purposes of Treaty history, this chapter will consider fairly intensively the motives and intentions of the British Crown as explained to Maori in the 1820s and 1830s, and the relationship with the person of the Sovereign and the sovereign's senior representatives, which Maori felt that they had developed by 1840. For the purposes of an inquiry into historical Treaty claims, how the Crown presented itself to Maori is actually more important than the political realities and the shifts in policy which led to British intervention in New Zealand in 1839-40. Thus, the representations of pressure groups to the Colonial Office, the evolution of British policy in London, and the eventual decision to intervene, are peripheral to this chapter and will be summarised briefly in the next.

The two streams of historical reality, how the Crown was represented to Maori and the development of the pre-Treaty relationship on the one hand, and the political reasons and actual nature of intervention on the other, come together in 1839 in the form of Lord Normanby's instructions to Captain Hobson, and then the negotiation of the Treaty with the confederation chiefs in 1840. These events were one step in an evolving alliance which, as far as Nga Puhi were concerned, had begun back in 1820, and would continue to evolve in the 1840s and beyond. The post-1840 actions of the Bay of Islands rangatira and the kawana can only be evaluated, in Treaty terms, in the light of this pre-1840 relationship and the attitudes and beliefs that it had created.

1. The Beginning of Personal Relationships with Kings and Governors

The main historical work on the 1830s and the political reasons for British intervention in New Zealand is the book *Fatal Necessity*, by Peter Adams. Readers are referred to this text for a detailed and exhaustive account of the shifts in policy at the Colonial Office, frontier developments and the perception of them in London, and the ultimate political decision to include New Zealand in the territories of the British Empire. The only historian, however, to consider these events more from the point of view of the Treaty itself and matters significant to its meaning and interpretation, is Claudia Orange in her book *The Treaty of Waitangi*. In that seminal work, Orange argues that the beginnings of the personal relationship with the British monarch, critical to Nga Puhi acceptance and understanding of the Treaty, and indeed their thinking throughout the nineteenth century, lay in the 1820s, well before the signing of the Treaty.

Nga Puhi traditions place a great deal of emphasis on this personal relationship between Crown and Maori. Sir James Henare, a prominent Nga Puhi leader, gave evidence to the Court of Appeal in 1987 on the nature of the Maori Treaty relationship with the Crown. He advanced a strong view of this personal relationship as a key factor in Nga Puhi history, and as a potent force still in the 1980s. He suggested:

> The relationship of the Maori people to the Crown is a very close and profound one. I doubt whether there would have been a Treaty of Waitangi if it had not been for the influence of the Missionaries who were Englishmen, and, of course, Busby, who was sent to New Zealand by the Crown, and Governor Hobson representing the Queen of England. The Queen of England was regarded by our tupunas as their great white mother. In fact, she was looked upon almost as a goddess, the reason being her clear instructions to Captain Hobson, through the British Government, to give guarantees to ensure that the Maori people were treated and protected the same as her British subjects.[1]

Henare went on to describe the loyalty which his people felt for the sovereign, due to the promises and guarantees made to them in the Treaty by the head of what they considered to be the 'most powerful nation in the world'. He maintained that throughout the nineteenth century, the Maori people felt that the Treaty was made with the sovereign, not the various New Zealand Governments that had breached it. As a result, various deputations were sent to Queen Victoria in the late nineteenth century, hoping to seek redress from the personal intervention of the monarch. Such was the faith that they had in Queen Victoria, that Henare argued: 'one can readily see then, the place that the Crown had, not only in the hearts, but also in the minds and the souls of the Maori people.'[2]

Moving on to the twentieth century, Henare cited the 1940 celebrations and the remarkable fact that Sir Apirana Ngata could say to the King's representative, "We thank God for one hundred years of British rule", despite the terrible treatment that Maori had received from settlers and the failure of governments to keep the Treaty. Maori loyalty and trust was further exemplified, he suggested, when Maori attempted to enlist to fight for the Crown in the Boer War, and again to fight for the empire in the First World War. Although Waikato peoples refused to enlist, this was not an expression of disloyalty to the Crown but rather of grievance with the raupatu and the New Zealand government. In the Second World War, also, the Maori people demonstrated their 'loyalty and close relationship to the Crown'. This sense of loyalty to the sovereign still survived at the end of the twentieth century, according to Henare in 1987.[3]

> It would be fair to say that the majority of the Maori people still remain very loyal to the Queen. And no doubt I think, that Queen Elizabeth has endeared herself to the Maori people by her frequent visits to this country. They are still very loyal to the Queen. You do however get a small minority who do not subscribe to this view…Right to this day the Treaty, as far as the Maori people are concerned, is with the Queen. When we refer to the Crown what the Maori people mean is the Queen's Government in New Zealand. And so the direct link with the Maori people with the Queen is still very strong. But the link with Governments, I don't think is very strong.[4]

In addition, Henare maintained that this bond with the monarch and her Treaty was partly a 'spiritual covenant'. It was informed by the missionaries and their work, seen partly as the culmination of Christianity in New Zealand, and full of the language of the Bible, from which Maori drew the images that gave it meaning. The use of the word 'kawana', for example, put the Treaty and the Queen's representative squarely in a biblical context. As a result, he drew a parallel between Maori spiritual links with land, rivers, forests, and the

[1] Evidence of Sir James Henare, 14 May 1987, Wai 49/0, p 3
[2] ibid, pp 3-4
[3] ibid, pp 4-6, 12-15
[4] ibid, p 15

natural world, and their Treaty relationship with the Queen of England, their aroha or 'great love' for the Queen. Maori spirituality, he argued, was focused on aroha, and the connection that this gave them to the dead ancestors, and it was aroha which bound Maori and the sovereign and elevated her in their view to 'almost a goddess'. Even King Tawhiao, aggrieved at the raupatu, was filled with 'great love' for Queen Victoria and took his concerns to her in Britain. For Henare, then, the peoples of the north were bound to the Queen as they were to their ancestors, to the rivers and mountains, to their taonga katoa.[5]

The origins of this bond, he maintained, were to be found in the relationship with the Crown as it developed prior to the signing of the Treaty. He emphasised in particular the roles of Busby and the missionaries in creating the relationship of trust which he considered led to Nga Puhi's acceptance of the Treaty. Had these people not won the confidence of the chiefs on behalf of the British sovereign, the Treaty would not have been signed.[6] It should be noted that Claudia Orange, though she put it very differently from Henare, had in fact a similar view of the personal nature of the relationship between Maori and the Crown, and its origins in the events prior to the signing of the Treaty.[7]

1.1 The Meeting with Kawana Kingi and its aftermath

The first contact between Bay of Islands Maori and British officialdom came in 1793. Prior to this, there had been a couple of ship visits to the Bay of Islands – Cook in 1769, Marion du Fresne in 1772 – but for the thirty years or so following, there was almost no contact between Bay of Islands Maori and European ships. From 1772-1792, no vessels are known to have been in the vicinity of northern New Zealand. The sealing and whaling trades in New Zealand waters did not really take off until after 1800. Only one ship recorded as visiting northern New Zealand in the 1790s made a call at the Bay. Instead, the few ships involved tended to call in at the Thames and trade with Hauraki tribes.[8] The exception was the *Daedulus*, which in late 1793 kidnapped two young men whilst off the coastal Bay (a man called Tuki from Doubtless Bay, and a local Bay of Islander named Huru). These men were obtained on the instructions of Governor King of Norfolk Island, who wanted someone to teach his convicts how to weave flax. Since this turned out to be subject to gender role divisions (traditionally it was 'women's work'), the kidnapped men were not much help.

The critical outcome for this report, however, is that a close personal relationship developed between Tuki, Huru, and the governor's family. By the time King returned them to New Zealand in late 1793, they had become friends and had more than a smattering of each other's languages. Shawcross notes this as the first forging of a personal relationship between Maori and an important Crown official, and explains how it became important to the whole of the north as a result of King's return visit and the actions of himself and the rangatira during that visit. Salmond also emphasised the importance of King's visit to the north, and of the relationship he forged with northern rangatira.[9] Marsden notes that the name of Kawana Kingi was still remembered with respect and warmth by northern Maori some 44 years later.[10] William Cotton found the same in 1844 during his visit to Kaitaia:

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[5] ibid, pp 10-17. It should be noted, however, that Queen Victoria would not receive Tawhiao, due to the representations of the New Zealand Government – see V O'Malley, 'Runanga and Komiti', pp 272-273
[6] Evidence of Sir James Henare, 14 May 1987, Wai 49/0, p 3
[7] See C Orange, *The Treaty of Waitangi*, Wellington, 1987, pp 8-31, & passim
[8] K Shawcross, 'Maoris of the Bay of Islands', pp 125-126
[9] K Shawcross, pp 131-136; A Salmond, *Between Worlds*, Auckland, 1997, pp 226-233
[10] JR Elder (ed), *The Letters and Journals of Samuel Marsden, 1765-1838*, pp 526-528

> Old Hahaki remembers Capt Cook coming into Doubtless Bay. Governor King is also remembered by the natives with great affection. Two New Zealand youths were taken by him from Doubtless Bay to Norfolk Island, (Hura & Tuke) and treated by him with great friendship. They *rode* the pigs to death, which Gov. King gave them.[11]

In November 1793, the ship *Britannia* reached North Cape and the Muriwhenua territories. King had intended to return Tuki and Huru to the Bay of Islands but after a delay caused by calm weather, he decided to either leave them in the far north or else take them back to Norfolk Island. At first, Tuki was not entirely convinced that a state of peace existed between Muriwhenua and his people at Oruru, but he finally accepted the assurances of a senior chief, named Tokoki, and agreed that he and Huru could be landed safely. The ceremonial exchanges that followed between Tokoki, Tuki, Huru, and Kawana Kingi were, argues Salmond, of great significance. At first, King was uneasy about leaving his new friends in the hands of a possibly hostile tribe, but Tuki assured him 'with an honest Confidence that "E tiketica no E teka" [a pidgin phrase – He tiketike no (kaore) e teka] ie. That an E tiketica [high chief] never deceives, and that he rather wish'd to go with Ko-to-ko-ke than to return to Norfolk Island before he had seen his family & Chief'.[12]

Shawcross also attaches great significance to this exchange, and to the statements made subsequently by King in light of it, in the knowledge that Maori saw him as just such a high chief. The governor displayed the military prowess of his ship by lining up the soldiers and having them fire their guns, at Tokoki's request, and also a ship's cannon, the force of which caused some surprise. The chief was careful to note the distance which the cannon shots were able to reach. The governor then assured the chief and the gathered people that the two peoples could be close neighbours and good friends, and that these weapons would never be used against them so long as they did not harm Europeans. Shawcross argues that King's statements were believed and widely reported throughout the north. He was considered to be a great chief, and as such a man who could not lie to an assembly of people. Tuki's own words to King, and Elsdon Best's report that a statement made by a chief before the assembled people was recognised by all to be of a permanent and binding nature, were seen by Shawcross as proof of how northern Maori would have viewed the words of Kawana Kingi (and later of Busby). Whilst there is some over-idealisation of chiefs in this view, Shawcross compares the statements of King in 1793 to the signing of the Treaty in 1840; it never occurred to the chiefs, she says, that such a great rangatira as Queen Victoria could ever break the undertakings she had made in the Treaty. And the encounter with King was one of several which set the context in which the Bay peoples assessed the Treaty and the good faith of British governors.[13]

The meeting between Governor King and northern Maori was also accompanied by a crucial exchange of gifts and information. Included among King's gifts were the successful introduction of the potato, which rapidly spread throughout the north and became a staple in both trade and the local food supply. Bay of Islands Maori attributed this most valuable of resources to King, which contributed greatly to his later mana and reputation, and also their view of the kind of things to be expected from a British kawana. The important Bay chief Te Pahi made this clear during his visit to King in New South Wales in 1806. He told the governor that his father had instructed him to seek out Kawana Kingi and bring back more blessings like the potato.[14]

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[11] W Cotton, Journal, 17 October 1844, volume 8, qMS 0568
[12] A Salmond, *Between Worlds*, pp 229-230
[13] K Shawcross, pp 136-137; E Best, *The Maori As He Was: a brief account of Maori life as it was in pre-European days*, Wellington, 1974, p 98
[14] A Salmond, *Between Worlds*, p 232

In addition, King's visit made the world a much smaller place. At first, the people refused to believe Tuki's assertion that Norfolk Island was only three day's journey away, until he produced a fresh cabbage as proof that they could not be many days' journey from the garden that had produced it. An interest quickly developed in the idea of going to visit Europeans in other places, which led chiefs and others to visit New South Wales and to the beginning of personal ties with Crown officials.

During the ceremonies on board the ship, there were also hongi and karakia of a kind which led Salmond to deduce that 'an honorary kinship relationship' was established between the North Cape chief Tokoki, Tuki, Huru, and Kawana Kingi. Salmond concluded:

> The third lasting consequence of their [Tuki & Huru's] stay in Norfolk Island was a close relationship between Northland Maori and 'Kaawana Kiingi' (Governor King) and his family. The old chief in Muriwhenua who had ceremonially established a kind of kinship with King (and possibly assumed his name) would never have forgotten him, and both Tuki and Huru were high-born people with their own wide networks of kinship and alliance in the north. Much of the content of the term 'Kaawana' (Governor) in Northland Maori in the late eighteenth and early nineteenth centuries derived from what people knew about Philip Gidley King. He was the Governor whom Maori people knew best, who had learned some of their language, had treated their kinsfolk with honour and had shown his chiefly prestige with generous hospitality and gifts. The taonga (treasures) that King gave Tuki and Huru were widely redistributed in the north, establishing reciprocal relations between King and his people and a number of ranking chiefs. And when in later years, other Maori went to visit King in Port Jackson, taking return gifts of their own, they were reinforcing those bonds. Utu and the power of mana were shaping history.[15]

Although this interpretation of King's visit and its impact is convincing in many respects, a note of caution should be sounded. King had also promised to return in three months' time and give the chiefs of Muriwhenua further gifts so long as Tuki and Huru were safely returned to their homes.[16] While there is evidence of the positive attitude of Te Pahi and other Bay chiefs in their later visits to Governor King, there is no indication as to how widely this broken promise was also discussed, or the way in which it was interpreted by northern Maori. Also, there was the original hara or crime of the kidnapping to be weighed in the balance. The safe return of the two men (along with many gifts) was presumably considered adequate payment. Later chiefs did not hesitate to trust their persons to King and other Crown officials during visits to New South Wales. Prominent chiefs like Pomare, however, showed more caution on their home turf in dealing with naval captains and going on board their ships. The view of the kawana, therefore, cannot have been entirely positive, and an explicit threat had been made; promises of friendship had gone hand in hand with a warning that harm to Europeans could lead to a visit from a ship with soldiers and guns. The parameters of the new relationship were complex but from 1793 onwards, communication was established and rules for interaction between the King's people and the Maori people began to be worked out.

European ships visited northern New Zealand regularly from 1802, and there were visits to the Bay every year after 1804. By 1807, most vessels in the area were calling at the Bay. Most of these ships were whaling vessels, with a few sealers and traders after 1807. Whalers found northern New Zealand a convenient place to replenish their supplies of wood and water. From 1802, they could also buy potatoes and a limited quantity of the vegetables of which King had gifted seed varieties in 1793. By about 1805, the Bay had become the most popular place for whalers to shelter and replenish casual supplies.[17]

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[15] ibid, pp 232-233
[16] ibid, p 230
[17] K Shawcross, pp 147-148

Regular visits by British, Australian, and American ships in the 1810s and 1820s provided Maori with a source of goods, information, and trade. In addition, the first mission station was established in 1814, with a growing number of missionaries and stations in the following decades. The missionaries in particular were propagandists for their country (so long as it served the interests of the mission), and opponents of the national interests of others, especially France and its expansive Catholicism.[18] A balancing view, however, must have been provided by American ships and (much less often) the French, although the tribe of Marion appears to have remained somewhat suspect at the Bay. Runaway convicts and deserters would also have provided a somewhat jaundiced view of the British Crown. Te Pahi was very shocked by the treatment meted out to criminals when he visited New South Wales, and protested that a ship's captain could cheat him and then sit down to dinner at the Governor's table, while a convict was hanged for stealing some pork.[19] Knowledge of the nature of British authority and the peculiarities of British justice was slowly spreading, interpreted with the eyes of British, New South Wales, American, and Maori cultural biases.

Visits abroad like that of Te Pahi, where British authority was seen in action and personal ties between Crown officials and Maori were created or strengthened, were very important in setting the context for the acceptance of a kawana in 1840. Te Pahi, the principal Te Hikutu rangatira of Rangihoua/Te Puna, visited Port Jackson in 1805. This was the first visit by a major rangatira, and it resulted in the acquisition of further important gifts from Kawana Kingi (now Governor of New South Wales). These included 26 sows and four boars, a gift which is credited with the successful establishment of pigs in New Zealand. By 1814, the first missionaries reported that pigs were common in the Hikutu part of the Bay. Also, maize became popular from 1806 when Te Pahi returned from New South Wales and began to grow it successfully.[20] Once again, the link between governors, gifts, and the establishment of major trade items and food sources was made in the first decade of the nineteenth century, confirming the experiences of the 1790s.

It is more difficult to reconstruct from European accounts what impressions Te Pahi gained in terms of a kawana's authority, and what Maori could expect the kawana to do for them in exercising that authority, as opposed to the exchange of gifts. He lived with King in Government House for three months, and clearly knew that the governor had the power of life and death over his followers, who were numerous and wealthy (some of them) in material possessions. The chief attempted to intervene and persuade the governor not to hang a man for stealing some pork – clearly, the governor could and did kill people for minor crimes, and equally some of the governor's followers were in such want that they had to steal a piece of pork to live.

Te Pahi became 'very violent' in his expressions, 'exclaiming in the most furious manner against the severity of our laws in sentencing a man to die for stealing a piece of pork, although he admitted that a man might very justly be put to death for stealing a piece of iron, as that was of a permanent use; but stealing a piece of pork, which to use his own expression, was eat and passed off, he considered as sanguine in the extreme'.[21] The governor refused Te Pahi's appeal to save the life of the convicted thief, and then the two men sat down to dinner. Conversation continued over the nature of law and justice – justice had been done because British law 'secured to each individual the safe possession of his property, and punished with death all those who would deprive him of it by theft or robbery'. Unconvinced, Te Pahi indicated a fellow guest, an unnamed ship's captain, and inquired as to why the governor did not hang him as well. 'He come to New Zealand, he come ashore, and tihi

[18] See for example the petition of 1831, discussed below
[19] A Salmond, *Between Worlds*, pp 352-354
[20] K Shawcross, pp 150-155
[21] A Salmond, *Between Worlds*, p 354

[taahae – steal] all my potatoes – you hang up Captain__'. This demand, whether serious or not, produced amusement at the dinner table and embarrassed the captain concerned.[22]

Governor King thought Te Pahi a man with a facetious sense of humour. We need not doubt this. But the question of what sort of authority the governor had over his European brethren in New Zealand was a very real one to the visiting chief. As explained in the previous chapter, some chiefs were less and less inclined to use force to punish the captains and crew of visiting ships who either trespassed against Maori law or attempted to cheat or abuse them in some fashion. This was less about the fear of retaliation from the (exaggerated) belief in the retaliatory power of the King's warships, and much more about maintaining a trading climate in which ships would not be obliged to call at other ports or perhaps avoid New Zealand altogether. With chiefs less willing to act against Europeans (unless the circumstances were right) as the century drew on, the possibility that *their own chiefs* might do so was seriously considered.

As a result, Te Pahi complained to Governor King about the behaviour of whalers at the Bay. In particular, he recounted how a captain had flogged a Maori man, and he asked King to control his countrymen and do something about their behaviour in New Zealand. Rather than exploring whether or not the governor could actually do so, this led to a discussion of the different nationalities visiting the Bay. King showed Te Pahi the American and British flags, explained the differences, and urged him to show kindness to crews of both countries.[23] Since Maori forbearance was not really the issue, this outcome did not get Te Pahi very far. After his return to New Zealand, he became less and less patient with whaling crews until a disastrous conflict was precipitated at the end of the decade, ironically in response to a mistaken belief that he had been responsible for the Boyd incident of 1809.

Te Pahi achieved his main object (satisfying his vow to his father that he would seek out Kawana Kingi and the good things at his disposal) but must have come away with mixed views of British law and authority. The kidnapping of his daughter and her convict husband in 1807 led to a much less satisfactory visit to Sydney in the following year. The new governor, Bligh of the *Bounty* fame, had been placed under house arrest by his own military juniors and the colony was in some disorder. Bligh had issued a proclamation in 1807, setting out requirements under which ships could transport "South Sea Islanders" and forbidding their forcible seizure, but it was not policed even at Sydney and proved unenforceable. In 1808 Te Pahi himself, after a misunderstanding about a basket of potatoes, was seized and tied to a ship's rigging for several hours. The kidnapping of his daughter, the insult to his person, and various other problems with whalers, led Te Pahi to visit the kawana a second time, determined to get redress from him (and perhaps help in the regulation of such matters).[24]

But the new governor had been, as noted, overthrown by a coup and it was made clear to the chief that ships' captains were not really under any effective control as a result. Salmond observed: 'Te Pahi's faith in the mana of governors must have been shaken by Bligh's intemperate behaviour and by his own observations'.[25] He returned to the Bay of Islands, without obtaining satisfaction for the depredations of whalers, or finding the whereabouts of his missing relations. All in all, it cannot have been a very satisfying experience of the authority of governors or the operations of their tikanga.

[22] ibid
[23] ibid, p 355
[24] ibid, pp 362-370
[25] ibid, p 372

2. The Meeting Between Hongi Hika and George IV

Over the next decade or so, important Bay chiefs visited New South Wales, including Hongi Hika, Ruatara, the brothers Korokoro and Tui (Ngare Raumati), Te Morenga, Wharepoaka, Titore, Tuhi, and Tupe (brother of Tara). These visits were often hosted by Samuel Marsden as the colonial chaplain's interest in founding a New Zealand mission grew, and provided the chiefs with an opportunity for inspection of colonial society, British law, and a British governor in action. Also, travel further afield became a feature of Bay of Islands Maori's exploration of the outside world. Some crewed on whaling ships in the 1820s and 1830s, others visited England in the company of gentleman-hosts.[26] The most important of these latter visits took place in 1820, when Hongi Hika travelled to Britain in the company of the missionary Thomas Kendall. Hongi's main aim was to obtain muskets and gunpowder, but as part of his visit he was presented to King George IV and had a brief conversation with him. The King gave Hongi expensive gifts, and a relationship was formed in terms of Maori custom on which Nga Puhi placed much emphasis in succeeding decades.

Marsden and the New Zealand missionaries had been assiduous prior to this meeting in their promotion of the benevolence and power of the British monarch.[27] Emphasis had also been placed on presenting the human face of the king – Kendall, for example, requested a painting of the king in his robes to display in his school room and use as an instructional tool.[28] But the meeting between the most prominent Bay chief and the King of England in 1820 was the most important contact between Crown and Maori until the arrival of Busby in 1833. It cast long shadows in New Zealand; some immediate (the missionaries felt the sting of Hongi's discovery of their relative unimportance); some long-term (it was still a point of contention twenty-five years later in deciding allegiances during the northern war).

Not much is known for sure of the details of what the two men said to each other. According to Pakeha sources, the conversation is reputed to have opened by Hongi saying "How do you do, Mr King George?", to which the King replied, "How do you do, Mr King Hongi?" From there, the two men chatted, during the course of which Hongi is supposed to have expressed surprise at the king's inability to control only one wife when he could manage five. The chief also discovered that the king had not heard of Marsden and had no personal knowledge of the missionaries, which lowered their mana in his estimation and caused them some problems upon his return to New Zealand. During a tour of the armoury and the Tower of London, Hongi was presented with a suit of armour and two muskets. His younger companion Waikato was given a helmet and a single gun (which is now kept in the Treaty House at Waitangi).[29] According to the missionary Hobbs, the King also made light of Maori cannibalism, informing Hongi that British sailors had been known to eat each other at sea.[30]

Maori sources give a very different account of the meeting. The earliest reference of which I am aware is a report from Samuel Marsden in 1831, citing the words of the chief Whare (possibly Wharepoaka) to Governor Darling. Whare informed the New South Wales government that King George and Hongi had made an 'agreement' that Maori and British would not kill each other. This was, he maintained, a solemn 'promise' on the part of the King, and one to which Marsden suggested that Maori looked for 'redress and protection':

> A chief named Waikato who married a sister of Whare accompanied the late chief Shunghee [Hongi] to England in the year 1821 [1820]. They were both introduced to his late Majesty King George the fourth, & to His late Royal Highness the Duke of York, both made them some valuable presents. His

[26] K Shawcross, pp 156-173
[27] C Orange, p 10
[28] J Binney, *The Legacy of Guilt: a Life of Thomas Kendall*, Auckland, 1968, p 41
[29] ibid, pp 63-65, 78
[30] O Wilson, *From Hongi Hika to Hone Heke*, Dunedin, 1985, p 43

> Majesty told them, they must not kill any of his subjects who visited New Zealand, & they promised to obey the King's commands. At the same time the Europeans were not to kill the New Zealanders. The complaint which the chiefs of the Bay of Islands wish to proffer to your Excellency [Governor Darling] is grounded upon the violation of the above agreement with his late Majesty.[31]

The most detailed Maori account comes some thirty years after the meeting, in an 1849 letter from Hone Heke to Queen Victoria. Heke opened his letter:

> To the Queen of England, greeting, - show us the same affectionate regard that King George did in what he said to Hongi when he went to Europe. King George asked him, "what was your reason for coming here;" he said "I had two objects in doing so – muskets and 60 soldiers." To which King George answered, "I will not consent to send soldiers to New Zealand lest you should be deprived of your country, which I wish should be left for your children and your people, for they would not act properly." They continued arguing on the subject for a long time, and then King George said to Hongi, "it is better that I should send some missionaries to you, as friends for you, for they are good people; should they act wrongly, send them back; but if they act properly, befriend them."[32]

Heke went on to argue that his people had done as the King asked and befriended the missionaries, dividing land with them, 'giving them part and retaining part ourselves'. They also understood the King's word to mean that these were the only people who would be sent among them – but instead many thousands of others had come. This had produced great trouble, 'which exactly agreed with what King George had said to Hongi'.[33]

The discussion between King George and Hongi about British soldiers was a key feature of the exchange for Heke. It was part of his war of words with Tamati Waka Nene, in their effort to win support from the Nga Puhi tribes in 1844. Kendall's account to the CMS confirms that Hongi did indeed want British soldiers, and must presumably have asked for them. The missionary reported Hongi as seeking 100 Pakeha settlers to supply technical skills such as blacksmithing and iron work, and 20 British soldiers with three officers. Hongi would protect them and gift land to them.[34]

Although he did not come back with soldiers, Hongi did obtain a great deal of arms as a result of his visit to Britain. He also, according to Claudia Orange, came away with 'the idea that he had come to some agreement with the King. It was based on no more than the exchange of pleasantries by the two men, but in northern Maori tradition it was understood as a special bond.'[35] Hongi later wore his armour into battle and must clearly have promoted the idea of a special relationship between himself and the King amongst Nga Puhi.[36] It may be that there are surviving oral traditions among Nga Puhi which the claimants may wish to bring before the Tribunal, in further explanation of this matter.

Hongi's version of the outcome of the meeting entered into popular history in the north and was still considered extremely important in the mid 1840s. It was raised in 1845, for example, by Nopera Panakareao of Te Rarawa during a debate with Waka Nene and other Nga Puhi chiefs at Taiamai. The discussion concerned whether the war should be continued against Heke and Kawiti, and whether Te Rarawa should assist the 'loyal' Nga Puhi and the Crown. Nopera accused Heke of betraying the arrangement made between his ancestor Hongi and the latter's 'father' or matua, the King. He stated:

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[31] S Marsden to Darling, 18 April 1831, Marsden Family Papers, MS-Copy-Micro-0206; see also C Orange, p 12
[32] Hone Heke to Queen Victoria, 10 July 1849, GBPP vol 6, [1280] p 17
[33] ibid. The Maori-language version of this letter is Document 3 in the Appendix.
[34] D Urlich Cloher, *Hongi Hika Warrior Chief*, Auckland, 2003, p 121
[35] C Orange, p 10
[36] JR Elder, ed, *The Letters & Journals of Samuel Marsden, 1765-1838*, Dunedin, 1932, pp 357, 427

> He [Nopera] had not merely made professions of friendship, but had come to assist. Those who had merely made professions were little to be depended on. This man & that man talked of the pakeha being their father. It was all deceit. Had Heke remembered the father of his ancestor Ongi Ika [Hongi Hika]. Take care friends we are not beguiled by Heke.[37]

This was a very significant speech. Edward Shortland, the protector who took the notes of the meeting, specified that in referring to Hongi Hika's 'father', Nopera meant King George IV.[38] That the relationship between the two men was not merely remembered 25 years later, but was used as a telling point in a debate over loyalty to the Crown, and by a senior chief who clearly felt it would have weight with his audience, is of some significance. Relationships were both alliances and friendships, political and personal, in which Queen Victoria and Governor FitzRoy were the successors of earlier monarchs and governors, all of whom had had their part to play in building a relationship between Crown and Maori. This relationship was based on promises and expressions of good will, on gifts and advantages, and based most of all on how the Crown had chosen to represent itself to Maori (or had been represented by its subjects and enemies in New Zealand). After 1820, the British Crown was in some ways perceived as the "ally" of the Bay chiefs, in particular of their leader, Hongi Hika, as a result of his meeting with George IV. And it was a renewal or reaffirmation of this alliance which the Bay chiefs sought in their missionary-orchestrated petition of 1831, after the death of the principals (Hongi in 1828 and George IV in 1830).

Heke clearly felt the need to defend himself against charges that he had broken the agreement made between his ancestor and Queen Victoria's matua (in this case, her great uncle). Part of the trouble, in Heke's view, was that Busby had arrived with a different arrangement to that reached between Hongi and King George, and so he informed the Queen in 1849. Busby was followed in turn by succeeding arrangements with Hobson, then FitzRoy, then the 'fighting governor', George Grey. And who had sent these people, one after the other? 'Which makes me think that you [Queen Victoria] were the original cause of the dispute between us – which confuted what King George had said to Hongi.' He argued:

> Don't suppose that the fault was mine, for it was not, which is my reason for saying that it rests with you to restore the flag of my island of New Zealand [given by William IV], and the authority of the land of the people. Should you do this, I will then for the first time perceive that you have some love for New Zealand and for what King George said, for although he and Hongi are dead, still the conversation lives; and it is for you to favour and make much of it, for the sake of peace, love, and quietness; therefore, I say, it remains with you to decide about the people who are continually arriving here, viz., the Governors, the soldiers, the French, and the Americans; to speak out to them to return; they are quarrelsome, and every place will be covered with them; I consequently am aware that their acts are making things progress towards trouble…I therefore say as you are the greatest of all the people of this world, search for the cause of trouble, but it ought to be searched for in a general assembly; if it is not inquired into in this way the cause of trouble which at present exists will not be seen for ever and ever, but will go on progressing towards perplexity. Should it be discovered, then it can be settled according to the just rule of King George to Hongi. I won't disapprove of what took place between them, therefore, I say, let the missionaries remain here as parents for me, that is to say, the right-thinking missionaries only.[39]

Heke concluded by stating that the missionaries and the settlers could remain, so long as the 'management of my island remains with me', including those parts which had been purchased by settlers as being under his authority. His only object in this, he maintained, was 'the carrying into effect what King George said to Hongi'. He cautioned the Queen that she must no longer conceal her real intentions, as he felt had happened to date, and must seek a

[37] E Shortland, Memorandum taken for information of Col Despard, September 1845, Edward Shortland Papers, Outwards Letter Book B, Hocken Library
[38] ibid
[39] Hone Heke to Queen Victoria, 10 July 1849, GBPP vol 6, [1280] p 17

substantial peace along the outlines of what her predecessor had agreed with Hongi. His final salutations greeted her as his 'sister' and spoke of his love towards her; all might yet, he considered, be put to rights if the 'just rule of King George to Hongi' could be achieved.[40]

As noted above, contemporary Europeans had a very different interpretation of the King's discussion with Hongi about the missionaries. Francis Hall reported in 1821 that Hongi had refused to visit the mission station and had told his people that the missionaries were 'only a set of poor Cooks [probably cookies, meaning taurekareka] – that King George knew nothing about [them] nor Mr. Marsden either – In consequence of this [the missionaries] have had many hard speeches and cruel mockings'.[41] Both Maori and Pakeha accounts agree that the missionaries were discussed, but Binney puts a third interpretation on it; that the king 'had never heard of (or rather had forgotten about) the Reverend Samuel Marsden and his missionary movement'.[42] It is entirely feasible that, once reminded of their existence, the King should encourage Hongi to accept the missionaries and treat them kindly. Whatever the details of their actual conversation, there is strong evidence to suggest that Hongi's version of it, and the agreement supposed to have been reached, became a part of the political situation for northern Maori in New Zealand from that point on. As Heke put it, despite the death of the principals, 'still the conversation lives'. Manuka Henare, whose helpful thesis became available to me shortly before the completion of this report, also notes the importance of the meeting between Hongi and King George, and of the living conversation.[43] It would be useful for claimants to provide any oral traditions that may shed further light on matters.

There was not a mutually understood and shared agreement following 1820. Whatever King George might have said or thought, his ministers and successors had no belief that he had entered into a particular alliance with Hongi and his people. Governor Grey's explanation of Heke's letter, for example, was that the chief was simply trying to 'bring himself under the Queen's notice' and thereby 'raise his consequence in the eyes of his countrymen'. The governor suggested that it should be laid before the Queen and Heke notified of that fact, with no other action or response.[44] The British Government accepted this advice, and no attempt was made to respond to its contents or engage with the issues it raised. That was the end of the matter (as far as the Crown was concerned).[45]

It should not be thought, however, that Nga Puhi traditions about the relationship commenced in 1820 were unknown to the Crown. Rangatira and government officials both referred to it from time to time, and this will be described below in section 5. Also, quite apart from Heke's letter to the Queen in 1849, his use of it to justify his actions and win support among Nga Puhi must have been widely publicised. Protector Shortland wrote that in 1844, Heke announced publicly that his reason for cutting down the flagstaff was 'a reported conversation between Hongi and King George'. As Hongi's son-in-law, Heke claimed the right to act in the matter – and also, thereby, claimed to be Hongi's successor. In reply to questioning from Hongi, the King told him:

> …that he need never be afraid that the English had any design of taking possession of New Zealand, unless they set up his flag there. "Now," said Heke, "first came the Missionaries with their flag: [a white flag with a dove and olive branch] that was of no consequence. Then came Mr. Busby with his

[40] ibid, pp 17-18
[41] Francis Hall to Marsden, 20 October 1821, cited in J Binney, p 78
[42] J Binney, p 64
[43] M Henare, 'The Changing Images of Nineteenth Century Maori Society – from tribes to nation', Ph D thesis in Maori Studies, Victoria University, 2003, pp 160-171
[44] G Grey to Earl Grey, 28 July 1849, GBPP vol 6, [1280] p 16
[45] Earl Grey to G Grey, 18 February 1850, GBPP vol 6, [1280] p 143

> flag: [discussed below] that was of no consequence. Lastly came the Governor with the Queen of England's flag. King George spoke the truth: the meaning of this flag is a taking of the soil.[46]

The relationship and agreement said to have been forged with George IV was, therefore, a potent symbol appealed to by Maori on both sides of the northern war. As an isolated event, it would have lacked such resonance. It proved, however, to be the beginning of a series of icon moments in Nga Puhi history, which strengthened the relationship and set the scene for either its confirmation or rejection at Waitangi in 1840. Henare described this as 'nation building'.[47]

3. Whare's Mission to New South Wales and the Petition to King William, 1831

Regardless of what King George or his ministers and successors thought of the matter, it is clear from the above account that Hongi Hika believed himself to have established an important alliance with the Crown, in return for protecting the missionaries. This relationship with the British Crown was not, however, limited to Hongi and his immediate allies, and it survived his death in 1828 and that of George IV in 1830. In fact, a plethora of chiefly relationships with the Crown intensified in the 1830s, beginning with the petition of 1831, in which the Bay of Islands chiefs sought to renew the alliance between Hongi and King George, now that both of the principals were recently dead. It is notable that the petition drew together chiefs from the recently warring factions of Nga Puhi, including Patuone and Waka Nene of Hokianga, Rewa and Titore of the northern alliance, and Te Morenga of the southern alliance. The preceding decades had created a situation in which such conflicting tribal groups believed that they could seek alliance with the British state, or individuals within it, simultaneously. These decades also imbued the Bay peoples with a belief that Britain was the "best" of the competing foreign powers, and that it could be trusted to protect them from France, for example, without unduly interfering with their authority or resources. The growth of these two perspectives in the 1810s and 1820s is important, and needs to be reviewed before the petition itself is considered.

Hongi's report of his alliance with the King may well have drawn the immediate enmity of his opponents in the Bay, who were jealous of his monopoly of the missionaries, but doing quite well themselves through their possession (until 1830) of Kororareka. An arrangement between Hongi and the Crown, in other words, would not necessarily be supported by all of Hongi's allies, and certainly not by Te Morenga and his southern alliance. The Kororareka chiefs encouraged British ships to attack Te Pahi in retaliation for the Boyd incident, despite the close relationship of Te Pahi with Kawana Kingi – throughout this period, alliance with the powerful British, their King, and his governor in New South Wales, was seen as something fluid and possibly available to more than one tribe or tribal alliance at a time. In 1820, the same year that Hongi visited the King in London, Nga Puhi's Hauraki enemies asked Samuel Marsden 'that they might have some protection afforded them from the British Government' against the constant assaults from Nga Puhi. One way in which Marsden thought such protection could be provided was for the government to stop the New Zealand arms trade, preventing whalers from supplying Bay of Islands Maori the weapons for such destructive warfare.[48]

The British state was not a monolith, and that was one of the reasons for the possibility of its relationships with multiple tribal groups. Te Morenga, for example, the most powerful chief of the southern alliance, focused his attentions on Samuel Marsden, the

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[46] E Shortland, *Traditions and Superstitions of the New Zealander*, pp 264-265
[47] See M Henare, passim
[48] S Marsden to CMS Secretary, 22 September 1820, in JR Elder, *Letters & Journals*, p 332

Colonial Chaplain and head of the CMS mission. Te Morenga stayed with Marsden in New South Wales, accompanied him on some of his New Zealand journeys, represented his arguments to Maori of various places, and acted in close alliance with him.[49] Te Morenga's rival Hongi, on the other hand, clearly felt that it was productive of more mana to have the King himself as an ally, even if the monarch had refused to send soldiers in his support. On his way home from England, Hongi met with Marsden and quarrelled with him furiously, because the latter would not allow the missionaries to trade in muskets and powder. This, more than the interview with King George, was the chaplain's explanation for the breakdown in relations between himself and Hongi in 1820. The chief forbade Marsden to return to the Bay of Islands, but he did so in any case in 1823.[50]

There was also a very instructive exchange between Hongi and his Hauraki enemy Te Hinaki in the early 1820s, suggestive of how alliances with the British were used in the struggle for mana. In 1823 the Bay rangatira Wharepoaka gave Marsden an account of the recent war between Hongi and Te Hinaki. At one point, the two leaders met face to face before the conclusive battle. Hongi was wearing his armour, helmet, sword and regimental coat, the gifts of King George IV. Te Hinaki advanced to meet him, wearing the army uniform given to him by Governor Macquarie of New South Wales. The squaring off of the two rangatira saw Hongi trump Te Hinaki with the mana of his greater British ally, with neither seeing any incompatibility in simultaneous alliance with two British leaders.

Wharepoaka told Marsden:

> When Shunghee [Hongi] advanced he took off his helmet, made a bow, and saluted Enakkee [Te Hinaki]. Enakkee turned on one side, and spurned his compliment. Shunghee said he did not wish to fight; Enakkee said he was determined to fight. Shunhgee said, "I have seen King George, as you may see by my war mat, or coat of mail, my sword, and helmet." Enakkee replied, "I have seen General Macquarie." Shunghee said he was very strong. Ennakkee replied he was not afraid to meet him, for he was strong too.[51]

In wearing his armour into battle, which he did throughout the 1820s, Hongi was thus proclaiming his alliance with the most powerful man in the world. Also, despite his quarrel with Marsden and an initial coolness in 1820-21, he continued to protect the missionaries and act as their patron at the Bay of Islands. So great was their mutual identification, in fact, that the missionaries feared to be plundered of all their goods on the death of their great patron (not even Paihia, the new station in the southern sphere, was deemed to be safe.)[52] As for the Kerikeri station, Hongi was considered to 'own' it.[53] As it turned out, there was so much turmoil between Hokianga and the Bay when Hongi died in 1828 that none of his family or dependents were raided, including the missionaries. If Hongi did believe himself the special protector of the mission, though, as appointed by King George, then he certainly carried out his part of the agreement. He also took the King's warning about British soldiers, and the possible threat that they might pose, to heart, as will be discussed below.

The identification of the missionaries with the promotion of the Crown and its interests, and their protection by the Crown, was a significant factor in political developments at the Bay between Hongi's visit to London in 1820 and the petition to King William IV in 1831. Orange emphasises the role of Samuel Marsden in promoting what she calls a 'benevolent face' for the Crown. She also suggests that his patronage of the many chiefs who visited New South Wales, and his introduction of them to the governor of the day,

[49] eg JR Elder, *Letters & Journals* p 462
[50] ibid, pp 376, 381, 383
[51] ibid, p 357
[52] See JN Coleman, *Memoir of the Rev Richard Davis*, London, 1865, passim
[53] A Ballara, *Taua*, p 193

encouraged 'the notion of a personal approach to the Crown' from the earliest years. Effectively, Orange saw Marsden and the missionaries as laying the groundwork for Maori alliance with the Crown in 1840 by constant pro-British and pro-government propaganda.[54]

There is certainly evidence to support this view in the letters and journals of Samuel Marsden and the other missionaries. Even Richard Davis, for example, who daily expected the judgement of God on the British Government in punishment of the nation's sins, was a staunch patriot and supporter of "John Bull" when the chips were down.[55] Contrary propaganda was, of course, available to Maori via American whalers, anti-government convicts or British crews, and French visitors. The 'national sins', as Davis put it, were easy to point out, especially in the treatment of aborigines in New South Wales. In particular, the British missionaries were worried about the anti-British sentiments which the French Catholic missionaries were spreading in the late 1830s. Through long years of association with all of these informants, and their own visits to New South Wales, Britain, and other countries, the Bay rangatira had the opportunity to weigh this propaganda in the balance. Their actions in the 1830s indicate a growing acceptance of the British missionaries and their various messages, which included that the British government was trustworthy, its intentions protective, and its protection compatible with their continued authority and independence.

Several examples of this type of missionary propaganda, and Maori responses to it, may be drawn from the journals of Samuel Marsden. The recurring themes are: that the King wished to protect Maori from the illegal actions of his subjects; that the King wanted to secure their independence and freedom from foreign threats, such as from the tribe of Marion (France); that such foreign threats were a real danger; that the Governor of New South Wales would punish criminals, both Maori and European, if they visited the colony; that British law was superior and benign; and that Britain had no territorial ambitions in New Zealand.

In 1814, for example, Marsden met with Muriwhenua Maori at the North Cape. He raised the issue of their attacks on certain whaling ships, which they responded to by accounts of how they had been cheated and abused. The chaplain 'assured them that both King George and Governor Macquarie would punish any act of fraud or cruelty committed by the Europeans whenever they were informed of them'. He handed out copies of the government's instructions to ship captains, requiring them to forfeit a bond if they committed any crimes in New Zealand, and he told them that they could report future outrages to the Governor through the new mission ship. The chiefs agreed that if they could get redress from the Governor, they need not punish Europeans themselves again. The Bay chiefs supported this position and Ruatara 'laid the strongest injunctions on them not to injure the Europeans in future, but refer their complaints to the Governor of New South Wales.'[56]

In 1819 Marsden met with the leaders of the Nga Puhi southern alliance at Okura. The assembled rangatira complained about the actions of ships' captains and crews in the Bay:

> I told them that a law had been passed in England for the punishment of any European who should wantonly kill a New Zealander, and that if any of the New Zealanders killed an European, if they came to Port Jackson afterwards they would be hung. They were much gratified with this information. I told them that King George wished to protect them from violence as well as his own people, and that he would punish the guilty whenever they could be caught, whether they were Englishmen or New Zealanders. They said if any European should kill a New Zealander they should wish to see him executed.'[57]

[54] C Orange, p 10
[55] JN Coleman, p 141 cf p 144
[56] S Marsden, Journal, 16 Dec 1814, in JR Elder, *Letters & Journals*, p 82
[57] ibid, 19 Oct 1819, p 207

In 1820, Marsden and Te Morenga visited Murupaenga's pa in Kaipara. They discussed the wars between the Bay and Kaipara peoples, and Murupaenga claimed to be sick of war. Te Morenga

> explained to them how the government of Port Jackson was conducted: that we had only one king, which was Governor Macquarie, and he put a stop to all fighting there. King George, he had heard, did the same in England. But while there were so many kings in New Zealand there would be continual wars. He said Captain Downie of the *Coromandel* had written to King George to send a man-of-war to New Zealand, and he thought when she came the country would be greatly benefited and she would prevent the people of the Bay of Islands from coming to the River Thames and Kiperro [Kaipara] to plunder and murder the inhabitants.'[58]

Te Morenga repeated the same point a week later, lamenting the ruined pa and cultivations left by war and expressing his support for the idea of a British ship to help stop tribal warfare.[59] Thus, by increments, the message that a benevolent British Government might assist in the protection of Maori tribes from each other, whether welcomed by both sides or not, was spreading through the agency of Europeans like Marsden and powerful chiefs like Te Morenga.

In 1830, when discussing the Girls' War with Nga Puhi leaders at Waimate, Marsden and his missionary companions went so far as to tell them that they were dissipating their national strength, which needed to be preserved for resistance to the threat of hostile foreign powers. 'We told them,' he recorded, 'that if they wished to enjoy their native land they must not kill one another; if they continued to do so they would have no men to protect their country from any foreign enemy who should at any future period wish to take it from them.'[60] This was not long before the visit of a French ship with possible territorial ambitions, and the resultant petition to the British King in 1831.

In communicating these types of messages, the missionaries had to combat those who were suggesting that it was Britain and her soldiers who were the real threat. In 1814, the New South Wales Governor made it clear that he supported the new mission by offering the visiting chiefs cattle and other inducements to accept the missionaries and cement good relations.[61] At the same time, some people at Sydney told Ruatara that the missionaries' goal was to get a footing and then pour into New Zealand with an army and take it for Britain. He was shown the subjugation and misery of the conquered Aborigines and told that the same thing would happen to his people. The chief was very upset that he might be 'the author of their country being taken and given to the English'. Marsden never entirely overcome Ruatara's fears on this head.[62]

Similarly, Heke's account of the meeting between Hongi and King George has the former seeking soldiers to assist in his wars, as he would from a tribal ally in New Zealand. The King, however, declined to provide soldiers: 'I will not consent to send soldiers to New Zealand lest you should be deprived of your country, which I wish should be left for your children and your people, for they would not act properly.'[63] If the King did indeed give such a warning, Hongi clearly took it to heart. In September 1823, at a meeting at Kerikeri, the chief Te Puhi expressed a wish that Britain should provide soldiers for New Zealand, not to assist Bay Maori in their wars (as Hongi had wanted) but to help bring about inter-tribal peace.[64] Several days later, Hongi met with Marsden and put his own views to the chaplain:

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[58] ibid, 19 Aug 1820, p 290
[59] ibid, 27 Aug 1820, p 298
[60] ibid, 23 March 1830, p 472
[61] S Marsden to CMS, 22 Sept 1814, in JR Elder, *Letters & Journals*, p 133
[62] S Marsden to CMS, 26 Oct 1815, in JR Elder, *Letters & Journals*, p 141
[63] Hone Heke to Queen Victoria, 10 July 1849, GBPP vol 6, [1280], p 17
[64] S Marsden, Journal, 19 Sept 1823, in JR Elder, *Letters & Journals*, p 371

> He [Hongi] told me that he was apprehensive that the English would send soldiers to New Zealand from Port Jackson, and take the country from them. I told him we had plenty of land at Port Jackson – more than we wanted – and took a chart and showed him what a little spot New Zealand was compared with New Holland, and that New Zealand was not an object to the English and therefore he need not be afraid of them. When he saw the chart he seemed satisfied. I told him I thought the chiefs of New Zealand had better make him king, and then he might put an end to their wars.[65]

In addition, Marsden cautioned Hongi of the need for Maori to save their military strength to fight off foreign aggressors. Although he did not name any particular country, he clearly did not mean Britain.[66] This constant sowing of seeds was one factor which led to the foreigner-scare documents of 1831 (the petition to King William) and 1835 (the Declaration of Independence).

Thus the Bay Maori were considering wide sources of information by 1830, and had established relationships with a variety of powerful British figures. This set the scene for the events of 1831, in which the rangatira made two major initiatives to renew Hongi Hika's alliance with the British Crown. These initiatives were sparked by three events in 1830. Firstly, King George IV died and was succeeded by his younger brother, William IV. Since Hongi had also died in 1828, there was then a question as to whether his alliance would survive the death of its two authors. Also, Rev William Yate met with the new king before his departure for New Zealand, and found him to be genuinely interested in New Zealand and its concerns. He no doubt brought a favourable report of the new monarch to the Bay of Islands.[67] At this point, it should be remembered, constitutional government had not evolved to the stage where the monarch's influence was negligible. The first Reform Bill had not yet been passed, and, as Captain La Place of the *Favorite* put it, Hongi had seen the realities of aristocratic rule when he visited London in 1820.[68] Regardless of whether personal alliance with the king was capable in reality of providing the benefits they sought, Bay Maori reacted to the power structures as they understood them and wanted to re-establish their alliance with King William and his kawana in 1831.

This desire was triggered by three crises in 1830-31. The first was the growing sense of difficulty in dealing with the shipping at the Bay. Shawcross puts forward a strong argument that as the 1820s wore on, Maori leaders became increasingly circumspect in their dealings with Europeans, even when the latter tried to cheat them or resorted to violence. They feared driving away the goose that laid the golden egg, and equally feared the blame and retribution that this would bring from their fellow rangatira.[69] But every now and then there were crises that made it difficult to resolve the actions of Europeans without conflict inside and between kin groups. The Girls' War of 1830, for example, which is discussed in more detail in chapter 2, was soon blamed on Captain Brind, whose spurning of one set of prominent women for another had precipitated the fight on the beach that led to war. It was convenient to blame Captain Brind – everyone did it – but his actions do appear to have been cavalier in terms of swapping alliances and casual treatment of his obligations, and they had far-reaching consequences. The southern alliance lost Kororareka, the balance of power was changed, and the northern alliance was embroiled in wars with Hauraki and other peoples, seeking payment for the life of the rangatira Hengi who was killed at Kororareka. One result was trade in the preserved heads of the fallen; again, some Bay of Islands leaders blamed Brind and Europeans for this outcome.

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[65] ibid, 8 Oct 1823, p 383
[66] ibid
[67] E Ramsden, *Marsden and the Missions: Prelude to Waitangi*, Dunedin, 1936, p 21
[68] K Sinclair (ed), *Laplace in New Zealand, 1831*, Waikanae, 1998, p 86
[69] K Shawcross, passim

The second crisis of 1830 was a new departure in the relationship between Maori and their allied ship captains. Word soon reached the Bay of Islands of the infamous "Elizabeth affair", in which Captain Stewart of the *Elizabeth* transported a Ngati Toa taua to Akaroa in secret, lured the Ngai Tahu ariki Tamaiharanui on board, and assisted in the ambush of the local Ngai Tahu. The ship then transported the captured prisoners back to the North Island in chains.[70] This broke the delicate balance of Maori-shipping relations. Previously, ships had sometimes kidnapped Maori and abandoned them among their enemies, but this was not usually at the behest of other Maori. Just such a kidnapping of one of Te Morenga's relatives had led to a major war in the 1820s. But there had never been collusion between Maori and captains on such a scale as the *Elizabeth* affair. Orange argues that Nga Puhi feared the use of such stratagems against them by their resurgent enemies to the south.[71] The rules of trade, the etiquette governing ship-board transactions, the nature of British-Maori relations; all might change as a result of the actions of Captain Stewart and Te Rauparaha.

When the Elizabeth reached the Bay of Islands, the events at Akaroa were relayed to one of the chiefs by a sailor who had formerly lived in his kainga at the Bay. The chief, named Whare by Marsden (Wharepoaka?) was a brother-in-law of Waikato and appears to have taken a personal interest, because of the role of "his" European, Powell, in the affair. Somehow, Whare managed to obtain control of a surviving Ngai Tahu chief, Ahu, who had accompanied Powell to visit him, and the whole story was then related to a hui of Bay chiefs. The Nga Puhi leaders were 'greatly incensed' and decided to send Whare and Ahu to Port Jackson to complain to Governor Darling.[72]

In the wake of the Girls' War and the Elizabeth affair, Nga Puhi thus met in early 1831 and deputed one of their rangatira to go to New South Wales and attempt to redeem King George's promise from the kawana. As Marsden put it, he had 'come at the request of the chiefs to seek redress'.[73] Further research might uncover more details on why Nga Puhi decided on this action, and the subsequent course of events in Sydney. The main source relied upon in this report is Marsden's account of matters, which leaves some unanswered questions. The chief who was sent to Sydney in April 1831 was named "Whare", as noted above. This was most likely Wharepoaka, the Te Hikutu chief of Rangihoua, but it could also have been the Ngaitawake rangatira Wharerahi, one of the most senior Nga Puhi chiefs and titular head of the most powerful chiefly family at the Bay. Both men were leaders of the northern alliance, and it is no co-incidence that Wharerahi's brother Rewa, the most powerful of the northern rangatira, was behind the second initiative to King William later that year. In Marsden's letter, he stated that Whare's sister was married to Waikato, which militates against the idea that he was Wharepoaka, unless Marsden misunderstood the relationship. On the other hand, Darling said that Whare was the son of a principal chief, which makes it unlikely to have been Wharerahi, who was an older man by this time.[74] Claimants may be able to shed light on this matter.

Whare's concern, as reported by Marsden, appears to have been that King George IV had made an agreement with Hongi Hika that British and Maori would not kill each other. This agreement had been violated by Europeans, and Maori now looked 'for redress and protection to the British Government according to His late Majesty's promise, made to Shunghee [Hongi] & Waikato'.[75] There was evidently a sting in the tale of this appeal to the kawana. Again, in Marsden's words, 'If no measures are taken the New Zealanders will

[70] G Phillipson, 'Preliminary Report to the Waitangi Tribunal', Wai 64 F5, pp 39-45
[71] C Orange, p 12
[72] S Marsden to Darling, 18 April 1831, Marsden Family Papers, MS-Copy-Micro-0206
[73] S Marsden to CMS, 18 April 1831, in JR Elder, *Letters &Journals*, p 498
[74] Darling to Goderich, 13 April 1831, CO/209/1
[75] S Marsden to Darling, 18 April 1831, Marsden Family Papers, MS-Copy-Micro-0206; see also Orange, p 12

redress their own wrongs and take life for life, though they are most unwilling to injure the Europeans'.[76] In other words, although Marsden spoke of 'protection', what was meant was more a warning and an appeal for help from a position of strength, not of weakness.

Marsden, having introduced Whare to the Governor and attended their meeting, wrote to Darling:

> W[h]are is very desirous to obtain from Your Excellency some assurance that the Europeans shall not be allowed to kill his countrymen in the manner they have done at [Akaroa]…Before W[h]are left the Bay of Islands, the New Zealanders declared that if the Europeans united with any of their tribes in their mutual wars, and killed the natives as they had done the people at [Akaroa], they would kill the white people as a satisfaction for their friends who were murdered.[77]

Hongi's pledge to George IV, as reconstructed here, was that he and his people would protect the missionaries and not kill Europeans. If they were to keep that pledge, the Europeans' king was going to have to start doing more to keep his followers in order. Also, the Bay chiefs wanted something done to stop the trade in preserved heads, and to reacquire the heads of their relatives. It is not entirely clear, however, how much the outrage about Captain Brind and the wars following the Girls' War is actually Marsden's rather than that of Whare, but Darling confirmed that the trade in heads was a major issue for many Maori.[78]

The representations of the Bay of Islands chiefs, and of the Ngai Tahu chief who also came seeking redress, led to immediate action on the part of Governor Darling. He issued a General Order prohibiting the importation of preserved heads to New South Wales, and made it clear to Marsden (and presumably Whare) that he intended to appoint a British official who could act on the spot to resolve crises, discipline ships' captains, and obviate the need for Maori to do so themselves. On 25 April, Marsden wrote to the CMS:

> I have no doubt that the Governor will point out [to the Colonial Office] the necessity of a Resident being appointed to New Zealand to whom the natives may appeal for redress for acts of cruelty, etc., done upon them by the Europeans. Something must be done or all commercial connection must cease between New Zealand and this Colony. The natives will most assuredly revenge their own wrongs unless some protection is afforded them…The British Government must take notice of them or expose their own subjects who visit that island to the constant danger of murder.[79]

The appointment of the Resident and the shifts in British policy that this occasioned will be considered in more detail below. First, however, we must consider the second Bay of Islands initiative in 1831 to renew the alliance between Nga Puhi and the British Crown. This took the form of a petition from thirteen prominent Nga Puhi rangatira of the Bay of Islands and Hokianga, asking King William (as Richard Davis put it) 'to take them under his protection, and to allow them a place in the number of his allies'.[80]

The immediate cause of the petition was the arrival of the French ship *LaFavorite* from New South Wales in October 1831. Yate and Rewa brought the news of its intentions, which were supposedly to seize New Zealand for the French and punish Bay Maori for the death of Marion du Fresne back in 1772. But the resultant petition was not entirely in relation to protection from foreign powers. The concerns that had led to Whare's visit to Governor Darling in April were repeated in the petition, which asked the King to 'protect these islands from foreign invasion and from the improper conduct of British subjects who frequent their coasts'.[81]

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[76] S Marsden to CMS, 18 April 1831, in JR Elder, *Letters &Journals*, p 499
[77] S Marsden to Darling, 18 April 1831, Marsden Family Papers, MS-Copy-Micro-0206
[78] JR Elder, *Letters & Journals*, pp 498-499 cf Darling to Goderich, 13 April 1831, CO 209/1
[79] S Marsden to CMS, 25 April 1831, in JR Elder, *Letters & Journals*, p 499
[80] R Davis to JN Coleman, 3 December 1831, in JN Coleman, p 144
[81] William Williams, journal, 4 October 1831, qMS 2248, p 256

The main Maori mover behind the petition was the Waimate and Kororareka chief Rewa, brother of Wharerahi and Moka, and widely esteemed to be the successor to Hongi's leadership role in the northern alliance. This powerful Nga Puhi chief was visiting New South Wales in September 1831, at the time when *La Favorite* called there on its circumnavigation of the globe. Rewa met its captain, Laplace, and carried the news back to the Bay of Islands, along with various rumours about the intentions of the French expedition towards Maori. Rewa was something of a friend and ally to the mission, inheriting this role among others from Hongi, but he was never overly amenable to missionary advice or the Christian religion.[82] His moving role in the creation of the petition, therefore, was as a result of his own knowledge and information received in Australia, in addition to the advice and information of mission leaders, particularly the Rev William Yate. It is necessary to stress at the outset, that the petition was as much Rewa's doing as the missionaries', and that it reflected Nga Puhi concerns and objectives, which dovetailed well with those of the missionaries but were not created by them.

Information about the interaction between Captain Laplace, Rewa, Yate, and Governor Darling is sketchy at best. Further research might well uncover more details. In the meantime, we know from Laplace's account of his visit that he met Rewa in Australia.[83] We also know from William Williams' journal that when Rewa and Yate returned to the Bay of Islands in late September, beating *La Favorite* by a couple of weeks, they brought back rumours about a French intention to take possession of New Zealand, and wild stories about the kawana's advice for Maori to place themselves under the protection of King William.

On 27 September, Williams recorded in his journal:

> News having been brought from Port Jackson by the return of the "Active" that it is suspected that a French corvette now at Sydney is coming to New Zealand with a design of taking possession of the country in the name of the French Government, we have taken the opportunity, at the suggestion of the Governor of Port Jackson, of mentioning the matter to the native chiefs. They seem all glad to avail themselves of the proposal to place themselves under the protection of the British government, as has been done at Taheiti [sic] and the Sandwich Islands, and we have accordingly taken measures for the preparation of a document for that purpose.[84]

This journal entry raises a key issue. Were the rumours of French intentions such that the kawana had instructed Yate to get the Maori chiefs to seek the protection of the British Government? If the initiative for the petition lay partly with the government itself, that makes it a very different document to interpret in terms of the intensifying alliance between Bay Maori and the Crown, than if the move came solely from the chiefs and the missionaries. Peter Adams, in his brief analysis of the move to appoint a British Resident, notes that the French had no territorial ambitions in New Zealand at the time, and that Laplace called in there more by accident than design. He observes, however, that 'groundless fears may be just as potent as those based on reality'.[85]

Adams rejects Williams' information as incorrect:

> Darling's hospitality [to Laplace] suggests that he did not suspect that the French captain had been sent to take possession of New Zealand, nor is it probable that Laplace gave him any grounds for suspicion, as it appears that the French captain did not decide to call and refresh at New Zealand until after he had left Sydney. William Williams' story that the missionaries acted at the suggestion of the New South Wales Governor does not ring true. Possibly Yate, or someone else on board the *Active*, got it into his head that the French ship had designs on New Zealand and persuaded the missionaries to take urgent

[82] See for example William Williams, journal, 24-25 November 1831, qMS 2248, p 259
[83] K Sinclair, p 68
[84] William Williams, journal, 27 Sept 1831, qMS 2248, pp 254-255
[85] P Adams, *Fatal Necessity: British Interventionin New Zealand, 1830-47*, Auckland, 1977, p 74

> action; either that, or the missionaries merely used the French ship as an excuse to put pressure on the British Government by getting the Maoris to ask for British protection.[86]

The sequence of events makes it likely that Adams is correct, and that Governor Darling had no idea in his mind that *La Favorite* posed any sort of threat when the *Active* sailed for the Bay. But whether or not the Governor believed them, rumours abounded in Sydney (as reported by Polack) and made their way to New Zealand with Yate and Rewa.[87] Also, Adams tends to ignore Maori agency and see the petition as a missionary jack-up. The evidence does not support this interpretation.

One immediate issue that arises is: how strong were Maori concerns about the possibility of French conquest in general, and of revenge attacks because of Marion du Fresne in particular? At first, the latter may have seemed the more pressing concern. Whilst nobody had sent troops to conquer New Zealand, the revenge attacks by whalers against Te Pahi were a very real precedent to point to, and the concept of French vengeance fitted easily with Maori views of warfare. The fact that it had been Ngare Raumati, no longer in control of the south-east Bay, who had been responsible for killing Marion was neither here nor there. Maori would take satisfaction from a variety of sources, not necessarily against the actual perpetrators of an offence, and expected the same from the French. Taking the example of the attack on Te Hikutu mentioned above, we note that the whalers attacked Te Pahi even though he had not been responsible for the sacking of the Boyd, but had been present and may have taken some of the loot. Though the whalers acted in the belief that he *had* been responsible, they were nevertheless acting in accordance with Maori tradition by seeking satisfaction from someone whose involvement had been peripheral. Retaliation for the attack on Te Pahi in its turn was not visited on the British who carried it out, but on the Whangaroa Maori who had sacked the Boyd in the first place.[88]

Similarly, Ngare Raumati were attacked by Nga Puhi soon after the battles with the French, because some of the neighbouring Nga Puhi had been involved and had lost their lives. Tohitapu, the Te Roroa chief of Te Haumi, had told Henry Williams that he himself had been involved in the battle and had eaten Marion’s body. Also, Te Whareumu (King George) had participated in the attack on the French. Notwithstanding their involvement, the Bay Nga Puhi advanced arguments that the people of Whangaroa (their great enemies) had really been responsible for it all.[89] Even so, the threat of French retaliation did not seem an idle one.

Captain Laplace recorded his surprise that his ship was not swamped by visitors, as he had been led to expect, although the chiefs and their families called and exchanged gifts and pleasantries. The captain wrote that, ‘intimidated doubtless by the guns and the large number of crew on the corvette, or perturbed, as I learned later, by false rumours the natives visited us but rarely during the stay and left it to their chiefs to do us the honours of the country’.[90] He reported his annoyance that the missionaries would not give him supplies for the sick, and wrote:

> I soon had gained the conviction that these Apostles of the Gospel, thinking our sojourn in the region to be for political ends, sought to overturn the good harmony that reigned between ourselves and the natives, by insinuating to them that I had come to take possession of the Bay of Islands and to avenge the death of Marion, assassinated by their ancestors towards the end of last century.[91]

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[86] ibid, p 76
[87] J Polack, 1838, cited in K Sinclair, p 42
[88] For details on this, see JR Elder, *Letters & Journals*, passim
[89] LG Kelley, *Marion Dufresne at the Bay of Islands*, 1951, pp 86-100
[90] K Sinclair, pp 65-66
[91] ibid, p 88

The incident loomed so large in Maori consciousness that they had given the French the name 'the tribe of Marion', and called them this in the petition to the King, which did not mention the possibility of attacks for the death of the French captain, but said instead: 'We have heard that the tribe of Marian [sic] is at hand coming to take away our land'.[92]

The prime Maori mover in spreading this rumour, and orchestrating the Nga Puhi response, was the rangatira Rewa. When the French ship finally arrived, Mrs Williams wrote:

> David [Rawiri] Taiwhanga came running in to tell me that the ship was now come, about which we had heard so much by our own vessel, and from Rewa, who had visited New South Wales, - that they were the enemies of King William, come to spy out the land, and had four hundred men on board; that as Mr Williams was at Kerikeri at the Committee, I must give him the flag of our nation to hoist upon the flagstaff on the hill. I told him the line was broken, which was the reason no flag had been hoisted for several Sundays. Oh! He would send a boy up; would I not give him a rope? I should have it again in a few days. Did I not wish to shew the flag of my country? Then, if they tore it down, Mr Williams would write to the rulers of our land to fight for us.[93]

Even as Mrs Williams was sacrificing her new washing line for the hoisting of her national flag, her husband was at Kerikeri where a gathering of Nga Puhi chiefs had been considering the text of the petition to the King. It is not clear how widely the matter had been discussed among Nga Puhi, who actually decided on the text, nor how widely the petition was supported in Hokianga and the Bay of Islands. The following analysis is based on snippets of information in the missionary papers – further research might uncover more useful details. Also, the claimants may have surviving oral traditions about the petition and the objectives of their tupuna in seeking closer alliance with King George's successor.

On 20 September 1831, Henry Williams recorded the return of the *Active* in his journal, along with its news: 'French man of war expected. Considerable doubts in the Colony as to her intention.'[94] From this point on, Rewa had two weeks in which to discuss the situation with other Nga Puhi chiefs and garner support for a petition. According to Professor Keith Sinclair, the decision to petition the King was made soon after and the text was prepared jointly by Rewa and Yate.[95] The textual evidence certainly suggests that Nga Puhi of the time were responsible for its sentiments, tone, and content, although this may simply represent a missionary ability to mimic the communication style of the chiefs. Either way, this jointly authored document was placed before a hui of chiefs at Kerikeri in early October.

On 27 September, William Williams noted that the missionaries had discussed the French threat with (unnamed) chiefs, that the suggestion of a 'proposal to place themselves under the protection of the British government' had come from the Governor and been accepted by the chiefs, and that the missionaries had therefore begun to prepare 'a document for this purpose'.[96] It is impossible to know how far the rangatira were influenced by Williams' idea that their approach to the King had actually been requested by the Governor as well as the missionaries. If the idea did get into circulation, it can only have increased the momentum and significance of the petition. On 28 September, further discussions took place: 'Several Chiefs came to speak respecting the letter to the King to become protector of this island.'[97] There was a further large hui at Kororareka on 2 October for the purpose of a

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[92] Petition to King William, GBPP vol 3, p 55
[93] Marianne Williams to Mrs T Williams, 3 Oct 1831, in H Carleton, *The Life of Henry Williams*, vol 1, p 92
[94] H Williams, journal, 20 Sept 1831, in LM Rogers, ed, *The Early Journals of Henry Williams, 1826-40*, Christchurch, 1961, p 192
[95] K Sinclair, pp 43-44
[96] W Williams, journal, 27 Sept 1831, qMS 2248, pp 254-255
[97] H Williams, journal, 28 Sept 1831, in LM Rogers, *Early Journals*, p 192

'native baptism' but chiefs like Titore refused to accept the missionaries' criticisms of this event. Presumably the petition was discussed here as well, although there is no record of it.[98]

Two days later, on 4 October, a hui at Kerikeri accepted the petition, which was then signed (perhaps over the next couple of days) by thirteen prominent chiefs. William Williams recorded on 4 October: 'A number of chiefs from the Bay of Islands and Hokianga signed a petition to King William praying him to protect these islands from foreign invasion and from the improper conduct of British subjects who frequent their coasts.'[99] The latter was an important point, as it meant the inclusion of Nga Puhi's earlier concerns about the behaviour of Europeans and their relationship with the King, which they had taken to the Governor in April 1831 and now took the opportunity of repeating in the petition.

The arrival of *La Favorite* was recorded the next day, and the missionaries visited the ship on 6 October. Henry Williams noted that all was polite and friendly.[100] His brother was more forthcoming about what they had discovered: 'No intimation was given by anyone on board of any intention on the part of the French government of forming a settlement in this country.'[101] It cannot have been far into the ship's week-long visit before the missionaries realised their mistake about its intentions. Richard Davis, on the other hand, continued to believe in the threat: 'The French vessel was evidently on the look out for this island, but left without hoisting the tricoloured flag, in consequence of what the natives had done.'[102]

At the same time, the possibility that the real threat was Britain continued to circulate. At Waiomio, a chief tackled William Williams about it:

> He said that the governor had told a chief who was there with Mr. Yate [Rewa], that if they listened to us they would all be bewitched [makutu'd] and that we should then send for soldiers to take their country; but that they would do well to befriend the captains of the ships who supply them with powder and muskets. This I shewed him to be altogether false from the general conduct of the governor towards the missionaries.[103]

Even so, there was sufficient support for Nga Puhi alliance with Britain to induce thirteen important chiefs to sign the petition. I have no details on the number of people who attended the hui, whether there was widespread support for the petition, or whether important chiefs who did not sign (such as Tareha, Pomare, Kawiti, Wharepoaka, and others) were present, did not support the petition, were not invited, or were absent unavoidably. Tohitapu, for example, was very unwell in late September and may not have been present for that reason.[104] Also, unlike the Treaty itself or the Declaration of Independence, there is no suggestion that Maori or missionaries took the document around for further support and signatures. It is certainly the case that, other than Te Morenga, the chiefs who supported the petition were leaders of the northern alliance, and as such, well disposed to Hongi's agreement with King George. It may be that the southern alliance tribes, including the powerful Pomare who had just lost Kororareka the year before, held back from supporting the petition and intensifying Hongi's relationship with the British Crown.

Unfortunately, William Yate (supposedly the architect of this petition) is largely silent about it in his letters and journals. His one fleeting reference hints that, in conjunction with the CMS committee meeting at the same time, the hui was representative and widely attended:

[98] W Williams, journal, 2 Oct 1831, qMS 2248, p 255
[99] ibid, 4 Oct 1831, p 256
[100] H Williams, journal, 6 Oct 1831, in LM Rogers, *Early Journals*, p 193
[101] W Williams, journal, 6 Oct 1831, qMS 2248, p 256
[102] R Davis to Coleman, 3 Dec 1831, in JN Coleman, pp 143-144
[103] W Williams, journal, 13 Nov 1831, qMS 2248, pp 257-258
[104] H Williams, journal, Sept 1831, in LM Rogers, *Early Journals*, p 191

> The Chiefs of all the various tribes in the Bay of Islands and from Hokianga assembled at Kerikeri to write to the King of England to entreat him to become their ally and to protect them from foreign invasion.[105]

The venue may have discouraged some; it was at Kerikeri, heartland for the northern alliance, although Te Morenga was present and signed the document. In fact, in terms of the signatories, a brief analysis indicates that there was a wide spread of Nga Puhi districts covered, including a very substantial Hokianga presence, that there was support from the northern alliance and from at least Te Morenga of the southern alliance, that there was support from very powerful chiefs, and that support was spread among people who held a wide spectrum of views about the missionaries. Although people like D'Urville dismissed the petition as a missionary affair, the identity of the signatories makes this difficult to accept.[106] Although missionary advice and agency was important, the petition and the policy of alliance with the King was undoubtedly the work of important Nga Puhi leaders themselves.

Before proceeding to identify the signatories, it is important to consider the text of the petition, which is reproduced in full because of its significance:

> **To KING WILLIAM, the Gracious CHIEF OF ENGLAND.**
>
> **KING WILLIAM,**
>
> We, the chiefs of New Zealand assembled at this place, called the Kerikeri, write to thee, for we hear that thou art the great chief of the other side the water, since the many ships which come to our land are from thee.
>
> We are a people without possessions. We have nothing but timber, flax, pork, and potatoes, we sell these things however to your people, and then we see the property of Europeans. It is only thy land which is liberal towards us. From thee also come the missionaries who teach us to believe on Jehovah God, and on Jesus Christ his Son.
>
> We have heard that the tribe of Marian is at hand coming to take away our land, therefore we pray thee to become our friend and the guardian of these islands, lest the teazing of other tribes should come near to us, and lest strangers should come and take away our land.
>
> And if any of thy people should be troublesome or vicious towards us, (for some persons are living here who have run away from ships,) we pray thee to be angry with them that they may be obedient, lest the anger of the people of this land fall upon them.
>
> This letter is from us, from the chiefs of the natives of New Zealand.[107]

There followed a note from William Yate, certifying that this was a literal translation of the petition, and his signature as secretary of the mission. Manuka Henare has located the original Maori-language version of the petition in the CO201 files, and has reproduced it in the appendices of his thesis.[108]

The petition was signed by the following Bay of Islands chiefs (in order of signature):

- Wharerahi, described in the petition as 'Chief of Paroa'. This rangatira was a Ngai Tawake and Patukeha leader, the elder brother of Rewa and Moka, and the most senior and respected chief of the northern alliance. He had established himself as the leading chief of the south-east Bay during the movements following the conquest of Kororaeka in 1830. As brother-in-law of Nene, he had links that enabled him to bridge the divide between the Bay and Hokianga. Although willing to fight external enemies, he was known as the 'peace maker' at home, and was a firm friend and ally

[105] W Yate, Journal, 3-5 October 1831, CN/0 99(b), Micro MS Coll 04/64
[106] D'Urville's opinion is cited in JR Elder, *Letters & Journals*, pp 504-505
[107] Petition to King William, GBPP vol 3, p 55
[108] M Henare, 'Rangatira Letter to King William IV, 5 October 1831', Appendix 6. There is a manuscript copy of the translated petition in the Webster Papers, MS-Papers-1009-2/71

of the CMS mission. Although one of their most powerful protectors, he was not a convert and continued to participate in warfare at this time, despite missionary opposition.[109]

- Rewa, described as 'Chief of Waimate'. He was the younger brother of Wharerahi, and the most powerful chief in the northern alliance. More than any other, he was looked to as the successor of Hongi's mana and leadership role. Like his older brother, he protected the mission but was less of a convinced ally, and as with most chiefs at this time, took missionary advice on few matters relating to his traditional sphere of action. William Williams believed, however, that the missionaries had greater influence over Rewa and others on what he called 'their state questions'.[110] Together, the support of Wharerahi and Rewa for the petition amounted to a great deal of the northern alliance's sphere of influence. When the decisions were made about fighting or not fighting, combining with allies (such as the Hokianga people) or not, and other such outward-looking questions, the word of these two brothers carried a lot of weight.

- Te Kekeao, described as 'Chief of the Ahuahu'. This Taiamai rangatira of Te Uri Taniwha was the principal chief of Te Ahuahu or Pukenui. As such, he headed the powerful tribal groups of Ngati Hineira and Te Uri Taniwha, and was a leader of the southern alliance. Shawcross describes him as an old man by the 1830s, who was friendly to Europeans and sought to expand the economic base of his tribe through new methods of cultivation, especially wheat.[111]

- Titore, described as the 'Chief of Kororarika' [sic]. This Ngai Tawake chief was one of several Nga Puhi leaders who moved from Waimate to Kororareka in 1830. The description of Rewa as 'Chief of Waimate' and Titore as 'Chief of Kororarika' probably represents a compromise between the two men. They were the main rivals for the leadership of the northern alliance, and Shawcross suggests that Titore displaced Rewa as the main leader in the next couple of years, through his prominence in the campaigns at Tauranga and the south. The CMS missionaries considered Titore a friend and ally, despite his role as a leading warrior, although like Rewa he was not very amenable to their suggestions. He had lived at Parramatta with Marsden, visited England, and supported his son's chapel (though did not become a convert himself).[112] His support of the petition, in combination with the other northern alliance chiefs, was very significant in terms of its status in the Bay of Islands.

- Te Morenga, described as the 'Chief of Taiamai'. He was the leading rangatira of Ngare Hauata and Te Uri Kapana, and the principal leader of the southern alliance. After the death of his main rival, Hongi Hika, he was probably the most powerful of the Bay chiefs. His support for the petition would carry a lot of weight in the Taiamai, Kawakawa, and other districts of the southern alliance. Like Titore, Te Morenga had lived for a while with Marsden, and he was a firm supporter of the mission. In 1834, Henry Williams described him as 'Mr. Marsden's friend'.[113]

[109] See L Rogers, *Early Journals*, pp 40, 80-81, 112
[110] W Williams, journal, 24-25 Nov, qMS 2248, pp 259-260
[111] K Shawcross, pp 225-227
[112] ibid, pp 222-223; LM Rogers, *Early Journals*, pp 109, 276, 278; & W Williams journal, 7 Jan & 7 Dec 1831, qMS 2248, pp 231, 260
[113] H Carleton, *The Life of Henry Williams*, vol 1, p 162

- Ripi, described as the 'Chief of Mapere' [Omapere or Mawhe]. Of all the chiefs who signed the petition, Ripi was the only Christian convert at the time, and he was baptised the next year with the baptismal name of Paratene (Broughton). He was the principal chief of the Te Uri Taniwha of the lake district, and allied to Te Kekeao of Pukenui, which places him more in the southern alliance, though he had strong links to the northern hapu as well. He was the only signatory who could be described as under missionary influence, in the sense that is usually ascribed to the supporters of the petition.[114]

- Hara, described as the 'Chief of Ohaiawai [Ohaeawai]'. This rangatira was the leading Ngati Rangi chief of the large Ohaeawai district, and one of the principal leaders of the northern alliance. He was also influential in the Waitangi area, where Te Kemara was the leading chief. Just as Ripi is the only signatory who can be described as a whole-hearted supporter of the mission, Hara is probably the only one who was a firm opponent in 1831. Two months after the signing of the petition, Henry Williams wrote: 'In the afternoon Hara came over wanting to sell 2 small pigs which we refused to do as he was so bad a character. He was very angry and said no one should listen to anything we had to say.'[115] It was not until two years later that Williams reported a change: 'He has hitherto been a sly evil disposed man, but has lately joined himself to our people. He has much to say respecting having left his evil deeds.'[116]

- Te Atua Haere, described as the 'Chief of Kaikohi [Kaikohe]'. This elderly rangatira was the leader of Ngati Tautahi and of the Te Uriohua living at Kaikohe. One of his most important allies, and later a leading chief of the Kaikohe people along with Hone Heke, was Rawiri Taiwhanga, a strong mission supporter and convert who was living at Paihia at this time and would also have supported the petition. Ripi was also close to Te Atua Haere and was attempting to convert him, but facing strong opposition from Wharepoaka and some of the Waimate chiefs.[117] Te Atua Haere could certainly not be described as under missionary influence, although he was not one of the more powerful leaders of the northern alliance.

In addition to these eight Bay of Islands rangatira, the petition was also signed by five chiefs who were mainly based in Hokianga, but had influence extending to the Bay of Islands:

- Patuone and Nene – these Ngati Hao brothers were the most powerful chiefs of Hokianga, and Nene saw himself as a leader of the whole of Nga Puhi, and heir to the role of Hongi Hika in the Bay of Islands. They were both protectors of missionaries and European traders at the time, and seeking ways in which to defuse the various crises that had developed for them as patrons in Hokianga.[118]

- Moetara – a leader of Ngati Korokoro of Hokianga, and the principal leader of Pakanae, which shaded into Bay of Islands territory.

[114] LM Rogers, *Early Journals*, p 208; W Williams, journal, 17 Sept 1831, qMS 2248, pp 253-254
[115] H Williams, journal, 5 Dec 1831, in LM Rogers, *Early Journals*, p 206
[116] ibid, 6 Dec 1834, p 402
[117] W Williams, journal, 17 Sept 1831, qMS 2248, pp 253-254
[118] See entries in the *New Zealand Dictionary of Biography*

- Matangi – the leading chief of Waima and described as one of the most famous and powerful of the Hokianga chiefs.[119]

- Te Taonui – a leading chief of the Popoto tribe, who lived at Otakura and was one of the great chiefs of Hokianga.

The support of these five rangatira, in combination with the eight Bay of Islands leaders, demonstrated a wide base of support for the petition from the leadership of wider Nga Puhi. In the context of their support, the involvement of Rewa, the demonstration of Maori concern about the French, and repetition of Nga Puhi's request to Governor Darling in April, it is almost impossible to view the petition as solely a missionary creation. It appears instead to have been a joint missionary-Nga Puhi initiative. Manuka Henare, who has reviewed the petition from a tikanga Maori perspective, came to the conclusion that it was the work of its Maori signatories. He is of the view that the Maori text supports this, although he rejects the idea that Nga Puhi were really all that worried about the French or possible utu for Marion du Fresne.[120] Indeed, it might be argued that a single ship with a rumoured 400 men aboard could not do a lot against the armed might of Nga Puhi. On the other hand, bombardment from ships was genuinely feared by coastal dwellers at the time. Nor was a rumour of 400 men insignificant, for either missionaries or Nga Puhi; such a number would have swamped British settlers at the time by a rate of about three to one.

In any case, the petition seems to have been the work of both missionaries and Maori, to have been led by Rewa, and supported by many important Bay rangatira. The King's response, therefore, which was read publicly at the ceremony to welcome the new British Resident, was also particularly important. This will be covered in the next section. First, to recap, the decade after the initial formation of the alliance between Hongi Hika and George IV in 1820, (which was how Hongi represented it to his Bay allies), saw developments which intensified the relationship between Bay Maori and the British and New South Wales governments. Partly this was the work of apologists like Marsden and his missionary colleagues, who presented the 'benevolent face' of the Crown to Maori, and acted from time to time as propagandists of the British Government. Rangatira visited New South Wales, stayed with Marsden, met with the Governor, and established personal ties with these leaders. Also, the alliance (as it was perceived in New Zealand) was worked out in the interactions of the Nga Puhi leadership at the Bay with their European visitors and dependents. The chiefs mainly managed to keep Hongi's pledge to protect the missionaries and not to kill Europeans. As their trading interests became more complicated and fraught, most chiefs were increasingly determined to avoid situations like the Boyd massacre of 1809. At the same time, Hongi remembered the King's warning about what might happen if soldiers were sent to New Zealand, and he and others were suspicious of Britain, France, and all the powers that might threaten their independence or avenge insults offered to their countrymen.

Matters came to a head in 1830, with Captain Brind's role in the Girls' War, the trade in preserved heads, and the Elizabeth affair. Nga Puhi became convinced that the British Crown was not doing its part to keep George IV's promise to Hongi, that Europeans would not be allowed to kill or harm Maori. In April 1831, the Bay rangatira sent a representative to New South Wales to revitalise their alliance with the Crown by seeking redress for these matters. He argued that the King's promise had been broken and should be kept, that the trade in heads should be prevented, and warned that if the kawana did not start controlling Europeans who acted improperly, then the chiefs would have to act themselves. According to

[119] LM Rogers, *Early Journals*, p 331
[120] M Henare, 'The Changing Images of Nineteenth Century Maori Society – from tribes to nation', pp 172-175

Marsden, there was an implication that violence would be punished by extreme measures, including death. This would mark, for the Bay rangatira, a withdrawal of Hongi's promise to George IV.

In September 1831, Rewa and Yate returned from New South Wales with the news that a French ship was on its way with the intention of claiming New Zealand for the French Crown, and punishing the Bay peoples for their role in the death of Marion du Fresne and his crew back in 1772. Although these rumours were in fact groundless, they provoked an immediate and strong response from Nga Puhi. Building on the success of the initiative in April, which had resulted in a ban on importation of heads to Australia and the offer that the Kawana would send them a "King's man" on the spot, the chiefs agreed to a proposal that they should send a written petition to King William IV.

The petition was drafted by Yate and Rewa, accepted at a hui in Kerikeri on 4 October 1831, and signed by 13 of the most powerful and senior chiefs of the Bay of Islands and Hokianga. The rangatira opened their letter with a salutation to the 'great chief the other side of the water', and explained that they relied on his people to supply them with material wealth, felt that his country was the most generous, and saluted him as the sender of the missionaries. Faced with a threat from the 'tribe of Marian' to come and take their country, they asked him to become 'our friend and the guardian of these islands'. Finally, the rangatira put their concerns of April, informing the King that if his people behaved in a 'troublesome or vicious' way, he needed to discipline them or else 'the anger of the people of this land' would do it instead.

The petition was not affected by the revelation that *La Favorite* had no designs on New Zealand, nor any intentions of seeking revenge for Marion du Fresne. After the departure of *La Favorite*, the news was taken to New South Wales by the ship *Fairy* that Captain Laplace had flown the French flag at the Bay of Islands and taken possession of the country for France. The Acting-Governor thought this very unlikely (further evidence that there had been no original alarm in government circles) but sent the sloop *Zebra* to investigate. If the French had attempted to assert sovereignty over New Zealand, the captain was to warn them off on the grounds that New Zealand was under British protection, 'according to the expressed wish of the inhabitants'. Captain De Sausmarez of the *Zebra* consulted with the missionaries about the petition and then returned to Sydney with it, from whence it was forwarded to London for response.[121]

The first news reached London in March 1832 that France might have staked a claim to New Zealand. This was raised urgently by the British ambassador in Paris but firmly denied. Two months later, the petition arrived in May and was considered for response by the Colonial Office. All of this was too late to affect the decision to appoint a Resident, however, which had already been approved in January 1832 as a result of Darling's response to the April 1831 initiative.[122] The appointment of the Resident, his instructions, the King's response to the petition, and the representations of the Crown made on the spot by Busby, will be covered in the next section of this chapter.

4 The British Resident, 1831-39

The relationship between the Crown and Bay of Islands Maori, and their alliance (as the latter saw it), was intensified by the appointment of a British Resident in 1832. From his arrival in 1833, James Busby orchestrated further formal overtures to the Crown, including the registration of a New Zealand flag, and the invitation to the King to protect New Zealand

[121] P Adams, pp 76-77
[122] ibid, pp 74-77

in the Declaration of Independence. In addition, Busby acted as a 'kaiwhakarite', or mediator, assisting in the settlement of disputes between Maori and European (not always successfully), and continually reminding Maori of the British Crown and its friendly intentions.

Both Orange and Ian Wards, who do not often see eye to eye in their interpretation of this period, agree that these actions on the part of Busby contributed very significantly to the climate of consent to the Treaty in 1840.[123] Thus, those historians who see Busby as a failure, such as Adams, are interpreting his actions in terms of failure to fulfil his grandiose instructions and single-handedly police the frontier.[124] If instead, we interpret the impact of the Resident in terms of Treaty history, as establishing positive relationships with the chiefs, further personalising the Crown in their eyes, explaining British intentions with a positive gloss, and accustoming them to a circumscribed role that they thought of as something like a kawana or 'king', then the Resident's actions take on a much greater significance.

As the climax of this interpretation of Busby's impact, we note that when it became clear to Maori that the situation was changing in New Zealand and Britain might be going to send them a kawana, some of the Bay peoples were said to have invited Busby to assume the title of 'king'. Thus, by 1836, the colonial and British governments had decided that Busby's appointment was a failure and his role useless. In 1839, however, the Ngati Rehia and other Waimate tribes may have invited Busby to become 'king'. And in 1840 the Resident was a key figure in obtaining support for British kawanatanga and the Treaty of Waitangi. The contrast between these two points of view is striking and will be explored below.

The origin of Busby's appointment as Resident, and the intensification of the relationship with the Crown that followed, lay in the Elizabeth affair and Whare's mission to Sydney in April 1831, as described above. Governor Darling was already concerned about the incidence of European crimes on the New Zealand frontier by February of that year, when news of the Elizabeth affair reached New South Wales. The governor attempted unsuccessfully to prosecute Captain Stewart and members of his crew, but it was not until two months later, when Whare and Ahu arrived and made their appeal to the Governor, that he decided to take positive action in New Zealand itself.

This is made clear in his despatch to the Secretary of State on 13 April, where he described the outcome of his meeting with Whare and Ahu. He felt it necessary 'that this Government should not by any supineness on the part of its officers which it may have the power of counteracting, allow it to be supposed that these proceedings are countenanced or viewed with indifference'. A settler (named Browne), Marsden, and the Bay chief Whare had all made it clear that Maori 'look to this Government for redress; for the injuries they have sustained; without which, it is to be apprehended that they will avenge themselves on the European Settlers, the law of retaliation appearing to be in perfect accordance with their notions'. As a result, the Governor had decided to send a Resident immediately in order to defuse the crisis. He may have discussed this solution with Whare, as he added that this 'appears in accordance with the wishes of the Natives, so as to assure them of the desire of His Majesty's Government to afford them protection and to tranquillize [sic] the minds of the settlers, who are apprehensive, that their lives will be made answerable for the proceedings of their Countrymen'. The initial intention, also, was that by establishing 'an authority in those Islands, a foundation will be laid which may hereafter, if desirable, be extended and improved to our advantage'.[125]

Marsden was very supportive of the idea, although he suggested that the Resident should be stationed in the Bay of Plenty, a location more central for contact with the most

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[123] See C Orange, pp 12-31, cf I Wards, *The Shadow of the Land*, Wellington, 1968, pp 5-20
[124] P Adams, pp 62-73
[125] Darling to Goderich, 13 April 1831, CO209/1

tribes, rather than at the centre of commerce in the north.[126] The fostering and protection of trade, however, was more prominent in the Governor's mind, and he noted the value of the New Zealand trade to the colony. Adams notes that commercial interests in Sydney were urging his intervention just as much as the humanitarian missionary movement (in the person of Marsden).[127] As noted in the introduction to this chapter, however, the 'realpolitik' considerations, while important for a full understanding of the Crown's position and motives, are less important for this report than how its position and motives were represented to Maori.

Darling planned to make an immediate appointment in 1831, sending an army officer with the permanent support of a warship.[128] His nominee, however, was killed by Aborigines soon after, and his second appointment had not been finalised before the news arrived of his recall and the despatch of a new governor. Darling decided not to proceed with appointing a Resident under those circumstances.[129] His successor, Governor Bourke, attempted to appoint a Resident in late 1831 but was also prevented, this time by his Executive Council, which refused to proceed unless sufficient military backing could be guaranteed from London. The matter was referred to the Colonial Office for decision.[130] In the meantime, Lord Goderich had received Darling's April despatch and wholeheartedly approved the idea of sending a Resident to counteract atrocities on the frontier, protect Maori from Europeans, and to protect valuable British trading interests.

On 31 January 1832, Goderich wrote to the new Governor, Sir Richard Bourke:

> The unfortunate natives of New Zealand, unless some decisive measures of prevention be adopted, will, I fear, be shortly added to the number of those barbarous tribes, who, in different parts of the Globe, have fallen a sacrifice to their intercourse with civilised men, who bear and disgrace the name of Christians…There can be no more sacred duty than that of using every possible method to rescue the natives of those extensive islands from the further evils which impend over them, and to deliver our own country from the disgrace and crime of having either occasioned or tolerated such enormities.[131]

The British Government, therefore, approved Darling's measures 'both for the punishment and prevention of these atrocities', including the appointment of a Resident. The governor's intention to provide the Resident with troops was not approved, however, on the grounds that a civil officer would be more likely to win the confidence and co-operation of Maori. Such an officer would be supported by frequent naval visits, and would be authorised to use reasonable 'coercion and restraint' to seize and confine British criminals. Also, Goderich encouraged the new governor to pass a local law against the trade in preserved heads, and to find creative ways to prosecute criminals like the captain of the Elizabeth under existing laws.[132]

But the Admiralty refused to provide a ship, and the Colonial Office had vetoed the prospect of soldiers; this left the new Resident to act with the support of judicial power alone. As it turned out, this also remained in abeyance, as repeated attempts to legislate for judicial authority in countries outside the British dominions were foiled throughout the 1830s. This was not yet known, of course, when the Colonial Office selected a young New South Wales settler, James Busby, to be the New Zealand Resident. Busby had written a paper on New Zealand that had impressed the British authorities, but he was part of a social and political grouping in the colony opposed to the new Whig governor, Sir Richard Bourke. In addition to a complete lack of temporal support, therefore, the Resident also faced the quiet enmity of his

[126] S Marsden to Darling, 18 April 1831, Marsden Family Papers, MS-Copy-Micro-0206
[127] P Adams, pp 61-62
[128] Darling to Goderich, 13 April 1831, CO209/1
[129] P Adams, pp 61, 64
[130] I Wards, pp 7-8
[131] Goderich to Bourke, 31 January 1832, CO209/1
[132] ibid

immediate superior in New South Wales. It was not a combination that augured well for the success of his mission.[133]

His mission was outlined in his official instructions of 13 April 1833, issued by Governor Bourke. Once again, the humanitarian intentions of the Crown were emphasised, and the Elizabeth affair recited as the prime example of what the residency was designed to prevent, although British trade and the lives of British subjects were of equal weight:

> The facts of this dreadful case [the Elizabeth affair] made it at once apparent that it was no less a sacred duty than a measure of necessary policy to endeavour, by every possible method, to rescue the natives of those extensive islands from the evils to which their intercourse with Europeans had exposed them, and, at the same time, to avert from the well-disposed of His Majesty's subjects, settled in New Zealand, the fatal effects which would sooner or later flow from the continuance of such acts of unprincipled rapacity and sanguinary violence, by exciting the natives to revenge their injuries by an indiscriminate slaughter of every British subject within their reach.[134]

The combination of a humanitarian 'sacred duty' and the exigencies of 'necessary policy' dominated Britain's official attitude to New Zealand for the rest of the decade. Where those two matters clashed, as they did more and more after the 1830s, the Crown found itself in a quandary created by the mire of mishmashed intentions which it expected its officials to carry out.

Busby was commanded to check the crimes of British subjects, in response to Maori complaints, and to encourage and protect 'well-disposed settlers' and trade. In the hierarchy of responsibilities, however, his 'principal and most important duty it will be to conciliate the good-will of the native chiefs, and establish upon a permanent basis that good understanding and confidence which it is important to the interests of Great Britain and of this colony to perpetuate'. The governor instructed Busby, using his powers of mind as an educated man, to gain an influence over the chiefs and use their support to maintain tranquillity. He felt that this would be fairly easy, because of the disposition of the chiefs to want to co-operate with Britain, and their conviction of the good faith of the British authorities. He supported this point by reference to the 1831 petition, which showed the 'favourable point of view in which the power and justice of Great Britain are regarded by them'. The King's response to the petition was carefully calculated to 'augment this feeling'. Busby was ordered to read it publicly to as many chiefs as possible, and with as great a formality as possible; one of his key roles, therefore, was to augment the favourable view of the British Crown by moves calculated to present it in the best light, and to maintain what was believed to be the chiefs' desire for its protection. He was also to establish himself near a principal chief and rely on his protection, or that of a Maori guard, purchased with occasional presents.[135]

In addition, the Governor instructed Busby to ally himself with the missionaries as well as the chiefs, to take their advice and use their services to support his authority. To supplement the support of the chiefs and missionaries, the Resident could rely on a naval vessel at his first landing, and hopefully frequent visits thereafter. Underlying these instructions appears to have been a strange assumption that Maori were always in the right in any clashes with the shipping, and that they were more than capable of acting to discipline Europeans, and indeed might do so a little too indiscriminately. So all that was necessary for the Resident to achieve his aims was for him to prevent the chiefs from punishing the innocent, and to channel their anger against the guilty parties, who would be turned over to Busby to be sent to New South Wales. There would be no need for disciplining Maori (it seems to be assumed), and the missionaries would provide all the assistance necessary to get

[133] P Adams, pp 61-66; C Orange, p 14
[134] Bourke to J Busby, 13 April 1833, GBPP vol 3, p 52
[135] ibid, pp 52-53

the chiefs to carry out their prescribed role. It was all wildly unrealistic, and left the Resident with little chance of success.[136]

Nor was it actually legal for Busby to arrest British subjects in any case. He had to send witnesses to Sydney, get a warrant from the New South Wales courts, and then (when it reached New Zealand) arrest the named offender and send him or her to the colony. The governor did not hold out much prospect of such a system working, although he maintained that information from Busby could be used to detain alleged criminals if they turned up in Australia of their own volition. Escaped convicts, on the other hand, could be apprehended and deported at will (but he had better not mistake their identities or he could be sued). In both situations, Busby was expected to get the chiefs to execute the law and apply the requisite force. He was also expected to obtain an influence over the shipping and settlers, find out their plans, and frustrate any evil schemes by talking them out of it in advance. The knowledge that Busby would report their actions to the British authorities might, thought Bourke, further serve to dissuade the nationals of other states from committing similar offences.

The governor also instructed the Resident to engineer social and political change among his allied chiefs. Bourke wanted Busby to become an official mediator in tribal wars, and to settle intra-Maori disputes 'peaceably and permanently' by means of such mediation. By his suggestions and advice, he was also to try to get them to adopt a 'settled form of government' with native courts that could take over the responsibility for the administration of justice 'by a less circuitous and more efficient process than any which I have been able to point out'. If, via a 'British functionary', Maori obtained courts and a government, that might go some way to making up for the injuries of the past.

Finally, Bourke reminded the Resident of his duty to foster British trade, protect British and New South Wales commercial interests, and report regularly on the results. His mediation role was to extend to this area also. The governor hoped that in the end, Busby would become the middle man for all communication between ship captains and Bay Maori, facilitating successful and peaceful commerce for all parties. His conception of the Resident as a mediator must have been at least partly a result of his conviction that Busby would have no actual chance to be a judge or a policeman – his authority would be moral, except for when a British warship happened to be in port.[137]

Busby's instructions were thus a mixed bag. His supplementary instructions in July were not much more help, simply reminding him that he was to 'ameliorate the condition of the Natives', put an end to the 'enormities which have been committed by our own countrymen to the great disgrace of a civilized Nation', and catch as many runaway convicts as he could. He needed to be armed with 'proper powers from Parliament', but in the end he awaited this in vain; neither the British Parliament nor the New South Wales Council were willing to pass the requisite legislation.[138]

For the purposes of this report, it is necessary to focus on the ways in which Busby attempted to carry out his instructions to increase Maori good will towards the British Crown, stressing always its benevolent intentions towards them, and to create a system of 'settled government'. As Busby himself put it in 1835, it had always been his 'first endeavour' to impress upon Maori a sense of the justice of the British Government. He added:

> If my own appointment has been or is calculated to be of any use to H.M. Subjects frequenting New Zealand, or settled therein; or if it is calculated to conciliate the esteem of the natives for the British

[136] ibid
[137] ibid, pp 53-54
[138] Lieut Governor Arthur to J Busby, 30 July 1833, Letters to & from James & Alexander Busby, qMS 0347

> character; or to establish their confidence in the honor of the British Government – it is chiefly because it is founded upon the principles of universal justice and humanity…[139]

One of the best examples of this "calculation" is the ceremony of Busby's first arrival in New Zealand, and in particular the public letter from the Crown in response to the 1831 petition, and the Resident's address and explanation of his and the Crown's intentions to the assembled chiefs. As it is fairly rare to have documentation of exactly what officials said to Maori in the 1830s, this evidence will be considered in full. It should be kept in mind while reading this material, though, that contrary propaganda was always available. In March 1833, two months before Busby's arrival, William Williams noted in his journal that ship captains and other Pakeha had told Maori 'most seriously that our object is only to obtain possession of the land; that when they are made christians we shall make slaves of them and send them out of the land'.[140] In June 1833, one month after the Resident's landing, George Clark informed the CMS of the constant warnings that the missionaries' object 'is to enslave them'. It was to these allies, and in this context, that Busby was instructed to turn when he arrived at the Bay of Islands in May 1833.[141]

Busby was transported in HMS *Imogene*, under the command of Captain Blackwood, and arrived in the Bay of Islands on 5 May 1833. For the next few days, the Resident met in close consultation with the missionaries, who translated the "king's letter" to the chiefs (actually written by the Secretary of State) and began to lay the ground work for a major hui to welcome Busby and receive the King's letter. Word was sent to Hokianga, and a deputation of chiefs and people arrived from there on 16 May.[142] The following day, about 600 Maori gathered at the Paihia mission station to welcome the Resident. As the canoes arrived from Kororareka, Waikare, and Kawakawa, each 'seemed anxious to learn the nature of Mr. Busby's commission and whether the Man of War was to remain in the Bay, and if soldiers were to be landed'.[143] The missionaries' preparations had not gone unopposed; William Williams commented that the 'natives do not as yet clearly understand the object for which Mr. Busby is sent, and some strange ideas have been industriously put into their minds by ill-disposed Europeans'.[144] Having listened to both sides, the chiefs now gathered to hear what the Resident himself had to say.

In mid-morning, Busby and his military escort came on shore, accompanied by a seven-gun salute. He was received on the beach by a haka, followed by speeches of welcome, after which the party moved to the chapel in preparation for the official reading of the "King's letter". The 50 or so Europeans took their seats on chairs in front of the chapel, while the chiefs arranged themselves in a semi-circle facing their visitors. The King's letter was placed with great ceremony on a table, after which Busby broke the Great Seal and read it aloud in English. Henry Williams then read a translation of the letter. This was followed by an address from Busby, which was translated by William Williams.[145] This address was later printed and circulated as widely as possible throughout the north, so that everyone could know the Resident's words.[146]

The King's letter, written on his behalf by the Secretary of State for Colonies, was the official response to the 1831 petition, and as such is a crucial document which will be given here in full:

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[139] J Busby to Colonial Secretary, 7 August 1835, Busby's Depatches, qMS 0345
[140] W Williams, journal, 17 Mar 1833, qMS 2249, p 312
[141] G Clarke to CMS, 4 June 1833, Clarke Letters & Journals, qMS 0463, vol 1
[142] H Williams, journal, 5 May-16 May 1833, in LM Rogers, *Early Journals*, pp 310-313
[143] ibid, 17 May 1833, p 313; J Busby to Colonial Secretary, 17 May 1833, qMS 0345
[144] W Williams, journal, 17 May 1833, qMS 2249
[145] LM Rogers, *Early Journals*, p 313
[146] W White to Busby, 30 Oct 1833, BR 1/1

LORD VISCOUNT GODERICH, one of the Principal Secretaries of State to HIS MAJESTY the KING OF GREAT BRITAIN, to the CHIEFS OF NEW ZEALAND.

FRIENDS,

I am commanded by the King to acknowledge the receipt of the letter, which you addressed to His Majesty, and which you entrusted to Mr. William Yate to forward to England.

The King is much gratified to find that the cause for alarm, which appears to have existed at the time when your letter was written, has entirely passed away, and he trusts that no circumstances may occur, in future, to interrupt the internal tranquillity of New Zealand, which is so necessary to the maintenance of a close commercial intercourse between its inhabitants and those of Great Britain.

The King is sorry for the injuries, which you inform him, that the people of New Zealand have suffered from some of his subjects; but he will do all in his power to prevent the recurrence of such outrages, and to punish the perpetrators of them according to the laws of their country, whenever they can be apprehended and brought to trial, and the King hopes, that mutual good-will and confidence will exist between the people of both countries.

In order to afford better protection to all classes, both of natives of the island of New Zealand and British subjects who may proceed or may be already established there for purposes of trade, the King has sent the bearer of this letter, James Busby, Esq., to reside amongst you, as His Majesty's Resident, whose duties will be to investigate all complaints which may be made to him. It will also be his endeavour to prevent the arrival amongst you of men who have been guilty of crimes in their own country, and who may effect their escape from the place to which they may have been banished, as likewise to apprehend such persons of this description as may be found at present at large.

In return for the anxious desire which will be manifested by the British Resident to afford his protection to the inhabitants of New Zealand against any acts of outrage which may be attempted against them by British subjects, it is confidently expected by His Majesty that, on your part, you will render to the Resident that assistance and support which are calculated to promote the object of his appointment, and to extend to your country all the benefits which it is capable of receiving from its friendship and alliance with Great Britain.

I have, etc.,
GODERICH.[147]

The sentiments and intentions conveyed to the assembled Maori by this letter were then reinforced by a speech from Busby, which, as noted above, was later circulated in the north. He began by reiterating the King's 'anxious wish that the most friendly feeling should subsist between his own subjects and yourselves: and how much He regrets that you should have had reason to complain of the conduct of any of His subjects'. The Resident's role would be to 'foster and maintain this friendly feeling – to prevent as much as possible the recurrence of those misunderstandings and quarrels which have unfortunately taken place – and to give a greater assurance of safety and just dealing, both to His own subjects, and the people of New Zealand, in their commercial intercourse with each other'. In addition to the King's beneficent wishes, Busby expressed himself keen for opportunities to demonstrate 'how much it is my own desire to be the friend of those among whom I am come to reside'.[148]

The Resident explained that it was the King's practice to send representatives to all countries 'with which He is on terms of friendship', and the chiefs should be aware of the honour that the king of 'a great and powerful nation like Great Britain, has done their country in adopting it into the number of those countries with which he is in friendship and alliance'. He warned them that a representative of the King was 'sacred', his duty was the 'cultivation of peace, and friendship, and good will', and any violence to the Resident would be resented by the 'whole civilized world'. He added: 'I have heard that the Chiefs and people of New

[147] Goderich to Chiefs of New Zealand, 14 June 1832, GBPP vol 3, pp 55-56
[148] J Busby, Address to the Chiefs and People of New Zealand, reproduced in WB Marshall, *A Personal Narrative of Two Visits to New Zealand, in His Majesty's Ship Alligator*, pp 333-334

Zealand have proved the faithful friends of those who have come among them to do good, and I therefore trust myself to their protection and friendship with confidence'.[149]

Having established that the King was to be considered a friend and ally, and that the tapu personage of the Resident had been sent to prevent crimes and facilitate trade, Busby added:

> All good Englishmen are desirous that the New Zealanders should be a rich and happy people; and it is my wish, when I shall have erected my house, that all the Chiefs shall come and visit me, and be my friends. We shall then consult together by what means they can make their country a flourishing country, and their people a rich and a wise people, like the people of Great Britain.[150]

The Resident described how Britain had once resembled New Zealand, with 'no large houses, nor good clothing, nor good food', in which the inhabitants painted their bodies and wore the skins of wild animals. But Christianity had brought peace, the end of warfare, and the union of tribes into one people, along with cultivation and the farming of cattle, all of which had made the people industrious and rich. The lesson of British history, he argued, was that the chiefs should listen to the missionaries, learn the will of God, and live in peace. If that were to happen, then they would eat bread instead of fern root, and have the same riches (taonga) as the British.[151]

Thus, Busby and Lord Goderich spoke of friendship and alliance, of regret for past injuries, of working together to create peace and prosperity, and of the role of the Resident as the King's man who would help to bring all this about. In promising prosperity, Busby reinforced expectations dating back to the time of the gifts of Kawana Kingi. William Williams thought it a 'very appropriate address', as well he might.[152] About 10-15 chiefs then replied, generally in a welcoming fashion, although one chief observed that some of the Maori themselves were 'very wicked, and that I ought to have brought Soldiers for my protection'. This was a salutary caution. Another chief spoke about what some of the settlers had been saying, and told Busby that he was welcome even if he had come to sell them; 'it having been stated that the present proceeding is only preparatory to the enslavement of the New Zealanders; and that the Missionaries and myself are to receive from the Government a certain number of dollars for each native who is converted, or who is brought into connection with the English, the intention being to send Ships of War to take them off for Slaves'.[153]

Busby must have known that this was no idle concern. Only four days earlier, he had reported to Sydney that the captain of the *Elizabeth*, considering himself cheated by some East Coast Maori, had carried off a number of them and handed them over to their enemies at the Bay of Islands, 'telling them they might make slaves of them'.[154] In the face of such behaviour by a British ship, of just the sort that they had complained about to Darling in 1831, the Bay chiefs must have made a deliberate decision to welcome Busby and intensify their alliance with the British Crown. But niggling suspicions clearly remained. Nor was the event a foregone conclusion – Bourke had instructed Busby that if the chiefs did not accept him, he was to return immediately to Sydney.[155]

William Williams thought that, even after the hui, the chiefs were still somewhat uncertain about what Busby's real intentions and purpose might be. But the accounts of Henry Williams, his brother William, and Busby himself, all agree that the welcome for the

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[149] ibid, pp 334-335
[150] ibid, p 335
[151] ibid, pp 335-337
[152] W Williams, journal, 17 May 1833, qMS 2249
[153] J Busby to Colonial Secretary, 17 May 1833, qMS 0345
[154] J Busby to Colonial Secretary, 13 May 1833, qMS 0345. I am not aware of whether this was the same *Elizabeth* that assisted Te Rauparaha in 1830 and led Nga Puhi to approach Governor Darling.
[155] Bourke to J Busby, 13 April 1833, GBPP vol 3, p 52

Resident was unanimous and that clearly the Bay and Hokianga Maori had decided to accept him, his letter, and his offer of friendship. None of these observers, however, recorded the names of the chiefs present, although Williams specified that there were rangatira from Hokianga, Kororareka, Waikare, and Kawakawa (among others). The missionaries thought that there were at least 40 major chiefs who should all be given presents, so the Resident handed out a blanket and some tobacco to each of those, putting away the 15 suits of clothing which he had planned to distribute. After handing out the gifts, the 50 or so Europeans were entertained to a meal in the Williams' residence, while the large gathering of 500-600 Maori was feasted with 'meat, potatoes, and boiled flour'. In all, it had been a most successful day.[156]

On the surface, there was widespread support for the Resident and his role as a personification of the alliance with the British Crown. But underneath there were doubts and concerns – were the Crown's intentions what the missionaries and Resident represented them to be? Or were they more in line with what some at least of the whalers and traders were saying? And why had the Resident brought no soldiers – where were his followers? Who would do the King's fighting for him? In the meantime, while these sorts of questions were no doubt being canvassed, Busby established himself under the protection of Te Kemara and Ngati Rahiri at Waitangi. Once settled, he turned his mind to the carrying out of his instructions. Appeals for adjudication and mediation began to come in, especially from the European inhabitants of the Bay, and usually as a result of their quarrels with each other. While the Resident's lack of judicial authority soon became apparent, he had meanwhile turned his mind towards the object of establishing a closer alliance between Britain and the chiefs, and the creation of a settled, more British system of government.

His first attempt at furthering these objects took the form of establishing a national flag for Maori New Zealand. The schooner *New Zealander* had been seized as an unregistered ship, as had the *Sir George Murray*, the latter while an important chief was on board. This had convinced Busby and local traders that New Zealand needed to be able to register its ships under a national flag, to prevent a recurrence of such seizures in British ports. He felt that 'all the functions of sovereignty which their simple state of Society requires' were vested in independent tribes, who had never thought of 'confederating for any national purpose', and seldom combined in too great a number, even in warfare. Nevertheless, he felt the first step would be for the British Government to insist on dealing with all major chiefs in a 'collective capacity only'.[157]

Busby's ambitious goal was to bring this about by stopping tribal warfare and persuading the chiefs to accept a tribal confederation. It needed to have the 'appearance of originating with themselves', but he saw his first opportunity in the adoption of a national flag. He hoped to set up a system of ship registration, so long as two-thirds of the principal chiefs could be persuaded to meet, adopt a flag, and request the King to recognise it. From such a beginning, he wanted to create a tribunal of chiefs with the power to compel obedience from its members. Already, faced with a dispute between Pomare and a settler, he was aware that he had no recourse if he thought a chief in the wrong, unless a British warship happened by. Also, it was clear that relationships had been established between Maori and runaway convicts; Busby saw the need to create an authority that could command the chiefs, an 'established Government', as the only way he could carry out his instructions with his current resources.[158] By July he was talking about having the power of the King's name, a 'Tower of Strength', introducing passports, building a parliament house, and creating a Maori parliament to sit in it 'as fast as the circumstances of the people will permit'. But the cold

[156] J Busby to Colonial Secretary, 17 May 1833, qMS 0345; W Williams, journal, 17 May 1833, qMS 2249
[157] J Busby to Colonial Secretary, 13 May 1833, qMS 0345
[158] ibid

harsh reality was that he had to act through a system of giving gifts in return for support, offering three blankets per escaped convict brought in by the chiefs.[159]

Governor Bourke sent Busby a flag in November 1833, but it had no red in it (an important colour to Maori of the time), so Henry Williams drew new designs for three possible flags.[160] By March 1834 the new flags had arrived, the HMS *Alligator* was in port, and Busby was ready to make a splash with a hui to choose a flag. He invited the prominent Bay of Islands chiefs to a hui at Waitangi on 20 March 1834, where he erected flagstaffs and a marquee in front of the Residency. William Williams noted that 26 'principal' chiefs of the Bay of Islands attended this hui, though their names have not been recorded.[161] Busby flew the union jack from one flagstaff, and had the chiefs and their 'considerable body of followers' assemble inside the marquee.[162]

An observer from the *Alligator*, William Marshall, thought that there were actually thirty major chiefs present (rather than twenty-six). He described how the large tent was divided in half by a barricade, and that Busby called out the names of the chiefs one by one, upon which they moved into the other half of the tent. His purpose, of course, was to separate his 'parliament' of chiefs so that they could vote on their choice of flag. The separation of the chiefs from their followers marred the spectacle, according to Marshall, and the people exhibited 'no small discontent' at their exclusion. Busby then read an address, explaining the purpose and advantages of the flags, after which the chiefs were called upon to vote.[163]

The Resident's address once again confirmed the friendship between the King and Maori, and expressed the King's 'desire that you and I are to long continue to be friends and work together for the good of everybody'. The flag was presented as the personal initiative of the King – Busby informed the chiefs that the King wanted them to accept a flag, that three choices had been brought by 'the Captain of one of the ships of His Majesty King William', and that the flag would then be sent to the King for his personal approval. Busby also informed the rangatira that the flag would mean that the ships were jointly New Zealand vessels but also those of the King (that is, under his protection). Having made their choice, the Resident hoped that they would also consult with chiefs throughout the country 'so that your decision would be the decision of the majority'.[164]

After Busby's address, the chiefs voted to select one of the three flags, which were flying on short poles at the front of the tent. According to Marshall's count of thirty chiefs, twelve voted for the winning choice, ten for a second, and six for the third. Two refused to vote at all, 'apparently apprehensive lest under this ceremony lay some sinister design on our parts, and, had anything like freedom of debate been encouraged, instead of suppressed, before proceeding with the election, I have little doubt but that the real sentiments of those present would have been elicited; and, assuredly, an opportunity might have been afforded of answering any objections as they arose, and, in that way, more completely satisfying the minds of the people as to the objects contemplated by our Government'.[165]

Busby does not mention the discontent of the excluded or the refusal to vote by two chiefs, and his numbers do not agree with those of Marshall. Instead, the Resident reported that the count was 12, 10, and 3, after which the majority choice was hoisted alongside the British flag and given a 21 gun salute. The 50 or so Europeans present then retired to the Residency for a meal, while the Maori were given stirabout outside, followed by their own

[159] J Busby to Alexander Busby, 22 July 1833, qMS 0347
[160] J Busby to Colonial Secretary, 13 January 1834, qMS 0345
[161] W Williams, journal, 20 March 1834, qMS 2249
[162] J Busby to Colonial Secretary, 22 March 1834, qMS 0345
[163] WB Marshall, *A Personal Narrative of Two Visits to New Zealand*, pp 108-109
[164] Address to the Chiefs on the Occasion of the Adoption of a Flag, 17 March 1834, BR1/1
[165] WB Marshall, *A Personal Narrative of Two Visits to New Zealand*, pp 108-109

lengthy hui on the day's events. Busby deliberately under-fed the assembled people, in the hopes of discouraging the chiefs from bringing so many followers next time.[166] This cannot have made a good impression, but the only open opposition to the day's proceedings came from Pomare, who had a grievance against Busby over a disputed boat. He came late with about 60 armed men, and refused to either join the hui or put aside his guns. The missionaries attempted to intervene, but the chief maintained a need for strict equality; the rangatira from the *Alligator* were allowed to wear their weapons, and so would he. Eventually, he allowed himself to be talked around, having made his point, but there is no record of what was discussed at the hui.[167]

In any event, the flag had been selected and was now sent back to England for the acceptance of the King as an ensign that would be respected in British ports. It may have been a coincidence that the majority of chiefs selected the mission flag, which had already been in use on the mission vessel for some time, or they may have been signalling their growing allegiance to the mission along with other things British. The flag itself was white, with a St George's cross, and in the upper left corner it had a blue field with a red cross and four white stars.[168] There is no doubt that the chiefs understood the significance and symbolism of flags, both as markers of national identity for the different ships, but also as used to convey all sorts of messages and ideas.

Since the 1820s, white flags had been in use to signal truces and parleys, often marking the presence of the missionaries as observers or mediators. Also, the British flag had been flown every Sunday at Paihia since 1823, to let people know that the ra tapu had arrived. In this circumstance, the flying of the flag meant the cessation of work for the day, and attendance at services.[169] When the French ship *La Favorite* arrived, Rawiri Taiwhanga was urgent for Mrs Williams to fly the same flag in response, clearly aware of its significance both as a warning and a symbol of power and authority. If the French tore it down, Taiwhanga knew that the British, far away as they were, would have to do something about it.[170]

The incorporation of flags into Maori culture and politics was taken a step further in March 1834 with the adoption of the national flag. The chiefs acted knowingly, though obviously not with total agreement, given the refusal of a minority to vote, the inability for a majority to agree on one flag, and the disturbance raised by the 'excluded' people and later again by Pomare.

Nor was Busby entirely naïve in his hopes for what the flag and its selection symbolised in terms of his dream of a confederation. Social and political changes were in the air, and Maori were using Europeans and their symbols to bring them about. An instructive comparison to the flag hui of 1834 may be found the following year, when the Bay chiefs decided to stop their huge annual ceremonies for the removal of the bones of the dead. This decision has been discussed above in chapter 3. William Williams noted the use of flags as signifying change, and to convey particular messages from tangata whenua to manuhiri.

> Rewa expressed a wish to have a flag hoisted on the occasion with a native bible and a slate and pencil attached to it, to signify to their friends from Hokianga that they thenceforth give up the customs of their fathers and take the word of God as their guide. This man is no christian nor has he much pretension to be called one, but this circumstance may be taken as a proof of a general change.[171]

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166 J Busby to Colonial Secretary, 22 March 1834, qMS 0345
167 WB Marshall, *A Personal Narrative of Two Visits to New Zealand*, pp 111-112
168 ibid, p108; also J Busby to Colonial Secretary, 13 January & 22 March 1834, qMS 0345
169 See LM Rogers, *Early Journals*, passim
170 See above
171 W Williams, journal, 18 May 1835, qMS 2249

A week or so later, the Waimate Maori hosted the ceremony for their Hokianga relatives. The Bay of Islands non-Christian leaders asked the missionaries to attend and speak against the hahunga, to assist in persuading the wider community that the custom should be abandoned. When the missionaries arrived, they found flags hoisted at each end of a 300 yard-long display of food, with one in the middle for good measure. Attached to the flags were 'placards desiring the natives of Hokianga not to make any return for this entertainment and informing them that from the present time the removal of bones is to cease'.[172]

It was in this context, where flags and other European symbols were being employed to convey various messages, that the Bay rangatira accepted Busby's method of voting and adopted the mission flag as a national flag for New Zealand-built ships. The symbolism was strong and no doubt debated at length in the hui that followed, as the people contemplated the actions and motives of the British Resident, and the King to whom they were sending their flag for approval. Busby had accomplished, perhaps, more than he knew. Orange argues that the flag-choosing's long-term significance lay in 'Maori understanding of the event: the belief that the mana of New Zealand, closely associated with the mana of chiefs, had been recognised by the British Crown'. Tangible proof of that mana lay in the ships that flew the flag, and that received privileges in British ports as a result of it. She suggested: 'Northern Maori absorbed the flag into their oral tradition, possibly regarding it as a special rahui or protection of their identity'. [173] Claimants should be asked to comment on this point. It should also be recalled that the symbolism of flags became a hot issue in the 1840s, when Hone Heke repeatedly challenged the Crown through this medium.

The British Government's acceptance of the flag led to renewed protestations of good will and friendship. Lord Aberdeen sent the King's approval of the proceedings in December 1834, along with an Admiralty letter instructing the Royal Navy to respect the joint chief-Resident register and the new national flag.[174]

The next major initiative in this direction, and further formalising the alliance with the Crown and its protection of the chiefs, came in late 1835 when a second foreigner scare of the *La Favorite* type led to the signing of the Declaration of Independence. Next to the Treaty, the Nga Puhi claimants see this declaration as a key document and a turning point in their history. The full views of claimants, and any surviving oral traditions concerning the Declaration, need to be researched and brought before the Tribunal. In terms of Treaty history, it was the climax of Busby's role in the Bay of Islands, until his critical assistance in negotiating the Treaty of Waitangi in 1840.

Historians have largely ignored or dismissed the Declaration of Independence. John Ross went so far as to argue that it had no significance at all, since it was not really aimed at Baron de Thierry or the creation of a confederation, but was simply point scoring in Busby's battle with the Hokianga Additional Resident, Thomas Mc Donnell.[175] The available evidence does not support Ross' arguments, as will be demonstrated below. Manuka Henare, in his recent thesis, advances almost the opposite argument. He sees it as the culmination of a movement of Maori nation-building, comparable to the American declaration, and as a very literal (in terms of its Maori text) intention to create a new mechanism for regulating inter-tribal affairs. As such, it garnered support from Maori leaders in other districts, where the baron can hardly have been thought of as a threat. Henare has no specific historical evidence that the rangatira carried out their mooted intention of establishing a new type of government,

[172] ibid, 27 May 1835
[173] C Orange, pp 20-21
[174] J Stephen, Memorandum, 18 March 1840, GBPP vol 3, p 117
[175] J Ross, 'Busby and the Declaration of Independence', NZJH, vol 14, April 1980

although he argues that five years (until the Treaty) was not really long enough to conclude that they would not or could not have done so.[176]

Ever since his instructions of 1833 were received, Busby had been exploring ways in which to create a more British-style system of government, and to make New Zealand more and more a 'British Dependency', as he informed his brother in July 1835.[177] He had achieved a major success in this direction with the adoption of the national flag, and his continuous efforts to create support and good will towards the British Government appear to have borne fruit. The next step was triggered by the arrival of letters from Baron De Thierry, a French national based then at Tahiti, who claimed to have purchased Hokianga lands and the sovereignty of New Zealand from Hongi and Waikato when they were in London in 1820. This 'purchase' had been followed up by Thomas Kendall, who apparently paid some resident Hokianga chiefs (including Nene) a few axes for a very large district of land. The baron, styling himself 'Sovereign Chief of New Zealand', announced to the Resident and missionaries 'his intention of establishing himself as an Independent Sovereign in this Country with strength to maintain his assumed dominion'.[178]

Busby was uncertain what to make of this unexpected announcement. At first he was inclined to dismiss the baron as a 'mad man', but on reflection he decided that 'there appeared to be sufficient method in the madness of such a man, to be productive of much mischief'. Also, a friend of Henry Williams' had met De Thierry in England twelve years ago, when he already had 'such a plan in contemplation'; Busby got the impression that this might be someone who should be taken seriously.[179] The Resident's letters show a very genuine fear of French ambitions in New Zealand, but he did not really associate De Thierry's wild claim with France itself. Rather, he feared that the baron might succeed in establishing himself with a few troops, and throw himself into tribal wars in such a way as to eventually attract enough tribes as followers as to make himself the genuine King of New Zealand. Busby felt that this was antithetical to British interests, commercial and otherwise, and the best interests of Maori.[180] He therefore reacted with great dispatch, and issued a circular inviting the major northern chiefs to meet him at Waitangi. He informed the rangatira that he had received a letter 'from a person afar off who desires to be king of the Maori people'. He invited them to consult with him 'that I may hear your opinions of this interfering person, and as to what shall be done. Shall the land be handed over to him, and all you be slaves, or not?'[181]

Put this way, there only seemed to be one answer. Busby also issued an address to the European settlers, asking them to use 'all the influence they possess with the Natives of every rank, in order to…inspire both chiefs and people with a spirit of most determined resistance to the landing of a person on their shores who comes with the avowed intention of usurping a sovereignty over them'. He announced his plan to consult with the chiefs, expecting it to result in 'such a manifestation will be exhibited of the characteristic spirit, courage, and independence of the New Zealanders as will stop at the outset such an attempt upon their liberties, by demonstrating its utter hopelessness'.[182] In fact, Busby hoped that if he could persuade the chiefs to sign a sufficiently strong statement of their intentions, he could prevent De Thierry's coming to New Zealand at all.

[176] M Henare, 'The Changing Images of Nineteenth Century Maori Society – from tribes to nation', pp 187-201
[177] J Busby to A Busby, 23 July 1835, qMS-0347
[178] J Busby to Colonial Secretary, 10 October 1835, qMS 0345
[179] ibid
[180] J Busby to Colonial Secretary, 31 October 1835, qMS 0345
[181] Cited in E Ramsden, *Busby of Waitangi*, 1942, p 95
[182] Cited in the preface of *Facsimiles of the Declaration of Independence*, (no page numbers)

Busby was not the only person to give credence to this "foreigner scare". In 1836, as De Thierry persisted with his plans, some of the settlers signed a petition to the Crown, seeking protection from the baron's claims, as well as more effective protection from the depredations of their fellow subjects.[183] To an extent, elements among the British settlers used any opportunity to encourage annexation. In any event, the hui called by Busby was widely attended by northern chiefs. The leaders of Nga Puhi gathered at Waitangi on 29 October 1835: 'I procured the attendance of 35 Chiefs and leading men, who furnished, in the opinion of the Rev. Mr. Williams, a fair representation of the population of the Country, from the North Cape, Southwards to the River Thames'.[184] Some of the principal Hokianga leaders were not present, however, including Patuone and Nene, who had been delayed by a flood. When Nene arrived, he signed a supplementary document stating his agreement to the 'introduction of a new status of Chieftainship upon New Zealand, and inclusion in the assembly (or Confederation'.[185]

Unfortunately, there does not appear to be a detailed account of the proceedings at the hui, or of the views of the chiefs before they agreed to support the Declaration, which Busby had drafted on their behalf. Claimants may be able to provide further particulars, and more research could be carried out in missionary records. Unfortunately the journal of Henry Williams, the major missionary involved, has gone missing for this period. Waikato was the only person present who had been involved with the transactions with De Thierry. He 'indignantly denied that he had ever invited that Individual to come out and govern the Country; or that he had ever received presents from him which were not given in return for the curiosities and valuables of this Country'.[186] Tareha is reputed to have said that if De Thierry landed in New Zealand he would kill and eat him, although it may not have been at this particular hui.[187] Apart from that, we also know from Busby's letters that he had trouble trying to separate the chiefs from the people and get their individual attention.[188]

In terms of their general attitude to the claims of De Thierry, which were also opposed by Nene when he arrived later, it is clear that northern Maori supported the declaration in so far as it was designed to dispute the baron's claims, and renew their alliance with Britain. Busby wrote:

> The Chiefs were perfectly unanimous in asserting their determination not to permit the landing of the Baron de Thierry; nor to submit to his Government. I addressed them on the great importance of laying aside their petty jealousies, and contentions which exposed them to the inroads of any adventurer who might make an attempt upon their country; and exhorted them to unite as one man in its defence.[189]

After much explanation by himself and the missionaries, Busby states that the Declaration was 'unanimously agreed to'.[190]

The themes of hostility to the French and alliance with the British must have manifested themselves, as they did on and off after the petition of 1831. The year before the Declaration, for example, Titore, who was now the leading chief in the northern alliance, was assisting a British ship with the gathering of spars for the Royal Navy. He took the opportunity to send a letter to the King, who he understood to have been a sea captain himself, asking him to use the spars for his ships if war broke out with the French: '*Should you and the Frenchmen quarrel* here are some trees for you, trees for your battleships'. He

[183] Evidence of John Flatt, Minutes of Evidence to House of Lords Committee, 1838, GBPP vol 1, pp 52-53
[184] J Busby to Colonial Secretary, 31 October 1835, qMS 0345
[185] Tamati Waka Nene to J Busby, nd, GC Petersen Papers, f-76-048
[186] J Busby to Colonial Secretary, 31 October 1835, qMS 0345
[187] Evidence of John Flatt, Minutes of Evidence to House of Lords Committee, 1838, GBPP vol 1, p 53
[188] J Busby to Colonial Secretary, 3 November 1835, qMS 0345
[189] J Busby to Colonial Secretary, 31 October 1835, qMS 0345
[190] ibid

sent a mere and two cloaks as gifts for the King, which were later reciprocated by the gift of a suit of armour from William IV.[191]

As Orange points out, all but two of the surviving signatories to the 1831 petition accepted the declaration, which again sought the protection and friendship of King William.[192] Ramsden asserts that the fourth article, which thanked the King for accepting their flag and requested him to continue as their parent and protector, 'originated entirely with the chiefs'.[193] This assertion, which he attributes to Busby (but I have not been able to find it in his correspondence), gives an extremely important insight into what the rangatira thought they were doing when they agreed to adopt Busby's draft declaration. Readers should pay particular attention, therefore, to article 4 (reproduced below). It is surely notable, in this respect, that the supplementary document signed by Nene, which Busby wrote on his own, was confined to the consideration of creating a new style of chiefly authority via the confederation.[194]

In terms of other specific information about the views of the chiefs, there is also an indication that they did not think the confederation government, which they were apparently signing up to, would actually work. Since this constitutes a large part of the declaration, and was very much the Resident's pet scheme for establishing a new system of government, Busby's revelation about it to the Earl of Haddington is quite critical:

> The Chiefs had, however, sagacity enough to see that any resolutions they might agree to or laws they might enact would tend to nothing to the establishment of order amongst them – They rightly observed that though eleven of their number should regulate their conduct by the law if the 12th. were disposed to break it, they had no resource but to let crime go unpunished or to levy war Tribe against Tribe as at present.[195]

It would appear, therefore, that the chiefs who assembled at Waitangi in October 1835 supported the rejection of Baron De Thierry's claims, and insisted on explicitly thanking the King for accepting their flag, and on renewing their alliance with their matua across the seas. But the parts about the confederation and its law-making processes were accepted because Busby wanted them in the document, and not because the chiefs thought that they would actually work as an inter-tribal system of government. If the chiefs did accept these clauses as a matter of form, therefore, and if Ramsden is correct that the fourth article was drafted on the day and added at the chiefs' request, then we are able to reconstruct to some extent the significance of the document to Nga Puhi, and what the rangatira thought they were doing in October 1835.

It is possible, however, that the rangatira viewed the confederation proposals as an ideal, something that they would like to see created but at the moment thought unworkable, rather than rejecting it altogether. This could explain its survival in the final version of the Declaration, even though both they and the Resident thought it impossible to carry out. Busby called it the Maori Magna Carta, and it seems clear that he thought it a definitive document of freedoms and rights. He hoped for a few British soldiers to help enforce laws against individual chiefs.[196] He also intended to proceed with the calling of annual meetings, which might have led to "law making", but circumstances were impossible at the time in 1836, and Busby's position became increasingly difficult after that year. Without more evidence, it is

[191] E Ramsden, *Busby of Waitangi*, pp 81-82
[192] C Orange, p 23
[193] E Ramsden, *Busby of Waitangi*, p 97
[194] Tamati Waka Nene to J Busby, nd, GC Petersen Papers, f-76-048; this letter was drafted by Busby with the intention of getting other chiefs who had missed the hui to sign it as well.
[195] J Busby to Earl of Haddington (draft), Busby Letters, qMS 0352
[196] J Busby to A Busby, 10 December 1835, qMS 0347; J Busby to Colonial Secretary, 31 October 1835, qMS 0345

impossible to arrive at a full answer to the question of what Nga Puhi and Busby wanted to achieve with the Declaration of Independence.

Manuka Henare offers an 'insider' Te Rarawa view of the Declaration. He considers that the growing moves to cooperate with the British Crown were accompanied by a willingness to experiment with new political forms. He also suggests that Maori desire for 'law', te ture, was influenced by the Old Testament, although this was before the translation and dissemination of the bulk of the Old Testament. As a mechanism to regulate hapu relationships, involving the chiefs basically coming together in a kind of parliament to make laws, he argues that the confederation was their own desire and not simply Busby's advice. His strongest evidence is the 'national' or multi-tribal base of support for the Declaration. He points out that Te Wherowhero had entered an alliance with Rewa and Bay of Islands Nga Puhi, and supported the Declaration. Similarly Ngati Kahungunu, who were allied to Pomare, also supported it (in the person of Te Hapuku). There were existing mechanisms assisting peaceful relations – alliances of the type entered into between these tribes and, to an extent, with the British Crown. And these mechanisms were a sufficient base for Maori leaders of the 1830s to try to build new ones. The confederation was an experiment, followed too soon by a change of British policy and annexation, to determine whether it would have worked.[197] Given the possibility of trying out a king soon after (discussed below), the acceptance of the Kawana, and the continuation of Maori self-governing institutions alongside experiments with magistrates, assessors, and official runanga (see chapter 3), there may well be documentary evidence in support of Henare's position.

The text of the Declaration itself is available in both Maori and English in *Facsimiles of the Declaration of Independence and the Treaty of Waitangi*. Also, Manuka Henare has retranslated the Declaration in his thesis, comparing the Maori text to the translation of the time.[198] As a document of key importance to Nga Puhi and their intensifying alliance with the Crown in the 1830s, the full text is reproduced here:

He wakaputanga o te Rangatiratanga o Nu Tireni

1. Ko matou ko nga Tino Rangatira o nga iwi o Nu Tireni raro mai o Hauraki kua oti nei te huihui i Waitangi i Tokerau 28 o Oketopa 1835. Ka wakaputa i te Rangatiratanga o to matou wenua a ka meatia ka wakaputaia e maotu he Wenua Rangatira. Kia Huaina "*Ko te Wakaminenga o nga Hapu o Nu Tireni"*.
2. Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga. A ka mea h hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakaminenga o Nu Tireni. Ko nga tangata anake e meatia nei e matou e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga.
3. Ko matou ko nga Tino Rangatira ke mea nei kia huihui ki te runanga ki Waitangi a te Ngahuru i tenei tau i tenei tau ki te wakarite ture kia tika ai te wakawakanga kia mau pu te rongo kia mutu te he kia tika te hokohoko. A ka mea hoki ki nga Tauiwi o runga kia wakarerea te wawai. Kia mahara ai ki te wakaoranga o to matou wenua. A kia uru ratou ki te wakaminenga o Nu Tireni.
4. Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakaputanga nei ki te Kingi o Ingarani hei kawe atu i to matou aroha. Nana hoki i wakaae ki te Kara mo matou. A no te mea ka atawai matou, ka tiaki i nga pakeha e noho nei i uta e rere mai ana ki te hokohoko, koia ka mea ai matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.

Kua wakaetia katoatia e matou i tenei ra i te 28 o Oketopa 1835 ki te aroaro o te Reireneti o te Kingi o Ingarani.[199]

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[197] M Henare, 'The Changing Images of Nineteenth Century Maori Society – from tribes to nation', pp 187-201
[198] ibid, pp 197-199
[199] Copied from the reproduction in *Facsimiles of the Declaration of Independence and Treaty of Waitangi*. Wellington, 1976

Declaration of the Independence of New Zealand

1. We, the hereditary Chiefs and Heads of the Tribes of the Northern Parts of New Zealand, being assembled at Waitangi, in the Bay of islands, on this 28th Day of October 1835, declare the Independence of our Country, which is hereby constituted and declared to be an independent State, under the Designation of the United Tribes of New Zealand.
2. All Sovereign Power and Authority within the Territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary Chiefs and Heads of Tribes in their collective Capacity, who also declare that they will not permit any legislative Authority separate from themselves in their collective Capacity to exist, nor any Function of Government to be exercised within the said Territories, unless by Persons appointed by them, and acting under the Authority of Laws regularly enacted by them in Congress assembled.
3. The hereditary Chiefs and heads of Tribes agree to meet in Congress at Waitangi, in the Autumn of each Year, for the Purpose of framing Laws for the Dispensation of Justice, the Preservation of Peace and good Order, and the Regulation of Trade; and they cordially invite the Southern Tribes to lay aside their private Animosities, and to consult the Safety and Welfare of our common Country by joining the Confederation of the United Tribes.
4. They also agree to send a Copy of this Declaration to His Majesty the King of England, to thank Him for his Acknowledgement of their Flag; and in return for the Friendship and Protection they have shown and are prepared to show to such of His Subjects as have settled in their Country, or resorted to its Shores for the Purposes of Trade, they entreat that He will continue to be the Parent of their Infant State, and that He will become its Protector from all Attempts upon its Independence.

Agreed to unanimously on this 28th Day of October 1835, in the Presence of His Britannic Majesty's Resident.[200]

The declaration was signed by the following major Bay of Islands rangatira, representing all parts of the Bay, the northern and southern alliances, and the pro-missionary/anti-missionary/uncommitted groups:

- Hare Hongi
- Wharepoaka
- Waikato
- Moka
- Wharerahi
- Rewa
- Titore
- Te Atua Haere
- Kawiti
- Pumuka
- Te Kekeao
- Te Kemara
- Pomare
- Whiwhia
- Marupo
- Hone Heke[201]

In all, 33 rangatira signed the Declaration on the day, and the claimants will be able to provide further information on each of the signatories.

Moetara of Hokianga signed on the day, and he was later joined by Patuone, Nene, Te Taonui, Kiwikiwi, Tirarārau, and other Nga Puhi leaders. Busby continued to seek support from wider afield, and in 1838 he secured the signature of Te Hapuku of Hawkes Bay, and

[200] Declaration of Independence, GBPP vol 1, [680] p 179. For a modern translation, see M Henare, pp 197-199
[201] For a full list of signatories, see *Facsimiles of the Declaration of Independence and Treaty of Waitangi*

even the Waikato leader Te Wherowhero in 1839.[202] Henare explains that it was the alliance between these tribes and Nga Puhi, and in particular the relationship between Te Hapuku and Pomare, Kawiti, and Te Hara, that probably accounts for their support of this Nga Puhi initiative.[203] For Busby, therefore, the Declaration was never a dead letter, and he continued to gather support for it. The internal Nga Puhi feuding and warfare of 1836-37, however, discouraged him from attempting to call a 'congress' and experiment with collective action on the part of the signatory chiefs.[204] By the end of 1837, the momentum for such an effort appeared to be gone, at least as far as Busby was concerned.

The New South Wales and British Governments took the Declaration seriously. Governor Bourke was pleased and supportive in general, but accused Busby of adding Article 2 in order to subvert McDonnell's anti-liquor law in Hokianga. Busby vigorously denied that, and assured the government that the wording would have been the same even if there had been no local Hokianga law to ban liquor imports.[205] Ross took up this view of things and argued that, given Busby's apparent inactivity on the issues of De Thierry and the Declaration in later years, the whole thing was actually a scheme to cancel McDonnell's law, which Busby opposed.[206] The available evidence in the Busby papers, however, suggests that the Resident did in fact continue to take the Declaration seriously and to promote it in later years, but was largely defeated by circumstances.

In any case, the British Government once again assured Bay of Islands Maori in a public and formal way of the Crown's friendship and protection. Lord Glenelg instructed Governor Bourke that the chiefs should be 'assured, in His Majesty's Name, that He will not fail to avail Himself of every Opportunity of showing His Goodwill, and of affording to those Chiefs such Support and Protection as may be consistent with a due Regard to the just Rights of others, and to the Interests of His Majesty's Subjects'.[207] When the King's 'gracious message' reached New Zealand in 1837, however, Busby felt that tensions within Nga Puhi were such that he could not get half of the chiefs present in 1835 to assemble to receive it.[208] In the end, it was given a wide circulation through distribution in a printed form.[209]

The alliance between the British Crown and Maori was nevertheless taken a further step by King William's acceptance of the Declaration. The governments of New South Wales and Britain had now formally recognised the independence of New Zealand and the right of Maori to govern themselves, both in the reception of the flag in 1834 and now again in the recognition of the Declaration in 1836. These two events were accompanied by protestations of friendship and protection on both sides, and stand squarely in the developing relationship started effectively by Hongi Hika and George IV in 1820, and now renewed on repeated occasions by William IV, governors of New South Wales, Secretaries of State, and Colonial Office officials.

For the purposes of this report, the most important developments in the 1830s were the embassy and petition of 1831, the Crown's response (Lord Glenelg's public letter and the appointment of a Resident), the adoption of the New Zealand flag, and the Declaration of Independence. This has led to a concentration on the role of the British Resident in promoting British interests, propagandising the Crown and presenting its intentions in a particular light, and intensifying the alliance between the Crown and Nga Puhi. A further relevant aspect to his role, however, is the personal relationships that Busby established with Bay of Islands

[202] ibid
[203] M Henare, pp 194-195
[204] J Busby to Colonial Secretary, 22 March 1837, qMS 0345
[205] J Busby to Colonial Secretary, 16 March 1836, qMS 0345
[206] J Ross, 'Busby and the Declaration of Independence', NZJH, vol 14, April 1980
[207] Glenelg to Bourke, 15 May 1836, GBPP vol 1, [680] p 159
[208] J Busby to Colonial Secretary, 22 March 1837, qMS 0345
[209] C Orange p 22

leaders, and the growth and frustration of his function as mediator and arbitrator – a kind of race relations conciliator, as Orange puts it.[210] In this respect, Busby contributed enormously to the continued personalisation of the Crown, and to Maori understandings of the sort of thing involved in having a King's man on the spot. It seems pretty clear that in seeking a kawana in 1840, the Bay chiefs were expecting a Busby with a little more of everything – a few troops, a warship, more ability to arbitrate than mediate, and (most importantly) ensconced in their midst at the Bay.

In exploring this side of Busby's role, it is helpful to refer to the excellent assessment of Ian Wards:

> To the Maoris, he was presented as proof of His Majesty's concern, a token of Great Britain's interest and protection, an indication of the benefit flowing from "alliance with Great Britain", and in fact this was all that he was to become. Described before a Select Committee of the House of Commons in 1836, by Thomas Trapp, as a "man-of-war without guns", Busby has been given scant sympathy by historians who have usually ignored the fact that his appointment was made on certain legislative conditions which were not fulfilled. He was left without legal authority, even in trivial matters, and his papers comprise a record of thieving and murder; of requests from the penal colonies of Australia to apprehend escaped convicts; of demands from ships' captains, including those of HM ships, to return deserters; of appeals from white settlers to adjudicate trading and boundary disputes; of self-righteous pleas from owners of public houses and brothels for protection from "ruffians", and of almost complete inability to do anything about any of these things. Through lack of support his herculean task became that of civilising by example, but personal integrity and good intentions, which he possessed in good measure, proved to be insufficient equipment and he became an embarrassment to his supporters and the butt of his contemporaries. Lesser men would have lost their dignity and perhaps their skins: Busby kept both and made many lasting friendships with Maori chiefs. The link that he forged between Britain and New Zealand may yet be found to be pure gold.[211]

The 'pure gold' referred to by Wards is also stressed by Orange in her interpretation of Busby's contribution to the processes which led to the acceptance of the Treaty in 1840. She argued that the Resident appeared to be weak because he tended to stress his powerlessness in his despatches, emphasising his lack of legal authority or the requisite force to be anything other than a mediator/negotiator in relations between Maori and British subjects. But this role of mediation was an important one in its own right. Orange notes: 'Busby's six-year term of office prepared Maori to accept further British intervention. In small ways Busby appeared helpful.'[212]

Orange gives examples of cases in which Bay of Islands Maori, and sometimes people from further afield, appealed to the Resident to resolve disputes with Pakeha, or provide redress in cases where damage to property or people had been inflicted. Most of these cases are drawn from the British Resident papers at Archives New Zealand, which have since gone missing.[213] The cases illustrate Busby's role as 'kaiwhakarite' or mediator, and even Pomare, with whom Busby quarrelled over a disputed boat in 1833-34, later called on Busby to negotiate the return of goods stolen from him by a European. Apparently, Pomare referred to the Resident as a tahuhu, the ridge-pole that held the Maori house together. Orange concluded that the use of this term by this particular chief suggests a growing Maori acceptance of the King's man as an intermediary between the races, on a similar basis to the missionaries with whom he was allied and closely identified in Maori minds. She adds: 'And if his record in controlling British nationals was not as satisfactory as some Maori wished, this would later be persuasive in their acceptance of more formal methods of political control.'[214]

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[210] ibid, p 14
[211] I Wards, pp 9-10
[212] C Orange, pp 14-18
[213] The letters from 1835 onwards, in BR 1/2, have been misplaced at Archives New Zealand, Wellington
[214] C Orange, pp 16-17

The register of the British Resident's papers indicates that Busby mediated disputes between Maori and Europeans, involving Titore, Heke, Pomare, Mate, Mauparama, Nene, Te Taonui, Te Puhi, and Herua (from Thames). There were also letters requesting assistance, for instance from the chief Papahia of Hokianga in 1838, seeking aid and protection for Catholic converts against oppressive Protestants and their missionaries. There were expressions of support for Busby, especially around the time of the attack on his house in 1834. He received assurances of protection and assistance in 1835 from chiefs who could not make it to the hui on this matter, such as Hamona Pita, Moetara, Nene, Taonui, Pi, Waitara, and Tirarau. One chief, Watena Rukaruka, who did not want to attend a meeting in Nga Puhi territory, pointed out that as a representative of the Queen and the Governor of New South Wales, Busby could go anywhere and meet with anyone, without losing mana.[215] Although he was not always able to resolve these cases successfully, Busby had clearly carved out a role for himself as a mediator and negotiator by the late 1830s.

While Maori and settlers both referred disputes to Busby when it suited them or they needed help and protection, he was not able to impose arbitrated awards or compel obedience. In vain did he ask for a warship, soldiers, or local police. By the mid 1830s, Governor Bourke had already decided that the appointment was a failure, and that if it could not be backed with coercive judicial or military power, then there was little point in keeping the Resident at all. To some extent, Busby and the British at the Bay of Islands agreed with this assessment. The Resident constantly wrote to Sydney with schemes for using a minimal force to get the confederation up and running. These appeals fell on deaf ears, as did the regular petitions from "respectable" British settlers for more effective protection from disorder and violence.[216] These appeals were partly exaggeration, partly ignorance. Busby arrived at the Bay after the end of the period of intense warfare for Nga Puhi. The skirmishing of 1837, for example, seemed a huge event to him. The missionaries could have told him that it was nothing compared to the local conquest of Ngare Raumati or the major southern campaigns of the 1820s. Ironically, Maori society at the Bay was at its most peaceful during Busby's period, with peace-making customs and hui regulating affairs between the local tribes.

Busby was reliant on convincing Maori that his proposed solutions to disputes were 'tika'. He had to argue and persuade at hui. He could not do this where his views conflicted with strongly held Maori ones. He was seldom able, for example, to enforce the exclusive property rights that he thought he and other settlers should have as landowners, either for himself, or for settlers like Polack.[217] It was this kind of failure, and a mistaken belief that tribal relations were much more violent than they actually were, that led to the litany of "failures" recited in Busby's correspondence. In fact, the Resident was in a stronger position than he realised, vis-à-vis his mana as the King's man at the Bay of Islands. In 1834, a chief named Rete broke into Busby's storeroom and stole some goods. In the resultant scuffle, shots were fired at the Residency and a splinter of wood hit Busby in the head. The Resident was furious that Maori seemed to take this lightly, as did Governor Bourke. Eventually, when the identity of the culprit was discovered, Rete was forced to cede some land to Busby in satisfaction for his offence. Titore, by this time the main leader of the northern hapu, promised to go to Sydney as a slave if Rete did not own up and accept his punishment. The Resident was far from satisfied, especially since he had wanted Rete banished but the chiefs seemed unwilling to adopt this sentence. He reported that Maori taunted him that no real atonement had been made.[218]

[215] Register of letters to and from British Resident, BR 1/1 & 1/2
[216] See J Busby's letters to the Colonial Secretary, qMS 0345, passim
[217] See above, chapter 4
[218] This information is in J Busby's letters to the Colonial Secretary, 1834-36, qMS 0345

Busby was not in fact aware of the delicacy of inter-hapu relations and the constraints on the northern alliance leadership, which in fact took the matter very seriously. Ballara argues that the whole Bay of Islands was thrown into turmoil as a result of the incident. Kawiti of Ngati Hine led a taua muru to Paihia mission station, complaining that the missionaries had spread a report that he had been the one responsible for the attack. The southern alliance hapu gathered at Otuihu, preparing for the expected attack from the northern hapu, and peace was not re-established until it was finally discovered that a Ngati Tautahi chief, Rete, had been responsible.[219] Whether the rangatira could have done more to punish Rete is not known, but the actions that were taken did seem sufficient in one respect; there were no more attempted robberies or attacks on the person of the Resident.

There was, however, nearly another war in 1836 as a result of a mediation that went disastrously wrong in the Residency grounds, which Henare suggests Maori accepted as a marae.[220] Busby had been asked to judge between Te Hikutu, led in this case mainly by Waikato, and the people of Whananaki, in a dispute over who had the rights to sell the kauri of Whananki to European traders. In the middle of the hui, when Noa's people were tracing their ancestral rights in the area, a scuffle broke out and the Te Hikutu went for their guns, which they had secreted nearby, as well as a supply of ammunition and rocks for throwing. Two people were killed and more wounded, but most escaped successfully inside the Residency, and Busby himself joined the missionaries who were present in protecting the rest and preventing further violence. Although Waikato allowed his people to be dissuaded from further bloodshed, the tapu of the Residency had been violated a second time.[221] Busby worked hard and successfully to talk the southern alliance out of going to war with Te Hikutu over this incident, and Te Hikutu maintained a wary peace as well. But Busby wanted the New South Wales government to send a ship to punish the culprits for what he saw as a massive insult to the British Crown, and to dissuade future "outrages". The Governor refused to countenance such a thing, and recommended the Resident to get the chiefs to punish Waikato as they had punished Rete.[222]

The whole incident was eventually swallowed up in the outbreak of a serious war between the northern and southern alliances in 1837, a war that had been pending since the cession of Kororareka in 1830. Unable to assemble the chiefs, feeling under-confident in his personal status, and seeing his vision of confederacy collapsing as the war canoes fired at each other on the Bay, Busby became very discouraged and felt that his role was untenable. The settlers and traders agreed; another petition for more effective British protection was soon on its way to London.[223]

By the time that peace was restored at the end of 1837, Busby continued to act in what Orange calls his 'small way' to mediate disputes where he felt he could help or had even a vague jurisdiction. The less respectable local Europeans continued to rob each other, get drunk, squabble over land boundaries, and generally expect the Resident to put all to rights. The focus of policy making shifted after 1837, however, from the Governor and Busby, who had hitherto largely made British policy on the spot, to the Colonial Office and the show-down there between the missionary societies, the commercial interests, and the New Zealand Association. Adams gives a detailed account of how these pressure-groups maintained a campaign for particular forms of intervention in New Zealand, culminating in the New Zealand Company's decision to send settlers, and the Colonial Office's decision to send a representative to obtain sovereignty and establish a colony. By 1838, the Resident's position

[219] A Ballara, 'Warfare and government in Ngapuhi Society', MA thesis, University of Auckland, p 295
[220] M Henare, p 179
[221] J Busby to Colonial Secretary, 18 January & 20 February 1836, qMS 0345
[222] E Ramsden, *Busby of Waitangi*, pp 142-152
[223] See J Busby's despatches to the Colonial Secretary for 1837, passim, qMS 0345

and views had become irrelevant. More intensive intervention was inevitable by then.[224] The only question was the form it would take, and the way in which Maori, who had for the past twenty years considered the British sovereign their friend and ally, would participate in the scenarios of greater British involvement. These matters will be considered in the next chapter.

Even though the Resident was becoming irrelevant to the British authorities and settlers, it was not so for the Maori who had looked to him as the King's representative and established personal relationships with him. By June 1839, change was in the air. The news had reached the Bay of Islands that a consul would be sent from Britain to New Zealand, and presumably the idea that he might also be a kawana was being discussed with considerable interest. Hakiro Pakira of Ngati Rehia, and other Waimate chiefs, held a huge hui to consider conversion to Christianity. They also wanted to make permanent peace with Pomare and Kawiti, the leaders of the southern alliance, and looked to Busby to help them in the negotiations that would be needed for this purpose. The Waimate hui also considered the possibility of choosing a king for themselves, perhaps in order to head off the arrival of the new consul.[225]

Richard Davis wrote to Busby:

> I believe that there are strong desires in the minds of many of the chiefs to change their Political economy – They are convinced while every one is his own Master, and at liberty to do as his mind which is in too many areas under no moral control may dictate that there is but little prospect of their being able to preserve the Sovereignty of their country or to live in peace – they have therefore some of them serious thoughts of having a meeting to arrange matters for the election of a King.[226]

When Hakiro visited Busby to deliver Davis's letter and discuss matters with him, he

> apprised me at his request as well as that of others – that they had it in contemplation to elect a King – The former part of the letter [dealing with peace negotiations] to this point I endeavoured to confine the conversation – It was however evident that his mind dwelt chiefly on the other part of the letter – and he at last came out with it direct was not I to be their King – I replied who was I that I should be a King – He said "true but if it were sanctioned by the Queen" – I told him that the "ritenga" of this land was not to have a King, that the authority must be in the confederation of chiefs – [227]

Busby was concerned that the proposal to elect him as King might interfere with any chance of further service with the British Government, and also that any selection of a king would interfere with the mission of the coming consul (who did not arrive for another seven months). He therefore discouraged the whole idea, both as it applied to himself, or to the election of one of the chiefs.[228]

Nevertheless, it stands as testimony to the relationships which he had established with the chiefs, and the extent to which the Crown had become identified with the person of its representative.[229] Hakiro and his people preferred to keep the man they knew (as Hakiro later said at Waitangi), but this was still to be a relationship with the Queen and had to be 'sanctioned' by her. It should be noted, though, that Busby did not report the proposal to his political masters, for his own protection. Davis' letter does not mention the possibility of the king being Busby. The only evidence we have for this comes from Busby himself, in a

[224] P Adams, pp 51-125
[225] R Davis to J Busby, 29 June 1839, qMS 0352
[226] ibid
[227] J Busby to A Busby, 29 July 1839, qMS 0347
[228] J Busby to R Davis, 11 July 1839, qMS 0352
[229] For a contrary view, see Polack, who thought Busby (his enemy) an aloof man who isolated himself at Waitangi from both settlers and Maori, and was treated by Maori with indifference and later insults; E Ramsden, *Busby of Waitangi*, pp 71, 86-87

private letter to his brother and in his letter of reply to Davis. While it might be easy enough to dismiss if he had only told his brother, the mention to Davis (who could have refuted it had he known it to be untrue) is compelling. Further research might uncover more details about the northern alliance's proposal to elect a king, and the extent to which it was widely or seriously considered in 1839. It certainly adds weight to Henare's contention that Nga Puhi were genuinely interested in following Busby's advice and trying out a new political idea, the confederation and its council, in 1835. It would also be useful to know whether the idea of having a king, or perhaps a kawana, was seen simply as having Busby but with a bit more power and authority. This does seem implicit in some of the evidence of the time.

5 Nga Puhi and the Crown, 1820 to 1870: a growing and deepening relationship?

Thus, by 1839 the alliance between Bay of Islands Maori and the British Crown, which had been intensifying throughout the 1830s, was on the verge of major change. The alliance had its origins in crime and redress. In 1772, Marion du Fresne and his crew gave offence to Ngare Raumati which led to conflict and war, leaving the 'tribe of Marion' with a bad reputation in the north. In 1793 Kawana Kingi of Norfolk Island kidnapped two northern chiefs and eventually returned them, giving presents and making a name for himself that was likewise remembered for many years to come. Eventually, with pioneering chiefs like Te Pahi leading the way, several Bay rangatira visited New South Wales and established personal relationships with the colonial leaders, usually the Governor of the day and the colonial chaplain, Samuel Marsden. A pattern of gift-exchange and friendship was established by 1820, when Hongi Hika and Waikato visited England and met King George IV.

Nga Puhi date their alliance with the British Crown from this historic meeting. Various accounts, both Pakeha and Maori, have survived. According to the Maori versions, the King promised friendship and protection, and that his subjects would not harm Maori, in return for Hongi's promise to protect the missionaries and never to kill British subjects. The King also warned against letting British troops into New Zealand, and promised that the country was to be under Maori authority forever. According to European commentators, however, the meeting was an innocuous formality with an exchange of pleasantries. The King's successors, and their ministers, were not of the view that an alliance had been entered into, with one possible exception. Governor Darling may have accepted the proposition in 1831 (Marsden certainly did), but it is notable that he did not report it to London, and made his proposal for a Resident solely on the basis of the justice and humanitarianism of the case, and the need to protect British interests.

During the 1820s, missionaries and colonial authorities presented the 'benevolent face' of the Crown to Maori, stressing the good intentions, protective nature, and friendly aspirations of Britain and her King. Maori remained suspicious, some more than others, throughout the period and beyond. Nevertheless, when a series of crises in Maori-European relations occurred in 1830, the Bay chiefs sent a representative to Sydney in 1831 to renew their alliance with the new King, and demand that he keep the promises of the old one. The result was the decision to appoint a Resident, whose arrival was delayed until 1833. In the meantime, the French scare brought about by the visit of *La Favorite* to the Bay of Islands in 1831 led Rewa, the most powerful of the northern alliance chiefs at that time, to co-operate with the missionaries in the preparation of a petition to King William, seeking his protection from the 'tribe of Marion', and his more effective control of his subjects at the Bay. They warned the King, as they had warned the Governor, that they might have to start major reprisals if their request was not met.

These two important approaches to the Crown in 1831 marked an intensification of the relationship between Crown and Maori. This was extended when the Resident arrived in 1833 and read out the Crown's favourable response to the petition of 1831. Busby also began the work of propagandising the British Government, representing its good intentions and just actions to Maori in a constantly favourable light, and maintaining that prosperity would accompany alliance with the Crown and the missionaries. His greatest successes, in terms of formalising the alliance further, were in 1834-35, when he engineered the adoption of a New Zealand flag and the Declaration of Independence. As with the petition of 1831, these approaches to the Crown were joint European-Maori endeavours. While the rangatira were willing to accept confederation proposals in the Declaration, which they did not think would work, they took the lead in drafting further protestations of friendship to the King. They requested his protection of their country from outside invasion and his redress of internal troubles involving Pakeha (which they would otherwise do themselves). Alternatively, if one accepts Henare's argument, then the signatories to the Declaration (wider than Nga Puhi) were willing to try a new political instrument to regulate their affairs. This is supported by their debate about choosing a king in 1839, and their acceptance of the Kawana in 1840, and of later mechanisms like official runanga alongside their own community power structures. In any event, one result of the Declaration was a further recognition by the Crown of its (loose) alliance and friendship with the chiefs, and of the independence of New Zealand under their authority.

At the same time, Busby also personalised the Crown further in the friendships and relationships he established with many chiefs. His role as mediator, while not always successful, especially as far as the traders and settlers were concerned, involved him in the resolution of disputes and the negotiation of compromise agreements. He provided assistance in a 'small way' to many Bay of Islands chiefs, and his mana as the King's man was quite high, though he did not himself perceive it. And most likely, it was Busby that the chiefs had in mind, as much if not more than the kawana of New South Wales, when they came to consider how things would be if they had a kawana in their midst.

By the end of the 1830s, the relationship between the Crown and the Bay of Islands Maori had grown close, at least as far as the latter were concerned. Its importance to them is symbolised in chiefly names, taken to commemorate important events or relationships. One of the most senior northern alliance rangatira, Wharerahi, took the name "King George". In the next generation, Hakiro, son of Tareha and successor to the mana of Titore, took the name "King William". In mid-1839, Hakiro may have asked Busby (on behalf of some northern alliance hapu) if he also would take the name of King, and establish a greater British authority among them. Alternatively, they may have planned to select one of their own leading chiefs as King, to balance the expected British governor. However one interprets this proposal, it is certainly a sign that Nga Puhi were getting ready for the imminent arrival of Captain Hobson and his proposal of establishing a kawana by Treaty. The negotiation of the Treaty in 1840 was a further step in an alliance that had been growing for the past 20 years; the signatory chiefs looked backwards as well as forwards when they accepted the new kawana, and the events of the 1840s and 1850s must be interpreted in the light of the preceding decades.

That Nga Puhi themselves saw it this way may be seen in a number of references to it in the fragmentary record of their views in the decades following the signing of Te Tiriti. Although most of these references were recorded and translated by officials, and the recording of the speeches of chiefs was very truncated, enough references survive to suggest that it was a matter of importance to Nga Puhi. I noted in section 2 that Hone Heke and Nopera Panakareao both appealed to the relationship between Hongi and George IV in their efforts to enlist Nga Puhi support either for or against the Queen. It is interesting that there

was no explicit reference to King George or King William at Waitangi, insofar as the surviving account of the speeches is concerned (see chapter 6). This does not mean the prior relationship was absent from the minds of those involved – quite the reverse. The chiefs bearing their names, Wharerahi and Hakiro, were present and a personal reminder of the importance of King George and King William to Nga Puhi. Many of the rangatira referred to a choice between the new kawana and keeping the old situation of the missionaries and Busby. Many wanted to keep the status quo, with Busby and the missionaries continuing as their matua. In other words, the choice was not between accepting and rejecting alliance with the Crown, so much as accepting the new and more intrusive presence of the Crown in the person of the Queen's Kawana. It was between Hobson and Busby; the old ways of King William and the confederation, or the new ways of kawanatanga and the Queen. That choice was still a potent one in the 1840s. This explains how the alliance with King George could be used by both sides in the northern war to explain and support their positions.

This changed in the 1850s. Nga Puhi leaders rejected Heke's position that the old ways of King George and the new ways of Queen Victoria were different. Instead, they accepted the position advanced by the Nga Puhi kawanatanga supporters from 1840 on, that kawanatanga was a culmination of the relationship with King George and King William. From the mid-1850s, only one version of this history is heard from Nga Puhi. Their leaders began the attempt to fully restore their relationship with the Crown, damaged by the northern war. More particularly, they wanted to attract settlement to the north, and feared that the legacy of the northern war was one of the impediments to this. As part of their interactions with the Crown, Nga Puhi leaders stressed the long relationship, the degree to which it sprang from King George and King William, and the Treaty as the culmination of that relationship. By the 1860s, they expressed it as a long continuum, starting with Hongi Hika and George IV.

One of the earliest outlines of their views that has survived is a letter to the Governor from a large body of chiefs, including Arama Karaka, Mohi Tawhai, Aperahama Taonui, and many others, sent from Hokianga in 1856:

> We still remember the letter which we sent to England by the Rev W Yate; the answer to which was this 'King William became our Parent and sent Mr. Busby the British Resident, when laws were made for this land. Then again there was another letter sent to England to King William containing our thoughts, which we have continued to cherish even to these days of Victoria Queen of England. These were our thoughts in the Treaty of Waitangi, which Treaty was worded thus: We the tribes of New Zealand residing to the North of the Thames being now assembled in the tenth Moon of the Native year to make Laws, to protect commerce and prevent war, and protect our Land, since we asked the King of England to become our Parent in this our childhood let our chieftainship be lost with the Sovereignty of our Land, which is held by the principal chiefs of this Assembly. This document was also sent to the King of England, and in answer to which he sent the first Governor. The Treaty of Waitangi was the giving up of the Sovereignty of this land. [ara te pukapuka whaka-aetanga a nga Rangatira o Nuitireni, ki te Kawanatanga o tenei whenua] When some of the Ngapuhi people fought against the Government, they did not think of these documents, and the agreements which they contained. We, the Chiefs of Hokianga, remembering these things, rose up to put a stop to this evil, because by it the laws were made of more effect, and for this many of the tribes condemn us; but these tribes do not remember the laws, via., the Treaty of Waitangi. We say again, our consent is not yes, yes, no, no, but we mean yes. And we further say our work shall be to prevent all evil forever and ever. If you should hear of any quarrel in Hokianga, heed it not; be assured that we, the Chiefs, will unite to preserve order and peace.[230]

[230] Makaore Taonui & others to the Governor, Hokianga, 24 March 1856, *Te Karere/Maori Messenger*, vol 2, no 5, 31 May 1856. A copy of this letter, showing the Maori- and English-language versions as they appeared in *Te Karere*, is Document 4 in the Appendix.

This letter referred to a cumulative relationship with the British Crown, which these particular chiefs felt themselves guardians of, and the continuity and long history of which they stressed to the Governor. So much did they see the Treaty arising from the previous agreements with King William, that their tradition as recited here had the Treaty sent to him, in response to which he sent the first Governor. The current Queen was the successor to that relationship, as were the present generation of Nga Puhi chiefs. This was not an isolated way of looking at the Treaty. The Nga Puhi petition of 1882, some 25 years later, also put it that way:

> O Mother, the Queen! On account of the desire to protect these Islands, your father sent hither, in 1840, Captain Hobson. At that time the enlightened administration of England was discovered by us, and the Maori chiefs came to the conclusion that England, in preference to other countries, should be the protector of New Zealand – to protect and cherish the Maori tribes of New Zealand. The conclusion brought about the Treaty of Waitangi, and the appointment of the first Governor, Captain Hobson.[231]

Before moving on, we do need to address the mention in the 1856 letter that their chieftainship should be lost with their sovereignty, 'kia whakakahoretia to matou Rangatiratanga; ko te kingitanga ko te mana i te whenua'. There are many possible explanations. One is that this was in fact part of the understanding of the Hokianga leaders. Another is that they stressed in this letter their willingness to accept the law and keep all the agreements they had made, and that the phrase should not be taken too literally as a relinquishment of their own authority – after all, they informed the Governor to take no notice of any problems in the area, as *they*, the chiefs, would sort it out. They clearly did not conceive that their authority was ended, let alone replaced by that of the Governor. Thirdly, an error may have been made in the transcription of this letter. Someone has underlined it in the edition of *Te Karere* that was imaged, and written that it should be 'whakahonoretia', not 'whakakahoretia'. This would, of course, give it the opposite meaning. It would be useful if the original pre-publication version of the letter could be found – it was not located as part of this research project.

Fourthly, as may be common in these traditions, the Treaty and the Declaration of Independence are conceived as essentially the same thing. The request for the King (not the Queen) to become a parent, the statement that the Treaty is enacted by those living north of Hauraki, and much of the wording (including 'whakakahoretia to matou Rangatiratanga'), come from the Declaration, not the Treaty. In the Declaration, it is translated by Henare as '*lest* [emphasis added] our authority and leadership be ended', not *let* it be ended.[232] There may have been an error in the translation of this letter by the editor of *Te Karere*. I am enclosing the full text in Maori and English (see appendix) so that the claimants can consider the document.

A modern translation has been offered by Raniera (Sonny) Tau, which conveys quite a different interpretation of some key parts of the letter:

> Mangungu, Hokianga
> March 24 1856
>
> E hoa e te Kawana
> Friend the Governor
>
> Tena ra koe, kia ora tonu koe, a ma Te Atua te kuini e tiaki, a koe ano hoki. Na kia whakarongona ata whaititia mai e koe, a matou kupu rua rua.

---

[231] Parore Te Awha, Mangonui Rewa, Hare Hongi Hika, Hirini Taiwhanga, Maihi Paraone Kawiti, Wiremu Puhi te Hiri, Kingi Hori Kira, & Hakena Parore, for the Native People of New Zealand, to Queen Victoria, 1882, reproduced in TL Buick, *The Treaty of Waitangi*, p 298

[232] M Henare, pp 198-199

Salutations and greetings to you. May God protect both yourself as well as the Queen. May you give due consideration to these our few words.

Kua rongo matou kia Hone Waiti ki au kupu kia whakamutua te whawhai. Ka whakaae atu matou, ou tamariki ki a koe, ae, e kore matou e pai ki te whawhai. Ko ta matou ae, e hara i te penei, ae, ae-kahore, kahore, oti ra he ae ano, he amene.

We have heard through John White your desire that all contention must cease. We your charges concur with you and do not desire contention. We do not say yes or no for the sake of it. Our concurrence with your desires is not given lightly but is everlasting.

E maharatia tonutia ana e matou te pukapuka i kawea e te Peti ki Ingarangi. Ka whakamatuatia a Kingi Wiremu kia matou. No reira ka tonoa mai a te Puhipi ka whakaritea i reira he ture mo tenei whenua.

We are mindful of the letter conveyed to England by the Rev. Yates. It was then that King William became our guardian. From then James Busby was sent whereby laws for this land were crafted.

Ka kawea atu ano he pukapuka ki Ingarangi kia Kingi Wiremu, a taea noatia nga ra o Wikitoria te Kuini o Ingarangi, a taea noatia te Tiriti O Waitangi.

Another letter was sent to England to King William, its content was relevant in the days of Queen Victoria, Queen of England, right up to the time of the Treaty of Waitangi.

I penei ra te korero o taua pukapuka. Ko matou ko nga Iwi o Niutireni i raro mai o Hauraki, ko oti nei te hui hui ki te runanga ki Waitangi, a te ngahuru i tenei tau, ki te whakarite ture, kia tika ai te hoko hoko, kia mau pu te rongo, kia whakarerea te whawhai, kia mahara ano ki te whakaoranga mo to matou whenua.

This is what was said in that particular letter. We the tribes of New Zealand domiciled from Hauraki north, assembled in congress at Waitangi, in the autumn of this year, to enact laws for controlling trade, keeping the peace, rebuking contention and remembering the protection of our land.

Koia matou ka mea ai ki te Kingi o Ingarangi, kia waiho ia hei matua kia matou, i to matou tamarikitanga, whakakahoretia to matou Rangatiratanga, ko te Kingitanga ko te mana i te whenua o te Whakaminenga o Niutireni ka meatia nei, kei nga tino Rangatira anake i to matou huihuinga. Ka kawea atu ano tenei pukapuka ki Ingarangi. Ka tahi ka tukua mai ko te Kawana tuatahi, no reira Te Tiriti o Waitangi, ***(ara te pukapuka whakaaetanga a nga Rangatira o Niutireni, ki te Kawanatanga mo tenei whenua).***

That is the reason we have asked that the King of England remain our guardian. Because of our inexperience in these matters, remove our right of self-government; the Kingdom will hold power over the lands held by this assembly of Chiefs who met in congress. ***ONLY*** these Chiefs assembled here make this concession. This letter was again sent to England. The first Governor was then despatched which led to the Treaty of Waitangi, ***(the document of agreement by these sovereign Chiefs of New Zealand to the Governance of this land.)***

Na ka whakatika Ngapuhi ka patua te Pakeha, kihai mahara ki aua ture a takahia ana. Whakaaro ana matou nga Rangatira o Hokianga ki te pehi i taua he, me nga ture i takahia.

Although Ngapuhi attempted to comply with these laws, contentions with Pakeha continued, they forgot the laws contained in those documents and transgressed them. We the Chiefs of Hokianga have decided to oppose these sins and transgressions of these laws.

Heoi e mea ana nga iwi katoa i he to matou whakatikanga ki te pehi i taua whawhai.

Despite our efforts, all other iwi have disagreed with our stance of opposition to those contentions.

Otira, kihai ratou i matau ki te whakaritenga o aua ture.

They are ignorant of the agreements reached concerning these laws.

Koia matou ka mea atu nei, e hara ta matou ae i te penei, ae, ae-kahore, kahore, koia matou ka mea ai, ko ta matou mahi tenei, he takahi i te kino, ake tonu atu.

That is why we have stated previously, our concurrence with you is not given lightly, again we state, our desire is to forsake wickedness forever.

E rongo koe ki tetahi raru raru e tupu ana kei Hokianga, he mea noa ano, ki ano i rangona noatia e te runanga.

If you hear of contention taking root in Hokianga, it is but rumour, which has not come to the notice of this assembly of Chiefs.

Me ta enei kupu ki Te nupepa, ka whakahoki mai ai tetahi kia matou, kia tu katoa ai matou ki te nupepa.

These writings must be published in the newspaper with a copy returned to us so all our names are recorded in the newspaper.

Mo te paanga ki te he, ka maharatia ano aua kupu, kei pera i ana ture i mua, na te wareware, na te kuare, takahia ana, otira kao te whakaaro.

When transgressions occur, these words will be remembered lest by forgetfulness and ignorance the laws will again be broken as in the past.

Tenei ano tetahi o matou kupu, e kore ranei koe e pai, kia ruria nga kainga o Hokianga nei, ka nohoia ai e te Pakeha ina haere atu te Pakeha ki te hoko kainga ia koe. He hiahia no matou ki tetahi Pakeha hei hoa noho mo matou. Otira, ki te pai koe.

Another matter we wish to raise which perhaps you will not like. That the areas for housing in Hokianga be surveyed as dwelling places for Pakeha if they wish to purchase dwelling places from you. We are desirous that one (several) Pakeha lives among us however, this is at your discretion.

Heoi ano na ou hoa aroha. Na:

That is all, from your loving friends:

Signed:

Makoare Taonui
Mohi Tawhai
Aperehama Taonui
Otene Pura
Wiremu Waka Turau
Tiopira Taoho
Rana Te Waha
Rihari Watene Raumati
Te Reti
Kaihau
Henare Taramoeroa
Kawiri Mutu
Watarauhi Muriwai
Wiremu Hopihana Tahua
Wiremu Patene Pura
Mohi Tarewarewa
Arama Karaka Pi
Hoera Tuhi Paru
Paora Matinga
Hekopa Taituha

Wiremu Tana Nguru
Pangari
Hoterene Matangi
Atama Tohu[233]

I am grateful to Mr Tau for his assistance in interpreting this letter. He suggests that the writers of the letter clearly did not confuse the contents of the Declaration and the Treaty, as appeared to be the case in the contemporary translation. He also argues that because of their inexperience (tamarikitanga) in matters of government, they asked for their guardian (the King) to remove their 'right of self-government' and provide them with the experience needed. This was not intended to be a permanent removal, and was superseded by the Treaty of Waitangi in any case. Tau also emphasises that only the chiefs who signed the letter refer to themselves as having taken this step, and that they did not commit the rest of Nga Puhi to it.[234] John Alexander, on behalf of the Te Waimate-Taiamai Alliance, offered the view that the letter reflected the faith of Nga Puhi in the Crown:

> That, in essence, it portrayed an agreement that the powers (Crown or King) would deal as was expected, act wisely and justly, as the Royal induction or coronation reflects this duty to its Maori subjects or constituent peoples. The Maori elders would have expected that.[235]

It is not in doubt that the Nga Puhi leaders who wrote the letter saw the Treaty and their relationship with the Queen as the culmination of the 1831 petition, the Declaration, and their alliance with King William. Two years after this 1856 letter, Governor Gore Browne visited the Bay of Islands in February 1858. The published version of the speeches is very abbreviated, but one rangatira was recorded as referring to the longterm nature of the relationship with the Crown. At Waimate, Wharekura said: 'Welcome, you come to us in kindness. This kindness is not a thing of today, it dates from the days of King George and King William.'[236] In 1860, in the wake of the Waitara incident and the Taranaki war, Gore Browne convened a conference of chiefs at Kohimarama. This was an occasion at which the relationship with the Crown, and the Treaty of Waitangi, were reaffirmed by many tribes. Interestingly, the Nga Puhi chiefs like Nene referred to their strong desire for 'protection' from the French, but did not otherwise stress the pre-1840 antecedents of the relationship.[237] Instead, this was done by the government's main spokesperson, Donald McLean, telescoping matters quite as much as the 1856 Nga Puhi letter:

> With regard to the Treaty: I think Tamati Waka and the Ngapuhi chiefs shewed themselves to be wise men in asking for protection [from France]. Hongi Hika was a sagacious chief and although he destroyed many tribes in war, yet he was a man of great mind. He loved his country, foresaw danger and provided against it. He and others perceived the necessity of having protection. They applied to the King of England for it and the result was this Treaty of Waitangi. Whatever you may now say respecting it, it has been a great boon to you. It is folly to accuse your chiefs of the past generation of ignorance.[238]

The conference was followed up by a visit from Governor Gore Browne to the Bay of Islands in 1861. Again, the account of the speeches is in very abbreviated form. At a hui at Te Ti on 12 February 1861, Hohaia Waikato attempted to establish a Nga Puhi claim on the Governor. His intention was to oppose a second general conference at Kohimarama, and to

[233] Raniera (Sonny) Tau, translation, November 2004. This also appears as Document 5 in the Appendix.
[234] Raniera (Sonny) Tau, Notes for Translation, November 2004
[235] John Alexander, personal communication, 23 February 2005
[236] *Te Karere Maori / The Maori Messenger*, vol 5, no 4, February 1858, p 9
[237] See, for example, speeches of Tamati Waka Nene, 20 & 24 July 1860, Proceedings of the Kohimarama Conference, *Raupatu Document Bank*, vol 88
[238] Donald McLean, 26 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, p 33833

request a conference just for Nga Puhi at Waitangi. Waikato stressed the special relationship between the Crown and Nga Puhi, consequent on Nga Puhi having brought the Crown to New Zealand, and then having signed the Treaty:

> Hearken friend the Governor; It was I and Hongi that fetched you from your country. There were none before us. Hongi is now dead and I alone am living. But now return my property (the Europeans). What matters if I have done them wrong – they were mine. It was said at Waitangi that meetings should be held there, where the Treaty was signed and the laws of the Queen established. I will not come to Kohimarama (Conference). Let the Ngapuhi have a Conference of their own. It was I that brought you here, therefore let me have a conference to myself.[239]

Hare Hongi did not mention this, however, and Waka Nene took him to task for it, though his words could be taken as a reminder for the Governor as well:

> This is another word of mine. Who was it that went to (Europe)? That was the cause of the Queen's saying that she loved the parting gifts of her parents [William IV & George IV] – the wars to be fought – their lands to be for themselves – Now, my word is, it was he himself (Hongi Hika) that went there. Therefore, let his son bear in mind the words of his parent. (This was addressed to Hare Hongi).[240]

Gore Browne was recalled before he could hold a second Kohimarama conference. The new Governor, Sir George Grey, visited the Bay of Islands in November 1861. A letter from Maihi Paraone Kawiti was read out to the hui, which again reminded the government of the long-standing relationship:

> When you heard that the Maoris were fighting with the Pakehas the Queen sent you here, saying, 'Go to New Zealand and make peace, I have regard for the people left to me by my father [meaning William IV].'
>
> 'Haere ki Niu Tireni, houhia te rongo; e aroha ana ahau ki nga tangata i waiho e toku matua.'[241]

Nine years later, a new Governor, Bowen, visited the north in 1870. At Whangaroa, where Hongi's son and people lived, both the Governor and one of the rangatira referred to Hongi's visit to England. The Governor said:

> The Queen will be highly pleased to hear of the loyal sentiments of Hongi Hika's people. It is a proof that Hongi Hika was sincere in his desire to have Europeans here; for you remember that it was Hongi Hika and Waikato who first went to England to ask King George the Fourth to extend his protection, and send Europeans to this country.[242]

Kingi Hori Kira stressed, as Waikato had in 1861, that the long-standing relationship had obligations for both sides, and that the Crown should be carrying out its side of things: 'Our great Chief Hongi Hika went to England and asked for Europeans, and they came. Now we ask for a town…'[243] The traditions of what Hongi said to (and obtained from) George IV and the centrality of this to the Ngapuhi-Crown relationship had become part of Nga Puhi traditional history, and from there it also became a tradition that Crown officials referred to and used to make their own points.

Only fragmentary evidence of the views of Nga Puhi leaders has been recorded from the mid-nineteenth century. Sufficient has survived, however, to show their belief that an

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[239] "Notes of Native Speeches, Feb 1861", MA 1/1 – 1/3 1861/18
[240] ibid
[241] MP Kawiti to Grey, 5 November 1861, *Te Karere Maori / The Maori Messenger*, vol 2, no 2, 15 January 1862. The Maori-language version of this letter, and the other speeches at the hui, are reproduced in Document 6 in the Appendix.
[242] AJHR 1870, A-7, p 15
[243] ibid, p 16

alliance was forged between Hongi Hika and George IV in 1820, and that that alliance was in trouble by 1830. Nga Puhi sent a rangatira to New South Wales to lay their complaints before the Governor and seek the restoration of balance in the relationship. This was followed by the petition of 1831, the appointment of the Resident, the Declaration of Independence in 1835, and various official communications from William IV of his friendship, support, and recognition of their authority. Some Nga Puhi looked upon this as a growing intensification of their relationship with the Crown. The southern alliance may not have been particularly supportive, and the 1840s war was based at least in part on the old agreement between George IV and Hongi, which had been broken, it was argued, by the new Queen. Nga Puhi were divided in their interpretation of this agreement. By the 1850s and 1860s, however, this disagreement had either disappeared or been shelved. Public references to the pre-Treaty period, which were recorded by officials, stressed that Nga Puhi had brought the Crown to New Zealand, that there had been an alliance between the Crown and Nga Puhi since 1820, and that the Crown needed to do more to recognise the unique obligations incurred as a result.

For their part, Busby and the missionaries maintained constant efforts to present the British Crown as friend and ally. Busby, as the King's representative, worked to mediate relationships between settlers, and between settlers and Maori. In the comparatively peaceful decade of the 1830s, Nga Puhi toyed with the idea of new political institutions, such as a confederation and a king. By 1839, they knew they were about to be presented with a choice. They could keep Busby and the current way of managing relationships between themselves and the settlers, or they could accept a greater presence on the part of the Crown, in the person of the kawana and soldiers, with all that they implied. It is to this choice that we now turn.

Chapter 6 Te Tiriti o Waitangi

In 1838, the British Government decided to intervene formally and more extensively in New Zealand than it had with its previous appointment of a British Resident. By mid-1839, this intention was known at the Bay of Islands and Nga Puhi were discussing the possibility of changes to their interactions with each other and neighbouring iwi, even to the extent of possibly approaching Busby to make him their "king". Eventually, the Government finalised its plan to send William Hobson as governor, with instructions to treat with Maori for the cession of their sovereignty, and to carry out the government and colonisation of New Zealand. One of the first results of these instructions was the negotiation of the Treaty of Waitangi on 5-6 February 1840.

The decision to accept the Governor (kawana) and his Treaty was one of the most important ever made by Nga Puhi. In some ways, it was the logical culmination of their past moves to ally themselves with the British Crown. King William IV had died, closer association with the Crown was no longer possible through Busby (who had refused to take on the role of "king"), and the time had come to reforge the alliance with King William's successor, via the new man that she had sent out to New Zealand. It is possible, in this sense, to see a clear line linking the embassy to Governor Darling in 1831, the petition to King William later that year, and the Declaration of Independence of 1835, with the Treaty of Waitangi in 1840. At the same time, despite appeals to the possibilities of French invasion and the growing difficulties of regulating settlers and traders, there were many Maori who preferred to keep the alliance as it was, with the retention of facilitators in the persons of Busby and the CMS missionaries. The question became partly: what did having a Governor really mean, as opposed to the literal or figurative meaning of the terms of the Treaty?

With the negotiating and signing of the Treaty, the two streams of Treaty history explored in the previous chapter – the intentions of the British Crown as they actually were in terms of real politics, and the Crown's intentions as portrayed and pledged to Maori – come together in a critical form. On 6 February, the Surveyor General, Felton Mathew, described to his wife how Captain Hobson had addressed the assembled hui at Waitangi. Hobson told the rangatira 'that he had been sent among them by the Queen to protect and defend them, and to place them under the paternal sway of Great Britain, and a good deal more such fustian'.[1] Mathew's description of the Governor's address as 'fustian' raises two critical questions for Treaty claims:

- What were the intentions of the Crown, and the meanings of the Treaty, as conveyed by its officials and their supporters?
- Were these the genuine intentions of the Crown, and if not, how serious were the discrepancies?

These issues lie at the heart of the Treaty relationship between Nga Puhi and the Crown, and are critical to the explanation of why some Bay rangatira apparently sought to take back what they had ceded to the Queen as early as 1845. It was a short five years, indeed, between the signing of the Treaty and the outbreak of civil war among Nga Puhi, and of war with the Crown. The third critical question, therefore, is:

- What was the meaning of the Treaty, in Nga Puhi eyes, and what did the Bay of Islands rangatira believe that they were doing when they accepted the Governor and the Treaty?

These are no idle questions. As early as 1845, Busby was outlining how the Crown's intentions had been misrepresented at Waitangi:

[1] J Rutherford, ed, *The Founding of New Zealand: the journals of Felton Mathew*, p 33

> When it was proposed to the natives to cede the sovereignty of their country to the Queen, the alleged grounds of that proposal were the great influx of Her Majesty's subjects into New Zealand which she could not prevent, and the impossibility of repressing the disorders which resulted from such a state of things, and of affording protection to the weak and well disposed of either race from the violence of men of opposite character. The only motives alleged were those of benevolence and protection. The chiefs were persuaded to agree to the treaty (so far as it was executed at Waitangi), by their confidence in the missionaries and myself. But had we been aware that it was the intention of Her Majesty's Government to enter into a competition with the New Zealand Company in colonizing the country by the profits to be realized from the lands to which the natives were invited for their own protection to yield the pre-emption, we could not, with our knowledge of their feelings and sentiments, have conscientiously recommended them to agree to the treaty; nor had it been otherwise, would our recommendations have had any influence with the natives, provided the intentions of the Government had been made known to them.[2]

The intention of the Crown to colonise New Zealand vigorously was outlined in Lord Normanby's instructions to Captain Hobson, which had not been published at the time, and which will be discussed further below.

There was an immediate tension, therefore, between the benevolent and colonising intentions of the Crown. The extent of this tension became rapidly apparent. As Busby put it, it was 'not without a feeling of great uneasiness and alarm that we [Busby and the missionaries] first became aware of these intentions on the part of the Government'.[3] The tensions of misunderstanding and misrepresentation led fairly rapidly to open war between the Crown and some of its Nga Puhi allies, on the one hand, and other groupings within Nga Puhi on the other. Henry Williams and others did a very good job of allaying concern and maintaining the alliance with the Crown by constant reference to the Treaty and its terms throughout the 1840s. As a result, the Treaty entered into the hearts, minds, and history of Nga Puhi. It became known as their pukapuka; the "Nga Puhi thing", as other tribes referred to it. Its importance was reaffirmed by Nga Puhi at Kohimarama in 1860, in later hui throughout the late nineteenth century, in the Maori parliament movement, and at various other times up to (and including) the current Treaty claims against the Crown. For this reason, and its centrality to the matters covered in this report, the Treaty will be considered in some detail in this chapter.

1. Sources

The main sources for the Treaty and its signing are:

- William Colenso's eye-witness account, which was amended by Busby and eventually published in the 1890s
- Various contemporary references in the letters and journals of Governor Hobson, Felton Mathew, and others, including slightly later references by Henry Williams, George Clarke, and James Busby
- Claudia Orange's classic account in her 1987 book, *The Treaty of Waitangi*
- A research report written for the Waitangi Tribunal in 1993 by Anne Salmond, which explored the Treaty signing at Waitangi in depth.

In addition, the claimants will no doubt have oral traditions relating to the meaning of the Treaty and the reasons for accepting it and the Governor. These traditions need to be accessed and considered as part of the claims process. The current account is limited to the written (predominantly Pakeha) sources, as outlined above.

[2] J Busby to Hope, 17 Jan 1845, GBPP, vol 4, p 519
[3] ibid

2. Politics and Benevolence Collide: the decision to intervene, and Lord Normanby's instructions to Captain Hobson

As described in the previous chapter, the Governor of New South Wales and the British Resident dominated British policy towards New Zealand, such as it was, until 1837-38. Governor Darling decided to appoint a Resident in 1831. This was confirmed in London and an appointment made in 1832. By 1834-35, Governor Bourke had decided that the experiment had failed and recommended the strengthening of the Residency with judicial and military power. These recommendations were not accepted and the status quo remained undisturbed until 1837, leaving Busby to continue his role as a kai whakarite on the frontier.

Up till this point, the main pressure groups interested in New Zealand had been the Church and Wesleyan Missionary Societies. They had tapped the strong vein of humanitarianism which dominated much policy making in the 1830s, with its high point in the 1836 House of Commons' Committee on aborigines. Basically, the missionary societies veered between two points of view throughout the decade: firstly, that all colonisation was fatal to indigenous peoples, and that New Zealand should be left to the missionaries to Christianise and civilise; and secondly, that the missionaries required some sort of support and protection from the British Government to ensure the success of their work. The societies were influential at the Colonial Office and in Parliament, and basically had a clear field for their views until 1837. Nobody was very interested in New Zealand apart from these societies and the distant New South Wales concerns (the Governor and commercial interests).[4]

This situation changed with the creation of the New Zealand Association in 1837. After going through various incarnations, the Association ended up with the name of 'New Zealand Company'. For the sake of clarity, it will mainly be referred to in this report as the Company, the name by which it is best known, even though it did not turn itself into a joint-stock company until 1839. When it was converted from a non-profit association to a company, the object remained the systematic colonisation of New Zealand, but now it also intended to make a direct profit in doing so. The profits were to be spent on various colonising objects, including benefits to Maori, and in paying a dividend to the company's investors.[5] The whole project was dressed up in very elaborate language, including the adoption of the humanitarian forms and intentions popular at the time.[6] For more detail on the Company, readers should consult Patricia Burns' study, *Fatal Success*.[7]

One of the most important aspects of the new body was its political clout. It had Lord Durham as its chair, a man vital to the survival of the Melbourne Government in 1837, as well as the support of Lord Howick and eleven members of the House of Commons. The company sought the authorisation and assistance of the British Government in its proposed operations. According to Adams, this led to a crisis in which the Colonial Office was finally forced to make a decision about what to do with New Zealand. Hitherto, the office had supported the alliance of the independent chiefs with the Crown, giving its blessing to the 1831 petition and 1835 Declaration of Independence. This had cost Britain nothing. There was no real French threat to deter, and the Resident could otherwise be left unsupported, with no more trouble to the Colonial Office than answering a stream of complaints from the Bay

[4] P Adams, *Fatal Necessity*, pp 89-102
[5] ibid
[6] See, for example, the Directors' instructions to Colonel Wakefield, GBPP vol 3, pp 70-75
[7] P Burns, *Fatal Success: a History of the New Zealand Company*, Auckland, 1989

of Islands. These usually took the form of Busby's despatches and the occasional petition from the inhabitants for greater law and order.[8]

But the approach from the New Zealand Association (later company) forced the government's hand. Just as Lord Glenelg was trying to make up his mind, a lengthy and detailed despatch arrived from the Resident, outlining what he claimed to be an anarchic frontier in need of much stronger British intervention. Orange dismisses this partly as posturing designed to achieve an end – she notes that privately Busby thought New Zealand the 'safest country in the world', certainly safer than the Australian bush.[9] Nevertheless, he presented a picture of troubled relations between Maori and unregulated British traders and settlers, and the growing problems associated with the latter's purchase of land. He also outlined the "fatal impact" of war and European diseases, pointing out that Maori converts were no safer from these than those who remained neutral or opposed to the mission.[10]

With this despatch, argues Adams, Busby took the wind out of the humanitarian sails. Colonisation was occurring regardless of what the British Government wanted, and the missions were not able to prevent it, nor prevent its harmful effects on Maori, if left to themselves. All sides, it seems, began to call for greater intervention. The choice was no longer one of colonisation or no colonisation, but colonisation regulated by a central force and made least harmful to Maori, or uncontrolled colonisation with potentially catastrophic effects for Maori and, in the short term, for the survival of British commercial interests.[11]

Against this call were ranged the forces of bureaucracy and their desire not to increase Britain's colonial possessions, entailing a corresponding increase in expense of all kinds, not least of which was the need to provide soldiers to support the authority of a colonial government. These forces were no longer sufficient to prevent stronger intervention by the end of 1837, though they were still capable of curtailing and weakening it.

In December 1837, Lord Glenelg informed the New Zealand Association:

> The intelligence which Her Majesty's Government have received from the most authentic sources justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose by some effective authority to put a stop to the evils and dangers to which all those interests are exposed, in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.[12]

He saw clearly the choice which eventually led the British Government to undertake the colonisation of New Zealand itself:

> Colonization, to no small extent, is effected in these islands; the only question, therefore, is between colonization, desultory, without law, and fatal to the natives, and a colonization organized and salutary.[13]

There followed, however, a further year and a half of manoeuvring between the New Zealand Company, the missionary societies, and the Colonial Office, before the company finally dispatched its first settlers (unsanctioned) and the Government sent its consul with instructions to colonise New Zealand and obtain its sovereignty from the Maori people. The eventual chartering of the company and the many problems associated with its settlements are not of direct relevance to this report, except insofar as they influenced the nature and

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[8] P Adams, pp 94-122
[9] C Orange, *The Treaty of Waitangi*, p 18
[10] J Busby to Colonial Secretary, 16 June 1837, GBPP vol 3, pp 26-33
[11] P Adams, pp 106-113
[12] Glenelg to Durham, 29 Dec 1837, cited in P Adams, p 103
[13] Glenelg to Durham, 29 Dec 1837, cited in Standish Motte to Normanby, 4 March 1839, GBPP vol 3, p 68

timing of formal intervention, and the eventual location of the new colony's seat of government, a major issue for Nga Puhi. For those who are interested in the details of exactly how the Crown reached its formal and final intentions towards New Zealand, as expressed in the Secretary of State's instructions to Lord Normanby, there is a detailed account to be found in Adams' book, *Fatal Necessity*.

Briefly, Governor Gipps sent Captain Hobson's famous factory proposal to the Colonial Office, where it arrived in early 1838. The captain proposed the establishment of limited colonies, called factories, based around current centres of British settlements, from which a governor would develop law and order, police the frontier, and offer effective protection to Maori from British criminals. Most of New Zealand would remain an independent Maori country.[14] The missionary societies continued to press for an extension of the Resident's role, with courts and more effective British protection for Maori and missionaries, but remained opposed to any form of organised colonisation. By the end of 1838, Lord Glenelg had basically decided to try some form of Hobson's proposal, and to appoint a consul to carry it out. There remained a tension within his administration as to how far the territory needed for factories should extend, whether there should be organised colonisation, and whether the interests of Maori were paramount or of equal weight to those of British subjects and their commercial dealings. Nevertheless, the government was committed to acquiring the sovereignty of parts of New Zealand, and to trying to actively protect the interests of both Maori and those British subjects already living in New Zealand. The New Zealand Association was on the outer for its failure to turn itself into a joint-stock company or meet the conditions the Government had set for colonisation by a non-government agency. Its private bill had been defeated in the Commons by a huge majority.[15]

The situation changed in early 1839 with the resignation of Lord Glenelg and the final reinvention of the Association as the New Zealand Company. The position of consul (and putative governor) had already been offered to Hobson at the end of 1838, and news of the Government's decision to send out such a person had reached New Zealand six months later. But matters dragged, and it was not until the reincarnated New Zealand Company informed the Government of its decision to send settlers without waiting any longer, that a much-needed spur was applied to the busy officials at the Colonial Office. The company was partly motivated by knowledge of the Crown's intention to introduce pre-emption over any territory which it acquired. Without a prior exemption for a semi-official company, the directors knew that they stood to lose a lot of ground in the purchase of cheap land for colonisation if the government's plan went ahead too soon.[16]

Critically, the Company's actions did not alter much about Glenelg's policy to send a consul, but two very important policy changes should be noted in Hobson's instructions from the new Secretary of State, Lord Normanby. Firstly, the Crown had moved towards the idea that the whole of New Zealand should be acquired, though the factory proposal was still seen as a good alternative, and secondly, the Crown had decided to make itself the primary coloniser of New Zealand, funded by purchasing land cheap from Maori and selling it at a much higher rate to settlers. Adams is at a loss to explain the sudden adoption of this intention, so at odds with the previous policy. The reasons for this vital development do not appear to have been rehearsed at the Colonial Office. The change is an important one, because Glenelg (influenced by the missionary societies) saw the new colony as one in which colonisation would be managed by the Crown for the protection of Maori, but not encouraged by it. Normanby, on the other hand, envisaged the Crown actively colonising the country, and doing so via a system of different land values (buying cheap and selling dear,

[14] W Hobson to Bourke, 8 August 1837, GBPP vol 3, pp 23-25
[15] P Adams, pp 110-133
[16] ibid, pp 136-144

assisting emigrants and funding government with the difference).[17] Perhaps the key difference was that Glenelg's ideas had still been tentative as to practicalities, whereas Normanby had to find some way to actually pay for having a government in New Zealand. Nevertheless, as noted above, Busby and the missionaries were not aware of this policy and its implications when they came to represent the Crown's intentions to Nga Puhi at the Bay of Islands.

By August 1839, the Company's *Tory* was on its way to New Zealand, and Lord Normanby was amending and finalising his draft instructions to Captain Hobson. These instructions, which set out the British Crown's public and formal intentions for the establishment of the new colony, are of critical interest to Treaty claims. The Tribunal has found, in its *Orakei Report* among others, that these instructions provide the principal documentary context for the interpretation of the meaning of the Treaty. As a result, a lot of weight has been placed upon them in terms of explaining the Crown's obligations to Maori.[18] It is important, therefore, to consider them in some detail.

Lord Normanby commenced by outlining the main reasons for British intervention in New Zealand, which he used to explain the 'principal object' of Hobson's mission. He noted that settlers, both ad hoc and sent by the company, had already established themselves in New Zealand to a significant extent. At the same time, the British Government was aware of the potential value of the country in terms of trade and global strategic defence. Nowhere, he argued, could colonisation 'be effected with a greater or surer prospect of national advantage'. But the Crown had been 'restrained by still higher motives from engaging in such an enterprise'. The Aborigines Committee had delivered its opinion that the increase of British wealth and power would not outweigh the harm to the British soul if it carried out 'a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government'.[19]

These scruples remained the core of British policy, but circumstances now forced their abandonment, though with 'extreme reluctance'. There were 2000 settlers already in New Zealand, many of them convicts and sailors, 'alternately the authors and the victims of every species of crime and outrage', and there were no laws and courts to control them. Also, the despatch of the company settlers and the sales of large tracts of land to the company, had shown clearly that a large British colony was going to be established in New Zealand. Without a government to restrain them and impose law and order, these settlers would inevitably repeat the processes by which indigenous peoples ('uncivilized tribes') had been destroyed in other parts of the world. The Crown's intention was to 'mitigate and, if possible [note the uncertainty of this], to avert these disasters', and to rescue the settlers themselves from lawlessness, by establishing a government. This was the 'principal object' of Hobson's mission.[20]

The Colonial Secretary then outlined how the consul should go about securing a cession of sovereignty to the Crown, so that he could establish a government. Normanby reiterated that the British Government recognised sovereignty of an independent state as vested in the Maori tribes, but that it was a limited kind of sovereignty, since the tribes had 'few political relations' with each other and were not capable of acting jointly as a government. Nevertheless, the past admissions were 'binding on the faith of the British Crown'. Queen Victoria, following the precedent of William IV, would not assume

[17] ibid, pp 134-158, especially pp 155-156
[18] Waitangi Tribunal, *The Orakei Report*, 1987, pp 193-206
[19] Normanby to W Hobson, 14 August 1839, GBPP vol 3, p 85
[20] ibid

sovereignty 'unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained'.[21]

Normanby saw little obstacle to such a cession. He believed that Maori authority had become 'precarious' and 'nominal' due to the intrusion of uncontrollable settlers. British protection, therefore, and the advantages of British courts, would obviously outweigh the advantages of a 'national independence' that Maori were not strong enough to maintain. The only obstacle, as he saw it, would be the inevitable suspicion as to British motives, and the 'appearance of humiliation' to Maori in giving up control, and of advantage to Britain in acquiring it. Also, they might not understand the technical terms involved, nor be able to appreciate the full results of what might follow – all of these obstacles could be overcome by 'mildness, justice, and perfect sincerity' in Hobson's negotiations. Relying on these qualities and the support of the missionaries, the consul was ordered to 'treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty's dominion'. This instruction was, of course, the origin of the Treaty of Waitangi, and such were the avowed intentions behind it.[22]

Hobson, the Secretary noted, had been chosen for his 'uprightness and plain dealing'. He was ordered to 'frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them'. Basically, Hobson was to inform them of the dangers of having settlers without laws and courts to control them, and that the Queen could no longer protect them unless she became sovereign of the country or at least those parts where her subjects had bought land. This was an important qualification on the promises of William IV – royal protection was now contingent on the cession of sovereignty. And if this did not work, he was authorised to buy consent through presents or payments.[23]

Having thus obtained the cession of sovereignty, Hobson was expected to get the chiefs to agree to a second provision; that from then on, all lands should be sold or gifted to the Queen alone (the right of pre-emption). The reason for this, as explained in the instructions, had nothing to do with the protection of Maori from speculators (as it was later put at Treaty negotiations and reinforced by Governor FitzRoy). The goal was to ensure proper paper titles to land, to generate revenue for the Crown, to ensure the effective colonisation of the country, and to prevent land being tied up in large estates. Even before the chiefs agreed to this measure, Normanby expected Hobson to issue a proclamation as soon as he arrived in the country, to the effect that all titles to land must derive from the Crown, including any estates acquired before the Governor's arrival.[24]

The next part of the instructions dealt with what became known as the Old Land Claims, covered above in chapter 4. These claims, the "purchases" of settlers prior to the establishment of the government, were to be allowed so long as they had been 'acquired [from Maori] on equitable conditions', and were not so large as to damage the interests of the community (ie by tying up land needed for settlement). The New South Wales government would set up a commission to inquire into these transactions and then recommend to the Governor whether or not they should be confirmed. The final decision, it was clear, would be left to the Governor. At the same time, he was to impose a tax on all such lands as a way of stripping old land claimants of any land they could not actually use, and acquiring it thereby to sell to bona fide settlers.[25]

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[21] ibid, pp 85-86
[22] ibid, p 86
[23] ibid
[24] ibid
[25] ibid, p 87

Having dealt with the 'land-jobbers', Hobson was instructed to use the power of pre-emption to buy as much 'waste' (that is, unoccupied) land as needed for the settlement of the country. This was his primary goal in the exercise of pre-emption, though it was hedged around with many restrictions about how and under what circumstances it would be just and fair to buy land from Maori. Leaving these aside for the moment, it is important to note the ultimate goal of the British Crown in buying Maori land. The intentions were clear and unequivocal; the Crown needed to fund both the government itself, and the costs of bringing settlers for systematic colonisation. Normanby instructed Hobson to pay for things as much as possible from customs duties, but also to raise a revenue from the purchase of Maori land at a low price, and its resale to settlers at a higher price. This land revenue was intended to fund surveying and land management, roading and improvements, the expenses of government, and finally the 'charge of removing emigrants from this kingdom to the new colony'. There would be no 'real injustice' in this process, because Maori were not able to use their waste lands in any case, and therefore such lands had no value to them. The real payment (as the New Zealand Company also argued) would come from the introduction of settlers, the development of land, and the gradual creation of prosperity in which Maori would also participate.[26]

Despite the general purpose of insisting on pre-emption, Hobson was instructed to carry it out under stringent conditions, in order to ensure that it would operate as fairly as possible for Maori. This part of his instructions, so vital to interpreting later Crown purchases at the Bay of Islands, is reproduced in full here:

> Having, by these methods [old land claim inquiries and land taxes], obviated the dangers of the acquisition of large tracts of country by mere land-jobbers, it will be your duty to obtain, by fair and equal contracts with the natives, the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand. All such contracts should be made by yourself, through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector. The re-sales of the first purchases that may be made, will provide the funds necessary for future acquisitions; and, beyond original investment of a comparatively small sum of money, no other resource will be necessary for this purpose. I thus assume that the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers. Nor is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.
>
> All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional author of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, - will be one of the first duties of their official protector.[27]

In addition to outlining the conditions under which the Governor could buy land, the Secretary of State described his other duties in terms of promoting the 'civilization' of the Maori people, by which he meant their 'religious, intellectual, and social advancement'. In

[26] ibid, pp 87, 89

[27] ibid, p 87. Crown purchases will be the subject of a forthcoming report by Dr Vincent O'Malley for the CFRT Northland Research Programme.

terms of religious provision, it should be remembered that this was an era of State support and funding for organised religion. The Governor was instructed to protect and support the missionaries, and to give them money if the government could afford it. He was also to make the establishment of schools an object of 'solicitude' – how, was not specified.[28]

Very importantly, both in terms of general Crown policy and the so-called "fourth article" of the Treaty, Lord Normanby instructed Hobson that

> until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism, must be promptly and decisively interdicted. Such atrocities, under whatever plea of religion they may take place, are not to be tolerated within any part of the dominions of the British Crown.[29]

When Captain Hobson received these instructions, he sought clarification on two important points:

- How far was he to go in terms of suppressing customs inconsistent with the principles of humanity? Was he authorised to use force? And did the Government include inter-tribal warfare, and the oppression of one tribal group by another, as something not to be tolerated after the establishment of a government?
- What provision would be made for the enforcement of his authority? Specifically, was he to have an armed force to support his edicts?[30]

Lord Normanby's response to these queries was very revealing. He hesitated to prescribe any course of action at all, but clearly included tribal warfare among the customs to be suppressed. The Governor was basically to use the tools of Busby and the missionaries, 'persuasion and kindness'. But if that did not work, such customs, so contrary to humanity and so damaging to those who practised them, would have to be suppressed by force if necessary. The Colonial Secretary, however, took comfort in contemporary views about the universal nature of right and wrong. He felt certain that Maori would have 'feelings deeply rooted in the minds of all men' that would convince them of the wrongness of cannibalism and human sacrifice, if once shown that other people thought them wrong. He happily predicted a 'willing assent' to the Governor's 'admonitions' on such matters.[31]

Nevertheless, force could be used where necessary. Remarkably, however, the Secretary intended to send the Governor without any armed force whatsoever, despite the proclaimed intention of bringing order to an anarchic frontier. There simply were no soldiers to spare, nor would be for as far as Lord Normanby could see into the future. He suggested that the Governor would 'probably' need to raise a militia or create an armed police. No money was earmarked for this purpose, and the Governor of New South Wales would have the final say on this point. Given the nature and tenor of the Governor's instructions, this decision on the part of the Crown was quite remarkable.[32]

3. The Written Transaction at Waitangi: the Treaty Texts

After consulting with Governor Gipps in Sydney, Captain Hobson reached the Bay of Islands in late January 1840. As instructed by Lord Normanby, he issued proclamations

[28] Normanby to W Hobson, 14 August 1839, GBPP vol 3, pp 87-88
[29] ibid, p 88
[30] W Hobson to Under Secretary, August 1839, GBPP vol 3, pp 91-92
[31] Normanby to W Hobson, 15 August 1839, GBPP vol 3, p 93
[32] ibid

informing the inhabitants that all past and future land titles would derive from the Queen, and essentially asserting the right of Crown pre-emption before it had been ceded by Maori. He then prepared to carry out those parts of his instructions that related to establishing a treaty with the sovereign tribes, in which they would cede their sovereignty to the Queen, and the sole right of the Crown to purchase their lands, as outlined above.

Claudia Orange has traced the evolution of the draft Treaty in some detail, based on material left by Busby and Williams. Essentially, there were four key people involved in creating the written versions of the Treaty:

- Governor Hobson, who drafted the preamble and most of the articles, and had the final say on the English-language version
- James Busby, who drafted the land guarantee in Article 2 (which was originally confined to the right of pre-emption), the post-script, and who checked the translated version and suggested minor corrections
- Henry Williams, who translated the Hobson-Busby draft on 4 February and basically created the Maori-language version of the Treaty
- Edward Williams, his 21-year-old son, who assisted with the translation and was supposed to be very fluent in the Nga Puhi dialect. He had grown up in the north, speaking both languages from an early age.[33]

The two versions of the Treaty became the basis of the written transaction at Waitangi on 5-6 February. Both were read out to the assembled people, and the Maori-language version was the one signed by the chiefs, who either wrote their names or drew their moko as a tohu of their adherence to the pukapuka. The content of the text is therefore of vital importance to the meaning of the Treaty, which was sent to London and accepted by the Colonial Office (in its English-language version). It was not for some years until the differences in meaning and emphasis between the two versions were made readily apparent to the government, during the crisis of the 1860s.

This pukapuka had (and has) enormous mana among Nga Puhi, and was constantly reaffirmed by at least some rangatira and hapu during the troubled years of the 1840s. It was made the basis of a covenant, a spiritual treaty as it were, at Kohimarama in 1860, when Nga Puhi renewed their formal alliance with the Crown and their adherence to the written text of the Treaty, and the oral agreements reached at Waitangi (which will be examined below). The written text was constantly referred to by Nga Puhi in the late nineteenth century in their attempts to deal with the Crown, especially in the parliament movement. Throughout the nineteenth century, respect for writing (tuhituhi) and documents was very high among many Maori.

The use of deeds in land transactions, the teaching of literacy in the mission schools, the craze for having bibles and public readings of them, and the growing popularity of letters or notes as a medium of long-distance communication, were important developments in the 1830s. They all tended towards the investment of importance in the written document, including the one signed at Waitangi in 1840. The missionaries might not always like the outcome – William Williams was horrified to find "the Gospel of Satan" scrawled on the door of a whare at Ohaeawai in 1836, as noted above in chapter 3 – but the fact was that the written word had become popular by 1840.[34] This did not necessarily mean lots of Maori could read and write, but that the written word had assumed significance in the Bay of Islands by 1840, especially for those hapu who had become Christians.[35]

[33] C Orange, *The Treaty of Waitangi*, pp 36-40
[34] W Williams, journal, 14 June 1836, qMS 2249
[35] G Phillipson, 'Missionary Printer: William Colenso at Paihia, 1834-52', in J Stenhouse & J Thomson, eds, *Building God's Own Country*, Dunedin, 2004

The two written versions of the Treaty have been the subject of intensive analysis and discussion during Tribunal inquiries. Many Tribunal reports have set out the differences in the two texts and explained the significance of what was or was not ceded by Maori, in terms of the written Treaty as the basis for the transaction at Waitangi. Also, Anne Salmond has offered an analysis of the documents from a technical point of view, with the assistance of Merimeri Penfold.[36] The results of these various analyses are well known, and will not be made the subject of detailed inquiry here. It is nevertheless important to provide a brief outline of the written texts and the issues involved, because they are so crucial to understanding Nga Puhi's acceptance of the Treaty and subsequent relationship with the Crown. For a more detailed account, readers are directed to Anne Salmond's report, the Tribunal's Orakei and Taranaki Reports, and Claudia Orange's seminal work on this topic.

As a preliminary point, it is necessary to note that the two versions of the Treaty, and the fact that Maori dealt with and signed the text written in their own language, are critical because of the major differences between the two. According to most commentators, these are not merely differences in emphasis or idiom, but significant differences in the meanings of words, to the extent that the Treaty means something very different in Maori to its original meaning in English. Williams, as primary translator, is alternately praised and blamed for this state of affairs. He is considered by some as a deceiver, by Nga Puhi like Sir James Henare as simply a poor translator, and by yet others as someone who conveyed fairly accurately the relation in which Governor and Maori would stand to each other for the foreseeable future. Another interpretation is that Williams, supported by Busby and the other missionaries, put things in the way most calculated to win Maori support, and that everything depended as a result on the oral explanations and contracts entered into at the Waitangi hui.[37]

The language difficulties should not be minimised. Williams himself believed that 'in this translation it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty, - which, though severely tested, has never yet been disturbed, notwithstanding that many in power have endeavoured to do so'.[38] Nevertheless, words like 'Governor', 'sovereignty', 'Queen', 'pre-emption', and 'British subjects', had no obvious equivalent in Maori, though transliterations had been used in the past (and had acquired meaning and currency) through missionary circulation of Maori bibles and prayer books. A word like 'kawana' ('governor') had been around now for almost 50 years, since the first encounter with Kawana Kingi in 1793. Thus, Williams was faced with the task of conveying concepts for which there were no natural Maori equivalents, using missionary Maori as his medium, and of ensuring that the document was both comprehensible and likely to draw support.

The result is that later commentators found the need to retranslate the Maori version of the Treaty, to convey in English what the Maori document had actually appeared to say in 1840. This became an important feature of the crises of the 1860s. William Martin, for example, drew the government's attention to the point that 'chiefship' had been guaranteed in the Treaty.[39] Richard Davis retranslated the Treaty, using the word 'government' instead of sovereignty, and 'supremacy' to translate rangatiratanga, in his new English version.[40] Similarly, TE Young of the Native Department had a new version of the Treaty published by the Legislative Council in 1869, using words like government and chieftainship instead of

[36] A Salmond, *Treaty Transactions: Waitangi, Mangungu and Kaitaia, 1840*, Wai 45, F-19
[37] See the evidence of Sir James Henare, 14 May 1987, Wai 49/0; C Orange, pp 38-43; & I Kawharu (ed), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Auckland, 1989, passim
[38] H Carleton, *The Life of Henry Williams*, 1877, vol 2, p 12
[39] William Martin, Memorandum, 12 May 1860, AJHR 1860-61, E1, p 27
[40] J Coleman, *A Memoir of the Rev Richard Davis*, pp 455-456

sovereignty and possession.[41] Anne Salmond and Merimeri Penfold have provided the Waitangi Tribunal with a modern retranslation, taking into account various anthropological, linguistic, and historical developments, in order to provide a contemporary version of what Maori might have understood in 1840 by the words used by Williams. This retranslation, and the conclusions which Salmond drew from it, will be considered below.

We should now proceed to consider briefly the content and meaning of the two texts. The preamble of the English version was written by Hobson and reflected the content of Lord Normanby's instructions. It recited that Queen Victoria regarded the chiefs and tribes with her 'royal favour' and was 'anxious' to 'protect their just rights and property' and to 'secure them the enjoyment of peace and good order'. Thus far, it was little different from expressions of paternal protection made previously in the name of William IV. It went on to state that due to the number of the Queen's subjects who were settling in New Zealand, or who were about to do so, the Queen felt it necessary to send a 'functionary' to make a treaty with Maori for the 'recognition of Her Majesty's sovereign authority over the whole or any part' of the country. The Queen wanted to prevent the evil effects of lawlessness and the lack of institutions of civil government, both to Maori and her subjects, so she sent Hobson as governor of any parts of New Zealand ceded by the confederation and the independent chiefs.[42]

Salmond and Penfold translated Williams' Maori version as:

> Victoria the Queen of England in her caring concern [i tana mahara atawai] for the chiefs and the sub-tribes [hapu] of New Zealand, and in her desire that their chieftainship (*rangatiratanga*) and their land should be guaranteed to them, and that lasting peace and tranquil living should be theirs, has thought it right that a chief should be sent (*tukua*) as an adjudicator (*kai-wakarite*) to the Maori people (pl) of New Zealand – that the Maori chiefs might agree to the Governorship (*Kawanatanga*) of the Queen over all parts of the land and the islands, because many of her people have already settled in this land and others are yet to come.
>
> Now the Queen wishes that the Governorship should be established, that evil may not come to the Maori people (pl) and the Pakeha living without law (*ture*).
>
> Now the Queen has been pleased that I, William Hobson, a Captain of the Royal Navy, should be sent (*tukua*) as Governor for all those parts of New Zealand which are now or shall be given up (*tukua*) to the Queen, and she declares to the chiefs of the Confederation of the sub-tribes of New Zealand and other chiefs the following laws (*ture*) [articles] which are spoken here:[43]

The English version of the first article of the Treaty has the chiefs (both confederation and independent) cede to the Queen 'absolutely, and without reservation, all the rights and powers of sovereignty' which the chiefs either possessed or might be supposed to possess, over their 'territories as the sole sovereigns thereof'. Salmond and Penfold have retranslated the Maori version as: 'The chiefs of the Confederation and also all the chiefs who have not entered into that Confederation give completely (*tuku rawa atu*) to the Queen of England forever – all the Governorship [kawanatanga] of their lands'.[44]

A great deal has been written on Williams' use of the word kawanatanga to translate 'sovereignty' in the preamble and Article 1, and that Busby approved of this, even though the Resident had used 'rangatiratanga' (which follows in article 2) to convey the concept of kingdom and imply sovereign authority in the Declaration of Independence. Commentators have explored the use of the word kawana in missionary Maori, and the ways in which kawanatanga and rangatiratanga were used in the parts of the bible and prayer book that were

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[41] Reproduced in C Orange, pp 265-266
[42] All quotations from the English version of the Treaty are from GBPP, vol 3, pp 46-47
[43] A Salmond, *Treaty Transactions*, Wai 45 F19, p 5
[44] ibid

in circulation in the north by 1840. The essence of the debate is: were the things that pertained to having a governor, that is, kawanatanga, sufficient to convey the degree of authority which Nga Puhi ceded to the Crown in the English version of Article 1. Colonial politicians in the 1840s and 1860s pointed to armed "rebellion" and accused Maori of breaking the Treaty. Lawyers and courts, similarly, accepted the full jurisprudential sense that sovereignty had been ceded in an absolute and final way in Article 1 of the Treaty. For the British authorities, the language of Article 1 was absolute and sufficient to commit the whole country; the law officers of the Crown turned down the local Attorney General's opinion that tribes who had not signed the Treaty were not subject to the Queen's authority.[45] Sovereignty was ceded at Waitangi (and other signings), and ceded for all, as far as the government was concerned.

There has not, as far as I am aware, been a full and in-depth study of how these words were used in the bible and Anglican liturgy. Some points are obvious. For at least twenty years, more and more Maori had been using the word rangatiratanga for the kingdom of God every Sabbath when they recited the Lord's Prayer. Of course, there is little agreement as to exactly what Maori converts understood by the Christian Atua in the 1830s, let alone concepts of His authority and kingship. Also, commentators tend to stress the role of Pilate as governor in the New Testament, and the subordinate role of governors and their provinces (translated as kawanatanga) in the Roman Empire. The general consensus is that kawanatanga in missionary texts was a subordinate, limited authority, as Salmond put it.[46] A brief survey of the Anglican liturgy, however, in use throughout the CMS mission stations, suggests that these words may have been used in a great variety of ways. Church services sometimes used kawana and related words for the supreme authority of God. The prayer for the King was changed to a prayer for the 'Rangatira maori', but God was the 'only Ruler of princes' ('te Kawana o nga piriniha'). In the Litany, Maori Christians prayed that God would rule (kawanatia) the hearts of the rangatira. The morning and evening services use the words kawana and kawanatanga to describe God and His authority over chiefs and people. The Kingdom of Heaven, on the other hand, was translated as te rangatiratanga o te rangi.[47] The use of these words is complex and would reward further study.

Although the use of the words kawanatanga and rangatiratanga in missionary Maori is important, more emphasis should perhaps be placed on the speeches made at Waitangi, which will be considered in the next section of this chapter. It is sufficient to note here that the idea of having a kawana, and the sort of powers that a kawana might expect to have, appears to have dominated the thinking of the chiefs who spoke both in support of and opposition to the Treaty. Also, there were real flesh-and-blood kawana to point to in New South Wales, and a long history of contact with that colony, and observation of its governor in action. As noted above in chapter 5, many of the major Bay of Islands chiefs had visited Sydney, stayed with or met the governor, and had brought back their observations of kawanatanga (the things that pertain to having a governor). It was not correct, therefore, when Jerningham Wakefield of the New Zealand Company published in his book *Adventure in New Zealand* soon after, that kawanatanga meant nothing more than 'Hobsonness' to the Treaty signatories.[48]

Wakefield's retranslation of the Treaty, notable as one of the earliest to point out the major discrepancies between the Maori and English versions of the Treaty, maintained that

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[45] A Ward, *A Show of Justice: racial 'amalgamation' in nineteenth-century New Zealand*, Auckland, 1973, pp 61-62

[46] A Salmond, *Treaty Transactions*, pp 10-14

[47] *Ko te Pukapuka o nga Inoinga, me te Minitatanga nga Hakarameta, ko era Tikanga koki o te Hahi, ki te Ritenga or te Hahi o Ingarani*, Paihia, 1839, pp 5-7, 9-10, 20

[48] EJ Wakefield, *Adventure in New Zealand*, London, 1845, vol 2, pp 456-465

chiefly authority would be preserved alongside a new 'chief', his translation of kaiwhakarite (the word used in the preamble), who would exercise the powers of Hobsonness.[49] This book was widely read and a 'raging success'.[50] He wrote as follows:

> Two important words, *Rangatiratanga* and *Kawanatanga*, also require some explanation. The termination *tanga* and some variations of it are used in the *Maori* language to produce the abstract notion of any noun or verb to which they are added; thus answering to our *ing*, *ness*, *ship*, *hood*, etc. For example, *hoko* is *Maori* for "to buy" – *hokonga*, for "buying;" *toa*, "brave" – *toanga*, "bravery;" *haere*, "to go" – *haerenga*, "going" or "journey;" *tamariki*, "child" – *tamarikitanga*, "childhood;" *mate*, "sick" – *matenga*, "sickness." *Rangatira* is *Maori* for "Chief," and *Rangatiratanga* is therefore truly rendered "Chieftainship". *Kawanatanga* is an adaptation of the same rule to the word *Kawana*, which had itself been coined from the English "Governor;" and therefore it is truly rendered by "Governorship". But the natives could have had, at the time of the Treaty, only very vague ideas as to the meaning of the English word "Governor" which they nearly pronounced. In the Treaty itself, they were told that *Hopihona* was a *Kawana*. Without very full explanation, *Kawanatanga* must therefore have represented to their ideas neither more nor less than "*Hobsonness*." Even to this day, in Cook's Strait, where *the* Governor has rarely been seen, the natives invariably call every Police Magistrate and the Land Commissioner, *Kawana*; and the Protectors of Aborigines, *Kawanas* for the *Maori*.[51]

But not only had Bay Maori at least some knowledge of what it meant in Australia and Norfolk Island to have a governor, they had also had several years of having a kaiwhakarite, as Busby's role had been defined since 1833. Again, the role of Busby as mediator or kaiwhakarite has been outlined in the previous chapter. It needs to be recalled here, both as informing at least partly what Nga Puhi thought the new kaiwhakarite's role would be, but also in terms of the repeated assertions at Waitangi that Busby and the missionaries were already enough to carry out this role. In light of the preamble and the first article, the question became: what would the new kawana/kaiwhakarite be doing, and did Nga Puhi really need him to be doing it? And secondly, should the original agreement with King George, renewed with King William, and manifest in Busby and the missionaries, simply be maintained as the basis of relationship with the British Crown?

In terms of whether or not the various rights and powers of a kawana and 'subjects' were fully understood in February 1840, George Clarke observed five years later:

> I am quite ready to admit that they had not a correct and comprehensive idea of all that was implied in ceding the sovereignty of their land; and that there was a consequent discrepancy between their intentions in the act, and our views and interpretations of it, is, I think, very probable; some of the chiefs would perhaps deem it only applicable to Europeans [a very important point]; and hence the frequent meetings at which sovereign acts and rights have been discussed and claimed, such as making war and peace amongst themselves, without reference to the Government, may be naturally accounted for. On the other hand, the doubt and hesitation manifested on such occasions, and the anxiety for information respecting the proper line of conduct to be adopted, convince me that they were not altogether ignorant of the general meaning and tendency of their own act in signing the Treaty; and when they plead ignorance on these points, and accuse us of abusing their confidence, it is more owing to the effect of the exaggerations of our own countrymen, than of their own deliberate convictions of having been misled by the treaty of Waitangi.[52]

These issues must be recalled as we consider the text of Article 2, in which Maori ceded the right of pre-emption to the Crown (a right additional to sovereignty) in return for a guarantee of their land and various other possessions, and possibly also their customs and way of life. The English version confirmed to *chiefs*, *tribes*, *families*, and *individuals* the

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[49] ibid
[50] Ronda Cooper, 'Wakefield, Edward Jerningham, 1820-1879', *Dictionary of New Zealand Biography* (online)
[51] EJ Wakefield, *Adventure in New Zealand*, vol 2, pp 461-462
[52] G Clarke to FitzRoy, 1 July 1845, GBPP vol 5, p 293

'full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession'. The chiefs yielded to the Queen the 'exclusive right of pre-emption' over lands that the 'proprietors' wanted to alienate, with prices to be agreed between the proprietors and representatives of the Queen. It is notable that this wording avoids any presumption of where authority over land lay; the collective and individual rights of chiefs, tribes, families, and individuals were guaranteed, and then denoted by the use of the word 'proprietors', which could be any or all of those persons. Also, it is important to note that the English version specifically guaranteed ownership of forests and fisheries, a specificity that did not survive into the Maori version, unless these are understood to come under the generic term of taonga.[53]

The Maori version guaranteed to the rangatira, hapu, and 'tangata katoa' of New Zealand, 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa'.[54] In terms of Treaty debate, all commentators note the differences between sovereignty and possession of land, as conveyed in the English versions of these articles, and the terms kawanatanga and rangatiratanga, as used in the Maori version of these 'ture' (articles). Interestingly, Colenso provides an example of the use of the words tino rangatiratanga on 5 February, partly as a taunt (it seems) towards the Anglican missionaries. While Hobson was closeted with Busby and Williams in the Residency, a police guard was on the door and the kawana was known not to be in to visitors. The CMS missionaries and Nga Puhi waited around outside, chatting and watching the preparations for the hui. Then Bishop Pompallier arrived, dressed in full ecclesiastical robes, and went straight inside to see the governor, 'brushing by the [mounted] police'. Colenso observed:

> At this a buzz might be heard among the Natives, one saying to another, "Ko ia ano te tino rangatira! Ko Pikopo anake te hoa mo te Kawana" (i.e., "He, indeed, is the chief gentleman! Pikopo (Pompallier) only is the companion for the Governor.")[55]

This was said in the hearing of the CMS missionaries, partly to taunt them perhaps, and was the first in a series of incidents in which representatives of the different denominations jockeyed for position.

In Article 2, the term 'tino rangatiratanga' was applied specifically to authority or rights over whenua, kainga, and taonga katoa. It meant, if Colenso's report of Nga Puhi usage is correct, the things that pertained to having a rangatira, and not just any rangatira, but the principal or 'chief gentleman', the most important rangatira. In the 1860s, when the meaning of the Treaty and its terms were being debated in light of the Waitara dispute, a missionary like Kissling defined rangatiratanga as a 'feudal dominion' over land.[56] Concepts of feudal rights and authority were often used to describe New Zealand chiefs in this period, when British observers sought to understand Maori through parallels with their own society. Referring to the Declaration of Independence, for example, in which the word rangatiratanga was also used, a lawyer told the House of Lords Committee in 1838 that the Crown's formal recognition of the chiefs would make them 'feudatories' of the Crown.[57] Similarly, in 1860, CW Richmond (Minister of Native Affairs and later a Supreme Court judge) argued that the way in which the humanitarians were defining chiefly authority over land was essentially a

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[53] Treaty of Waitangi, encl in G Gipps to Lord John Russell, 19 February 1840, GBPP, vol 3, p 46
[54] C Orange, p 257
[55] W Colenso, *The Authentic and Genuine History of the Treaty of Waitangi*, p 13
[56] G Kissling to CMS, 27 April & 3 May 1860, G Kissling, Letters, Reports & Papers, CN/056
[57] Evidence of GS Evans, 18 May 1838, Minutes of Evidence to House of Lords Committee, GBPP vol 1, p 320

'manorial right' and a 'species of minor sovereignty'.[58] This, it seems, was probably what Williams and Busby wanted to convey when they used the word rangatiratanga in this context in the Treaty. The Taranaki Tribunal found that essentially the Treaty promised Maori autonomy or self-government at a local level, when the things pertaining to having tino rangatira were considered in their Treaty context.[59]

The Maori version of Article 2 has provided further controversy in Treaty claims. The meaning of 'hokonga', the word used to translate pre-emption, has been hotly debated. According to Orange and others, it conveyed the right of buying and selling, and was therefore an appropriate way of suggesting that the Queen was going to trade in land and re-sell it to settlers. The word had become widely used for commercial transactions between Maori and traders, and had replaced (in many ways) the more traditional words used for more customary forms of gift exchange. But it did nothing to convey that this was an exclusive right; that Maori could sell their lands to the Queen alone, which the use of a word like 'anake' might easily have corrected. Soon after, some chiefs appeared not to have understood this restriction at all, as Colenso reported, while others maintained that the Queen had only a right of first refusal. Orange points to the speech of the chief Moka, however, as demonstrating that some Nga Puhi understood that the Queen alone would carry out this hokonga – a point that will be considered in the next section of this chapter.[60]

Also, the use of the word taonga in Article 2 has generated Treaty claims and much controversy. There are many examples of its use prior to 1840. In 1834, for example, William Williams told a chief that he could not provide presents for those who were building a house, only to be told 'we have got you, and that is the taonga nui', which Williams translated in this instance as 'great possession'.[61] In 1839, another chief asked Williams to 'leave some of our taonga (treasure) at this place', referring to copies of the Anglican prayerbook.[62] And in the Resident's address of 1833, Busby used the word taonga to refer to the riches of New Zealand (trade, clothing, and 'all other things which you desire'), and also those of Britain, where industry had made people rich and given them 'all good things they desired' ('A ka mahi ano ka wiwi ki te taonga').[63] From just these few examples, therefore, the word could be used to mean a valued person, a book, a treasured possession, a spiritual object, riches, and 'all good things'. It is not surprising, therefore, that many claimants have sought to explore the meaning of what these 'good things' might be, both then and today. Recent examples include the radio spectrum claim, in which the claimants argued that part of the magnetic spectrum is a taonga, and the claim of Nga Ruahine and Ngati Kahungunu that petroleum is a taonga over which they have (or should have) authority and rights.[64]

Salmond and Penfold have retranslated the Maori version of Article 2 as:

> The Queen of England accepts and agrees to the full chieftainship (*tino rangatiratanga*) of the chiefs, the sub-tribes and all the people of New Zealand over their lands, their dwelling-places [kainga] and all of their treasures [taonga katoa]. Also, the chiefs of the Confederation and all the other chiefs give (*tuku*) to the Queen the trading (*hokonga*) of those areas of land whose owners are agreeable, according to the return (*utu*) agreed between them and the person appointed by the Queen as her trading agent (*kai hoko*).[65]

[58] CW Richmond, memorial, 25 May 1860, AJHR 1860 E-1b, p 2
[59] Waitangi Tribunal, *Taranaki Report*, 1996, pp 5-6
[60] C Orange, pp 42, 47
[61] W Williams, journal, 27 Sept 1834, qMS 2249, p 397
[62] ibid, 14 April 1839, p 501
[63] WB Marshall, *A Personal Narrative of Two Visits to New Zealand*, pp 336-337
[64] See, for example, Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report*, 1999
[65] A Salmond, *Treaty Transactions*, p 5

The English version of the third article of the Treaty states that in return for the cessions made in Articles 1 and 2, the Queen extends her 'royal protection' to Maori and grants them 'all the rights and privileges of British subjects'.[66] Salmond and Penfold argue that the Maori version could be recast as: 'In recognition of this agreement to the Governorship of the Queen – the Queen of England will look after (*tiaki*) all the Maori people (pl) of New Zealand and give (*tukua*) to them all and exactly the same the customary rights (*tikanga*) as those she gives to her subjects, the people of England'.[67]

Orange argues that in this article alone Williams basically conveyed the sense of the original without alteration. Neither version, she suggests, made it clear that there were obligations as well as rights for British subjects, such as paying taxes and obeying British laws. A lot would depend, therefore, on whether this aspect of the probable consequences of Article 3 was brought out in the discussions and explanations at Waitangi, which make up the oral parts of the transaction (as covered below).[68] But Salmond also points out that there is special significance in the use of the word 'tiaki', which makes the Queen the kai tiaki of Nga Puhi, a spiritual as well as practical protector. The governor was to be a kai whakarite, the Queen a kai tiaki, and Maori and Europeans were to have the same rights, to have their tikanga guarded and protected by the Queen.[69] In noting the spiritual aspect to this bond, Salmond echoes the words of Sir James Henare in 1987, who strongly emphasised the religious aspects of the relationship between Nga Puhi and the Queen.

Finally, in the post-script of the English version of the Treaty, the chiefs certified that they had 'been made fully to understand' the provisions of the document, and accepted the 'full spirit and meaning thereof', in witness of which they attached their signatures or marks (tohu).[70] Salmond argues that these tohu represented a commitment by all parties and their descendants to 'uphold the relationship that had been established, to honour the gifts that had been given, and to continue a pattern of reciprocal generosity at the risk of a fundamental collapse of *mana* (ancestral power) for the defaulting party'.[71]

Salmond views the post-script this way because she sees the wording of the Maori version of the Treaty, especially the constant use of the word tuku, as setting up a framework for the transaction in which it took on the trappings of a ceremonial gift exchange, and one which marked an ongoing and mutually beneficial relationship. She summarises this aspect of the Treaty document (and the personal relationship it established with the Queen) as follows:

- a *tuku* by the Queen of a chief as a *kai-wakarite* (adjudicator) to Maori people.
- a *tuku* by the chiefs of land to the Queen, now and in the future.
- a *tuku* by the chiefs to the Queen of *kawanatanga*, and the right to control the *hokonga* (barter) of the land through a *kai-hoko* (trading agent)
- a *tuku* by the Queen to the Maori people of her protection, and *tikanga* (customary rights) exactly the same as those of her people in England.

Salmond concludes: 'the chiefs would have understood the Treaty essentially as forging a personal, aristocratic alliance between Maori people and the Queen, with the Queen acting as guardian or *kai-tiaki*, a significant spiritual as well as practical role in traditional Maori terms'.[72]

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[66] Treaty of Waitangi, encl in G Gipps to Lord John Russell, 19 February 1840, GBPP, vol 3, p 47
[67] A Salmond, *Treaty Transactions*, p 5
[68] C Orange, pp 42-43
[69] A Salmond, *Treaty Transactions*, p 9
[70] C Orange, p 259
[71] A Salmond, *Treaty Transactions*, p 10
[72] ibid

A great deal of what was understood, however, was shaped not merely by the written words, which were read out and explained by Hobson and Williams, but also by the course of debate at the hui on 5 and 6 February. In many ways, the agreement made with the kawana was an oral one and a personal one. Not only was there much shaking of hands, and personal salutations to the Governor throughout the proceedings, but specific points were addressed to him and (presumably) considered settled. Tamati Waka Nene, for example, whose intervention was crucial to Nga Puhi's acceptance of the Treaty, turned to the Governor and said to him: 'You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!' Hobson thought this important enough to record in his very brief report on the Treaty signing.[73] Ever afterwards, George Clarke maintained that the Treaty had promised the protection of Maori customs, and that Nga Puhi understood it so.[74] The words of Nene, clear and influential, would have been part of this picture of what the Treaty was about, and what the Kawana had undertaken to do, just as much as any of the words in the texts composed by Hobson, Busby, and Williams. It is to the oral aspects of the Treaty transaction, and the events of 5-6 February, that we now turn.

4. The oral transaction: the Waitangi hui, 5-6 February 1840

At the end of January, Captain Hobson arrived at the Bay of Islands and enlisted the aid of the former British Resident and the CMS missionaries. Fortunately for the success of his mission, Busby co-operated wholeheartedly with his replacement, and composed a circular letter for the confederation ('wakaminenga') chiefs, inviting them to a hui at Waitangi. The invitation was simply to meet Hobson, described as 'te Rangatira o Te Kuini', who was coming 'to be Governor for us all' ('hei Kawana ma tatou').[75] Thus invited, the Nga Puhi hapu began to assemble at the Bay in large numbers on 4 February, and everyone (settlers and Maori alike) converged on the Residency on the morning of the 5th. The sailors from the *Herald* had set up a huge marquee on the lawn in front of the Residency, decorated with flags, and it must have been reminiscent of the hui in 1834 at which the New Zealand flag was adopted, and the meeting in 1835 to discuss the Declaration of Independence. Though the alliance with Britain had been intensified as a result of those hui, not much had changed in practical terms; it remained to be seen whether the outcome of this hui would be the same.

After a levee to meet the local Europeans, the official party moved into the marquee to open the hui. There were about 400 people crammed into the tent – roughly 200 Maori chiefs and people, seated on the ground in the centre of the tent, and much the same number of European locals, standing around the sides. At the front, on a raised platform, were seated the Governor and his party, which included the handful of government officials, some of the *Herald* officers, the Roman Catholic bishop, several CMS and WMS missionaries, and of course Busby and Williams. The Treaty was displayed upon a table, draped in the British flag.

[73] W Hobson to Gipps, 5 February 1840, GBPP vol 3, p 46
[74] G Clarke, Minutes of Executive Council, 29 December 1842, GBPP vol 2, Appendix 19, p 459;
G Clarke to W Shortland, 31 July 1843, GBPP vol 2, Appendix 9, p 346;
G Clarke to FitzRoy, 1 July 1845, GBPP vol 5, p 294;
G Clarke to Colonial Secretary, 30 March 1846, GBPP vol 5, p 562;
G Clarke to EM Williams, Waimate, 1 August 1862, BAFR 10869, Folder 1b
[75] J Busby, circular letter to chiefs, Jan 1840, GC Petersen papers, f-76-048

The proceedings were opened by the Governor's address to the chiefs, which the new Surveyor General, Felton Mathew, described as 'fustian'. Colenso's version of the speech is as follows:

> Her Majesty Victoria, Queen of Great Britain and Ireland, wishing to do good to the chiefs and people of New Zealand, and for the welfare of her subjects living among you, has sent me to this place as Governor.
> But, as the law of England gives no civil powers to Her Majesty out of her dominion, her efforts to do you good will be futile unless you consent.
> Her Majesty has commanded me to explain these matters to you, that you may understand them.
> The people of Great Britain are, thank God! free; and, so long as they do not transgress the laws, they can go where they please, and their sovereign has not power to restrain them. You have sold them lands here and encouraged them to come here. Her Majesty, always ready to protect her subjects, is also always ready to restrain them.
> Her Majesty the Queen asks you to sign this treaty, and so give her that power which shall enable her to restrain them.
> I ask you for this publicly: I do not go from one chief to another.
> I will give you time to consider of the proposal I shall now offer you. What I wish you to do is expressly for your own good, as you will soon see by the treaty.
> You yourselves have often asked the King of England to extend his protection unto you. Her Majesty now offers you that protection in this treaty.
> I think it not necessary to say any more about it, I will therefore read the treaty.[76]

After Henry Williams had interpreted this address, the Treaty was read out – the English version by Governor Hobson, the Maori version by Williams. According to Hobson's account, he explained fully the effects that might be expected from accepting the Treaty, and 'assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction'. This was a theme to be much repeated over the next few years, as the missionaries, protectors, and Governor sought to retain Maori support for the kawanatanga of the Crown. He also offered an explanation of 'such passages as they might be supposed not to understand', which Henry Williams translated sentence by sentence.[77]

Unfortunately, none of the observers present at Waitangi have recorded Hobson's explanation of the Treaty. Henry William's account suggests that he also offered his own explanation of the articles, which again was not recorded:

> In the midst of profound silence I read the [Maori version of the] treaty to all assembled. I told all to listen with care, explaining clause by clause to the chiefs; giving them caution not to be in a hurry, but telling them that we, the Missionaries, fully approved of the treaty, that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights, and privileges. That this treaty was a fortress for them against any foreign power which might desire to take possession of their country, as the French had taken possession of Otiaiti.[78] [Tahiti – which did not in fact happen in substance for a further two years]

In 1847, Williams offered Bishop Selwyn his recollection of how he interpreted the Treaty. It shows that the Maori-language version (Te Tiriti) was definitely articulated by Williams, and intended by him as the basis of the agreement between the Crown and Nga Puhi:

> Your Lordship has requested information in writing of what I explained to the natives, and how they understood it. I confined myself solely to the tenor of the treaty.
> That the Queen had kind wishes towards the chiefs and people of New Zealand,

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[76] W Colenso, pp 16-17
[77] W Hobson to Gipps, 5 February, GBPP vol 3, p 45
[78] H Carleton, *The Life of Henry Williams*, vol 2, p 12

> And was desirous to protect them in their rights as chiefs, and rights of property,
> And that the Queen was desirous that a lasting peace and good understanding should be preserved with them.
> That the Queen had thought it desirable to send a Chief as a regulator of affairs with the natives of New Zealand.
> That the native chiefs should admit the Government of the Queen throughout the country, from the circumstance that numbers of her subjects are residing in the country, and are coming hither from Europe and New South Wales.
> That the Queen is desirous to establish a settled government, to prevent evil occurring to the natives and Europeans who are now residing in New Zealand without law.
> That the Queen therefore proposes to the chiefs these following articles:
> Firstly, - The Chiefs shall surrender to the Queen for ever the Government of the country, for the preservation of order and peace.
> Secondly, - the Queen of England confirms and guarantees to the chiefs and tribes, and to each individual native, their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree.
> The chiefs wishing to sell any portion of their lands, shall give to the Queen the right of pre-emption of their lands.
> Thirdly, - That the Queen, in consideration of the above, will protect the natives of New Zealand, and will impart to them all the rights and privileges of British subjects.[79]

Unfortunately, Williams' account leaves many questions unanswered; how (or whether) he explained 'Government', the Governor as a 'chief' who would be a 'regulator of affairs with the natives', and, of course, pre-emption. On the other hand, Williams clearly stressed: that the 'full rights' of chiefs would be preserved (twice); that Maori would be protected in possession of all their property 'of every kind and degree' (taonga); and, above all, that the Queen wished to protect Maori and Pakeha, and establish order and peace.

After the opening address, which has been cited above, and the reading and explanation of the written Treaty, the rangatira were invited to discuss the proposal. The most detailed account of their discussions was recorded by William Colenso, the young CMS printer, whose published account was corrected by Busby at the time and offers a great deal of information about what was said at the hui. This account can be supplemented by the much briefer descriptions of Hobson, Felton Mathew, Busby, and Henry Williams. It should be noted, of course, that these summaries of the chiefs' speeches are in English, sometimes differ markedly, and do not represent the full sense (or content) of what was said at Waitangi.

Before moving on to the detail of what Nga Puhi rangatira said at the hui, however, and the outcome of the discussion, it is necessary to consider first one of the shorter accounts of the Treaty signing. The relationship in which Maori authority and the Governor's authority were to stand to each other, and the real power balance that it was believed would rest behind this relationship, is revealed most clearly, I believe, in the remarkable account of the government's Surveyor General, Felton Mathew. There is also a confirmation of his interpretation by Busby, several years later, and Mathew's description needs to be considered at the outset and should inform interpretation of the later discussion.

According to Mathew, writing on 6 February, the Governor's opening address was a powerful one (though he also described its sentiments privately as insincere):

> He [Hobson] set forth briefly but emphatically, and with strong feeling, the object and intention of the Queen of England in sending him hither to assume the government of these Islands, provided the native chiefs and tribes gave their consent thereto. He pointed out to them the advantage they would derive from this intercourse with the English, and the necessity which existed for the Government to interfere for their protection on account of the number of white people who had already taken up their abode in this country. He then caused to be read to them a treaty which had been prepared, by which the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing

[79] H Williams to Selwyn, Paihia, 12 July 1847, reproduced in H Carleton, vol 2, pp 156-157

> themselves on her protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same. This treaty having been read and explained to them, they were asked to state their opinion on the matter, and to make known if any of the conditions were not clearly understood or required explanation.[80]

What is remarkable about this account is that Mathew was relying on the English-language versions of what was said to and by Maori. And yet he garnered that the Queen's sovereignty was equated with protection and 'full power over their own people – remaining perfectly independent'. In fact, Mathew seems to have understood the sovereignty and land ownership as the same thing (a point debated at length by the Colonial Office and commentators), and stated that on the payment of a fair and suitable price, Maori would resign to the Queen 'such portion of their country as they might think proper'. This was in fact a confusion and conflation of Articles 1 and 2 of the written Treaty.

Two further points need to be noted about Mathew's account. Firstly, his version of Te Kemara's speech, the Waitangi host of the hui, included an equation of power with numbers; the balance of power would remain with Maori if there were not too many settlers, as was being predicted, and under those circumstances the Governor could go or stay:

> After a while one ferocious looking chief started up and commenced a long and vehement harangue, in which he counselled his countrymen not to admit the Governor, for if they did so they would inevitably become slaves and their lands would pass from them. Then, addressing the Governor, he said:-
>
> "If you like to remain here it is well, but we will have no more white people among us lest we be over-run with them, and our lands be taken from us."[81]

Secondly, Mathew summarised: 'During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.'[82]

It is difficult to know how Mathew, or the English-language translations that he was citing, could have reconciled the 'perfect independence' of Maori, involving 'full power over their own people', with the sovereignty ceded to the Queen in Article 1 of the Treaty. And yet a clearer confirmation of the relationship between kawanatanga and rangatiratanga in the oral transactions at Waitangi would be harder to find. In Mathew's account, the chiefs feared the loss of their lands, and their subjection to the authority of the kawana, who might make them slaves or handcuff and hang them, but they also feared the French and the Americans, and the loss of their independence, which was apparently now guaranteed to them. The likeliest explanation is that those who were presenting the Crown's case at Waitangi, Busby and the missionaries, agreed with Te Kemara's assessment of what would happen if the country was 'over-run' by settlers. There was a clear equation between the continued power of Maori over their own affairs, which is what Mathew meant by 'independence', and the fact that Busby and the missionaries were not expecting the systematic colonisation of New Zealand.

In 1845, Busby made this equation quite clearly:

> They [Maori] have always had an extreme jealousy on the subject of their land, and they have often declared, in various forms of expression, that they would only resign it with their lives: akin to this feeling was the dread of seeing *foreigners arrive in such numbers as to threaten their independence* [my emphasis]. When they understood that it was intended to make a traffic [hokonga] in the lands of their country the means of filling it with emigrants, they considered themselves as overreached by the

[80] J Rutherford (ed), *Felton Mathew*, p 34
[81] ibid, p 36
[82] ibid, p 39

> Government…The natives considered the proceedings of the Government in these matters, as a violation of the spirit of the treaty, which was proposed to them as a measure of protection to themselves, and not as a means of realizing a profit to the Government, or of settling its subjects on their lands.[83]

At Waitangi, therefore, Busby and the chiefs would have been in accord in assuming that Maori 'independence' would continue so long as the country was not swamped by settlers. Clearly, Busby and perhaps Williams did not see this 'independence' as in conflict with the kawana exercising certain powers of benefit to Maori. Williams, for example, countered arguments on the evening of the 5th, that the country had been taken from Maori and they were now taurekareka (slaves or war captives), by

> explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act; under one Sovereign, and one Law, human and divine.[84]

Thus, there is strong reason to believe that there was a deliberate strategy at Waitangi, on the part of the Crown's representatives, to inform Maori that they retained their independence and full power over their own people, whilst ceding kawanatanga to the Queen. Mathew for one did not see any contradiction in this, and nor (it would seem) did Busby, so long as the influx of settlers was sufficiently controlled to preserve Maori 'independence'. There are not many other commentators who put it as unequivocally as Mathew. One such was George Clarke, former Chief Protector of Aborigines, who wrote a pamphlet in 1861 in response to Busby, who was querying whether tribal rights over Maori land existed in Maori custom and were protected by the Treaty. Clarke's 1861 account is much less ambivalent than his explanation to FitzRoy in 1845, when he was still in office (see above). Clarke recalled:

> The expressive language used and fully understood by both parties to the Treaty was this – that "the *shadow* [emphasis in original] of the land was to be the Queen's (meaning the Queen's sovereignty) "and the *substance* [emphasis in original] to remain to the native chiefs;" – their lands and the "tino rangatiratanga" (chief chieftainship) over their own tribes.
>
> Mr. Busby lays stress upon his having had a hand in the Treaty. I have an equal right to do the same; and do here affirm that when the subjects in the Treaty were under consideration, the subject of Tribal rights and the full power of the Chiefs over their own tribes and lands was explained to the natives, and fully understood by the Europeans present.[85]

Although Clarke was referring to Nopera Panakareao's famous statement about the substance and shadow of the land (made later at Kaitaia), he asserts that the Treaty was explained at Waitangi as preserving 'Tribal rights' and the 'full power of the Chiefs over their own tribes and lands', and that this was 'fully understood by the Europeans present'. This corroborates Mathew's account, since the latter clearly picked up and understood matters in the way Clarke described them. Mathew can only have done so from the English translation of the speeches, and from information relayed to the government party. While Clarke admittedly had political points to make in 1861, Mathew did not in his private diary of 1840. Clarke stated that tino rangatiratanga (translated by him as 'chief chieftainship' and 'full power' over the tribes and their lands) was understood by both parties to the Treaty. Mathew seems to have understood this although he did not use the Maori words. No hint of this, however, made it into Hobson's official despatches. The Colonial Office, therefore, was not informed as to the extent to which the Crown had recognised Maori authority in the

[83] J Busby to Lord Stanley, 1 July 1845, GBPP vol 5, p 236
[84] H Carleton, vol 2, p 14
[85] G Clarke, *Remarks Upon a Pamphlet by James Busby, Esq.*, Auckland, 1861, p 21

Treaty. We should bear these accounts of Busby, Mathew, and Clarke in mind as we turn now to consider the views of the Nga Puhi rangatira as recorded by Colenso (and supplemented from the records of other Europeans present at the hui).

Before the chiefs discussed the proposal, however, Busby made a short speech endorsing the Treaty, and assuring Nga Puhi that the Governor had not come 'to take away their land', but rather for the express purpose of securing them 'in the possession of what they had not sold'. The Resident reiterated that he had often told them that land that had not been purchased properly from them would be returned to them, and that this was what the Governor was going to do.[86] Before the main discussion opened, therefore, Busby announced the Crown's intentions with regard to what became known as the old land claims, and made some far-reaching assurances about the purpose and results of the projected inquiry into pre-Treaty purchases. Even so, this was not sufficient to disarm the fire of the chiefs in the speeches that followed, many of whom expressed concerns about the claims which Europeans were making to have purchased large areas of Maori land.

The speeches of Hobson, Williams, and Busby were followed by several hours of discussion among the chiefs. The majority of the Bay of Islands leaders (among those who spoke) expressed themselves as strongly opposed to the Governor and his authority. If their sentiments have been recorded properly, then there was almost no discussion of the pukapuka itself and the meaning of its particular articles, especially the right of pre-emption and how that might work in practice. Instead, the oral transaction at Waitangi was both personal and particular – it was all about what having a kawana might mean in practice, and whether Hobson in particular should be allowed to remain in that capacity. The ideas expressed by most chiefs in the early stages of the hui, before the intervention of Heke, Nene, and Patuone, seem to have been that:

- The status quo was preferable, with Busby and the missionaries as kai whakarite, with no need for a new kawana to fill this role.
- The status quo was also preferable in terms of law, with the new Church practices sufficient for the needs of Maori.
- The authority of the kawana would be greater than their own, perhaps much greater, and that was not to be tolerated. It could even be used to punish them as criminals, in the way criminals were punished in Sydney, with handcuffs, imprisonment, forced labour, and execution by hanging. None of this was acceptable.
- The acceptance of the kawana might lead to more settlers and the ultimate loss of land and authority, reducing the rangatira to the status of taurekareka in their own country.
- The acceptance of the kawana could lead to the arrival of troops and the military conquest of the country.
- Britain was just as much a risk as France or America in these respects, and there was no need for a closer relationship than the current one.
- The kawana was not necessary to the continuation or growth of trade.
- The kawana was unlikely to have any more control than Busby over Europeans and those of their trading and other practices that the chiefs did not like.
- There were problems with Busby and certain missionaries over land, which should be 'returned' to the Maori owners, and there were doubts over whether the kawana could in fact do anything effective about this.

The first of the leading Bay rangatira to speak was Te Kemara, a Ngati Kawa and Ngati Rahiri chief, whose hapu were the host people of Waitangi. He began by rejecting the governor utterly – having a kawana might mean that Te Kemara himself could be judged,

[86] W Colenso, p 17

condemned and hung. The only circumstance that would lead to his acceptance of the kawana would be if 'all were to be on an equality, then, perhaps, Te Kemara would say, "Yes;" but for the Governor to be up and Te Kemara down – Governor high up, up, and Te Kemara down low, small, a worm, a crawler – No, no, no.' He then went on to appeal to the Governor to return his lands, the 'inheritances of my ancestors, fathers, relatives, all gone, stolen, gone with the missionaries'. Busby and Williams were singled out in particular, and the grounds of the Residency claimed as still belonging to Te Kemara, and the Governor again requested to ensure their return to him.[87] After raising that point, however, in a way that seemed to assume that the Governor would have the power to do so, he then returned to the position that the kawana must leave. The alliance with Britain itself was also queried (perhaps in the form of offering a broad hint): 'You English are not kind to us like other foreigners. You do not give us good things. I say, Go back, go back, Governor, we do not want thee here in this country.'[88]

Te Kemara shifted his ground at the end of his speech, having delivered stinging criticisms of Williams and Busby for taking his lands, stating: 'Go back, leave to Busby and to Williams to arrange and to settle matters for us Natives as heretofore.' Thus, the rangatira ended by reaffirming the alliance, which Busby was previously the main symbol of, and the role of the Resident and missionaries as intermediaries and mediators in frontier disputes. Colenso stated in a footnote that the chief's rhetoric about land loss was 'all mere show – not really intended'. As evidence, he cited the point that Te Kemara and others gave evidence later as to the 'fair sale of their lands' before the Land Claims Commission.[89] The interpretation of Te Kemara's concerns about land has already been addressed above in chapter 4. Regardless of whether Colenso was correct, it is clear that Te Kemara urged the kawana to leave if he was going to be a much more powerful force than the chiefs, able to judge and execute them, but to stay if he would be co-equal with them. He also asked the Governor to ensure the 'return' of his lands, and then argued in favour of the status quo, in which alliance with Britain was maintained with Busby and the British missionaries as kai whakarite. There were some mixed messages in this speech, and Te Kemara later signed the Treaty. Are we to assume that he had been reassured that 'all were to be on an equality' and his lands would be reaffirmed to him, or, as Colenso maintained, was his opposition partly 'mere show'? Busby believed that Te Kemara was later swayed by the prospect that the kawana would become "his" pakeha and live at Waitangi, a valuable catch indeed.[90] The position of this chief will be reconsidered briefly below, at the point of his second speech at the hui.

The next chief to speak was Rewa, a Ngai Tawake leader and one of the most senior members of the northern alliance, second only to Titore until the latter's death in 1837. Rewa had been the prime mover of the 1831 petition to King William, and had supported the Declaration of Independence, with its appeal to the King for protection, but he now expressed strong opposition to the kawana. He wanted to keep the status quo. According to Colenso and Hobson, the origins of Rewa's opposition were to be found in the advice of Bishop Pompallier, although we should note that Rewa had visited New South Wales in 1831, as described in chapter 5 above, and had seen kawanatanga in action for himself.[91] Like Te Kemara, he urged the kawana to return to his 'own country', and demanded the return of lands now with the missionaries Davis, Clarke, and others. He claimed to have no lands at all, to have been reduced to just a name – though a famous one, and known to foreigners. But

[87] See above, chapter 4
[88] W Colenso, pp 17-18
[89] ibid, p 18
[90] ibid, pp 27-28
[91] W Colenso, p 34; W Hobson to Gipps, 5 February 1840, GBPP vol 3, p 45

though his land was all gone, the country itself still belonged to him, and he asserted that kawanatanga must remain with the chiefs, who would be the governors of ‘this our fathers’ land’:

> What do Native men want of a Governor? We are not whites, nor foreigners. This country is ours, but the land is gone. Nevertheless we are the Governor – we, the chiefs of this our fathers’ land. I will not say “Yes” to the Governor’s remaining. No, no, no; return. What! This land to become like Port Jackson and all other lands seen [or found] by the English. No, no. Return. I, Rewa, say to thee, O Governor! Go back.[92]

Thus, drawing on his knowledge of Australia, Rewa concluded his speech by proclaiming that New Zealand must never become like that country. Orange sees in Rewa’s views a clear understanding of the distinction between land ownership and sovereignty, and that the one was not dependent on the other.[93]

Rewa’s opposition was the strongest offered to Hobson on 5-6 February, though in the end it was defeated by the greater influence of Nene and Patuone. The seriousness of his opposition stuck out to the point that Hobson quoted him in his report to Governor Gipps (the only other chief to be thus quoted was Nene). According to Hobson, Rewa was one of two principal opponents to the Treaty, and declaimed to the chiefs: ‘Send the man away; do not sign the paper; if you do, you will be reduced to the condition of slaves, and be obliged to break stones for the roads [like Australian convicts]. Your land will be taken from you, and your dignity as chiefs [rangatiratanga?] will be destroyed.’[94] Rewa was the last of the important chiefs to sign the Treaty on 6 February, holding out until the end, when he was finally persuaded by ‘some of his Native friends as well as by the members of the Church of England Mission’.[95]

Even so, this was not the end of his opposition to the kawana and his Treaty. A month or so later, when W Symonds tried to get signatures from Tainui and others at Manukau in March, he reported that Rewa was present and ‘exerted all his influence against me’, preventing many from signing the Treaty.[96] Henare has pointed out the marriage alliance and links between Te Wherowhero and Rewa, and that he was instrumental in Te Wherowhero’s support of the Declaration of Independence.[97] So should this be taken as evidence that Rewa and his supporters, because unwilling to change the nature of the relationship with the Crown, were therefore abandoning their alliance or ending it? It does not seem so, from evidence of their attitudes in the early 1840s. Colenso attended the hui in 1844 where Nga Puhi leaders affirmed their support for the Governor, and gave muskets as utu for Heke’s cutting down of the flagstaff. The missionary observed an undercurrent of discontent and a preference for the pre-1840 relationship, even among those who supported the kawana. It was still a choice between ‘their’ missionaries and Busby versus the Governor even then, after the signing of the Treaty:

> All things passed off very well; but it required little knowledge of the Native Character to discern much dissatisfaction in the speeches of the Native Chiefs made at this and other meetings. They compared the present and prospective state of things with the past, praised several of their old Missionaries and Mr. Busby, and spoke ill of the New Missionaries, the Bishop, and the Government, whom they always class together. They also spoke much against the continual removing of their Missionaries from them to other parts of the Island, of the alterations in the Liturgy, praying for the Queen, Queen Dowager, Prince Albert, Albert Prince of Wales, & others instead of the Native Chiefs,

[92] W Colenso, pp 18-19
[93] C Orange, p 48
[94] W Hobson to Gipps, 5 February 1840, GBPP vol 3, p 45
[95] W Colenso, p 34
[96] Symonds to Colonial Secretary, 12 May 1840, GBPP vol 3, p 223
[97] M Henare, ‘The Changing Images of Nineteenth Century Maori Society’, pp 194-195

> and of many other things both Ecclesiastical and Civil; which shew, at least, their great powers of discernment.[98]

Rewa was followed by his brother Moka, described by Colenso as a 'chief of the Patukeha Tribe'. Like Rewa, he was an important northern alliance leader, and he threw the weight of his mana behind his brother's opposition to the kawana and the Treaty. Unlike Te Kemara and Rewa, however, Moka did not express concerns that the kawana would have a greater authority than the chiefs'. Instead, his entire concern was focussed on the land question, pre-emption (the only explicit discussion of this part of the Treaty), and whether the kawana would actually have enough authority to enforce pre-emption with Europeans.

Moka began by urging the Governor to return to his own country, leaving things as they were, but went on to demand the return of the land which the missionary Baker had purchased. He understood the kawana to be promising the return of such lands, but challenged him on this point: 'Do not say, "The lands will be returned to you." Who will listen to thee, O Governor? Who will obey thee?' Moka then called Clendon and Mair, local settlers, to step forward – and when they did not, he announced that they were off buying land, in defiance of the Governor's pukapuka, meaning the proclamation of pre-emption in late January (and presumably the Treaty as well).

When Williams translated this to Hobson, the Governor interrupted to address the point. He reaffirmed that 'all lands unjustly held would be returned'. He also told Moka that any purchases made after the date of the proclamation would be disallowed. The chief approved of this, stating that the kawana's promises were 'straight' (tika?), but then launched into an immediate test of it, demanding that Baker, who was standing on the dais with the CMS missionaries, should return his land. Moka marched up to stand in front of Baker and awaited a reply. The missionary's response was a loaded question: 'E hoki, koia?', translated by Colenso as "Will it, indeed, return?' The clear implication was that it would not, to which Moka replied: 'There! Yes, that is as I said. No, no, no; all false, all false alike [including Hobson's promises]. The lands will not return to me.'[99] Moka's concern, therefore, was that the Governor would have too little rather than too much power, and that the Europeans' interpretation of land transactions would prevail.

Moka's speech was cut short at this point, broken by an interlude in which one of the European locals objected to Williams' translations as incomplete. A Mr Johnson was called upon to interpret instead, but he declined the office, though protesting that the chiefs were saying 'a great deal about land and missionaries which Mr. Williams does not translate'. Colenso denied this accusation, stating that although Williams left out a lot of repetition, he translated fairly what had been said. Henry Williams also responded to the accusation with a defence of missionary purchases of land for their children, including the points that a Commission would inquire strictly into such purchases, and that he hoped that all purchasers could show 'as good and honest titles' as the missionaries. Busby also made a short statement to the Europeans about land purchases, disputing that Te Kemara and Rewa had accused him and Williams of theft. He asserted that he had not bought large tracts, and had only purchased lands pressed on him by Maori, and for a liberal price. Furthermore, in every single purchase he had reconveyed whare and cultivations to Maori by inalienable deeds of gift, sufficient to support the number of people living there.[100] The significance of this defence, and the question of whether the Governor would be able to deal with the pre-Treaty transactions to the satisfaction of their Maori authors, has been discussed above in chapter 4. Here, we need to note the primacy of this issue for these rangatira when evaluating whether they should

[98] W Colenso to CMS, 19 November 1844, qMS-0491
[99] W Colenso, p 19
[100] ibid, pp 19-21

keep the missionaries and Busby (and the existing relationship with the Crown), or accept the new man and his promises.

Busby's and Williams' statements were not translated for the chiefs, as far as we can tell, and the speeches resumed as soon as Busby had completed his defence of his land transactions. So far, three northern alliance leaders, whose people were based at Waitangi, Kororareka, Waimate, and Paroa, had spoken against the kawana and the Treaty. There was a break to this pattern, however, with the speeches of two southern alliance chiefs from Kawakawa, who now came forward in support of the governor remaining to protect their lands. This is a reversal of the pattern demonstrated in chapter 5, where the southern alliance rangatira (except Te Morenga) were not very involved in Hongi's alliance with the Crown. The first of these rangatira was Tamati Pukututu, described by Colenso as chief of the Te Uri-o-te-hawato tribe. Gary Hooker suggests that this rangatira was a leader of Ngati Rangi of Kawakawa, and notes that he had signed the Declaration of Independence in 1835.[101] He later supported the Governor against Kawiti in the northern war (see below, chapter 7).

Pukututu invited the Governor to 'sit, a Governor for us – for me, for all, that our lands may remain with us – that those fellows and creatures who sneak about, sticking to rocks and to the sides of brooks and gullies [low-life land sharks], may not have it all'. He invited the Governor to become a father for all, and told him to ignore the previous chiefs, who had transacted all their land and were now 'filled with foreign property'. Now that they had no more to sell, they had no need of a governor – either to make land deals with them or to protect their possession of what remained. Pukututu saw the Governor as an addition to the existing alliance with Britain: 'You two stay here, you and Busby – you two, and they also, the missionaries.' He was supported by the Te Uri-o-Ngono chief Matiu, who invited the Governor to become a 'father for us', and to combine forces with the missionaries (and presumably continue their work as kai whakarite), 'you as one with the missionaries, a Governor for us'.[102]

Hobson's relief at these expressions of support must have been short-lived, however, as the next speaker was the powerful chief Kawiti of Ngati Hine, a leader of the southern alliance, and an opponent of the kawana remaining. He was the first chief not to raise land issues with Hobson or the land-purchasers on the dais. Instead, Kawiti confined his remarks to issues of authority as between the governor and the rangatira, and was also the first to raise the question of military might and the coming of British soldiers:

> We do not want to be tied up and trodden down. We are free. Let the missionaries remain, but, as for thee, return to thine own country. I will not say "Yes" to thy sitting here. What! to be fired at in our boats and canoes by night! What! to be fired at when quietly paddling our canoes by night! I, even I, Kawiti, must not paddle this way, nor paddle that way, because the Governor said "No" – because of the Governor, his soldiers, and his guns! No, no, no. Go back, go back; there is no place here for the Governor.[103]

Round about this time in the discussion, Mathew notes that a chief (whom he does not name) raised a similar issue of the governor having the sort of military power that Busby had lacked, presumably a powerful reason for so many speakers favouring the retention of the unarmed services of Busby and the missionaries in their dealings with Pakeha. The speaker may well have been Kawiti. In any case, one of the chiefs said to Hobson: 'Go, return to your own country. Mr. Busby has been shot at. You will be shot at, perhaps killed. Mr. Busby could do nothing, but you are a Man of War, Captain, and if you are killed the soldiers will

[101] G Hooker, 'Te Tai Tokerau Treaty Signatories', submission of Te Roroa, W/CL 6/1 vol 2
[102] W Colenso, pp 21-22
[103] ibid, p 22

come and take a terrible vengeance on our countrymen.'[104] Concern about the military power of Britain and her soldiers had been one strand of Nga Puhi thinking ever since the days of Hongi. It was, presumably, one of the reasons Hongi sought an accommodation with King George in the first place – and that he had hoped to co-opt that power in his own support, bringing soldiers back to New Zealand to join his followers. The reference here to the incident in which Busby was shot at and the chiefs arranged compensation (discussed in the previous chapter) was highly significant.

Firstly, the unnamed chief clearly believed that Hobson was no likely to be safer from Maori bullets than Busby had been, part of the uncertainty that surrounded the question of just how powerful the new kawana would really turn out to be. Secondly, there was a clear awareness that though Busby had not taken punitive action, the new kawana might do so. Concern about warfare and possible conquest by foreign powers was one of the reasons why Nga Puhi had sought alliance with the Crown in the 1830s. Now, the very real question of whether Britain, France, or the USA was the greatest threat, had to be settled at Waitangi, in the presence of the kawana and the officers of the Royal Navy, local Europeans (presumably including some Americans), and the French bishop. It should also be noted that Busby had not needed to take punitive action, in the view of the Nga Puhi leaders; *they* were his protectors. There had been a period of uneasy hui and negotiations until the actual 'offender' was uncovered, followed by a cession of land to Busby (and/or the King), arranged by the leading chiefs as compensation. The whole of the Bay of Islands Nga Puhi, in that instance, acted as Busby's protectors, and settled matters according to custom.

Kawiti's opposition to the governor remained firm on 6 February and he refused to sign the Treaty. According to Nopera Panakareao in April, Kawiti was one of the leaders of a group of Bay of Islands chiefs who planned to drive the governor out by force, and had approached the Muriwhenua peoples for assistance. Whether there was really a serious 'conspiracy' at this point, Kawiti signed the Treaty in May 1840 after a private meeting with Hobson. Nevertheless, he was one of the two primary leaders of those Nga Puhi who opposed the government in the northern war in 1845-46.[105]

Kawiti was followed by a Ngai Tawake chief called Wai, who took the debate in a new direction. His challenge to the governor related to whether or not Hobson would be able to control the European settlers and traders. How real would his authority over those people be? Wai complained that there were serious problems involved in current trading practices, including lying, stealing, cheating, and middle men making profit from the resale of goods. Even worse, Pakeha were cursing Maori and getting away with it. On each of these things, he put to the Governor: 'Is that straight [tika]?' He also put it to the Governor that there was no point in his remaining since the traders would take no notice of him, just as they took no notice of the Resident: 'If they would listen and obey, ah! yes, good that; but have they ever listened to Busby? And will they listen to thee, a stranger, a man of yesterday? Sit, indeed! what for? Wilt thou make dealing straight?' Thus, Wai made it clear that certain European practices offensive to Maori would need to be controlled by the governor, that he thought it unlikely that Hobson could do this any more effectively than the Resident, but that if he could indeed do so, then he would have Wai's support.[106] His opposition to the kawana may have been more stringent than it seemed, however, as he was the only chief who spoke at Waitangi who never signed the Treaty. In 1844, he was reported to still be firmly opposed to it.[107]

[104] J Rutherford (ed), *Felton Mathew*, p 36
[105] A Salmond, *Treaty Transactions*, p 25
[106] W Colenso, p 23
[107] A Salmond, *Treaty Transactions*, p 26

At this point, the Kororareka traders intervened and complained again about Williams' translation. It was hard to hear from the outskirts of the tent, but even so they felt that their interests were being undermined. Having retranslated Wai's speech, a local grog dealer commented that it was 'great lies'.

After this interruption, and the position taken by Wai on the policing of trading and other relationships, Pumuka of Te Roroa (based around Te Haumi) spoke in support of the kawana. Salmond suggests that he was the first really important chief to do so.[108] He invited the governor to remain as 'a foster-father for me'. This type of relationship was important in creating and cementing ties in Maori society. The idea that Pumuka might become the kawana's whangai was a significant one, expressive of the close personal relationship that was considered necessary between the two forms of authority, the governor's and the chiefs'. Although he did not explore how the relationship might work in practice, Pumuka also joined earlier speakers in requesting the continuance of the old system with an additional player on board: 'I wish to have two fathers – thou and Busby, and the missionaries'.[109]

Pumuka was supported by Wharerahi, one of the most important and senior of the northern alliance chiefs, and older brother of Rewa and Moka, who had earlier opposed the Treaty. Their tuakana now spoke in support of it. Although keen enough to fight external enemies, Wharerahi had always been a peace-maker and mediator in the internal disputes of Nga Puhi. He was brother-in-law to Patuone and Nene, and (like Busby and the missionaries) had mediated many hapu disputes. He was the first chief to appeal to the idea that having the governor would assist in the creation of peace between the tribes:

> Is it not good to be in peace? We will have this man as our Governor. What! turn him away! Say to this man of the Queen, Go back! No, no.[110]

According to Salmond, this speech by a very powerful rangatira marked a shift in opinion at the hui.[111] Its effect was reduced, however, by a disturbance at the front as two chiefs, Tareha and his son Hakiro, tried to clear the area before the dais so that they could emphasise their points by rapid movements in front of the Governor. While this was happening, a Waikare chief (whose name is not given) apparently tried to return to Wai's point about trading practices, and sought assurances that the Governor would make the Europeans pay fair prices for Maori goods. This speech was 'not much noticed in the bustle'.[112]

In the meantime, Hakiro and Tareha were ready to perform their speeches at the front of the dais. Hakiro spoke before his father, but not in his own right. Instead, he spoke on behalf of the dead chief Titore and his Ngai Tawake followers. When Titore died during the war of 1837, he was the most powerful of the northern alliance chiefs, and having succeeded to his mana made Hakiro a man of great importance among Nga Puhi. Interestingly, when he eventually signed the Treaty, Hakiro did so 'mo Titore kua mate' (for Titore who has died). As a leader of both Ngai Tawake and Ngati Rehia, Hakiro had sponsored growing movements for change among the Waimate people in the late 1830s. It was he who approached Busby on their behalf when news of the Queen's intention to send out a "new man" reached New Zealand, and invited him to take on an expanded role as "king". Hakiro adopted the name "King William", and he now turned his mana against the Governor, in favour of the status quo: 'We are not thy people. We are free. We will not have a Governor.

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108 ibid, p 27
109 W Colenso, p 23
110 ibid
111 A Salmond, *Treaty Transactions*, p 27
112 W Colenso, p 23

Return, return; leave us. The missionaries and Busby are our fathers. We do not want thee; so go back, return, walk away.'[113]

Powerful though Hakiro's opposition was, one of the most dramatic moments of the hui came after his speech, when his father Tareha took the floor. Tareha was the leader of Ngati Rehia, and also a prominent chief within Ngai Tawake. He had been a powerful rangatira since the days of Marsden, he was a giant of a man (Colenso says the largest, most powerful man in the Bay of Islands), and he had a deep 'sepulchral' voice. In addition, with a flair for the dramatic, Tareha had dressed up and brought props to make his points in as visual a way as possible. With the Governor and the ship's officers in uniform, and the bishop in his ecclesiastical robes, and most of the chiefs dressed in their finest Maori or European garments, Tareha was dressed in a dirty floor mat in order to 'ridicule the supposition of the New Zealanders being in want of any extraneous aid of clothing, etc., from foreign nations'. He also carried and waved a bunch of dried fern root, in rejection of European foods, and in reminder of traditional Maori staples. His size, voice, and props combined to give him 'peculiar prominence, and his words striking effect: this last was unmistakably visible on the whole audience of Natives'.[114]

Tareha's performance, following Hakiro's opposition to the Treaty, must have done much to reverse the effect of Wharerahi's support. The Ngati Rehia leader proclaimed:

> No Governor for me – for us Native men. We, we only are the chiefs, rulers. We will not be ruled over. What! thou, a foreigner, up, and I down! Thou high, and I, Tareha, the great chief of the Ngapuhi tribes, low! No, no; never, never. I am jealous of thee; I am, and shall be, until thou and thy ship go away. Go back, go back; thou shalt not stay here. No, no; I will never say "Yes." Stay! Alas! what for? why? What is there here for thee? Our lands are already all gone. Yes, it is so, but our names remain. Never mind; what of that – the lands of our fathers alienated? Dost thou think we are poor, indigent, poverty-stricken – that we really need thy foreign garments, thy food? Lo! note this. (Here he held up high a bundle of fern-roots he carried in his hand, displaying it.) See, this is my food, the food of my ancestors, the food of the Native people. Pshaw, Governor! To think of tempting men – us Natives – with baits of clothing and of food! Yes, I say we are the chiefs. If all were to be alike, all equal in rank with thee – but thou, the Governor up high – up, up, as this tall paddle (here he held up a common canoe-paddle) and I down, under, beneath! No, no, no. I will never say, 'Yes, stay.' Go back, return; make haste away. Let me see you [all] go, thee and thy ship. Go, go; return, return.[115]

In the wake of this powerful performance, one of the most pro-missionary of the Nga Puhi Christian converts, Rawiri Taiwhanga of Kaikohe and Ngati Tautahi, rose to take the floor. He reverted to the position and themes of Wharerahi, inviting the Governor to remain as a father and a peace-maker. Like Rewa, he greeted the Governor first in English, but then asked him to remain 'that we may be in peace'. He spoke in praise of peace, and requested the Governor to become a father to the Maori people, as well as their Governor.[116]

But something more dramatic and decisive was required to change the overall mood of the hui, which was still galvanised by Tareha's speech. The first step in this direction was a powerful appeal from Hone Heke of Matarahurahu and Ngati Tautahi. Heke spoke after Rawiri (one of his fellow Kaikohe chiefs) in support of the Governor, but later allied himself with Kawiti against both the Crown and Rawiri's followers at Kaikohe. But in February 1840 he was one of the most influential supporters of the new kawanatanga, and (according to Colenso) the first called upon to sign the Treaty because he was the most in favour of it.[117] Heke appealed to the assembled chiefs with the argument that Maori would be destroyed if

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[113] ibid, p 24
[114] ibid, p 25
[115] ibid, pp 24-25
[116] ibid, p 25
[117] ibid, p 32

the Governor did not remain, possibly by the French or, in the end, the local publicans. He identified the kawana with the missionaries, of whom (at this time) he was a strong supporter. The coming of the Governor and his pukapuka was like the coming of the missionaries and the Word of God, and must be received in the same way. And he would be an additional 'father', along with their 'fathers' the missionaries, on whose advice they must rely. Ultimately, Heke argued, neither he nor his fellow chiefs could know what the result would be, so they would trust the advice of the missionaries. His manner was 'remarkably strong and solemn', and the sentiments more ambiguous, perhaps, than has sometimes been thought.

Heke's speech needs to be considered in full, noting that there is actually a vein of uncertainty balanced by trust running throughout it, very ambivalent, of which the missionaries and Busby were to feel the burden in later years:

> "To raise up, or to bring down? to raise up, or to bring down? Which? which? Who knows? Sit, Governor, sit. If thou shouldst return, we Natives are gone, utterly gone, nothinged, extinct. What, then, shall we do? Who are we? Remain, Governor, a father for us. If thou goest away, what then? We do not know. This, my friends," addressing the Natives around him, "is a good thing. It is even as the word of God" (the New Testament, lately printed in Maori at Paihia, and circulated among the Natives). "Thou to go away! No, no, no! For then the French people or the rum-sellers will have us Natives. Remain, remain; sit, sit here; you with the missionaries, all as one. But we Natives are children – yes, mere children. Yes; it is not for us but for you, our fathers – you missionaries – it is for you to say, to decide, what it shall be. It is for you to choose. For we are only Natives. Who and what are we? Children – yes, children solely. We do not know: do you then choose for us. You, our fathers – you missionaries. Sit, I say, Governor, *sit!* a father, a Governor for us."[118]

Heke's speech caused a great stir at the hui and provoked a general response in which lots of people were talking about it, with the result that the next speaker (the first speaker from outside the Bay of Islands) was barely listened to. He was a Te Rarawa chief named Hakitara, and all Colenso could record of his speech was that it favoured the Governor remaining.

It should be noted, however, that other observers differed from Colenso on the nature and content of Heke's speech. A Wesleyan missionary, Samuel Ironside, and William Baker both thought that Heke had rejected the governor, and in a very strong manner, leading to a duel between the Ngati Tautahi chief and the next main speaker, Tamati Waka Nene, a duel that foreshadowed the war of 1845-46. Buick and Salmond both drew attention to Ironside's comments that Heke was

> violent in his harangue against Captain Hobson, vociferating repeatedly in his native style, "Haere e hoki" ("Go, return"). Tamati Waaka came to me and said his heart was pouri (grieved) with Heke's violence, and the way Captain Hobson was being treated. "Well", I said, "If you think so, say so: whereupon Tamati sprang up and made his speech.[119]

William Baker later wrote that Heke was 'very violent in his language' and that a 'war of words ensued between Tamati Waaka Nene, who came in at this crisis, and Heke, the result of which was Waaka removed the temporary feeling that had been erected'.[120]

It is difficult to reconcile this evidence with Colenso's version of events, which was checked and endorsed by Busby, and the fact that Busby was so sure of Heke's support that he called upon him first to come forward to sign the Treaty. Henry Williams also recorded that Heke told 'the people he fully approved, as they needed protection from any foreign power, and knew the fostering care of the Queen of England towards them. He urged them to

[118] ibid, p 26
[119] cited in A Salmond, *Treaty Transactions*, p 30
[120] ibid

sign the treaty.'[121] Further research would be necessary to identify whether Ironside and Baker's comments were made at the time, or whether they were influenced by events later in the 1840s (Williams' comments were certainly made later). Also, claimants may be able to provide further information on whether or not Heke spoke in support of keeping the Governor on 5 February 1840.

In any case, Tamati Waka Nene spoke after Heke (not counting Hakitara, who was basically ignored) and is generally credited with the transformation of opinion at Waitangi, swaying the hui in favour of accepting the Governor and his Treaty. Nene was a powerful Ngati Hao chief who was a force to be reckoned with in both Hokianga and the Bay of Islands. Although based at Hokianga at the time, he was influential at the Bay and had, according to William Williams, been born and raised there, at Kawakawa and Waimate.[122] We have many versions of Nene's speech, all of which will be considered, as it was thought so critical to the signing of the Treaty. Felton Mathew, following things in English only, was convinced of the key importance of Nene's intervention:

> Things had thus assumed a very unfavourable appearance and the current was running strongly against us, when a powerful chief named "Nina" [Nene] rushed into the tent attended by other chiefs and followers, and commenced an address to his countrymen in a strain of fervid and impassioned eloquence such as I never before heard, and which immediately turned the tide in our favour. He commenced by saying:-
>
> "Let the Governor remain. Say to him, 'You are welcome.' The English have long been settled amongst us and we like them. They give us clothes and other things which we require, and since they have been here they have put a stop to the bloody wars which we used to have, and preserved us from eating each other. The English have more power and dignity than we have, and we shall derive dignity from them settling amongst us. If we do not let the English remain and acknowledge Queen Victoria, other white people – the French, or Americans – will come amongst us and make us slaves. We do not like the French or Americans, we will not have them. Therefore my speech is, Let us take the English who will protect us. Let us say to the Governor, 'Remain, you are welcome.'"
>
> This speech produced a great effect, and was followed by others in the same strain which caused a complete revulsion of feeling amongst the natives and an evident inclination in our favour.[123]

Governor Hobson also thought that Nene had reversed the growing opposition from the Bay of Islands chiefs. He mentioned 'Revewah' (Rewa) and 'Jakahra' (Tareha? or Hakiro?) in particular in this respect, and reported to Gipps:

> At the first pause Neni [sic] came forward and spoke with a degree of natural eloquence that surprised all the Europeans, and evidently turned aside the temporary feeling that had been created. He first addressed himself to his own countrymen, desiring them to reflect on their own condition, to recollect how much the character of New Zealanders had been exalted by their intercourse with Europeans, and how impossible it was for them to govern themselves without frequent wars and bloodshed, and he concluded his harangue by strenuously advising them to receive us and to place confidence in our promises. He then turned to me and said, "You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!"[124]

Thus, according to these two accounts, Nene stressed the prosperity that followed from having British settlers, and that Maori would benefit further from having a governor, who would assist in the suppression of warfare and cannibalism. We should note that there is a different spin placed on the latter point; Mathew put it that the presence of Europeans had already led to an end to tribal warfare and cannibalism, whereas Hobson thought Nene

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[121] H Carleton, vol 2, pp 12-13

[122] W Williams, *Plain Facts Relative to the Late War in the Northern District of New Zealand*, reproduced in Carleton, vol 2, p xx

[123] J Rutherford, pp 37-38

[124] W Hobson to Gipps, 5 February 1840, GBPP vol 3, pp 45-46

wanted the governor involved in an ongoing process of bringing these things to an end. Nene also claimed that the British were the only people powerful enough to protect Maori from the French and Americans – it was those nations, not the British, that wanted to make Maori slaves and steal their country. This pro-British, anti-French sentiment was very much in the tradition of the 1831 petition and 1835 Declaration of Independence, both of which Nene had supported. Hobson's account has an additional point over that of Mathew, however, which is Nene's appeal (almost instructions) to the Governor, that he must ensure that Maori never became slaves, must protect their customs, and prevent the loss of their lands; all of this he would do as a 'father' to the Maori people.

Neither Hobson nor Mathew explains where Nene stood on the issue of such concern to Rewa, Te Kemara, Tareha, and others, the idea that the Governor would have a higher status than the chiefs and be in a position to exercise authority over them. According to a French observer, however, Nene's brother Patuone declared that all chiefs would be equal with each other, and that 'each chief would similarly be equal with Mr Hobson'.[125] Nene presumably shared this view, and it is a point of great significance for the 1840s, when the Governor and the Nga Puhi rangatira sought to establish the parameters of their respective power and authority. There is a famous story of how Nene, the great supporter of the kawanatanga in the northern war, was furious about the ordinance that forbade the cutting of kauri trees, and wanted to see the Governor so that he could cut one down in front of him and find out what he would do.[126]

But this lay in the future. In the meantime, the most detailed account of Nene's speech was provided by Colenso:

> "I shall speak first to us, to ourselves, Natives" (addressing them). "What do you say? The Governor to return? What, then, shall we do? Say here to me, O ye chiefs of the tribes of the northern part of New Zealand! what we, how we?" (Meaning, how, in such a case, are we henceforward to act?) "Is not the land already gone? is it not covered, all covered, with men, with strangers, foreigners – even as the grass and herbage – over whom we have no power? We, the chiefs and Natives of this land, are down low; they are up high, exalted. What, what do you say? The Governor to go back? I am sick, I am dead, killed by you. Had you spoken thus in the old time, when the traders and grog-sellers came – had you turned them away, then you could well say to the Governor, 'Go back,' and it would have been correct, straight; and I would also have said with you, 'Go back;' – yes, we together as one man, one voice. But now, as things are, no, no, no,." Turning to His Excellency, he resumed, "O Governor! sit. I, Tamati Waka, say to thee, *sit*. Do not thou go away from us; remain for us – a father, a judge, a peace-maker. Yes, it is good, it is straight. Sit thou here: dwell in our midst. Remain; do not go away. Do not thou listen to what [the chiefs of] Ngapuhi say. Stay thou, our friend, our father, our Governor."[127]

Much of this speech appears designed to counteract what Tareha had said, dressed in his floor mat and waving his fern root. Nene pointed out that it was too late to turn the clock back, that the point of no-return had already been passed when Maori had accepted the traders and settlers among them. But things had gotten out of balance, with the settlers spreading too rapidly and holding too much power, with Maori 'down low'. Now a Governor was needed as well to assist in the management of the Europeans, a friend, a father, a kai whakarite ('a father, a judge, a peace-maker').

Nga Puhi reaffirmed their commitment to the Treaty at the Kohimarama Conference in 1860. At that hui, Nene referred to his reasons for supporting the Treaty. Again, he emphasized that it was too late to turn the clock back. He wanted to keep his Pakeha and

[125] P Low, 'Pompallier and the Treaty: a new discussion', NZJH 1990, p 192
[126] W Williams, *Plain Facts Relative to the Late War in the Northern District of New Zealand*, reproduced in Carleton, vol 2, p xxvi
[127] W Colenso, pp 26-27

their goods.[128] More particularly, he was concerned about possible French threats, and the Pakeha land transactions:

> My reason for accepting Governor Hobson was to have a protector for this Island. I thought of other nations – of the French…If the Governor had not been drawn ashore (the Queen's protection solicited) then our lands would have become the Pakeha's by purchase. Each man would have said, Here is my land. He would have had a knife as payment, and the land would have become the Pakeha's. But when the Governor came, the land was placed under the protection of the law, as it was enacted that he alone should purchase…My object in accepting the Governor was that I might have a protector…[129]

When challenged on this, Nene pointed out that the French had just overthrown Queen Pomare and taken all the land of Tahiti.[130]

Nene was followed and supported at Waitangi by his elder brother Patuone, a very powerful chief in his own right (though less interested in the Bay than his brother), and a man of enormous mana. It is interesting, however, that if Colenso's account of Heke's speech is correct, then Patuone actually reverted to themes raised by Heke, rather than reinforcing the particular views raised by his brother. Patuone thus welcomed the Governor and identified him very strongly with both the missionaries and their pukapuka, the Word of God, and sought his protection from the French in both a temporal and religious respect:

> Sit, stay – thou, and the Word of God. Remain here with us, to be a father for us, that the French have us not, that Pikopo [Bishop Pompallier], that bad man, have us not, Remain, governor. Sit, stay, our friend.[131]

According to Bishop Pompallier, whose observations were later reported by Captain Lavaud of the French navy, Patuone also addressed the question of the relationship between governmental and chiefly authority. Colenso does not mention this point. Lavaud stated:

> Finally he [Patuone] arrived, and spoke at length in favour of Mr Hobson, and explained, by bringing his two index fingers side by side, that they would be perfectly equal, and that each chief would similarly be equal with Mr Hobson.[132]

Pompallier, according to Lavaud's account, had told chiefs like Rewa that it was a 'question of knowing whether it is preferable for you to recognize and obey a great European chief, rather than to live as you have lived until now…The chiefs did not want to hear talk of obedience; they supposed that Captain Hobson would be an additional great chief for the Europeans only, but not for them.'[133] Set against Pompallier's advice and the powerful imagery of the chiefs who crossed their hands as though cuffed, was now Patuone's hand gesture of two fingers from separate hands, brought together at exactly the same height, to symbolise the equality between kawana and rangatira.

The tide had turned, partly as a result of Patuone's influence as well as Nene's, but the final word fell to the tangata whenua of Waitangi. Te Kemara rose to speak for a second time, and explained very clearly that he still wanted to be satisfied on the point of whether the Governor would return his lands, and in particular whether the Governor and chiefs would be equal 'in rank, in power', as Colenso translated it. His speech ended with a

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[128] Tamati Waka Nene, 13 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, p 33732
[129] Tamati Waka Nene, 24 July 1860, Proceedings of the Kohimarama Conference, *RDB*, vol 88, pp 33812-33813
[130] ibid
[131] W Colenso, p 27
[132] cited in P Low, p 192
[133] ibid, p 191

vigorous acceptance of the Governor, in the form of a violent and protracted shaking of hands. The hand imagery was important to the point Te Kemara wanted to make. He rushed up to the Governor and waved his crossed-hands in the air, as though they were handcuffed, shouting 'Shall I be thus, thus?" over and over, before suddenly dropping his arms and proceeding to shake the Governor's hand instead. According to Busby, the critical turning point was his own statement to Te Kemara that the Governor would expect to live at Waitangi, which satisfied the chief's concerns and led to his enthusiastic reception of the Governor.[134] According to Hobson himself, one of the other chiefs accused Te Kemara of having insulted him. Te Kemara, 'stung by the remark, sprang forward and shook me violently by the hand, and I received the salute apparently with equal ardour'.[135]

As the closing speech for the day, Te Kemara's statements and his apparent conversion were important to the success of Hobson's mission and the signing of the Treaty on the next day. He began by reiterating his opposition and concerns:

> "No, no. Who says 'Stay'? Go away; return to thine own land. I want my lands returned to me. If thou wilt say, 'Return to that man Te Kemara his land,' then it would be good. Let us all be alike [in rank, in power]. Then, O Governor! remain. But, the Governor up! Te Kemara down, low, flat! No, no, no. Besides, where art thou to stay, to dwell? There is no place left for thee." [Busby notes that here he interposed: ' "my house would be occupied by the Governor", which intimation served to produce the change in his demeanour.'] Here Te Kemara ran up to the Governor, and, crossing his wrists, imitating a man hand-cuffed, loudly vociferated, with fiery flashing eyes, "Shall I be thus, thus? Say to me, Governor, speak. Like this, eh? Like this? Come, come, speak, Governor. Like this, eh?" [It may have been at this point that another chief shouted out that he was insulting the Governor] He then seized hold of the Governor's hand with both his and shook it most heartily, roaring out with additional grimace and gesture (in broken English), "How d'ye do, eh, Governor? How d'ye do, eh, Mister Governor?" This he did over, and over, and over again, the Governor evidently taking it in good part, the whole assembly of whites and browns…being convulsed with laughter.[136]

This was the final speech of the official proceedings. By this stage, the hui had been going on for about six hours. The Governor informed the chiefs that the meeting would reconvene on Friday the 7th, and then departed to loud cheers from both Maori and settlers. Mathew adds that the decision to break came from the chiefs, who wanted a chance to discuss matters without the Governor present:

> After all the chiefs had spoken a pause took place, when one of them again rose, and said:-
> "Give us time to consider this matter. We will talk it over amongst ourselves. We will ask questions and then decide whether we will sign the Treaty."[137]

There was a feast on the evening of the 5th, along with a distribution of tobacco as a present from the Governor, which led to quarrels and trouble over the quantity and shares. Some departed from Waitangi as a result, and a few others also left because they feared an ambush of the type that had occurred at the Residency in 1836 (see chapter 5 above).[138] This may explain why no Te Hikutu leaders signed the Treaty the next day. On the other hand, some chiefs and people were still arriving, offsetting the departures with people who had not heard the debate as it unfolded inside the marquee. There was also a great deal of discussion among Nga Puhi as they considered their position on the Governor and the Treaty. Their European friends were giving advice throughout the evening. The 'ill-disposed' kept telling

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134 J Busby's note, in W Colenso, p 27
135 W Hobson to Gipps, 5 February 1840, GBPP vol 3, p 46
136 W Colenso, pp 27-28
137 J Rutherford, p 39
138 W Colenso, p 29

the chiefs that 'their country was gone, and they now were only *taurekareka*'. Many turned to Henry Williams and the missionaries for further advice:

> We gave them but one version, explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act; under one Sovereign, and one Law, human and divine.

Overall, Williams' advice was that the Treaty would 'preserve them as a people'.[139]

Some chiefs clearly remained in opposition. Kawiti, Tareha, and Wai refused to sign the Treaty on the 6th, and though Rewa was eventually persuaded by the combined pressure of his Maori friends and the missionaries, he remained a strong opponent (and helped dissuade others from signing the Treaty at Manukau later in the year). Other chiefs may or may not have been present – Pomare of Otuihu, Wharepoaka and Waikato of Rangihoua-Te Puna, and Te Ururoa of Whangaroa, were all prominent Bay rangatira who did not sign the Treaty on the 6th, and who are not mentioned as having been present at the hui. Nevertheless, some sort of agreement must have been reached that evening, as almost all of those who had spoken in opposition on the 5th came forward, signed the Treaty, and shook hands with the Governor the next day. We may never know the reasons why Nga Puhi agreed amongst themselves to take this action, as there were no further speeches at the official hui on the 6th. Claimants may be able to provide further information on the crucial evening of 5 February, and the reasons why the leaders of the northern alliance changed their minds and agreed to adopt the position of Wharerahi, Heke, Nene, and Patuone. Presumably, chiefs like Te Kemara were ultimately satisfied that the positions of kawana and rangatira would be relatively equal, a very strong stipulation on their part on the 5th, but that the Governor would nevertheless be powerful enough to regulate the practices of European traders, return full authority over land claimed by Europeans, and act as a more effective kai whakarite than Busby had been able to do. It seems clear to me, given the participation of the chiefs in the Land Claims Commission soon after, that their support of the Governor was an act of faith that their view of the pre-Treaty transactions would be supported.

Whether or not they were indeed satisfied on these issues, which had seemed crucial sticking points during the day, they had certainly made up their minds to accept the kawanatanga by the end of the evening. The chiefs did not want to wait around another day for further discussion, before finalising matters on the 7th as proposed by the Governor. According to Colenso, the key issue was the lack of supplies at Waitangi to feed such a large group of people over two more days.[140] As a result, between 300 and 500 Maori gathered on the Residency lawns for the final ceremony the next morning. As Colenso wandered about the crowd, he heard them 'talking about the treaty, but evidently not clearly understanding it'.[141] This strong conviction led to his intervention at the signing, which will be discussed below.

After a mix-up about what was going on, the Governor and party finally arrived and the hui was reconvened inside the marquee. Since this was not the official public meeting, Hobson announced that he could only accept signatures, as further discussion would be contrary to prior notice and therefore unfair to non-attendees. A couple of chiefs responded by saying that 'yesterday they had not understood the matter, but that now they had made enquiry and duly considered it, and thought it was good, and they would sign it'.[142] Even so,

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[139] H Carleton, vol 2, p 14
[140] W Colenso, pp 29-30
[141] ibid, p 30. Colenso says there were 300-400 people, Mathew and Hobson say there were at least 500.
[142] J Rutherford, p 40

there was a pause while nobody came forward to take the first place, allowing an opportunity for two further crucial developments before the chiefs proceeded to sign the Treaty.

Firstly, Bishop Pompallier requested a public declaration that all religious denominations would be tolerated by the British Crown. This resulted in the so-called "fourth article of the Treaty", a written and oral promise on the part of the Governor which assumed some importance in the minds and memories of those present and their descendants, today's claimants. It was never part of the official written text of the Treaty, but became one of the oral agreements believed to have been reached during the hui. Hobson wanted to go further than a public declaration of tolerance for all faiths, a position shaky in Britain itself where Catholic emancipation was still a live issue. The Governor wanted Henry Williams to convey to Maori that he would actively support and protect not just the Roman Catholics but 'all creeds alike'. When Williams rose to do so, he was unsure exactly how to put it, and a decision was made to 'write it down first, as it is an important sentence'. The missionaries conferred and agreed on a text, which was then passed to the Governor and Bishop Pompallier for their approval. Both having assented, the paper was then read out to the hui.[143]

The promise read out to the hui was: 'E mea ana te Kawana, ko nga whakapono katoa, o Ingarani, o nga Weteriana, o Roma, me te ritenga Maori hoki, e tiakina ngatahitia e ia.' This was a translation of: 'The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him.' According to Colenso, the promise to protect te ritenga Maori (Maori custom) was only added on his own suggestion, as a 'correlative' to that of Rome, in other words, to stress the pagan apostasy of Roman Catholicism by equating it with Maori religion.[144] Hobson did not include this matter in his official report, and Orange suggests that little weight can be attached to such a promise made in such a way, especially since the protection of Maori custom was a sectarian-inspired after-thought.[145] It should be recalled, however, that the Governor approved the wording of the promise. Also, similar points about the protection of Maori custom had been made the day before, especially by Nene, and George Clarke always believed that part of the Treaty transaction had been a promise to protect and tolerate Maori custom, as discussed above. The claimants may be able to provide further light on the significance of the promises in the "fourth article". Sectarian conflict became an issue in the late 1830s.[146] As noted in chapter 5 above, a Catholic chief had appealed to Busby for aid against the Protestants in the late 1830s. Hobson himself, instructed to suppress customs incompatible with universal human morality but to tolerate the rest, had inquired what he should do in the case of oppression of one tribe by another, especially by non-Christian tribes of pacifist Christian tribes. The jockeying between the CMS and Pikopo, 'that bad man', and the anti-French and anti-British sentiments tossed around by their supporters, indicated some heat in these issues.

Whatever significance is given to the promises in the "fourth article", the second interruption to proceedings was also important. Just as Hone Heke prepared to sign the Treaty, William Colenso stepped forward and queried the Governor publicly on whether or not the Maori actually understood the Treaty they were about to sign. Hobson must have been furious, to have such an interruption just as the transaction was about to be finalised. He told Colenso that if the chiefs did not understand the Treaty, it was not his fault as he had done 'all that I could to make them understand the same, and I really don't know how I shall be enabled to get them to do so. They have heard the treaty read by Mr. Williams.' Colenso replied that the Maori were 'children in their ideas', and that it was not easy to get them to

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143 W Colenso, pp 31-32
144 ibid, p 32
145 C Orange, p 53
146 A Ballara, *Iwi*, p 251

fully understand a 'document of this kind'. Still, he added, 'I think they ought to know somewhat of it to constitute its legality'. He maintained that some chiefs at least, to whom he had spoken, had 'no idea whatever as to the purport of the treaty'.[147]

This was a serious challenge to the integrity of the agreement. Busby intervened to say that the best way of looking at things was to recall the words of Hone Heke, who was about to sign the document, that they perhaps could not understand its full implications at this point (neither, as it turned out, did Busby according to his subsequent writings). Nga Puhi must therefore 'trust to the advice of their missionaries'. Colenso's rejoinder was that the missionaries must first explain it fully, so that 'it should be their very own act and deed'. He predicted a possible reaction, in which Maori would turn on the missionaries, saying: 'You advised me to sign that paper, but never told me what were the contents thereof'. The Governor then shut the discussion down, basically warning Colenso (and the other missionaries by extension) that it was up to him to make sure that 'the people under your care are peaceable enough'.[148]

Colenso was anxious to defend his behaviour, and wrote to the CMS on 11 February that he was convinced Maori did not understand the full meaning of the Treaty when they signed it. He gave the pre-emption clause as an example: 'As to their being aware that by their signing the treaty they have restrained themselves from selling their land to whomsoever they will; I cannot for a moment suppose that they can know it'. He cited the Ngati Rangi chief Hara, based at Ohaeawai, who had supported the Treaty on 5 February and signed it the next day. This chief had, only days later, offered land for sale to a settler, who objected that he was no longer allowed to do so. Hara replied: 'What! do you think I won't do as I like with my own?'[149] Colenso's account of his intervention, in this private letter to the CMS, expressed it as a support of the 'dearest' interests, and he accused the land-buying missionaries of acting too much in defence of their temporal interests at Waitangi.

After Colenso's fruitless intervention, Hone Heke signed the Treaty, followed by 44 other chiefs, who either signed their names or made their moko marks on the parchment. During the signing, Marupo and Ruhe, important chiefs who had not spoken the day before, carried out what Salmond describes as a ceremonial challenge, and which Colenso called 'long speeches against the signing' of the document. Marupo was the Ngati Kawa and Ngare Hauata chief of Pouerua, and also had interests at Waitangi itself, whilst Ruhe was a Ngati Rangi and Ngati Hineira chief, the brother of Te Kopiri (who had signed the 1835 Declaration, and in whose name Ruhe signed the Treaty). After completing their challenge, both of these chiefs signed the Treaty. After the signing ceremony, Patuone presented the Governor with a mere pounamu for the Queen, and whilst the official party (and Patuone) went off to dine on board ship, Colenso distributed two blankets and some tobacco to each chief who had signed the Treaty as a gift from the Governor.

Colenso commented, both in his letter to the CMS and his published manuscript, that the majority of the signatories were from the Bay of Islands, but that there were 'not many chiefs of the first rank'. The implication is that he means this comment in terms of the north as a whole, rather than specifically as regards the comparative status of Nga Puhi chiefs within the Bay of Islands. Important signatories included (in order of signing):

- Hone Heke of Ngati Tautahi, based partly at Kaikohe
- Hori Kingi Wharerahi of Ngai Tawake and Patukeha, based mainly at Paroa
- Tamati Pukututu of Te Uri o Hawato, based at Kawakawa

[147] W Colenso, p 33
[148] ibid, p 34
[149] W Colenso to CMS, Jan-Feb 1840, W Colenso Letters, vol 1, qMS 0491. Hara also signed the 1831 petition, see chapter 5 above.

- Hakiro, on behalf of Titore, of Ngai Tawake (based at Waimate and Kororareka)
- Hikitene of Te Kapotai, based at Waikare
- Pumuka of Ngati Rangi and Te Roroa, based in the Kawakawa and Te Haumi areas
- Marupo of Ngati Kawa and Ngare Hauata, based at Pouerua and Waitangi
- Te Tao of Te Mahurehure, a Hokianga chief
- Reweti Atuahaere of Ngati Tautahi, based at Kaikohe
- Wiremu Hau of Ngati Whiu, based at Waimate
- Mene, on behalf of Tareha, of Ngati Rehia and Ngai Tawake – this is an important accession to the Treaty, though Tareha did not sign it himself
- Tamati Waka Nene of Ngati Hao, a chief of both Hokianga and the Bay of Islands
- Matiu Huka of Te Uri o Ngonga, based at Kawakawa
- Te Kemara of Ngati Kawa and Ngare Hauata, based at Waitangi
- Eruera Maihi Patuone, Ngati Hao chief from Hokianga, living in Hauraki at the time
- Paora Nohi Matangi, a Te Popoto chief from Hokianga
- Ruhe of Ngati Rangi and Te Uri Taniwha, partly on behalf of his brother Te Kopiri
- Rewa of Patukeha, Ngai Tawake, and Ngati Tautahi, based at Waimate and Kororareka (brother of Wharerahi and Moka)
- Moka of Patukeha, Ngai Tawake, and Ngati Tautahi, based mainly at Kororareka
- Hara of Te Uri o Hawato and Ngati Rangi, based at Ohaeawai
- Rawiri Taiwhanga of Ngati Tautahi, Te Uri Taniwha, and Te Uriohua, based at Kaikohe
- Iwi of Ngati Rangi and Te Urikapana, a brother of Te Morenga and based in the Taiamai area
- Kaitara Wiremu Kingi of Ngati Rangi, son of Te Wera Hauraki and nephew of Te Morenga

As noted above, important Bay rangatira who did not sign the Treaty on 6 February included Kawiti (who signed later in May), Tareha (though someone signed on his behalf), Wai, Pomare, Wharepoaka, Waikato, and Te Ururoa. The information about the Treaty signatories is drawn from a variety of sources and may well contain errors. Also, it is not a complete list of the signatories' hapu affiliations. Claimants will be able to correct the list if necessary, and provide further information to the Tribunal.

5. Conclusion

During the 1830s, many chiefs who signed the Treaty on 6 February 1840 also signed the 1831 petition to King William and the 1835 Declaration of Independence. They were encouraged to do so by the CMS missionaries and then by the British Resident, who together acted as mediators and negotiators in frontier disputes. At one level, policy was made by these local representatives of the Crown (Busby more so as its official representative) and by the Governor of New South Wales. Essentially, this policy consisted of presenting the British Crown in the best possible light, encouraging appeals to the Crown for protection, and providing some assistance in dispute resolution in the form of a kai whakarite. By 1837, however, with the creation of the New Zealand Association (later Company), political pressure grew for the British Government to annex the country or patronise its systematic colonisation by supporting the company's efforts. The two streams of policy making, frontier representations of the Crown's intentions, and the real politics involved in protecting commercial interests and the rights of aborigines, merged in 1839 with the decision to annex New Zealand in the ways and on the grounds described in Lord Normanby's instructions.

The harbinger of these good intentions, qualified by a determination to govern and colonise New Zealand as well as protecting Maori interests, was Captain Hobson. His arrival in the Bay of Islands in January 1840 forced a decision on Nga Puhi; would they accept the new kawana and his pukapuka or send them back to the Queen, and take their chances with the French and Americans? The policy of Nga Puhi alliance with the British Crown had begun with Hongi back in 1820, and had reached its high point in 1831-36, with the embassy to Governor Darling, the petition to King William, the Declaration of Independence, and the Crown's responses to these initiatives. But by 1839 things had changed. A French bishop had taken up residence at Kororareka and was winning support, especially with the Ngai Tawake chiefs Rewa and Moka. King William IV and Titore were dead, the influx of settlers was growing and the kai whakarite was unable to do as much as he had hoped. By mid-1839, the new Queen was known to be sending out a "new man" with unknown intentions. A large hui at Waimate considered the possibility of creating a position with the title of "king", possibly an expanded kai whakarite role, and may have offered this to the man on the spot, Resident Busby. He turned it down, however, and told them to wait for the arrival of the Queen's new man.

The new man arrived at last in late January 1840, and on 5 February he met the assembled chiefs of Nga Puhi at Waitangi and proposed that they accept him as their Governor (kawana) and sign their names to his Treaty. This transaction, in its written form, consisted of a preamble expressing the Queen's desire to protect Maori from her own subjects, and to set up a government, and three articles by which Maori ceded sovereignty to the Queen and the sole right to purchase their lands, in return for guaranteed ownership of their lands, forests, and fisheries, and all the rights and privileges of British subjects. But when Henry Williams came to translate this document, with its foreign concepts and legal terms, he ended up using words that changed the sense so dramatically that the Maori version of the Treaty is now considered a separate document in its own right (Te Tiriti o Waitangi).

The most important of these differences have been well explored by the Waitangi Tribunal. Essentially, they revolve around the use of the following words:

- Kai whakarite, as one description of Hobson's role (meaning mediator/judge and negotiator). This word had been used in the 1830s for Busby's role, and implied that "Hobsonness", as Wakefield put it, would be similar to having Busby.
- Kawanatanga for sovereignty, which means governorship and conveys something less than the absolute cession of sovereignty, though includes all the things pertaining to having a governor.
- Rangatiratanga for possession of property, which means something much greater, and more akin to sovereignty (according to many commentators), and certainly covers all the things that pertain to having rangatira – and not just any rangatira, but tino rangatira – the greatest chiefs.
- Taonga as a catchphrase for properties, which means much more than the types of real property protected under the English version, and includes all types of treasured things, some of a spiritual, intangible nature.
- Hokonga for pre-emption, which means trading, thereby conveying the concept that the land would be resold, but without the qualification of a word like anake, does nothing to convey an exclusive right.

In addition to the written texts, the nature of the Treaty transaction and the alliance reforged between the Crown and Nga Puhi at Waitangi, rests partly on the oral agreements and stipulations made by the Governor and chiefs on 5-6 February. Basically, it seems likely that Felton Mathew was correct when he stated that the upshot of the Treaty, as negotiated at Waitangi, was that 'the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their

own people – remaining perfectly independent'. He stressed this latter point: 'During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.'

This interpretation of what was said and done at Waitangi appears to be supported by the later evidence of Busby and Clarke, the evidence of the written text of the Treaty in Maori, with its use of the words kawanatanga and tino rangatiratanga, and the speeches of those chiefs who supported the Governor, or opposed him but agreed the next day to sign the Treaty. Great chiefs of the northern alliance, Te Kemara, Rewa, Moka, Tareha, and Hakiro, all spoke strongly against the kawana remaining at the Bay. On the whole, they preferred to keep the current arrangement of Busby and the missionaries as their mode of alliance with the Crown. They wanted the 'return' of lands held by those very people, however, and wondered if the Governor would keep his promises in this respect, or be able to enforce his authority over Europeans (whether land claimants or bad traders) any better than Busby could do. On the other hand, they worried equally that he would have far too much power over Maori. Chief after chief told the Governor that they would not endure to have him high above them, telling them what to do and where to go, possibly condemning them as criminals and even executing them, with all the powers that they had observed in the governors of New South Wales. And in his wake would follow soldiers – he was just as likely to get shot at as Busby was, but what would be the consequences this time? On the whole, therefore, they doubted that he could do what they wanted, and feared that he would do things that they did not want. Were their trader friends right? Was the country gone and the chiefs taurekareka if they kept the kawana sent by the Queen?

This position was not confined to the northern alliance. Great southern chiefs like Kawiti also spoke to this effect, but there was some support as well from all sides. Pumuka, Wharerahi, Rawiri Taiwhanga, and Hone Heke, were all influential chiefs who supported the role of the new governor. Those who supported the kawana saw him as friend and father, kai whakarite, a man to make peace and resolve disputes, a judge. They thought that he would add to the existing arrangement of Resident and missionaries, and decided to accept him and his pukapuka as they had accepted the Word of God. It was too late now to send the settlers away, so there must be aid in regulating them. Also, fears of the French and Americans reared their head; who was to protect the land from the settlers and the French? The path of prosperity was clear; the Governor must remain.

Tamati Waka Nene and his brother Patuone were the most persuasive proponents of these views, and they swayed the hui in favour of accepting the kawana and the Treaty. Nene's position may be summarised best by his direct appeal to Hobson: 'You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!' This, in Nene's view, was the essence of what was agreed to at Waitangi. Patuone, on the other hand, dismissed the fears of men like Te Kemara and Tareha about how the kawana and the rangatira would stand towards each other in terms of status and power; all chiefs would be equal, and 'each chief would similarly be equal with Mr Hobson'. Men like Te Kemara had expressed themselves willing to accept the kawana on such terms, and they did indeed sign the Treaty the next day on 6 February.

Before the actual signing took place, however, two important developments took place. Firstly, the Governor promised to protect and support all religious denominations, including 'te ritenga Maori', Maori customs, at the request of the French bishop. His promise, both written and oral, was never part of the formal Treaty document but did become part of the traditions of the day, and became known in some quarters as the "fourth article" of the Treaty. Secondly, William Colenso proclaimed publicly that he did not believe the Governor or missionaries had done enough to ensure that Maori understood the contents of

the written Treaty. He was silenced with the response that, if this was true, then Maori would simply have to follow the advice of their missionaries, as Hone Heke had said the day before.

With this last obstacle removed, 45 rangatira signed the Treaty – most of them Bay of Islands chiefs – while Marupo and Ruhe maintained a running challenge. The die was cast, the kawana and the Treaty accepted, and now it remained to be seen how the parameters of authority, Maori and governmental, would be worked out in practice. It was only four short years later that Hone Heke was cutting down the British flag staff, and Nga Puhi were moving towards civil war and war both for and against their ally, the British Crown.

Chapter 7 The Origins of the Northern War

In February 1840, Nga Puhi agreed to a far-reaching change in their relationship with the British Crown. They did so against a backdrop of Pakeha advice. Busby and the missionaries stressed that the Governor would put a stop to Pakeha practices that they disliked, would be a ruler of the Pakeha, and a mediator between themselves and Pakeha, and protect the country from other foreign powers. Some traders (especially Americans) argued that they would lose their lands and become taurekareka (slaves). Both sources and types of advice continued in the 1840s. Nga Puhi had, in the words of Felton Mathew, 'agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent'. They had made stipulations for 'the preservation of their liberty and perfect independence'. The chiefs expected the Governor to put an end to Pakeha misbehaviour, including the return of land over which people like Busby and Williams were trying to assert exclusive control. The Governor was to be a chief for the white people, and a mediator. He was to be equal in rank and authority with the chiefs, having greater mana than the more dependent Busby. He was invited, as claimant James Eruera puts it, to live and work with Nga Puhi.

Four short years later, Hone Heke cut down the flagstaff on Maiki Hill and challenged the authority of the Queen. This was the beginning of a trial of strength between Nga Puhi and the Crown. Heke, Kawiti, and other leaders of the 'rebellion' appear to have believed that it was possible to return to the days of Busby and the missionaries. They wanted to keep settlers but get rid of the government and its soldiers. At worst, they might have been willing to see the Americans in place of the British authorities, so long as their independent self-government was retained. War with the Crown divided Nga Puhi deeply and led to some hapu supporting the government. The leaders of the Kawanatanga party, Tamati Waka Nene and some Bay chiefs, had much the same goals as Heke. They wanted to preserve their authority and keep the settlers. Unlike Heke, they believed that the best way to achieve this was to keep faith with the heir of King George and King William, and remain in alliance with the Crown. Their relationship with the Governor was renegotiated in September 1844 at Waimate, when the Governor promised to remedy their main grievances against the new order. This won FitzRoy committed allies who fought for the Crown in 1845, when the situation degenerated into armed conflict. It also prevented many from active support of Heke and Kawiti, who otherwise would have fought against the Crown. Many Bay of Islands hapu remained neutral, unwilling to commit to either side in the conflict.

Governor Grey's arrival changed the situation in significant ways. He refused to accept the continued neutrality of key rangatira and insisted on a public declaration of support, although he was unable to get actual military assistance from them. He also forged ahead with decisive military action. His supposed victory was disbelieved at the time and has been debunked by Belich. Most importantly, he abandoned FitzRoy's confiscation policy, and any idea of asserting on-the-ground control in the north. The new Governor simply pretended to have won the war, negotiated peace agreements with Kawiti, Heke, and other leaders individually, and kept the pre-1844 status quo. He rejected the request of Nga Puhi leaders that he return the capital to the north and establish a town and economic prosperity. He also failed to provide meaningful assistance to Nene's attempts to resolve the land question with the Old Land Claimants. In fact, Grey's northern policy was one of benign neglect. The north was left to govern itself and to develop as best it could without government attention or assistance. In the

mid-1850s, having won the peace but finding victory somewhat hollow, Nga Puhi leaders sought further engagement with the Crown. The earliest manifestations of this were the land 'sales' of the late 1850s and 1860s, the re-erection of the flagstaff, Maihi Paraone Kawiti's gift of land and shared authority to the Queen, and repeated calls for the government to establish a town. The climax was Nga Puhi's affirmations of loyalty during the wars of the 1860s, and their attempt to engage with Grey and his New Institutions. These later developments will be covered in another report.

1. From Waitangi to Maiki Hill, 1840 to 1844

The origins of the northern war lie partly in the relationship developed with the Crown up to 1840. Nga Puhi had welcomed Busby and cooperated with him intermittently in his efforts to mediate disputes and introduce political change. Their relationship with King William had involved the exchange of letters and gifts. Looking outwards from New Zealand, they saw the great Pakeha confederations competing with one another, and heard the horror stories of British and French treatment of indigenous peoples. There were risks in choosing Britain for an alliance, and even greater risks in inviting a closer, stronger British presence in New Zealand. But the risk was considered acceptable in 1840. The alliance was reaffirmed and the Governor welcomed to stay. According to George Clarke, corroborated by Felton Mathew, both sides understood the Treaty to guarantee the full power and authority of the chiefs over their lands and people. Mathew described this as 'independence'. Hobson did not, however, report matters in this way to the Colonial Office. Inevitably, as the government worked out its authority in detail with Maori in the coming years, there would be clashes and disagreements. The question was how far New Zealand could be an instance of indirect rule, like India and many of the future African colonies, and the extent to which the Crown would try to actively govern both Maori and Pakeha. As we noted in chapter 3, Maori law and institutions of self-regulation continued in the north to 1870 and beyond. This was the victory and legacy of Heke, Kawiti, Waka Nene, and other northern leaders.

More immediately, there were four main factors in the early 1840s which contributed to war. They created a climate in which some Nga Puhi leaders and hapu felt that the Treaty had been a mistake, and the Governor should be evicted from New Zealand. Other leaders were uncertain as to how best to achieve their goal of preserving their authority and recovering economic prosperity. The result was a direct challenge from Hone Heke to the Crown, and the renegotiating of the alliance between FitzRoy and the Nga Puhi leadership in 1844.

1.1 The removal of the capital from the Bay of Islands

One of the main Nga Puhi grievances of the 1840s, and a key contributing factor to the political crisis of 1844, was Hobson's decision to relocate the capital at Waitemata. This issue was noted by the Chief Protector, George Clarke, and by Governor FitzRoy. It was combined with Nga Puhi concern not only that they had lost the Governor as their Pakeha, but that the promised economic prosperity was lost along with him. Not only that, but it had been lost to their traditional enemies, Ngati Whatua. The Nga Puhi leadership made a concerted effort in 1845 to get the new Governor, George Grey, to return the capital to the Bay of Islands. They were unsuccessful.

In April 1844, Governor FitzRoy reported that the booming Bay of Islands trade had been 'much checked subsequent to the removal of the Local Government to Auckland'.[1] The Chief Protector identified this as a key cause of Nga Puhi discontent with the Government: 'A contrast is drawn between their former comparative wealth and their present poverty, in consequence of the depression of trade – in their opinion entirely the effect of the removal of the seat of Government from Russell to Auckland.'[2] The economic decline was contrasted with the benefits won by Ngati Whatua from having the capital in their midst.[3] In September 1844, meeting with Nga Puhi leaders in Hokianga, Clarke reported their anger that, having welcomed the Governor and been so active in getting him and the Treaty accepted, 'then to see him removing from them to Auckland was too much for them, and not treating them well'.[4]

FitzRoy saw this as a critical grievance. In his pamphlet on New Zealand, published in 1846, he wrote:

> it should be carefully noted that the removal of the seat of government, in 1841, from the Bay of Islands to Waitemata or Auckland, caused very great dissatisfaction to the natives of the northern districts, living near that Bay and Hokianga. They soon discovered that the restraints and inconveniences of the newly-constituted authority which they had consented to acknowledge, however reluctant to obey, remained to interfere with them; while the countervailing advantages of augmented traffic, and good markets, were not only lost – gone to their greatest enemies – but that even the trade enjoyed previous to 1840 was almost destroyed by the Custom House regluations, and by the presence of government officers at Kororareka – (now called Russell).[5]

On 28 November 1845, the newly arrived Governor Grey met with Nga Puhi leaders at Kororareka. Mohi Tawhai and others called for the Governor to take up his residence at the Bay of Islands. The strongest advocate for this was Tamati Pukututu, a Kawakawa chief and one of the Crown's most committed allies at the Bay.

> *Pukututu*, addressing the other natives, said, "Friends, you have heard the Governor, and we shall see if his words remain firm, and it will be seen if our promises to him will also remain firm. My thoughts are, will the Governor remain here, or go to the south to live, from whence his words only will come to us. They have had two Governors at Auckland, and why should not this one live here, he may be able to tame our wild hearts…When the first Governor came, there was a great meeting at Waitangi. Heke and Kawiti were there, and they heard the words of the Governor. We asked him to come and live among us at Russell, which he did, but afterwards went to Auckland. I felt very much annoyed at his leaving Russell, and at the departure of the strangers and soldiers who I had invited to live among us. When Governor Hobson died, I asked for a Governor and soldiers, but Governor FitzRoy remained at Auckland, and while he was there, this evil grew. After the evil commenced, I began to be afraid. Now that you have arrived among us, we have heard all you have to say, and our thoughts are, will you live here.[6]

Governor Grey did not make any immediate reply to the requests for him to re-establish the capital at the Bay of Islands. His ultimate answer, however, was clear. The capital was not moved from Auckland until his second governorship, when it was established further south at Wellington.

Busby had informed the hui at Waitangi that the Governor would be living on 'his' land at Waitangi. He had gone so far as to lay out a proposed township, which he

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[1] R FitzRoy to Stanley, 10 April 1844, G30/5
[2] G Clarke to Colonial Secretary, 1 January 1845, GBPP vol 5, p 460
[3] G Clarke to Colonial Secretary, 31 July 1844, GBPP vol 4, pp 459-460
[4] G Clarke to Colonial Secretary, 30 September 1844, GBPP vol 4, p 419
[5] R FitzRoy, *Remarks on New Zealand*, London, 1846, p 14
[6] Minutes of meeting between Governor Grey and chiefs at Kororareka, 28 November 1845, GBPP vol 5, p 356

called Victoria, and to start selling allotments. Henry Williams, however, had already advised the Governor against making the Bay of Islands the capital of the new colony. He met with Hobson on 31 January and 'pronounced solidly against the Bay of Islands, where, he contended, the land was too circumscribed for a potential city'. Williams suggested Waitemata instead, as unoccupied (by Maori) and having much better natural advantages. Governor and missionary went to inspect this site on 21 February, taking Felton Mathew, the Surveyor General. Mathew's view was not very positive but Hobson's stroke intervened and the decision was postponed.[7] In late March, Mathew carried out an intensive study of the Bay of Islands. He thought that it was too far north, and from the 'very rugged and impracticable character of the country in its immediate vicinity, the Bay of Islands cannot be regarded as an eligible spot for the principal settlement or capital of this island'.[8] Even so, the European population, valuable trade, and shipping indicated its economic importance and therefore that the government should establish a town there. The best site for a government town was, he argued, Clendon's land (Okiato), rather than Kororareka or Busby's Victoria.[9] Moon attributes devious financial motives to Mathew, and is strongly critical of the Government's choice to purchase Okiato from Clendon. In any case, Moon is mistaken in his belief that Hobson and Mathew planned to make Okiato the capital.[10] That was never a possibility. Hobson wanted the capital in the Waitemata area, and Mathew himself recommended only a government-established town and not the capital for Okiato.

By the middle of April, Hobson had recovered enough to send Mathew back to Waitemata to resume his investigation. Mathew recommended Tamaki for the capital's site. Hobson made a further personal investigation with Clarke, and rejected Mathew's advice because he felt that the channel was inadequate for the volume of shipping he expected. Captain Rough advised that the water access was fine on the Ponsonby side of the Waitemata harbour, so the Governor decided to 'adopt the advice of Henry Williams and establish the capital on the shores of the Waitemata Harbour, leaving the determination of the actual spot until a later date'.[11]

Hobson's decision was based on:

- Its central location in the North Island
- Ease of communication with the interior of the island by water – the Kaipara, Manukau, and Waikato Rivers
- Facility and safety of its port
- Lots of small ports nearby, lots of timber, and fertile soil – reportedly the richest and most valuable land in the North Island.[12]

He had received an independent report from a leading settler, SMD Martin, as to its suitability. The Governor does not appear to have consulted the Council about this decision. Nor is there any record of consultation with Nga Puhi, who (apart from Ngati Whatua) were the most directly affected by his decision, and would have had their own views to put. They were not, for example, much impressed with the idea that a rangatira should be closer to the middle of the island – in their view, a rangatira always sat at the stern of the canoe.[13]

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[7] T Buick, *New Zealand's First War: The Rebellion of Hone Heke*, Wellington, 1926, pp 10-11
[8] Felton Mathew to Acting Colonial Secretary, 23 March 1840, GBPP vol 3, p 492
[9] ibid, pp 492-494
[10] P Moon, *Hobson: Governor of New Zealand 1840-1842*, Auckland, 1998, pp 182-212
[11] T Buick, pp 11-12
[12] W Hobson to Secretary of State, 15 October 1840, GBPP vol 3, pp 235-236
[13] F Porter, ed, *The Turanga Journals, 1840-1850: Letters and Journals of William and Jane Williams*, Wellington, 1974, pp 302-303

In April 1841, Lord John Russell agreed that the proposed site for the capital sounded good, but it was a question of such importance for the future of the colony that he urged the Governor that his 'final opinion should be settled with great deliberation'.[14] In 1840 to 1841, a war of words was in fact fought over the location of the capital. The New Zealand Company wanted it at Wellington, and the Governor at his new settlement of Auckland. The Company argued especially that the capital needed to be at the centre of the country (both North and South Islands), for access to the most people and ease of access to all parts of New Zealand.[15] Russell, however, directed the Governor that the capital could not be a Company site, because the Crown needed to be able to sell the town land and generate a revenue, as well as control the layout of the town.[16] Various theories about the reasoning behind siting a colonial capital were advanced during this debate. These included the propositions that it had to be:

- a good port;
- an outlet to the sea for the largest agricultural hinterland possible;
- to be able to communicate quickly with all parts of both islands, but especially the North Island (where most people lived);
- to be central to a large population (Maori as well as settlers);
- and to have good water supply, a healthy, pleasant climate, and be a likely centre for production; and
- to have convenient topography for ultimately a large city.[17]

The issue was finally settled when Stanley sent the Queen's consent to Auckland as the capital.[18]

These were all reasonable factors for the Governor to have considered, although there was certainly no science to choosing a site for colonial capitals. If the intention of the Governor was, as Busby believed, to mediate between Maori and settlers but not actively to colonise the country, then the Bay of Islands was a logical choice. It was the largest centre of European settlement and trade, set in the midst of a large Maori population. Nga Puhi wanted settlers and increased trade, but not to be swamped.[19] If, on the other hand, the goal was to keep the corrupting influence of settlement as far as possible from Christian Maori, then Williams' choice (which he believed empty of Maori) was also logical. The new Company settlement at Port Nicholson had arguments in its favour. Ultimately, if the capital was to be central for the population it governed, then both the Bay of Islands and Auckland were too far north. On the other hand, if one considers that the great majority of the Queen's new subjects were Maori, then a northern location for the capital was justified (at least until the population ratios changed). The Bay was never seriously considered as a capital from this point of view. Hobson wanted somewhere that settlers did not already claim to own, so that he could lay out a future city and sell its sections for the profit of the Crown, and to subsidise the Government and settlement. The Bay of Islands simply was not practical in this respect. Nor was his decision ultimately to the detriment of Nga Puhi, as the long-term experience of Ngati Whatua and Te Atiawa suggests.

Given the desire to combine a central geographical location with a good harbour, a large agricultural hinterland, and a site practical for a big city, there were good reasons for the Governor to move the capital from Russell. It was not, however, an overwhelming

[14] Lord John Russell to W Hobson, 17 April 1841, GBPP vol 3, p 243
[15] P Moon, *Hobson*, pp 193-210
[16] Russell to W Hobson, 22 April 1841, GBPP vol 3, p 260
[17] See especially, Ray, Blount, Duncan & Co to Stanley, 20 September 1841, GBPP vol 3, pp 416-417
[18] Stanley to W Hobson, 24 June 1842, GBPP vol 3
[19] J Busby to Lord Stanley, 1 July 1845, GBPP vol 5, p 236

necessity for him to do so. Colonial capitals tended to grow up by accident, as had those in the metropoles. There was nothing central, for example, about London's location in Britain. Nevertheless, it was not unreasonable for Hobson to develop criteria and plan his capital according to them. Three factors might have assisted in preventing his decision from becoming both a grievance and an economic blow for Nga Puhi. Firstly, the Governor might have consulted them (and other Maori) about the location of the capital. The settlers certainly made their views known, especially at Port Nicholson, but he took little notice of them either. Secondly, the Governor might have proceeded with the establishment of a government town at Okiato, as recommended by Mathew. This could well have provided an economic boost for the region, and the call for such a town remained a feature of Nga Puhi's dealing with the Crown for the next few decades. The Colonial Office, however, was appalled at the high price (£15,000) agreed with Clendon, and the deal fell through.[20] Nga Puhi desire to have settlers – but not too many – was defeated. Thirdly, the Governor might reasonably have spent part of each year in the north, living from time to time at the Bay of Islands. Lieutenant Governors and provincial capitals were established under Grey's administration. The Governor-in-chief, as he became, could have chosen to meet Nga Puhi halfway and spent at least some time living in their region. He did not do so. In any case, the removal of the capital and its economic effects was one of the contributing factors to the political crisis of 1844.

1.2 The Government's role in the economic decline of the Bay of Islands

All observers, whether government, missionary, settler, or Maori, agreed that there was a serious economic collapse at the Bay of Islands in the early 1840s. A trading economy based on a small settler population and ship visits was booming by the late 1830s, as described above in chapter 3. There was a drastic drop in ship visits from 1840 to 1844. This was accompanied by the withdrawal of the new Government establishment from Kororareka to Auckland. The new settlers who might have formed a stable market went to Auckland instead of Russell. Local traders were affected and some either left or had their businesses fail. People like Busby went into serious debt. Those who wanted to speculate in land or sell what they believed they had acquired, found they had either no titles recognisable in British law, or paper awards for limited portions of the lands claimed. The 'surplus', it was said, belonged to the Crown. It was difficult to attract finance or start development under these conditions. The result was a spectacular economic crash. Once, Nga Puhi had cut a figure amongst Tainui during their visits to Waikato. Now, however, both tribes were described by the missionary Maunsell as equally 'ragged'.[21] The Government was not only blamed for this, but it had also promised the opposite. The belief that the Governor would bring settlers, trade, and prosperity was one of the factors in Nga Puhi's acceptance of the Treaty. Economic decline quickly became a grievance against the Government.

This was made clear to the Chief Protector when he met with Nga Puhi leaders in Hokianga in September 1844. Taonui, Patuone, Ripa, and others complained of the decline of trade and their comparative poverty. They had been convinced that 'their approval of the late Governor, and signing the Treaty would tend to prosperity'. They were also angry at the removal of the capital to Auckland. Even so, they continued to treat their Europeans well and would not support Heke. They renewed their assurances of

[20] P Moon, *Hobson*, pp 182-212
[21] W Cotton, Journal, 2 September 1844, qMS 0568

'good feeling and wishes' towards the Governor.[22] The same belief, that Hobson had promised economic prosperity if they consented to his government, was held by Nga Puhi at the Bay of Islands (and by Clarke). Trade was very depressed, and 'neither has that prosperity attended the colonization of the country been realized which they were led to expect from the late Governor Hobson, and other real friends of the natives'.[23] Selwyn was surprised that Maori should be 'personally aggrieved' at what he saw as the operation of 'political economy' (market forces).[24] He was probably unaware of the promises that had been made. An Old Land Claimant like Maning knew more of the matter, and put these words in the mouth of his Nga Puhi chief: 'We had less tobacco and fewer blankets and other European goods than formerly and we saw the first Governor had not spoken the truth, for he told us we should have a great deal more.'[25]

FitzRoy had early warning of the economic crisis. In January 1844, the settlers of Kororareka had sent a petition, complaining about the decline of trade and commerce at the Bay of Islands. The shipping, once so numerous, had almost entirely abandoned their port. Money had ceased to circulate, and internal trade had almost disappeared. The Europeans blamed the failure to sort out the OLC titles, customs duties, and the lack of a market for produce.[26] FitzRoy was aware of the decline of ship visits, and he also blamed the customs duties. He reported to the Secretary of State that from 1830 to 1840, there were generally 20-40 ships at the Bay of Islands at any one time. After1840, there were seldom more than 8 or 10, and usually only 3 or 4 ships. This decline, combined with the prevention of the former free trade with the ships that did still come, had caused major discontent at the Bay of Islands. FitzRoy presented it to Stanley as the primary cause of the cutting down of the flagstaff.[27] In April, before the attack on the flagstaff, he noted that trade had been 'much checked' by the removal of the Government to Auckland and by the customs. Before the attack, however, he thought things were starting to recover and he had no proposal to do anything about it.[28]

FitzRoy's view of this (and much else) was informed by his Chief Protector, George Clarke. In July 1844, Clarke advised him that the economic decline in the north was both the main source of Maori complaint, and the main opportunity for Americans and others to drive a wedge between Government and Maori. The end of revenue from land sales and the decline of the timber trade (at Hokianga) had made Maori poor. 'In those early settlements some of the chiefs who once made a respectable appearance, and had wealth at command, have fallen back to the use of the blanket and the mat.' Pakeha had pointed out that this had happened since the establishment of the government, and Maori were comparing their circumstances to what they had been in 1840. But Maori confidence in the 'just and benevolent intentions' of the Crown had not failed, and their 'kindness' to settlers continued.[29] Clarke's reports in 1844 and 1845 continued to emphasize economic grievances, and particularly the customs duties, as a key factor in Maori opposition to the Crown.

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[22] G Clarke to Colonial Secretary, 30 September 1844, GBPP vol 4, p 419
[23] G Clarke to Colonial Secretary, 19 October 1844, GBPP vol 4, p 416
[24] W Cotton, Journal, 8 July 1844, vol 7, qMS 0567
[25] F Maning, *Old New Zealand: a tale of the good old times, together with a History of the War in the North of New Zealand against the Chief Heke in the Year 1845 as told by an Old Chief of the Ngapuhi Tribe*, cited by the editor in T Kawiti, 'Heke's War in the North', *Te Ao Hou: the New World*, no 16, October 1956, p 39
[26] Address from the inhabitants of Kororareka, in the Bay of Islands, to Governor FitzRoy, 9 January 1844, GBPP vol 4, p 244
[27] R FitzRoy to Stanley, 29 September 1844, GBPP vol 4, pp 391-392
[28] R FitzRoy to Stanley, 10 April 1844, G30/5
[29] G Clarke to Colonial Secretary, 31 July 1844, GBPP vol 4, pp 461-462

FitzRoy became convinced of the validity of these arguments. Maori had been led to expect prosperity if they signed the Treaty, and it had not happened. Worse, their economic situation had seriously declined, and the Government was blamed. The British flag became a symbol of economic 'oppression'. Maori believed that the flag and the Government prevented them from trading with ships as they pleased and as they had used to do before 1840. FitzRoy felt that there was 'no doubt' that Maori, 'so much on an equality, and so jealous of their independence, will not long endure' a Government that prevented them from bartering freely and obliged them to pay higher prices than necessary for tobacco, clothing, and tools.[30] It was one of the main topics for discussion at his hui with Nga Puhi leaders at Waimate. His own view was that the customs had almost destroyed trade at the Bay of Islands. He proposed, therefore, to take the serious step of abolishing the customs duties altogether.[31] This would leave his Government practically without a revenue, but even that seemed less serious than Heke's assault on the flagstaff and the simmering discontent in the north.

Another contributing factor was the decline of gift-giving at the Bay of Islands after 1840. This was partly because of the end of land transactions, which had involved a considerable revenue for Maori, and the general economic depression of the settlers. Also, with the arrival of the Government and some newer settlers, there was an expectation on the part of Pakeha that they did not have to conform to Maori customary practices as they once had done.[32] From a Nga Puhi perspective, this was at the root of a lot of the so-called looting of the early 1840s, as Maori sought satisfaction for offences and to both protect their Pakeha and punish their failure to give gifts. Hone Heke, for example, was accused of plundering settlers during the conflict with Panakareao in 1843. His reply to Clarke made it clear that Heke wanted customary gift-giving relationships with settlers to be preserved and carried out correctly according to Maori law. A lot of what was seen as robbing or pillaging was actually attempts to restore the balance in this respect. Those who were not generous or hoarded wealth could expect a visit from a taua muru (though this way of looking at things was anathema to Pakeha and could not be pushed too far). Heke asserted:

> It was through me that the houses of Mongonui and Taipa were saved. I only asked them for potatoes for my tribe, and they gave me some from Taipa and Mongonui. I asked for them; had they been withheld I should have been angry; ask them, they will tell you the same. I will not try and hide it; do you suppose that I am afraid? When they are niggardly I get angry, but when they are generous, I say, "treat the Europeans well."[33]

One reason for the decline in this part of the Nga Puhi economy was the intervention of the Government in land transactions. Firstly, the Crown had prohibited private transactions, but was not sufficiently solvent to transact land itself. Secondly, the Government recognised the Old Land Claims as absolute alienations. This tended to interrupt the previous relationship (to some extent). Thirdly, the Crown proposed that small segments of land should be granted to the claimants, but that the surplus should become the property of the Government. This was anathema to Nga Puhi, who demanded (as they had in 1840) the return of land to them. They were unhappy at most aspects of the Crown's intervention on land issues. This will be considered below. Here, it is necessary to note that the Governor and Chief Protector both became convinced that the end of private land transactions was a serious economic blow to Nga Puhi and an

[30] R FitzRoy to Stanley, 16 September 1844, GBPP vol 4, p 357
[31] R FitzRoy to Gipps, 4 September 1844, GBPP vol 4, p 311
[32] R FitzRoy, *Remarks on New Zealand*, p 11
[33] Hone Heke to G Clarke, May 1843, GBPP vol 5, p 274

important grievance. The Governor had already decided to waive pre-emption in March, and in the wake of the flagstaff crisis, he reduced the government fee from ten shillings to a penny an acre, to try to remove all impediments.

The Colonial Office was astonished to see its Governor thus ridding himself of all forms of income. He attempted to replace them with a direct property tax, but that also failed. Scant months later, in April 1845, he re-established the customs. Their abolition had not worked in reducing Maori discontent, as it had not made any change to actual prices, so there was no point in continuing with it. Also, the property tax having failed, the revenue had to come from indirect taxation.[34] FitzRoy's analysis that the customs were to blame for high prices and low ship visits to the Bay of Islands was hardly given a fair test by a suspension of six months. It would be fair to say, though, that the Bay of Islands was hit by a decline in the whaling trade which would have happened regardless of the customs regulations. Nor was the waiver of pre-emption particularly significant at the Bay of Islands. FitzRoy tried to use it to pressure Maori – he suspended it at Kawakawa, for example, to try to get local Maori to return horses taken in a taua muru. But the waiver had practically no effect at the Bay in any case. The March waiver (with a fee of ten shillings an acre) led to two tiny transactions at the Bay, one for only 13 perches. The October waiver was mainly used by the settlers in the vicinity of the capital – there were only a few certificates in the north.[35] Neither of FitzRoy's remedies for Nga Puhi's economic problems had any effect.

But some kind of solution was vital to fulfilling Nga Puhi expectations of the Government. Pomare, who hosted Hobson briefly at Okiato, told the Governor that he would give him three years to see if he would prove as good a friend as Clendon had been. Gift-giving and the generous distribution of wealth was expected of Hobson, being a great chief.[36] It was explained to Selwyn as 'he whakaaro rangatira no tua iho', which he translated as 'an hereditary aristocratic feeling', equating it with British noblesse oblige.[37] Chief Protector Clarke and other advocates of the Government represented the face of British 'kindness' to Maori, which alone, he claimed, secured the survival of the Crown's position.[38] Clendon told Pomare that Hobson would be a 'kind' friend, and Pomare spoke in no uncertain terms that the Governor must give gifts and distribute wealth to Maori.[39] Heke, who maintained that Pakeha must be generous in their gifts to their protectors, asked FitzRoy:

> What has become of the preserving policy contained in the Newspapers? What has become of the kind policy of England? Is Her kindness in her cannon, and in her rockets? Is the kindness of England in the curses of Europeans, in the debauched lives? Is it in the enslaving of the Natives, and the desecrating of their sacred places? It is in this we have been wronged…[40]

Two men who thought very differently from each other, Selwyn and Grey, both saw the force of this kind of argument. Instead of paying for soldiers and war to enforce the Government's authority, it ought to spend the money on institutions that provided Maori with visible and practical benefit. Then, most Maori would have 'loved the Government as much as they do the Mission'. Instead, the Government came in the guise

[34] R FitzRoy to Stanley, 9 April 1845, GBPP vol 5, p 187
[35] R Daamen, *The Crown's Right of Pre-emption and FitzRoy's Waiver Purchases*, pp 99, 131-132
[36] N Taylor, ed, *Journal of Ensign Best, 1837-1843*, Wellington, 1966, p 220
[37] GA Selwyn to W Selwyn, 15 September 1849, Cambridge University Selwyn Papers, Hocken Library
[38] G Clarke, Half-Yearly Report, 4 January 1843, GBPP vol 2, Appendix 4, p 122
[39] N Taylor, *Journal of Ensign Best*, p 220
[40] Hone Heke to R FitzRoy, 21 May 1845, G30/7. The Maori-language version is Document 1 in the Appendix.

of soldiers, jails, and 'swindling transactions in land'. Maori, not unnaturally, saw no benefit for themselves in its existence. The protectors did nothing more than patch up quarrels.[41] The mission, on the other hand, could point to churches and schools as practical evidence that it meant to carry out its avowed intentions. As a result, argued Selwyn, the churches and parsonages were spared destruction at Kororareka.[42] The Bishop informed FitzRoy that he had heard Maori dismiss the Government as a thing of soldiers, barracks, constables, and jails. The Government needed to prove its good intentions by ensuring Maori kept enough land for their present and future needs, strict justice in maintenance of Maori rights, punctual performance of all promises, and the building of schools and hospitals.[43] Grey agreed with much of this, and (unlike FitzRoy) had more money to do it. His abolition of the protectorate was based party on the idea that it had done nothing but put out fires, whereas the Government should be demonstrating its benevolence through hospitals and schools.[44] Heke would then see the true 'kindness' of Britain. Neither, however, picked up on the point raised by Clarke; that Nga Puhi consent to the presence of the Government had been in expectation of material benefits, and somewhat conditional upon their delivery.

1.3 Land

Land was a primary factor in the political crisis of 1844 to 1846. The problem was not so much that Maori could not transact their land with settlers as before. This was a matter which was continually stressed by disaffected traders and settlers, but it was not one which Nga Puhi themselves complained about. Concern about land was a powerful motivating factor for all Nga Puhi leaders, whether in support or opposition to the Government. Henry Williams cited a letter from Tamati Waka Nene in 1847:

> 'If they (Heke and Kawiti) had fought for their land, I would not have fought against them; but their fighting was wrong. It was the sayings of the pakehas, - 'Taurekareka, you are slaves, your power, or influence [mana], and land is gone.' And they (Heke and Kawiti) said, 'The sayings of the pakehas are true.'" Your Excellency will observe that Waka pronounces Heke and Kawiti to be wrong in allowing themselves to be led away by certain pakehas;- but had their cause been good – had they really fought for their land – he should not have opposed them. In the above extract from his letter may be seen the real feeling of Waka, and all other well-disposed chiefs, upon the question of the seizure of the lands. The reliance of Waka was upon the treaty, hence his loyalty and good feeling. Let Waka be informed that the treaty is now withdrawn, and with it is withdrawn loyalty and good feeling.[45]

Concern about whether Nga Puhi would lose their lands as a result of accepting the Kawana was a theme throughout the period 1840 to 1844. In June 1841, Williams informed the CMS:

> The excitement under which the natives were some months since seems to be greatly removed form the assurance given them by the missionaries that their lands were reserved to them and as much their own property as at any period. That they could continue to possess them or sell them to the Government as they might feel disposed. And that none would be required to work but

[41] GA Selwyn to E Coleridge, 8 August 1845, Letters from Bishop Selwyn & Others, 1842-1867, qMS.SEL.33167, vol 1, ATL
[42] GA Selwyn to E Hawkins, 22 March 1845, Society for the Propagation of the Gospel, Copies of Letters Received from New Zealand, 1841-66, Micro MS Coll 17, Reel M.1301, ATL
[43] GA Selwyn to R FitzRoy, November 1845, CO209/49
[44] A Sinclair, Colonial Secretary, to G Clarke, 5 February 1846, qMS-0464, p 256
[45] H Williams to G Grey, 1 December 1847, GBPP vol 6 [1120], p 8

> according to their will. That the Government would exercise no authority over their rights & privileges. This assurance from the missionaries has entirely quieted their fears.[46]

The prime mover in land issues became the young Kaikohe chief, Hone Heke, son-in-law of Hongi Hika and guardian of Hongi's final words to his people, and of the agreement between Hongi and King George. Hongi's final message, which had a strong impact on Heke, was: 'Children, and you my old comrades, be brave and strong in your country's cause. Let not the land of your ancestors pass into the hands of the *pakeha*.'[47] When Heke chopped down the flagstaff in 1844, he justified it on the basis of King George's warning to Hongi that Britain's flag would take possession of the land.[48] FitzRoy himself noted the customary implications of British policy; pre-emption, it was said, made Maori taurekareka taken in war, 'who have not the disposal of their own lands, while occupied by their conquerors'. To prevent a general insurrection, it was necessary to remove this restriction from such a 'sensitive, jealous, and warlike people'.[49]

In this respect, the flagstaff was seen as a rahui, erected as a symbol of a claim to land. Protector Shortland argued that the re-erection of the flagstaff was the key to continuing the conflict. If one tribe claimed land by putting up a post as a rahui, then the expected response was to take it down. If the original party put it back up again, then that signalled their intention to persist in their claim to land, which would result in war if the other side continued their opposition.[50] This was why Heke was so adamant that it was not his chopping down of the flagstaff that had caused war, but the Government's persistence in re-erecting it.[51] The missionary Shepherd also saw it this way, stating: 'The late war was occasioned by an impression in the native mind that it was the intention of Government to seize their lands and the putting up of the flag staff time after time confirmed the natives in that opinion.'[52] This helps to explain Heke's offer to re-erect the flagstaff himself, or to do so jointly with the Governor, but not to permit the Government to do it on its own. The Chief Protector had observed this kind of rahui in the contest between Te Rarawa and Nga Puhi in 1843. During the dispute between Panakareao and Nga Puhi over land at Mongonui, Nopera erected a flagstaff on the disputed land and flew the British flag on it, defending it with a large force. When he eventually withdrew, the Nga Puhi cut that flagstaff down.[53]

Heke's letters, some of which have survived, indicate that he had two overwhelming and interwoven concerns. One was clearly the authority and sovereignty of the Queen, and its relation to the authority of rangatira. The second was that local Pakeha had been telling him for years that Maori had lost their lands to the Crown, and would become slaves like the Australian aborigines. He had not really believed this, he wrote, until 1844, whereupon he cut down the flagstaff:

> What has become of the preserving policy contained in the Newspapers? What has become of the kind policy of England? Is Her kindness in her cannon, and in her rockets? Is the kindness of England in the curses of Europeans, in the debauched lives? Is it in the enslaving of the Natives, and the desecrating of their sacred places? It is in this we have been wronged, we have been cajoled to sell our produce and our Land, and the Europeans now taunt us with these things[;]

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[46] H Williams to CMS, 22 June 1841, Micro-MS-Coll-04-60, CN/O 94(b)
[47] T Buick, p 29
[48] E Shortland, *Traditions and Superstitions of the New Zealander*, pp 264-265
[49] R FitzRoy to Stanley, 14 October 1844, GBPP vol 4, pp 400-401
[50] E Shortland, *Traditions and Superstitions of the New Zealander*, pp 264-265
[51] ibid; also Hone Heke to R FitzRoy, 21 May 1845, G30/7
[52] J Shepherd to Colonial Secretary, 24 January 1848, OLC 1, 802-808
[53] G Clarke, Protector's Report, 7 June 1843, GBPP vol 5, pp 285-286

> those of Hokianga, of Wangaroa, of Kororareka, of the Wahapu, of Otuihu, they explained it. "Your Lands will be seized by the Governor, and afterwards you will be destroyed, look at Port Jackson, at China, and all the other islands, and such will be the fate of this Island. The Ensign (or Color) takes possession of the Land. The English commenced this system [ie the taunts], then the French and afterwards the Americans. Therefore I acquiesced in these words – four years was this work going on, and on the fifth year these frequent speeches of the Europeans to us were believed, and we at once approached that Flagstaff, and cut it asunder that it might fall. After which it was erected again. Then indeed we concluded it was true insomuch as it was persisted in. We agreed that we would die upon our Land, which was delivered to us by God, but I will never be *taken*. [marginal note from Forsaith: The original word is murdered, but frequently used in a modified sense and I think means here taken, subdued, conquered etc or treated like Maketu.][54]

Shortland explained the significance of re-erecting the flagstaff as a claim to land. For some recipients of Heke's views, the feared loss of land was prospective only. It would not actually take place until the Crown had increased its physical power in the country. For this reason, the arrival of soldiers was staunchly resisted by Nga Puhi leaders of all persuasions in 1844. FitzRoy reported to Stanley in that year how strongly some Maori believed that 'we are only waiting till our numerical strength in New Zealand is sufficient to make all the aborigines slaves, and take from them all their land'.[55] But there is an ambiguity running through Heke's surviving letters. They could be interpreted as referring to something that has already happened. His reference above, for example, to land sales and the desecration of waahi tapu is significant. The Old Land Claims were in fact a key factor in the concerns of Nga Puhi in the early 1840s. It will be remembered from chapter 4, how carefully Heke guarded waahi tapu on 'sold' land.

In 1847, FitzRoy described the Old Land Claims and the Government's policies as a central cause of the war:

> At the end of 1843 I found excessive discontent prevailing in the northern part of the islands, not only among the settlers but among the aborigines; and it was obvious that this feeling had been much increased if not caused by the interference of Government with purchases of land made, or agreed upon, before the establishment of the colony. This dissatisfaction had been greatly heightened among the natives by their having heard the lands actually bought by settlers, but not to be retained by them under the new order of things, were to be taken by the Government and eventually resold to other parties.
>
> Having foreseen these troubles, I had written on the subject to the Secretary of State for the Colonies previous to my departure from England, but I found the actual state of the case worse than I had anticipated. The interference of Government, the proceedings in the Land Commissioners' Courts, and the attempts made to survey land not validly purchased from all the real owners, laid the principal foundations on which Heke was afterwards supported in raising his rebellion against the sovereignty of Her Majesty…[56]

The investigation of the Old Land Claims by the Commission was an assertion of Government authority over both the old settlers and Maori in the Bay of Islands. As such, it was resented by rangatira like Heke, who did not want any interference in their relationship with their Pakeha.[57] Others, like Rewa, had called for the Crown to intervene at Waitangi and prevent Busby, Williams, and others from attempting to assert exclusive control. I have noted above, how Heke told Clarke that the customary gift-giving relationships must be preserved and extended. It came as a shock, therefore, when the news circulated that the Crown intended to limit the old settlers to small grants and to

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[54] Hone Heke to R FitzRoy, 21 May 1845, G30/7. The Maori-language version, with Forsaith's translation (and another translation by Kemp), is reproduced as Document 1 in the Appendix.
[55] R FitzRoy to Stanley, 16 September 1844, GBPP vol 4, p 356
[56] R FitzRoy, Memorandum, 20 March 1847, GBPP vol 5, pp 624-625
[57] J Busby to GW Hope, 17 January 1845, GBPP vol 4, p517

assume ownership of the ‘surplus’ land. This became a burning issue for Nga Puhi (and has remained one ever since).

According to Busby and some missionaries, Bay of Islands Maori were angry on behalf of their Pakeha, and wanted no interference with their claims. The result of the Crown’s claim to surplus land was an increase in Maori suspicion about their lands. ‘If the Queen acts thus towards her own people, what will she do to us?’[58] Governor Grey and some of his officers, however, believed that the Old Land Claims were a primary cause of the war. Williams’ defence was always to point out that missionaries and mission families remained in possession of their land, when others had been driven out. To an extent, that was beside the point. Heke repeatedly stated that he wanted the settlers to remain. The question was not whether the settlers had acquired rights to settle and use resources, but whether they had an absolute right that could be assumed by a third party without reference to Maori – in this case, the Crown. As noted in chapter 4, this type of “on-sale” was one of the most contested Pakeha behaviours in the 1830s.

The view of Busby and Williams, that Maori resented the surplus land policy on behalf of their Pakeha, was contested by a missionary who had not transacted land, Robert Burrows. He informed the CMS, in relation to the contest between Grey, Williams, and Clarke:

> Nor is the feeling of the Natives with regard to the large land purchases such as have been represented. They do not open their minds freely on this subject to such as claim large tracts of country. It is generally known among the Natives that the Government is now trying to dispossess them of a portion of their lands, and I have heard but a very few speak against the proceeding whilst on the other hand I have heard many speak against their holding so much land: and, should they be assured that a portion or the whole of the land taken would be returned to them; or that they would, in any way, become gainers, I believe the Government would find them ready agents.
>
> These statements may not agree with others that you may have received, but I write from practical observations, and possessing, you will allow, the advantage from my position of taking a more impartial view of the whole subject than any other member in this District.[59]

In December 1843, the inhabitants of Auckland and the north presented an address to the newly arrived Governor. It requested FitzRoy to issue titles for the Old Land Claims, and protested the Crown’s surplus land policy:

> no lands so claimed [by the OLCs], and to which no grant can be made to the claimant, may be taken possession of and appropriated by the Government; believing as we do that it would be highly unjust towards the natives, and, at the same time, highly impolitic, as the natives lay claim to such surplus lands; and the forcibly taking possession of them by the Government would be attended with the very worst consequences.[60]

FitzRoy replied: ‘I agree with you that it would be improper to take possession of lands validly purchased from aborigines, but in excess of the quantities allowed to be held by Europeans in New Zealand’.[61] There was also a written petition from Maori about the surplus lands, to which he made a verbal promise that he would return the surplus lands to them. This was reported at the time in the *Southern Cross*, of which SMD Martin was editor, and also recalled by Dr Martin in his book published soon after. The Chairperson of the Myers Commission queried the veracity of this reported promise. He could not find

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[58] ibid; & R FitzRoy to Stanley, 15 October 1844, GBPP vol 4, p 409
[59] R Burrows to CMS Secretaries, Waimate, 8 May 1848, Micro-MS-Coll-04-49, CN/027(a)
[60] Address from the Inhabitants of Auckland to Governor FitzRoy, 26 December 1843, GBPP vol 4, p 237
[61] Answer of Governor FitzRoy to the Address from the Inhabitants of Auckland, GBPP vol 4, p 240

other written evidence of it, and did not believe that FitzRoy would so soon and so publicly depart from his Colonial Office instructions.[62]

In response to this view, it could be stated that the new Governor was a man who, 'instead of letting people *see* what he intended to do, he seems to have talked about his plans very prematurely'.[63] His response to the Auckland settlers shows that he had, in writing, announced that the Crown would not keep the surplus land. This key issue, and his promises in respect of it, became one of the major planks in the renegotiation of the Crown/Nga Puhi alliance in 1844. In any case, he had specifically raised the matter with the Colonial Office before his departure for New Zealand, and informed officials of his view that the surplus land should be returned to Maori. Lord Stanley's response allowed him some leeway to return the surplus where Maori were in occupation of it, or they had requested its resumption and and their request was one that should, in all fairness, be 'humoured'.[64]

Surplus land will be considered further below. Here, it is necessary to stress that Nga Puhi concerns about land were not only prospective. This is not to say that concern about the future was not important, even critical. For four years Heke had disbelieved that the Crown would take Maori land, but in the fifth year he believed. According to Williams, one of the key turning points was the publication in New Zealand of the 1844 House of Commons Committee's resolutions. The report arrived at the Bay of Islands in a journal in early 1845 and was soon known to Nga Puhi. The Committee's view was that the Treaty had been a mistake and was not really valid. Its terms were ambiguous, and certainly the interpretation of Maori owning the entire land surface of the country was 'highly inconvenient'. The Crown should only admit Maori rights to lands in occupation (meaning cultivated lands); all else should become Crown land and sold for settlement. The CMS in London entered a vigorous protest against this policy, which was partially adopted by Lord Stanley.[65] In any case, the effect of this publication at the Bay of Islands was electric. The 'actual opponents to the Government were but few until a few days previous to the cutting down of the Flagstaff in March 1845', and the reason for this sudden increase in opposition was the Commons Committee's report. Much of Williams' work to publicise the Treaty and assure Nga Puhi of the absolute integrity and good faith of the Crown had come to nought.[66] FitzRoy sent Williams the instructions of Lord Stanley, 'by which our fears have been altogether allayed from the assurance that the Treaty remained inviolate'.[67] Nga Puhi, it would seem, were not so reassured.[68]

Land issues were clearly a significant factor in the northern war. Tamati Waka Nene and other leaders accepted the Governor's assurances but Heke and Kawiti did not. There is less direct evidence of Kawiti's views. His letters to Governors tended to be very short and to the point. One thing does emerge clearly. Kawiti was motivated by his concern that his people's lands would be lost to the Pakeha, and that the Government intended to take those lands, by force if necessary. Ensign Best gives this account of Kawiti's views when he signed the Treaty with Tirarau in May 1840:

> When the Chiefs began to sign Kowetti [sic] was exceedingly violent and intractible he said that he should not sign away his land and thought that the Governor might as well wait for said he we

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[62] AJHR 1948, G8, pp 60-64
[63] W Cotton to W Cotton Snr, Kororareka, 18 March 1844, Cambridge University Selwyn Papers, Micro 297/3, Hocken Library
[64] Stanley to R FitzRoy, 26 June 1843, GBPP vol 2, Appendix 4, p 188
[65] Coates to Stanley, 14 August 1844, GBPP vol 4, pp 139-141
[66] H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[67] H Williams to R FitzRoy, 20 February 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[68] G Clarke (junior), *Notes on Early Life in New Zealand*, Hobart, 1903, p 70

> are all dying and the Mauri [sic] will soon cease to exist when I was young all our houses were full now they are empty let the Pachia [sic] wait a short time then the land will be theirs for we shall pass away…Eventually he signed the Treaty.[69]

This concern about land and its possible loss was expressed in Kawiti's letters. 'I have been fighting for my land; if you had said that my land should be retained by myself I should have been pleased.'[70] This was in response to FitzRoy's proposal that Kawiti give up some land to the Crown as part of peace-making. Robert Burrows reported that Kawiti was determined to fight on in defence of his lands. The Governor's proposed confiscation seemed proof to Heke and Kawiti that they had been right all along of the Crown's intention to take their lands.[71] Henry Williams thought that Kawiti's motives had nothing to do with the Crown – his followers simply wanted a good fight and to plunder the settlers.[72] Kene Martin, Kawiti's biographer, argues rather that he was known as a peacemaker among Nga Puhi but that he had changed his mind about the Treaty and was determined to challenge the Queen's sovereignty. The lands of Ngati Hine, and their preservation for the tribe, were his primary motivation in so doing.[73] Governor Grey knew him as a 'man of the highest reputed honour' and rejected the idea of any base motivations in his proceedings.[74]

Belich's influential interpretation of the war rejected the idea that land was a significant cause of it. He argued that Heke's concerns about the land were all prospective – that the Crown might take the land – and that in fact it was the authority of the Crown and the independence of Maori that motivated him:

> He fought less to overturn the Treaty of Waitangi than to ensure the application of its Maori version. He wished to safeguard order, stability, and peace, through the energetic application of traditional law. He wished to preserve Maori local independence and the chiefly authority which protected it. He wished to regulate, not reject, European contact and settlement.[75]

Belich argued that the war was not really about land at all. In doing so, he did not identify Nga Puhi concerns about the Old Land Claims, and most particularly the Crown's claim to the surplus land. Heke's concerns were to keep the settlers, certainly, but also to keep them on Maori terms. The customary gift-giving arrangements needed to be protected and enforced. Settlers had to be protected in their occupation and compelled to accept the Maori view of their obligations and responsibilities. Above all, ownership of the surplus land should be with Maori, not settlers or the Crown. The Government, in maintaining otherwise, had already taken Nga Puhi land. This point of contention was a cardinal factor in the negotiations between FitzRoy and Nga Puhi leaders at Waimate in 1844. The Crown's rahui had been erected on OLC land. The Governor's insistence on re-erecting it was a claim to land. Land was central to Maori concerns at the time. It was, in my view, a key factor in the war that followed.

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[69] N Taylor, *Journal of Ensign Best*, pp 221-222
[70] Kawiti to R FitzRoy, 7 October 1845, GBPP vol 5, p 312
[71] R Burrows, *Extracts from a Diary kept by the Rev R Burrows during Heke's War in the North in 1845*, Auckland, 1886, (republished, Christchurch, 1996), 2-4 November 1845, p 49
[72] H Williams to CMS, 26 March 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[73] Kene Hine Te Uira Martin, 'Kawiti, Te Ruki ? – 1854', *Dictionary of New Zealand Biography*, updated 16 December 2003 (online version)
[74] G Grey to Stanley, 4 February 1846, GBPP vol 5, pp 406-407. See also other correspondence of Grey's, where he compared Heke and Kawiti to the latter's favour.
[75] J Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, 1986, pp 33-34

1.4 Authority and independence

The question of government authority, vis-à-vis that of the rangatira, was a cardinal point at issue between Nga Puhi and the Crown. Ironically, the removal of the capital from the Bay of Islands (a grievance for many) took some of the heat out of this question, and postponed confrontation over it for two or three years. Nevertheless, in combination with economic collapse, concerns over land, and determination to enforce customary relations with settlers, this issue was a major cause of Hone Heke's attacks on the flagstaff. Jamie Belich, the main historian of the New Zealand wars, saw the question of authority and independence as almost the only issue. The main cause of the war, he argued, was government actions which impinged on the independence and authority of chiefs in the north, including the new prominence given to British law (especially the trial of Maketu) and the British police magistrate. Customs duties and the movement of the capital to Auckland, both of which were seen as attracting settlers away from the north and damaging the valuable trading interests of the Bay of Islands chiefs, were secondary concerns.

Belich suggested that Nga Puhi broadly aligned themselves behind Heke and Waka Nene, who wanted the same things: relative independence and continued chiefly authority on the one hand, but also the continued benefits of European settlement and trade. The roots of the war were the misunderstanding of the Treaty, which conveyed substantive sovereignty in its English version and nominal sovereignty in its Maori one, and the government's attempts to transform the latter into the former. FitzRoy knew that he could not impose full government authority on Maori with his current resources, but he nevertheless expected that he would be able to make *some* laws apply to them. Although the two Maori sides had largely the same aims, they saw two very different ways of achieving them. Belich argues that the main difference between the anti-government and pro-government forces in the north is that the latter were convinced by missionary and government explanations of the Treaty and of Crown intentions, and the former were not. Although Belich refers in passing to expressions of fear that the government would take all the land, he does not really see land issues as a cause of this war (nor even of the later wars of the 1860s).

Belich's view of the situation is sound insofar as it identifies Maori concerns about their authority vis-à-vis the Crown's, although I differ from his interpretation in some respects. Firstly, I think that land issues were a significant factor in the political crisis of 1844 to 1846, as I have argued above. Secondly, FitzRoy's renegotiation of the Crown/Nga Puhi alliance deserves greater weight – it was not simply a matter of explanation but of renegotiation. Thirdly, the war needs to be set more in its customary context. Although the relationship with the Crown and grievances against the government were critical, this was still in part a Maori war. As such, it was a war between the Bay of Islands and Hokianga, with Te Rarawa also getting involved against those who had opposed their land claims at Mangonui and Oruru. Customary relationships and grievances were at stake, as was mana. It was also a war between closely related kin groups, in which some remained neutral and the greatest casualty was sometimes food and resources, taken by taua muru. Young men wanted 'a regular fight, for the purpose of getting themselves a name after the manner of their forefathers'.[76] They joined Heke and Kawiti from every tribe in the Bay. When things finally looked like resolving in favour of the Crown, Nga Puhi leaders informed Grey of their intention to go and collect their young people and bring them home. But this view should not be taken too far. It was only

[76] W Cotton to S&P Cotton, Waimate, 24 July 1844, Micro MS 0508, ATL

partly a customary conflict, and issues with regard to the Crown were key factors. As Nene told Bishop Selwyn, Wharerahi would soon have made peace between the tribes if it had been purely an internal matter.[77]

Fourthly, I think that the yoke of Crown authority rested very lightly on Nga Puhi. The Chief Protector believed firmly in the need for Maori communities to govern themselves according to their own laws for the foreseeable future, with the Crown and protectorate as a mediator in Maori-settler disputes. With Clarke basically in control of FitzRoy's Maori policy, there was no real attempt to turn nominal sovereignty, as Belich puts it, into substantive sovereignty. The Maketu case was very much the exception to the rule. When the Government moved to Auckland, the growing potential for clashes was reduced. With only a protector, a magistrate, and a few police, the 12,000 Nga Puhi were not in any immediate danger of being actively governed. The only exceptions to this were the customs establishment, which governed the shipping rather than Maori but had direct effects on them, and the all-important land question. The Government's Commission did in fact sit in the area, and the Governor issued Crown grants. Here again, FitzRoy did not dare do anything about the surplus land, as he explained to the Secretary of State. The question of whose view of the land transactions would prevail was not really settled until the Bell Commission of the late 1850s.

Government authority had an early test when Hobson took up residence briefly on Clendon's land at Okiato in 1840. He found a small household of Pakeha and Maori living on the beach and keeping a grog shop. He sent a policeman to 'warn him [the shop owner] off Govt ground and when he would not go we sent a Corp[ora]l & File of men and pulled the place down'. The Pakeha appealed to his protecting chief, Pomare, who had supposedly sold the land to Clendon, to 'come & fight for him'. The military warned the shop owner that 'if a war canoe came that we would hang him on the tree he was then under'. This, not unnaturally, frightened the 'rascal' and he left before Pomare could intervene.[78] This was probably the first contest between the Crown and Nga Puhi over the meaning of land alienation.

Shortly after, the Governor met with the 'former' owner of the land. Pomare reaffirmed his acceptance of the Treaty and promised to get his ally Kawiti and others to sign it. The discussion then moved on to the relationship between Clendon, Pomare, and Hobson:

> In speaking of Mr Clendon after that gentleman in reply to Pomaray's regrets at his intended departure had said that he had no doubt that the Mauries would find as kind & a more powerful friend in Capt Hobson Pomaray was peculiarly happy. It is easy said he to say I am your friend. Capt Hobson does not know how good a friend Mr Clendon has been to us I do not expect him to be such a one but I give him three years then I shall see if he is a friend. Pomaray is rich now perhaps he may be poor perhaps not, but I shall by that time see if when the *Poor* Mauri goes to his door naked he is given a blanket and to eat should he be hungry or if he is driven away. It is easy to say I will be a friend, I give Capt Hobson three years to prove his words.[79]

With this meeting, Pomare set out his view of the customary relationship that should exist with the man to whom Clendon had sold 'his' land, and who had just driven off one of the other Pakeha whom Pomare had protected on the same land. As near neighbours, and as one of the two primary points of contact between the shipping and Maori at the Bay, Pomare at Otuihu was inevitably due for some interaction with the new Government. The other main focus of Government activity was the town at Kororareka.

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[77] GA Selwyn to R FitzRoy, November 1845, CO209/49
[78] N Taylor, *Journal of Ensign Best*, p 219
[79] ibid, p 220 [Best's spelling is reproduced]

Conflict between the shipping or settlers and Maori was the area where Crown and Nga Puhi authority intersected. In April 1840, 250 local Maori took over the courthouse (which was also the church) because they objected to the Government handling a murder case involving a Maori defendant and a Pakeha victim. Their object was to take the defendant away and deal with him themselves. The troops were called in and, after a long korero, the chiefs agreed to let the trial proceed. They were 'hostile' to the defendant in any case, and professed themselves happy with the outcome. Things might have ended very differently had they been *friendly* towards the man involved.[80]

At Otuihu, Hobson occasionally sent troops or police to intervene in brawls between ship crews and Pomare's people. In June 1840, there was a disturbance involving a group of rowdy, drunk sailors, as part of which Pomare seized their small boats. Hobson sent the troops to restore order. The Maori retreated and allowed the troops to take the boats back. Pomare met with the Governor the next day – Hobson understood Maori not to have been in the wrong, and no further action was taken by either side. Pomare appeared to accept the Governor's authority to act in disputes between Maori and Pakeha, on the basis that he himself had full authority over his own people:

> Pomare has applied to me for some soldiers to preserve the peace, and promised if I would keep the white men in order he would answer for the natives. I have on two occasions since employed the mounted police at the Pa. Pomare gave them lodging and fed them liberally.[81]

In the same letter, though, Hobson appealed for more troops, which he felt were desperately needed. Soon after, the Governor began to rethink his approach to dealing with Maori-settler disputes. In August, for example, he wrote a letter to Heke, informing him that he had heard that Heke had robbed the house of George Black. If the report was true, he asked Heke to return the property. His appeal was based on the concept that the Governor was the person who had the 'power for the wrongs both of Europeans and natives'.[82] All Hobson could in fact do, as the man with the power, was ask the chief to return property if Heke acknowledged a 'wrong' had taken place. There was no thought of a court inquiry or compulsion. Hobson informed the Colonial Office that this was an example of how he adjusted quarrels and adjudicated disputes. He proposed to appoint sub-protectors to do this work. Nothing else was possible without proper military support.[83] He instructed the protectors to act as magistrates but to assure Maori that 'their native customs and habits will not be infringed, except in cases that are opposed to the principles of humanity and morals', and to settle disputes in accordance with Maori custom, not British law.[84] Eventually, FitzRoy turned this policy into his Native Exemption Ordinance.

Nor was the Government's authority that much stronger with Pakeha during its brief residence at the Bay of Islands. The CMS clergyman, Robert Burrows, stated that an 'attempt was made to establish law and order, which only partially succeeded'. Many attempts to arrest Pakeha failed, if they were able to obtain shelter at a Maori settlement, although ship captains were able to retrieve runaway sailors by paying Maori a bounty for them. There were frequent drunken quarrels but 'the magistrate very wisely did not encourage the interference of the policeman in every case, but the combatants were either left to fight it out, or some person or persons of influence managed to put a stop to the quarrel'. The magistrate's court was not always an orderly affair, and 'nor were all the

[80] ibid, pp 217-219
[81] W Hobson to Gipps, 15 June 1840, GBPP vol 3, pp 144-145
[82] W Hobson to Hone Heke, 24 August 1840, GBPP vol 3, p 239
[83] W Hobson to Secretary of State, 15 October 1840, GBPP vol 3, p 235
[84] G Clarke to Shortland, 31 July 1843, GBPP vol 2, Appendix 9, p 349

decisions strictly according to English law or justice'. And this was just for the Queen's Pakeha subjects.[85]

Even so, Nga Puhi were alarmed at the situation. The removal of the Government and the troops took the heat out of potential conflict. Williams reported to the CMS in mid-1841:

> Many changes of a political nature have taken place and all have been kept in a continual state of anxiety. The natives have been evidently under serious alarm lest their country shd be seized by the English. We are happy to observe that this feeling has now generally subsided. Since the removal of the Governor with the Government officers and people connected therewith to Auckland, the Bay of Islands has assumed its wonted quietness, the Europeans being comparatively but few.[86]

Hobson had in fact been cautious and diplomatic in his handling of 'native cases', and Williams thought that this had had a good effect.[87]

The only serious exercise of Government authority in the region after the move was the sitting of the Land Claims Commission, and the trial and execution of Maketu. In November 1841, Mrs Roberton and her family and servant were murdered on one of the islands of the Bay of Islands. Isabella Brind, the granddaughter of Rewa (the Ngaitawake and Patukeha chief), was among the slain. Local Maori discovered the Roberton family's goods in the possession of Maketu, son of Ruhe, one of the most important Bay chiefs. He was accused of the murders and openly confessed them. There was serious conflict between Maori at the Bay about it, mainly because of the involvement of Rewa's granddaughter. Maketu's people would not agree to his being arrested and the police magistrate could not compel them. In the end, Ruhe finally came forward and gave his son up. The reason, according to Hobson, was that Rewa's people would otherwise have killed Maketu. But holding him at the Bay was too risky so he was sent to Auckland for trial. Maori in general at the Bay accepted that his crime was terrible, and if he had been killed by Rewa's people at once, that might have been the end of it.[88] Such a killing might also have sparked a tribal war, but this was unlikely given the fairly universal condemnation of the crime.

Even so, Nga Puhi leaders were uneasy at seeing a chief arrested and imprisoned. The trial and execution, reported Hobson, would be seen as a degradation for all Maori. Had his offence been less atrocious, or his guilt less obvious, Hobson believed that the Government would have had a severe struggle to carry out the law. As it was, Maori opinion was divided but there was 'great excitement'. Hobson again appealed for a larger military force.[89] The case was so important that, for some years, whenever the Chief Justice visited a Maori kainga or pa in the North Island, he was introduced as 'ko te Matenga, nana nei a Maketu i whakaae kia mate, the Martin, who condemned Maketu to death'.[90]

There were rumours that the Governor would be killed in retaliation for his treatment of Maketu. In November, Ruhe's people held a hui at Kerikeri at which they talked of waging war on Europeans.[91] In response to a request from Tamati Waka Nene, the neutral Henry Williams convened a hui at Paihia in December 1841. Northern chiefs

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[85] R Burrows, *Extracts from a Diary*, p 4
[86] Paihia Mission Station Annual Report, 30 June 1841, Micro-MS-Coll-04-61, CN/O 94(b)
[87] H Williams to CMS, 22 June 1841, Micro-MS-Coll-04-60, CN/O 94(b)
[88] W Hobson to Secretary of State, 16 December 1841, GBPP vol 3, pp 541-542
[89] ibid; see also, S Oliver, 'Maketu, Wiremu Kingi ? – 1842', *Dictionary of New Zealand Biography*, updated 16 December 2003 (online version)
[90] GA Selwyn to R FitzRoy, November 1845, CO209/49
[91] T Beckham to Colonial Secretary, 3 December 1841, IA 1, 1841, 1556

from the Bay of Islands, Hokianga, and Whangaroa were invited, and over 1000 Nga Puhi attended. Hone Heke was the main leader of those who wanted to reject the authority of the Government. Maketu should be retrieved and dealt with by themselves. Nene and others prevailed and the hui sent letters to the Governor, with the following resolutions:

- the hui disapproved of the murders committed by Maketu;
- Maketu acted alone and no one had known of his intentions;
- The chiefs of Nga Puhi had no intention of 'rising to massacre the Europeans living in New Zealand, and their hearts are sorry because the Europeans have thought that this is the desire of the natives'; and
- Maketu must not be sent back to the Bay of Islands.[92]

According to Buick, Heke never forgave the Nga Puhi leaders for 'this adhesion to law', and 'nursed his wrath' at the Government which had robbed him of mana, income, and now claimed the right of putting a chief to death. Ruhe encouraged Heke to avenge Maketu's death.[93] Primary evidence indicates, however, that Ruhe actually supported the Crown during the northern war. In any case, Nga Puhi had given the Governor permission to go ahead and deal with Maketu. The trial and execution took place in 1842 without any actual disturbances. It caused a shock, and the Waimate missionary Davis reported some attempts to 'agitate', though in the end it 'occasioned but little excitement'.[94]

But, Hobson reported, there were still those who thought that it showed the Government had no respect for Maori rights and customs, and would try to overturn them altogether.[95] The reality on the ground was otherwise. The face of the Government in the north was now the Police Magistrate, the gaoler, a few police, and the protector. As noted above, Selwyn was critical of this. Government was a thing of soldiers and jails, with a protector who did nothing more than try to mediate disputes. It ought to have been a thing of hospitals and schools, of churches and prosperity, which would then have made it 'loved' as the mission was 'loved'. Britain's official benevolence and promises had translated into nothing very positive for Nga Puhi. Williams also noted that the missionaries were sometimes accused of lying to Nga Puhi and deceiving them about the content and consequences of the Treaty, They had paved the way for a Government that brought warships and soldiers rather than the expected economic benefits.[96]

Conversely, the protector was one of their own – Nga Puhi rangatira had no objection to the residence of missionary sons who had grown up in the area. Kemp and Clarke junior were welcome to meet with them, debate with them at hui, and live among them. As Heke put it to the young Clarke: 'You are not a stranger, and so long as you do not turn soldier, or policeman, or collector of customs, I do not mind if you are the only representative here of the Government'.[97] The police magistrate, Thomas Beckham, was a sensible man who did not try to overreach himself, and who usually relied on the protectors and missionaries to help resolve Maori-settler disputes. A serious error in judgement occurred in this respect in 1844, and helped spark the northern war. But Beckham was welcome to come and put his point of view at hui. It was clear to all, however, that the Government was not to exercise any authority over matters internal to Nga Puhi. This included everything from intra-Maori disputes and 'crimes' to authority

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[92] T Buick, pp 32-33
[93] ibid, pp 33, 35-36
[94] R Davis to CMS, 5 April 1842, Micro-MS-Coll-04-44, CN/08(b)
[95] W Hobson to Secretary of State, 12 March 1842, GBPP vol 3, p 543
[96] H Williams to CMS, 1 May 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[97] G Clarke (junior), *Notes on Early Life in New Zealand*, p 74

over land and resources. In November 1841, the Governor was concerned about the destruction of kauri and issued a Proclamation against timber cutting. 'The Proclamation,' reported Williams, 'tended seriously to disturb and unsettle the minds of all classes of the community, and Waka particularly declared that if the Governor were present he would cut down a Kauri tree before him and see how he would act.'[98] Inevitably, the Government's authority was ignored.

Similarly, when a Rotorua Maori murdered one of Williams' Maori shepherds in early 1842 on what the missionary considered his exclusive land at Pakaraka, he sent the culprit off to jail at Kororareka. The man had to be released four days later, as Kawakawa Maori would not stand for it, 'it being altogether a native affair'. The fight had been over a woman and the Kawakawa people felt that provocation had been offered – that is, that the killing had been justified in customary terms. It made no difference, to Williams' chagrin, that the act had been committed on a European's land.[99]

Despite the reality of Maori power and independence on the ground, Heke and other chiefs remained concerned about the possibilities inherent in kawanatanga, and at the various attempts by the protectors and officials to intervene and mediate in their affairs. As Belich noted, there was no difference between the Bay of Islands and the Hokianga chiefs in this respect. Those who ended up supporting or opposing the Government, and those who remained neutral, all wanted to ensure the continued independent authority of rangatira over their communities. In 1843, Chief Protector Clarke noted that it would be 'an act of great humanity to put an end to' tribal warfare. This was easier said than done:

> [Maori] love of independence has been strikingly manifested on several occasions, where friends and foes have alike deprecated the interference of Government in their quarrels, expressing their determination to seek satisfaction in their own way; never was there a people more uneasy under the yoke of submission to authority than the New Zealanders, and they only want a bold and enterprising leader to throw off even the name of subject. The uniform kindness of Her Majesty's Government has alone secured the peace and tranquillity of the colony.[100]

Later that year (1843), Clarke tried to intervene in a land dispute between Nene and Taonui in Hokianga, where they had moved onto disputed land and built opposing pa. The 'spirit of war' was reviving in the north. Clarke met with the Hokianga chiefs, and pointed out to them the need for peace, and offered the Government's help to settle their disputes. Some of the 'young men' of Hokianga were:

> vociferous, asserting their independence of, and contempt for, the Government, and many of the old men more than intimated that they preferred settling quarrels in their old way; that it was of no use to apply to the Governor, who did nothing for them. On the other hand, I told them their difficulties arose from not following the Governor's advice, and from wishing to dictate [to the Governor], rather than obey.[101]

There was little difference, therefore, in the attitudes and intentions of the Crown's allies and its enemies. The Hokianga leaders Nene and Taonui, the Crown's main supporters in the northern war, were determined to settle disputes in customary ways, and to continue to live as independently of outside control as before. The reason for their support of FitzRoy was his renegotiation of their alliance in 1844 to their satisfaction, which will be discussed in the next section.

[98] Enclosure in H Williams to CMS, 1 May 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[99] H Williams to AN Brown, 4 March 1842, Alfred Brown Papers, Micro-MS-0756-1/04
[100] G Clarke, Half-Yearly Report, 4 January 1843, GBPP vol 2, Appendix 4, p 122
[101] G Clarke to Colonial Secretary, 1 June 1843, GBPP vol 5, p 272

Heke, who was, together with Kawiti, the leading opponent of the Government, carried out a vigorous correspondence with FitzRoy and later with Grey. He made it very clear that he wanted the settlers and the missionaries to remain, but his attitude towards the Government was ambivalent. He seems to have veered between two points of view. From time to time, he wanted the Governor to acknowledge the chiefs (and himself in particular) as equal in power and status. This should be done, as Heke's ally Hira Pure wrote, by the Governor coming to Nga Puhi, shaking hands, and 'talking mouth to mouth'. They would have korero and reach agreement on issues. There was no need or place for soldiers.[102] Always, Heke insisted that the Governor come to see him, that they meet face to face, and decide together what was best to be done.[103] This was interpreted by Pakeha (and some Maori) as self-aggrandisement, as Heke wanting to become the one great leader in the north. While there was certainly mana involved and he saw himself as the leading man, Heke was inclusive, not exclusive, in his approach. He usually declined private meetings with officials. He preferred public hui where everyone could participate and hear the korero. This meant that his opponents would be present, have their say, and assert their mana. He refused, for example, to meet privately with Bishop Selwyn at Waimate, and insisted on a public hui. This gave the opportunity for 'several furious old Maori chiefs' to put their opposing view and try to persuade Heke's followers. [104]

Heke saw the great symbol of the flagstaff as a potential expression of the equal status and joint authority of Governor and rangatira. In September 1844, in response to the Nga Puhi agreement with FitzRoy, he 'said he wanted the Governor to come with him & take down the present flagstaff, and then erect two, side by side, one for the English, and one for the Maori flag'.[105] This was nothing more nor less than what Patuone and other chiefs had insisted on at Waitangi; the Governor and the chiefs to be equal, symbolised by Patuone holding his two index fingers up, side by side.[106]

But Governors were not to be trusted. Heke wrote to FitzRoy of Caesar, Pontius Pilate, Pharoah, Nicodemus, Agrippa, and Herod – even Judas – these were the Kings and Governors. 'Did these governors confer any benefit, or did they not rather kill Jesus Christ?' But both Heke and FitzRoy had killed Christ (meaning peace) in New Zealand.[107] Sometimes, it seemed to Heke that the solution was not a personal pact between himself and the Governor, or the full equality of chiefs with the Governor, but the expulsion of the Government from New Zealand altogether. He put this argument in a letter that was not actually sent to the Governor, but discovered at Ohaeawai after his evacuation of the pa. FitzRoy was incensed at a 'remarkable passage': 'tena kei tohu o te mana o te Kuini hore rawa kihau e pai te kara', which is translated as 'if it is an emblem of the Queen's sovereignty, I never will submit to the flag'. FitzRoy believed the letter to be in French handwriting, and blamed the Roman Catholics for the dimension of Maori opposition that seemed to want to end the Queen's sovereignty.[108]

A translation of the letter was sent to the Colonial Office:

> Governor. I salute you. This is my word to you. If you are willing to put an end to our fighting I am willing. And these are my terms upon which our fighting work may be finished. Unconditional pardon for all of us who were concerned in the plunder of Kororareka, because the goods taken from thence cannot be restored. They are consumed and distributed about to different men. The

[102] Hira Pure to R FitzRoy, no date (1844), GBPP vol 4, p 418
[103] For example, H Heke to R FitzRoy, no date (1844), GBPP vol 4, pp 416-417
[104] W Cotton, Journal, 7 September 1844, qMS 0568
[105] ibid
[106] See above, chapter 6
[107] H Heke to R FitzRoy, 29 August 1845, GBPP vol 5, p 310
[108] R FitzRoy to Stanley, 16 August 1845, G30/7

> things that I myself have, I am willing to restore: and I am also willing to use my influence with my friends, that they should restore the things they have.
>
> If Pomare thinks proper to erect the flagstaff at Maiki, only as a signal for vessels, I have no objection:- *but if it is for an ensign of Sovereignty of the Queen I never will submit to the flag!* [emphasis in original]
>
> Governor you are the representative of the Queen; by whom you were sent; as was also the Governor who is dead; therefore I say, that the thoughts and full decision concerning your works in New Zealand are with the Queen; therefore I shall write to her, to the Queen, to restore to us the Sovereignty of our Island; to the Natives. I have heard that she is a good woman, and that she will not desire that our Land shall be purchased with the blood of her Soldiers, and of the Natives. Therefore I propose that we should put an end to our War till such time as I receive the letter of the Queen. If she agrees to my proposals, that I insist on, it will be concluded. But if she persists in maintaining her authority over our Land then we will carry on the War until we (the Natives) are exterminated on our own Lands. If you are will to make peace let us make peace for 18 months, and if no letter arrives from the Queen to me or if she persists in claiming the Sovereignty of the Land, and these 18 months are expired then we will recommence our fighting work.
>
> No signature.[109]

Heke did in fact write such a letter to the Queen in 1849. He urged a return to the original agreement between Hongi Hika and George IV. The missionaries and settlers should remain in New Zealand, under the authority of the Maori chiefs, and both peoples would 'live and die together'. Though they occupied Heke's land, 'the adjustment of the pieces they have acquired remains with me'. Management of the island would be in the hands of the chiefs:

> Heoi ka mea atu nei ahau ki a koe, aha koa e noho ana ratou ki runga ki tenei motu me ahau hoki, koia ahau ka mea atu nei. Hei ahau ano te whakaaro mo toku motu. Ahakoa, kua riro ia ratou tetahi wahi maku te whakaaro ki nga pahikua riro ia ratou, no te mea hoki kua paumatia e te Atua nga motu katoa – mo ia iwi, mo ia iwi.[110]
>
> But I say to you, that although they are living on this island and I also, still the management of my island remains with me, and although they have obtained possession of part of it, still the adjustment of the pieces which they have acquired remains with me; also for God apportioned the land to this nation and to that…[111]

The Governor, soldiers, and Bishop Selwyn (who was not 'over good' because he 'follows the policies of the Governor') should return to England. Heke and the Queen should reach a new agreement that carried into effect the words of Hongi and King George. Maori had 'in our folly' consented to having a Governor, 'not understanding the authority which accompanies the appointment of governors'. With the Queen would remain control of the pace of settlement – it was up to her how many people she chose to send to New Zealand, so long as management of the country remained with Maori. If the 'living conversation' of Hongi and King George were restored, then there would be peace between Heke had his 'sister' (tuahine), Queen Victoria, the greatest of the people of the world.[112]

[109] Unsigned letter (from Heke) to Governor, found in Heke's pa at Ohaeawai, G30/7. I don't have a Maori-language version – the translated version is reproduced as Document 7 in the Appendix.
[110] H Heke to Queen Victoria, 10 July 1849, G30/16. This version is reproduced as Document 3 in the Appendix.
[111] H Heke to Queen Victoria, 10 July 1849, GBPP vol 6 [1280], p 17
[112] ibid, pp 17-18

Heke moved back and forth between these two points of view: absolute equality between the authority of the Governor and the authority of the chiefs, to be worked out in the region by face-to-face korero and consensus; or a return to the agreement between Hongi and King George, keeping the missionaries and settlers but expelling British authority. His views shifted according to what seemed practically achievable, but also in response to the changing fortunes of war, and pressure from respected Pakeha and fellow Nga Puhi leaders. At first, he may well have believed, as Clarke told FitzRoy, that he could drive out the British Government and put the United States in its place, on better terms.[113] He began to fly the American flag on his waka as he moved around the Bay of Islands. Kawiti, on the other hand, seems to have been mainly concerned about land. He had refused to sign the Treaty on 6 February 1840. At the Waitangi hui, as described in chapter 6, he had rejected the idea that the Governor should exercise any authority over rangatira. Although he later signed the Treaty, partly at Pomare's persuasion, he did so after expressing his very strong concerns about possible land loss. This remained a theme in his correspondence with the Governor. Buick tells an interesting story of Heke's gift to Kawiti of a mere pounamu smeared in excrement as a symbol of the Crown's trampling of Maori mana, and Kawiti's response that they should fight.[114] This story was recorded in the Kawiti family's oral history. Tawai Kawiti described it as a symbol that someone 'had defiled the mana of Ngapuhi and such a challenge must be met'.[115] Nothing that the missionaries, the protectors, or the Governor could say would convince them otherwise. Heke was viewed by many at the time as a patriot fighting for the independence of his country. That much was certain. What was in doubt was whether tino rangatiratanga could be exercised in conjunction and cooperation with the Crown, or whether it required the expulsion of the Government from New Zealand.

2. Renegotiating the alliance, 1844 to 1845

Hone Heke challenged the authority of the Crown when he felled the flagstaff on Maiki Hill in July 1844. There followed eight months of negotiation between Nga Puhi and the Crown, during which the flagstaff was chopped down twice more in January 1845. Finally, it was attacked a fourth time in March, and the town of Kororareka was accidentally sacked as well. This ended the phase of (primarily) negotiation and began the civil war within Nga Puhi and against the Crown. During those eight months, the missionaries and protectors led a campaign to win support for the Crown by explaining the Treaty and defending the good faith, integrity, and benevolent intentions of the Government. FitzRoy visited the Bay in August to September 1844 and, building on the groundwork laid by the missionaries, he renegotiated the Crown's alliance with Nga Puhi. Compensation was paid for Heke's wrongdoing according to Maori custom, and promises of mutual support and protection were made. The Governor further promised to recognise Nga Puhi rangatira as allied 'princes', on the Indian model, and to return the surplus land to them. He agreed not to land his troops and make war on Nga Puhi, but to send the soldiers back to Sydney. Governor and chiefs agreed that Nga Puhi would be responsible for maintaining peace in the area and restraining Heke and Kawiti. The Nga Puhi chiefs would have their own flag to use alongside the British one. Although mocked and condemned at the time, the Governor's renegotiated alliance with Nga Puhi in fact won him the Maori allies without whom he could not have fought a war in the north after

[113] G Clarke to Colonial Secretary, 1 January 1845, GBPP vol 5, p 170
[114] T Buick, pp 46-47
[115] T Kawiti, 'Heke's War in the North', *Te Ao Hou: the New World*, no 16, October 1956, pp 38-39

March 1845. Convincing Nga Puhi of the integrity of the Treaty and the Crown's good intentions was, according to Williams and others, a near-run thing.

2.1 Negotiations with the Crown, July to September 1844

Heke's actions at Kororareka in early July 1844, culminating with the attack on the flagstaff, have been described many times and do not require detailed recital here. Heke's immediate take for bringing an armed party to the town was compensation from a European settler named Lord. His wife, Kotiro, was a Taranaki woman and a former slave of Heke's, and the chief wanted her back. Kotiro met Heke's messenger with insults, which resulted in a taua muru. When they arrived, Heke's party took up residence at Lord's house. They then 'made a rush' through the town to the beach, where they performed a haka and made speeches, with the settlers observing.

> [The] first speaker said, "War, war, war with the white people;" the second, "Cut them in pieces, and throw them into the sea;" a third, that "Rauperaha had killed white people, and why could not they;" and lastly, Heke got up, and in a long speech stated, that he was come for payment from Lord and his wife, and to cut down the flag-staff, and told us not to interfere.[116]

Beckham (the police magistrate) and Kemp (the protector) observed this set-piece performance. They sent to Paihia for assistance. William Williams and Robert Maunsell joined forces with Beckham and Kemp, but were unsuccessful in dissuading Heke from his plan. The most they achieved was a promise to William Williams which led Heke to stay in his canoe, while he sent Haratua to do the actual deed.[117]

During this korero, 'Heke related the grievances of the natives, from the death of Marion to the present time, and particularly mentioned the manner the chiefs had been entrapped into signing the Treaty of Waitangi'.[118] Beckham tried to resolve matters by getting Lord to make compensation. Lord was too poor, however, so the missionaries (acknowledging that Heke had a valid complaint) paid compensation of rice and sugar for Kotiro's cursing. That matter was apparently resolved, but Heke's party still cut down the flagstaff on 8 July, the Government officials powerless to stop them. When asked why by locals Potter and Hector, 'some said there had been no payment given for the land; others, that it prevented the ships coming in'.[119]

Commenting later on wild tales of lawless plundering and danger, Busby pointed out that Heke's taua did nothing more than occupy two houses (one the subject of a 'native quarrel'), kill and eat a few pigs that they would probably replace, and left the shops untouched and the people unharmed. Reported insults to British women were not much more than stripping to dance the haka. So the focus should not be distracted from the main point – the flagstaff, which Busby saw as an act of deliberate and premeditated rebellion. Although the majority of Maori in the district might not approve the act, he feared that they all partook of the distrust and disaffection that had brought it about.[120]

Having achieved his object and delivered his challenge to the Crown, Heke returned peacefully to Kaikohe. Protector Kemp met with the 'neighbouring tribes', by which he meant the Ngaitawake and Patukeha people who lived mainly at Te Rawhiti and were the protecting chiefs of the Kororareka settlers. It should be remembered that the Te

[116] C Hector to R FitzRoy, Russell, 8 July 1844, GBPP vol 4, p 306
[117] T Buick, pp 36-38
[118] C Hector to R FitzRoy, Russell, 8 July 1844, GBPP vol 4, p 307
[119] ibid
[120] J Busby to GW Hope, London, 17 January 1845, GBPP vol 4, p 516

Rawhiti chiefs had resisted Heke's claims to land and authority at Kororareka in the 1830s, and in front of the Land Claims Commission in the 1840s. To an extent, Heke was advancing such claims again by his actions (in other words, his challenge was not only to the Crown).[121] These were the people who 'discountenanced' Heke's actions and told Kemp that they were ready to protect the settlers.[122] Beckham reported that about 400 Maori from these 'neighbouring tribes' arrived a few hours after Heke's departure. They had come:

> for the purpose of co-operating with the Europeans, and so highly incensed were they at Heke's conduct that they one and all determined to punish him for the outrages he had committed; but fearing that if a collision took place it might involve the whole district in war, I assembled the chiefs together and after some difficulty persuaded them to remain quiet till the wishes of His Excellency were known. The natives of this place consider the destruction of the Flagstaff as an insult to themselves as they state that they permitted it to be placed here in the first instance and that it is their business to put up another and protect it, and they accordingly erected a temporary one which will answer until I can get a new one supplied.[123]

Bishop Selwyn intervened at this point, and decided the situation was too urgent to wait for instructions or action from the Governor. He sent a letter to all the Bay of Islands and Hokianga chiefs, asking the 'quiet' and gentle' chiefs ('nga rangatira marie, atawhai') to adjust the 'evil' at a hui at Waimate on 18 July.[124]

Before the hui, FitzRoy sent Beckham instructions to re-erect the flagstaff, as well as a small contingent of 30 soldiers to protect the town. He also sent urgently to Sydney for additional troops. The Governor's mind was turning to compensation. It was clear to him that he would have to make some kind of military demonstration in the district to support the Crown's authority. But at the same time he wanted Protector Kemp to negotiate with Nga Puhi leaders and persuade *them* to get Heke to pay compensation for his actions. The amount of compensation, however, would be set by the Governor. In the meantime, the small detachment of soldiers was to act strictly on the defensive, and Beckham was to continue his cautious and conciliatory behaviour towards Nga Puhi. Having issued those instructions, FitzRoy set off for Taranaki where he had a more urgent situation to resolve in the wake of Commissioner Spain's land report. He would not go to the Bay of Islands until he had soldiers to support his authority.[125]

On 17 July, the day before the hui, Hone Heke came galloping into the Waimate settlement at dusk, 'waving his [sword]stick over his head. I fear,' wrote the Bishop's chaplain, William Cotton, 'that if any attempt is made to apprehend him the natives will rise as one man.'[126] Heke cut an inspiring figure, not apparently cast down by the fact that the Bishop's invitation had referred to his 'mischief' and his 'evil' (kino). There was no love lost between Selwyn and Heke, as Burrows explained in his diary.

> His Lordship appealed to Heke in his capacity as Bishop, and tried to impress upon him as a member of the Church, and as one who had acted as a Lay Reader, he was in duty bound to obey him, and leave off his troublesome ways. Heke, however, did not acknowledge any episcopal authority over him, and the Bishop, not knowing then the native character so well as he did after living and travelling more among them, presumed upon his office to reprimand the proud man, reminding him that he [Selwyn] had come to New Zealand under the authority of the Queen. This

[121] See above, chapter 4; & the evidence presented to the Land Claims Commission, 'Case no 256', January 1841, OLC 1, 548-551; & also the evidence of Rewa, 5 October 1842, OLC 1, 638
[122] HT Kemp to G Clarke, Russell, 8 July 1844, GBPP vol 4, p 305
[123] T Beckham to Colonial Secretary, 10 July 1844, IA 1, 1849/158, Part II
[124] W Cotton, Journal, 13 & 17 July 1844, qMS 0567
[125] R FitzRoy to T Beckham, 12 July 1844, GBPP vol 4, p 308
[126] W Cotton, Journal, 17 July 1844, qMS 0567

> did not tend to mend matters, and up to the departure of the Bishop and his staff, in October, 1844, Heke did not treat his lordship with that respect which was due to his office.[127]

At first, Selwyn thought that he might not proceed with the hui. He had received a letter from Rewa, the principal leader of Ngai Tawake and Patukeha, refusing to attend. Rewa's stance was critical for the Crown, and at the moment he was wavering, and his people 'seem to have kept clear of the whole affair'. It looked as if opponents of the Government might dominate the hui, and the Bishop 'thought at one time it would be better to have no speechifying'. But the arrival of Taonui, one of the principal Hokianga chiefs, and of the Waimate chief Paratene Kekeao, tipped the balance. The hui began with about 300 Nga Puhi in attendance. Archdeacon William Williams opened the proceedings by saying that the Bishop was going to see the Governor, and they should tell him their views to relay to FitzRoy. He was followed by Taonui, Paratene Kekeao, Waikato, Wi Hau, and Rawiri Taiwhanga of Kaikohe, 'all peaceably disposed. But deprecating the sending for the soldiers.'[128] Nobody wanted the Governor to have a military presence in their district.

Heke spoke late in the day:

> The Bp interrupted him at the beginning of his speech, when he assumed as a grievance that the Maori chiefs had been omitted from the Liturgy. The Bishop quoted the passage in the prayer for the Ch[urch] Militant, when we pray for all Xtian kings, princes & governors, me nga rangatira hoki o tenei whenua & the chiefs of this land also. He then turned round to the people and said J Heke has forgotten this because he has deserted public prayer. This turned the tables. His speech was a long account of the passage [?] of the Pakehas in the land. The gift of the New Zealand flag to the chiefs by Mr Busby. The substitution of the English flag for it. This was made a great grievance. And upon this he laid the cutting down of the flagstaff at Kororareka. It was erected he said for the NZ flag & not for the Queen's. This was indeed quite a shuffle. But it was introduced into a letter to the Governor drawn up by Mr Maunsell, wh[ich] all the chiefs signed, John Heke and all. This was very unsatisfactory to the Bishop & I do not think he will present it to the Gov[ernor].[129]

Tamati Waka Nene arrived too late that day to change things, but Selwyn took advantage of his presence to discard the letter agreed on the 18th. The Bishop was busy all the next morning 'with the principal chiefs [unnamed] in his study, drawing up a more satisfactory letter to the Governor'.[130] Instead of being from all the chiefs, the new letter was from Heke alone. It made a somewhat ambivalent apology to FitzRoy, and Heke offered to re-erect the flagstaff.[131] Selwyn claimed that 'Thomas Walker almost compelled John Heke to sign that letter of apology which, though much ridiculed, would I believe have secured the peace of the country, if the Flag Staff had not been erected, without further communication between the Government and the Ngapuhi Chiefs'. The Bishop took the letter to Auckland but missed FitzRoy, who had departed in the meantime for New Plymouth. Selwyn then carried it overland but reached Taranaki too late, because FitzRoy's earlier instructions to put up the flagstaff had already been followed.[132] The letter was printed in the *Southern Cross* in September in the mistaken belief that it had been received by FitzRoy at the Waimate hui of that month:

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[127] R Burrows, *Extracts from a Diary*, p 6
[128] W Cotton, Journal, 18 July 1844, qMS 0567
[129] ibid
[130] ibid, 19 July 1844
[131] W Williams, 18-19 July 1844, in F Porter, *The Turanga Journals*, p 291
[132] GA Selwyn to R FitzRoy, November 1845, CO209/49; W Cotton, Journal, 29 July 1844, qMS 0567

> Friend Governor, - This is my speech to you. My disobedience and rudeness is no new thing, I inherit it from my parents, from my ancestors; do not imagine that it is a new feature in my character, but I am thinking of leaving off my rude conduct towards the Europeans. Now I say that I will prepare another pole, inland at Waimate, and I will erect it at its proper place at Kororareka, in order to put an end to our present quarrel. Let your soldiers remain beyond sea, and at Auckland; do not send them here. The pole that was cut down belonged to me, I made it for the native flag, and it was never paid for by the Europeans. – From your friend, Hone Heke Pokai.[133]

The Governor arrived at the Bay of Islands about a month later, with a small force of 250 soldiers, which was the biggest British army that New Zealand had seen so far. He seems to have believed (and others with him) that this might be a large enough force to overawe Heke and his followers. His avowed intention was to land his troops at the mouth of the Kerikeri River, so that they could march inland and capture Heke. Whether FitzRoy would really have carried out such a rash scheme, there is no way of knowing. On 26 August, he landed at Kororareka and met with about 70 Maori, including Rewa, Moka, Tareha, Nene, and Te Kemara. After a ‘great deal of general talk’, the Governor proposed the terms he would offer to Heke:

> He is to give up ten guns and the axe with which the flagstaff was cut down. They were quite delighted with the easy terms, saying “Kotahi ka ora tatou. Now for the first time we are saved. An utu may be payed [sic] but had John Heke’s person been demanded, very many natives would have joined him.[134]

FitzRoy also told the chiefs that ‘those who had done the mischief’ must make a ‘promise of good conduct for the future’. At the end of the hui, four of the principal chiefs went off with George Clarke to ‘persuade Heke to yield to these easy terms’.[135] The Governor was not willing to wait long. On 27 August, Clarke met with Heke at Kaikohe but was unsuccessful.[136] The same day, not having received a response from Heke, FitzRoy left Kororareka for Kerikeri, planning to march with his troops to Kaikohe in search of the chief. On 28 August, however, he ‘received a communication from the most influential Chiefs of the Waimate and Hokianga districts, entreating him not to take the Soldiers inland, but to meet them alone and they would answer for the good conduct of Heke’.[137] This communication was made via George Clarke, who probably talked the Governor into it.[138] Nga Puhi leaders offered to make compensation themselves for the assault on the flagstaff, and to become the guarantors of future peace. FitzRoy agreed to meet and discuss it.[139]

This decision was a crucial one for the relationship between Nga Puhi and the Crown. Bishop Selwyn later wrote:

> Military officers, who have served in the late expeditions in the interior of New Zealand, have stated their belief that if that body of men had marched against Heke in September 1844 “not one of them would have returned”. I do not say that this was the opinion of anyone at the time; but it is the result of recent experience. The whole body of the northern, or Ngapuhi natives, it is well known, suspected the intentions of the British Government; and the arrival of the soldiers led them to believe that all their suspicions of old standing were then to be fulfilled, by an attempt on our part to subjugate the people. Heke availed himself of this popular topic in most of his public addresses. If the force had marched upon the Waimate, in defiance of the wishes and entreaties of

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[133] H Heke to R FitzRoy, 19 July 1844, GBPP vol 4, p 370
[134] W Cotton, Journal, 26 August 1844, qMS 0568
[135] R Burrows to CMS, 4 September 1844, Micro-MS-Coll-04-44, CN/08(b)
[136] W Williams, Journal, 27 August 1844, in F Porter (ed), *The Turanga Journals*, p 297
[137] R Burrows to CMS, 4 September 1844, Micro-MS-Coll-04-44, CN/08(b)
[138] W Williams, Journal, 27 August 1844, in F Porter (ed), *The Turanga Journals*, p 297
[139] R FitzRoy to Gipps, 4 September 1844, GBPP vol 4, p 311

> the principal Chiefs, Walker, Broughton, Macquarie,[140] and others, my belief is (and I speak advisedly) that the British Government would not, at this time, have had a single native ally North of the Waitemata.[141]

The next step in the Governor's negotiations was a general hui with Nga Puhi at Waimate. He returned to Kororareka with the troops. Chief Protector Clarke and Bishop Selwyn sent out separate invitations to a hui at Waimate for 2 September. This made it a joint Government and Church-sponsored affair. In Cotton's words, FitzRoy had 'determined to try the effect of a quiet talk with the principal chiefs'.[142] This hui was a critical event for Nga Puhi. On the first day, there was a general meeting at which the rangatira paid the Governor's stipulated compensation for the offence of chopping down the flagstaff. Many issues were discussed. Heke did not attend but sent messages via Ruhe. The result was a consensus that the Governor's military force would not be kept at the Bay of Islands – a major objective of Nga Puhi – but would be sent away. FitzRoy recognised their economic grievances and announced that the custom duties would be abolished. The Governor would rely on the chiefs to keep the peace and ensure the good conduct of Hone Heke; they would, in effect, govern the north for him. At this meeting, the alliance between Nga Puhi and the Crown was renegotiated and reaffirmed.

On the second day, FitzRoy met privately with the leading chiefs. Unfortunately, there is no detailed account of this second meeting. It was an opportunity for the Nga Puhi leaders to present their grievances in detail, and work out solutions with the Governor. We know at least two of them – that the Governor promised Nga Puhi chiefs their own flag as the 'Allied Guardians of New Zealand', and that he promised to return the surplus land to them. At the end of the two-day hui, FitzRoy had reached an agreement which he hoped would preserve the authority of the Crown in the north without recourse to war.

The first day of the hui (2 September) opened with a church service. Bishop Selwyn preached a sermon on ' "who is my neighbour": applying the parable to the present situation of Maoris & Pakehas.'[143] This was followed by the Governor's opening address, translated by the Kaitaia missionary, William Puckey. FitzRoy's address was printed in the *Southern Cross* and sent home to the Colonial Office. In it, the Governor raised Heke's concerns about the meaning and significance of the flag, and the suspicions of other Nga Puhi, 'doubtful of our intentions'. Designing and wicked Europeans were blamed for these suspicions, and FitzRoy announced his determination to explain and prove the good intentions of the British Government. He wanted Nga Puhi to enjoy peace and prosperity; all his interest was in their welfare, and his desire was to do them good. He then recited the history of the relationship between Nga Puhi and the Crown. He referred to their 1831 letter to the King, and the sending of Busby in response to the letter. The King intended Busby to stop the mischief of bad Europeans, but the Resident failed because he had no force with which to compel their obedience. At around the same time, other foreign powers became interested in New Zealand. Quite simply, Maori did not have the ships or arms to keep them out. As part of his "foreigner scare" tactics, FitzRoy later alluded to how King William had refused the request of the Tahitians for protection, after which they suffered great harm from the French.[144]

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[140] Tamati Waka Nene, Makaore Taonui, and Paratene Kekeao
[141] GA Selwyn to R FitzRoy, November 1845, CO209/49
[142] W Cotton, Journal, 30 August 1844, qMS 0568
[143] ibid, 2 September 1844
[144] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 367

The King of England, however, 'determined to save and protect the inhabitants of New Zealand'. King William refused to take any part of the country by force, and promised to protect Maori and 'guard their lands'. The King would not allow the fate of aborigines elsewhere (of which Nga Puhi had heard and spoken so much) to happen in New Zealand. Queen Victoria was William's successor and shared his views and intentions.[145] Victoria sent the first Governor to bring Maori under the protection of her flag:

> he offered to make them a part of the great British family – the greatest nation in the world; to give them all the advantages of English laws; but not to interfere with their own laws against their consent, while affecting only themselves. His offers were accepted gladly by the greater number of the chiefs; and the consequence has been, that no one injures or molests them; that their lands are secured to them, and that they are perfectly free.[146]

The British flag, continued the Governor, was the symbol of their freedom, liberty, and safety. FitzRoy then made his first concrete promise. He acknowledged that the Government had damaged trade, and he promised to remedy this by ending the customs and allowing Maori to trade freely with the shipping. He reminded them, though, that insults, quarrels, and annoyances on their part could also drive the ships away, and other Pakeha, and leave them destitute. Having delivered that rather unsubtle warning, the Governor tried to illustrate how the British Government had carried out measures for their benefit. All he could come up with was pre-emption, which he claimed protected them from excessive land loss. He then resorted to claiming the benefits of the missions as 'British', funded by the people of England. Cleverly, he asserted that Nga Puhi had made no equivalent for this gift, and that the best return they could make would be 'yearly progress in improvement'.[147]

Turning to the specific question of the flagstaff, FitzRoy proclaimed that it made him 'very sad; it made my heart sick, to be obliged to bring soldiers and warships here', but he could not allow actions like Heke's to pass without atonement. He assured the hui that he was:

> very desirous of acting in such matters in concert with the principal chiefs. I wish to consult with them on all important occasions.
>
> My wish is for peaceable measures; although I am prepared to act otherwise; but, with your help, under God's providence, we shall succeed in our object of restraining the ill-conducted and checking the bad men.
>
> I have consulted about this matter of Heki's [sic] misconduct with several chiefs, and he has written me a letter of apology about the flag-staff, and has offered to put up another.[148] I shall now only require further that a certain number of guns be immediately given up to me, as atonement for the misconduct of Hone Heki.[149]

It was at this point in the hui that the Governor was rushed by several chiefs, who piled about 20 guns and many axes at his feet, assuring him that he might have more if he chose. Paratene Kekeao, the local Waimate chief, led the charge. FitzRoy then informed the hui that the Government was determined not to profit from Heke's error. The guns had no value to the Government per se, except as an acknowledgement and atonement. The Governor did not want their property, and convincing them of that was his great aim.

[145] ibid
[146] ibid, p 368
[147] ibid, pp 367-368
[148] This is a reference to the letter Heke sent to FitzRoy after the July Waimate hui, not to the letter received by FitzRoy at the end of this day
[149] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 368

He therefore returned the guns to them, expressing himself as satisfied at the act of making compensation. FitzRoy would trust them to ensure that no further disturbances took place, and that all should live together as friends and brothers. As a further agreement to their wishes, FitzRoy was going to send the troops away from the Bay of Islands. He warned them that their future good conduct was the only thing that could prevent him from bringing soldiers back to 'their country'.[150]

This wonderful symbolic exchange between the Governor and Nga Puhi has been variously interpreted. The *Southern Cross* editor, politician and critic SMD Martin, thought it a bold and wise measure of conciliation.[151] Bishop Selwyn wrote to FitzRoy:

> You have heard a good deal of ridicule cast upon the friendly meeting at the Waimate, and the farce, as it is called, of the surrender of the muskets, and the chivalrous act of restoring them to their owners: and the folly of attempting to govern savages by moral influence. I was present, Sir, as you know, on that occasion, and I am of a temperament not readily moved by mere outward show; but I am not ashamed to confess that the tears started into my eyes, when I heard the ready shout "Here they are", and saw that fine old man Broughton (the most consistent perhaps of our Waimate Chiefs) rush forward at the head of the party who laid more than the required number of muskets at your feet. You were there in the heart of the country, with no other attendants than Colonel Hulme, Captain Robertson, and your private Secretary: there was an opportunity for the enemy, supposed to be so treacherous, to strike a blow which would have at once deprived the Civil, Military, and Naval force of their leaders: the word might have gone forth from end to end of the Island, before the English Settlements could have recovered from their consternation, or prepared for their defence; everything, in fact, was in the power of the Native people: what was it then which tied the hands of the murderers of Marion, but that power of religion, which some men are hardy enough to deny; and that moral influence and dignity of the British Crown, which was never more set forth in the person of its representative than when you stood, with your two brother officers, alone and unguarded, in the midst of an armed multitude of warlike men. I am proud to share the ridicule or the blame with you, being convinced that the proceedings of that day confirmed in their allegiance to the British Crown all the chief men of the North, and at least a thousand of their followers.
>
> For you well remember the chiefs who were present on that occasion, Broughton, Macquarie, Thomas Walker, William King, Adam Clarke, William Hau, William Repa, Rewa, Moka, and others. Where are they now? I can assure you that I saw them all, (I think without one exception) encamped by the side of our forces at Kororareka, on the 4th November last. From the day of that meeting at the Waimate till now, they have been our faithful allies. Many of them have fought with success against the rebel chiefs (especially Thomas Walker and William Repa) and all are now encamped side by side with our forces: to carry on the war, if need be, or to assist in ratifying peace. Their words were: "If the Pakeha (white man) takes root here (ie at Kororareka) here we also take root; if he moves elsewhere, we also will move."
>
> Are we to believe that your conversation with Thomas Walker, and the other chiefs at the Waimate, - your appointment of him as guardian of the peace of his district, - your practical refutation of the suspicions against the British Government by your frank and unguarded visit to the Waimate, - and your conciliatory policy in not allowing the Soldiers to land, had no effect in securing the attachment of those Chiefs who have since shewn their fidelity in a manner which has removed all doubt, even from those who were before distrustful of the Native character? For the effect of this alliance I refer again to the Military authorities…[152]

Ultimately, Selwyn believed, the agreement reached at Waimate had kept the northern war 'a personal quarrel with one or two Chiefs' instead of a 'national question'. William Williams was similarly positive in his assessment of the hui. He thought the speeches of the chiefs 'very satisfactory': 'The false feeling which has been excited by the machination of designing Europeans & Americans will be removed & confidence

[150] ibid
[151] ibid, pp 366, 370-371
[152] GA Selwyn to R FitzRoy, November 1845, CO 209/49

once more established'.[153] Robert Burrows was not so sure, and noted of the surrendered muskets that 'their quality was not first rate'. Heke 'made sport of the pledge given by the handing up of a dozen or so rusty muskets', wondering how they could be an adequate equivalent.[154] If so, there is some irony in the chiefs getting them back again.

William Colenso felt that 'all things passed off very well; but it required little knowledge of the Native Character to discern much dissatisfaction in the speeches of the Native Chiefs made at this and other meetings'.[155] Like FitzRoy, they also appealed to the pre-1840 relationship with the Crown:

> They compassed the present and prospective state of things with the past, praised several of their old Missionaries and Mr. Busby, and spoke ill of the New Missionaries, the Bishop, and the Government, whom they always class together. They also spoke much against the continual removing of their Missionaries from them to other parts of the Island, of the alterations in the Liturgy, praying for the Queen, Queen Dowager, Prince Albert, Albert Prince of Wales, & others instead of the Native Chiefs, and of many other things both Ecclesiastical and Civil; which shew, at least, their great powers of discernment.[156]

Discontent, noted Colenso, was simmering away beneath the surface. There is no hint of it, however, in the official rendering of the speeches.

Robert Maunsell, the Waikato missionary, spoke after the Governor. He began with a waiata and warned of the consequences of driving Europeans away, perhaps pouring salt in the wound of Nga Puhi economic grievances unintentionally:

> [He] kept his audience in a roar of laughter. His principal topic was the benefit the Maoris derived from intercourse with the white people, thereby showing how impolitic it was to drive them away. "When I first came into this Country if a Ngapuhi came down to Waikato, all the people wd. gather round him to admire his clothes, "How well he is dressed"! "Just like a Pakeha"! But now I come among the Ngapuhi & find them as ragged as my own people [meaning his flock at Waikato]."[157]

After the missionaries, the chiefs addressed the Governor, 'each one before he began touching his hat or cap to the Gov. which salutation he courteously returned'. Only Tareha was not wearing a hat, so he waved a red handkerchief at the Governor.[158] Mohi Tawhai, an important Hokianga chief, noted that chiefs saw things differently from each other and there would always be conflict and problems. In future, the way to settle them was for the Governor to meet with the chiefs as at Waimate, 'and not with guns and soldiers'. Tawhai fully acknowledged FitzRoy as Governor. Waikato followed Tawhai, and declared to the Governor that he himself would take no account of Nga Puhi's economic grievances. He would ignore the prices of corn and potatoes, and those 'who measured their prosperity' by them, and would instead welcome the Governor. In doing so, he in fact stressed how much opposition to the Government arose from these concerns. Anaru pointed out next that there had always been problems between Maori and Pakeha but 'nothing very serious has ever taken place'. He urged the Governor not to be discouraged, and reminded him that Heke was a 'child of the late Hongi' and would therefore always be troublesome.[159]

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[153] W Williams, Journal, 2 September 1844, in F Porter (ed), *The Turanga Journals*, p 300
[154] R Burrows, *Extracts from a Diary*, p 7
[155] W Colenso to CMS, 19 November 1844, qMS-0491
[156] ibid
[157] W Cotton, Journal, 2 September 1844, qMS 0568
[158] ibid
[159] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 369

Tareha claimed that the Governor had heard a whole lot of lies, but his own concern was his Pakeha – they must and should stay, and that had to be a priority and an outcome from the hui. The rest of his speech, however, was so difficult to understand that it was not recorded.[160] FitzRoy later noted that the speeches were so dense with imagery and rich in irony that only the longest-resident of the missionaries could even begin to understand them.[161] Erurea Patuone followed Tareha. He welcomed the Governor as the 'great chief', something new to Nga Puhi. The Governor had come in peace, and Patuone was therefore 'all submission'. Heke's conduct towards the flagstaff was wrong and FitzRoy was clearly right. Patuone ended, however, by asking the great chief to return to Auckland and leave it to Nga Puhi to maintain peace in the district. Taonui agreed with earlier speakers that the only possible way to resolve this issue was for Nga Puhi to meet with each other and the Governor, and make a lasting peace. He had been angry ('my heart was dark') at the arrival of soldiers but was happy now that they were to be sent away again. He was determined that peace would be maintained, and spoke of possible precedents – Rete, whose offence had led to the payment of land as compensation (see chapter 5); and Maketu, who had paid for life with his own life. These were possibilities that he did not want to see the present situation reach.[162]

Tamati Waka Nene also urged the Governor to return to Auckland and take his soldiers with him, leaving it to the chiefs of Nga Puhi to sort matters out. He promised to protect the flagstaff:

> Governor, if that flag-staff is cut down again, we will fight for it; we will fight for it all of us; we are one tribe, and we will fight for the staff and for our Governor; I am sorry that it has occurred, but you may return the soldiers; return, Governor, we will take care of the flag; we, the old folks, are well-disposed, and will make the young folks so also.[163]

The Waimate chief, Kekeao, was concerned to maintain the status quo. Like Tareha, he did not want his Europeans to be forced to leave the Bay of Islands. He urged the Governor but also the Bishop and missionaries to ensure that the Europeans stayed. Kaitara from Pukenui, a mission chief, agreed that the Europeans must be safeguarded and protected – an injury done to them would be an injury done to Maori. King George (Wharerahi) also spoke in favour of peace, affirming that anything agreed at Waimate would be carried out at Kororareka, and the Europeans treated well. Wai of Te Rawhiti asserted that warfare should cease with the coming of the Governor, as chieftainship rested with both the Governor and the Bible.[164] Rewa, the leading chief of Te Rawhiti, dissented somewhat from this view. He argued that religion had caused divisions within Nga Puhi and that it was part of their internal quarrels. He also emphasized that he was concerned about the land as well as peace, and that the chiefs had lost mana through Heke's conduct. The Governor should return to Waikato and govern them, since Nga Puhi had behaved disgracefully. The Governor and Rewa's people should share their strength – ultimately, the Governor must remain in New Zealand.[165]

Ruhe informed the hui that he was, somewhat unexpectedly (to Heke as well as them), on the Governor's side, not Heke's. He reported Heke's views to the assembly, noting that the Governor's request for guns had been interpreted as a metaphor for land: 'the Ahuahu he thought was to be the butt-end of them, and the Kaikohe the barrels, the

[160] ibid
[161] R FitzRoy, *Remarks on New Zealand*, p 24
[162] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 369
[163] ibid
[164] ibid
[165] ibid, p 370

distance ten miles'. Ruhe also reported Heke's challenge to Waka: 'tell Waka I shall go and have a quarrel with him for the active part he has taken'.[166] The Governor himself had given way from his earlier insistence that Heke must meet with him and resolve matters in person. Burrows described Heke's messages as sometimes 'insulting' but Heke's 'friends', so it was maintained, had surrendered the guns on his behalf and promised to ensure that he would keep quiet from now on. In return, the Governor promised to send the soldiers away.[167]

The absence of Heke was a key factor in both the successes and failures of the hui. Bambridge reported that one 'young man rose and said that all their talking was of no use, and all they were doing was nothing because John Heke was not present'.[168] Missionaries, protectors, and Nga Puhi leaders had met with him in late August to try to persuade him to come to terms with the Governor. William Williams met Heke on 26 August and found him determined 'not to see the Governor unless it is agreed to take away the flagstaff'.[169] Prior agreement on this point was unlikely. On the other hand, Heke was not very impressed with the number of soldiers arrayed against him: 'It is said that John H lauged at the idea of 200 coming to oppose him and well he may.'[170]

But the most important overtures came from the protectors of Kororareka, who had signalled their opposition to his actions. Wharerahi, Rewa's elder brother and a very senior Nga Puhi rangatira, was known as 'a great peacemaker of this Bay'.[171] He was at Kaikohe for a whole week with Heke, 'endeavouring to reconcile him to the Governor's demand' for muskets as compensation.[172] Heke did not come to Waimate and restore the balance. He held a competing hakari nearby and erected a huge stage for the feast. The tallest pole 'has a rudely carved head on the top', reported William Cotton, 'which the natives called "Te Kawana", and in insult put a rope around its neck'.[173] But while the Governor's authority was challenged in this graphic way, this was out of sight of the assembly at Waimate. Bambridge believed that Wharerahi's persuasions were successful, and that 'it is most likely that John was induced to provide the guns etc from amongst his friends'.[174] When Heke arrived at Waimate some days later, Bambridge reported him as saying:

> He says he did not wish to treat the Governor with contempt in not coming to the meeting on Monday. On the contrary he sent a message to His Ex. requesting that he would remain at the Waimate 2 or 3 days longer, because he could not leave the party whom he had invited to feast with him at Kaikohe, lest they be offended.[175]

Heke's stance, if this was reported correctly, was disingenuous at best. His hakari was a competitive display of mana, as Johnson put it.[176] He must have known that the Governor would not wait around for an indeterminate number of days for Heke to show up. The likeliest explanation is that Heke wanted to avoid any unnecessary offence to his fellow chiefs (except, it seems, for Nene), and used Ruhe as his representative at the hui, rather than those who rushed forward with the utu.

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[166] ibid
[167] R Burrows to CMS, 4 September 1844, Micro-MS-Coll-04-44, CN/08(b)
[168] W Bambridge, Journal, vol 3, 2 September 1844, MS Copy Micro 0501
[169] ibid, 26 August 1844
[170] ibid, 15 August 1844
[171] W Cotton, Journal, 26 July 1844, qMS 0567
[172] W Bambridge, Journal, 2 September 1844, MS Copy Micro 0501
[173] W Cotton, Journal, 24 October 1844, qMS 0568
[174] W Bambridge, Journal, 2 September 1844, MS Copy Micro 0501
[175] ibid, 6 September 1844
[176] R Johnson, 'Ko te Pu o te Pakeha', p 27

In any case, the second day of the Waimate hui was in some ways more important then the first. After the public hui on 2 September, FitzRoy met privately with the leading chiefs for discussion of their particular grievances. Unfortunately, detailed minutes were not kept. The fullest account comes from the journal of William Cotton, the Bishop's chaplain:

> After chapel the Gov had his talk with the Chiefs in the Native Teachers School. Wi Hau was the principal speaker, being charged, as it were, with all the native causes of complaint. 1st, with regard to the Flag, he will give the Chiefs a flag for themselves. An English Ensign with the motto Hoa Tiaki o Nui Tireni – Allied Guardians of New Zealand. This seems to please them much, and is, Colonel Hulme says, in accordance with English Policy towards the native princes of India. 2nd. The land which has been sold to Pakehas, or rather that portion of it which is over and above the quantity granted to each claimant according to the established scale, is no longer taken possession of by Gov. but reverts to the original owners. This seems but just. I never could understand the justice of the old way of proceeding. Several questions were then asked by the Hokianga natives concerning the price of wheat and pigs. They wanted the Gov. to fix a certain price for corn, viz. 7 shillings a bushel. This was he told them impossible. A thing is only worth what it will fetch. Tho in their present state it is very difficult to make the Maoris understand the first principles of Political Economy. They think they are cheated because they do not get the same price for these things as they did some years ago.[177]

The report in the *Southern Cross* stated:

> …his Excellency appointed an hour the following day to meet with some of the chiefs, who were anxious to obtain information on the subject of their lands, such as the right of selling to Europeans, and the decision as to who should obtain the surplus lands of the claimants. A meeting accordingly took place early next day, when all these matters were freely and amicably discussed, and settled to the entire satisfaction of the natives.[178]

The Governor, in reporting the hui and his resolution of matters with Nga Puhi, did not mention his promise about surplus lands to the Colonial Office. He informed Governor Gipps, to whom the troops could now be returned, that Nga Puhi had given up the number of guns and tomahawks he asked for, and made assurances of their support, 'good feeling and attachment to the British Government and people'. The Governor considered this a sufficient guarantee to withdraw the troops. He noted that the root of Maori discontent lay in disaffected Pakeha, 'the land question', and the customs. Although he informed Gipps of his intention to abolish the customs, he did not explain what he meant by the land question.[179] George Clarke junior, a supporter of the legitimacy of the missionary purchases, later wrote that FitzRoy must have been mistaken in referring to 'the land question'. He argued that land issues were only relevant with the New Zealand Company in the south and were not a hot issue at this time in the north.[180] While this reflected the Clarke family's understanding of the Old Land Claims, it did not reflect the reality on the ground, as FitzRoy had discovered.

In October, the Governor wrote to Lord Stanley about the surplus lands issue. He described how there were bona fide settlers whose claims 'seemed large on paper', but involved a valid alienation of just a few hundred or thousand acres. These people had been harmed by the failure to give them grants over the past three years. The Maori who had 'sold' to them became irate about the settlers' failure to get anything, and suspicious of the Crown's intentions. The Crown's interference in the arrangements between Waikato tribes and Fairburn had nearly caused a war. The Government's object in all of

[177] W Cotton, Journal, 3 September 1844, qMS 0568
[178] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 370
[179] R FitzRoy to Gipps, 4 September 1844, GBPP vol 4, p 311
[180] G Clarke, *Notes on Early Life in New Zealand*, p 69

this was to take as much land as possible from the old settlers, with a view to it 'not reverting to their original owners', but being sold by the Crown. He did not mention his promise to Nga Puhi that he would return this land to them as the original owners. Instead, he merely noted that it was simply too dangerous for the Crown to try to sell the surplus lands:

> The natives would never have allowed it to take effect; and the attempt to do so would have injured the character of the Queen's Government very seriously, if not irretrievably; so tenacious are the natives of what they consider to be strict justice. As yet it is quite impossible to make them comprehend our strictly legal view of such cases.[181]

Not only did FitzRoy not report his promise, he left the issue in abeyance. He made no attempt to take, define, or sell the surplus lands. Instead, as noted above in chapter 4, he left the Crown Grants to mature on the ground, and left the question of the surplus to be decided later.

FitzRoy's failure to carry out or even report his promise was a critical one for Nga Puhi. Is there sufficient evidence that he in fact made a promise? William Cotton's record of the hui states specifically that the Governor promised that any land in excess of the 'established scale' would be returned to Nga Puhi as the original owners. Pakeha would still get their grants.[182] One could even interpret this as an agreement for the Governor to stop (or reverse) his grants to people like Williams, which had been made well in excess of the established scale. The report in the *Southern Cross* states that the question of 'who should obtain the surplus lands of the claimants' was 'settled to the entire satisfaction of the natives'.[183] Although it does not specify the promise made, the general point must have been clear to anyone at the Colonial Office or in Parliament who read this report (which was sent home by the Governor and printed in the Parliamentary Papers).

In addition, we know that FitzRoy had publicly replied to an address from the Auckland settlers in 1843 that the Crown would not keep the surplus land. We also have the *Southern Cross* report and SMD Martin's account that FitzRoy, at the same time, promised Maori that he would return the surplus lands to them.[184] This adds a great deal of weight to the likelihood that FitzRoy did in fact make the same promise to Nga Puhi in 1844, as reported by Cotton and implied by the report in the *Southern Cross*. Armstrong and Stirling thought so, in their report on Muriwhenua surplus lands for the Crown, although they did not have Cotton's account to supplement that of the *Southern Cross*. They also accepted the strong evidence that FitzRoy had on other occasions publicly stated, including to Maori, that the Crown would return the surplus land to Maori.[185]

So why did FitzRoy not report his promise to the Colonial Office? One can only speculate. He had already disobeyed his instructions in so many ways, by issuing debentures, waiving pre-emption, failing to set up a militia, and now abolishing the custom duties prior to getting approval. He was also dropping the waiver fee to a penny an acre, which (whatever other effects it might have) was guaranteed to reduce the Crown's revenue. He was about to try a risky direct property tax. He had made concessions to Nga Puhi – some might think too many. He was trying to govern amidst a storm of criticism. The Company and its settlers hated him, and he had just overturned Spain's award in Taranaki. All of these were good reasons for not informing the British Government that he intended to divest the Crown of yet another source of income – the

[181] R FitzRoy to Stanley, 15 October 1844, GBPP vol 4, p 409
[182] W Cotton, Journal, 3 September 1844, qMS 0568
[183] 'Extracts from *The Southern Cross* of 7 September 1844', GBPP vol 4, p 370
[184] see above, section 1.3
[185] D Armstrong & B Stirling, *Surplus Lands, Policy and Practice, 1840-1950*, Wai 45 J2, pp 7-18

sale of the surplus lands. Instead, he stalled matters and reported that, no matter what should be the case legally, the Crown had not and could not sell it *yet*. FitzRoy thus postponed the trouble.

It should be noted, however, that FitzRoy's instructions allowed him some leeway on the question of surplus land. He had asked the Colonial Office about it in 1843, before taking up his governorship, suggesting that justice required the return of surplus land to Maori. The Colonial Office disagreed in principle, but gave him considerable scope to return land to Maori as he saw fit:

> But in reducing any such general principle to practice, not only the difficulties you yourself suggest, but others not now distinctly perceptible, will probably arise. Especially, it may happen that the natives may be found in possession of some such lands; or may be prompted by feelings entitled to respect, earnestly to solicit the resumption of them. In any such contingency it will be your duty (I am well aware how much it would be your inclination) to deal with the original proprietors with the utmost possible tenderness, and even to humour their wishes, so far as it can be done compatibly with the other and higher interests over which your office will require you to watch.[186]

A blanket promise of returning all surplus land was not contemplated by Stanley, but its return on a fairly significant scale could have happened under these instructions. FitzRoy's hands were not completely tied by the Colonial Office. His primary motivation in not keeping or reporting his promise of 3 September 1844, I suspect, lies in his view of the Old Land Claims, as described above in chapter 4. He did not want to define them on the ground. For a start, he had too few surveyors, but ultimately he believed that his grants needed time to evolve into exclusive property rights. Time had to be allowed for each grantee to 'make his way by degrees' and turn his or her property into a 'willing and permanent cession'. Only after that could the surplus (if any) be defined.[187] Ultimately, therefore, FitzRoy opted to protect the settlers' interests and failed to keep his promise to Nga Puhi.

This failure lay in the future. At the time, the Waimate hui seemed a successful renegotiating of the alliance between Maori and the Crown. Mutual promises and regard had been exchanged, and satisfaction made for past wrongs. The Governor left Waimate 'highly pleased' at the outcome:

> Besides a great load is off his mind now that the John Heke business is like to be well settled. Everyone remarked a complete change in his countenance after the meeting. It may seem strange to European lawyers that payment for an offence should have been accepted from other than the offending party. But it is quite in accordance with native custom, and will do more, it is thought, than anything else could have done towards lessening his evil influence. Whenever he is disposed to be troublesome, the chiefs will say "We saved your life, Heke, by paying this utu for you." And indeed it was the only way of getting out of the difficulty. From the nature of the country it is impossible to apprehend the real offender, and had a single gun been fired by the soldiers no one could tell when the evil would have stopped.[188]

War had been averted by the following policy statements, promises, and agreements, which have been collated from the Governor's address and records of the korero at the hui:

- That the settlers should be encouraged to stay, under the protection of their chiefs;

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[186] Stanley to R FitzRoy, 26 June 1843, GBPP vol 2, Appendix 4, p 188
[187] See above, chapter 4, and also R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 624-626
[188] W Cotton, Journal, 3 September 1844, qMS 0568

- That the Governor would do his best to ensure Nga Puhi's prosperity, and as part of that, he would abolish the customs and restore trade at the Bay of Islands;
- That the missionaries should remain among Nga Puhi, with their schools and other work funded by the people of England;
- That the Governor would not land his soldiers but send them back to Auckland, in return for the agreement of Nga Puhi to remain at peace and to restrain trouble-makers (specifically Heke);
- That the Governor himself would return to Auckland and leave Nga Puhi to manage the situation;
- That the Government would not interfere in the operation of Maori law insofar as it applied to themselves alone;
- That the Governor wanted to act in concert with the principal chiefs, and would consult them on all important matters;
- That pre-emption was intended for the protection of Maori from land loss, and their lands were secure;
- That the Governor recognised the Nga Puhi chiefs as the 'Allied Guardians of New Zealand', and would give them their own flag with that as the motto;
- That the surplus lands would be returned to Nga Puhi;
- That compensation was made for Heke's actions by the Nga Puhi leaders, in atonement for his offence against the Crown, and that they would prevent its repetition.

2.2 Testing the Alliance, September 1844 to March 1845

The question next was whether the Governor and Nga Puhi would keep the promises they had made each other, and whether the reinvigorated alliance would stand the strain of further testing by Heke. Having refused to meet with the Governor, Heke visited Waimate a few days later with 250 of his followers, to find out what had happened. The Bishop invited him into his study for a 'quiet talk' but Heke refused, insisting that everyone hear the korero. He wanted to hear what the Governor had said in his speech, so Mr Puckey delivered a summary of it, based on notes prepared by the Bishop. The headings were:

1. The change of the Natives since the Residence of the Missionaries.
2. The call of the Natives for Mr Busby to keep the white people in order. Mr Busby gave them a flag.
3. Mr Busby's flag could not protect them because [of] France, America, Russia & England.
4. The Queen of Tahiti's application to England for protection refused. The consequences of it.
5. Protection granted to New Zealand. The meaning of the flag. Sorrow at cutting down of flag. Anger against Pakeha.
6. He had named ten guns as a payment which were given up and returned by him.
7. He had made the port free in order that the ships might come in to trade as before.
8. He would take away the soldiers and trust to the chiefs for keeping the peace.
9. That he would hear all the Natives had to say.[189]

Heke was convinced that they were not telling him all that the Governor had said. Selwyn maintained that the speech was shorter because the original had taken extra time for translation. Importantly, Cotton's brief account in his journal does not record any mention of surplus land. Heke was 'quiet' in his manner but 'kept harping on all the old

[189] ibid, 7 September 1844

grievances'. Ultimately, however, he was willing to settle matters on the basis of a public display which recognised the mana of himself and the Governor, and their absolute equality: 'He said he wanted the Governor to come with him & take down the present flagstaff, and then erect two, side by side, one for the English, and one for the Maori flag.' Several 'furious old Maori chiefs' spoke against Heke, but nothing was resolved. Heke and his people remained firm.[190] Heke's offer of joining the Governor to put up flags was a little hollow, given that the Governor had just been there and Heke had refused to see him, nor to face the Nga Puhi leadership at their hui. He had been pressured into agreeing to a compromise consensus at the last Waimate hui, and does not seem to have been willing to risk that a second time.

The agreement reached at Waimate in September 1844 was tested by Heke and later by Kawiti over the next six months. The Governor had returned to Auckland, and sent his army back to New South Wales (as he had been ordered to do, the moment it could be spared). Protector Kemp and Police Magistrate Beckham remained at the Bay of Islands as the face of the Government. They worked on the ground with the missionaries to try to maintain Nga Puhi belief in the Treaty and the Crown. As noted above, Selwyn argued that Waka's alliance with the Crown was negotiated at Waimate and remained firm from that point. Others, such as the Hokianga chief Taonui and the Waimate chief Kekeao, were also consistent in their support for the Crown after September 1844. Also important was FitzRoy's concession to their authority; it was for them to decide when and how to resolve the situation of Heke. Taonui made these points, and emphasised his own choice first, the agreement with the Governor second, in explaining it to Grey:

> I got up to oppose the bad people, not because I was asked to do so, but from the strength of my own thoughts and feelings; but I am wrong, perhaps, in saying that it was my own thoughts, for now I remember Governor FitzRoy asked me at Waimate to put down evil; this was the beginning of the disturbances…When I did get up to fight Heke, it was not because I was directly asked to do so [fight] by Governor FitzRoy, but because we said to him that we would assist in putting down evil.[191]

Colenso, on the other hand, noted the discontent and suspicion under the surface at Waimate. Doubts and fears persisted alongside a commitment to support the Governor. Nor should one underestimate the severity of the dilemma facing Nga Puhi. When Heke was joined by Kawiti, there were two leading chiefs acting in such a way as to endanger the Nga Puhi economy and the presence of the Europeans on whom it now depended. A confrontation with the Government, in which the rangatira and tribes of Nga Puhi had to take sides, appeared likely. Kin relationships and old enmities complicated the choices people had to make. Some leaders genuinely did not know what to do when faced with this conundrum. Waka put this point to Selwyn at Waimate in July 1844. The Bishop's response epitomised the choice facing the Nga Puhi leadership:

> …from the first, Thomas Walker used his endeavours to bring Heke to reason. On the same occasion [the hui of 18-19 July] Walker had a conversation with me, which he reminded me of a year afterwards in Colonel Despard's camp at Kororareka, referring to an expression used by me, that if my child in obstinacy or play, were to take a torch to burn down the house, I should not look idly on, but rise and prevent him.[192]

This was a fair approximation of the dilemma which the older rangatira felt when faced with Heke's actions, which seemed about to destroy the relationships with settlers and the

[190] ibid
[191] Governor Grey's address & chiefs' replies, 28 November 1845, Encl in no 10, GBPP vol 5, p 355
[192] GA Selwyn to R FitzRoy, November 1845, CO209/49

Crown that they had worked hard to build up and preserve. The entrance of Kawiti, one of the 'old men' and the principal chief of Ngati Hine, on Heke's side must have caused Waka and his allies consternation. The issues, and the choosing of sides, were greatly complicated by that significant development.

The Government's representatives in the north were weakened by the removal of Bishop Selwyn and his clergy to Auckland in October 1844. This was balanced by the return of Henry Williams from the East Coast, where he had been filling in for his brother William. The senior Paihia missionary had been one of the primary architects of the Treaty and the Nga Puhi/Crown alliance. He played a crucial role from September to March in advocating for the Treaty and the alliance, and waging a war of words with Heke for the minds and hearts of Nga Puhi. Williams was ably assisted by Robert Burrows, Richard Davis, and other northern missionaries who attended coastal and inland hui. Heke's messengers were constantly at work throughout the region, from Muriwhenua to Whangarei, trying to get support. Heke himself was 'almost constantly on the move with a small party of his followers'. The missionaries were just as active in trying to stop people from joining him.[193] Without their work and support, the Governor's Waimate agreement might well have foundered during these months of testing.

Williams noted in 1847:

> On my return from Turanga on the 16th of September 1844 I found the Tribes around under considerable excitement without exception. The Treaty of Waitangi having been declared as the origin of all the existing mischief by which the Chiefs had given up their Rank, Rights, and Privileges as Chiefs, with their lands and all their possessions. To meet this growing evil, I had four hundred copies of the Waitangi Treaty struck off & distributed and for many days was engaged in explaining the same, shewing to the Chiefs that the Treaty was indeed their "Magna Charta" whereby their Lands, their Rights and Privileges were reserved for them. By these means & by these alone were the fears of Waka and all the other Chiefs allayed. They admitted that the Treaty was Good.[194]

The work of the Government's missionary apologists was complicated by a confrontation between Beckham and Hori Kingi Tahua in October 1844. A small party of police raided a house near the Kawakawa pa in the middle of the night, to arrest a European for theft. His Maori wife, the sister of Hori Kingi, received a slight cut on her finger during the scuffle. The Kawakawa people demanded a horse as compensation. Hori Kingi went to Kororareka twice to see the Police Magistrate, but each time Beckham refused compensation. He did so on the advice of Protector Kemp, who thought the injury both slight and accidental, and that compensation was not therefore required under Maori custom. Williams disagreed, but in any case Kingi arranged a taua muru and took 8 horses from a local settler, 'assigning as the reason that the woman had been ill-used by a "Pakeha" (European), and consequently they had come to the first they met with.'[195]

After further negotiations, the Kawakawa people agreed to return the horses to Mr Wright when the Government paid them compensation. Police Magistrate Beckham handed over a horse, but Hori Kingi still refused to return Wright's horses after that was done. Another grievance, about an Old Land Claim, was also at work:

> Hori Kingi also prefers a claim to a Wahi Tapu at Russell ("Okiato") for which he demanded another Horse, and declining to accede to his request the same having been paid for by Mr

[193] R Burrows, *Extracts from a Diary*, p 8
[194] H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[195] H Williams to G Clarke, Paihia, 4 October 1844, GBPP vol 4, p 414

> Clendon some time since, the Natives have in consequence retained all the Horses belong to Mr Wright.[196]

Williams tried to negotiate the return of the horses but was unsuccessful. The dispute brought the senior Kawakawa chief, Kawiti, into the crisis. He replied nothing at all to Williams' arguments, and instead agreed that the young men should take the horses upriver, into the interior.[197]

The Chief Protector, George Clarke, came up from Auckland to negotiate a settlement. He secured the return of six of Wright's horses, and the promise of the other two in return for a colt and tobacco, as payment for the original offence against Kingi's sister. Kawiti disavowed the actions of the young men involved and claimed to have no influence over them. Kingi himself pointed out that he had done the correct thing by seeking compensation from the magistrate. He acted throughout according to Maori custom, and stated that if his sister had been killed, he would have required a Pakeha life in payment. When the magistrate failed to act properly, Kingi felt himself entitled to retaliate. Clarke found it difficult to refute this position. He urged FitzRoy that the solution was for the Government to act quickly to redress Maori complaints; 'a deference to native customs paid, together with kind treatment', would do much to restore confidence in the Crown. Clarke reminded FitzRoy that promises of protection and prosperity had been made by Hobson and had not so far been fulfilled.[198] Williams commented that Hori Kingi Tahua had been a quiet man before this incident.[199] Now, he became one of the leading younger chiefs in opposition to the Crown. This incident unsettled the Kawakawa people and contributed to their alliance with Heke in early 1845.

Heke himself now wrote to the Governor, to explain why he had not attended the Waimate hui, and to offer an alternative solution to the problems between them. He told FitzRoy that the situation had not in fact been settled between the two of them, and that the Governor must come and settle it with Heke in person. Unless that happened, it would remain a live issue and 'we shall all remain in doubt without confidence'. Nga Puhi 'are calling out to have this evil buried'. Heke did not attend the hui at Waimate 'for fear of a collision (or quarrel) with the natives'. Nonetheless, Nga Puhi wanted the matter dealt with, and so did the Governor – and so did Heke. The way matters had been left, if the Governor did not come and resolve it, then it would end in fighting between Maori in the north. Heke clearly believed, therefore, that the chiefs would keep their promise to FitzRoy, and, since he would not back down, the result would be a tribal war. This could still be averted, however, if FitzRoy came to meet with him and 'the affair is amicably adjusted'. If the Governor thus showed his love to Heke's people, they would show love and peace to him in return. Heke invited FitzRoy to come and meet with him at Waimate, to be followed by their going together to Kororareka to end the matter. Although he did not say how it would be resolved at Kororareka, this must have been a reference to his September proposal of the two of them putting up flagstaffs side by side to fly the Maori flag and the Queen's flag.[200]

Clarke sent Heke's letter to FitzRoy, who replied on 5 October 1844. The Governor expressed himself happy to meet with Heke, but not for a 'few months'. He would come to the Bay of Islands in the summer, see Richard Davis and the chiefs of

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[196] HT Kemp to G Clarke, Russell, 4 October 1844, G30/6
[197] H Williams to G Clarke, Paihia, 4 October 1844, GBPP vol 4, p 414
[198] G Clarke to Colonial Secretary, 19 October 1844, GBPP vol 4, pp 415-416
[199] H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[200] H Heke to R FitzRoy, no date (late September or early October 1844), GBPP vol 4, pp 416-417. A Maori-language version of this letter (from G30/6) is reproduced as Document 8 in the Appendix.

Waimate, and meet with Heke then. When the two men got to know each other, Heke would come to trust the Governor and the 'kind intentions of the British Government'. Those kind intentions consisted of the Queen's promises of protection and justice. She had instituted pre-emption for their benefit. FitzRoy also referred to the surplus land issue, now claiming it was for the benefit of Maori. The Queen had instructed: 'Do not let the Europeans have large tracts of land; measure what they have already bought, and do not allow them to keep more than a reasonable quantity.' This measure was for the protection of Maori. 'What could be more kindly regulated for the New Zealanders?' asked FitzRoy. Although he did not state his promise to return the surplus land to Nga Puhi, the inference is unmistakable, and his promise would by then have been known to Heke.[201]

Most of the letter put FitzRoy's views on the flag. It was 'sacred' and Heke's attack on it had been a grave insult. The flag symbolised Maori inclusion in the great British nation, 'united as brothers and friends'. Many nations, with their own customs and languages, lived in security under the flag. Maori could have and keep their own flags but these would have no force against other nations: 'Your safety, your freedom, your preservation as a nation, depend upon your union, not only together, but with a powerful European nation, not only able to protect you, but willing to acknowledge and defend your rights.'[202]

At the same time, FitzRoy received a more 'obejctionable' letter which did not 'read so well as Heke's',[203] from the latter's ally, Hira Pure, a Te Uriohua chief. Hira informed the Governor that the matter was not settled, although he might think it was (from his Waimate hui). The Governor was an elder and the 'man appointed to put right all errors'. But he had acted wrongly. He should have held his Waimate meeting before re-erecting the flagstaff and sending for soldiers. Now, peace had to be restored by a meeting between the Governor and Heke, with the shaking of hands and discussion of the issues. FitzRoy should return to the Bay, take down the flagstaff, and then meet with Nga Puhi. The flag was 'equal to the taking of our country from us'. If the Governor disagreed that that was true, then he must come and prove the contrary. All could yet be resolved through this means, but Hira Pure ended his letter with a warning that there would be consequences if he did not come.[204]

FitzRoy replied to Hira, as he had to Heke, that he would meet them at Waimate in the summer.[205] The Governor did not explain his reasons for not meeting with Heke, but they are fairly obvious. He had just concluded an agreement with the Nga Puhi leadership that they would deal with the situation, and that he would remove himself and his troops back to Auckland. To return immediately for a separate meeting with Heke would have broken this agreement, with uncertain effect. Nor would FitzRoy ever have taken down the flagstaff himself, no matter what Heke wanted to put in its place. So the possibility of a peaceful settlement, with a personal agreement between FitzRoy and Heke, was remote. The Governor wanted the protectorate and officials to deal with this chief, but not to single him out for his own personal attention in the way requested by Heke. Nonetheless, the letters showed that Heke was still willing to accept the Governor and resolve matters with him at this time. As FitzRoy reported to Stanley, there had not yet been an 'open, unqualified denial of Her Majesty's sovereignty'. The Governor

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[201] R FitzRoy to H Heke, 5 October 1844, GBPP vol 4, p 417
[202] ibid
[203] R FitzRoy to Hira Pure, 5 October 1844, GBPP vol 4, p 418
[204] Hira Pure to R FitzRoy, no date (late September or early October, 1844), GBPP vol 4, p 418. The Maori-language version of this letter (from G30/6) is reproduced as Document 9 in the Appendix.
[205] R FitzRoy to Hira Pure, 5 October 1844, GBPP vol 4, p 418

requested warships and troops so that he could overawe the Queen's subjects, whether Maori or Pakeha, when required.[206]

In rejecting these requests from Heke and Hira Pure, FitzRoy made the crucial decision that would lead to war in March 1845. His Waimate hui ensured that he had committed allies in the Bay of Islands. His October rejection of Heke's overtures ensured that he also had enemies. The flagstaff remained as the Queen's rahui at the Bay. It was only a matter of time before Heke would attack it again, unless the Crown's Nga Puhi supporters could in some way prevent him, or the Governor agreed to Heke's request for a face-to-face meeting. The protectors and missionaries made it clear in the next few months that Heke could not be talked out of his resolve, either by them or by his fellow Nga Puhi chiefs. As Henry Williams put it in February 1845, Heke 'appears to me as haughty as ever and not to see his error'.[207]

Nga Puhi's internal dispute resolution mechanisms failed to bring Heke into line. Supporters of the Crown could threaten, argue, and cajole at hui, as the Waimate chiefs did on 3 March, for example, but Heke would not bow to their pressure.[208] The longer the situation was left unresolved, the greater the danger. The next step for Nga Puhi was traditionally to lead taua muru to punish or discipline the offender, which in this instance would clearly have led to war. Nene, however, faced the opposition of the Hokianga Wesleyan missionaries to this step.[209] Armed confrontation between Nga Puhi chiefs was not a desired outcome. FitzRoy later stated that he 'invariably refused' the Government's agreement to his supporters taking military action against Heke. He feared that if he agreed to their requests, it would result in a long and interminable war over which he would have no control, and which would undo the work of the missions.[210]

This meant that although the Governor had agreed to Nga Puhi sorting the matter out themselves, he also tied their hands. FitzRoy's fear of a long, interminable tribal war was unlikely to have come about. Nene told Bishop Selwyn that Nga Puhi could have sorted it out quickly, using their own institutions and peacemakers (especially the noted mediator, Wharerahi).[211] Conflict between these groups in the 1820s and 1830s had usually been settled quickly without much bloodshed. Utu, as for Hengi, was sought outside the district.[212] But FitzRoy refused to take the risk, for entirely admirable reasons. That being the case, however, he had in fact broken his agreement with Nga Puhi to allow them to resolve the situation in their own way. The only solution left was the one acceptable to Heke – for the Governor to meet with him and negotiate their respective spheres of authority. Three months followed the October exchange of letters, in which FitzRoy could have returned to the Bay and met with Heke (as well as Nene and his allies). Whether they could have reached a mutually satisfactory agreement is unknown, but it was at least possible. Nene and other chiefs could hardly have objected to a return visit from the Governor. FitzRoy's rejection of Heke's overture, just as much as Heke's persistence, was responsible for the northern war.

The protectors and missionaries manoeuvred with Heke during November and December 1844. Matters were pushed to a crisis in January 1845. In the early hours of 10 January, Heke and a small force crept up Maiki Hill and cut down the flagstaff for a second time. The only Pakeha around were the signalman and his son, who were woken

[206] R FitzRoy to Stanley, 19 October 1844, GBPP vol 4, p 412
[207] H Williams to R FitzRoy, 20 February 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[208] R Burrows, *Extracts from a Diary*, 3 March 1845, p 9
[209] ibid, 19 March 1845, p 14
[210] R FitzRoy, *Remarks on New Zealand*, p 47
[211] GA Selwyn to R FitzRoy, November 1845, CO209/49
[212] See above, chapter 2, sections 9.1 & 9.2

up by a barking dog. They found themselves locked in their house by a man holding a rope tied to the door. They could hear the sound of chopping through the window. Heke came and asked them to open the door, and 'shook hands with Deponent and told him that he had not come to hurt him; but only to cut the Flag Staff down'.[213] Heke and his people then left, the flagstaff chopped up and burnt.

This second attack on the flag took the Government by surprise. Beckham wrote to FitzRoy at once, informing him that Heke's people neither entered the town nor did any other damage. The flagstaff was the only victim – the reason, a 'general dislike to the British Government'. Heke's next step, according to rumour, would be to attack the Government's buildings, pulling down the jail and public offices.[214] He was prevented from doing so by the immediate occupation of the town by the 'friendly tribes at the Rawiti', who moved in to defend their Pakeha.[215] On 16 January, Heke landed on the beach with seven canoe loads of warriors to attack the Government buildings, but was deterred by the 200 or so of Rewa's people who were in occupation.[216]

In the meantime, the Governor sent his 30 available soldiers back to the Bay of Islands. He ordered Beckham to put the flagstaff back up immediately, to arm and drill the settlers, and to apprehend Heke if possible. Otherwise, FitzRoy would send for additional troops, and began preparations for economic sanctions.[217] Henry Williams advised against putting the flagstaff back up again but the Colonial Secretary insisted. It was guarded on alternate nights by the 30 soldiers and a force of Tamati Waka Nene's men. Williams noted that the main body of Rewa's people had come to defend the settlers, no one being sure of what Heke intended. These people remained in the town. Waka's men, however, kept the undertaking to FitzRoy at Waimate and defended the flagstaff on Maiki Hill. The Governor had offered a reward of £100 for Heke, and Waka's people boasted that they would put Heke in their pipes and smoke him (claim the reward and buy tobacco with it). Challenge having been given, Heke walked up Maiki Hill on his own on 19 January. One member of Waka's party pointed his gun at the chief, but Heke brushed it aside and cut down the temporary flagstaff while they stood aside and let him. When it came to a choice of actually laying hands on a rangatira in defence of the Pakeha rahui, they would not do so.[218]

This incident caused something of a crisis of confidence amongst all the supporters of the Government, both Maori and Pakeha. FitzRoy felt he had been betrayed, and that the chiefs had failed to keep their promises made to him at Waimate. As he later stated at a hui in May 1845:

> I have been reading over the account of a conference held last year at Waimate with the chiefs of that neighbourhood, on the occasion of Heke's first outrages; and I cannot help recollecting with great pain that the promises then made to me by the chiefs, to which I trusted entirely, were not fulfilled. I have, however, considered their good intentions and am quite sensible of them; but they have not exercised, and cannot exercise, sufficient authority over those who look to them as leaders; therefore, what am I now to trust to from them?[219]

Beckham, the missionaries, and the protectors were unsure how to proceed. Williams urged Beckham not to re-erect the flagstaff, and that the soldiers should make no hostile

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[213] Affidavit of James Tapper, 10 January 1845, IA 1, 1849/158, Part I
[214] T Beckham to R FitzRoy, 10 January 1844, GBPP vol 4, p 542
[215] T Beckham to R FitzRoy, 14 January 1844, GBPP vol 4, p 543
[216] T Beckham to R FitzRoy, 16 January 1844, GBPP vol 4, p 543
[217] R FitzRoy to T Beckham, 15 January 1845, GBPP vol 4, p 549
[218] T Buick, pp 48-50
[219] Minutes of Conference respecting the capture and liberation of the Chief Pomare, 17 May 1845, GBPP vol 5, p 266

display but remain as quiet as possible. 'You know not,' he wrote, 'under existing circumstances in whom to put your dependence'.[220] The Crown's Maori allies seemed suddenly unreliable, and Beckham asked them to return to their homes as soon as he got a small reinforcement of soldiers from the Governor.

Richard Davis took a pessimistic view. He wrote to the Chief Protector:

> Heke's party is strong – in fact, I do not know, but it consists of nearly the whole of Nga Puhi. Heke has done much mischief by instilling into the minds of the natives that the *mana* of the Island is invested in the Queen of England, and that they are thereby made thoroughly poor men and slaves. This, from the manner in which he has introduced it, has seriously affected the native mind, and many have been brought over to his way of thinking, although they do not stand so prominently forward in the cause. Had it not been for this feeling, or some of a similar nature, the last flagstaff would not have been cut down without bloodshed. The quiet removal of that flagstaff in the face of those who had engaged to protect it is, or ought to be to us, a sufficient indication as to what the mind of the natives is, and of the little reliance which can be placed on them. They (the hostile party) declare that they have no anger to the Queen of England – to the Governor; but seeing that they are a lost people – they and their children – for ever, they now wish to have undone what they ignorantly did, or to make an effort to save themselves and their children from ruin, or perish in the attempt. They say: "It is for the Governor to save or destroy us. If the flagstaff be again raised it will be a sufficient indication to us as to what the Governor's intention is – namely, our destruction. Should he permit the flagstaff to remain down we are friends again." But, "Listen!" said they, "We shall not deal with the flagstaff as we last did, by going in the night to cut it down, but what we do will be done in the light of day." Heretofore I have heard the natives boast, but there was no appearance of anything of the kind – all was solemn.[221]

Nene and the other 'friendly' chiefs convened a hui at nearby Paroa on 28 January, which continued until 200 Whangaroa people, led by Ururoa, arrived on 30 January.[222] The key Government apologist at this hui was Henry Williams. In his account, he met with Nene and Rewa the day before the hui, but they were 'little disposed to enter into conversation'. The mood at the hui the next day was 'sullen'. Waka Nene was angry that the Crown had placed him in an invidious position, and he shared the concerns and suspicions of many as to the Government's ultimate intentions. The purpose of the hui was to resolve how the tribes present would respond to Heke's latest challenge, which was to them as well as to the Governor. Ururoa wanted Nga Puhi to support Heke against the Crown. Suspicions about the Government were widespread. Waka himself referred to his anger over the 1841 proclamation about kauri timber cutting (long a dead issue), and his intended defiance of the Governor over it. Both Waka and Rewa observed 'that the evils which threatened them arose from their having signed the Treaty of Waitangi'.[223]

We only have Williams' account of this hui, published by his brother in defence against the charges of Grey and others. The fears of Davis cited above, and the impression that there was a mass desertion of the Crown in the final week of January, followed by an equally sudden re-conversion and pledging of support at Paroa, are exaggerated. Colenso pointed out that discontent and suspicion had been rife at the Waimate hui. These were a constant among chiefs of all persuasions, given their real concerns and the strength of their distrust. But they had committed themselves to an alliance, which they took seriously. All that had happened in late January was that some

[220] H Williams to T Beckham, 26 January 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[221] R Davis to G Clarke, cited in T Buick, p 51
[222] M Williams, Journal, 28-31 January, 1845, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, p 96
[223] W Williams, *Plain Facts Relative to the Late War in the Northern District of New Zealand*, Auckland, 1847, reproduced as an appendix in H Carleton, *The Life of Henry Williams*, vol 2, pp xxv-xxvi

young men had been surprised by Heke in the middle of the night. Without a senior chief present, and in face of Heke's courage and mana, they did not dare lay hands on him. This was hardly cause to suspect the entire body of the Crown's allies of deserting it. Other evidence shows a consistent line of support for the Crown from Waka and other chiefs. Selwyn, Burrows, and FitzRoy himself, noted how seriously Waka took his pledges at Waimate, and how consistently he tried to fulfil them.[224]

In any case, the crux of the hui was the Treaty of Waitangi and the intentions of the British Crown. As Williams reported to the Governor:

> Many of the chiefs had accused us of having betrayed them by inducing them to sign the Treaty, which obliged me to meet them with the Treaty to which I have not found one person who could raise an objection. Heke of course had taken advantage of their ignorance of the terms of the Treaty and had declared himself as the Deliverer of his Country which was lost in consequence of their having signed the Treaty at Waitangi in 1840. I am happy to say that he has now lost the main force of his influence in consequence of the explanation which has been given and many Tribes which had declared in his favour now express their determination to remain neutral and say that should Heke again attack the Flagstaff he will deserve what he may meet with, this being strictly in accordance with the ritenga Maori (Native custom) tho in this no dependence can be placed. Your Excellency will see therefore that the Treaty has been the only weapon we have been enabled to use in the subjugation of this excited feeling under which even the most friendly of the Chiefs have been during the present period.[225]

The hui ended with pledges of support for the Crown.[226] Over and over, Williams had assured Nga Puhi that the Treaty was a 'sacred compact' between the British Government and the chiefs, and that it was 'impossible that the Queen or the Governor could admit of any deceit towards them'. His efforts to explain the Treaty and its terms in detail had confirmed a body of support for the Crown, in the sense of a large number of Maori who said in February 1845 that they would not support Heke. But nor, he informed Bishop Selwyn, would they act against him.[227] Part of the campaign waged by the Government and its missionary allies in early 1845 was to ensure the neutrality of key tribes. Their active help against their close relative, Heke, was beyond what the Crown could expect.

Williams noted that his only argument at the hui was the Treaty. He read it 'clause by clause, requesting the chiefs to notice any expression which favoured the assertion that their interests had been betrayed by the Government, or that there was any design to deprive them of their just rights'.[228] In 1847, he described to Bishop Selwyn how he had interpreted the Treaty at Waitangi in 1840, and afterward on other occasions (like the Paroa hui) where he went through it 'clause by clause':

> Your Lordship has requested information in writing of what I explained to the natives, and how they understood it. I confined myself solely to the tenor of the [Maori version] of the treaty.
> That the Queen had kind wishes towards the chiefs and people of New Zealand,
> And was desirous to protect them in their rights as chiefs, and rights of property,
> And that the Queen was desirous that a lasting peace and good understanding should be preserved with them.
> That the Queen had thought it desirable to send a Chief as a regulator of affairs with the natives of New Zealand.

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[224] See GA Selwyn to R FitzRoy, November 1845, CO209/49; R Burrows, *Extracts from a Diary*, 19 March 1845, p 14; & R FitzRoy, *Remarks on New Zealand*, p 47
[225] H Williams to R FitzRoy, 20 February 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[226] W Williams, *Plain Facts*, p xxvi
[227] H Williams to GA Selwyn, 20 February 1845, Micro-MS-Coll-04-61, CN/O 94(b)
[228] W Williams, *Plain Facts*, p xxvi

> That the native chiefs should admit the Government of the Queen throughout the country, from the circumstance that numbers of her subjects are residing in the country, and are coming hither from Europe and New South Wales.
> That the Queen is desirous to establish a settled government, to prevent evil occuring to the natives and Europeans who are now residing in New Zealand without law.
> That the Queen therefore proposes to the chiefs these following articles:
> Firstly, - The Chiefs shall surrender to the Queen for ever the Government of the country, for the preservation of order and peace.
> Secondly, - the Queen of England confirms and guarantees to the chiefs and tribes, and to each individual native, their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree.
> The chiefs wishing to sell any portion of their lands, shall give to the Queen the right of pre-emption of their lands.
> Thirdly, - That the Queen, in consideration of the above, will protect the natives of New Zealand, and will impart to them all the rights and privileges of British subjects.[229]

It was this kind of explanation of the Treaty, its provisions, and its intent, which Williams used to secure continued Nga Puhi support for the Crown. He clearly took his stand on the Maori version of the Treaty (Te Tiriti). As a result, doubters like Ururoa told Williams that their 'fears respecting the Treaty were now removed, and that he [Ururoa] no longer thought it an instrument for seizing the country for the Queen'. The 200 Whangaroa Maori returned home peacefully, and Ururoa promised to meet Heke and try to dissuade him from further action.[230] That meeting took place in mid-February but Ururoa was unsuccessful. Williams had no better luck. He met with Heke on 5 February and informed him of the results of the Paroa hui, and in particular of Ururoa's change of heart. Heke responded that the Treaty 'was all soap'. 'It is, said he, "very smooth and oily, but treachery is hidden under it."'[231]

Nor were the Whangaroa people entirely convinced. Later in February, George Clarke Junior noted that they were still strongly in support of Heke.[232] Towards the end of the year, the Chief Protector described Ururoa as neutral.[233] This reflects the complexities of motivation and allegiance at the Bay of Islands. Ururoa, as the primary mover of the war that led to the cession of Kororareka, was one of its main chiefs and protectors. He had placed Pakeha on the beach and maintained them there from his distant (main) residence at Whangaroa. He came to the Bay with about 150 of his people to support Heke against Nene, but left again when the troops arrived 'to seek payment for Kororareka'.[234] He saw the two wars as quite separate and was willing to fight Nene but not the Governor, believing that Heke owed compensation for the destruction of the town.

The situation was also complicated by the publication of the 1844 House of Commons Committee's report at the Bay of Islands. This had the effect of undoing some of the work done by Clarke, Williams, and FitzRoy himself, in securing allies for the Crown, as noted above in section 1.3. Williams urged FitzRoy to come to the Bay of Islands and meet with the Crown's allies.[235] Richard Davis requested the Governor to

[229] H Williams to GA Selwyn, Paihia, 12 July 1847, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, pp 156-157; this quote has already been cited above in chapter 6, but is so critical to the question of Nga Puhi support for the Crown in 1845, that it is reproduced in full here
[230] W Williams, *Plain Facts*, p xxvi
[231] ibid, pp xxvi-xxvii
[232] G Clarke Junior to G Clarke Senior, 18 February 1845, GBPP vol 4, p 550
[233] Chief Protector's List of Principal Chiefs in the Northern District, G30/8
[234] R Burrows, 'The War in the North 1845', c. 1860, MS Papers 0948
[235] H Williams to R FitzRoy, 20 February 1845, Micro-MS-Coll-04-61, CN/O 94(b)

meet with Heke – as indeed he had promised to do in his letter of October 1844.[236] The Governor did neither. He sent George Clarke Junior, one of the protectors, to assess the degree of support for the Crown on the ground. His report was not particularly encouraging. So far, Heke had not personally committed any acts of aggression against individual settlers, though he was either unable or unwilling to restrain his followers. Out-settlers were being robbed or plundered, often when they were away and their houses empty. Other chiefs had remonstrated with Heke, to which he replied that 'they are all the slaves of British tyranny; that his object is to restore their former freedom, and to remove every mark of British authority'. Heke shared the concern of the Crown's supporters that the settlers should not be driven out of the area. He 'assured the natives generally, that he would not molest the white settlers, except in retaliation for any hostile measures the Government might adopt towards himself or his friends'.[237]

The principal chiefs who had publicly opposed Heke, and committed themselves in support of the Crown, were: Tamati Waka Nene; Wi Hau, Paratene Kekeao; Tamati Pukututu, and Repa. The list of open opponents was also short: Heke, Kawiti, Hira Pure, Haurangi, Ruku, Marupo, and Tawai. Tribal communities were divided, some sections supporting Heke, and others the Crown, or remaining neutral. In particular, the powerful chiefs Pomare, Tareha, and Ruhe had not made a single public statement of their views. Clarke described them as 'wavering'. One of the problems for the Crown, as Clarke saw it, was that young people from every tribe had joined Heke. This was a serious dilemma for their communities, which would have to try to save and protect their young men. The majority of the district, he thought, would actively oppose an attempt to subdue Heke by force, mainly for that reason.[238]

In late February, Heke and Kawiti made a crucial alliance that alarmed the Government. Also, 200 Maori from Mangamuka in Hokianga joined Heke in the Bay of Islands.[239] The first approach came from Heke, who went to Te Wahapu to meet with Kawiti. He brought with him 'te ngakau', the traditional gift representing a request for help to settle a tribal grievance. Tawai Kawiti describes how his ancestor was presented with a mere smeared with human excrement:

> No explanation was needed, the meaning was obvious. Someone had defiled the mana of Ngapuhi and such a challenge had to be met![240]

But Heke and Kawiti were leaders of the northern and southern alliances respectively, and that did not make for an easy combination. Their hui lasted all night, and its focus was on whakapapa. The lines of descent from Rahiri and Hineamaru were recited, to find the basis for an alliance of Ngati Hine, Te Kapotai and others with Heke's Ngati Tautahi. Tawai Kawiti described the process:

> There was an all night gathering of leaders. Once more the 'tatai' or line of descent from Rahiri and Hineamaru was traced and described by the tohungas. The genealogical net when completed would cover the whole of the tribal district. Rahiri and Hineamaru, Ngapuhi ancestors, would bring a number of subtribes together: Ngatihine, Ngatitautahi, Te Kapotai, Ngatimaru, Te Waiariki and many others. Once these knew that the cause was right, the choice of partnership was backed by tradition.[241]

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[236] T Buick, p 60
[237] G Clarke Junior to G Clarke Senior, 18 February 1845, GBPP vol 4, p 550
[238] ibid
[239] T Beckham to R FitzRoy, 27 February 1845, GBPP vol 4, p 552
[240] T Kawiti, 'Heke's War in the North', *Te Ao Hou: the New World*, no 16, October 1956, pp 38-39
[241] ibid, p 39

According to Marianne Williams' account, Heke and Kawiti's goals were too divergent to allow of easy cooperation, and Heke did not in fact commit himself to the alliance until as late as 7 March.[242] In any case, Kawiti's people began stripping settlers near Kororareka early in that month. Pomare did nothing to stop them, although he had a pa nearby.[243] FitzRoy decided in early March to proceed to economic sanctions – only friendly chiefs with passports would be allowed to trade with settlers and ships at the Bay of Islands.[244] It was too late to make any difference, even if it would have worked. Heke was already on his way to Kororareka. On 3 March he stopped at the Waimate mission station with 150 of his followers. About 400 Waimate Maori gathered to meet him there. Some 'long speeches were made, and some strong language used on both sides'. Paratene Kekeao, Ruhe and others warned Heke that if he 'did mischief' at the Bay, they would join Waka Nene in opposing his return inland. But Heke continued on as planned.[245]

Although he does not mention it in his published diary, Burrows' manuscript account of this hui states that Tamati Waka Nene himself was present at this Waimate hui. Waka reminded Heke of his pledge to the Governor at the September hui, and his determination to keep his word:

> Here he was met by Walker and several other Chiefs, who reminded him of their pledge to the Governor & warned him that if he again attempted the flag staff he would find them true to their promise. His reply to them was quiet & only sarcastic. He taunted them with [illegible] with Government and allowing them to take from the the land of their fathers, & the country which God had given them, for the sake of a little present gain. I have been told, he continued, that the snake at Maiki has grown to a Monster and has many mouths, & I am desirous therefore to see this strange sight.[246]

But Nene lacked either the force or the support to try to stop Heke *before* carrying out his obvious intent to take down the flagstaff. The tools of korero, relationship links, and persuasion remained the ones employed against Heke. On 4 March 1845, Burrows and Williams tried to stop him near Waitangi:

> Here Archdeacon Williams opened the conversation by pointing out to him the trouble he was bringing upon himself and his people by his foolish proceeding. He was very civil for some time, and said he had no wish to injure either sailor, soldier, or any of the settlers; but the third flagstaff had been erected without any reference to him; moreover that £100 had been offered by the Governor for his apprehension (he presumed, dead or alive). He did not attempt to hide from us that if he had a chance he would attempt the destruction of the third flagstaff. Heke did not allow this opportunity to pass without alluding to the Treaty of Waitangi, and of having been deceived by the Archdeacon and others in inducing *so many* chiefs to sign it, when they must have known that they (the chiefs) were signing away their lands, etc. Heke, however, had his match here; for with that peculiar look which the Archdeacon knew how to give over his spectacles, accompanied by a stern sort of half-smile, he replied, "Your salvation is in that treaty;" and then he stood up, and in a speech addressed to all present he related to them the circumstances which led to the missionaries then in the country taking part in obtaining signatures to the treaty, (1) to prevent another nation coming in; (2) the anarchy and confusion which was going on and increasing among the settlers and natives; (3) the doings of the New Zealand Company in the South, who claimed to have purchased so many degrees of territory where they had never seen either the land or the owners thereof.[247]

[242] M Williams, Journal, 7 March 1845, reproduced in H Carleton, *The Life of Henry Williams*, vol 2, p 97
[243] Enclosures in R FitzRoy to Stanley, 26 March 1845, GBPP vol 4, pp 550-556
[244] R FitzRoy to T Beckham, 6 March 1845, GBPP vol 4, p 555
[245] R Burrows, *Extracts from a Diary*, 3 March 1845, p 9
[246] R Burrows, 'The War in the North 1845', c 1860, MS Papers 0948
[247] ibid, 4 March 1845, pp 9-10

Heke would not be deterred. Rewa's people, on the other hand, remained committed to protecting their Pakeha at Kororareka.[248] Protector Kemp, however, advised Beckham, due to the problem of distinguishing friend from foe, not to accept offers of help from this tribe. Wai, a chief of Te Rawhiti, had come over to offer their assistance, but Beckham declined, and asked them to 'remain quietly at their own Settlements'.[249] George Clarke, the Chief Protector, considered this to have been 'judicious' advice. The settlers' protecting chiefs, therefore, moved to safeguard their particular missionaries, or remained at their own residences.[250] According to Clarke and Kemp, the reason for rejecting Maori help was the difficulty that the soldiers would have in distinguishing the Crown's Maori allies from its enemies, although the likelier explanation was that which Rewa himself had been told – that the Government did not trust them. Certainly, the faith of Beckham and other officials had been shaken by the surrender of the flagstaff to Heke on 19 January. Thus, the Crown rejected the support and protection that would have prevented the sacking of Kororareka, although probably not the attack on the flagstaff. It seems certain that, if Ngaitawake and Patukeha had occupied the town in force, Kawiti's feint would have remained just that, and the town would not have been abandoned in panic by its inhabitants and the small British army and navy contingents.

Rewa was furious about it, and had been insistent with his offers of help and support, as he told Governor Grey in December 1845. Rewa outlined how both Protector Kemp and Beckham had refused his coming to protect the town, as had the military commander, rejecting offers from both Rewa and his brother. Rewa was very upset about this, and the destruction of the town and driving away of his settlers. Beckham had told him that 'he did not know how far the natives would be faithful'. If the magistrate had accepted the offers of Rewa and Wai, 'we should then have been here and have taken a part in the fight against Heke and Kawiti'.[251] Rewa, no matter what his views about the Crown, had been very consistent in his protection of his Pakeha at Kororareka. Heke had tested his resolve in January, and had had to leave without trying to pull down the Government buildings. This was a critical error on the part of the Government, and one that turned the fourth attack on the flagstaff (almost bloodless) into a war.

3. Civil War

The March attack on the flagstaff and Kororareka started a civil war among Nga Puhi of the Bay of Islands and Hokianga. Heke and Kawiti deliberately escalated matters to the point where war was inevitable. In January, Heke had attacked an undefended flagstaff (on the 10th), and then a flagstaff defended by Waka's men (on the 19th), but not on one of the alternate nights when it was protected by British soldiers. In March, however, with a new bunkhouse and soldiers on guard, Heke deliberately attacked the Queen's forces. He must have known that FitzRoy would have no choice but to respond to such a challenge. Kawiti's feint was designed to assist Heke's attack on Maiki Hill. Unexpectedly, and mainly because of the accidental blowing up of the magazine, the British forces decide to evacuate a town that was not really under attack. Belich notes that despite Maori not pressing home the assault on the town, the British evacuated it and the Hazard bombarded it. After that, the Maori plundered it, and settlers returned to retrieve

[248] ibid, 9 March 1845, p 10
[249] HT Kemp to Chief Protector, 13 March 1845, G30/7
[250] G Clarke to Colonial Secretary, 24 March 1845, GBPP vol 5, p 554
[251] Minutes of meeting between Governor and chiefs at Bay of Islands, December 1845, GBPP vol 5, p 355

as much of their property as they could, in perfect safety (apart from the dangers of friendly fire from the Hazard). The British sailed off to Auckland, having lost about 20 killed and 23 wounded. The Maori casualties were about 13 dead and 28 wounded.[252]

Williams reported that Heke and Kawiti were surprised to take Kororareka – that taking the town was not in fact part of their plan for the day. Heke's determination was to destroy the flagstaff and fight with the soldiers, and in this he succeeded. His animosity was not directed against the settlers.[253] As part of the war of words from January to March 1845, he had told Protector Kemp, the missionaries, and the Nga Puhi chiefs, that he intended to protect the settlers.[254] The destruction of Kororareka was a disaster for Heke in this respect. Firstly, it turned a minor engagement with few casualties into the fall of a settler town and the eviction of the valuable Pakeha traders. This immediately won support for those Maori who thought the threat to Nga Puhi trade and power came from him, and not from the Governor. The importance of this cannot be overstated. Heke had maintained that it was possible to oppose the Government but keep the settlers and their economy. His credibility suffered a major blow on this issue.

Secondly, it forced Rewa and the Rawhiti tribes to take the Crown's side against him. Heke had driven out the people under Rewa's protection. Fortunately for Heke, Rewa was just as angry at the Government, which had refused to allow him to protect the town. Even so, Rewa and his influential brothers, Moka and Wharerahi, were almost forced into supporting the Crown by this disaster. Thirdly, the possibility of containing the war to a limited conflict with the soldiers was reduced. Tamati Pukututu, one of the Crown's supporters, wrote at once to Nene, 'calling upon him to come & see "Te Matenga o Te Wiremu" (the death of Mr Williams) at the hands of Heke & Kawiti which was received by him as a call to come to the protection of the Europeans'.[255] Waka's men had declined to shed blood in protection of a 'piece of wood', as FitzRoy noted, but now the settlers themselves were at stake.[256] Nene had opposed Heke with korero thus far, but as soon as he heard of the destruction of the town, he 'proceeded to Hokianga, mustered what force he could & returned again to Okaihau', where he was joined by his allies and their warriors.[257] War within Nga Puhi was now inevitable.

Fourthly, it forced FitzRoy into a position where he could not rely on economic sanctions, and made a minor war with a quick, negotiated settlement much less likely. A blockade depended on there being trade to inhibit, but the disappearance of the town and its traders made this kind of sanction (and also the customs duties) irrelevant. The Governor, on the other hand, was faced with the destruction of one of the few large British towns in New Zealand, and £50,000 worth of damage. The fall of the flagstaff he had effectively tolerated in the past (and Grey never put it back up), but an engagement with British soldiers would require some kind of military response. The nature of that response had to be much more intense, though, if the Government was to regain any credibility after the destruction of a British town. Heke, in defence against these charges, pointed out that British fire did much of the destruction, and that some of the plunder went to neutral or even 'friendly' Maori. These arguments were largely ignored.

Waka Nene returned to the Bay of Islands with his armed followers, reaching Waimate on 19 March. Robert Burrows, the resident missionary, recorded Waka's

252 J Belich, *The New Zealand Wars*, pp 36-37
253 H Williams to CMS, 26 March 1845, Micro-MS-Coll-04-61, CN/O 94(b)
254 HT Kemp to Chief Protector, 13 March 1845, G30/7
255 H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
256 R FitzRoy, *Remarks on New Zealand*, p 38
257 R Burrows, 'The War in the North 1845', c. 1860, MS Papers 0948

response to the fall of Kororareka and his determination to carry out his promises made at the Waimate hui:

> Waka opened the conversation by saying, "I know that you will preach peace, as Mr. Hobbs (Wesleyan missionary, stationed at Hokianga) has done, but I am determined to put a stop to the doings of that 'hikaka' (proud) fellow," meaning Heke, "and you know that in the step I am taking I am only fulfilling my promise to the Governor made on this spot" (he alluded to the meeting of himself and the other chiefs with Governor FitzRoy, when the twelve muskets were laid at his Excellency's feet). "That man," he continued, "has turned a deaf ear to your warnings as missionaries, and to ours as chiefs of Ngapuhi. Who is John Heke that he should despise our councils, who are older men than he is? Does he pride himself upon being the son-in-law of the late Hongi? We are also related to Hongi, and have in time past fought his battles for him. He was a friend of the pakeha (foreigner); moreover, I have pledged myself to uphold the law established among us, and I mean to do it."[258]

3.1 Nga Puhi alignment in the Civil War

War between the Nga Puhi tribes began in April 1845, before the Governor sent any new troops to the Bay of Islands. The northern war of 1845 to 1846 has been described fully by Belich, Johnson, and other historians, so their work will not be repeated here.[259] What has not been discussed, however, is the internal Nga Puhi politics. Belich noted that Nene, Heke, and Kawiti had almost identical aims – to preserve the authority of chiefs over their peoples, and to keep the settlers and trade. So the war was about the role and place of the Crown in this schema, and its possibly greater or competing authority in the north. I have already described the importance of the Crown's failure to keep its promise of prosperity, the removal of the capital, and land issues (especially surplus land) in contributing to the political crisis. Belich rightly saw the importance of the Crown and its authority in the four choices made in the Nga Puhi civil war: to support the Crown, openly oppose it, secretly oppose it, or remain neutral for the meantime and await developments. But he did not provide a breakdown of those choices, which is necessary to evaluate this period of the Crown's relationship with Bay of Islands Maori.

In some ways, the northern war was a struggle between Hokianga and Bay of Islands chiefs. Heke certainly characterised it that way.[260] The Crown's most committed supporters, and the leading participants in actual war on its behalf, were the Hokianga chiefs Nene, Taonui, Mohi Tawhai, Arama Karaka, Wi Repa, and others. FitzRoy considered them more reliable than his Bay allies, because of the kinship between Heke and his nearer neighbours. He instructed Colonel Hulme that the Government's allies were to place themselves under the leadership of the Hokianga chiefs.[261] But one must be careful in over-emphasizing this point. There was significant Bay of Islands support for the Crown, and active assistance of its forces. There was also a significant Hokianga presence among Heke's allies.[262] Some Te Rarawa from Kaitaia, led by Panakaereao, took part in support of the Crown. On the other side, there was a small group from Whangaroa (led by Pona) fighting with

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[258] R Burrows, *Extracts from a Diary*, 19 March 1845, pp 14-15
[259] See especially J Belich, *The New Zealand Wars*; R Johnson, ' "Ko te Pu o te Pakeha", A History of Intercultural Encounter in the Northern War, 1844-6'; & T Buick, *The Rebellion of Hone Heke*; for detailed accounts of the northern war.
[260] H Heke to R FitzRoy, 29 August 1845, GBPP vol 5, pp 309-311
[261] R FitzRoy to Colonel Hulme, 26 April 1845, G30/7
[262] T Beckham to R FitzRoy, 27 February 1845, GBPP vol 4, p 552; G Clarke Junior to Chief Protector, 18 February 1845, GBPP vol 4, p 550

Heke.[263] To the south, Ngati Wai at Whangarei sympathised with Heke and provided support. There was not in any sense a straight war between Hokianga and the Bay of Islands. Nor was Nene only a Hokianga chief – he had been born and brought up in the Bay, and had his own interests there.

Within the Bay of Islands, opposition to the Crown was focused at Kaikohe, Waitangi, Ohaeawai, Waikare, Kawakawa, and Pakaraka. Young warriors from all the tribes, however, went to live with and support Heke. The Waimate district was very divided, some supporting the Crown, others fighting for Heke. In fact, no tribe was entirely in support of one side or the other. The Kaikohe people, for example, had a section supporting the Crown, led by Rawiri Taiwhanga. Similarly, some Kawakawa people, led by Pukututu, opposed Kawiti and supported the Crown. The Waikare people were divided between support of Pomare, who remained officially neutral, and support of Hikitene and other leaders of the Kapotai hapu. It would be fair to say, though, that the tribal groups whose main focus was opposition to the Crown were Ngati Hine, Te Uriohua, Ngati Tautahi, Te Uri Kapana, Ngati Manu, and Kapotai.[264]

Support for the Crown in the Bay of Islands mainly came from dissenting leaders within these tribes, and from the former protectors of Kororareka, now based at Te Rawhiti and the south-eastern Bay of Islands. Led by Rewa, the Ngai Tawake and Patukeha tribes supported the Crown. Others, such as Ngati Rehia, Ngati Rahiri, and the sections of Ngati Manu led by Pomare, remained officially neutral. Unofficially, they were suspected of helping Heke and the other 'rebel' leaders.[265] Pomare certainly seems to have been a secret opponent of the Crown. It is no accident that open opposition was more prevalent inland, where the great fighting pa were built by Kawiti and Heke. The coast was more vulnerable to attack, and Pomare's person and pa were taken in 1845, due to the Government's suspicion of his secret support for Kawiti.[266] He had visited Auckland, for example, and tried to enlist Ngati Whatua support.[267] Kawiti had returned Ngati Whatua to Kaipara, so there were important links for Pomare to call upon there, but he failed to get their help.[268] Tareha, his son Hakiro, Waikato of Te Hikutu, and others were more successful in preserving their neutrality, until Governor Grey finally won a public statement of support from them in December 1845.[269]

The leaders of military action against Heke and Kawiti, came from outside the Bay of Islands. Tamati Waka Nene, Taonui, and Mohi Tawhai, were the most prominent military leaders. They were later joined by Nopera Panakareao and some Te Rarawa, determined to settle scores against Bay of Islands tribes. Even so, Rewa, Wharerahi, Pukututu, Paratene Kekeao, Wi Hau, and other Bay of Islands chiefs (and some of their followers) fought with Waka in support of the Crown.[270] It was partly that FitzRoy trusted Waka Nene more than them.[271] The Chief Protector still thought Rewa and his brothers were 'neutral' in late 1845, although they in fact fought actively for the Crown

[263] H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[264] ibid, & H Williams to J Busby, 15 January 1847; Chief Protector's List of Principal Chiefs in the Northern District, G30/8; this information is also drawn from a wide range of other sources
[265] ibid; G Grey to Stanley, 14 December 1845, G30/8
[266] 'Minutes of Conference respecting the capture and liberation of the Chief Pomare', 17 May 1845, GBPP vol 5, pp 266-268
[267] W Cotton to S&P Cotton, 22 April 1845, Micro MS 0858
[268] Kene Hine Te Uira Martin, 'Kawiti, Te Ruki ? – 1854', *Dictionary of New Zealand Biography*, updated 16 December 2003 (online version)
[269] G Grey to Stanley, 14 December 1845, G30/8
[270] GA Selwyn to R FitzRoy, November 1845, CO209/49; H Williams to J Busby, 14 January 1847 & 15 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[271] R FitzRoy to Colonel Hulme, 26 April 1845, G30/7

and were rewarded with pensions.[272] The Bay tribes were deeply divided, and only small numbers fought actively for the Crown. Hence, Nene could only field about 700-800 warriors in May 1845, as opposed to the 1,200 or so supporting Heke alone.[273] Although numbers fluctuated during the war, the majority of Bay of Islands Maori either supported Heke and Kawiti or remained 'neutral'.

To summarise, the main leaders of opposition to the Crown were:

- Hone Heke Pokai, a chief of Ngati Tautahi, Te Uriohua, and Ngati Rahiri, based mainly at Kaikohe (but with wide interests)
- Kawiti of Ngati Hine, based mainly in the Kawakawa district
- Hikitene, a chief of Kapotai, from the Waikare River area
- Hara, a Ngati Rangi chief at Ohaeawai
- Hautungia of Te Urikapana
- Hira Pure of Te Uriohua
- Te Atua Wera (the renowned tohunga Papahurihia) of Te Hikutu and Ngati Hau
- Marupo, a Waitangi and Pouerua chief
- Ruku, a Kawakawa chief
- Pona, a Whangaroa chief
- Haratua, a Pakaraka chief
- Hori Kingi Tahua, a Kawakawa chief
- Kauata of Ngati Wai
- Tohu of Ngati Hau
- Pene Taui, a Ngati Rangi chief of Ohaeawai

The main leaders of support for the Crown were:

- Tamati Waka Nene of Ngati Hao
- Makoare Taonui of Te Popoto
- Mohi Tawahi of Mahurehure
- Wiremu Repa of Ngati Hao
- Arama Karaka of Mahurehure
- Paratene Kekeao of Ngati Matakire at Te Waimate
- Rewa of Ngai Tawake and Patukeha at Te Rawhiti
- Moka of Ngai Tawake and Patukeha at Te Rawhiti
- Wharerahi of Ngai Tawake and Patukeha at Te Rawhiti
- Tamati Pukututu of Te Uriongaonga at Kawakawa
- Rangatira of Ngati Korekore
- Moehau of Te Hikutu
- Nopera Panakareao of Te Rarawa
- Wiremu Kingi Kaitara of Pukenui
- Wi Hau of Te Waimate
- Rawiri Taiwhanga of Ngati Tautahi and Te Uriohua at Kaikohe

The principal neutral chiefs were:

[272] Chief Protector's List of Principal Chiefs in the Northern District, G30/8; cf other reports of the actions of Rewa, Moka, & Wharerahi, and also 'Distribution of the £100 paid to the chiefs who aided the Government in the Northern War…for the year ending December 1859-60', MA 1/1-1/3, 1861/184
[273] Hulme to R FitzRoy, 1 May 1845, G30/7; cf H Williams to CMS, 11 December 1845, Micro-MS-Coll-04-61, CN/O 94(b)

- Tareha, the Ngati Rehia chief of Te Tii Mongonui and Kerikeri
- Hakiro, the son of Tareha
- Waikato of Te Hikutu
- Pomare, the chief of Ngati Manu
- Ururoa (Rewharewha), chief of Whangaroa
- Hare Hongi, son of Hongi Hika, also of Whangaroa

From an outsider's perspective, traditional tribal politics appear to have been minor as a determinant of support or opposition to the Crown. There was certainly a main divide between the Hokianga and Bay of Islands chiefs, which was an important characteristic of the war. Within the Bay of Islands, tribal leaders do not appear to have been influenced much by their traditional northern and southern alliances. The close alliance of Heke and Kawiti, traditionally from opposite sides in the contests between these two alliances, was a clear example of this. Pomare and Tareha were neutral, despite their customary relationships with Kawiti and Heke respectively. Rewa, one of the leaders of the northern alliance, fought against Heke. Within tribal communities, kinship remained influential in tribal choices. According to Williams, for example, Kawiti called upon the Waikare and Whangai communities to support him, exercising his traditional leadership in the area.[274] The claimants may be able to offer a different view from their oral history, and it would be extremely helpful to have their perspectives on this issue.

Another point to note briefly here is the question of Nga Puhi leaders acting in concert. As described in chapters 2, 5, and 6, there were occasions where Nga Puhi leaders and tribes combined to fight wars against common enemies and to make critical political decisions, such as the 1831 letter to the King, the 1835 Declaration of Independence, and the Treaty of Waitangi in 1840. These decisions were all made at hui, which reached consensus on the points at issue. On other occasions, the chiefs and tribes acted separately and independently, sometimes in opposition to each other. The Waimate hui of July 1844 was an example of the leaders of Nga Puhi coming together to debate and agree a common course of action. Heke absented himself, however, from the September hui in order, he said, to avoid an open rupture with his fellow chiefs. From then on, he argued that he was fighting not just for the authority of chiefs vis-à-vis the Crown, but also his right to lead his own people independently of the rest of Nga Puhi.

On 7 October 1846, Heke and Waka Nene met to make peace. It was an historic occasion. As part of the korero, Heke made an important stipulation:

> He requested particularly that in case of any of his people committing any offence, an application should be made in a proper form to the Chief of the Tribe, when every effort would be made to bring the offender to justice: but hoping that one particular Chief should not interfere with the tribe of another.[275]

In making this statement, which appears to have been accepted by the hui, Heke was defending the right of Nga Puhi tribes to regulate their affairs and act independently of one another. This dimension of Nga Puhi politics had always existed alongside the need for the tribes to sometimes come together and act in concert on major issues affecting them all. The *balance* here was an important part of the struggle between Nene on the one hand, and Kawiti and Heke on the other.

[274] H Williams to J Busby, 14 January 1847, Micro-MS-Coll-04-61, CN/O 94(b)
[275] E Meurant, Diary, 1-9 October 1846, G30/11

3.2 Aftermath of the Civil War

Nga Puhi fought a civil war in 1845 to 1846 as a result of the presence and authority of the Crown in their region. This war was also classified as a 'rebellion', in which some of the Queen's subjects fought alongside her armies in support of the Crown's authority, while others fought against it. The concept of rebellion, however, was a hard one to make stick in 1840s New Zealand. The authority of the Crown was so new and untried, and Maori consent to the cession of kawanatanga so limited and conditional, that any number of incidents involving tribal self-regulation could have been called rebellion. The Church Missionary Society appealed to the British Government that Nga Puhi could not be treated in the same way as rebels against a long-established and 'civilised' State.[276] James Stephen, Colonial Office Under Secretary, agreed that 'pacific overtures and acts of forbearance' impossible with ordinary subjects of the Crown would involve 'no loss of honour or of power if employed to soothe and reconcile these unhappy people'.[277] Lord Stanley had full confidence in Grey's humanity and discretion in that respect, and the CMS was assured that the British Government would remain vigilant to avert calamity from Maori.[278] Grey, in his turn, did not insist on FitzRoy's proposed confiscation of land.

FitzRoy had accepted the neutrality of key Bay of Islands tribes and chiefs, but was determined on the cession of land in recompense for Heke and Kawiti's 'rebellion'. Grey, as in so much else, did the opposite of FitzRoy – he quietly dropped the demand for land, but insisted on neutral chiefs making at least some public show of support for the Crown. It could easily have gone the other way. FitzRoy's concession about the Wairau incident was reversed by Grey, who practically confiscated land from Ngati Toa as compensation in 1847.[279] But the Bay of Islands escaped either Grey's excessive censure or his attention after 1846, because he was not interested in colonising it. Sorting out the New Zealand Company settlements, and buying up land for settlement in the more southern regions, were his main objectives. He simply was not interested enough in the north to establish the Crown's power there, initiate land transactions and settlement, or even to properly sort out what he knew to be the faulty Old Land Claim grants.

Instead, Captain Graham and his interpreter were sent to mediate between Heke, Kawiti, and the occupying Hokianga leaders (who were themselves claiming land in satisfaction). Nene's statesmanship, rather than Grey's diplomacy, was mainly responsible for the Hokianga chiefs dropping their land claims, and the full restoration of peace.[280] Heke and Kawiti lived fairly much as before, their authority unimpaired by the war or their supposed defeat. In fact, Heke's mana was so enhanced that he appears to have been the principal rangatira at the Bay of Islands in the late 1840s until his illness and premature death. I have noted examples of Heke's exercise of authority and his independence vis-à-vis the Resident Magistrate in chapter 4 of this report. One further example from 1849 is worth noting, some three years after the end of the war. The settler Hingston had spotted one of his horses (taken before the war) with Heke's people. The magsitrate, Major Cyprian Bridge, approached Heke and asked him to get the horse returned to Hingtson. Heke refused to intervene. Bridge reported: 'it appears to me, that

[276] CMS Secretaries to Stanley, Memorial, 2 December 1845, CO209/39
[277] J Stephen, Minute, 12 December 1845, CO209/39
[278] Stanley, Minute on CMS Memorial, and Stephen to Coates, 20 December 1845, CO209/39
[279] G Phillipson, *Northern South Island*, part 1, pp 85-95
[280] G Grey to Gladstone, 17 October 1846, G30/11; Captain Graham to G Grey, 1 October 1846, G30/11

notwithstanding his promises that after the Governor had met and shaken hands with him, he would see all the stolen horses restored and be a loyal subject, that he is inclined to be as rebellious as ever, and is determined not to acknowledge European Laws or authority'.[281]

Bridge wanted to incorporate Heke in the machinery of the State as an assessor, subordinate to the magistrate. He wrote to Heke: 'I hope you, being a chief whom I have recommended should be appointed a native assessor will assist me in getting the horse restored to its proper owner.'[282] Heke replied:

> Friend The Major, you are mistaken. I am no magistrate for Europeans. I am a Maori man for the Maori people. You have a law an erroneous law. I have a law likewise: it is a straight law…Should the lower order of Europeans misbehave in future I will not look to the Magistrate, it matters not whether they are Chiefs or whether the Governor goes to war, that will be good.[283]

Nene and Heke both, on the other hand, struggled to impose their authority over the Old Land Claimants and their Crown granted land. Grey, who had seemed to promise Waka so much in 1846-47, in fact did nothing to help him. When Heke's issues with the Davis family, Irving, and Busby were rather forcibly drawn to the Governor's attention, the Government's ultimate response was to ignore them.[284] Evidence cited in detail in chapter 3 of this report, shows that Nga Puhi continued to govern themselves through their own laws and institutions well into the 1860s, sometimes in cooperation with the Crown's magistrate and officials. In a sense, with no land taken and no heavier imposition of Government authority, the Crown had fought a war to no purpose. In 1850, Williams complained to the CMS that settlers were as insecure in their titles, and as likely to be subjects of taua muru, as they had been before.[285] The flagstaff, the 'symbol of British supremacy', remained prostrate, 'a warning if not a reproach'.[286]

On the other hand, prosperity was elusive. The war had a serious economic effect on the region. As well as the destruction of Kororareka and the Crown's blockade, trade and agriculture were affected by the fighting. Much property was destroyed without compensation, settler and Maori alike. The Crown's allies had to feed themselves – they were not paid by FitzRoy. Heke claimed to have lost £546 worth of property, burned and destroyed by the 'men of Hokianga'.[287] Settlers were slow to come back and trade remained depressed. But Grey had held out promises of renewed prosperity as part of his peace-making. In 1846, Captain Graham assured Kawiti, Pomare, and Hori Kingi Tahua that Grey's objectives for the north were 'peace, extension of trade, and cultivation of the Land, all for the material benefit of Natives and White people'.[288] These assurances were not, however, followed up by concrete Government action or assistance.

FitzRoy's renegotiated alliance, which Waka, Rewa, Pakututu and others had supported with their blood and treasure, proved of little benefit. The Crown did not consult with Nga Puhi chiefs, as promised, because it made no intiatives in the north. The flagstaff, for which so many lives had paid, was not put back up. The one thing over which the Crown cared enough to assert its authority was land. Just as Nga Puhi had feared, FitzRoy's promise was not kept and the surplus land was not returned to them.

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[281] Major Bridge to Colonial Secretary, 12 January 1849, IA 1, 1849/58, Part I
[282] Major Bridge to H Heke, 9 January 1849, IA 1, 1849/58, Part I
[283] Hone Wiremu Pokai Heke to Bridge, 16 January 1849, IA 1, 1849/58, Part I
[284] See above, chapter 4, section 4.5.1, & section 5.2
[285] H Williams to CMS, 30 January 1850, Micro-MS-Coll-04-61, CN/O 94(c)
[286] FD Fenton, Report on Waikato, March 1857, AJHR 1860-61, E – no 1C, p 2
[287] H Heke to R FitzRoy, 29 August 1845, GBPP vol 5, p 310
[288] Captain Graham to G Grey, 1 October 1846, G30/11

Also, Grey's Crown Titles Ordinance failed to resolve their Old Land Claim issues. The Bell Commission and its work was the first real imposition of Crown authority on the north, and it hit Nga Puhi hard. By that time, however, the intervening years of Crown disinterest and econcomic depression – the Government's continued failure to encourage the promised prosperity – had caused a change of heart in Nga Puhi leaders. In the late 1850s, they accepted the authority of the Bell Commission, turned to land 'sales' as a way to get settlers, and began to press the Crown for the creation of a town. The change of heart was symbolised when Maihi Paraone Kawiti re-erected the flagstaff on Maiki Hill in 1858. His gift to the Queen initiated a new era in the relationship between Nga Puhi and the Crown. That era will need to be the subject of another report. Here, it is necessary to note that despite 160 years of protest, Nga Puhi have never been properly compensated for the confiscation of the surplus land, or for the property granted absolutely to settlers that they had conditionally ceded and shared before 1840.

4. Conclusion

The origins of the northern war lay in the relationship established with the Crown prior to 1840. It was to that relationship – the agreement between George IV and Hongi, and the days of just Busby and the missionaries – that some Nga Puhi wished to return. It had worked for them, and they were mistrustful of the new Governor whom they had agreed to accept in 1840. Their mistrust was turned into a political crisis by four factors:

- The removal of the capital to Ngati Whatua territory, which deprived them of promised prosperity, and took 'their' Governor away to enemy territory;
- The economic depression at the Bay of Islands, when Governor Hobson and their 'true friends', as the Chief Protector noted, had promised them prosperity;
- Worries about land, both prospective (that the Crown might try to conquer them and take it, making them slaves) and current (that the Crown already claimed the surplus land for itself); and
- Concerns about the authority of the Crown vis-à-vis the authority of the chiefs, and a determination that they be exactly equal (as in fact stipulated at Waitangi in 1840).

These four issues came to dominate the concerns of Nga Puhi in 1844 to 1845, when a war of words was fought between the Government's supporters, especially the protectors and missionaries, and its opponents. Heke assumed the leadership of the Crown's opponents and felled the flagstaff in July 1844. It was the symbol of the Crown's authority, and possibly a rahui claiming the land. A Nga Puhi hui at Waimate in July reached a consensus, as a result of which Heke sent a letter to the Governor, with an ambivalent apology and an offer to put the flagstaff back up. This was the last time that Heke acted in concert with the Nga Puhi leadership. The opportunity was missed because the Governor was in Taranaki and had already ordered the re-erection of the flagstaff.

The first Waimate hui was followed by a second in September. At this key hui, Governor FitzRoy renegotiated the Crown's alliance with Nga Puhi. He made various promises and statements, including:

- an assurance that he would consult the chiefs on all key matters,
- that Maori law would continue to apply to themselves,
- that he would send his soldiers away and leave the chiefs to sort out Heke,
- that they were allied guardians of New Zealand (fundamentally like the Indian princes), and
- that he would return the surplus land to them.

On this basis, Waka Nene and other leaders made compensation for Heke's offence, and undertook to keep the peace and prevent any recurrence of Heke's behaviour. That chief, however, rejected this agreement and wrote to the Governor, requesting his own meeting and a negotiation of the matters at issue between them. The Governor declined this request, but also would not approve Nga Puhi requests to resolve matters through customary means that might result in war. As a consequence, he neither sorted it out himself, nor allowed them to do so. The war that followed, therefore, was rendered inevitable by Heke's determination to assert his mana, keep his issues live, and resolve things personally with the Governor, and FitzRoy's equal determination that he should not do so.

Waka Nene and other Nga Puhi leaders remained faithful to the Waimate agreement. They joined the missionaries and protectors in attempting to convince Heke and others that the Treaty of Waitangi was their 'salvation', that it guaranteed their authority over their tribes and lands, and that the British Government would keep faith with them. Heke was not convinced, though many were, especially at the January hui at Paroa. As the months slipped by and FitzRoy did not come, Heke's resolve stiffened. He attacked the flagstaff twice more in January 1845. This was not enough to precipitate war. FitzRoy had it put back up, continued to stay away, and sent troops. The final catalyst for war was the accidental sacking of Kororareka in March 1845. Nene could not then be dissuaded from fighting, and the Governor no longer wished to prevent him.

The result was a civil war triggered by the intransigence and mistakes of Heke and FitzRoy. It could still have been avoided, as late as December 1844, had the Governor been prepared to allow Nga Puhi to act on the ground, or to come and negotiate with Heke in person. Up till then, there had been no clear rejection of the Queen's sovereignty. Nene was confident that customary mechanisms would have involved a short conflict and satisfactory peace, if the Government and its soldiers were not part of it. FitzRoy feared the effects of allowing tribal warfare in the north, even though he lacked the forces with which to compel obedience to the Crown. The result was a longer and more damaging civil war in which the Crown was a full participant. At issue was the future of the north; Maori authority and effective self-government; the authority of the Crown (especially where settlers were involved); authority over the land and old land claimants; and ultimately the peace and prosperity promised by Governor Hobson.

The politics of 1844 to 1845 produced a war that marked a significant turning point in the relationship between Nga Puhi and the Crown. The Bay of Islands was deeply divided over the issue of whether the Crown could be trusted to keep the promises and undertakings that FitzRoy had made at Waimate in September 1844. Open opposition to the Crown was focused at Kaikohe, Pakaraka, Ohaeawai, Waikare, Kawakawa, and (to an extent) Waitangi. Waikato, Tareha, Hakiro, and Pomare, maintained an official stance of neutrality, with some degree of secret support for Heke and Kawiti. Support for the Crown was focused at Te Rawhiti and the south-eastern Bay of Islands, and also among leaders within the 'rebel' tribes, such as Taiwhanga, Pakututu, and others. The Waimate communities were deeply divided between support for the Crown and Heke. Principal leadership of the Crown's allies, in terms of active warfare against their kin, fell to leading Hokianga chiefs, especially Tamati Waka Nene. The position of Nene was not a simple one, however, as he had his own residence and interests at the Bay of Islands. The Hokianga tribes were not unanimous in their support of the Crown. Some aided Heke, and there was never anything like a full commitment of their numbers to the war on either side.

FtizRoy's attempt to punish 'rebellion' with confiscation was quietly abandoned. The raupatu claims of Hokianga chiefs were also resolved through Nene's statesmanlike

concessions. The new Governor turned down Nga Puhi requests to return the capital (and with it settlers and prosperity) to the north. The communities of the Bay were deeply divided but left to govern themselves much as before, after 1846. Grey's virtual abandonment of the north was not at all what they wanted or expected of him, but his concern was to acquire land in the south and colonise those districts. Thus, although Maori authority survived at the Bay of Islands, as both Heke and Waka had sought, the legacy of the northern war was also economic depression and unresolved land issues. FitzRoy's promise to return the surplus land was not honoured. Grey's efforts to assist Nene and resolve the Old Land Claims turned out to be nominal and were ultimately unsuccessful. Nga Puhi had secured a somewhat hollow victory in 1846, and they turned to the Crown in the late 1850s in an attempt to re-engage with the Government and again renegotiate their alliance.

Chapter 8 Conclusion

1 The Treaty Claims

This report covers the period 1793 to 1853. The Treaty claims filed by Bay of Islands Maori concerning that period, more particularly the years from 1840 to 1853, relate primarily to:

- The relationship forged between Nga Puhi (especially Bay of Islands tribes) and the Crown
- The relationship between kawanatanga (Crown authority) and tino rangatiratanga (Maori authority)
- More particularly, Maori authority over land, resources, tribal institutions and entities, and the Maori culture and way of life; their Treaty rights of self-regulation
- The Crown's infringements of those Treaty rights
- The loss of land from Maori ownership and control by the incorrect recognition of the Old Land Claims as absolute sales instead of conditional customary transactions
- The Crown's confiscation of the 'surplus' land not granted to settlers
- The Crown's making war on Nga Puhi, and the consequences of that war.

2 The Old Land Claims

The Old Land Claims was the name given to pre-1840 land transactions. One of the fundamental issues with regard to these transactions is the question of whether Maori society and culture had changed to the point where Maori tribes acted in a European way and sold land absolutely and for a finite price. Chapter 3 of this report assessed the degree of culture-change at the Bay of Islands, from 1769 (first contact) to 1869. During this century, there were clearly some changes to Maori society. Europeans were welcomed and their material culture partly adopted and adapted. Trading practices involved the partial transformation of customary trade (gift-giving with delayed and unspecified exchanges) into European-style barter. Neither the use of European goods nor the adjustment to barter involved the end of Maori traditional practices. In fact, the continuation of gift-giving, and the Maori social system on which it was based, was one of the primary reasons for what Bay of Islands Europeans saw as plunder and extortion in the 1840s. Hone Heke explained this very clearly to George Clarke in 1843.

Also, Christianity was adopted in the late 1830s by about half of the population of the Bay of Islands. The missions insisted on some social change as part of conversion: the abandonment of polygamy, the freeing of slaves, and the end of warfare. They encouraged the abandonment of other customs, with mixed success. Fundamentally, none of these changes affected the core concepts of Maori customary law, or its continued operation. The prohibition of warfare probably came closest, but Maori continued to adjust disputes and social relations through hui and taua muru. Other customs, which Maori toyed with abandoning, in fact continued in the 1840s and beyond. Primary evidence from the files of the Resident Magistrates and Civil Commissioner shows that Maori continued to govern their communities by their own customary law, and to try to adjust disputes with settlers according to customary norms, up to 1869 and beyond. It is simply not possible, therefore, to point to a major change in Maori law and custom before 1840, to argue for the supposed adoption of European practices with regard to transacting land.

In Chapter 4, I discussed the meaning of the pre-1840 transactions in depth. I concluded that there is strong evidence that they were:

- conditional, in the sense of particular to individuals and their families;
- conditional, in the sense of contingent on continuing benefits to the host community, sometimes in the form of gifts but not always;
- shared, in terms of continued Maori occupation from time to time for various forms of resource-use, or even just for purposes of transit;
- under the authority of the protecting chief and the host community, although the settler had long-term occupation and use-rights; and
- recoverable by the protecting chief and host community if the agreement was violated, or if the settler left, failed to occupy, or attempted to introduce a third party without consent.

These conditional transactions were negotiated between peoples on what historian Richard White called the 'middle ground', an important cultural construct unique to frontiers where power was relatively balanced but groups needed things from each other:

> On the middle ground diverse peoples adjust their differences through what amounts to a process of creative, and often expedient, misunderstandings. People try to persuade others who are different from themselves by appealing to what they perceive to be the values and practices of those others. They often misinterpret and distort both the values and the practices of those they deal with, but from these misunderstandings arise new meanings and through them new practices – the shared meanings and practices of the middle ground. This accommodation took place because for long periods of time in large parts of the colonial world whites could neither dictate to Indians nor ignore them.[1]

The endpoint of new, shared meanings and practices had not developed in the Bay of Islands by the time of the Treaty. Instead, each side was still accommodating the other to an extent, and this played out in front of the Land Claims Commission, but they retained fundamentally different views of the meaning of the transactions. Each side was coming to perceive the other's view, though neither accepted it. On the 'middle ground', the Pakeha characterisation of Maori understandings is that there were 'reserves' (either oral or written) or that Maori continued to occupy and use resources *by permission of the new owner*. These 'innumerable' arrangements were how Pakeha conceptualised the Maori rights that they had had to accept on the middle ground. It might have been better translated between cultures as lease agreements. Disinterested Pakeha, such as the visiting Captain FitzRoy, brought out the extent to which Maori behaved as though they had not made British-style absolute alienations.

The most important point, with regard to Treaty claims, is that this information about the nature of the transactions was available to the Government of the 1830s and 1840s. The House of Lords Committee investigation of 1838 was particularly important in highlighting the issue. The House of Commons Committee of 1840 was less well informed, although it had the evidence of Blackett and Alexander Busby. Some European commentators like Dieffenbach published their information widely. The letters and reports of the British Resident, while maintaining that the transactions were British-style sales, actually revealed the facts of continued Maori occupation of Busby's various pieces of land, and the uneasy relationship between his own authority over the land, and that of his protecting chiefs. A close reading of Busby's despatches would have shown the Government that the situation was not as he had represented it. Missionary papers and reports also highlighted their belief that British 'sales' had taken place, with countervailing evidence of continued Maori occupation, second payments, and Maori claims (sometimes resisted successfully) to authority over both missionaries and land. Governor FitzRoy, who visited New Zealand briefly in 1838, viewed the transactions as conditional, with continued Maori authority over

[1] R White, *The Middle Ground*, p x

both the settler and the land, and shared resource-use (which he called a 'right of common'). The power balance between settlers and protecting chiefs was shifting somewhat by the late 1830s, and people like Busby and Williams were proving troublesome because of their attempts to enforce their understanding (exclusivity). Hence, Rewa and other chiefs appealed to Hobson to sort this matter out and 'return' the land to them. As Te Kemara put it, the Waitangi land was Busby's, it was also his (Te Kemara's), and yet it needed to be returned to him. Hobson promised an inquiry and the return of land that had not been validly alienated.

Maori and settler understandings of the transactions were clearly different. This was nowhere more evident than in the evidence of Montefiore, Wharerahi, and others in OLC 13, where Ngai Tawake admitted a 'sale' to Montefiore yet lived on the land and used it as before. Why, then, did the Land Claims Commission recommend awards of absolute title, and FitzRoy turn those recommendations into Crown Grants of freehold land? Not only did FitzRoy seem to have abandoned his 1838 opinions, he actually extended several Bay of Islands grants far beyond the statutory limit of 2,560 acres. There is not, in my view, a satisfactory explanation for the failure of the Land Claims Commission. Partly, the Commission was misled by the protectorate, which had a vested interest in the outcome but also argued sincerely for the Pakeha understandings of the middle ground. Also, if Maori witnesses turned up to support 'their Pakeha', the investigation of their evidence was brief, pro forma, and not designed to bring out the complexity and range of their actual views. Even so, the Commissioners identified that (regardless of what was in the British deeds) Maori in fact remained in occupation of 'sold' land, had their waahi tapu on it, and were in 'innumerable' instances still living on it as if nothing had changed. Also, they accepted that Maori had validly (in custom) 'sold' the same land over and over, as if their rights had survived not just one but multiple 'sales'. Land at Kororareka, 'purchased' from Kiwikiwi and others in the 1820s, had to be repurchased from its new Maori owners after the Maori title was transferred in 1830.

These important points did not give the Commissioners much pause. Their plea to the Government was that land within their awards should be reserved for Maori. Boundaries, Maori reserves (whether oral or written), and the actual parcels of land to be granted within the claim areas, needed to be worked out on the ground in consultation with Maori before the Commissioners' awards were turned into British titles. Their awards only excepted 'reserves' recorded in writing, or land that Maori did not admit to have been 'sold'. These in turn became the only exceptions in FitzRoy's Crown Grants. But the Commissioners noted 'innumerable' cases of continued Maori occupation of various types, and recommended that a general exception be included in the grants and that all such forms of occupation be legally protected. Without this, the Commissioners and Dieffenbach agreed, Maori were in danger of being dispossessed. Even more worrying, Godfrey told the Governor that the Commissioners' small awards (often less than the maximum possible) were not just because of statutory limits – they reflected what the Commissioners believed had actually been validly alienated.

The Commissioners' caveats came fairly close, then, to recognising the reality that these transactions were not absolute alienations of land. FitzRoy disregarded their recommendations, however, partly because he lacked the surveyors to define matters on the ground. More importantly, he believed that:

> When once the land is validly transferred by its aboriginal owners to European purchasers and surveyed, the main difficulties are overcome [a future state, after survey]. It is a mistake on the part of Governor Grey to suppose that native pahs, cultivations, and burial grounds were not generally excepted from the sales of land to early settlers. This is just one of those points on which the authoritative interference of British ideas of landed property may be most prejudicial. The old settler, on friendly terms with his aboriginal neighbours, makes his way by degrees, and gradually obtains a

> willing and permanent cession of even those places, after he has succeeded in establishing a general right to a certain piece of land. But he never attempts to take land by force. To do so would be his ruin, by raising a host of enemies.
>
> The pahs, sacred places, and favourite resorts, for whatever purpose, were either reserved by the natives verbally when they sold the land, in most instances, or they were specially mentioned in the deed or agreement.
>
> The adjustment of all these matters should be left chiefly to private arrangement and the mutual self-interest of the parties concerned.[2]
>
> ***
>
> This may be a convenient place for remarking that the wording of all these deeds of grant [ie Crown grants] for unsurveyed lands was most studiously guarded. As I could not indefinitely delay the settlement of these land-claims, and had neither men nor money enough to survey them, even in a few years (setting aside the doubt as to involving the Government in private questions); moreover, as I believe, from the best information, that land purchases, properly made, never had been nor were likely to be seriously disputed; and as the claimants themselves generally sought titles, as against the Crown, rather than the aborigines, on whose good faith and traditional usages they could then depend, I resolved to extricate all parties from their perplexing dilemma by undertaking the responsibility of issuing such grants as would avoid compromising the Government, and yet answer the object of the several claimants for, at least, a term of years, during which interval accurate data might be obtained, and the civilization, as well as the diminution of the number of natives would continue. I allude to this diminution with regret; but the fact is undoubted, and irrespective of war on the one hand and all the efforts of man to arrest it on the other. It is most striking and rapid in the immediate neighbourhood of our own settlements, however peaceful, where the influence of the missionary clergyman is so much slighter than in the native villages.
>
> These grants were intended to effect exactly what I now observe Governor Grey to do with respect to certain purchases of land, of which the boundaries may be uncertain and the title doubtful for a time, namely, to give (in the deeds of grant) "no guarantee or warranty of the title to the lands, save only so far as to engage that the grant shall be considered as barring the title of the Crown to such lands, and as transferring to the grantee any right to the lands which at or previously to the date of the grant may have been vested in the Queen."[3]

Thus, FitzRoy had not changed his mind about the nature of the pre-1840 transactions. He knew that they were not absolute alienations, that Bay of Islands Maori continued to live on the land and exercise authority over it, but that the settlers had acquired some kind of 'general right'. His actions were of critical importance to Nga Puhi's Treaty claims. Instead of carrying out the Commissioners' recommendations and consulting Maori on the ground to create reserves and negotiate agreed parcels of land, FitzRoy gave the settlers freehold titles. This proved to be an irrevocable act. At the least, he could have carried out the Commissioners' recommendations. He might reasonably have been expected also to do as the New Zealand Company had to do, and make additional negotiations, payments, and reserves. He could have found a solution mutually acceptable to settlers and Maori, given that the Old Land Claimants were desperate to get any kind of settlement before he started issuing grants in 1844. Like the settlers of Wairarapa, some at least might have accepted a leasehold (with maybe ownership of a small homestead), which was a British form of title more suited to the Nga Puhi understanding of these transactions. Instead, FitzRoy gave settlers absolute titles, in the belief (probably shared by the protectorate) that each settler would 'make his way by degrees' and 'gradually obtain a free and willing cession' in the future, especially as Maori learnt more of British law and underwent an unfortunate but convenient population decline.

FitzRoy's actions were to have permanent consequences. Governor Grey soon came to understand that Maori had not intended the transactions as absolute sales. He informed the British Government several times that the Old Land Claims were conditional alienations to

[2] R FitzRoy, Memorandum , 20 March 1847, GBPP vol 5, pp 626
[3] ibid, p 625

particular individuals and their families, and that Maori were still in occupation of much of the transacted land. He set out his views most fully in 1848:

> That previously to New Zealand being declared a British Colony, many persons had made purchases or pretended purchases of lands from the Natives, which were conveyed by Deeds of various forms, the deeds frequently conveying the lands named only to the original purchasers, his children and their relatives.
>
> The Titles so obtained were in all cases wholly distinct from a Crown Title in a British Country; the lands purchased were, I believe, in no instance surveyed, the seller produced no Title deeds, and in no way proved that he was the real owner of the property.
>
> No person protected the rights of minors or absentees. The purchaser had no guarantee that he would be supported in possession of the property, and in the vast majority of the cases, the purchases or pretended purchases so made were mere speculative bargains, and even in the best cases for the purchaser, the title could not I think be regarded as more than simply an adoption into the tribe, and a right of holding the land upon the same terms as the Natives themselves hold lands. Clearly a barbarous people in their condition, could have no notion of a tenure of land, other than that recognized in the Country.[4]

Grey continued to receive instances of this throughout his governorship. Heke, for example, successfully resisted the founding of a military settlement on the "Children's Land", policed waahi tapu on the Davis family's land, and resisted Irving's occupation of land – land, incidentally, onsold by Busby to Clendon to Irving, over which Nga Puhi still insisted on dealing with Busby. Waka Nene both accepted and disputed that the missionaries owned Kerikeri lands, asserting his authority over them, claiming that the missionaries had recognised that authority, and later demanding surveys and contesting missionary claims when it became apparent that they would not accept his authority. Pakeha who had made what Grey called 'pretended purchases' were favoured by the law because they had FitzRoy's Crown Grants. Grey attempted two remedies: firstly, he challenged the grants in the Supreme Court, without success; and secondly, he enacted the Crown Titles Ordinance 1849. The latter proved a dead letter, because it opened the possibility for Maori to prove their title still existed, but offered no real incentives for settlers to survey their claims and bring them into court. Nor were there penalties for not doing so. The grantees preferred to wait for better days, which came with the Bell Commission of the late 1850s. Grey, who had a clear understanding of how Nga Puhi understood and intended the pre-1840 transactions, failed to do anything effective to remedy the problem.

As a result, FitzRoy's Crown Grants survived until something better (for the settlers) came along to take their place. Professor Oliver's view of the Bell Commission, the creature of a settler government, indicates that the period 1840 to 1853 was the most favourable one for a fair solution. Nga Puhi interests were significantly injured by Grey's failure to find one. This was mainly due to disinterest after 1849. He had other priorities, and left the north to itself. Nga Puhi continued to claim the land – for example, for gum digging in the 1860s – but their ability to maintain those claims in the face of British law was gradually but inevitably circumscribed after 1856. The evidence taken by the Bell Commission, and flowing to the Government from other sources in the 1840s and 1850s, is that the middle ground continued to exist in that period, with instances of shared occupation and resource-use. The Old Land Claimants 'made their way by degrees' as FitzRoy had intended, sometimes making further payments for 'ones own land' as James Davis put it, otherwise biding their time for a more secure title. Ultimately, though, Bell cancelled FitzRoy's Crown Grants and the Government issued new, valid ones, and the land passed fully out of Maori legal ownership. Some occupation on the ground continued in the 1860s and beyond, and Maori tried to claim OLC land as customary land in the Native Land Court. This strategy was mainly unsuccessful in

[4] G Grey to Earl Grey, Auckland, 17 October 1848, G30/14

the 1870s and 1880s, although Maori occasionally managed to get the Court to grant them title to surplus land.

The final Old Land Claim issue considered in this report, in chapters 4 & 7, is the Crown's assumption of ownership of all land 'sold' by Maori but surplus to the 2,560-acre limit per grantee. Governor FitzRoy made undertakings that this land would be returned to Maori. On his arrival in 1843, he promised an Auckland deputation that the Crown would not keep the surplus land, and he assured Maori petitioners that the surplus lands would be returned to them. In September 1844, as part of his renegotiating of the Crown/Nga Puhi alliance at Waimate, he promised Nga Puhi leaders to return the surplus land to them. This promise was never openly reported to his superiors at the Colonial Office, although it was implicit in the account of the hui published in the *Southern Cross* and the British Parliamentary Papers, and also in a letter from the Governor to Heke. Nevertheless, FitzRoy's promise was never kept. He left the Old Land Claims entirely undefined on the ground, and warned the British Government that Maori were so opposed to the Crown's claim that it could not take the surplus land *yet*. Grey, if he was aware of the promise, did not fulfil it. The issue of the surplus land was important to Bay of Islands Maori in the 1840s. In the 1850s they tried to obtain legal title to it from Commissioner Bell. He informed Nene and other leaders that 'under the law, as they had been *repeatedly told* [emphasis added], the Surplus Land reverted to the Crown'.[5] This breach of faith became a burning grievance for Nga Puhi. By taking the surplus land for itself, and granting the rest of the land to the Old Land Claimants, the Crown effectively confiscated one-quarter of the Maori land of the Bay of Islands, without the consent or proper recompense of its Maori owners, and in full knowledge (on the part of FitzRoy and Grey) of what it was doing.

3 Alliance with the Crown, 1820 to 1840

Nga Puhi date the beginning of their alliance with the British Crown to 1820. With a ceremonial meeting, exchange of gifts, and korero, Hongi Hika believed that he had forged an agreement with King George IV. From then on, the relationship with the Crown was the responsibility of Hongi's successors in the northern alliance. The question of whether it should be retained and/or changed was debated at various points in the 1830s. According to the Maori versions (especially Heke's), the King promised friendship and protection, and that his subjects would not harm Maori, in return for Hongi's promise to protect the missionaries and never to kill British subjects. The King also warned against letting British troops into New Zealand, and promised that the country was to be under Maori authority forever.

During the 1820s, missionaries and colonial authorities presented the 'benevolent face' of the Crown to Maori, stressing the good intentions, protective nature, and friendly aspirations of Britain and her King. It was a campaign that the missionaries were to continue for thirty years. Maori remained suspicious, some more than others, throughout the period and beyond. Nevertheless, when a series of crises in Maori-European relations occurred in 1830, the Bay of Islands chiefs sent a representative to Sydney in 1831 to renew their alliance with the new King, and demand that he keep the promises of the old one. The result was the decision to appoint a Resident, whose arrival was delayed until 1833. In the meantime, the French scare brought about by the visit of *La Favorite* to the Bay of Islands in 1831 led Rewa, the most powerful of the northern alliance chiefs at that time, to co-operate with the missionaries in the preparation of a petition to King William, seeking his protection from the 'tribe of Marion', and his more effective control of his subjects at the Bay. They warned the

[5] Minutes of Court, Kororareka, 23 March 1858, OLC 1, 634

King, as they had warned the Governor, that they might have to start major reprisals if their request was not met.

These two important approaches to the Crown in 1831 marked an intensification of the relationship between Crown and Maori. This was extended when the Resident arrived in 1833 and read out the Crown's favourable response to the petition of 1831. Busby also began the work of propagandising the British Government, representing its good intentions and just actions to Maori in a constantly favourable light, and maintaining that prosperity would accompany alliance with the Crown and the missionaries. This theme also was to be repeated over the years, and was influential at Waitangi in 1840.

Busby's greatest successes, in terms of formalising the alliance further, were in 1834-35, when he encouraged the adoption of a New Zealand flag and the Declaration of Independence. As with the petition of 1831, these approaches to the Crown were joint European-Maori endeavours. According to some evidence, the rangatira were willing to accept confederation proposals in the Declaration, which they did not think would work, but themselves took the lead in drafting further protestations of friendship to the King. They requested his protection of their country from outside invasion and redress of internal troubles involving Pakeha (which they would otherwise redress themselves). Alternatively, if one accepts Henare's argument, then the signatories to the Declaration (wider than Nga Puhi) were willing to try a new political instrument to regulate their affairs. This willingness to make political changes is supported by their subsequent debate about choosing a king in 1839, and their acceptance of the Kawana in 1840, and of later mechanisms like official runanga alongside their own community structures. In any event, one result of the Declaration was a further recognition by the Crown of its (loose) alliance and friendship with the chiefs, and of the independence of New Zealand under their authority.

At the same time, Busby also personalised the Crown further in the friendships and relationships he established with many chiefs. His role as mediator, while not always successful, especially as far as the traders and settlers were concerned, involved him in the resolution of disputes and the negotiation of compromise agreements. He provided assistance in a 'small way' to many Bay of Islands chiefs, and his mana as the King's man was quite high, though he did not himself perceive it. And most likely, it was Busby that the chiefs had in mind, as much if not more than the Kawana of New South Wales, when they came to consider how things would be if they had a Kawana in their midst.

By the end of the 1830s, the relationship between the Crown and the Bay of Islands Maori had grown close, at least as far as the latter were concerned. In mid-1839, some hapu of the northern alliance may have asked Busby if he would become their king, and establish a more extensive British authority among them. Alternatively, they may have planned to select one of their own leading chiefs as king, to balance the expected British governor. However one interprets this proposal, it is certainly a sign that Nga Puhi were getting ready for the imminent arrival of Captain Hobson. The negotiation of the Treaty in 1840 was a further step in an alliance that had been growing for the past 20 years; the signatory chiefs looked backwards as well as forwards when they accepted the new Kawana, and the events of the 1840s and 1850s must be interpreted in the light of the preceding decades. Also, a pattern had been established of debating and renegotiating the alliance at fairly regular intervals. Bay of Islands Maori did not necessarily see the acceptance of the Governor as irrevocable in 1840, and in fact further renegotiations of the alliance followed in the 1840s and 1850s. The Waimate hui of 1844, Grey's peace agreements of 1846, and the re-erection of the flagstaff by Maihi Paraone Kawiti in 1858, were all part of a pattern established before 1840.

During the 1840s, both supporters and opponents of the Crown appealed to the pre-1840 relationship, especially Hongi's alliance with King George. There had been a choice at Waitangi between the old relationship, represented by Busby and the older missionaries, and

the new relationship, represented after 1840 by the Governor and the new clergy (especially the Bishop). Heke wanted to return to the agreement with King George – friendship, mutual protection, missionaries, no killing of Pakeha, trade, and Maori independence. Panakareao, however, accused Nga Puhi of abandoning Hongi's legacy and their alliance with the Crown. After the northern war and the death of Heke, Nga Puhi leaders sought to re-engage with the Crown. From that time on, the pre-1840 relationship was still appealed to, but no longer in the way that Heke had done. The main themes were that the relationship was a long-standing one, that Nga Puhi had brought the Crown to New Zealand, and that the Crown ought to recognise the special relationship thus created by more generous behaviour. Although records of Nga Puhi speeches and views are sketchy, these themes appeared in hui and letters up to 1870.

This was partly a reinterpretation or repackaging of the Crown/Nga Puhi alliance to meet the circumstances of the late 1850s and 1860s. Even so, its persistence reflects the depth of the relationship that had been established by 1840, a vital pre-requisite to Nga Puhi's acceptance of kawanatanga and the Treaty of Waitangi. A lot of attention has been paid to the differences between the Maori and English texts of the Treaty, especially the use of the following words:

- Kai whakarite, as one description of Hobson's role (meaning mediator/judge and negotiator). This word had been used in the 1830s for Busby's role, and implied that "Hobsonness", as Wakefield put it, would be similar to having Busby.
- Kawanatanga for sovereignty, which means governorship and conveys something less than the absolute cession of sovereignty, though includes all the things pertaining to having a governor.
- Tino rangatiratanga for possession of property, which means something much greater, and more akin to sovereignty (according to many commentators), and certainly covers all the things that pertain to having rangatira – and not just any rangatira, but tino rangatira – the greatest chiefs.
- Taonga as a catchphrase for properties, which means much more than the types of real property protected under the English version, and includes all types of treasured things, some of a spiritual, intangible nature

In addition to the written texts, the nature of the Treaty transaction and the alliance reforged between the Crown and Nga Puhi at Waitangi, rests partly on the oral agreements and stipulations made by the Governor and chiefs on 5-6 February. Basically, it seems likely that Felton Mathew was correct when he stated that the upshot of the Treaty, as negotiated at Waitangi, was that 'the native chiefs agreed to cede the sovereignty [kawanatanga] of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people [tino rangatiratanga] – remaining perfectly independent'.[6] He stressed this latter point: 'During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.'[7]

This interpretation of what was said and done at Waitangi appears to be supported by the later evidence of Busby and Clarke, the evidence of the written text of Te Tiriti in Maori, with its use of the words kawanatanga and tino rangatiratanga, and the speeches of those chiefs who supported the Governor, or opposed him but agreed the next day to sign the Treaty. The great chiefs of the northern alliance, Te Kemara, Rewa, Moka, Tareha, and Hakiro, all spoke strongly against the Kawana remaining at the Bay. On the whole, they

[6] J Rutherford (ed), *The Founding of New Zealand: the Journals of Felton Mathew*, p 34
[7] ibid, p 39

preferred to keep the current arrangement of Busby and the missionaries as their mode of alliance with the Crown. They wanted the 'return' of lands held by those very people, however, and wondered if the Governor would keep his promises in this respect, or be able to enforce his authority over Europeans (whether land claimants or bad traders) any better than Busby could do. On the other hand, they worried equally that he would have far too much power over Maori. Chief after chief told the Governor that they would not endure to have him high above them, telling them what to do and where to go, possibly condemning them as criminals and even executing them, with all the powers that they had observed in the governors of New South Wales. And in his wake would follow soldiers – he was just as likely to get shot at as Busby was, but what would be the consequences this time? On the whole, therefore, they doubted that he could do what they wanted, and feared that he would do things that they did not want. Were their trader friends right? Was the country gone and the chiefs taurekareka if they kept the Kawana sent by the Queen? These two overriding concerns – land and Maori authority – were to lead to war five short years later.

Those who supported the Kawana saw him as friend and father, kai whakarite, a man to make peace and resolve disputes, a judge. They thought that he would add to the existing arrangement of Resident and missionaries, and decided to accept him and his pukapuka as they had accepted the Word of God. It was too late now to send the settlers away, so there must be aid in regulating them. Also, fears of the French and Americans reared their head; who was to protect the land from the settlers and the French? The path of prosperity was clear; the Governor must remain. George Clarke later reminded FitzRoy that Hobson and the 'true friends' of Nga Puhi had promised them that prosperity would result from acceptance of the Governor and the Treaty. This was taken very seriously by Nga Puhi from both Hokianga and the Bay of Islands. The failure to deliver on this promise (later renewed by Grey in 1846) was an important cause of the northern war, and of the eventual Nga Puhi attempts to renegotiate the alliance and transact land with the Crown in the late 1850s and 1860s.

Tamati Waka Nene and his brother Patuone were the most persuasive supporters of the Crown, and they swayed the hui at Waitangi in favour of accepting the Kawana and the Treaty. Nene's position may be summarised best by his direct appeal to Hobson: 'You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!'[8] This, in Nene's view, was the essence of what was agreed to at Waitangi. Patuone, on the other hand, dismissed the fears of men like Te Kemara and Tareha about how the Kawana and the rangatira would stand towards each other in terms of status and power; all chiefs would be equal, and 'each chief would similarly be equal with Mr Hobson'.[9] Men like Te Kemara had expressed themselves willing to accept the Kawana on such terms, and they did indeed sign the Treaty the next day on 6 February. It remained to be seen whether the 'perfect independence' of Nga Puhi and the kawanatanga of the Crown could coexist and work together constructively in the sparsely settled north.

4 The northern war and the renegotiation of the alliance

The analysis of the origins of the northern war in chapter 7 has shown the importance of the relationship established with the Crown prior to 1840. It was to that relationship – the agreement between George IV and Hongi, and the days of Busby and the missionaries – that some Nga Puhi wished to return. It had worked for them, and they were mistrustful of the new Governor whom they had nonetheless agreed to accept in 1840. Their mistrust was turned into a political crisis by four factors:

[8] W Hobson to Gipps, 5 February 1840, GBPP vol 3, pp 45-46
[9] P Low, 'Pompallier and the Treaty: a new discussion', NZJH 1990, p 192

- The removal of the capital to Ngati Whatua territory, which deprived them of promised prosperity, and took 'their' Governor away to enemy territory;
- The economic depression at the Bay of Islands, when Governor Hobson and their 'true friends', as the Chief Protector noted, had promised them prosperity;
- Worries about land, both prospective (that the Crown might try to conquer them and take it, making them slaves) and current (that the Crown already claimed the surplus land for itself); and
- Concerns about the authority of the Crown vis-à-vis the authority of the chiefs, and a determination that they be exactly equal (as in fact stipulated at Waitangi in 1840).

These four issues came to dominate the concerns of Nga Puhi in 1844 to 1845, when a war of words was fought between the Government's supporters, especially the protectors and missionaries, and its opponents. Heke assumed the leadership of the Crown's opponents and felled the flagstaff in July 1844. It was the symbol of the Crown's authority, and possibly a rahui claiming the land. A Nga Puhi hui at Waimate in July reached a consensus, as a result of which Heke sent a letter to the Governor, with an ambivalent apology and an offer to put the flagstaff back up. This was the last time that Heke acted in concert with the Nga Puhi leadership. The opportunity was missed because the Governor was in Taranaki and had already ordered the re-erection of the flagstaff.

The first Waimate hui was followed by a second in September. At this key hui, Governor FitzRoy renegotiated the Crown's alliance with Nga Puhi. He made various promises and statements, including:

- an assurance that he would consult the chiefs on all key matters,
- that Maori law would continue to apply to themselves,
- that he would send his soldiers away and leave the chiefs to sort out Heke,
- that they were allied guardians of New Zealand (fundamentally like the Indian princes), and
- that he would return the surplus land to them.

On this basis, Waka Nene and other leaders made compensation for Heke's offence, and undertook to keep the peace and prevent any recurrence of Heke's behaviour. That chief, however, rejected this agreement and wrote to the Governor, requesting his own meeting and a negotiation of the matters at issue between them. The Governor declined this request, but also would not approve Nga Puhi requests to resolve matters through customary means that might result in war. As a consequence, he neither sorted it out himself, nor allowed them to do so. The war that followed, therefore, was rendered inevitable by Heke's determination to assert his mana, keep his issues live, and resolve things personally with the Governor, and FitzRoy's equal determination that he should not do so.

Waka Nene and other Nga Puhi leaders remained faithful to the Waimate agreement. They joined the missionaries and protectors in attempting to convince Heke and others that the Treaty of Waitangi was their 'salvation', that it guaranteed their authority over their tribes and lands, and that the British Government would keep faith with them. Heke was not convinced, though many were, especially at the January 1845 hui at Paroa. As the months slipped by and FitzRoy did not come, Heke's resolve stiffened. He attacked the flagstaff twice more in January 1845. This was not enough to precipitate war. FitzRoy had it put back up, continued to stay away, and sent troops. The final catalyst for war was the virtually accidental sacking of Kororareka in March 1845. Nene could not then be dissuaded from fighting, and the Governor no longer wished to prevent him.

The result was a civil war triggered by the intransigence and mistakes of Heke and FitzRoy. It could still have been avoided, as late as December 1844, had the Governor been prepared to allow Nga Puhi to act against Heke with limited force, or to come himself and negotiate with Heke in person. Up till then, there had been no clear rejection of the Queen's

sovereignty. Nene was confident that customary mechanisms would have involved a short conflict and satisfactory peace, if the Government and its soldiers were not part of it. FitzRoy feared the effects of allowing tribal warfare in the north, even though he lacked the forces with which to compel obedience to the Crown. The result was a longer and more damaging civil war in which the Crown was a full participant. At issue was the future of the north; Maori authority and effective self-government; the authority of the Crown (especially where settlers were involved); authority over the land and old land claimants; and ultimately the peace and prosperity promised by Governor Hobson.

The politics of 1844 to 1845 produced a war that marked a significant turning point in the relationship between Nga Puhi and the Crown. The Bay of Islands was deeply divided over the issue of whether the Crown could be trusted to keep the promises and undertakings that FitzRoy had made at Waimate in September 1844. Open opposition to the Crown was focused at Kaikohe, Pakaraka, Ohaeawai, Waikare, Kawakawa, and (to an extent) Waitangi. Waikato, Tareha, Hakiro, and Pomare, maintained an official stance of neutrality, with some degree of secret support for Heke and Kawiti. Support for the Crown was focused at Te Rawhiti and the south-eastern Bay of Islands, and also among leaders within the 'rebel' tribes, such as Taiwhanga, Pukututu, and others. The Waimate communities were deeply divided between support for the Crown and Heke. Principal leadership of the Crown's allies, in terms of active warfare against their kin, fell to leading Hokianga chiefs, especially Tamati Waka Nene. The position of Nene was not a simple one, however, as he had his own residence and interests at the Bay of Islands. The Hokianga tribes were not unanimous in their support of the Crown. Some aided Heke, and there was never anything like a full commitment of their numbers to the war on either side.

FtizRoy's attempt to punish 'rebellion' with confiscation was quietly abandoned. The raupatu claims of Hokianga chiefs were also resolved through Nene's statesmanlike concessions. The new Governor turned down Nga Puhi requests to return the capital (and with it settlers and prosperity) to the north. The communities of the Bay were deeply divided but left to govern themselves much as before, after 1846. Grey's virtual abandonment of the north was not at all what they wanted or expected of him, but his concern was to acquire land in the south and colonise those districts. Thus, although Maori authority survived at the Bay of Islands, as both Heke and Waka had sought, the legacy of the northern war was also economic depression and unresolved land issues. FitzRoy's promise to return the surplus land was not honoured. Grey's efforts to assist Nene and resolve the Old Land Claims turned out to be nominal and were ultimately unsuccessful. Nga Puhi had secured a somewhat hollow victory in 1846, and they turned to the Crown in the late 1850s in an attempt to re-engage with the Government and again renegotiate their alliance. The price for this was accepting the Bell Commission and the settler Government's interpretation of the Old Land Claims and the surplus land question; the confiscation, in effect, of a quarter of their lands. Even so, the prosperity promised by the Crown remained a mirage.

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BOIMMS-1362387

Te Pēwhairangi (Bay of Islands) Marine Mammal Sanctuary Proposal

The submission of Geoff and Fran Ricketts is:

Background

We own a property at Onepoto Bay in Rawhiti. We are strongly conservation minded and were strong supporters of the marine reserve established at Deepwater Cove pursuant to a rahui. We are the Founding Settlors of the Ipipiri Nature Conservancy Trust which was established as a Charitable Trust to buy and preserve the Elliot Bay and surrounding farm and bush for conservation in perpetuity. I also Chair the University of Auckland Foundation and in that capacity, over the years, have been involved with marine scientists in relation to the Goat Island Marine Reserve where the University has a facility and am also aware of the views of marine scientists generally and in relation to this proposal.

We have been owners of both yachts and in more recent times power boats, sailing up the coast and/or in the Bay of Islands. On many occasions dolphins have surfed on the bow wave even in a boat travelling at reasonable speed. They are quite at ease doing so.

Proposed marine mammal sanctuary

We would generally support marine reserves and sanctuaries. However, from our research and enquiry, we have seen no evidence that limiting the speed of boats to 5 knots, will be of any benefit to dolphins or marine mammals. On the contrary, as the suggested marine sanctuary is in a busy marine area with a lot of boats, particularly in holiday times, it means boats will be in those areas for a much longer period of time and possibly could further aggravate the dolphins and other mammals.

Also, our observations of marine reserves and sanctuaries, would be that they have a better chance of success being established in more remote and isolated positions where there has been no "urbanisation", which is not the case in this proposal – for example, Deepwater Cove, Goat Island, the Poor Knights, or unoccupied areas such as south of Cape Brett.

From my property to the north, north–east, I can see boat and marine traffic through the Albert Channel and have frequently seen dolphins and orcas entering the inner Bay of Islands through that channel. They don't appear to be affected by boats also coming through at reasonable speed into the inner Bay of Islands area, although both orcas and dolphins tend to veer south towards the Hauai Bay and Rawhiti marine areas.

At the Guardians of the Bay of Islands last Annual General Meeting, a presentation was given by a DoC presenter regarding the decline in numbers of dolphins in the Bay area. My recollection is that the presenter suggested that when vessels with viewing permits approach pods of dolphins, it appears to have an adverse impact on Bottle Nose Dolphins as it disrupts their daily routines. I regularly see large permitted tourist boats approaching pods of dolphins in the Rawhiti area. Sometimes there is more than one permitted boat and their presence tends to attract locals in runabouts or small boats to the area. My observation is that this does have an adverse impact on dolphins and they disappear from the scene quite quickly when the permitted boats and swimmers are close.

While we don't agree with the establishment of the marine sanctuary, or the speed limit, we do agree that there should be no swimming with dolphins or mammals and restricting all boats from being closer than 400 metres from marine mammals. However, there should not any 400 metre exemptions for marine vessels with permits. Our observation would be they are part of the problem, not part of the solution.

Characterisation of the problem objectives and impacts

As stated above, I consider the problem as being incorrectly characterised.

It is not about boat speed for the reasons I have said above, and nor is the area for the proposed sanctuary appropriate, particularly given the somewhat built up and urbanised area of Paroa Bay etc, and the busy area of Tapeka Point and its surrounds.

Based on what my understanding of the views of marine scientists, the Bottle Nose Dolphins in particular are not generally concerned about boat speed. What they are more concerned about is being disturbed in their daily routine, particularly when they are surrounded by permitted tour boats, swimmers and other boats.

While the population of dolphins in the Bay of Islands has declined, the research indicates that Bottle Nose Dolphins do not always take up permanent residence, and are known to change their habitat if it doesn't meet their requirements.

The reduction in numbers of dolphins could also be impacted due to the change in the habitat with silting up of the waters and changes in water temperature. This has had an adverse effect on fish stock numbers, mussels and scallops.

Conclusion

We support that there should be no swimming with dolphins or mammals and there should also be restrictions on all boats from being closer than 400 metres from marine mammals. There should be no exception for marine vessels with permits. The 5 knot speed limit should be dropped as should the establishment of a marine mammal sanctuary be dropped. As we see it, there is no evidence to support either the speed limit or that the sanctuary is in an appropriate area and likely to succeed.

BOIMMS-1372426

EB Metz Submission to the proposed MMS in Te Pēwhairangi (Bay of Islands)

Date 17th May 2021

I am a recreational vessel owner who has boated, dived, swum, and fished regularly in the waters of the BOI for the last 35 years. During this time, I have spent several long periods of up to 4 months at a time boating in the BOI during both summers and winters.

Submission

My submissions are based on the Department of Conservation provided document titled 'Te Pēwhairangi (Bay of Islands) marine mammal sanctuary proposal'. I refer to this in my submission below as 'the proposed MMS document'.

I partially oppose the marine mammal safety zones because I believe the measures proposed are too drastic and/or poorly defined.

> Regarding the two proposed 'marine mammal safe zones', I agree to the proposed rules applying to the proposed Motuarohia Island (Roberton Island) and Moturua Island marine mammal safe zone.
>
> However, I DO NOT agree to the proposed rules applying to the proposed Tapeka Point to Whangaiwahine Point marine mammal safe zone because they are incredibly and *unacceptably* restrictive on human marine based behaviour.
> This proposed area encompasses several extremely popular boating areas and beaches. Restricting boat speeds to 5 knots in this area is unrealistic and grossly unfair.
>
> I believe the proposed Tapeka Point to Whangaiwahine Point marine mammal safe zone *must be removed* as one of the two marine mammal safe zones. I believe that the general proposed restrictions of the MMS only should apply here.
>
> This will mean that there will only be ONE marine mammal safe zone, that being between Motuarohia Island (Roberton Island) and Moturua Island.

I do believe the proposed MMS document should be changed/amended.

> Under the section of the proposed MMS document titled 'Proposed Restrictions', I believe there needs to be better clarification when a vessel must maintain a distance of 400 metres from any marine mammal present. The document is too general.
>
> During the cooler months seals are often seen lying on the smaller islands of the eastern areas of the MMS area such as Mahenotapuku (Bird Rock), Motutara (Twins Rock) and other rocks in the general vicinity.
> A 400 metre no go zone around these areas is unnecessary and again unfair on recreational boating and fishing activities.
> In my experience, and that of others, these seals are largely oblivious of the presence of boats fishing around these places. I have never experienced a seal being disturbed by my close presence to these islands. I certainly haven't seen a seal being scared off the rocks back into the water.

Besides this, the existing Marine Mammals Protection Regulations 1992 already adequately cover human marine behaviour in this eventuality.

Also, under the section of the proposed MMS document titled 'Proposed Restrictions', I believe that the document needs to provide a *safety-based* exception to the proposed section that currently states, "*If your vessel is not in compliance with this requirement, you're required to take all reasonable measures to stop and allow the marine mammals to pass to 400 metres away*".
The safety exception needs to make an exemption from having to stop if the sea conditions make it dangerous or unsafe for the vessel to do so. Stopping the vessel in some sea conditions could cause danger to human life and/or loss or damage to the vessel.
Better wording needs to be included here.

Finally, also under the section of the proposed MMS document titled 'Proposed Restrictions', I believe that the statement "*The proposed sanctuary builds on the existing restrictions on the interactions with marine mammals*" is grossly understated. This new MMS proposal is a huge variation from the rules detailed in the existing Marine Mammals Protection Regulations 1992. I found this statement somewhat disturbing.

<u>I partially agree with how you have characterised the problem, objectives, and impacts.</u>

In the proposed MMS document section 'Why new measures are proposed', DOC states ...

"*This area has a uniquely high levels of vessel interactions affecting all marine mammals*" and "*The near-constant presence of people and vessels disrupts normal behaviours critical for survival…*" and "*bottlenose dolphins spend on average 86% of daylight hours in the presence of at least one vessel*."

I submit from my considerable experience of boating in the BOI (as above), that these statements are only near true during the few weeks of the typical New Zealand summer holiday period, centred around Christmas New Year, and the short periods of Waitangi weekend, Easter, and Labour weekend.

I have NOT witnessed '*uniquely high levels of vessel interactions'* outside these periods, and I believe the proposed MMS document claims to be a somewhat misleading and an unhelpful exaggeration.

Further, regarding the section "*decreasing numbers of bottlenose dolphins, other marine mammals visiting Te Pēwhairangi (Bay of Islands) now face the same pressures as the focus shifts to them*", I believe the existing regulations (Marine Mammals Protection Regulations 1992), already adequately cover human marine behaviour in this eventuality.

<u>Lastly</u>

How on earth are we supposed to be able to estimate how far 400 metres is away from our vessel or swimming area.

Thank you for your consideration of my submissions.

End of Submission

BOIMMS-1372435

John Douglas Kensington Submission

This submission is made in my personal capacity as someone who has holidayed in the BOI for 40+ years and currently owns a Property at Tapeka pt outside of Russell and visits the bay for rest and relaxation , fishing, local and deep sea and for yachting for BOI race week in January each year and the Coastal Classic to name but two annual events.

All sailors and fishermen in the BOI would be supportive of helping preserve the marine mammals within the Bay of Islands,- this in itself is an excellent concept. However I feel the proposal measures will not work well nor achieve the desired outcomes for marine mammals in relation to people transiting through the BOI as part of their on-water activity. They also lack a certain degree of balance in terms of how it is proposed they are designed and enacted.

For example yachts competing in any racing throughout the bay , simply want to get around the course as quickly as possible in an attempt to win and will pay little attention to the dolphins and will make the trimming of the sails and sailing of the boat their priority , they will not focus on going near dolphins for a look . It is also simply not practical from a racing perspective for the racing yachts to have to keep 400m away from dolphins or alternatively stop the vessel by dropping sails and coming to a halt while the mammals decide what to do. Most race boats experience dolphins with them for 20-30 seconds before the dolphins move on. Whereas under the proposal were we required to stop, start our motor to allow us to pull down sails and remain stationary, the greater activity and noise and stationary boats would likely cause the dolphins to stay for longer. Any race fleet will be trying to traverse the course area as quickly as they can and have no interest with interacting with the dolphins.

The forced stopping of vessels will force them to congregate and make an easy target for dolphins to play around – I would have thought you don't want closely grouped boats but rather dispersed and well separated boats

Further the whole race result could be altered if a boat or boats was forced to stop because it was surrounded by dolphins whereas other boats were not forced to stop. Legitimate national championship , the coastal classic , , BOI race week and millennium cup results could be impacted in a way that meant they became a bit of a joke and the events were moved elsewhere

In addition, in a normal year only a quarter of the coastal classic fleet (a race that has been in place for 40 years next year and is recognized as one of the top 10 races in the world and the largest single race in the southern hemisphere) could have a real issue as only half the fleet finish in daylight hours with the bulk finishing after dark. It is simply not possible on a rainy or dark or moonless night or a combination thereof to be able to see dolphins in the water at 400m.

We I cannot see how yacht clubs could adapt their events to incorporate the proposed vessel restrictions, while maintaining the essence, history and viability of the event.

The Bay of Islands benefit significantly socially and economically in a number of ways from the Yacht Races – whether it be the coastal classic , BOI race week , millennium Cup . Many of these events have been going on for years (the coastal classic has been going on for 39 years) and are part of the fabric not only of yachting but also of Bay of Islands with benefits for accommodation providers, food and beverage operators, other travel business such as the Fullers Ferries, charter fishing etc., from the people who come up in the yacht, race in the BOI , their support teams and others and stay in the BOI.

A similar situation arises for a fishing boat moving to a fishing spot in the BOI or leaving the BOI to fish for game fish out wide . As we leave the boat ramp or marina we have one aim to get to our fishing spot as quickly as possible . We have no desire to watch the dolphins in fact they are a bad luck sign when fishing as the "scare away" other species we are targeting . When we traverse the BO to go to a fishing spot we would only encounter dolphins for 20 seconds or so as they ride the wake , and then they move away because we steer a straight line to our spot , we don't slow down we just keep going

Again by making us stop as we traverse the bay will only prolong the contact the dolphins have as on a busy day it would be feasible that many dozen boats will end up stopped with the dolphins playing around them

I would ask that the draft rules are amended to exclude a couple of things
-yachts competing in an organized race to allow these vessels to transition through the area as efficiently as possible and reduce the time spent with the dolphins.
- yachts and launches transitioning through the area for a reason such as heading out to a fishing spot

We propose the following wording be added to the proposed gazette notice:

6. The following vessels would be exempted from all restrictions in the proposed sanctuary:

a. *any vessel involved in a maritime emergency or undertaking a maritime emergency role;*

b. *any vessel undertaking research under the Marine Mammals Protection Act 1978;*

c. *any vessel undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);*

d. *any Harbourmaster vessel;*

e. *any Navy vessel.*

f. ***Any vessel competing in an organised yacht race.***

g. ***Any vessel transitioning through the defined area provided that vessel makes a reasonable/genuine attempt to keep 400m away from any mammals and when doing so keeps going such that there ation is to move through the area and not remain within it***

Another matter that should also be considered is a defined entry /exit lane BOI efficiently to assist boats to transition through the BOI and cause minimum disruption and spend minimum time in the defined area

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Regards

Greer Houston

Commodore of the New Zealand Multihull Yacht Club

BOIMMS-1372480

Bay of Islands Marine Mammal Sanctuary Proposal – Submission

Tom Brough

I am marine ecologist with a specialisation in marine mammal ecology, marine spatial planning and quantitative modelling with the National Institute of Water and Atmospheric Research. This submission does not, however, reflect the position of the institute. I am also a Bay of Islands local, having grown up in the Bay where I return for work and recreation for several months of each year. Having spent decades on the water in the Bay of Islands, including working for research institutions and non-permitted commercial operators, I am well aware of the need for management of the local bottlenose dolphins. I recognise the current proposal for a marine mammal sanctuary as a good first step to instigate an important korero. However, I have strong reservations around the science and the subsequent process used to arrive at the current proposal. For this reason, **I do not support the current proposal.** Given the need for management in the Bay of Islands, it is important to get the inputs to the decision making processes as accurate as possible to ensure the most appropriate management solution and minimise litigation. Considering the uncertainty and lack of robustness in the science and sanctuary development process, I do not fully agree with how the problem and impacts have been characterised. As it stands, I believe the proposal needs considerable revision, the details of which are discussed below.

Science

The impacts of tour vessels on the behaviour of bottlenose dolphins in the Bay, elsewhere in NZ and internationally is well known. I completely acknowledge that vessels in the Bay are having an impact on the behaviour of the dolphins. What is less clear, however, is the relationship between behavioural impacts and consequences for the (sub)population; behavioural impact does not always imply a population level consequence (e.g., New et al. 2013). There are established methods with which to establish the relationships between an anthropogenic stressor and a biological response in marine mammal populations (e.g., Meyer et al 2017; Tenan et al. 2020), that have been routinely used for threatened populations of marine mammal in NZ (Currey et al. 2009; Meyer et al. 2017; Roberts et al. 2019). These methods should be used for the Bay of Islands sub-population to establish causality for the perceived decline in relative abundance. Such an intervention would bring this proposal in line with currently accepted national and international best-practice.

While there seems like an obvious reduction in the number of dolphins utilising the Bay of Island, the current metrics used to summarise this reduction are inappropriate. Reporting very basic metrics that summarise the 'number of identifiable individuals', is not a recognised measure of a declining population. For example, the latest surveys suggest a decline from 96 to 26 identifiable dolphins. Yet, the study timeframes over which these dolphins were observed are 29 and 10 months respectively – if the 2020 study continued for another 19 months perhaps it would encounter a similar number of dolphins. Best practice is to report population decline as a reduction in population abundance (e.g., Bejder et al. 2006; Currey et al. 2007); and abundance is calculated using capture-recapture models or density models. Similarly, calculations of calf survival rates in this proposal are not an accurate reflection of survival given the likelihood they may be constrained by variability in capture probability among individuals and variability in field effort. More accurate modelling approaches for estimating survival rates of key demographics are well established in NZ and elsewhere (Currey et al. 2009, Gormley et al. 2012; Bezamat et al. 2020), that reduce such biases significantly and provide a measure of uncertainty around survival estimates. Population modelling approaches using capture-recapture

frameworks provide the basis for any marine mammal risk/threat assessment (e.g., Large et al. 2017; Roberts et al. 2019) by allowing the accurate quantification of the necessary population vital rates (abundance, reproductive and survival rates). Such approaches also allow meaningful projection of the population's status into the future, in contrast to the current approach which provides no scientific basis for stating the population may be extirpated by 2022.

The recent analyses on the distribution of dolphins within the Bay of Islands (Guerin 2020), which seems to be used to set boundaries for the 5knot speed areas, are simplistic, difficult to interpret due to poor phrasing and not fit for purpose. Simple grids of sightings per km effort provide limited information on the use of areas unless there is a relatively even distribution of research effort, which is not the case in Guerin (2020). The previous analysis (Peters and Stockin 2016) uses a more robust method, though there is a lack of information on some of the critical parameters for Kernel Density Estimation. The Peters and Stockin (2016) distribution results show dolphin high-use areas that are different from the 5kn areas in the present proposal. Consequently, there is substantial uncertainty regarding the scientific basis for how the 5kn areas were conceived. To establish appropriate boundaries for spatial zones, rigorous spatial analyses that incorporate seasonal, environmental and demographic parameters should be used, ideally using long-term data (Brough et al. 2019). Current best-practice is to develop dynamic spatial models that incorporate the aforementioned parameters as covariates; such models can then be used to determine how distribution changes across various temporal scales. Given the history of changes in habitat-use by bottlenose dolphins in the Bay (Hartel et al. 2014), such models are essential in locating the best places for spatial management zones.

Process

Spatial planning processes for a variety of marine conservation purposes typically follow a prescribed approach that iterates a range of trade-offs between biodiversity conservation, cultural values, recreational and commercial use components. While the partnership with tangata kaitiaki illustrated in this proposal is commendable, there is limited evidence for representation of other marine users' perspective in a way that allows a quantitative assessment of trade-offs. Through recent projects in the MPA reform workflow, the Department itself has funded the development of a 'cookbook' for marine spatial planning (Lundquist et al. 2020), that outlines the process and major decision points required for the development of marine spatial management. Such approaches have been undertaken for cetaceans at a national scale (Stephenson et al. In press) and would be highly relevant for local scale analyses in the BOI. I recommend that the Department follows its own advice, and engage in an appropriate, stakeholder-driven process for the establishment of a MMS in the BOI using systematic spatial planning. At the very minimum, systematic approaches should be developed that assess the impact of the proposed management on existing users. There is significant evidence that community by-in is the only way to achieve effective MPAs; allowing users to contribute to the development of the MMS through systematic planning is a proven method for encouraging such by-in.

I also have concerns with a lack of engagement with the wider scientific community on this proposal, a lack of appropriate peer-review of the science and what seems to be substantial conflict of interest between parties involved. The development of a marine sanctuary, that has the potential to impact users of the marine environment in significant ways, should incorporate feedback from the wider scientific community on the appropriateness of the methods used to establish the sanctuary. This engagement should incorporate thorough peer-review of the science that underpins the sanctuary. While I recognise the Peters and Stockin (2016) was peer-reviewed, it was not in the context of the development of a MMS and the most recent work (Guerin 2020) does not seem to be meaningfully reviewed at all. The existence of a conflict of interest between the research provider (TriOcean) and

the management authority (DOC) raises additional concerns around the transparency of the process to develop the MMS, and further necessitates the involvement of the wider scientific community.

Summary

In summary, while I acknowledge the need for management of the tourism industry in the Bay, I believe the current proposal is unlikely to afford successful mitigation of impacts due to a lack of robustness to the scientific inputs and the planning processes. I strongly encourage DOC to investigate the development of other MMS within NZ and more-widely (none of which are referenced in the supporting documentation). Examples including the Hector's/Maui Threat Management Plan, Fiordland bottlenose dolphin management, NZ sea lion Threat Management Plan provide insights into the necessary inputs, and the process required to develop spatial management for marine mammals in NZ. The road to the implementation of management is long and costly. However, assistance is only an email away. I strongly advise the Department to engage more thoroughly with the wider marine mammal and MPA planning scientific community in Aotearoa. The expertise to develop all the required scientific inputs for this process are readily available in NZ and the Department would find collaborations easily forthcoming for such an important issue. Personally, I would happily lend my expertise in spatial/population modelling and MPA design to collaborate with the Department and its current research providers, as would researchers throughout NZ. If the department follows the established process, with meaningful engagement with the wider scientific community and other marine users, I believe an effective MMS in the Bay of Islands is a realistic outcome.

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BOIMMS-1372498: 1

NZMYC PO Box 3337 Auckland info@multihull.org.nz

New Zealand Multihull Yacht Club submission in relation to the proposal to establish a Marine Mammal Sanctuary in Te Pēwhairangi (Bay of Islands)

The New Zealand Multihull Yacht Club (NZMYC) has made a separate submission in relation to the iconic "Coastal Classic" yacht race run by the club and the significant impact the proposal would have on the event. This submission discusses the general effects it may have on our members and their activities within the moana of Te Pēwhairangi.

The NZMYC acknowledges the importance of keeping this pod of dolphins safe and allowing them regenerate. We also broadly support with the general concept of what the Te Pēwhairangi Marine Mammal Sanctuary is trying to achieve, however we feel the proposal is unnecessarily restrictive on the movements of yachts while racing in organized events in these waters.

Our Club members compete at the Bay of Islands race week, the Tall Ships race, The Millennium Cup and other yacht races in Te Pēwhairangi. These events are all held within the general Bay of Islands area from the Inner Bay out to the Nine Pin and Red Head, within the proposed Te Pēwhairangi Marine Mammal Sanctuary. These events are all iconic events that focus world attention and bring significant social and economic benefits to the Bay of Islands by using the beautiful islands of Te Pēwhairangi as marks of racecourses.

When yachts are competing, they are focused of moving around the racecourse in the fastest way possible and do not divert their course to watch or interact with the dolphins. Anecdotal evidence from our members is that if the dolphins interact with a racing vessel, the dolphins tend to only hang around for 20-30secs before losing interest and leaving the vessel.

If the proposed rules are implemented as written, it will result in competing yachts having to change course to keep 400m away from dolphins or stop racing altogether if the dolphins are too close. For a yacht to stop moving through the water, it must lower its sails and requires starting its engine for maneuverability to do this. This activity and associated disturbance is likely to encourage more interest from the dolphins than if the yacht had kept sailing on its course.

We would ask that the rules are amended to exclude yachts competing in an organized race, to allow these vessels to move off as efficiently as possible and reduce the time spent with the dolphins.

We propose the following wording be added to the proposed gazette notice:

> *6. The following vessels would be exempted from all restrictions in the proposed sanctuary:*
>
> a. *any vessel involved in a maritime emergency or undertaking a maritime emergency role;*
>
> b. *any vessel undertaking research under the Marine Mammals Protection Act 1978;*
>
> c. *any vessel undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);*
>
> d. *any Harbourmaster vessel;*
>
> e. *any Navy vessel.*
>
> **f. *Any vessel competing in an organised race.***

We will also request to the Yacht Clubs who organizing these events, that the racecourses are amended to keep racing vessels outside of the proposed "Marine Mammal Safe Zones" to prevent racing yachts going into these special areas.

We wish to be involved in any further discussions about the proposed Marine Mammal Sanctuary and wish to also present at any hearing on the matter, should one be held.

Regards

Greer Houston
Commodore of the New Zealand Multihull Yacht Club

BOIMMS-1372498: 2

COASTAL CLASSIC

NZMYC PO Box 3337 Auckland – info@multihull.org.nz

New Zealand Multihull Yacht Club (NZMYC) submission on behalf of its Coastal Classic Yacht Race in relation to the proposal to establish a marine mammal sanctuary in Te Pēwhairangi (Bay of Islands)

The NZMYC has been running the Coastal Classic Yacht Race from Auckland to Russell every Labour Weekend for 39 years (2022 will be the 40th anniversary of the race). The race is recognized as one of the most iconic yacht races in the southern hemisphere and is the most popular coastal yacht race in New Zealand. The race course is from Devonport Wharf in Auckland, to the finish off Russell Wharf in Te Pēwhairangi. We usually have 130-200 yachts competing and at least 1500 people competing on these vessels.

As the race organization responsible for the Coastal Classic, we have significant concerns about some parts of the proposed Te Pēwhairangi Marine Mammal sanctuary, particularly those related to restricting vessel movements when dolphins are within 400m. These proposal measures will affect the last 20 nautical miles (NM) of the 120NM racecourse.

While it is our view that all sailors competing in the race would be generally supportive of helping preserve marine mammals within Te Pēwhairangi, we feel the above noted proposed measures do not work well or achieve the desired outcomes for marine mammals in relation to racing yachts.

The yachts competing in the race enter Te Pēwhairangi by rounding Cape Brett from the south and proceed to the finish off Russell. Our race fleets are solely focused on traversing this final stretch to the finish as quickly as is safely possible. Unlike marine mammal tours and private vessels out for a cruise, racing yachts do not change their route to intentionally engage with dolphins and navigate with indifference to the animals if they do arrive. Anecdotal experience informs us that most race yachts experience dolphins near them typically for only 20-30 seconds before they move on, and the actions required to safely stop racing and come to a halt (e.g., starting the engine, dropping sails, etc.), causes movement and noise on board the vessel which is interesting to dolphins and encourages them to stay alongside the yacht for longer.

In addition, in a normal year only a quarter of our fleet finish in daylight hours, with the bulk of the fleet traversing the body of water in question and finishing the race after dark. It is not possible on a

rainy, or dark, or moonless night, or a combination thereof, to be able to see dolphins in the water at 400m.

We have reviewed how we could adapt our event to incorporate the proposed vessel restrictions, however we can see no way to incorporate them, while maintaining the viability, essence, history and fairness of the event. For example, the race results would be altered if any yacht were forced to stop because dolphins approached it while other yachts were not forced to stop.

If we finished the race outside of the proposed marine mammal sanctuary, we expect most yachts would return to Auckland or Tutukaka than continue onto the Russell, the current finish line and onshore base for the event. As the race has been continuously held for 39 years, it is part of the fabric not only of yachting in New Zealand but also brings significant benefits to the wider Bay of Islands community such as accommodation providers, food and beverage operators, ferries, charter fishing etc. etc, from all the people associated with the yacht race. We are concerned our race will no longer be of interest to its participants and these benefits will disappear if the proposal goes ahead as notified.

We would ask that the rules are amended to exclude yachts competing in an organized race to allow these vessels to traverse through the area as efficiently as possible and reduce the time spent with the dolphins.

We propose the following wording be added to the proposed gazette notice:

> *6. The following vessels would be exempted from all restrictions in the proposed sanctuary:*
>
> a. *any vessel involved in a maritime emergency or undertaking a maritime emergency role;*
> b. *any vessel undertaking research under the Marine Mammals Protection Act 1978;*
> c. *any vessel undertaking a compliance role (including the Department of Conservation under the Marine Mammals Protection Act 1978, Maritime Police, Customs, Ministry for Primary Industries, Northland Regional Council);*
> d. *any Harbourmaster vessel;*
> e. *any Navy vessel.*
> **f.** ***Any vessel competing in an organised race.***

This submission is related to just that part of the proposal that will affect our clubs flagship event, the Coastal Classic. Please see our other submission for views of our club members and how it will affect them.

We request to be involved in any further discussions on this matter and wish to be heard if a hearing is called.

Regards

Greer Houston
Commodore of the New Zealand Multihull Yacht Club

BOIMMS-1372531

Business Paihia Marine Mammal Sanctuary Submission

13th of May 2021

Business Paihia represents 100 businesses based in and around Paihia, the tourism hotspot of the Bay of Islands. Many of these businesses are directly or indirectly involved in maritime operations in the Bay of Islands.

The association has consulted widely with it's membership before putting together this submission.

The association opposes the proposed Marine Mammal Sanctuary Proposal, as it currently stands, for the following reasons;

- The proposal suggests that vessels within 400m of Marine Mammals will have to come to a complete stop until the marine mammals move 400m away from the vessels. In practice this could create an effective 800m wide stop zone anywhere in the Bay of Islands. This will impact events in the Bay of Islands with races needing to be abandoned and events canceled. Cruise ships, on short visits to the Bay of Islands, could be prevented from berthing, or have their tender operations suspended indefinitely as a result of marine mammals entering the inner harbour.
- The requirement to come to a complete halt is unworkable. It has the potential to be unsafe as vessels loose steering, sailing vessels dropping sails and skippers become frustrated and pressured to maintain schedules. Delays to tourist vessels could lead to missed connections and delayed service departures. Ultimately it could lead to the cancelation of ferry services or even the complete lockdown of Opua Marina.
- The inclusion of seals in the species protected by the marine mammal sanctuary provisions. The seal population is on the increase. The behaviour of seals is such that they are quite sedentary and can stay in a location for an extended period of time. Under the proposed rules they have the potential to restrict all vessel movements in large portions of the Bay of Islands i.e. a seal on the pontoon at Opua could force all movement in the marina to be shutdown.

As an Association our members would like to suggest the following amendments to to the rules of the proposed marine mammal sanctuary;

- Reduce the minimum space required around marine mammals to 300m. This is consistent with current rules, and reduces the disruption to the people, boaties and the Bay of Islands economy.
- Remove the requirement for vessels to come to a complete stop around marine mammals, and instead require vessels to reduce speed to 5kts. This is consistent with existing rules, and it is already a known requirement within 200m of shore.
- Remove Seals from the species that trigger the distance and speed limitations.
- Introduce an exclusion zone within the inner harbour area of the Bay of Islands. The association proposes that this limit could be from Tapeka Point to the Brampton Buoy. This will mean that operations such as cruise ship tendering, parasailing, passenger and vehicle ferry services will not be disrupted by the sanctuary.

In addition, the association would like to see increased education and funding to enable the restrictions to be understood and complied with by all.

On a positive note, the association recognises that the sanctuary will improve DOCs ability to control the actions of recreational boaties around marine mammals. This is seen as desperately needed.

Also the Association believes that in principle the creation of a practical marine mammal sanctuary will be an attractive marketing proposition for the Bay of Islands region, and will ultimately draw more visitors, both domestic and international, to the region.

Yours sincerely

Charles Parker
Chairperson

BOIMMS-1372558

To Whom it may concern,

I am a local resident/land owner in the Bay of Islands, and have been boating in the Bay of Islands for the past 44 years, I am an environmental conservationist at heart, I have a deep admiration for marine mammals in particular dolphins.

I wish to draw your attention to the fact the Foundation Calculation Statement of the MMS Proposal is incorrect, false and misleading.

The promotional statement "Bottle nosed dolphins send an average of 86% of their daylight house in the company of at least one vessel" is incorrect as the maths simply does not add up.

Nine months of the year the bay of islands is basically deserted, there is physically not enough vessels at sea/underway in the Bay of Islands during this period to make this calculation correct. In addition to seasonality there is also other mitigating factors such as bad weather which will also impact the calculation. **This inaccurate calculation is being used to underpin and benchmark the Bay of Islands against other areas therefore this proposal is providing misleading and false information to the public.**

The proposed 5 knots speed restriction will actually increase the number of vessels at any one time transiting the proposed restricted 5 knot area, as the boats are moving slower, they will be in the area for longer causing a disruption/noise for a longer period, it is a bit like traffic building up at roadworks outside your house. This will be exasperated over the busy summer months, defeating the intended purpose of the MMS Proposal.

Dolphins will also bow ride and surf on the wake of a vessel operating at 5 knots also defeating the intention of the proposal.

Dolphins and other marine mammals are very intelligent, they are not stupid, if they do not want to do something, they will not do it! Dolphins enjoy the company of vessels and people, which is why dolphins will migrate towards vessels from time to time even when anchored or alternatively from time to time dolphins will keep clear of vessels and humans.

There is no conclusive evidence provided that definitively proves the reduction in bottle nose dolphins population is 100% attributed to boat movements and interaction with humans, it is only speculative evidence. The local bottle nosed dolphin population may be declining due other environmental factors such as dolphins being caught in trawlers nets, set nets or simply a shortage of food resource available in the Bay of Islands.

Food is one of the biggest drivers of creature behaviours in the world regardless species, this is a known and documented fact, for example food is used to train dolphins behaviour in captivity.

There is however a better alternative, a guaranteed way assisting mammals in the Bay of Islands area!

Food!!

A better option with a known and guaranteed outcome is to provide a guaranteed food resource for the dolphins and other mammals , this could easily be achieved by creating a fishing reserve around Roberton Island. This reserve concept would be supported by just about everyone, with little if any negative impact on the Bay of islands community.