[PAN2 web site]

Registered Claims by Category

[under construction: links to be completed]

[Most of the 791 registered claims with the Waitangi Tribunal (as at 25 August 1999) relate to land; approximately 260 or 33% relate to other resources or contemporary issues.

The following categories are claims identified by their Tribunal summary descriptions as being 'non-land' in character although many of these, on inspection of the actual claims, would also relate to land. Similarly, many 'land' claims include categories listed below).

Summary Treaty Claims Register to 25 August 1999

Harbours & Estuaries [15]
Wai 8 Manakau Harbour claim
Wai 55 Te Whanganui-A-Orotu claim (Napier Inner Harbour)
Wai 86 Waikareao Estuary Road claim
Wai 121 Ngati Whatua Lands and Fisheries claim (Hokianga/Manukau Harbour)
Wai 125 Raglan Harbour claim
Wai 229 Otamatea Lands claim (Otamatea/Kaipara Harbour)
Wai 278 Waikokopu Harbour claim
Wai 296 Maketu Estuary claim
Wai 379 Marlborough Sounds and Picton claim
Wai 450 Waireia Lands claim (Hokianga Harbour)
Wai 489 Whareroa Blocks and Fishing Rights in the Tauranga Harbour claim
Wai 688 Nga Hapu O Whangarei Lands, Waters, Forests and Resources claim (Kaipara Harbour)
Wai 705 Whitianga Township and Te Whanganui-o-Hei Harbour claim
Wai 708 Tauranga Harbour (Pirirakau) claim
Wai 775 Whaingaroa Harbour and OtherWaikato Waters claim

Coasts, Seabed & Foreshores [5]
Wai 347 Turanganui A Kiwa Coastal Permits claim
Wai 513 Proposed Regional Coastal Plan (Northland) claim
Wai 517 Northland Regional Coastal Plan claim
Wai 771 Ngamotu Lands, Fisheries, Foreshore and Seabed claim
Wai 782 Tauhara Middle Blocks (Foreshore Reserves) claim

Rivers, Streams, Lakes, Waters, Springs, Aquifers [41]
Wai 4 Kaituna River claim
Wai 49 Taumarere River and Te Moana O Pikopiko-I-Whiti claim
Wai 79 Awakeri Springs claim
Wai 85 Mangakino Lands andWaikato River claim
Wai 119 Mohaka Lands claim (Report issued on river aspect 5.11.92.)
Wai 120 Opua Lands and Waterways claim
Wai 128 Hokianga Lands and Waters claim
Wai 129 East Coast Lands and Waters claim
Wai 167 Whanganui River claim
Wai 173 Waiapu River claim
Wai 178 Lake Rotoaira claim
Wai 193 Waitangi No.3 (Soda Springs) claim
Wai 212 Ika Whenua Lands and Waterways claim
Wai 217 Waikato River - Atiamuri to Huka claim
Wai 218 Taniwha and Hamurana Springs claim
Wai 219 Hamurana Springs claim
Wai 129 East Coast Lands and Waters claim

Wai 212 Ika Whenua Lands and Waterways claim
Wai 222 Te Puia Springs claim
Wai 239 Morere Springs (Tangiora) claim
Wai 240 Rotorua Lakes claim
Wai 292 Te Kao Lands and Waterways claim
Wai 300 Morere Springs (Hape) claim
Wai 333 LakeWaikaremoana claim
Wai 363 Tuhourangi Lands and Waterways claim
Wai 367 Combined record of inquiry for South Taupo Lands and Lake Taupo claim
Wai 382 Kaweka Forest Park and Ngaruroro River claim
Wai 402 Pt Ngaruroro Riverbed claim
Wai 451 Mohaka River Settlement claim
Wai 490 Tokaanu Hot Springs Reserve claim
Wai 516 Waingongoro Stream claim
Wai 536 Pakowhai Native Reserve and Ngaruroro River Bed claim
Wai 595 Heretaunga Aquifer claim
Wai 671 Whanganui Groundwater claim
Wai 675 Lake Okataina and Surrounding Lands claim
Wai 688 Nga Hapu O Whangarei Lands, Waters, Forests and Resources claim
Wai 700 Whirinaki Lands and Waters (Hokianga) claim
Wai 708 Tauranga Harbour (Pirirakau) claim (Wairoa River -Waipapa Stream)
Wai 761 Urewera Lands and Waters (Keepa) claim
Wai 762 Waimiha River Eel Fisheries (King Country) claim
Wai 775 Whaingaroa Harbour and OtherWaikato Waters claim

Geothermal resources [11]
Wai 53 Parahirahi C1 Block and the Ngawha Geothermal Fields claim
Wai 123 Parahirahi (Geothermal) claim
Wai 164 Paengaroa South Geothermal claim
Wai 165 Geothermal claim
Wai 206 White Island and Whale Island claim
Wai 226 Tuwharetoa Geothermal Areas claim
Wai 268 Whakarewarewa Geothermal Valley claim
Wai 304 Ngawha Geothermal claim
Wai 335 Pukeroa Oruawhata Geothermal Resource claim
Wai 461 Mokai Geothermal Resource claim
Wai 533 Whakarewarewa Geothermal Valley and State Forest claim

Sewerage, pollution [3]
Wai 3 Welcome Bay Sewerage Scheme claim
Wai 17 Ngati Kahu - Sewerage and Ancestral Land claim
Wai 21 Tasman Co. Pollution claim

Customary use and title [3]
Wai 541 Protection of Maori Customary Title claim
Wai 698 Customary Fishing Regulations claim
Wai 757 Fisheries (Kaimoana Customary Fishing) Regulations 1998 claim

Unspecified 'Resources' [25]
Wai 389 Te Rohe Potae Land and Resources claim
Wai 461 Mokai Geothermal Resource claim
Wai 535 Ngati Maniapoto Lands and Resources claim
Wai 549 Ngapuhi Land and Resources claim
Wai 576 Waitara Land and Resources claim
Wai 620 TeWaiariki/Ngati Korora Hapu Land and Resources claim
Wai 641 Ngati Hine Lands and Resources claim
Wai 682 Ngati Hine Lands, Forests and Resources claim

Wai 489 Whareroa Blocks and Fishing Rights in the Tauranga Harbour claim
Wai 514 Te Waka Hi Ika O Te Arawa Fisheries Allocation claim
Wai 521 Ngati Apa Iwi Lands and Fisheries claim
Wai 589 Treaty ofWaitangi Fisheries Commission (Appointments) claim
Wai 698 Customary Fishing Regulations claim
Wai 753 Ngati Kinohaku Lands, Forests and Fisheries claim
Wai 757 Fisheries (Kaimoana Customary Fishing) Regulations 1998
Wai 762 Waimiha River Eel Fisheries (King Country) claim
Wai 770 Wairarapa Land and Fisheries (Karaitiana)
Wai 771 Ngamotu Lands, Fisheries, Foreshore and Seabed claim
Wai 772 Mandating Process and Nga Ariki Lands and Fisheries claim

Native flora and fauna [3]
Wai 262 Indigenous Flora and Fauna claim
Wai 679 Papatarata A2 Native Trees claim
Wai 740 Protection of Indigenous Flora and Fauna (Allen) claim

Parks, reserves, DOC conservancy areas [20]
Wai 69 Rangaika Reserve claim
Wai 72 Ngati Paoa Lands and Fisheries claim Tribunal issued interim report on aspect of claim (Sylvia Park and Auckland Crown Asset disposals)
Wai 276 Sylvia Park claim
Wai 277 Raetihi and Mangaturuturu Blocks claim National Park, Ruapehu
Wai 325 Maketu A Sec.127 (Bledisloe Park) claim
Wai 326 Cathedral Cove/Mercury Bay Marine Reserve claim
Wai 331 Ngaio Reserve claim
Wai 382 Kaweka Forest Park and Ngaruroro River claim
Wai 397 Gwavas Forest Park claim
Wai 467 Tongariro National Park claim
Wai 480 Tongariro/Taupo Conservancy claim
Wai 490 Tokaanu Hot Springs Reserve claim
Wai 502 Tongariro National Park claim
Wai 510 Taitokerau/Northland Conservancy Plan claim
Wai 515 Taitokerau/Northland Conservancy Plan claim (No.2)
Wai 574 Karanema Reserve claim
Wai 690 Ngati Tera Lands and Reserves (Porirua) claim
Wai 711 Tauhara Middle No 4 (Rotoakui Reserve) claim
Wai 728 Tikapa Moana (Hauraki Gulfl National Marine Park claim
Wai 782 Tauhara Middle Blocks (Foreshore Reserves) claim

Laws, Acts & Regulations, Courts [29]
Wai 1 Fisheries Regulations claim
Wai 13 Fisheries Regulations claim
Wai 29 State Owned Enterprises Act 1986 claim
Wai 35 Tuhoe Lands and State Owned Enterprises Act claim
Wai 39 Ngati Porou Lands, Fisheries and SOE Act claim
Wai 160 Guardianship Act claim
Wai 169 Labour Relations Act claim
Wai 179 Maori Affairs Act and Burials and Cremations Act claim
Wai 223 Immigration Act claim
Wai 235 Crown Forest Assets Act claim
Wai 241 Family and Youth Court Proceedings claim
Wai 242 Operations of the Maori Land Court, Maori Trustee and Maori Affairs claim Wai 336 Ancestral Lands and Energy Companies Act 1992 claim
Wai 395 Electoral Act claim
Wai 412 Provisions of the Electoral Acts claim
Wai 486 Maori Affairs Act 1953 claim

Wai 688 Nga Hapu O Whangarei Lands, Waters, Forests and Resources
Wai 702 Waitaha Hapu Lands and Resources claim
Wai 716 Gas & Oil Resources (Rongomaiwahine) claim
Wai 719 Kaipara Land and Resources (Pirika Ngai Whanau) claim
Wai 721 Ngati Tahinga Ki Kaipara Land and Resources claim
Wai 723 Ngati Tama Manawhenua Ki Te Tau Ihu Land and Resources
Wai 726 Ngati Haka and Pataheaheu Lands, Forests and Resources (Urewera) claim
Wai 727 Pirirakau-Maungapohatu Land and Resources (Tauranga) claim
Wai 733 Otakanini Lands and Resources (Kaipara) claim
Wai 736 Pikaahu Hapu Lands, Forests, and Resources claim
Wai 741 Wairarapa Local Government and Resource Management claim
Wai 745 Patuharakeke Hapu Lands and Resources claim
Wai 756 Southern Kaipara Lands and Resources claim
Wai 774 Waitangi Lands and Resources claim
Wai 783 Tautuku andWaikawa Lands (Resource Management)
Wai 784 Kauwhata Lands and Resources claim
Wai 335 Pukeroa Oruawhata Geothermal Resource claim

Fisheries [49]
Wai 1 Fisheries Regulations claim
Wai 13 Fisheries Regulations claim
Wai 15 Te Weehi Fishing claim
Wai 18 Taupo Fishing Rights claim
Wai 22 Muriwhenua Fisheries and SOE claim
Wai 27 Ngai Tahu Lands and Fisheries claim
Wai 39 Ngati Porou Lands, Fisheries and SOE Act claim
Wai 44 Kurahaupo Rangitane claim (Fisheries settlement, 4.11.92)
Wai 56 Nelson Lands and Fisheries claim
Wai 58 Whangaroa Lands and Fisheries claim
Wai 63 Tairawhiti Fisheries claim
Wai 64 Chatham Islands claims Tribunal issued report on aspect of claim (Fisheries settlement, 4.11.92),
Wai 65 Chatham Islands and Fisheries claim
Wai 72 Ngati Paoa Lands and Fisheries claim
Wai 74 Kawhia Fisheries claim
Wai 97 Wairarapa Lands and Fisheries claim
Wai 98 Oweka and Whangaokeno Lands and Fisheries claim
Wai 99 Te Pakakohi Lands and Fisheries claim
Wai 106 Kaipara Fisheries claim
Wai 108 Muaupoko Lands and Fisheries claim
Wai 114 Lake Taupo Fisheries claim
Wai 121 Ngati Whatua Lands and Fisheries claim
Wai 159 Tuhua (Mayor) Island claim Tribunal issued report on aspect of claim (Fisheries settlement, 4.11,92)
Wai 166 Southern Hawkes Bay Lands and Fisheries claim
Wai 232 Whanau-A-Kauaetangohia Fisheries claim
Wai 244 NgatiWai Lands and Fisheries claim
Wai 249 Hokianga Lands and Fisheries claim
Wai 250 Hokianga Fisheries claim
Wai 305 Lands and Fisheries claim
Wai 307 Aggregation of claims concerning the Crown-Maori Settlement on Fisheries
Wai 308 Rekohu Lands and Fisheries claim
Wai 309 Fisheries of Te Whanau Apanui claim
Wai 310 Sealord Fisheries Settlement claim
Wai 311 Sealord Fisheries Settlement claim
Wai 321 Treaty ofWaitangi Fisheries Commission claim
Wai 447 Fisheries Allocation claim
Wai 469 Ngati Awa Northern South Island Lands and Fisheries claim
Wai 485 Urban Maori Fisheries Allocation claim

Wai 509 Urewera Consolidation Act claim
Wai 512 Laws Governing Maori Land claim
Wai 528 Local Government Act 1974 claim
Wai 545 National Archives and Archives Act claim
Wai 572 Privy Council claim
Wai 585 Privy Council (Ngati Te Ata) claim
Wai 634 Maori Land and the Laws of Succession claim
Wai 645 Tauranga Moana Maori Trust Board Act claim
Wai 648 George Hori Toms and Colonial Laws of Succession claim
Wai 656 Section 137 of the Maori Affairs Act 1953 claim
Wai 698 Customary Fishing Regulations claim
Wai 699 Dog Control Act and Policies claim
Wai 724 Murupara Section and Rating Powers Act 1988 claim
Wai 757 Fisheries (Kaimoana Customary Fishing) Regulations 1998 claim

Legal aid [2]
Wai 107 Legal Aid claim
Wai 439 Civil Legal Aid claim

Tax, rates, rating, rent, subsidies, loans [12]
Wai 5 Land Tax claim
Wai 24 Rates on Maori Lands claim
Wai 115 Sewage Rates claim
Wai 260 Crown Forest Rental Trust claim
Wai 284 Karikari Rating claim
Wai 314 Maori Farming Loans Policy claim
Wai 387 Childcare Subsidies claim
Wai 463 Rating and Valuation of Maori Land claim
Wai 477 Te Reo Maori in Tax Legislation claim
Wai 677 Allotments 441 & 442, Ngaruawahia Rating claim
Wai 724 Murupara Section and Rating Powers Act 1988 claim
Wai 763 Kapehu Blocks and Rating claim

Special Privileges [1]
Wai 19 Special Privileges claim

Representation, Electoral [4]
Wai 25 Maori Representation on Auckland Regional Authority claim
Wai 395 Electoral Act claim
Wai 412 Provisions of the Electoral Acts claim
Wai 413 Maori Electoral Option claim

Education, university, bursary, school, syllabus [20]
Wai 148 Manaia 1C School Site claim
Wai 180 Koroniti School Site claim
Wai 208 Bethlehem School Site claim
Wai 287 School History Syllabus claim
Wai 332 Ministry of Education Property claim
Wai 352 Kaikohe West Primary School Site claim
Wai 372 Education claim
Wai 431 Maori Tertiary Education claim
Wai 441 Tainui Education claim
Wai 493 Hokio Maori Native Township, Hokio Boys School Wai 578 Maori University Bursary Examination claim
Wai 527 Paki Paki School House claim
Wal 539 Matarawa Primary School claim
Wai 544 Takahue School claim

Wai 563 Kaiaua School Lands claim
Wai 582 1995 Bursary Maori claim
Wai 718 Wananga Maori Education Funding claim
Wai 746 Rakamaunga School West Huntly claim
Wai 764 Piriaka School Land (Taumarunui) claim
Wai 779 Pakanae School Site claim
Wai 789 Mokai School Closure (Atiamuri) ?

Broadcasting, radio, frequencies, spectrum [7]
Wai 26 Maori Language Bill and Broadcasting Corporation claim
Wai 150 Allocation of Radio Frequencies claim
Wai 176 Broadcasting claim
Wai 649 Aotearoa Maori Radio claim
Wai 673 Maori Broadcasting Policy claim
Wai 681 Broadcasting Deregulation claim
Wai 776 Radio Spectrum Management and Development claim

Miscellaneous [28]
Wai 86 Waikareao Estuary Road claim
Wai 126 Motunui Plant and Petrocorp claim
Wai 130 Telecom Corporation claim
Wai 162 Kopukairoa Telecom Site claim
Wai 195 Manupirua Baths claim
Wai 177 Hauraki Gold Mining Lands claim
Wai 247 Waiohau C26 - Metal Extraction claim
Wai 248 Omataroa Rangitaiki - Metal Extraction claim
Wai 273 Tapuwae Incorporation claim
Wai 286 Adoption of Children claim
Wai 289 Hauraki Goldfields Agreement claim
Wai 328 Whale-Watching Kaikoura claim
Wai 350 Maori Development Corporation claim
Wai 359 Hautu and Rangipo Prison Farms claim
Wai 449 Kiwifruit Marketing claim
Wai 453 Whakarewarewa Rugby Community Sports Inc claim
Wai 473 Provision of Health Services claim
Wai 527 Paki Paki School House claim
Wai 534 Telecom Depot Kaitaia claim
Wai 545 National Archives and Archives Act claim
Wai 568 Housing Corporation claim
Wai 588 Kaimanawa Wild Horses Range claim
Wai 699 Dog Control Act and Policies claim
Wai 716 Gas & Oil resources (Rongomaiwahine) claim
Wai 748 New Zealand Film Commission
Wai 766 Roading Reform claim
Wai 777 Sale of State Houses and Land claim
Wai 790 Parininihi KiWaitotara (Dairy Industry Restructuring) claim

THE TARANAKI REPORT

KAUPAPA TUATAHI

WAI 143

Muru me te Raupatu

The Muru and Raupatu of the Taranaki Land and People

WAITANGI TRIBUNAL REPORT 1996

GP PUBLICATIONS

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The Waitangi Tribunal
Wellington

The Honourable John Luxton
Minister of Maori Affairs

and

The Honourable Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings
Wellington

11 June 1996

Tena korua

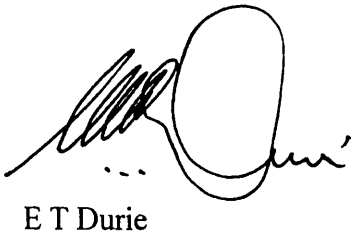
Enclosed is the first part of an interim report on the Taranaki claims.

We understand the Government and claimants are seeking a negotiated settlement. Claimants and Crown counsel are none the less agreed that, to assist a settlement, the Tribunal should report its initial opinion, although its inquiry is incomplete.

The size of the Taranaki claims and the pressure of other business has compelled the Tribunal to complete this interim report in stages. We enclose our opinion on the general background, with some views on settlement strategies. A further report on the impact of events on the various hapu should follow soon.

If the impact of Treaty breaches and the measures necessary to restore an equilibrium are significant criteria, then the gravamen of the enclosed report is to forewarn you that you may be dealing with the country's largest claim. Our reasons for so saying are summarised in the first chapter. While the basis for settling large historical claims has not been finally determined, some comments on the general approach are in the last chapter.

Ka mutu i konei mo tenei wa



E T Durie
Chairperson

PREFACE

To expedite intended negotiations for a settlement, it was arranged for the Tribunal to report on its preliminary views on the Taranaki claims, based on the inquiry so far.

Accordingly, this report gives initial opinions only. The Crown has yet to be heard on many matters raised and all others must respond before final conclusions are drawn. The inquiry having proceeded for some years, however, with indications that replies would consume more years in preparation and presentation, the Tribunal considered that a report on its understanding of the position at this stage might hasten a settlement.

Because no final conclusions can be given, no recommendations are made, or can be, in terms of section 6 of the Treaty of Waitangi Act 1975.

At this point, in paper 2.108 the Crown has recorded its view that:

- the Waitara purchase and the wars constituted an injustice and were therefore in breach of the principles of the Treaty of Waitangi;
- the confiscation of land, as it occurred in Taranaki, also constituted an injustice and was therefore in breach of the principles of the Treaty of Waitangi;
- confiscation had a severe impact upon the welfare, economy, and development of Taranaki iwi;
- in general terms, the delays in setting aside reserves contributed to the adverse effects of the confiscations; and
- events relating to the implementation of the confiscations leading to the invasion of Parihaka in 1881, the invasion itself, and its aftermath constituted a breach of the principles of the Treaty of Waitangi.

Leave has been reserved to parties or those admitted as interested persons to seek further hearing on the whole or any aspect of the claims or this report, if the proposed negotiations are unsuccessful or would benefit from further consideration of particular items.

In addition to reviewing the material received, the Tribunal has undertaken research of its own. The report discloses the further research done, on which all counsel may wish to be further heard.

This report relates to 21 claims concerning the Taranaki district. The record of the claims filed, the documents submitted, and the hearings conducted are described in appendix I. The bibliography includes relevant secondary sources that were read. Some were referred to us but are not cited in the text because they were not relied on.

The claim area is depicted in figures 1 and 2. Figure 4 depicts the location of the various tribal groupings (as seen by those groups today) that signified an interest at the opening of our inquiry.

The nub of the Taranaki complaint is the land confiscations during the 1860s wars. In that respect, Taranaki stands with other places where lands were so taken after war: south Auckland, Hauraki, Waikato, Tauranga, Whakatane, Opotiki, Urewera, Gisborne, and the East Coast to Hawke's Bay. Of these, the Waikato claims have been settled, and were appropriately settled first in our view for, although the war began in Taranaki, it was the Kingitanga of Waikato that carried the burden of representing a common Maori position.

The essential feature of Taranaki, however, is that the wars began there before extending elsewhere, but they were over in south Auckland, Hauraki, and Waikato, gone from Tauranga, finished in Whakatane, completed in Opotiki, done in Urewera, and ended throughout the East Coast, while during all this time the war in Taranaki carried on. Taranaki Maori suffered more as a result. In most districts, the fighting was over in months, but armed initiatives did not cease in Taranaki until after an unparalleled nine years.

Even then, the period of armed struggle was in fact much longer. History creates time slots to compartmentalise war, and 1860 to 1869 has been given for the Taranaki fighting; but just as conflict was apparent from 1841, so also did it continue after 1869. Military action on the Government's part did not end until the invasion of Parihaka in 1881. Thus, in Taranaki, conflict with the use of arms was spread not over a few months, as in most places, or even over a decade, but over a staggering 40 years. After British sovereignty was proclaimed, in no other part of New Zealand did a contest of that nature continue for so long or Maori suffer so much the deprivations of strife after British sovereignty was proclaimed.

The tension did not cease with the abandonment of arms. The confiscations came with an undertaking that lands necessary for hapu survival would be returned without delay, but the promise was not maintained. The same promise was also made in other districts, but we understand that in most cases land was promptly offered and given over for Maori possession. In Taranaki, however, many hapu were left with nothing of their own to live on and became squatters on Crown land. More than a decade after the war, they had not received anything more than promises of land. It was only after more conflict that some reserves were eventually defined, but they were given over to administrators to hold for Maori and 'the promotion of settlement'. They were then leased to settlers on perpetual terms, with the result that Taranaki Maori, and they alone, have still to receive the right to occupy the lands promised after the war.

Legislation is now proposed to terminate those leases within 63 years. Though competing equities now apply, it may none the less be observed that the promises of reserves made in the confiscations of the 1860s, limited though they may have been, have still to be given effect and on current projections will not have final effect for a further 63 years – over 180 years after they were made. It should be seen at once that this history is not a thing of the past.

Thus, the distinctive Taranaki circumstance. If war is the absence of peace, the war has never ended in Taranaki, because that essential prerequisite for peace among peoples, that each should be able to live with dignity on their own lands, is still absent and the protest over land rights continues to be made.

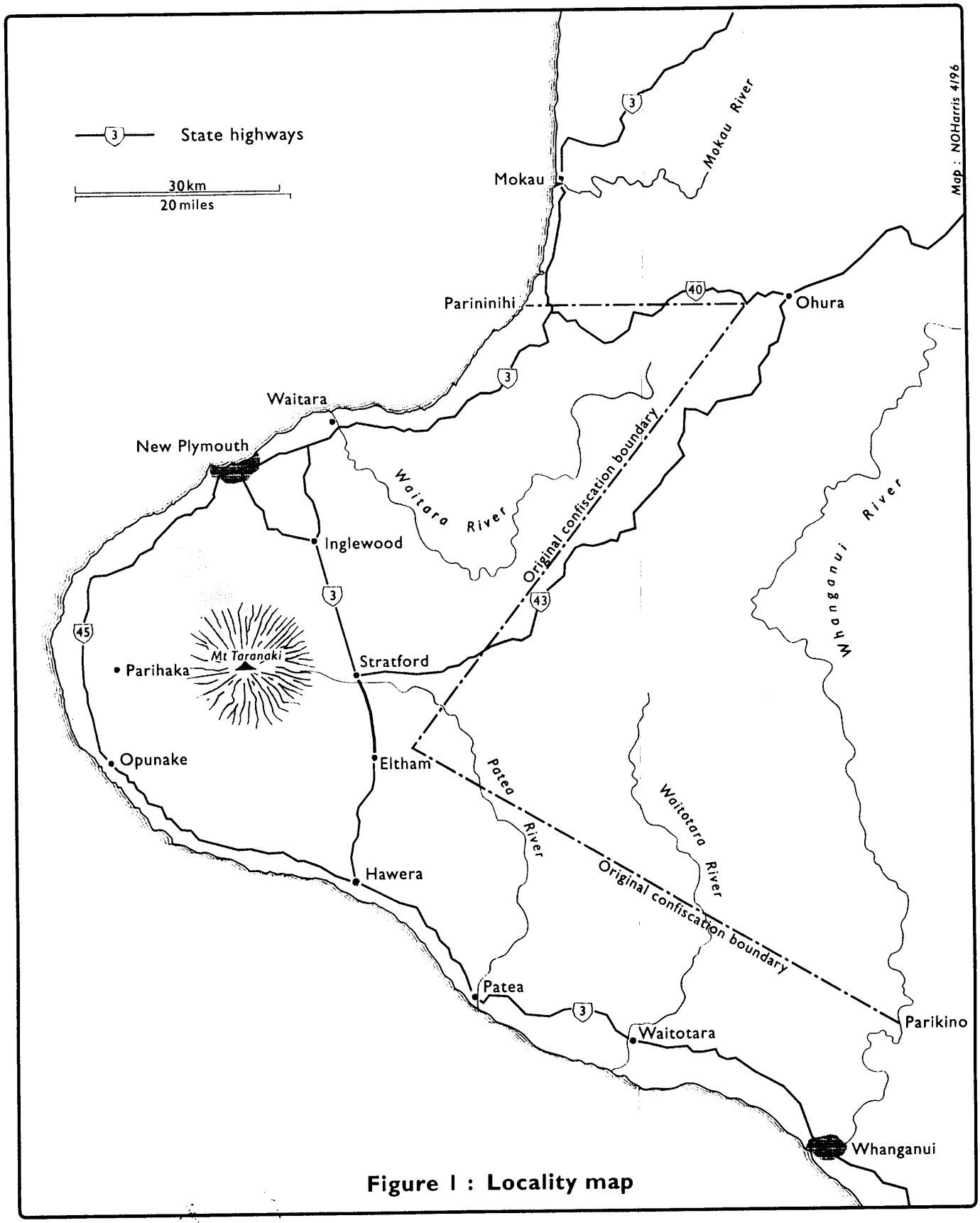


Figure 1 : Locality map

1.3 CONTINUING EXPROPRIATION

War and confiscation are not the only foundations for the claims. Although they are severable to time slots, with the confiscation period being the better known, such divisions should not obscure the record of continuing expropriation from first European settlement, the cumulative impact of the process as a whole, or the various rights that were expropriated in many ways. It needs to be appreciated that what was involved was a process, not a set of unconnected incidents.

One form of expropriation was that, at various times, absentees (ie, Taranaki Maori who were then living away) were excluded from having interests. We believe that those exclusions were not justified. Another form of expropriation, before the wars, were Crown purchases while customary rights and the process for alienation had not been agreed. In our view, for those reasons alone, in terms of the Treaty, those purchases should be vitiated.

More buying was done after the confiscations, but outside the confiscation district. The buying took in nearly all the area beyond the confiscations, but again, it was done on such conditions and by such arrangements that, in terms of the principles of the Treaty of Waitangi, it too should be set aside.

The confiscation of tribal interests by imposed tenure reform was probably the most destructive and demoralising of the forms of expropriation. All land that remained was individualised, even reserves and lands returned. No land was thus passed back in the condition in which it was taken; it came back like a gift with an incendiary device. This land reform, so clearly contrary to the Treaty when done without consent, made alienations more likely, undermined or destroyed the social order, jeopardised Maori authority and leadership, and expropriated the endowments to which hapu, as distinct from individuals, were entitled. The subsequent fragmentation of title and ownership was the inevitable consequence, making Maori land the illusory asset that it is for Maori today, and bequeathing to generations of Maori farmers frustration for their labours and divisions within their families.

The purchase of individual interests began as soon as individual interests were created. The practice continued even when the extent of Maori landlessness was plain, so that little Maori land now remains.

The mood to capture as much Maori land as possible permeated through to today. The targeting of Maori land for public works or Government-supported industrial schemes was apparent as late as the 1970s and 1980s with the acquisitions for the New Plymouth Airport and various major economic projects in north Taranaki. The Treaty principle that each hapu should possess sufficient land endowments had long ceased to exist in Government policy, if it had ever been part of that policy at all. There was no change of attitude until the land march of 1975, when the catch-cry 'Not one more acre . . .' drew attention to what had been happening continuously for over 100 years.

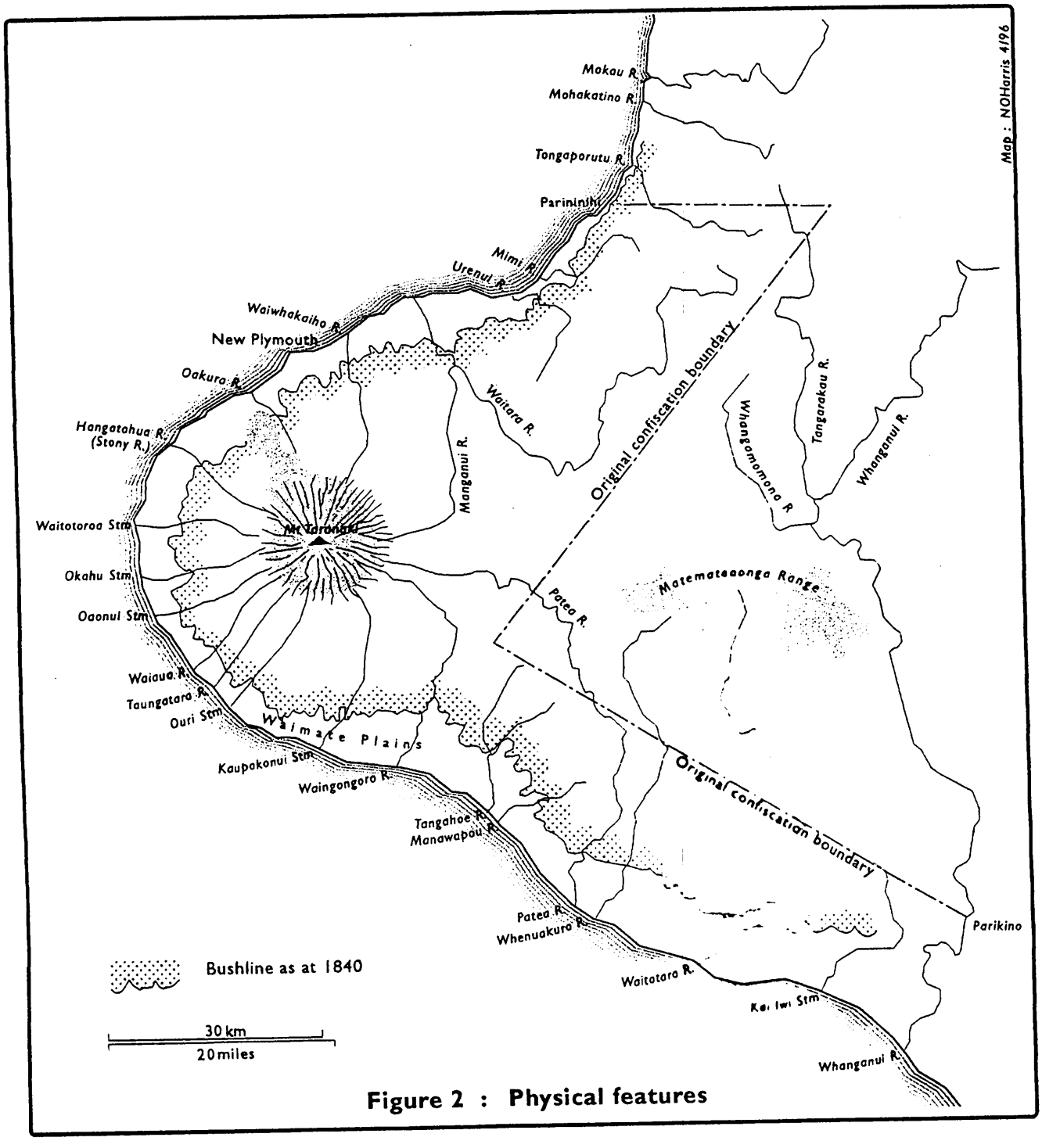


Figure 2 : Physical features

how the respective authorities of Maori and Pakeha were to be recognised and respected and the partnerships maintained. To the governors of the day, such a position was an invitation to war. To Maori, it was the only foundation for peace. It was peaceful purpose that the Maori leadership most consistently displayed.

This dichotomy of approach permeates all the claims. Through war, protest, and petition, the single thread that most illuminates the historical fabric of Maori and Pakeha contact has been the Maori determination to maintain Maori autonomy and the Government's desire to destroy it. The irony is that the need for mutual recognition had been seen at the very foundation of the State, when the Treaty of Waitangi was signed.

At no point of which we are aware, however, have Taranaki Maori retreated from their historical position on autonomous rights. Despite the vicissitudes of war and the damage caused by expropriation and tenure reform, their stand on autonomy has not changed. Nor can it, for it is that which all peoples in their native territories naturally possess. If the drive for autonomy is no longer there, then Maori have either ceased to exist as a people or have ceased to be free.

1.5 MURU

Few Maori have been as inhumanely penalised for standing by their rights as the Taranaki hapu. Perhaps this was because the war was not only longer there but more intense and severe and because, despite the marshalling of several thousand Imperial troops, it was in Taranaki that a Maori ascendency was most maintained.

During its course, the war passed through stages of intensity characteristic of prolonged hostility. Chivalry gave way to attrition. Eventually, military expeditions traversed the length of Taranaki to destroy all homes and cultivations in the way. A cavalry charge on a party of boys, all under 13, that killed eight was indicative of the growing excesses perpetrated by both sides and the developing climate of fear.

Then, in the last year of the wars, Titokowaru emerged from the slopes of Taranaki mountain to clear the land of all soldiers and settlers for a distance of over 40 miles. With a taua of over 1000, larger than any that local leaders had assembled before, he pushed beyond Taranaki to establish a pa near Whanganui, where settlers and soldiers had taken refuge.

The anticipated attack on Whanganui never came. In 1869, while flushed with victory, and for reasons that have never been clear, Titokowaru and his forces packed up and left.

That is how Taranaki Maori ended their fighting. Never again did they raise arms in aggression; only in defence when pursued. They placed their faith instead in the pacifist prophets of Parihaka, Tohu, and Te Whiti, and even Titokowaru joined them. With more than 2000 adherents, the prophets developed new arts of cultivation and cultivated new arts of peace.

Accordingly, Taranaki Maori, unlike Maori of other places, do not use 'raupatu', or conquest, to describe confiscations resulting from war. They use 'raupatu' for

their marginalisation by the organs of the State, for on this view, they were never conquered by the sword but were taken by the pen.

There was, however, no end to the dread and fear of Maori after such prolonged and indeterminate warfare. Even in such high places as the superior New Zealand courts, Maori were characterised as 'savages' and 'primitive barbarians'. Titokowaru was especially feared. Once all chance of overt war had passed, he was to be thrice imprisoned for long terms. Mainly, he was held for failing to produce sureties to keep the peace, for sums too large for any Maori to find; but in our view, his commitment to pacifism for the previous 12 years meant sureties were not required.

Because of the independence Maori had shown in the war, the Government made efforts to deprive Maori not only of their land but of all by which their traditional autonomy had been sustained. Dialogue with established leaders was declined and they were ignored or imprisoned. Such land as was returned from confiscation was broken into discrete parts and allocated to individuals in prescribed shares.

Maori protested but, true to a new policy of peace, did not resort to arms. Despite every provocation and dire consequence, they maintained peaceful roles. Protest came after no less than 12 years, when, with the whole of their lands confiscated and their habitations given over to settlers, they were still waiting for promised reserves. The protest that then came took the form not of arms but of ploughing settler land. The weapon was the tool of peace – the ploughshare. Protest ploughing soon spread throughout Taranaki.

They were no ordinary ploughmen who first took the field but the leading Taranaki chiefs, 'loyal' and 'rebel' alike. They disdained all threats that they and their horses would be shot, and they gave no resistance when surrounded. As the ploughmen were arrested, Titokowaru among the first, others took their place, until over 400 Taranaki ploughmen swelled the gaols of Dunedin, Lyttelton, Hokitika, and Mount Cook in Wellington. The Government was confronting organised and disciplined passive resistance and the dogma of moral right.

Again, no resistance was offered when the Armed Constabulary took possession of the remaining Maori land to divide and sell it for European settlement. Included was the very land that Maori were cultivating or had planted in crops and on which whole communities depended in order to survive. When the army broke fences and the crops were exposed to destruction as a result, Maori simply re-erected them. As they were torn down, they were put up again. There was no violent response to the consequential cajoling and arrests. As happened with the ploughmen, new fencers replaced those who were incarcerated, until over 200 Taranaki fencers joined the ploughmen in the South Island gaols.

Throughout this period, the rule of law and the civil and political rights of Taranaki Maori were suspended. By special legislation, all rights of trial were denied in all but 40 cases. Several hundred were sent to gaol for indefinite periods at the Governor's pleasure. This was well after the 'end of the wars' in 1869.

At all times the Maori protest had been peaceful, when eventually a force of 1589 soldiers invaded and sacked Parihaka, the prophets' home, dispersed its population of some 2000, and introduced passes to control Maori movements. This large and prosperous Maori settlement, rumoured to have been preparing for war, had not one

fortification, nor was there any serious show of arms. That was a fact the Government knew full well before the invasion began. There were official reports to say so.

When the cavalry approached, there were only two lines of defence; the first, a chorus of 200 boys, the second, a chanting of girls. On Te Whiti's clear orders, there was no recourse to arms, despite the rape of women, theft of heirlooms and household property, burning of homes and crops, taking of stock, and forced transportations that ensued. There was no resistance again when Tohu and Te Whiti were imprisoned and charged with sedition. The prophets had only one question of their accusers: 'Had the people been shown their reserves?' To this, the answer could only have been 'no', for in truth none had been made. None had been made, though 19 years had by then elapsed since the whole of the Maori land had been confiscated and settled, with promises that reserves for Maori would be provided. A section of the dispersed people began marching the land, marching throughout Taranaki so that a home might be found.

Then, when it appeared the charges of sedition might not be sustained against the prophets and the actions of the Armed Constabulary might be questioned instead, legislation was passed to make any action the soldiers had taken legal and beyond review. By the same legislation, the trial of Te Whiti and Tohu was terminated in order to avoid an acquittal and ensure their incarceration for as long as the Government might wish.

Only then were reserves made, years after they were due, but as if to ensure that several hapu would be scattered to the winds, most reserves were held back from their possession, to be leased to settlers on perpetual terms. Thus, the conflict has not ended in Taranaki. To this day, Maori have still to receive the lands that were their minimal due in terms of the promises of that war.

It is a further consequence of this extraordinary record of expropriation and deprivation that there is not one hectare of Taranaki land that is now held entirely on Maori terms and by Maori rules. All that could have been done was done to destroy the land base for Maori autonomy and representation. In the governance of the Taranaki province, since the Treaty of Waitangi was signed, land has been reserved for the bush and the birds but not one acre could be guaranteed as a haven for Maori.

1.6 VALIDITY AND LEGALITY

The wars, in our view, were not of Maori making. The Governor was the aggressor, not Maori, and in Treaty terms it was the Governor who was in breach of the undertakings made in the name of the Queen.

Of the numerous Treaty breaches, we believe none was more serious than the Government's failure to respect Maori authority. While historians and previous commissions have generally concluded that the Governor caused the war through errors of fact on Maori customary tenure, a 'blunder worse than a crime' in the opinion of W Pember Reeves, we consider the larger error was one not of fact but

of principle. The Governor assumed that his own authority must prevail and that of Maori be stamped out, when the principles of the Treaty required that each should respect the other. While the Governor would not recognise this principle, Maori placed their faith in it.

In terms of strict law, according to the legal advice we have taken and with which we concur, the initial military action against Maori was an unlawful attack by armed forces of the Government on Maori subjects who were not in rebellion and for which, at the time, the Governor and certain Crown officers were subject to criminal and civil liability. Subsequently, if Maori were in rebellion against the Crown, it was only because the Government itself had created a situation where that must inevitably have been so, as a matter of fact, and had then passed legislation to ensure that it was so, as a matter of law. Even in the strict terms of the statute, however, it appears most hapu had not been in rebellion at all at the time their lands were taken.

In any event, were the Treaty the law, however, then as we see the Treaty today, the opposite situation would apply. The Governor was in rebellion against the authority of the Treaty and the Queen's word that it contained. Maori were not in rebellion, in Treaty terms, because they supported the Treaty position and the expectation of partnership that it implied. The written record is replete with Maori statements that demonstrate this approach; there was a place for Pakeha in their country, provided Pakeha could respect them.

It follows that, in Treaty terms, the confiscations were not valid either. While the norms of a Treaty, like those of an international covenant, may be suspended in an emergency, the emergency in this case was caused by the Governor and he could not reap the benefit of his own wrong.

In addition, however, it seems almost certainly the case that the confiscations in Taranaki were unlawful. We refer not to the larger question of whether the legislation was *ultra vires* the Parliament but to the clearer fact that the Governor did not follow the legislation, as he was required to do by law. A major difference would have resulted had the Governor kept to the strict terms of the New Zealand Settlements Act 1863. The statute required that the Governor declare districts where rebellion was occurring, that he define sites eligible for European settlement within those districts, and that he then take such land as might be necessary for those settlements. This, the Governor did not do. We are satisfied upon the facts that there was no rebellion or no sufficient evidence of rebellion in the greater parts of north, central, and southern Taranaki at the time that the confiscations were made. In addition, however, not only did the Governor declare districts larger than the theatre of the war but he declared the whole of those districts to be eligible settlement sites: mountain, hill, and vale. Some parts, the mountain for example, have not been settled to this day, and most could not have been readily settled at the time. There was simply no proper exercise of discretion. For Maori, the consequences were horrendous. There was nothing left for them to live on. Far from ending the war, the confiscations became the cause of its continuance and forced Maori to unaccustomed levels of desperation.

This illegality may have been technically cured by a later amendment to the Act that made all illegalities legal, or at least beyond judicial review, but in our view this

remarkable piece of legislative wit did nothing to save the unlawfulness of the confiscation of Parihaka lands, or the rest of central Taranaki. By the governing statute, all land was merely deemed to be confiscated, and then only for the purpose of the Act, namely, to promote peace by settlement; and no acre was actually taken until it was Crown granted for the purpose of a settlement. When the powers of acquisition under the Act expired, no part of central Taranaki had been taken and settled in that way. Twelve years of peace had elapsed and the Government had never taken possession of any part. Then, unexpectedly, after 12 years of inaction, the Government presumed to survey and sell the land as though it were the Crown's, which, in our view, it was not. It was merely deemed to be held for the purpose of the Act, but the purpose of the Act – to secure peace – had long been fulfilled, and the Act itself had expired. That which had been deemed to be Crown land could no longer be so.

This matter may well have emerged at the trial of Te Whiti and Tohu, but it did not because legislation was passed to prevent that trial from proceeding. The same legislation legalised the actions of the military, but in this instance, nothing was done to legalise the Crown's unlawful assumption of the land. We believe that it was unlawful at the time, and although most lands will now have the protection of having passed to third parties, nothing has been done to this day to make the original acquisition lawful.

1.7 RAUPATU

The raupatu was effected through a reconstruction programme to make Taranaki Maori subservient to Government control. One of the few safeguards that Britain saw in the confiscation legislation was the provision for an independent and impartial Compensation Court to return land to those who had not rebelled. Instead, the court introduced the process of subjugation of the people as a whole. It excluded from land rights hundreds of Maori who were absent at some relevant time but whose ancestral interests in our view could not have been doubted. The court deprived hundreds more of their land for being rebels without an inquiry into their war complicity, and it then turned its back on compensating the remainder with land on the ground that, owing to the rate of English settlement, there was not enough land left for them. Instead, the court called for political solutions. It created the very situation the Secretary of State for the Colonies had warned against: Maori were left without the protection of a court and at the mercy of the Government.

The political solution came in the guise of the West Coast Commission, under a politician who was in the General Assembly for most of the time that he was also a commissioner. He had been the prime mover of the confiscation legislation. The commission's ostensible task was not to determine what lands Maori should fairly receive but, following the protest and imprisonment of the ploughmen, to give effect to what political promises may have been made, whether arising from the Compensation Court's operations or otherwise. In practice, the commission assumed another task: to secure central Taranaki for the Government. That area had not been

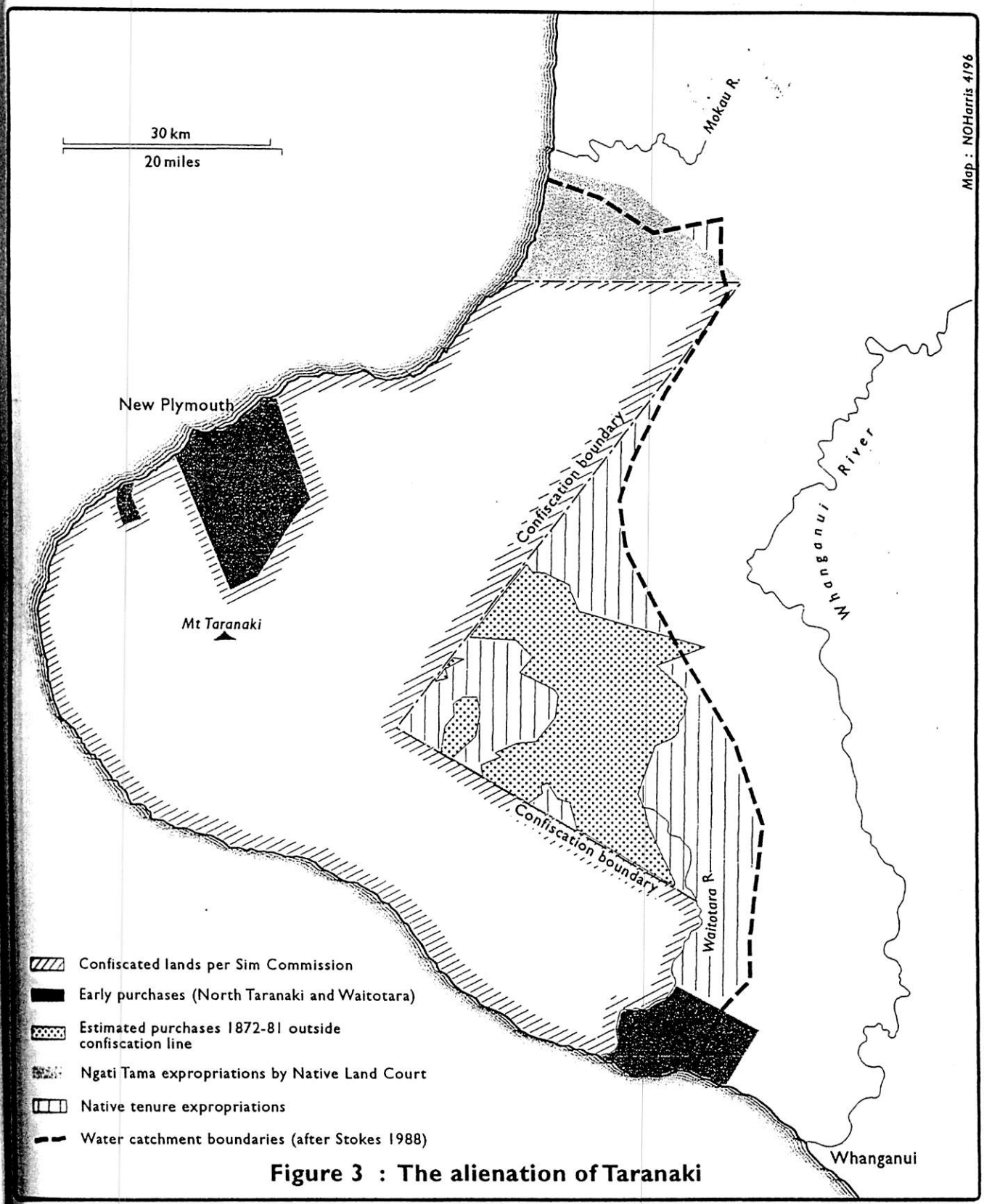


Figure 3 : The alienation of Taranaki

touched by European settlers and the confiscation of that part had been abandoned. Under the guise of making reserves for Maori, however, the commission expropriated the remainder, the bulk of the land, to assist a heavily indebted Government, of which the commissioner was a member, by selling it to settlers. There was thus the irony that, while some Maori were required to settle for less than their lawful due because, it was said, nearly all the land had been taken up by Europeans, the commission was in fact relieving Maori of huge areas to provide for settlers still to come. This was the Maori introduction to the raupatu: the subjection of Maori rights to the whim and caprice of politicians. The Compensation Court and the West Coast Commission, along with the ever-present Crown purchase agents, were vanguards to a process of conquest and subjugation by officials – legislative, administrative, and judicial.

The denial to Maori of land that could and should have returned to them was but the beginning. As noted earlier, such land as was returned was individualised to entrench the regime for cultural and social destruction. The same land was then handed to a Government functionary to administer, who, according to arrangements set in place by the West Coast Commission, then leased the greater part of the Maori reserved lands to settlers. As observed before, they were leased on terms that gave away the possession of those lands forever. In all, 214,675 acres returned. On average, this was 38 acres per head for those lucky enough to receive anything, but the blocks were generally larger with several owners in each. By 1912, the reserves comprised 193,666 acres, of which 138,510 acres were leased to Europeans, with a mere 24,800 acres for Maori farmers under occupational licences.

For over 100 years, Maori protested the Government's assumed right to administer the lands reserved for Maori, lease those lands without Maori consent, and make those leases perpetual. The first protests involved yet further ploughing and imprisonments but changed to parliamentary petitions and the representations of the Maori members of Parliament. None the less, there were further legislative changes, without consultation let alone consent, to give more advantage still to the lessees and to worsen the Maori position. Rents were reduced. In the depression and at other times, rent arrears were remitted. For Maori, inflation and share fragmentation arising from the imposed land tenure system meant that the rents themselves became meaningless. Based on rent formulas favouring tenants and with reviews only every 21 years, the rents were conservative at the start of the lease terms and minuscule for most of the remainder, particularly following inflation in the 1960s. Provisions were also made to help the lessees buy the freehold. By 1976, 63 percent of the Maori reserves had been sold by the officials administering them.

Thus, land was said to have 'returned' to Maori, when in fact they were denied the control and possession of it. It was a sleight of hand, a show of justice while denying the substance. Maori had at best the right to apply to use their own land, if they could show some farming capability. As earlier noted, very little passed to them. Today, Maori hold without hindrance less than 5 percent of the area reserved for them following the confiscation. Maori who gained land still had to pay rent to the administrator because the land was severally owned. Then, while Europeans received long-term leases and were able to attract development loans and stock and

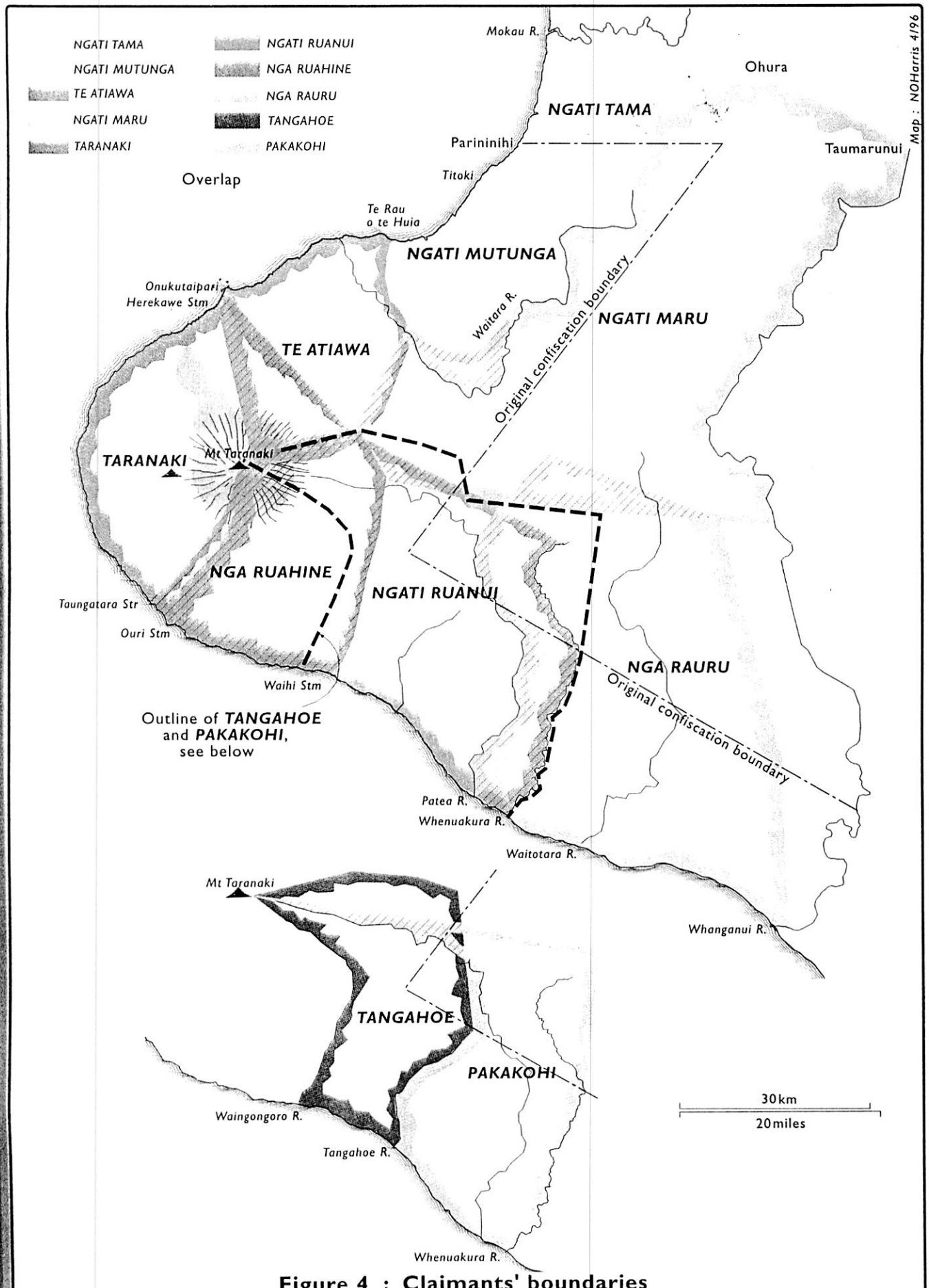


Figure 4 : Claimants' boundaries

other subsidies, Maori were allowed only short-term, unbankable licences to occupy. The short-term licences also meant regular rent reviews. Maori were thus liable to pay more rent for mere licences to occupy their own land than Europeans, who were paying for leases that were perpetual.

The leases in perpetuity were the unkindest cut of all, the twist to the blade of the raupatu. It was not only that Maori lost a century of development experience. It was not only that with inflation and fragmentation the rents became as nothing. It was also that, as each generation of Maori succeeded to lands they could never walk on, they inherited the history of war, protest, imprisonment, and dispossession. They succeeded not only to lands under perpetual leases but to the perpetual reminder of forced alienation. As many witnesses and whole families protested at our hearings, they were denied even the right to forget. How could they forget when they saw their children leave home to seek work while they knew that the family land down the road would always be worked by strangers? How could they ask their children to respect the law and the property of others when they knew, and their children knew, that by the same law their own property had been permanently taken from them?

The perpetual leases have been the subject of protest for a century. They are not past history but are a live issue in the present. They describe a part of what raupatu means for Taranaki Maori. It means the conquest so arranged as to inflict the pain of the past on every generation of their people.

1.8 PREJUDICE

The prejudice to claimants cannot be assessed simply by quantifying the land expropriations; but quantification is, none the less, a relevant consideration.

Taranaki Maori were dispossessed of their land, leadership, means of livelihood, personal freedom, and social structure and values. As Maori, they were denied their rights of autonomy, and as British subjects, their civil rights were removed. For decades, they were subjected to sustained attacks on their property and persons.

All were affected, even non-combatants, because everyone's land was taken, people were relocated, land tenure was changed, and a whole new social order was imposed. The losses were physical, cultural, and spiritual. In assessing the extent of consequential prejudice today, it cannot be assumed that past injuries have been forgotten over time. The dispossessed have cause for longer recall. For Maori, every nook and cranny of the land is redolent with meaning in histories passed down orally and a litany of landmarks serves as a daily reminder of their dispossession. This outcome had been foretold. As Sir William Martin, our first chief justice, said, when opposing confiscation in 1864:

> The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; . . . how the claim of the dispossessed owner is remembered from generation to generation and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.

In fact, grievances compound over time. As their economic performance is criticised, Maori have cause to reflect on their progress before their land was taken and on the opportunities lost in experience and infrastructure. When the harvesting of natural resources is curtailed, they have cause to consider that they had taken from them not only arable land but their interest in the bush, rivers, lakes, and sea. While they live with massive uncertainties as to their institutional structures and representation for their groups, they live also with the knowledge that their leaders were imprisoned and their institutions destroyed.

The nature and extent of prejudice is thus not defined by the quantum of land wrongly acquired by the Crown. Quite rightly, it was not the quantum of loss but the impact of loss over time that the claimants most stressed. It is instructive, however, to consider the total taken, especially as a proportion of the district and with regard to the numbers that the balance had to sustain.

In this respect, for the past 68 years reliance has been placed on figures that we would question. In 1927, the Government submitted to the Sim commission of inquiry that the total Taranaki confiscation was 1,275,000 acres, of which the Government purchased 557,000 and returned 256,000, leaving only 462,000 acres as taken. The Sim commission did not question these figures. It considered that an annuity should be paid for the wrong done. This prestigious commission, which brought relief to Maori for the first time, was unfortunately constrained by the chairman's ill-health and the size of the task. It was given eight months to report on not only all the New Zealand confiscations but also the north Auckland surplus land question and 57 Maori parliamentary petitions.

The Government compiled the expropriation figures itself, and owing to the exigencies confronting the commission, they were uncritically received. Had circumstances permitted a full inquiry, it would necessarily have been found that the so-called purchased area had not been properly purchased at all. To all appearances the land had been confiscated, but some Maori were offered money in return for signing a deed or receipt. It was a gross distortion of reality, a camouflage for a fiction perfumed with a whiff of legality. How could the Government claim to have bought that which it insisted it had already taken away? It would also have been observed, as the Government's own records showed, that about half of the so-called purchase area had been the subject of an inquiry by a commission at the time the 'purchases' were being made. That commission had two main observations, the first relating to the extensive fraud and corruption of certain Crown agents involved; the second relating to the process itself, which in the commission's view was nothing but 'secret bribery'.

With regard to the so-called 'returned' land, there were at least three major impediments. It was returned not to the hapu from which it was taken but to selected individuals, who may or may not have been of that group. It was returned not in the condition in which it was taken but under a new tenure system, by which the autonomy and integrity of the hapu would be destroyed. Finally, most of the land was not returned to Maori possession; it was leased to Europeans and is held by Europeans to this day. The amount that we would discount for lands 'purchased' and 'returned' is nil.

Further, to the confiscated area we would add the land acquired in a climate of tension and hostility both before and after the war proper, the land of Ngati Tama beyond the confiscation boundaries that was wrongly awarded by the Native Land Court, and the land, also beyond the confiscation boundaries, that was expropriated from hapu through court awards to individuals. Assuming the ranges prescribing water catchment areas make fair tribal divides, then as shown in figure 3, we would assess as follows the areas affected by various expropriations that were inconsistent with the principles of the Treaty:

Confiscated lands (per Sim commission, less north Taranaki pre-war purchases)	1,199,622 acres
Early purchases (north Taranaki and Waitotara)	107,578 acres
Estimated post-war purchases outside confiscation line	189,000 acres
Ngati Tama expropriation, Native Land Court, north Taranaki	66,000 acres
Balance where native tenure expropriated	approx 360,000 acres
Expropriation in Treaty terms	approx 1,922,200 acres

In effect, the whole of the Taranaki land was affected by processes prejudicial to Maori and inconsistent with the principles of the Treaty, and the tribal rights in respect of the whole of that land were wrongly taken away.

1.9 REMEDY

The principles for the resolution of historical claims, where factual issues are beyond living memory and new variables have intervened with time, may call for other than a strictly legal approach to rectification. We observe in that respect that the Tribunal's jurisdiction in making recommendations does not include criteria that are usual for compensation in the courts.

The quantification of property loss, personal injury, social impairment, and forfeited development opportunities may assist the consideration of comparative equities between claimant groups, but it is not necessarily determinative of the measures appropriate for relief in any one case today. As we consider further at the end of this report, in resolving historical claims a pay-off for the past, even if that were possible, may not be as important as the strategies required to ensure a better future. Similarly, an endowment that provides adequately for tribal autonomy in the future is important, not payments for individual benefit.

The proper approach to take would need to be fully debated if we were to progress this inquiry further. The most careful deliberations would be required. At this stage, however, we can observe that, having regard to the historical record and the suffering to which the Taranaki people have been exposed, we could be dealing with the country's largest claims.

CHAPTER 2

FIRST PURCHASES

> I will not agree to our bedroom being sold (I mean Waitara here), for this bed belongs to all of us; and do not you be in haste to give the money. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it . . . All I have to say to you, O Governor, is that none of this land will be given to you, never, never, till I die. I have heard it is said that I am to be imprisoned because of this land. I am very sad because of this word. Why is it? You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.
>
> Wiremu Kingi to Governor Browne, April 1859

> The compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres.
>
> Justice Richardson, Court of Appeal, 1987

2.1 PARTNERSHIP AND AUTONOMY

Graphically arising from the Taranaki claims is a question of the relationship between governments and indigenes. What status do they have in relation to each other, what are their respective interests and spheres, and what protocols are needed between them to ensure good order, harmony, and peace? The nature of that relationship was most at issue in the Taranaki wars and in the land dealings that led to them. It is a concern to this day, being the subject of current protests concerning 'Maori sovereignty'.

Because of the centrality of this issue to past and present contentions, we open this chapter with some comments on it.[1] The instinct of peoples for autonomy explains a consistent Maori perception of both the events and the prejudice now seen to exist. It also informs our statutory duty, when considering proven claims, to recommend the action required 'to compensate for or remove the prejudice, or to prevent other persons from being similarly affected in the future'.[2]

The execution of the Treaty of Waitangi is evidence itself that the need for protocols between the Government and Maori had been foreseen. Before anything

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1. This chapter draws mainly from a report of Dr A Parsonson, 'Land and Conflict in Taranaki, 1839–1859' (docs A1(a), (b)). Aspects of the transactions are also particularised in the submissions of Dr N Love (docs D11, D14) and the reports of A Harris, 'Title Histories of the Native Reserves . . .' (docs F23, F23(a)), and J Ford, 'Title Histories of the Native Reserves . . .' (doc F24) and 'Schedule of Land Purchases and Native Reserves, Taranaki, 1839–1860' (doc D19).
2. See s 6(3) Treaty of Waitangi Act 1975

could be done, it was necessary for the Crown to at least acknowledge that Maori had prior inhabitant status. That status was not changed by the recognition given to a new form of governance.

The broad nature of the anticipated relationship may be determined from the Treaty's texts, associated Crown documents, and the record of Maori opinion before, during, and after the Treaty signings. From expert opinion on that material, and though he considered that the Treaty should be seen 'as an embryo rather than a fully developed and integrated set of ideas', the president of the Court of Appeal considered, in a landmark decision of 1987, that 'the Treaty signified a partnership between races'. President Cooke added that the answer to the case then before the court had to be found within that concept of partnership.[3] We consider that it is within that same concept that the Taranaki claims must now be viewed.

Other members of the five-member court in that case expressed much the same view, emphasising it was the spirit of the Treaty that counted most, not its specific terms. Justice Richardson, the current president of that court, added:

> There is, however, one paramount principle which I have suggested emerges from consideration of the Treaty in its historical setting: that the compact between the Crown and the Maori through which the peaceful settlement of New Zealand was contemplated called for the protection by the Crown of both Maori interests and British interests and rested on the premise that each party would act reasonably and in good faith towards the other within their respective spheres. That is I think reflected both in the nature of the Treaty and in its terms.
>
> It was a compact through which the Crown sought from the indigenous people legitimacy for its acquisition of government over New Zealand. Inevitably there would be some conflicts of interest. There would be some circumstances where satisfying the concerns and aspirations of one party could injure the other. If the Treaty was to be taken seriously by both parties each would have to act in good faith and reasonably towards the other.[4]

We have been struck by the coincidence between this current perception of partnership and good faith and the view of Maori leaders at the time. The predominant Maori view, as we see it, was that there was a place for Pakeha, provided Maori authority was also acknowledged. Nor was this expectation of respect couched in unreasonable or demanding terms. On the eve of the New Zealand wars of the 1860s, for example, as the Government was preparing to attack him, the Te Atiawa leader, Wiremu Kingi, wrote simply to the Governor:

> You should remember that the Maoris and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them.[5]

Later, when a military commander presented an ultimatum, a virtual declaration of war alleging Kingi was in rebellion, Kingi replied:

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3. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 663–664
4. Ibid, pp 680–681
5. Kingi to Governor, 25 April 1859, AJHR, 1860, D-3, p 6

> Friend, Colonel Murray, salutation to you in the love of our Lord Jesus Christ . . . You say that we have been guilty of rebellion against the Queen but we consider we have not. [He then went on to explain his position and concluded:] This is my word to you. I have no desire for evil, but on the contrary, have great love for the Europeans and Maories. Listen, my love is this, put a stop to your proceedings, that your love of the Europeans and the Maories may be true.[6]

There is small evidence of Maori belligerence in this case, but, none the less, there was a firm expectation that Maori authority would be respected and reasonable dialogue maintained.

Twenty years later, when the war had come and gone, the leadership, as represented by Te Whiti, still maintained the same position: there was a place for Pakeha and a place for Maori but Maori authority had to be recognised and dialogue between Maori and the Government had to be maintained. Te Whiti and Kingi, in turn, were adherents of the Kingitanga, the movement under the Maori King, where the relationship between the separate authorities of the colonisers and Maori was exemplified in the symbolic depiction of 'the [Maori] King on his piece; the Queen on her piece, God over both; and Love binding them to each other'.[7]

The symbols were seen by the Governor as a challenge to the Queen's authority, but it is difficult to comprehend that that was ever intended. The symbols are similar to those now used on our current coat of arms.

For Maori, their struggle for autonomy, as evidenced in the New Zealand wars, is not past history. It is part of a continuum that has endured to this day. The desire for autonomy has continued to the present day in policies of the Kingitanga, Ringatu, the Repudiation movement, Te Whiti, Tohu, the Kotahitanga, Rua, Ratana, Maori parliamentarians, the New Zealand Maori Council, Te Hahi Mihingare, iwi runanga, the Maori Congress, and others. It is a record matched only by the Government's opposition and its determination to impose instead an ascendancy, though cloaked under other names such as amalgamation, assimilation, majoritarian democracy, or one nation.

Yet New Zealanders as a whole appear unaware of the cause of today's tensions or the history behind them. We are prone to observe the ethnic dispute in Bosnia or the tribal conflict in Rwanda without seeing the Bosnia and Rwanda in our own present and past.

In modern times, overseas countries have seen the indigenous component of a symbiotic relationship with the Government under the rubric of 'aboriginal autonomy'. Also called 'aboriginal self-government', it equates with 'tino rangatiratanga' and 'mana motuhake'.

Without examining detail, it may also be considered that, in recent times, the underlying issue of aboriginal autonomy has been addressed more thoroughly in places other than our own. Support for this view may be found in the position in the United States of America and developments in Canada and Australia. These suggest the recognition of aboriginal autonomy is not in fact a barrier to national unity but

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6. Kingi to Murray, 21 February 1860, BPP, vol 12, p 9
7. Quoted by 'Curiosus' in the *New Zealander*, 3 July 1858

an aid. They go further to recognise that conciliation requires a process of empowerment, not suppression.

Some official opinions suggest the lack of a comprehensive definition of 'aboriginal autonomy' is actually appropriate at this stage: that it is better to focus on the problem and the options for relief than to argue word prescriptions too soon.[8] Broadly, however, we understand 'aboriginal autonomy' to describe the right of indigenes to constitutional status as first peoples, and their rights to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government.

The autonomy approach posits two presumptions that seem to us to be true:

- that autonomy is the inherent right of all peoples in their native countries; and
- on the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties.

In terms of the Treaty of Waitangi, in our view, from the day it was proclaimed, sovereignty was constrained in New Zealand by the need to respect Maori authority (or 'tino rangatiratanga', to use the Treaty's term).

State responsibility, not absolute power, is the more necessary prerequisite to governance in this context. So also is State responsibility of increasing importance in the current global environment, where international norms carry the objectives of world security, free trade, and peace. Thus, it is more apparent today that the legal paradigm of State sovereignty had necessarily to change when different peoples met and one colonised the lands of another, but at least it can be said that both Government authority and Maori authority were recognised in the Maori text of the Treaty of Waitangi.

The matter has new significance in the current climate of the International Decade of Indigenous Peoples and its focus on the associated Draft Declaration on the Rights of Indigenous Peoples, with its acknowledgement of autonomy. At this time, too, as inter-State tensions ease, ethnic conflict may be seen as taking pre-eminence in global concerns for peace. It is thus of concern that the decade has barely been acknowledged in New Zealand, the draft declaration is hardly known here, and policies for the conciliation of peoples in New Zealand are comparatively undeveloped.

The historical record seems to us to be clear that this right of autonomy was assumed by Maori (though those words were not used). This was seen by them not as a likely cause of conflict but as the natural foundation for peace; and that is not surprising, considering their world view. Maori protocols in meeting, as used to this day, are honed to the punctilious recognition of the authority of others, call for a fulsome display of respect, and insist on strict speaking orders to promote dialogue. The value of such an order for the maintenance of peace is not diminished by the extent of warfare that in fact prevailed; rather, the warlike conditions gave rise to it.

We have introduced this matter at length because of its place in an understanding of the Maori position in Taranaki history. The need to respect other peoples is clearer

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8. For example, see *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, Federal Policy Guide, Minister of Public Works and Government Services, Ottawa, 1995, p 1

today than formerly, and we more readily appreciate now that the conciliation of subjugated peoples requires a process of re-empowerment. Our colonial forebears, however, sought mainly to impose their own will. The single thread that most illuminates the historical fabric of Maori and Pakeha contact in Taranaki for over 150 years has been the determination of Maori to maintain their own autonomy and status and official attempts to constrain that determination. One sought peace by dialogue on equal terms, the other, by domination or by removing Maori altogether.

The disparity between the opinions of the Treaty proponents on the one hand and colonial officials on the other is painfully apparent in the Taranaki case. The changed position was obvious from the earliest arrangements for the acquisition of land and the resolution of disputes. It was presumed that the arrangements would be made entirely by the Government on its terms, that the Government alone could determine the justice of disputes, and that Maori authority should be tolerated only until it could, in fact, be suppressed.

2.2 ISSUES

The first item of claim relates to the Government's claim to have purchased 75,370 acres in nine blocks extending out from New Plymouth, between 1844 and 1859, comprising some of the most valuable Taranaki land. These purchases, and attempts to conclude others, led to the war and confiscations.

As we see it, the first and most important question, as indicated in the preceding discussion, is whether the process was fairly settled and agreed between the Government and the appropriate Maori.

The second, and secondary, question is whether, even accepting the process used, the purchases were otherwise consistent with the principles of the Treaty of Waitangi. On that aspect of the case, the following observations summarise previous Tribunal opinion.

In the English text, the Treaty articles guaranteed to Maori the full, exclusive, and undisturbed possession of their lands for so long as they wished to retain them. The Maori text was clearer in guaranteeing to Maori the full authority of their lands. This clarified that Maori would not only possess their own land but decide and determine the laws affecting them; for example, the forms of tenure and management.

The articles also conferred on the Crown a pre-emptive right in buying – a privilege that carried a concomitant duty to protect Maori interests when so doing. Further promises of protection are found in the Treaty's preamble, the record of the Treaty discussion (including Lieutenant-Governor Hobson's address at Waitangi on 6 February 1840[9]) and Lord Normanby's accompanying instructions, which prescribed, among other things, 'fair and equal contracts' and the assurance of adequate Maori reserves.[10] It is pertinent to ask:

- whether adequate endowments were secured for the future support and development of the hapu;

9. See W Colenso, *Signing of the Treaty of Waitangi*, Christchurch, Caxton Press, 1971, pp 16–17
10. See BPP, vol 3, p 86

- whether customary ownership and decision-making were respected; and
- whether fiduciary responsibilities were maintained for Maori protection (this includes such matters as whether the consideration was adequate, the associated conditions appropriate, and the arrangements fully understood).

2.3 BACKGROUND

While not wishing to write a definitive history, some perspective of the background events is needed to deal with the claims in issue. In this instance, the purchases cannot be considered without reference to the preceding events by which they were conditioned. Below is an overview of the relevant events, as we see them, followed by a more detailed examination of some aspects.

2.3.1 Tribal war, dispersal, and absentees

For a millennium or more, the iwi of Taranaki occupied the length of the Taranaki coast. In broad terms, the coast was cleared for cultivations, while the interior bush was largely intact, as illustrated in figure 2. The iwi were descendants both of those there 'from before time' and of subsequent Pacific migrants. Like all Maori hapu, however, they also had a history of mobility and, accordingly, have ancestral connections throughout the country.

For some decades before European contact, however, there was intermittent warfare with iwi from north Auckland to Waikato. This warfare escalated and intensified with the advent of muskets to the north, giving their foe an uncustomary edge. Some devastating battles resulted, and a series of movements out of Taranaki between 1821 and 1834 followed. Some Maori were taken to Waikato as prisoners of war, but the greater number went to Cook Strait in pursuit of guns and goods from whalers and traders. The majority were still absent from Taranaki when the first Europeans arrived.

2.3.2 The New Zealand Company: the 'null and void' acquisition of north Taranaki

The New Zealand Company was a private enterprise established in Britain and having for its business the profitable colonisation of New Zealand; generally, by buying land cheaply and selling it well. In August 1839, Colonel William Wakefield, a land purchase agent for the company, arrived in Cook Strait. He had been dispatched from London in May, soon after the company learnt that Britain intended to intervene in New Zealand, negotiate a cession of sovereignty, and prohibit private purchases of Maori land. The company sought to acquire land before any prohibition took effect, and accordingly, Colonel Wakefield had cause to act with haste. The intention that future private purchases be excluded was specified in Lord Normanby's instructions to Hobson on 14 August 1839.

From here, events assume a quixotic character. In October 1839, after other acquisitions were purportedly made for the company around Wellington, Wakefield

CHAPTER 12

CONCLUSIONS

> Indigenous peoples have the right to maintain and develop their political, economic and social systems . . . and to engage freely in all their traditional and other economic activities . . . [They] have the right to own, develop, control and use [their traditional] lands and territories . . . This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources . . . [They] have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status . . .
>
> as a specific form of exercising their rights to self-determination, [indigenous peoples] have the right to autonomy or self-government in matters relating to their internal and local affairs . . . as well as ways and means for financing these autonomous functions . . . [They] have the collective right to determine the responsibilities of individuals to their communities . . . Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights . . .
>
> Extracts from articles 21 to 39,
> Draft Declaration on the Rights of Indigenous Peoples, August 1994

12.1 HOW PEOPLES RELATE

A century and a half after the Treaty of Waitangi was signed, the world's indigenous minorities sought a United Nations declaration to define their rights in relation to national states. Following 12 years of intensive study and discussions with indigenous peoples and governments, an independent and distinguished group of experts, the United Nations Working Group on Indigenous Populations under Mme Daes of Greece, produced the Draft Declaration on the Rights of Indigenous Peoples. It was introduced for consideration by various organs of the United Nations in 1994, when the General Assembly proclaimed the International Decade of Indigenous Peoples. The draft declaration expresses with particularity several principles that flow naturally from the Treaty of Waitangi.

In different ways, the draft declaration and the Treaty acknowledge that, on the colonisation of occupied lands, the indigenes must be adequately provided for in the life of the new nation. The respect that is due to all peoples is payable to each according to their circumstances. The special circumstances accruing to indigenes

require that they should be respected as founding peoples and not merely as another cultural minority.

12.2 THE RELATIONSHIP IN TARANAKI

The whole history of Government dealings with Maori of Taranaki has been the antithesis to that envisaged by the Treaty of Waitangi. The Draft Declaration on the Rights of Indigenous Peoples affirms the relevance of the Treaty's principles for the global environment of today, defines the required relationship between governments and their indigenes, and emblazons in vivid relief the many respects in which the ability of Taranaki Maori to develop in their own country was removed from them. The relationship between peoples was in issue in Taranaki from the first contact with the New Zealand Company, before the Treaty was signed. Maori and Pakeha both assumed at that time that their own law and authority would govern whatever had been agreed, so that they were not contracts in the Western legal sense, for the understanding each had of the arrangements is unlikely to have been the same. The relationship between Maori and Pakeha law and authority has never been resolved, other than by force, to this day.

Taranaki Maori were confronted with Western methodologies for the occupation of land from 1839. Te Atiawa in particular were subjected to pressure to sell land for settlers who were on the land before arrangements were agreed. The tactics used to secure a show of acquiescence pitted one Maori against another, causing internecine warfare. Such were the circumstances surrounding the 'purchase' of most of the Te Atiawa land in the north, Waitotara in the south, and the land of the inland tribes in the east that, in our view, no distinction should now be made between the lands said to have been sold before, during, or after the 1860s wars and the lands confiscated as a result of them.

The protections promised Maori in the Treaty were gradually whittled away. The Native Protectorate was abolished and the offices of Native Secretary and native land purchase officer were combined in 1846. Matters worsened when representative institutions were introduced in New Zealand from 1853 without effective provision for Maori representation. At Waitara, the Governor was at once the purchaser, the judge of the title dispute, and the supreme commander of the troops. In the words of William Pember Reeves, adopted by the Sim commission and now us, the Waitara purchase would 'always remain for New Zealand the classic example of a blunder worse than a crime'. Maori custom, law, and institutions were judged by those who did not know them; and the judgments were wrong. The right of Maori to make their own decisions about who controlled the disposition of land and the nature of the interests held was negated, and the immediate result was war. The long-term consequence was that the Government enforced a plan to alter Maori land tenure and to destroy, by stealth and by arms, the capacity of Maori to manage their own properties and to determine rights within them. The relationship the Government imposed was that of dominance and subservience. The settler

government was unable to see that the essence of peace is not the aggregation of power but its appropriate distribution.

Wiremu Kingi was unjustly attacked. No serious historian has disputed that. Though famous for honour and integrity, Kingi was none the less attacked and hounded until, years later, he died landless. It was the Government that spread the war. In the words of D S Smith, claimant counsel before the Sim commission in 1927:

> The memories of the past are bitter memories still. Out of Waitara there sprang, and from Waitara there spread what to the native mind was a war of aggression. We say, in fact, that it was a war of aggression, and that an impartial tribunal will find it so.[1]

The Sim commission agreed, and we do too, that Kingi and his people never rebelled but were attacked by troops. It was a direct violation of the Treaty of Waitangi. After a truce, a second war began through the Governor's invasion of Omata and Tataraimaka. It was no less an act of aggression than the first. From that point, Maori could no longer expect the Governor's protection. They had good cause to consider that their lands and their survival must depend on their recourse to arms.

As for the confiscation plan, it was in fact not a scheme to secure peace by occupation, as the legislation claimed, but a strategy to take the territory for the benefit of settlers. Constantly expanding in proportion to the ambitions of its designers, the confiscation plan was immoral in concept and unlawful in implementation throughout the length and breadth of the land.

Since the whole of the lands of most hapu had been taken during the war, then by any standards of fairness and justice, the post-war relief had properly to be swift and clement. In fact, for over a decade Maori did not know what lands, if any, would be theirs, while that beneath their feet was continually being allocated to settlers. Even Maori who had not fought, or had fought with the Government, and whose lands should never have been touched in the first instance lost everything, were left not knowing what would be returned, and never recovered more than a fraction of that which was theirs. Many hapu with extensive customary lands were affected in that way, for land was taken ostensibly on account of the war in places that the war had never visited. The protests of the landless were protests of desperation, but for their actions they were imprisoned in their hundreds, at will, without trial, and with all civil rights suspended. The ultimate consequence, the invasion and sacking of Parihaka, must rank with the most heinous action of any government, in any country, in the last century. For decades, even to this day, it has had devastating effects on race relations. There was not a tribe in the country that did not learn of it, for Parihaka had been open to them all.

Throughout the post-war period to the Parihaka invasion of 1881, when Taranaki Maori had uncertain land rights, if any at all, and were under threat of extermination, the Government embarked on a macabre buying spree of lands both inside and outside the confiscation boundaries. Such were the post-war circumstances of those purchases, the materially different expectations of the parties, the lack of protection

1. MA 85 85/1; RDB, vol 48, p 18,565

for Maori interests, and the accompanying fraud and corruption that none of those purchases met the required standards of sincerity, justice, and good faith to be valid in Treaty terms. As contracts they were nullities for lack of common understandings. Like the pre-war purchases, these too should be treated no differently from the land confiscations.

Between 1880 and 1884, long after the war, the West Coast Commission eventually returned various lands to some Maori. Even that necessary and long awaited result was, however, made secondary to the promotion of European settlement. The primary objective of the West Coast Commission was to relieve Maori of more land. The consequences were no less catastrophic than before. Much less was returned than could or should have been, and the lands returned were so individualised as to undermine the basis for Maori society and destroy the traditional bulwark against land alienation. The consequences were known and expected, and as anticipated, sales followed.

Where the commission did not personalise titles, the Native Land Court did. The court went further and in its arrogance deprived many of their ancestral lands. Ngati Tama lost all of their territory that had not already been confiscated through a decision of that court that was probably political and, in any event, wrong. It should not have been the business of the court to have decided the matter in any event, because the issues were fully capable of resolution within the Maori community. It ought not to be forgotten in this context that last century the Native Land Court was set up to perform the Government's purpose.

Further, and without Maori consent, the administration of such lands as were returned to Taranaki Maori was passed by the West Coast Commission to the Public and Native Trustees. By statutory direction, and again without agreement, the bulk of those lands were then tendered to Europeans on perpetually renewable leases. Loss of possession and control meant more sales, and over time, most of the lease lands were sold by the trustees. The remainder are still under perpetually renewable leases. Over 100 years have passed since the wars, but Maori have still to gain possession of the promised land, and in the interim, their society crumbled as development opportunities passed them by.

Among the machinations of the past, false promises of land may have lingered longest in memories, the most cruel being the promise of reserves and the delivery of leases in perpetuity. The perpetual leases ensured that the pain of dispossession, which prolonged the war and imprisoned the protestors, was formally passed down in succession orders through every generation to the present. It would have been kinder had the land been taken, for the rents were negligible and Maori were succeeding to little more than lands they could never walk on. Their inheritance was a certificate that they should never be allowed to forget the war, the imprisonments, and their suffering and dispossession. It lived with them as they hunted down jobs, knowing that others were working what should really have been theirs. As children, they learnt the Taranaki double talk: that Taranaki maunga was Mount Egmont, as though the past was no longer theirs, and that 'Maori reserved lands' means 'lands for Pakeha', for the future was not theirs either.

We cannot begin to describe the resentment that welled up at every hearing, founded not on factual research but on the reality of inherited opinions. There is a conviction that from first settlement to the present there has been a concerted and unending programme to exclude Maori from land ownership throughout Taranaki. Law and order are not readily maintainable in that situation. Similar views are held by Australian Aboriginals and Canadian Indians, and it seems to be relevant that the three are the world's most imprisoned races. The prejudice must be overcome. The opinion that the world is no longer theirs to behold must stop with this generation.

We would expect any government seized of the consequences of the Taranaki legacy to have moved years ago to promote reconciliation through speedy and generous recompense. It took 60 years of agitation, however, before any inquiry was made, and then, as if to prevent proper public disclosure, that inquiry was so constrained by the Government that no full and proper investigation was possible. Nor was there ever a free and willing settlement. An annuity was offered on a take it or leave it basis. Any appearance of good intentions was destroyed when the annuities were allowed to erode through inflation. The only salve to conscience we can see is in now regarding those annuities as only token payments, in recognition of a wrong, as the Sim commission intended.

By the processes described, Taranaki Maori were plundered of their resources. The little left to them cannot sustain the cultural basis of their society for the future. This situation arose from the attitude of the Europeans in departing so entirely from the promises on which the government of the country was established. Generous reparation policies are needed to remove the prejudice to Maori, to restore the honour of the Government, to ensure cultural survival, and to re-establish effective interaction between the Treaty partners.

12.3 THE RELATIONSHIP IN FUTURE

12.3.1 Kaupapa tuarua

This report has introduced the historical claims of the Taranaki hapu. It has shown the need for a settlement and will shortly conclude with some opinion on how settlements might be effected. A second report, unless matters are earlier resolved, will précis the history relevant to particular groups and associated ancillary claims that may need to be distinguished in any comprehensive settlement.

A separate accounting for particular groups was seen to be necessary because they are not the same, were affected differently, and have different aspirations for the future. In the meantime, further hearings will be considered if the claimants or the Crown can demonstrate that these are necessary to achieve a settlement.

12.3.2 Settlement options

This report concludes by marshalling some comments on how the claims might be settled, based upon the picture that has emerged and the representations and arguments made at various sittings over the last five years. We observed in prefacing

this report that further sittings would be needed, especially to hear the Crown, before findings and recommendations could be made, but that the parties had sought an early report in the hope that our preliminary opinion on the facts and our views on a settlement might expedite a resolution. Our thoughts for settlement relate to quantum, process, and structure.

12.3.3 Size of claims

As to quantum, the gravamen of our report has been to say that the Taranaki claims are likely to be the largest in the country. The graphic muru of most of Taranaki and the raupatu without ending describe the holocaust of Taranaki history and the denigration of the founding peoples in a continuum from 1840 to the present.

12.3.4 Injurious affection

The above assessment of the size of the Taranaki claims is based upon the extent of prejudice or injurious affection. In historical claims, as distinct from the actionable and recent losses of individuals, the long-term prejudice to people may be more important than the quantification of past loss. Section 6(3) of the Treaty of Waitangi Act 1975, which requires consideration of the steps necessary to remove prejudice, not simply the quantification of property losses in accordance with lawful damages criteria, suggests this approach is necessary for historical matters. The extent of property loss is of course relevant but is not solely determinative. It appears that compensation should reflect a combination of factors: land loss, social and economic destabilisation, affronts to the integrity of the culture and the people over time, and the consequential prejudice to social and economic outcomes, for example.

12.3.5 Compensation for the impact of land loss

We consider that 1,199,622 acres (485,487 ha) were confiscated, that no distinction should be made in all the circumstances between that land and a further 296,578 acres (120,025 ha) said to have been purchased, and that a further 426,000 acres (172,402 ha) were expropriated by land reform and the Government's Native Land Court process, making some 1,922,200 acres (777,914 ha) in all. Even more important than the number of acres, however, is the fact that the whole of the lands of most hapu were confiscated, the whole of the lands of every other hapu were also deleteriously affected, and lands were not adequately returned to any hapu to provide the minimum relief that was vitally necessary. In other words, when determining injurious affection, the impact of loss by reference to the proportion of land taken and the amount retained, having regard to the size of group, is more important than the amount taken in absolute terms.

Considering the ways in which the alienation of Maori land was effected, including land reform as a device to remove tribal controls for land retention, and having regard to the Crown's Treaty duty to ensure a sufficiency of land for each hapu, it is useful to consider the land in Maori possession today and to relate that, if possible, to the circumstances of the people. Research on the amount of land in

Maori possession in Taranaki is still being undertaken through the Crown Forestry Rental Trust and is not yet available to us. We would assess the land left in Maori possession, however, to be less than 3 percent of the total area, and it may be that none of it will have a commercial benefit to hapu, as distinct from individuals. In commercial terms, the hapu loss would appear to be total. Relating that to the people is more difficult. The Taranaki Maori population cannot readily be assessed both because of Government policies from the 1840s to exclude Maori from the district and because of migration following land loss.

12.3.6 Compensation for social and economic destabilisation

The social and economic destabilisation of Taranaki Maori is a major compensation heading arising from the Government's circumvention of the traditional leadership, its disregard for Maori rights of autonomy, its levying of war, its land acquisition, and land reform through the Compensation Court, the Native Land Court, and the West Coast Commission. Some criticism of current arguments over tribal representation is properly directed not to the tribes but to the destruction of their society and institutions by the means described above. Based on the inquiry to date, we assess the question of autonomy to be most at issue in the Taranaki claims. We consider the principal losses to be the destruction of the culture and society of the people and of the resources that traditionally underpinned them. The result was the loss of both society and economic development opportunities, including the opportunity to participate in Government-assisted projects over the years; among them, the Department of Maori Affairs' farm development schemes. Reparation sufficient for the several hapu to establish a durable economic base appears to be essential for the reconciliation now needed.

12.3.7 Compensation for personal injuries

Personal injuries constitute a serious prejudice for which reparation is due. By personal injuries, we mean the present-day damage to the psyche and spirit of the people caused by deleterious and prejudicial action over generations. In our view, it is a significant item when considering historical claims and the steps necessary to remove prejudice. While time can soften hurt, the hurt in Taranaki has not been allowed to mend. The attack on Wiremu Kingi might well be seen as a thing of the past were it not for the fact that the rights of autonomy Kingi and others represented are still being denied. The military march through Taranaki and the bush scouring to destroy every village in the way, whether at peace or in arms, was one of the gravest scourges of the war; but it too might have been forgotten were it not for the fact that the process was repeated, long after the war, in the sacking and pillage of Parihaka and the forced dispersal of its citizens. It was indelibly emblazoned on our minds by witness after witness that Parihaka lives in the memory, and not as an isolated incident but as the exemplification of a pattern.

The history of Taranaki is not a set of unconnected incidents but a record of continual denial and represssion, and that is the major problem to be addressed. Original prejudices have been resurrected and reinforced throughout each

generation. The manner in which land was taken; the way in which the so-called purchases were effected; the human rights abuses, including imprisonments without trial; the injury sustained; the continued denial of rights over generations; the resultant state of race relations and the bitterness to be ameliorated; cultural marginalisation; and demographic dispersal are all relevant considerations under this heading.

Included in this category is compensation for the perpetually renewable leases. While they may well constitute a separate, specific, and quantifiable item of damage for loss of use and rents, the main prejudice was the memorialisation of the confiscations and dispossessions. The perpetual leases ensured that the history of war and deprivation would be revisited by every generation of Taranaki Maori.

12.3.8 Social and economic performance

Current social and economic performance may be a measure of past deprivation and poverty. We understand the Crown Forestry Rental Trust is funding a study in this area, but details of the work are not currently available to us.

12.3.9 Prior payments

We would place little weight on moneys previously paid for these claims. At best, they served to save face for the Government's wrongs, but only fleetingly, for the sincerity of the Government's desire for atonement has depreciated in proportion to the growth of inflation.

We refer now to matters of structure and process.

12.3.10 Full and final settlement

Just as generous reparation is needed to restore the Crown's honour and re-establish sound relations, so too is a broad and unquibbling approach required for the terms and conditions on which the settlement is made. Based on legal principles, the Taranaki claims may be assessed in billions of dollars, yet claimants appear to be required to settle for a fraction of that due. Some billions of dollars would probably result were loss based only upon the value of the land, when taken with compound interest to today, leaving aside exemplary damages or compensation for loss of rents and the devaluation of annuities. It may be necessary to have some constraints on account of economic exigencies. It could also be that the historical claims of peoples should not be treated as lawsuits for the recent losses of individuals, because historical variables have interposed. Whatever the case, it seems to us that a full reparation based on usual legal principles is unavailable to Maori as a matter of political policy, and if that is so, Maori should not be required to sign a full and final release for compensation as though legal principles applied. How tribes can legally sign for a fraction of their just entitlement when they have no other option is beyond us. To require Maori leaders to sign for a full and final settlement in these circumstances serves only to destabilise their authority. If a full-pay off for the past on legal lines is impractical, and a massive sum would be needed in this instance,

it is more honest to say so and to reconsider the jurisprudential basis for historical claims settlements.

A more arguable case would appear to be that the settlement of historical claims is not to pay off for the past, even were that possible, but to take those steps necessary to remove outstanding prejudice and prevent similar prejudice from arising; for the only practical settlement between peoples is one that achieves a reconciliation in fact. Accordingly, it appears to us that generous reparation is payable, and if the hapu are to waive further claims to the Waitangi Tribunal in future, it must be subject to the Government maintaining a commitment to the people's restoration and adhering thereafter to the principles of the Treaty of Waitangi.

12.3.11 Hapu representation

On the evidence to this point in time, the vast majority of those who appeared before us favour not a single Taranaki settlement but a settlement with the main hapu aggregations. Bearing in mind that over the history described more than 100 hapu can be counted and that the same number of hapu could well surface again, it is necessary to emphasise that we are here referring to the principal aggregations that have devolved to today. Most speakers before us presumed there were only eight such groupings, being the first eight named below, all of whom are currently represented on the Taranaki Maori Trust Board. It was considered these would cover the interests of all. Based upon their regular appearances and submissions at hearings spread over the last five years, however, 10 groups in fact demonstrated that they exist today as distinctive and viable entities deserving separate consideration. The groups are arranged by region and waka as follows:

North (Tokomaru)	Centre (Kurahaupo)	South (Aotea)
1. Ngati Tama	5. Taranaki	6. Nga Ruahine
2. Ngati Mutunga		7. Ngati Ruanui
3. Ngati Maru		8. Nga Rauru
4. Te Atiawa		9. Pakakohi
		10. Tangahoe

Other hapu appeared or filed claims, some only after four or five years of well-publicised hearings. Where these have particular ancillary claims relating to recent losses, as will be considered in any further report, those claims may need to be severed from the general settlement. Otherwise, these hapu appear to fall within the umbrella groups named.

12.3.12 Hapu apportionment

Because the hapu were affected in different ways, direct comparisons between them are not practicable. It is not enough to quantify the differences by comparing the amount of land that each lost by confiscation, purchase, or land reform or that each

had returned as reserves, because there was not one hectare of the land of any hapu that was not deleteriously affected in some way. A population basis is also of no help in this case, because population is conditioned by land loss.

The allocation is properly to be agreed between the hapu. In addition, the matter has not been fully argued before us. In the absence of some agreement, however, and based only upon our broad perception of matters over the last five years of research and hearings, we would consider the loss of the Taranaki people in the centre, including the destruction of Parihaka, to equate to one-seventh of the total, with the north and south losses to be equal between them at three-sevenths each. This also roughly approximates comparable tribal areas.

Hopefully, any apportionments within the three districts can be settled locally without further input from us. It may be useful if we state our view, however, that, although we recognise Pakakohi and Tangahoe as functioning entities of distinctive tradition, they have not had an exclusive occupation of territory nor have they established to our satisfaction that they have asserted such pre-eminence either formerly or today as might entitle them to share equally with Nga Ruahine, Ngati Ruanui, and Nga Rauru.

Further, subject to some contrary arrangement that might be locally agreed, it appears to us that separate settlements with the north, centre, and south would be appropriate, provided a body can be established for each that is fully accountable to the hapu in the area. To resolve overall quantum, however, a negotiating body of representatives from each of the northern, central, and southern parts may be required.

Those are our views at this stage, but as we have said, they are subject to any alternative arrangements settled locally.

12.3.13 The Taranaki Maori Trust Board and the PKW Incorporation

Conversely, while the Taranaki Maori Trust Board has had and should continue to have an important role in the life of Taranaki, compensation should be directed to the hapu, not the board, unless the hapu agree otherwise. Similarly, although the shareholders of the PKW Incorporation can point to historical losses of possession and rents, the main loss has again been with the hapu and it is with the hapu that a settlement must be made. If historical grievances are not to be compounded, or history repeated, limited funds should not be dissipated to individuals. It may need to be recalled that the Taranaki claims arose initially from the colonists' reordering of individual and group functions in Polynesian tradition.

None the less, the costs incurred by the trust board and the incorporation, which provided the main funding for the research and hearings over several years, should be acknowledged and reimbursed by the Crown.