

2 HISTORICAL ACCOUNT

- 2.1 The Crown's acknowledgements and apology to the Hapū in part 3 are based on this historical account.

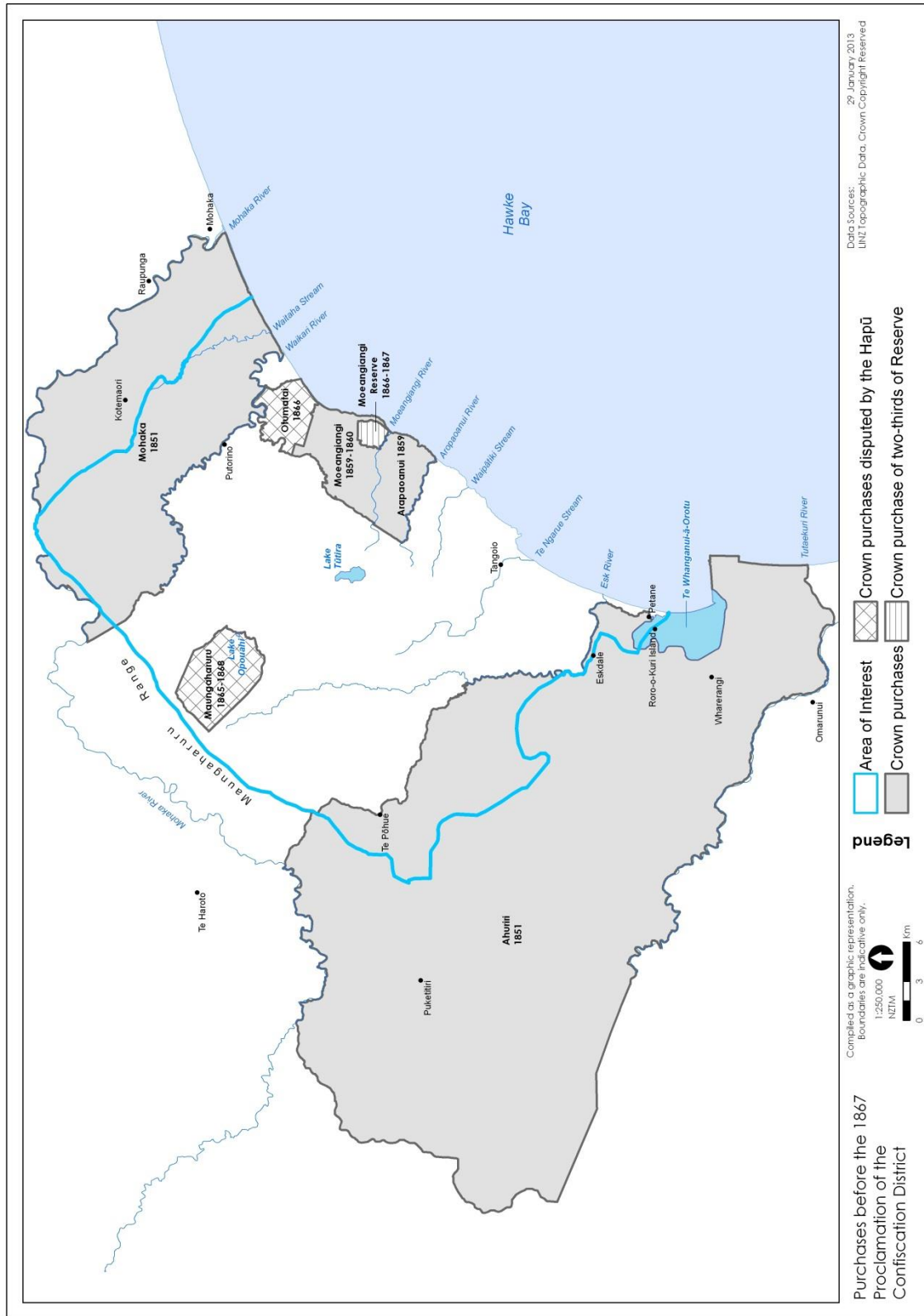
EARLY YEARS OF MĀORI AND PĀKEHĀ INTERACTION IN HAWKE'S BAY

- 2.2 In the 1840s and 1850s the Hapū were affected by social and economic changes. This included the arrival of Christianity, which led to the construction of decorated Christian chapels at Petane, Tangoio, Arapawanui and other villages. In the 1840s there were shore whaling stations at Moeangiangi and Whakaari (Tangoio). Some men from Tangoio were involved in commercial whaling at Te Māhia. Wheat and maize was shipped from Tangoio to Napier.

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CROWN PURCHASING IN THE 1850S AND 1860S



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- 2.3 In the early 1850s the Crown decided to acquire a large amount of land in Hawke's Bay. The Crown was keen to purchase land for settlement rather than allow Māori to lease it to settlers. The Crown's chief land purchase agent, Donald McLean commenced negotiations for large scale purchases in Hawke's Bay in 1851. Among the first acquisitions were purchases in 1851 of 265,000 acres at Ahuriri and 85,700 acres at Mohaka.

The Ahuriri Purchase 1851

- 2.4 In April 1851, the Governor instructed McLean to purchase the Ahuriri block for the lowest price Māori would accept. By 2 May 1851 McLean had secured an agreement to buy the Ahuriri block for £1,500. However there was much discontent among the Tangoio people about this price before a deed was signed by Māori in November 1851. On 15 November, McLean recorded in his diary that this discontent had probably arisen because the Tangoio people were not consulted in the first phases of the sale. McLean had informed the Tangoio people two days earlier that it was too late to change the arrangements.
- 2.5 The Crown led Māori to believe that they would derive considerable economic benefits from selling their land to the Crown in order to persuade them to accept low prices. A deed of sale was signed on 17 November 1851.
- 2.6 The Crown agreed to reserve less than one percent of the Ahuriri block for Māori. The three principal reserves were at Roro-o-Kurī Island within Te Whanganui-ā-Orotu (also known as the Napier Inner Harbour or Napier Lagoon), Wharerangi and Puketitiri. However, the Crown did not establish any mechanism to ensure these reserves would always remain in Māori ownership, and by the 1920s all the reserves had been sold.
- 2.7 The 1851 deed of sale described Te Whanganui-ā-Orotu as one of the boundaries of the purchase. The plan attached to the deed shades Te Whanganui-ā-Orotu red and includes it within a dark red line which marks the boundary of the purchase. McLean wrote in his diary that he showed this plan as he read the deed before it was signed. The Crown considered the nearly 8,000 acres of Te Whanganui-ā-Orotu to have been included in the purchase.
- 2.8 However, the Hapū have long protested that Māori did not intend to sell Te Whanganui-ā-Orotu in 1851. Several inquiries have drawn different conclusions about this issue. In 1916 the Solicitor-General concluded that the wording of the Ahuriri deed did not include Te Whanganui-ā-Orotu within its boundaries, and that the boundary shown on the map had been drawn in error. In 1920 the Māori Land Claims Commission concluded that Māori had understood Te Whanganui-ā-Orotu was included in the Ahuriri purchase. In 1948 a Native Land Court Judge reporting on a petition about this issue, concluded that only a small proportion of Te Whanganui-a-Orotu had been included in the sale.
- 2.9 The Hapū consider that their tīpuna (ancestors) did not agree to sell Te Whanganui-ā-Orotu, and that the Crown subsequently assumed ownership without justification.

The Mohaka Purchase 1851

- 2.10 In April 1849 three Waikare rangatira (chiefs) offered land to the Crown in return for a large payment and the introduction to their district of many settlers with whom they could

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trade. The Crown did not immediately follow up this offer, but by January 1851 McLean was keen to purchase as much land in the Mohaka district as possible.

- 2.11 By March 1851 the Crown was negotiating to purchase a large block in the Mohaka district. On 6 March, Waikare Māori offered to include land between the Waitaha Stream and the Moeangiagi River in the block to be acquired by the Crown. However, by 1 April 1851 the owners had decided to retain this land for their own use, and the Crown's negotiations were focused on a block between the Waikari and Mohaka Rivers. The Crown sought to purchase the Mohaka block as cheaply as possible, and by July 1851 a price of £800 had been agreed.
- 2.12 A deed of sale was signed in December 1851 that provided for the Crown to pay £800 in four annual instalments of £200. There was some dissatisfaction when the deed was signed that the Crown would not pay all the purchase money at once. The Crown did not complete payment of the purchase money until 1855. In April 1855 the Crown paid a final instalment of £300 of which £100 was paid to the Waikare people. They protested about the size of the payment which McLean acknowledged was small. McLean wrote in his diary that Māori would consider the payments to be inadequate unless they received the collateral advantages the Crown had led them to expect from the development of settlement on the land that they sold.
- 2.13 The deed did not provide for any reserves to be set aside for Māori along the north bank of the Waikari River. In 1851 Waikare Māori retained a large amount of land on the south bank, but customary interests in this land were later extinguished as part of implementing the Crown's policy of confiscation. Although much of the land was returned to individual members of the Hapū, by the 1930s the Crown had purchased most of it.

Other Purchases before 1865

- 2.14 In the late 1850s and in the 1860s the Crown negotiated to purchase two other blocks in the takiwā or traditional area of the Hapū. Between April and June 1859 the Crown purchased 2,000 acres at Arapaoanui in three transactions. Between July 1859 and November 1860 the Crown purchased 12,000 acres at Moeangiagi for £310.
- 2.15 In 1865 the Crown made a down payment of £100 for 8,000 acres on the Maungaharuru Range. The purchase was to be completed after the land had been surveyed. The Crown completed the Maungaharuru purchase in 1868 when a deed of sale was signed providing for the Crown to acquire 7,760 acres for £185. In 1866 the Crown paid £400 for 4,470 acres at Otumatai (also known as Otumatahi). There is little information about the negotiation of these transactions beyond the deeds that were signed. The Hapū have long held the view that the customary title to these blocks was never completely or fairly extinguished.
- 2.16 All of the blocks the Crown purchased in the late 1850s and in the 1860s were enclosed within land that the Crown would later make subject to its policy of confiscation.

The Introduction of the Native Land Laws

- 2.17 Parliament established the Native Land Court under the Native Land Acts 1862 and 1865, to determine the owners of Māori land "according to native custom" and to convert

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customary title into title derived from the Crown. Through these laws the Crown also set aside its pre-emptive right of purchase, allowing Māori owners to lease and sell their lands to private parties or to the Crown. The Crown intended these Acts to facilitate the opening up of Māori customary lands to Pākehā settlement. Māori were not represented in Parliament when this legislation was introduced, and the Hapū were not consulted about these Acts.

- 2.18 The native land laws introduced a significant change to customary land tenure. The titles available under the native land legislation were awarded to individuals and undermined tribal control of land alienation. The Crown expected that this change would eventually lead Māori to abandon the tribal and communal structures of traditional land holdings.
- 2.19 The Native Land Act 1865 provided for titles to Māori land blocks to be awarded to a maximum of ten individual owners. There were no provisions in the Act to prevent these individuals from dealing with the tribal lands they were awarded as their personal property.

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Land Purchases Under the Ten Owner Rule: Moeangiangi Reserve 1866, Petane & Te Pahou Blocks 1870



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- 2.20 In June 1866 the Crown agreed with two individuals to purchase 1,000 acres that had been reserved for Māori in the 1859 Crown purchase at Moeangiāngi on the condition that they obtain a title for the reserve from the Native Land Court. Later in 1866 the Court held hearings in Napier to determine the ownership of this block as well as blocks of more than 10,500 acres at Petane, and nearly 700 acres at Te Pahou.
- 2.21 Neither of the Moeangiāngi sellers lived on the block. One seller presented evidence to the Court identifying himself with another iwi, but based the sellers' claim to Moeangiāngi on descent from Tatarāmoa the eponymous ancestor of Ngāti Kurumōkihi who were previously known as Ngāi Tātara. The other witness to testify was Te Retimana Ngarāngipāi who had lived at Moeangiāngi and who only appeared because he happened to be in Napier during the hearing. Te Retimana identified himself as belonging to Ngāti Kurumōkihi and made his claim to Moeangiāngi under the ancestor Mutu of Ngāi Te Aonui. The Court named him one of three owners of the Moeangiāngi reserve, along with the two sellers from whom the Crown had purchased.
- 2.22 The Court's hearings for the Petane and Te Pahou blocks led to ownership of each of these blocks being awarded to ten individual owners several of whom were from the Hapū.
- 2.23 On 12 January 1867 the Crown proclaimed the confiscation of the Mohaka-Waikare district. Te Pahou block was just outside the boundaries of this district, but the Moeangiāngi and Petane blocks were within it. However, the Moeangiāngi and Petane blocks were not treated as part of the block proclaimed for confiscation, and the titles awarded by the Court continued to have legal effect.
- 2.24 Later in 1867 the Crown completed the purchase of the interests in the Moeangiāngi reserve of the two sellers with whom it had previously negotiated for a price of £160. In 1870 a Pākehā settler purchased all of Te Pahou, and eight of the ten shares in Petane. He agreed to pay £100 for each share in Te Pahou, and £200 for each share in Petane.
- 2.25 In 1873 the Crown established the Hawke's Bay Commission to investigate a number of complaints Māori were making about the operation of the ten owner rule in Hawke's Bay. The Commission heard evidence about a large number of blocks including Moeangiāngi, Te Pahou and Petane. In the case of Petane there were complaints by some people with customary interests in Petane about being left out of the 1867 Crown grant. The Commission criticised the manner in which a reserve such as that at Moeangiāngi could be awarded to only a few individuals when it was probable that a whole community must have interests in this land. It recommended that the ten owner rule be repealed.
- 2.26 Later in 1873 the Crown paid Te Retimana £80 for his interests in the Moeangiāngi reserve. The Native Land Act 1873 repealed the ten owner rule, but the repeal did not have retrospective effect.
- 2.27 The owners of the Petane and Te Pahou blocks who had sold their shares complained about being paid with liquor and goods for their interests. The Commission concluded that the Pākehā purchaser had fairly paid for the shares by providing credit at the store he operated.

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OMARUNUI AND THE MOHAKA-WAIKARE CONFISCATION

Omarunui

- 2.28 The Battle of Omarunui in October 1866 was a key turning point in the history of the Hapū, and led to the Crown proclaiming the confiscation of the Mohaka-Waikare block in 1867.
- 2.29 In 1866 the Crown had yet to conclude peace agreements with all Māori it had fought against in the New Zealand wars. In August 1866, several rangatira from Ngāti Hineuru wrote to McLean, the senior Crown official in Hawke's Bay, to say they would lead a party to Hawke's Bay in response to his invitation to negotiate peace terms. In September 1866 an armed party of about one hundred, which included some individuals from the Hapū, came to Petane hoping to meet with McLean.
- 2.30 This party stayed at Petane for several weeks. They told a Crown official who visited there that they had come to Hawke's Bay in response to an invitation from McLean. On 4 October most of the party at Petane moved to Omarunui a few miles away. The inhabitants of Omarunui left their pā which was in the hands of the newcomers for the following week.
- 2.31 On 5 October McLean wrote to the leaders of the party encamped at Omarunui to ask them to explain their intentions.
- 2.32 In correspondence between 5 and 8 October the leaders of the party encamped at Omarunui indicated that they were expecting to meet McLean in light of his invitation to come to Hawke's Bay. At no time did the party at Omarunui attack anyone.
- 2.33 On 8 October 1865 McLean decided that the party encamped at Omarunui were a threat to the security of the region surrounding Napier. It is not clear why McLean came to this view. He ordered Crown military forces to begin preparations to neutralize the threat he perceived.
- 2.34 At midnight on 11 October 1865 Crown military forces began to surround Omarunui. McLean hoped that a display of overwhelming military force would induce those inside the pā to surrender. In the morning though, the Crown sent an ultimatum to them demanding that they surrender within one hour or face attack. The Crown declined a request for more time, and Crown forces assaulted the pā when the ultimatum expired without the occupants having surrendered. Those encamped at Omarunui had taken no additional steps to further fortify the pā.
- 2.35 Crown forces killed about 23 of those inside Omarunui in about two hours of fighting. One Pākehā and two Māori fighting as part of the Crown's military forces were also killed. The battle ended when most of those inside Omarunui surrendered, once it became obvious to them that further resistance was hopeless. Some managed to break out and flee towards Te Pōhue, but they were pursued and mostly killed or captured.
- 2.36 At the same time as Omarunui was attacked, Crown military forces also attacked and defeated those who had remained at Petane. Those attacked at Petane included a small number of people who had ridden down from Tītī-a-Okura since the main body moved to Omarunui.

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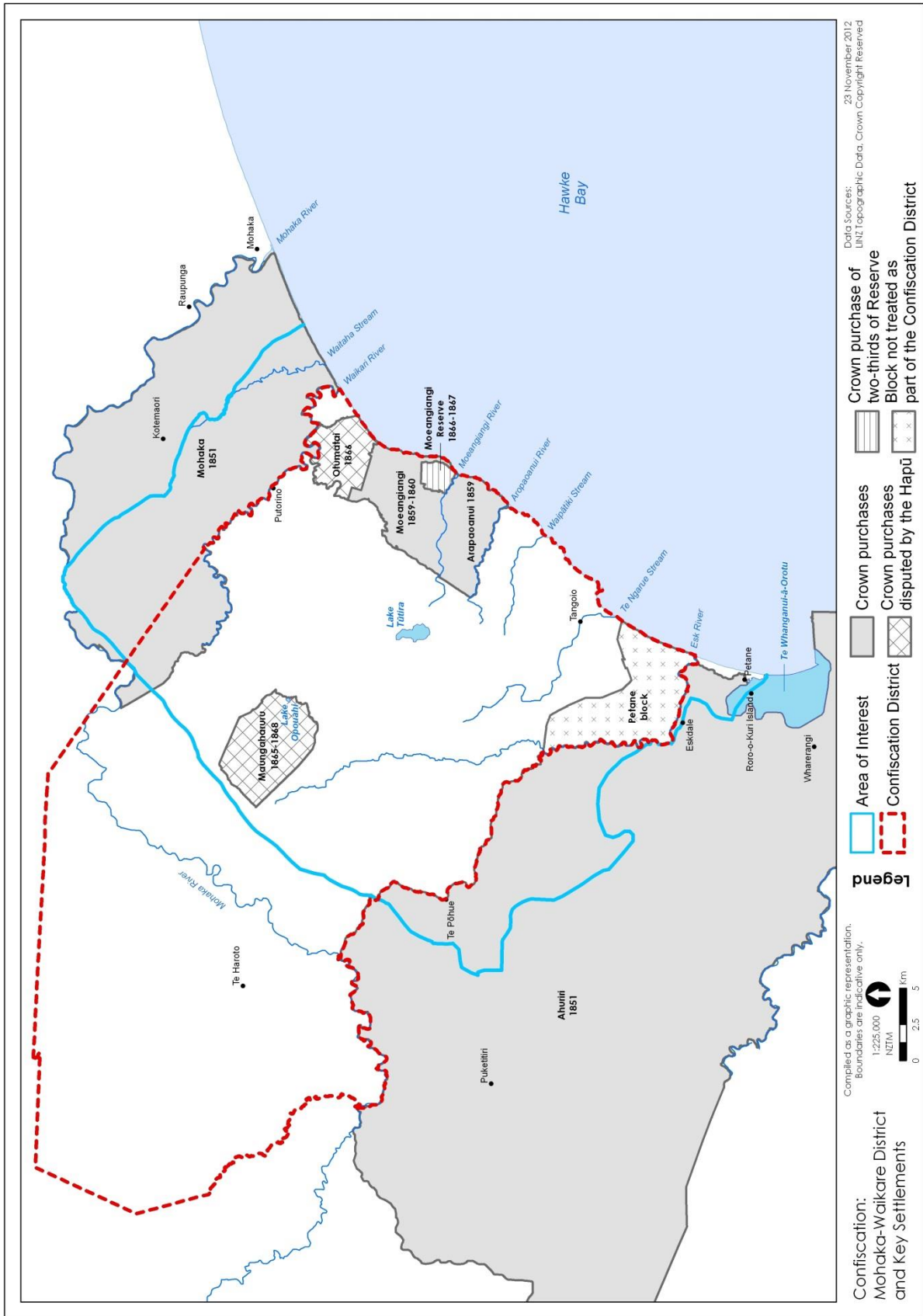
- 2.37 The Crown captured 86 prisoners and transported most to the Chatham Islands. The Crown's prisoners included at least seven men who belonged to Ngāti Tū and at least six who belonged to Ngāti Kurumōkihi. The Crown held the prisoners in harsh conditions on the Chatham Islands for nearly two years. At no time were the prisoners given a trial. In July 1868 Te Kooti led the prisoners in an escape to the mainland.
- 2.38 The escaped prisoners became known as the Whakarau, and were soon embroiled in a bitter war against the Crown. In January 1869 Crown forces summarily executed a number of prisoners who had been captured after an assault on a Whakarau pā at Ngatapa. The identity of most of those executed is not definitely known. It is possible that some of them may have affiliated to the Hapū. Tribal history records that several of the Hapū escapees returned home, but it is unclear when this may have occurred.
- 2.39 In general the Hapū did not oppose the Crown in the conflicts of the 1860s. Some Hapū members were involved in the conflicts as allies of the Crown. Others did not participate at all. Many would later characterise themselves as "Loyal Natives" in petitions to the Crown.

Mohaka-Waikare Confiscation

- 2.40 During the 1860s it was Crown policy to confiscate land from those it considered rebels, and the New Zealand Settlements Act 1863 was enacted to facilitate such confiscations.
- 2.41 On 8 January 1867 McLean recommended that what became known as the Mohaka-Waikare district be confiscated pursuant to the New Zealand Settlements Act. McLean described the proposed confiscation district as an area lying between Petane and the Waikari River along the coast and extending inland to the Hawke's Bay provincial boundary.
- 2.42 On 12 January 1867 the Crown proclaimed that it would confiscate land belonging to rebels in the Mohaka-Waikare district. The proclamation was made by an Order in Council under the New Zealand Settlements Act 1863.

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- 2.43 The Crown proclaimed that it would not retain the land of any loyal inhabitants within this district, and any “rebels” who submitted to the Crown within a reasonable time frame would receive only a “sufficient quantity” of land that was “adequate for their maintenance”.
- 2.44 The New Zealand Settlements Act was punitive in nature, and did not provide a definition of “rebel”. Although members of the Hapū were involved in the battle at Omarunui, they were at no time in a state of rebellion.
- 2.45 The Crown did not define the district selected for confiscation with reference to iwi and hapū boundaries. The district was a large area lying between the Mohaka and Ahuriri Crown purchases of 1851 and the Hawke’s Bay provincial boundary. Some land within the district was already Crown land, including the 1859 Crown purchases of the Arapaoanui and Moeangiangi blocks. The incomplete purchase of the Maungaharuru block was also within the district.
- 2.46 The Crown did not establish any judicial inquiry into interests within the Mohaka-Waikare district, and did not establish any judicial inquiry to determine who had been loyal and who had been in rebellion. The Compensation Court, used in some of the other confiscated areas, did not sit in Hawke’s Bay. Nor was any process equivalent to the Tauranga Commissioners or the Poverty Bay Commission established with respect to this confiscation. The process of collecting the names of the persons to whom the returned blocks were to be allocated to was left entirely up to Crown officials.

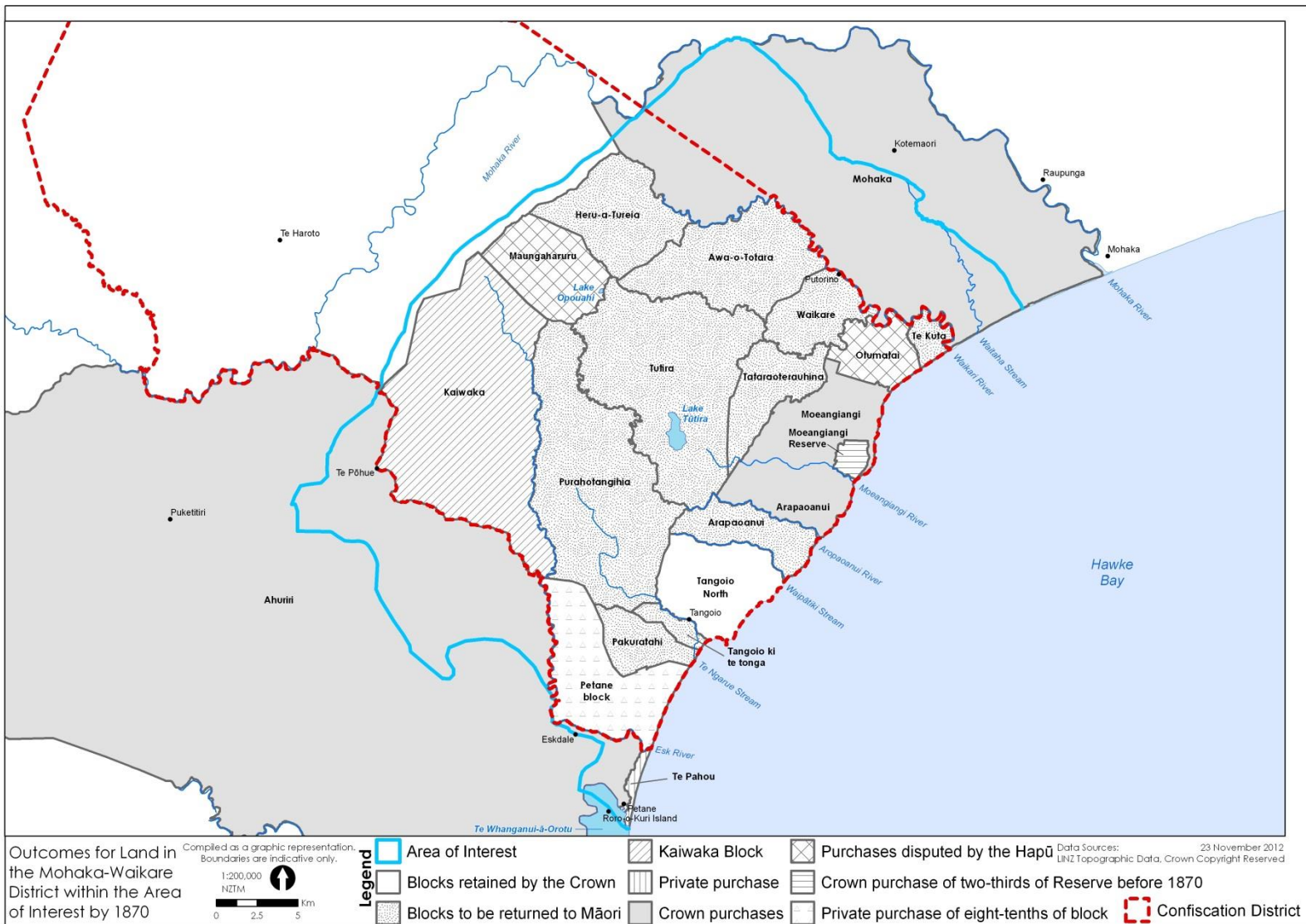
The Mohaka-Waikare Deeds and the Mohaka and Waikare Districts Act 1870

- 2.47 On 8 May 1868 the Crown signed a deed with a number of Hawke’s Bay rangatira returning some of the Mohaka-Waikare district to Māori ownership and retaining the remainder as Crown land. However, the deed was never implemented. In July 1868 the prisoners who had been sent to the Chatham Islands escaped, and the Crown became embroiled in further fighting against them. In 1869 the Crown began renegotiating how much land the Crown would retain, and how much would be returned to Māori. A second Mohaka-Waikare deed was signed on 13 June 1870. The 1870 deed split the Mohaka-Waikare district into smaller blocks, provided for the Crown to retain the Tangoio North block of 9,050 acres and for various blocks of land to be returned to Māori named in the agreement. The Hapū maintain that the Maungaharuru block of 8,000 acres was also retained by the Crown as they believe its purchase had not been completed. Most of the official correspondence about the negotiation of the 1870 deed has been lost.
- 2.48 Although the Maungaharuru, Moeangiangi and Otumatai blocks lay within the boundaries of the confiscated district, they were excluded from the 1870 deed on the grounds that the Crown had already purchased them. The Petane block was also excluded from this agreement despite lying within these boundaries because the Native Land Court had awarded it to Māori owners before the confiscation proclamation was issued.
- 2.49 The blocks returned to Māori individuals in the takiwā were –
- 2.49.1 Tangoio ki te tonga (35 names);
- 2.49.2 Pakuratahi (13 names);

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- 2.49.3 Arapaoanui (37 names);
- 2.49.4 Tutira (40 names);
- 2.49.5 Tatara-o-te-Rauhina (14 names);
- 2.49.6 Purahotangihia (27 names);
- 2.49.7 Awa-o-Totara (39 names);
- 2.49.8 Waikare (37 names);
- 2.49.9 Te Kuta (36 names);
- 2.49.10 Kaiwaka (1 name); and
- 2.49.11 Heru-a-Tureia (36 names).

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- 2.50 The 1870 deed provided that the returned blocks were to be inalienable “both as to sale and mortgage” and that they were to be held on trust “in the manner provided, or hereinafter to be provided, for Native Lands under trust”. The deed did not clarify whether interests in the returned blocks were equal, or whether they were held according to Māori custom.
- 2.51 The deed was given legal effect by the Mohaka and Waikare District Act 1870. This Act declared the deed valid and binding. The Act also provided authority for the award of Crown grants for the blocks to be returned to the individual Māori named in the deed.
- 2.52 In 1878 the Mohaka and Waikare Districts Act was inadvertently repealed. In 1881 the Native Land Acts Amendment Act included provisions revalidating both the 1867 confiscation and the 1870 deed. By this time much of the returned land was leased to Pākehā settlers.

The Native Land Court hearing of 1882

- 2.53 The 1881 Act provided for the Native Minister to apply to the Native Land Court to determine ownership of the Mohaka-Waikare blocks which were to be returned under the 1870 legislation. The Native Land Court usually awarded ownership of Māori land to individuals it determined to have customary rights to the land. Members of the Hapū saw the 1881 Act as providing an opportunity to apply to the Court to award the Mohaka-Waikare lands to their customary owners. However in July 1882 when the Native Land Court considered this application, it proceeded on the understanding that the only persons who could be recognised as having an interest in the land were those named in the 1870 deed or their successors.
- 2.54 When the Court declined the application to investigate the ownership of the Mohaka-Waikare blocks according to Māori custom, the customary rights holders walked out of the court in protest led by their rangatira Anaru Kune of Ngāti Tū and Ngāti Kurumōkihi, Hemi Puna of Ngāi Te Ruruku, Te Teira Te Paea of Ngāti Tū and Ngāti Kurumōkihi and Manaena Tinikirunga of Ngāi Tauira. A Crown agent then read out to the Court the names of individual Māori listed for each block in the 1870 deed and the Court simply recorded them as the owners. The Native Land Court never subsequently conducted an investigation of title to Hapū lands on the basis of customary interests.

“A GROSS AND UNPARDONABLE FRAUD”: THE KAIWAKA CASE

- 2.55 Kaiwaka (30,765 acres) was one of the largest and most valuable of the Mohaka-Waikare blocks returned to Māori ownership. The 1870 deed vested Kaiwaka solely in the ownership of a rangatira from another hapū as a reward for services he had provided to the Crown. The Hapū consider that this Ahuriri rangatira had no customary interests in the Kaiwaka or any other block in their takiwā. No other block was vested in just one individual. The same Ahuriri rangatira also received a shared interest in all of the other Mohaka-Waikare blocks.
- 2.56 The Hapū considered the Ahuriri rangatira was a trustee for the customary owners. During the 1870s the Ahuriri rangatira passed on rental income from Kaiwaka to several Hapū rangatira, who then distributed it among the customary owners. However, after the Ahuriri rangatira died in 1880, his children began to treat Kaiwaka as their own property. The customary owners of Kaiwaka received no further income from it.

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- 2.57 In 1889 Hemi Puna, a rangatira of Ngāi Te Ruruku and other members of the Hapū joined a petition to the Crown claiming that the Ahuriri rangatira had no rights in Kaiwaka, and had intended to return it to the customary owners before he died. The petitioners requested that the Native Land Court investigate the ownership of Kaiwaka, and award it to its customary owners. The Native Affairs Committee, which inquired into the petition, reported that it appeared the intention of the 1870 deed was for the persons awarded titles to the returned blocks to hold the land as trustees.
- 2.58 However the Crown did not take any steps to create a trust over those blocks. In November 1895 the Crown granted ownership of the Kaiwaka block to the children and several other relatives of the Ahuriri rangatira. This was the only Crown grant for any of the “returned” blocks issued by this time.
- 2.59 In 1896 members of the Hapū initiated legal proceedings in which they sought a declaration that the Ahuriri rangatira awarded title in 1870 had been their trustee. This case went straight to the Court of Appeal, which found that no trust had been created. In addition to their own legal expenses the Hapū members who brought this case were ordered to pay the substantial legal costs of the legally recognised owners of Kaiwaka who had opposed their lawsuit.
- 2.60 The Hapū, led by Te Teira Te Paea a rangatira of Ngāti Tū, then bore the expense of an appeal to the Privy Council in London. The Hapū argued that the Crown stated it would protect the interests of loyal Māori when it first proclaimed the confiscation of the Mohaka-Waikare district in 1867. They reasoned it was therefore inconsistent for the sole owner awarded Kaiwaka in 1870 not to be held as their trustee. The defendants argued that the block had passed absolutely to the grantee and then to his heirs. However, the Privy Council agreed with the New Zealand Court of Appeal that there was nothing to show that there had been any intention to create a trust. The Privy Council dismissed the appeal and the Hapū were again ordered to pay the respondents’ costs as well as their own.
- 2.61 In 1903 the Hapū sent a petition about Kaiwaka directly to King Edward VII, but he was advised by his Ministers that the matter was for the government of New Zealand to decide. The New Zealand government refused to intervene. In May 1910 the Crown paid more than £14,000 for Kaiwaka subdivisions 1 and 2A. None of the land acquired by the Crown was returned to the customary owners of Kaiwaka.
- 2.62 The balance of Kaiwaka remaining in Māori ownership, block no. 2B, was offered for sale to the Crown in 1912. While the Crown was considering this proposal the owners successfully applied to the Native Appellate Court to convert the balance of the Kaiwaka block from Native freehold land to general land. This change meant that the land could now be sold freely to private purchasers. Negotiations between the Crown and the owners of Kaiwaka 2B appear to have ended at this time.
- 2.63 The net effect of the Crown’s actions with regard to the Kaiwaka block was that the customary title of the customary owners was extinguished. The Hapū consider that the vesting of this block in a single individual, and the Crown’s persistent opposition to the search for relief by the Hapū via legal proceedings, and by petition, over a period of some fifty years, was equivalent to the block being confiscated and retained by the Crown.

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CROWN PURCHASING OF THE MOHAKA-WAIKARE BLOCKS: AN OVERVIEW

- 2.64 In 1909, individual Hapū members who had land returned to them under the 1870 deed were mostly deriving income from the leasing of much of this land, which the 1870 deed had provided could not be sold.
- 2.65 In 1911, the Crown initiated negotiations to purchase the land returned to individual Hapū members in 1870. The Native Land Act 1909 provided for Māori landowners to make collective decisions about the alienation of their land. Māori land could be sold if a majority of owners present at a meeting organised by the local District Māori Land Board, had approved a sale. However, in 1913 the jurisdiction of the Land Board to call a meeting with respect to one of the returned blocks was challenged on the grounds that no Crown grants had ever been issued to the Māori owners to whom the Crown agreed to return the land in 1870.
- 2.66 In 1914 the Solicitor-General concluded that as the Mohaka-Waikare blocks had been confiscated, they remained Crown land until Crown grants were issued to the individual Māori owners. The Solicitor-General recommended the enactment of new legislation to deal with the Mohaka-Waikare titles. He concluded that whether the shares in the blocks should be equal or determined by Māori custom, was a matter for the Native Land Court to determine. In response Parliament enacted section 4 of the Native Land Claims Adjustment Act 1914 which provided for all the returned blocks to become Māori freehold land. The legislation deemed all interests in the Mohaka-Waikare returned blocks to be equal.
- 2.67 Meanwhile, the Crown continued its efforts to purchase land in the returned blocks. The Crown used its power under the native land legislation to issue a proclamation prohibiting the owners from leasing or selling the Heru-a-Tureia block to a party, other than the Crown. A private party was keen to lease Heru-a-Tureia, but could not do so while the proclamation was in force.
- 2.68 In February 1912 the Crown made an offer at a meeting of owners of Heru-a-Tureia. This offer was rejected, and in August 1912 the owners asked the Crown to remove its proclamation so that they could lease the block privately.
- 2.69 However the Crown would not agree to remove its proclamation. In 1913 an amendment to the native land legislation empowered the Crown to purchase land from individual owners. The Crown proceeded to do so, despite the opposition to selling that the owners had expressed collectively at the 1912 meeting of the owners.
- 2.70 The native land legislation provided for such Crown proclamations to expire after several years. However, when the proclamation for Heru-a-Tureia expired, the Crown issued a fresh proclamation. The Crown's approach to negotiations left the owners no choice but to sell to the Crown if they wished to derive any economic benefit from their land. The Crown maintained its monopoly powers over the Heru-a-Tureia block until 1923 by which time it had acquired the entire block through purchases from individual owners.
- 2.71 The Crown sought to acquire as much land as it could in the blocks it purchased, even where the owners had made offers to sell which provided for them to retain some land in their takiwā as an economic base in the region. One catalyst for the wave of Crown purchasing during the 1910s was the extension of the Wellington to Napier railway line to Gisborne through a part of the the Mohaka-Waikare district. In August 1913, a group of

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Hapū owners led by Ni Puna offered to sell land to the Crown inland of the proposed railway route in the Awa-o-Totara, Purahotangihia, and Tutira blocks. This offer envisaged that the Hapū would retain the land in these blocks on the seaward side of the railway line.

- 2.72 However the Crown sought to purchase all the land in these blocks on both sides of the railway. In December 1913, after issuing a proclamation prohibiting alienations to private parties, the Crown presented offers to purchase all of Purahotangihia and Awa-o-Totara to meetings of the owners of these blocks. Both meetings passed resolutions approving the Crown's purchases. Some Purahotangihia owners subsequently protested to the Crown that title should be investigated and shares should be defined before the Crown commenced purchasing, but in 1915 all of Purahotangihia, and most of Awa-o-Totara, became Crown land.
- 2.73 The Crown adopted a similar approach to negotiations in other blocks. It issued a proclamation prohibiting alienations to private parties of land in the Arapaoanui and Pakuratahi blocks in 1915, and made purchase offers to meetings of the owners. These were rejected, but by the end of 1917 the Crown had purchased most of these blocks from individual owners.
- 2.74 In 1916 the Crown also made a purchase offer to the owners of Tataro-o-te-Rauhina after imposing its monopoly powers. This offer was rejected, but the Crown made another offer to a meeting of owners in 1917. Despite the assembled owners twice rejecting Crown offers, the Crown then approached the owners individually, and had purchased all of Tataro-o-te-Rauhina by 1923.
- 2.75 In 1913, at the same time as it was in negotiations over the railway blocks, the Crown entered into negotiations for Te Kuta, after receiving an offer of sale from absentee owners. The Crown issued a proclamation against alienations to private parties in Te Kuta, and a Crown purchase offer was accepted at a meeting of owners in December 1913, subject to the interests of four resident non-sellers being retained. The Crown obtained most of the block in 1915 while the non-sellers retained an area beside the Waikari River including their kāinga and urupā.
- 2.76 The Crown negotiated for all the land it acquired in this district as a monopoly purchaser. The native land legislation provided for the Crown to issue proclamations prohibiting private competition for land the Crown wished to acquire for a period of one year, and for such proclamations to be renewed for a further two years. In negotiations for Heru-a-Tureia, Arapaoanui, Pakuratahi and Tataro-o-te-Rauhina the Crown issued proclamations, renewed them, and then issued fresh proclamations when the original proclamations expired under the provisions of the native land legislation.
- 2.77 The Crown's use of these proclamations denied owners income from their land for long periods which placed pressure on them to sell to the Crown if they needed to derive income from their land.
- 2.78 By 1931 the Crown had purchased nearly all of the returned Mohaka-Waikare blocks. The Crown acquired interests in the Kaiwaka, Heru-a-Tureia, Awa-o-Totara, Purahotangihia, Te Kuta, Arapaoanui, Pakuratahi, Tataro-o-te-Rauhina, and Tutira blocks totalling over 100,000 acres, leaving little more than 4,500 acres as Māori land by 1931.

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

- 2.79 This was too little land for the Hapū to maintain a viable presence in the region and their takiwā.

THE COMPULSORY VESTING OF TANGOIO SOUTH IN THE IKAROA DISTRICT MĀORI LAND BOARD

- 2.80 The Tangoio South block of 965 acres was vested in 35 owners by the Mohaka-Waikare deed of 1870. Tangoio Marae is located on this block, and its coastal lagoon was a valued source of kai moana. The flat portions of Tangoio South were used for gardening, but its hilly parts were infested with blackberry by the beginning of the twentieth century.
- 2.81 In February 1907 the Crown vested the Tangoio South block in the Ikaroa District Māori Land Board for the purpose of bringing the blackberry infestation under control. The owners resented this Crown action to which they did not consent. In November 1907 some owners petitioned Parliament seeking to recover control of their land from the Board. The Native Affairs Committee at Parliament referred the petition to the government for consideration, but the Crown did not restore Tangoio South to the owners' control.
- 2.82 In October 1908 a group of owners met with the President of the Board and again requested that the block be returned to the owners. They were told they would need to make an application to the government but it was unlikely that their request would be granted.
- 2.83 The Board instead leased much of Tangoio South to several of the owners who were required to pay rent to the Board. The leases required the lessees to control the blackberry infestation, but in November 1911, nearly five years after the block was vested in the Board, a Crown official reported that the block was still badly infested with blackberry.
- 2.84 In February 1917 the Native Land Court, acting at the request of the owners, partitioned Tangoio South. Beneficial interests in a large section of 839 acres were awarded jointly to all of the owners as Tangoio South 27, and the remaining land was divided into 26 small lots in which beneficial interests were awarded to individuals or family groups.
- 2.85 In March 1917 some owners offered to sell a portion of Tangoio South to the Crown. However in August 1917 the Crown declined this offer because of the continuing, heavy infestation of blackberry on the block.
- 2.86 In December 1917 a number of owners petitioned the Board to re-vest sections 1-26 of Tangoio South in the owners, but the President of the Board replied that it had no jurisdiction to do this. The owners then sent their petition to the Crown, but the Crown did not act on the owners' request to promote legislation providing for the transfer of their land to their own control. In 1922 the owners wrote to the Member of Parliament for Eastern Māori seeking his assistance in having these lots returned. They wrote that this would make it easier to run their stock, and that the lessees were unable to pay rents owed to the Board. The Board was unwilling to hand back the land especially because of the unpaid rent.

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

- 2.87 In August 1923 Tangoio South 27 (the residue block) was partitioned into 17 blocks ranging from 20 to 100 acres in size.
- 2.88 In August 1924 the owners sought assistance from the Member of Parliament for Eastern Māori after several local bodies levied rates on sections 1 to 26. In October 1924 the Crown informed the owners that only a small area where their meeting house and marae were located could be exempted from rates. According to the Crown, the owners received the same benefits as Europeans from roads that rates were used to pay for, but the owners pointed out that the Crown had not paid for land it had taken from them for roads. The owners estimated that the road from Panepaoa (at Tangoio beach) to Waikare was 24 miles long and the road from Tangoio South to the Aropoanui River was 10 miles long, therefore approximately 3,000 acres had been taken from them for roads without any compensation.

TUTIRA

- 2.89 Much of Tutira had been leased to settlers before 1870 through agreements that, as they affected customary Māori land, were not legally enforceable in the event of any disputes arising. The 1870 Mohaka-Waikare deed provided for the 23,467 acre Tutira block to be granted to 40 individuals who would have the legal power to lease Tutira for a period of up to 21 years.
- 2.90 The informal leasing of Tutira continued until 1884. In September 1884 the owners entered into a formal, legal agreement to lease most of Tutira to two Pākehā settlers, and reserved an area of 3,000 acres for their own use. In November 1895 one of the settlers, and a new partner, entered into a fresh lease of 10,000 acres on the understanding that the first lease would be relinquished when it expired in 1905.
- 2.91 In 1907 the Crown established the Stout Ngata Commission to review the usage of Māori owned land, and recommend which land should be retained by Māori and which land should be made available for settlers. The Commission investigated Tutira, and, after discussions with the owners, made recommendations relating to the location, duration, and rents for the Tutira leases which would increase the owners' income by £1,000 a year. In 1907 Parliament enacted legislation empowering the Ikaroa District Māori Land Board to act on behalf of the owners in giving effect to these recommendations about the Tutira leases.
- 2.92 In 1908 some of the Tutira owners brought legal proceedings against the Board arguing that the 1907 legislation was not intended to compel them to accept leases negotiated by the Board. These owners argued that compelling them to accept any lease negotiated by the Board would breach the Treaty of Waitangi. The Court of Appeal held that the leases negotiated by the Board were binding on the owners.
- 2.93 In 1913 the Crown did not take up an offer from some of the owners to sell to the Crown part of the Tutira block which lay inward of the proposed Napier-Gisborne railway. However, in July 1917, after some owners offered to sell their interests, the Crown decided to commence purchasing interests in Tutira despite being unaware of the attitude of the other owners to selling. The block at that time was still leased to a settler for rent of £1,600 a year which was based on a capital value assessed in 1907 of £32,000. By 1917 the value of the land had nearly doubled since this rental was agreed. The Crown was required to pay at least the government valuation for any Māori land it purchased, and had Tutira re-valued. The Crown then offered just over £40,000, after

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2: HISTORICAL ACCOUNT

- deducting the value of the lessees' improvements from the block's capital value of just over £60,000.
- 2.94 In February 1918 the Crown began acquiring individual interests in Tutira. By January 1923 the Crown had acquired eighty percent of the individual interests in Tutira. The Crown had applied to the Native Land Court to be awarded the interests it had purchased, but in April 1923 the Court dismissed this application because Tutira had not been surveyed.
- 2.95 Some of the non-sellers were dissatisfied with the Court's decision, and in April 1923 Hami Tutu, a Hapū member, asked the Court to partition out the interests of the non-sellers. This application was repeatedly adjourned by the Native Land Court at the Crown's request.
- 2.96 In August 1923 the Commissioner of Crown Lands at Napier reported that some of the non-sellers had stated that their interests in Lake Tūtira were protected by the Treaty of Waitangi.
- 2.97 By July 1926 Tutira had been surveyed, and was found to be 3,000 acres larger than had been believed when the Crown decided upon the price it would offer. In July 1926 the Crown asked the Native Land Court to partition Tutira between the Crown and the non-sellers. Tutira A, containing an area of 19,426 acres was awarded to the Crown, and Tutira B, containing 862 acres, was awarded to the non-sellers.
- 2.98 The non-sellers successfully applied for a rehearing of the partition after the Crown opposed their request for the Court to make orders protecting their customary hunting and fishing rights in Lake Tūtira. However, the rehearing was repeatedly adjourned between 1926 and 1928 during which time the Crown recommenced purchasing individual interests.
- 2.99 Finally, in April 1928 the Native Land Court awarded the Crown 19,726 acres in Tutira A, and the non-sellers 561.5 acres in Tutira B. Two acres on the eastern side of Lake Tūtira were reserved as Tutira C and gifted to the Crown as a memorial to Tiwaewae, a famous Ngāti Kurumōkihi chief. The Court partitioned Lake Tūtira between the Crown and the non-sellers in the same proportions as the surrounding land.
- 2.100 In February 1929 a Native Land Court Judge heard evidence about a petition from Kipa Anaru, a Hapū rangatira, and a number of others. The petition called for the awards for the Tutira block and its lake to be finalised in a way that enabled the Hapū to preserve their access to the lake, and their ability to exercise their customary rights over it. The Judge reported that the non-sellers wished to have the whole or at least most of the lake returned to them. He also reported that the non-sellers were willing to gift Lake Tūtira to the nation provided that their customary rights in the lake were protected. As an alternative, the non-sellers suggested that the 3,000 surplus acres be awarded to them in a location that included the lake and the neighbouring hill slopes.
- 2.101 In 1931 the Native Land Court increased the Crown award in Tutira A to 22,790 acres and the non-sellers' award in Tutira B to 677 acres in eighteen subdivisions. In spite of the petition of the non-sellers, the lake was partitioned between the Crown and the non-sellers in the same proportions as these two blocks. In 1935 the Crown paid an additional £6,470 to purchase the additional 3,350 acres, which the block had been discovered to include since the Crown made its first offer. This money was paid to the

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

Ikaroa District Māori Land Board for distribution to the sellers. In 1941 the lessee of Tutira B paid some of the rent money due to its owners to the Crown to cover the survey costs of the eighteen subdivisions.

WHAKAARI

- 2.102 In 1870 Parliament designated ten acres at Whakaari as a Crown owned reserve for use as a landing-place for all and a fishing ground for the owners of the returned blocks.
- 2.103 The Crown has never returned this reserve to Māori ownership, nor always ensured that the Hapū retained access to it. In 1959 Whakaari was leased, along with the adjoining land, to a Pākehā farmer. Hapū members, Te Otane Reti, Tautahanga Sullivan, Hineraumoa Sullivan and Morehu Albert petitioned the Crown asking for the restoration of Whakaari to Māori ownership. The Crown declined this request.

ENVIRONMENTAL ISSUES

Lake Tūtira

- 2.104 Lake Tūtira was known to the Hapū as “ko te waiū o ō tātau tīpuna” - “the milk of our ancestors”. This is a reference not only to the abundance of kai (food) that could be sourced from the lake but also to the lake providing spiritual sustenance to the Hapū. Since the 1880s, deforestation and the development of pastoral farming has caused significant increases in soil erosion resulting in a ten-fold increase in sedimentation and pollution in Lake Tūtira. In the 1890s the surrounding swamp was drained, and drainage ditches carried sediment directly into the lake. This sedimentation continued through much of the twentieth century, and between 1925 and 1963 the lake bed rose substantially. Severe storms such as the 1938 ‘Anzac Day Storm’ and Cyclone Bola in 1988 have greatly exacerbated the ongoing sedimentation of the lake. Since the 1950s, nutrient run-off from the use of aerial topdressing on surrounding pastures and suspended sediment has affected the water quality of the lake and adjoining rivers. There has been severe eutrophication in the lake, and an invasion of waterweed and algal growth. River channels have been filled, riparian vegetation removed and the flood plain size increased. Lake Tūtira’s fisheries have deteriorated with the complete loss of kākahi (freshwater mussel) beds while the once plentiful tuna (eel) fishery has been greatly reduced.
- 2.105 In 1951 Te Aturangi Anaru, a Hapū rangatira, suggested to Crown officials that the section of the lake owned by the Hapū become a wildlife refuge.
- 2.106 In 1957 the Crown section of Lake Tūtira was gazetted as a wildlife refuge. However the individual Hapū owners of the rest of the lakebed declined Crown attempts to persuade them to include their section of the lake within this refuge as they feared it would affect their status as the owners.

Flooding

- 2.107 In the twentieth century the principal kāinga for the Hapū was at Tangoio located in the Tangoio South block. The kāinga and Tangoio marae were in a low-lying area that was prone to severe flooding. The risk of flooding was increased because of deforestation carried out on surrounding lands.

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

2.108 During the twentieth century a series of devastating floods forced many whānau to move away from their tribal lands. On Anzac Day in April 1938 severe flooding in the Esk and Tangoio valleys damaged all the buildings at Tangoio apart from the schoolhouse and the school. All fences were destroyed and there were substantial losses of stock and other property. In June 1963, a serious flood led the District Commissioner of Works to declare the Tangoio valley unsafe for habitation. The valley was covered with silt up to a depth of 900mm. Forty houses were flooded and many settlers and whānau decided to evacuate the area permanently. However, total evacuation of the area was difficult to achieve as some whānau did not want to leave their kāinga and marae.

2.109 The marae at Tangoio has continued to be vulnerable to flooding.

Coastline

2.110 Te Hata Kani described the coastline in this region as a fishing paddock handed down from his ancestors. The coastal waters were once rich sources of kaimoana (seafood) for the Hapū. However natural disasters and man-made pollution have had a severe impact on the coastline. The 1931 Napier earthquake raised and drained the Tangoio lagoon and Te Whanganui-ā-Orotu. Intensive farming in the twentieth century exacerbated erosion and caused significant pollution in streams that flowed into the sea. Coastal waters have also been polluted by outfall from processing plants. The Hawke's Bay seafloor has become almost completely covered by sediments resulting from the erosion of adjacent catchments. Sedimentation has negatively impacted kaimoana both directly and also indirectly through effects on nursery habitats. In 1991 researchers concluded that shellfish taken from Tangoio beach were unfit for human consumption, and that it was even unsafe to swim at Tangoio because of the pollution.

SOCIO-ECONOMIC ISSUES

2.111 The traditional tribal lands of the Hapū were critical to their economic wellbeing in 1840. In the 1860s the loss of land through confiscation was a severe economic blow. Although much of the confiscated land was re-granted to Māori owners, banks were reluctant to lend money on multiply-owned Māori land, and the Hapū did not have the same access as Pākehā settlers to development capital. In 1907 the Stout Ngata Commission criticised the Crown for not providing Māori with the same level of assistance it provided to settlers to develop their land.

2.112 The Crown did not begin to offer significant development assistance for Māori land until the late 1920s. However, by this time the extent of Crown land purchasing meant that the Hapū no longer had sufficient land for a socio-economic base. In 1930 the only lands retained by individual members of the Hapū were in the Tutira, Tangoio South and Arapaoanui blocks. In the late nineteenth and early twentieth centuries there was a large decline in Māori-owned land under cultivation in the region, and Māori in this region were becoming increasingly dependent on wage labour.

2.113 Education and training were critical to the participation of Hapū members in the economy of the twentieth century, and by 1900 Tangoio Māori had asked the Crown to provide a school for them. In 1904 the Crown established Tangoio school. The proportion of all children moving on to secondary school and tertiary education at this time was very low, but increased significantly over the twentieth century. However, the education system, generally, had lower expectations for Māori than Pākehā children until well into the

DEED OF SETTLEMENT

2: HISTORICAL ACCOUNT

twentieth century. Many Māori had to support themselves with unskilled manual labour after leaving school.

- 2.114 Many Māori in the region lived in great poverty. The depression of the 1930s hit the Hapū hard. In 1932 the Native Minister reported that the economic position of Māori in Hawke's Bay had deteriorated, and many lived in overcrowded housing. A Crown official described the housing conditions in many Hawke's Bay pā as "appalling". In 1940 another Crown official reported that most of the owners of Tutira B had no other land interests, and lived in poor financial circumstances at Tangoio. In 1942 a Crown survey concluded that 84% of all Māori houses in Hawke's Bay were below a "satisfactory" standard, and that 63% either needed costly renovations, or should be demolished.
- 2.115 In the years following 1945 an increasing number of Hapū members emigrated to urban centres away from the region. There had been some significant improvements in living standards, and during the 1950s and 1960s Māori were in "full employment." However they were mainly employed in unskilled work, and Māori living standards generally remained behind those of Pākehā. In the 1970s Māori unemployment began to rise, and during the restructuring of the New Zealand economy in the 1980s the Māori unemployment rate rose to double figures.
- 2.116 Hapū members have consistently suffered from worse health than Pākehā. During the nineteenth century Māori were exposed to epidemic diseases against which they had no immunity, and this caused a significant decline in the Māori population. Censuses in Hawke's Bay suggest that the population of the Hapū began to recover after 1896 as they began to develop greater immunity to the newly introduced diseases. However, recent research by the Hapū shows that many of the Hapū's family lines died out between 1860 and 1930.
- 2.117 The Hapū continued to suffer from diseases of poverty such as typhoid and tuberculosis during the first half of the twentieth century. In 1926 a Crown official reported that typhoid was endemic in Tangoio. The same official reported that support for the Ratana Church at Tangoio contributed to the prevalence there of infectious diseases, especially typhoid, because it meant the people of Tangoio did not consult doctors or refer these diseases to the authorities. However another official reported at this time that the Ratana Church instructed its followers to seek medical help for these infectious diseases.
- 2.118 Yet the same official reported that vulnerability of the people of Tangoio to typhoid was exacerbated by the land's proneness to flooding, which contaminated its water supply. In the 1930s, rates of pneumonia, scabies and whooping cough were reported to be severe. In 1932 a Crown official reported that many Hawke's Bay Māori seldom consulted doctors, as they were too poor to pay for them.
- 2.119 Since 1945, improved living conditions and Crown health services have contributed to considerable improvements in Māori health. Yet a substantial gap between Māori and Pākehā health has continued, and Māori life expectancy continues to be lower than that of Pākehā. In 1988 the Director General of Health characterised Crown health policies, and the development and delivery of Crown health services, as monocultural.